

**NOTICE OF SPECIAL MEETING  
OF THE  
SPRING HILL GOVERNING BODY**

**CITY OF SPRING HILL, KANSAS**

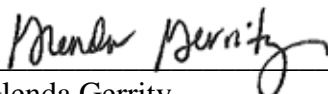
**May 17, 2019**

To Whom It May Concern:

You are hereby notified that there will be a Special Meeting of the Spring Hill Governing Body at 6:30pm, May 21, 2019, Spring Hill Civic Center, 401 N. Madison, Council Chambers, Spring Hill, KS, the object of said meeting being on the following:

1. Call to Order
2. Roll Call
3. Ordinance No. 2019-10: Authorizing Industrial Revenue Bonds (Blackhawk Apartments Project Phase II)
4. Discussion: Outside Agency 2020 Budget Funding Requests
  - Johnson County Human Services – Utility Assistance
  - United Community Services of Johnson County
  - Spring Hill Chamber of Commerce
  - Spring Hill Cemetery Board
  - Spring Hill Parks Advisory Board
5. Adjourn

Witness my hand and the seal of said city this 17<sup>th</sup> day of  
May, 2019.

  
\_\_\_\_\_  
Glenda Gerrity  
City Clerk

State of Kansas

County of Johnson/Miami

City of Spring Hill



## AGENDA ITEM REVIEW SHEET

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TO: GOVERNING BODY  
SUBMITTED BY: MELANIE LANDIS, ASSISTANT CITY ADMINISTRATOR  
MEETING DATE: MAY 21, 2019  
DATE: MAY 17, 2019

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### **Formal Action**

**Issue:** Ordinance authorizing the City of Spring Hill, KS, to issue its industrial revenue bonds (taxable under federal law), Series 2019 (Blackhawk Apartments, Phase II), in the aggregate principal amount not to exceed \$10,100,000 for the purpose of financing a portion of the cost of acquiring, constructing and equipping a multifamily housing facility; authorizing the execution of certain documents in connection with the issuance of the bonds.

**Background:** Industrial revenue bonds (IRB's) are an economic development tool available to Kansas cities and counties. IRB's are offered under Kansas law (see K.S.A. 12-1740 and 79-201a) to provide financing for private business facilities and may be used to finance all or a portion of the project. Cities elect to offer the use of IRB financing to support economic development activities which offer the option of tax abatement and/or sales tax exemption on construction of the facility.

**Analysis:** The city has previously accepted an IRB application for the Blackhawk apartment project, phase II. The approved request is for IRB's to finance a portion of the project (Phase I), abatement of property taxes averaging fifty percent (50%) over ten (10) years and exemption of sales tax on construction of the project.

The ordinance being presented to Council is an authorization for bond issuance and execution of related documents including: PILOT agreement, lease, trust indenture, special warrant deed, and bond purchase agreement.

**Legal Review:** The ordinance and all related documents were provided by Kutak Rock, city bond counsel, and provided to Mr. Jenkins, city attorney for review. Applicant and applicant's legal counsel have reviewed all documents as well.

**Recommendation:** It is staff recommendation to approve ordinance 2019-10 authorizing the City of Spring Hill, KS, to issue its industrial revenue bonds (taxable under federal law), Series 2019 (Blackhawk Apartments, Phase II), in the aggregate principal amount not to exceed \$10,100,000 for the purpose of financing a portion of the cost of acquiring, constructing and equipping a multifamily housing facility; authorizing the execution of certain documents in connection with the issuance of the bonds.

**Attachments:** Ordinance 2019-10  
Payment in Lieu of Tax Agreement (PILOT) Agreement  
Lease  
Trust Indenture  
Special Warranty Deed  
Bond Purchase Agreement

**ORDINANCE NO. 2019-\_\_**

**AN ORDINANCE AUTHORIZING THE CITY OF SPRING HILL, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW), SERIES 2019 (BLACKHAWK APARTMENTS PROJECT PHASE II), IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$10,100,000 FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING AND EQUIPPING A MULTIFAMILY HOUSING FACILITY; AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS**

**WHEREAS**, the City of Spring Hill, Kansas (the “Issuer”), is authorized by K.S.A. 12-1740 *et seq.*, as amended (the “Act”), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities;

**WHEREAS**, pursuant to Resolution No. 2018-R-16 of the Issuer adopted on August 23, 2018 (the “Resolution of Intent”), the Issuer expressed its intent to issue industrial revenue bonds in the approximate principal amount of \$10,079,657 for the purpose of financing a portion of the costs of acquiring, constructing, and equipping an apartment complex, including real estate, buildings and improvements (the “Project”), and further authorized the execution of a Payment in Lieu of Tax Agreement (the “PILOT Agreement”) between the Issuer and Blackhawk Development, L.L.C., a Kansas limited liability company (the “Purchaser”), providing for a property tax exemption for the portion of the Project financed with industrial revenue bonds, subject to certain conditions;

**WHEREAS**, the Purchaser has requested, and the Issuer has agreed, to revise the form of the PILOT Agreement to replace the Purchaser with an affiliate of the Purchaser, Blackhawk Apartment Homes II, LLC, a Kansas limited liability company (the “Tenant”), and to authorize execution of the PILOT Agreement as so revised;

**WHEREAS**, the Issuer has found and does find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II), in the aggregate principal amount not to exceed \$10,100,000, (the “Bonds”), for the purpose of financing a portion of the costs of acquiring, constructing, and equipping the Project, as more fully described in the Indenture and the Lease authorized herein, and authorizing the Issuer to lease the Project to the Tenant; and

**WHEREAS**, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds to execute and deliver (i) a Trust Indenture (the “Indenture”), with Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the “Trustee”), prescribing the terms and conditions of issuing and securing the Bonds; (ii) a special warranty deed (the “Deed”), from Tenant, as grantor, conveying to Issuer, as grantee, fee title to the

Property; (iii) a Lease (the “Lease”), between the Issuer and the Tenant, pursuant to which Issuer shall lease the Project to the Tenant, in consideration of rentals which are intended to be sufficient to provide for the payment of the principal of, premium, if any, and interest on the Bonds as the same become due; (iv) a Bond Purchase Agreement providing for the sale of the Bonds by the Issuer to the Purchaser; and (v) a PILOT Agreement between the Issuer and the Tenant (collectively, the “Bond Documents”);

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SPRING HILL, KANSAS, AS FOLLOWS:**

**Section 1. Authority to Cause the Project to be Acquired, Constructed and Equipped.** The Issuer is hereby authorized to cause the Project to be acquired, constructed and equipped all in the manner and as more particularly described in the Indenture and the Lease herein authorized.

**Section 2. Authorization of and Security for the Bonds.** The Issuer is hereby authorized and directed to issue the Bonds, to be designated “City of Spring Hill, Kansas, Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II)” in the aggregate principal amount not to exceed \$10,100,000, for the purpose of providing funds to pay the costs of acquiring, constructing and equipping the Project. The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The Bonds shall be special limited obligations of the Issuer payable solely from the trust estate established under the Indenture, including revenues from the lease of the Project to the Tenant. The Bonds shall not be general obligations of the Issuer nor constitute a pledge of the full faith and credit of the Issuer and shall not be payable in any manner by taxation.

**Section 3. Execution of Bonds and Bond Documents.** The Mayor of the Issuer is hereby authorized and directed to execute the Bonds and deliver them to the Trustee for authentication on behalf of, and as the act and deed of, the Issuer in the manner provided in the Indenture. The Mayor is further authorized and directed to execute and deliver the Bond Documents on behalf of, and as the act and deed of, the Issuer in substantially the forms on file in the office of the City Clerk, with such corrections or amendments thereto as the Mayor may approve, which approval shall be evidenced by execution thereof, and to execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance and the Bond Documents. The City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer’s official seal.

**Section 4. Pledge of the Project and Net Earnings.** The Issuer hereby pledges the Issuer’s interest in the Project and the net earnings generated under the Lease to the payment of the Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Bonds shall be deemed to have been paid within the meaning of the Indenture.

**Section 5. Further Authority.** The officials, officers, agents and employees of the Issuer are hereby authorized and directed to take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Bonds and the Bond Documents as necessary to give effect to the transactions contemplated in this Ordinance and in the Bond Documents.

**Section 6. Effective Date.** This Ordinance shall take effect from and after its final passage by the Governing Body of the Issuer, signature by the Mayor and publication once in the official newspaper of the Issuer.

**PASSED** by the Governing Body of the City of Spring Hill, Kansas, and approved by the Mayor on May 21, 2019.

**CITY OF SPRING HILL, KANSAS**

(Seal)

\_\_\_\_\_  
Steven M. Ellis, Mayor

ATTEST:

\_\_\_\_\_  
Glenda Gerrity, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Frank H. Jenkins, Jr., City Attorney

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Tyler Ellsworth, Bond Counsel

## PAYMENT IN LIEU OF TAX AGREEMENT

**THIS PAYMENT IN LIEU OF TAX AGREEMENT** (this “Agreement”), made and entered into as of this \_\_\_\_\_, 2019, by and between **BLACKHAWK APARTMENT HOMES II, LLC**, a Kansas limited liability company (the “Company”), and **THE CITY OF SPRING HILL, KANSAS**, a municipal corporation (the “City”).

**WHEREAS**, the Company, or an affiliate of the Company, has applied to the City for the issuance of industrial revenue bonds pursuant to K.S.A. 12-1740 *et seq.*, and has requested the equivalent of a ten-year, fifty percent (50%) tax abatement on the cost of acquiring, constructing and equipping a multifamily housing facility in the City (collectively, the land, buildings and improvements comprising such facility are referred to as the “Project”);

**WHEREAS**, Kansas law and the structure of the industrial revenue bond transaction requested by the Company allow an abatement of *ad valorem* property taxes on that portion of the Project financed with proceeds of the bonds;

**WHEREAS**, the Company intends to finance the buildings and improvements, but not the land, at the Project, with proceeds of the bonds; and

**WHEREAS**, to effect the equivalent of a fifty percent (50%) abatement on the entire Project, the parties undertake this agreement to abate the buildings and improvements, but not the land, at the Project as set forth herein;

### WITNESSETH THAT:

- Tax Exemption; Payment in Lieu of Taxes.** In consideration of the issuance by the City of its industrial revenue bonds in the principal amount of \$10,079,657 (the “Bonds”), to finance a portion of the cost of acquiring, constructing and equipping the Project and in consideration of Company’s execution and delivery of a Special Warranty Deed, pursuant to which the Company, as grantor, conveys fee title in the Project to the City, as grantee, and the Lease (the “Lease”), as may be amended from time to time, pursuant to which the City, as lessor, leases the Project back to the Company, as lessee, and in further consideration of the laws of the state of Kansas granting an exemption from real and personal property taxation for the Project for a period of up to 10 years, commencing with the first calendar year after the calendar year in which the Bonds are issued, the Company agrees to make payments in lieu of *ad valorem* property taxes in the amount specified herein and in the manner provided for herein, and the City agrees to apply for an *ad valorem* property tax exemption for the buildings and improvements, but not the land, comprising the Project (such buildings and improvements, to the extent financed with proceeds of the Bonds, the “Project Improvements”) for the 10 year period herein described.
- Location.** The Project is located in the City on the real property described on *Exhibit A* attached hereto (the “Project Site”).
- Amount of Payments; Place of Payment.** In lieu of the general *ad valorem* property taxes on the Project Improvements as permitted by K.S.A. 79-201a, for the 10 calendar years commencing with the first calendar year after the calendar year in which the Bonds are issued, the Company shall pay, if due, by separate check to the Treasurer of Miami County, Kansas (the “County”), or other appropriate officer as required by the laws of the State of Kansas, a payment in lieu of taxes (“PILOT”) in an amount equal to the *ad valorem* property taxes which would otherwise be due on the Project Improvements, abated by the abatement percentage set forth on *Exhibit B* attached hereto. Such amount shall be billed to the Company by statement of the County Clerk of the County (or such

other appropriate officer of the County or City) which bill shall be issued approximately contemporaneously with the issuance of general tax bills in the State of Kansas and shall be due on the dates and in the percentages that *ad valorem* property taxes are due in the State of Kansas. Currently, tax bills are issued by November 20th of each year and are due as follows: one-half (1/2) on or before December 20th in respect of the PILOT for the then current calendar year, and the remainder for such calendar year on or before May 10th of the following calendar year.

4. **Distribution of Payment.** All PILOTs shall be distributed to all applicable taxing subdivisions in the County, as provided in K.S.A. 12-1742.
5. **Reduction of Payment for Actual Taxes Paid or Decrease in Valuation.** The annual amount to be paid pursuant to Section 3 herein shall be reduced, but not below zero, by any actual *ad valorem* property tax payments paid by or on behalf of the Company with respect to the Project Improvements for any year in which the taxes for the Project Improvements are exempt under the terms of this Agreement. The annual amount to be paid pursuant to Section 3 herein shall not be reduced in the event the County's valuation of the Project Improvements for any calendar year decreases after such annual amount, or any portion thereof, has been paid by the Company for such calendar year.
6. **Failure to Make PILOT; Lease Default.** Should the Company fail to make the payments described above or a default shall occur under the Lease and not be cured within any time period permitted therein, this Agreement may be terminated at the option of the City effective on the date in the year such payment was originally due or the date of such default, as applicable, and the Company agrees that from and after such termination date, it shall pay in full the regular amount of *ad valorem* property taxes on the property constituting the Project Improvements.
7. **Approval of Exemption.** This Agreement is conditioned on the issuance by the Kansas Board of Tax Appeals of an order exempting the Project Improvements from *ad valorem* property taxation in accordance with Kansas law, including K.S.A. 79-201a *et seq.*, and upon receipt by the City from the Company of all information necessary to file the Application for Exemption with the Kansas Board of Tax Appeals by no later than February 1 in the year following the issuance of the Bonds. The Company acknowledges that the exemption must be annually renewed and agrees to provide the City with information to complete the annual renewal by February 1 of each year in which the exemption is in place.
8. **Payment of Fees and Expenses.** This Agreement is conditioned on payment when due by the Company of all fees and expenses of the City in connection with the Bonds and the Lease, including without limitation the City's application fee, service or origination fee, annual renewal fee and the fees of the City's Bond Counsel and City Attorney.
9. **Counterparts.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed to be an original and all of which shall constitute the same instrument.
10. **Transferability.** The benefits of this Agreement may not be transferred to any assignee of the Company, without the written consent of the City.
11. **No Waiver.** No waiver by the City of any breach of this Agreement shall be construed to be a waiver of any other or subsequent breach.
12. **Governing Law.** This Agreement shall be governed by the laws of the State of Kansas.

13. **Prior Agreements.** This Agreement supersedes and replaces in its entirety any prior agreement between the City and the Company with respect to the Project Site and Project Improvements herein defined.

*[Remainder of Page Intentionally Left Blank]*



**IN WITNESS WHEREOF**, the City has caused this Agreement to be signed by a duly authorized official, such signature to be attested by a duly authorized officer and its official seal to be applied, and the Company has caused this Agreement to be executed by a duly authorized officer, as of the day and year first above written.

**CITY OF SPRING HILL, KANSAS**

(Seal)

\_\_\_\_\_  
Steven M. Ellis, Mayor

ATTEST:

\_\_\_\_\_  
Glenda Gerrity, City Clerk

**BLACKHAWK APARTMENT HOMES II,  
LLC, a Kansas limited liability company**

By \_\_\_\_\_  
Grant W. Merritt, Manager

## **EXHIBIT A**

### **THE PROJECT SITE**

The following described real estate in Miami County, Kansas:

All that part of the Northwest Quarter of Section 26, Township 15, Range 23, in the City of Spring Hill, Miami County, Kansas, described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 26; thence North  $87^{\circ}43'39''$  East, along the South line of the Northwest Quarter of said Section 26, a distance of 425.50 feet, to the point of beginning; thence North  $2^{\circ}16'21''$  West, a distance of 90.07 feet; thence North  $37^{\circ}07'31''$  West, a distance of 211.39 feet; thence North  $23^{\circ}29'31''$  East, a distance of 27.31 feet; thence North  $37^{\circ}16'29''$  East, a distance of 59.27 feet; thence North  $52^{\circ}16'15''$  East, a distance of 214.55 feet; thence North  $88^{\circ}15'33''$  East, a distance of 130.58 feet; thence North  $54^{\circ}02'35''$  East, a distance of 35.56 feet; thence North  $88^{\circ}15'26''$  East, a distance of 26.00 feet; thence North  $01^{\circ}44'16''$  West, a distance of 80.11 feet; thence North  $88^{\circ}15'26''$  East, a distance of 33.54 feet; thence South  $01^{\circ}44'34''$  East, a distance of 556.39 feet, to a point on the South line of said Northwest Quarter; thence South  $87^{\circ}43'39''$  West, along said South line, a distance of 318.88 feet to the point of beginning.

**EXHIBIT B**

**ABATEMENT PERCENTAGES**

<b>Year</b>	<b>Percentage</b>
Year 1	53%
Year 2	53
Year 3	53
Year 4	53
Year 5	53
Year 6	53
Year 7	53
Year 8	53
Year 9	53
Year 10	53

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**CITY OF SPRING HILL, KANSAS**

AS ISSUER

AND

**BLACKHAWK APARTMENT HOMES II, LLC**

AS TENANT

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**LEASE**

DATED AS OF \_\_\_\_\_ 1, 2019

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NOT TO EXCEED \$10,100,000  
INDUSTRIAL REVENUE BONDS  
(TAXABLE UNDER FEDERAL LAW)  
SERIES 2019  
(BLACKHAWK APARTMENTS PROJECT PHASE II)

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## LEASE

**THIS LEASE**, made and entered into as of \_\_\_\_ 1, 2019, between the City of Spring Hill, Kansas (the “Issuer”), and Blackhawk Apartment Homes II, LLC, as tenant (the “Tenant”).

### WITNESSETH:

**WHEREAS**, the Issuer is a municipal corporation incorporated as a city of the second class, duly organized and existing under the laws of the State, with full lawful power and authority to enter into this Lease by and through its Governing Body;

**WHEREAS**, the Issuer, in furtherance of the purposes and pursuant to the provisions of the laws of the State, particularly K.S.A. 12-1740 *et seq.*, as amended (the “Act”), and in order to provide for the economic development and welfare of the City of Spring Hill, Kansas, and its environs and to provide employment opportunities for its citizens and to promote the economic stability of the State, has proposed and does hereby propose that it shall:

(a) acquire a fee title interest in and construct and equip the Project (as defined in the Indenture);

(b) lease the Project to the Tenant for the rentals and upon the terms and conditions hereinafter set forth; and

(c) issue, for the purpose of paying Project Costs (as defined in the Indenture), the Series 2019 Bonds under and pursuant to and subject to the provisions of the Act and the Indenture (herein defined), said Indenture being incorporated herein by reference and authorized by an ordinance of the Governing Body of Issuer (the “Ordinance”); and

(d) grant the Tenant an option to purchase the Issuer’s interest in the Project; and

**WHEREAS**, the Tenant, pursuant to the foregoing proposals of the Issuer, desires to lease the Project from the Issuer for the rentals and upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein set forth, the Issuer and the Tenant do hereby covenant and agree as follows:

### ARTICLE I

**Section 1.1. Definitions.** Capitalized terms not otherwise defined in this Lease shall have the meanings set forth in *Appendix B* to the Indenture. In addition to the words, terms and phrases defined in *Appendix B* to the Indenture and elsewhere in this Lease, the capitalized words, terms and phrases as used herein shall have the meanings set forth in the Glossary of Words and Terms attached as *Appendix C*, unless the context or use indicates another or different meaning or intent.

**Section 1.2. Representations and Covenants by the Tenant.** The Tenant makes the following covenants and representations as the basis for the undertakings on its part herein contained.

(a) The Tenant is a limited liability company, duly formed and existing under the laws of the State, and duly authorized and qualified to do business in the State, with lawful power and authority to enter into this Lease, acting by and through its duly authorized members.

(b) The Tenant (i) shall maintain and preserve its existence as a limited liability company, and maintain its authority to do business in the State and to operate the Project; (ii) shall not initiate any proceedings of any kind whatsoever to dissolve or liquidate without (A) securing the prior written consent thereto of the Issuer and the Owners of all of the Outstanding Bonds and (B) making provision for the payment in full of the principal of and interest on the Bonds.

(c) To the Tenant's knowledge, neither the execution and/or delivery of this Lease, the consummation of the transactions contemplated hereby or by the Indenture, nor the fulfillment of or compliance with the terms and conditions of this Lease contravenes in any material respect any provision of its articles of organization or its operating agreement or conflicts in any material respect with or results in a material breach of the terms, conditions or provisions of any mortgage, debt, agreement, indenture or instrument to which the Tenant is a party or by which it is bound, or to which it or any of its properties is subject, or would constitute a material default (without regard to any required notice or the passage of any period of time) under any of the foregoing, or would result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Tenant under the terms of any mortgage, debt, agreement, indenture or instrument, or violates in any material respect any existing law, administrative regulation or court order or consent decree to which the Tenant is subject.

(d) This Lease constitutes a legal, valid and binding obligation of the Tenant enforceable in accordance with its terms.

(e) The Tenant agrees to operate and will operate the Project, or cause the Project to be operated, as a "facility," as that term is contemplated in the Act, from the date of the Issuer's acquisition of its interest in the Project to the end of the Term.

(f) The estimated total cost of the Project to be financed by the Series 2019 Bonds, plus interest on the Series 2019 Bonds during acquisition, construction and equipping of the Improvements, and expenses anticipated to be incurred in connection with the issuance of the Series 2019 Bonds, will not be less than the aggregate face amount of the Series 2019 Bonds funded pursuant to the Bond Purchase Agreement.

**Section 1.3. Representations and Covenants by the Issuer.** The Issuer makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) It is a municipal corporation incorporated as a city of the second class, duly organized under the constitution and laws of the State. Under the provisions of the Act and the

Ordinance, the Issuer has the power to enter into and perform the transactions contemplated by the Lease and the Indenture and to carry out its obligations hereunder or thereunder.

(b) It has not, in whole or in part, assigned, leased, hypothecated or otherwise created any other interest in, or disposed of, or caused or permitted any lien, claim or encumbrance to be placed against the Project, except for this Lease, any Permitted Encumbrances, any Impositions and the pledge of the Project pursuant to the Indenture.

(c) Except as otherwise provided herein or in the Indenture, it will not during the Term, in whole or in part, assign, lease, hypothecate or otherwise create any other interest in, or dispose of, or cause or permit any lien, claim or encumbrance (other than Permitted Encumbrances) to be placed against, the Project, except this Lease, any Impositions and the pledge of the leasehold interest in the Project pursuant to the Indenture.

(d) It has duly authorized the execution and delivery of this Lease and the Indenture and the issuance, execution and delivery of the Series 2019 Bonds.

(e) It has obtained the consent to and/or approval of the issuance of the Series 2019 Bonds by each municipal corporation and political subdivision the consent or approval of which is required by the provisions of the Act.

(f) This Lease constitutes a legal, valid and binding obligation of the Issuer enforceable in accordance with its terms.

## ARTICLE II

**Section 2.1. Granting of Leasehold.** The Issuer by these presents hereby rents, leases and lets unto the Tenant its leasehold interest in the Project and the Tenant hereby rents, leases and hires from the Issuer, for the rentals and upon and subject to the terms and conditions hereinafter set forth, the Project for the Basic Term.

## ARTICLE III

**Section 3.1. Basic Rent.** The Issuer reserves and the Tenant covenants and agrees to pay to the Trustee hereinafter provided and in the Indenture designated, for the account of the Issuer and during the Basic Term, for deposit in the Principal and Interest Payment Account referred to herein and in the Indenture established, on each Basic Rent Payment Date, Basic Rent in immediately available funds.

**Section 3.2. Presentation of Bonds in Satisfaction of Rent.** In the event the Tenant acquires any Outstanding Bonds, the Tenant may present the same to the Trustee for cancellation, and upon such cancellation, the Tenant's obligation to pay Basic Rent shall be reduced accordingly, but in no event shall the Tenant's obligation to pay Basic Rent be reduced in such a manner that the Trustee shall not have on hand in the Principal and Interest Payment Account funds sufficient to pay the maturing principal of and interest on Outstanding Bonds as and when the same shall become due and payable in accordance with the provisions of the Indenture.

**Section 3.3. Additional Rent.** Within 60 days after receipt of written notice thereof, the Tenant shall pay any Additional Rent required to be paid pursuant to this Lease.

**Section 3.4. Rent Payable Without Abatement or Setoff.** The Tenant covenants and agrees with and for the express benefit of the Issuer and the Bondowners that all payments of Basic Rent and Additional Rent shall be made by the Tenant as the same become due, and that the Tenant shall perform all of its obligations, covenants and agreements hereunder without notice or demand and without abatement, deduction, setoff, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Improvements shall have been acquired, started or completed, or whether the Issuer's interest in the Project or any part thereof is transferred, defective or non-existent, and notwithstanding any failure of consideration or commercial frustration of purpose, the eviction or constructive eviction of the Tenant, any Change of Circumstances, any change in the tax or other laws of the United States of America, the State, or any municipal corporation of either, any change in the Issuer's legal organization or status, or any default of the Issuer hereunder, and regardless of the invalidity of any action of the Issuer or any other event or condition whatsoever, and regardless of the invalidity of any portion of this Lease, and the Tenant hereby waives the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Lease or which releases or purports to release the Tenant therefrom. Nothing in this Lease shall be construed as a waiver by the Tenant of any rights or claims the Tenant may have against the Issuer under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the Issuer separately, it being the intent of this Lease that the Tenant shall be unconditionally and absolutely obligated to perform in full all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Bondowners.

**Section 3.5. Prepayment of Basic Rent.** The Tenant may at any time prepay all or any part of the Basic Rent without penalty or premium.

**Section 3.6. Deposit of Rent by Trustee.** As assignee of the Issuer's rights hereunder, the Trustee shall deposit, use and apply all payments of Basic Rent and Additional Rent in accordance with the provisions of this Lease and the Indenture.

## ARTICLE IV

**Section 4.1. Disposition of Original Proceeds; Project Fund.** The Original Proceeds shall be paid over to the Trustee for the account of the Issuer. The Trustee shall pay from such Original Proceeds into the Principal and Interest Payment Account the full amount of any accrued interest received upon such sale. The remainder of such proceeds shall be deposited by the Trustee in the Project Fund to be used and applied as provided in this Lease and the Indenture, except that Costs of Issuance may be paid from the Project Fund without further order or authorization.

**Section 4.2. Funding of Project Fund.**

(a) Prior to the Completion Date for the Project, the Project Fund will be funded by the Bondowner in installments as requests for disbursements substantially in the form attached to this Lease as *Appendix A* are submitted to and accepted by the Trustee. Without the consent of the Trustee, the Tenant shall not submit more than two requests for disbursement per month. In accordance with the Bond Purchase Agreement, the Bondowner shall disburse installments to the Trustee, for deposits in the Project Fund as the Tenant submits the above referenced requests for disbursements.

(b) The Bondowner's obligation to fund the Project Fund ceases upon the occurrence of the earlier of (i) the Completion Date; (ii) the advancement of maximum principal amount of the Series 2019 Bonds; or (iii) the date on which this Lease is terminated.

**ARTICLE V**

**Section 5.1. Lease of Land and Improvements.** The Tenant shall, prior to or concurrently with the issuance of the Bonds, convey to the Issuer the Land described in *Schedule I* and such of the Improvements as are then completed, installed or in progress pursuant to the Deed. The Tenant shall also concurrently with such conveyance make provisions for the discharge of any liens or encumbrances incurred by it or others in connection with the construction and installation of the Improvements other than Permitted Encumbrances.

**Section 5.2. Environmental Matters.** A prior Environmental Assessment on the Land has been obtained by the Tenant which revealed no evidence on the Project of Hazardous Substances or other materials defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance or similar term defined by CERCLA or any other Environmental Law, the removal of which is required by the provisions of any applicable Environmental Law, or the maintenance of which is not in compliance with any such law.

The Tenant acknowledges that it is responsible for maintaining the Project in compliance with all Environmental Laws. In the event that the Tenant does not expeditiously proceed with any compliance action with respect to the Project lawfully required by any local, state or federal authority under applicable Environmental Law, Issuer, immediately after notice to the Tenant, may elect (but may not be required) to undertake such compliance. Any moneys expended by the Issuer in efforts to comply with any applicable Environmental Law (including the cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and attorneys' fees) shall be due and payable as Additional Rent hereunder with interest thereon at the average rate of interest per annum on the Bonds, plus two (2) percentage points, from the date such cost is incurred. There shall be unlimited recourse to the Tenant to the extent of any liability incurred by the Issuer with respect to any breaches of the provisions of this Section.

The Tenant shall and does hereby indemnify the Issuer, the Trustee and the Bondowners and agrees to defend and hold them harmless from and against all loss, cost, damage and expense

(including, without limitation, attorneys' fees and reasonable costs incurred in the investigation, defense and settlement of claims) that they may incur, directly or indirectly, as a result of or in connection with the assertion against them or any of them of any claim relating to the presence on, escape or removal from the Project of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether before, during or after the term of this Lease, including claims relating to personal injury or damage to property.

The Tenant agrees to give immediate written notice to the Issuer and the Trustee of any violation of any Environmental Law of which violation the Tenant has actual knowledge.

**Section 5.3. Project Contracts.** Prior to the delivery of this Lease, the Tenant may have entered into a contract or contracts with respect to the acquisition and/or construction of the Improvements. Those contracts, and any such contracts entered into by the Tenant after delivery of this Lease are hereinafter referred to as the "Project Contracts." Prior to the delivery hereof, certain work has been or may have been performed on the Improvements pursuant to said Project Contracts or otherwise. The Tenant hereby conveys, transfers and assigns to the Issuer all of the Tenant's rights in, but not its obligations under the Project Contracts and the Issuer hereby designates the Tenant as Issuer's agent for the purpose of executing and performing the Project Contracts. After the execution hereof, the Tenant shall cause the Project Contracts to be fully performed by the contractor(s), subcontractor(s) and supplier(s) thereunder in accordance with the terms thereof, and the Tenant covenants to cause the Improvements to be acquired, constructed and/or completed in accordance with the Project Contracts. Any and all amounts received by the Issuer, the Trustee or the Tenant from any of the contractors or other suppliers by way of breach of contract, refunds or adjustments shall become a part of and be deposited in the Project Fund.

**Section 5.4. Payment of Project Costs for Improvements.** The Issuer hereby agrees to pay for the acquisition, construction and equipping of the Improvements, but solely from the Project Fund, and hereby authorizes and directs the Trustee to fund all amounts submitted by the Tenant on the certificate of payment of Project Costs in accordance with this Lease, but solely from the Project Fund, from time to time, while the Tenant is in compliance with the requirements of Section 6.1 hereof, upon receipt by the Trustee of a certificate signed by the Authorized Tenant Representative in the form set forth by *Appendix A* hereto which is incorporated herein by reference and receipt of lien waivers for all amounts relating to construction of the Project.

The sole obligation of the Issuer under this Section shall be to cause the Trustee to make such disbursements upon receipt of such certificates. The Trustee may rely fully on such certificate and shall not be required to make any investigation in connection therewith, except that the Trustee shall investigate requests for reimbursements by the Tenant directly to the Tenant or Original Purchaser and shall require such supporting evidence as would be required by a reasonable and prudent corporate trustee.

**Section 5.5. Payment of Project Costs for Machinery and Equipment.** The Issuer hereby agrees to pay for the purchase and acquisition of machinery and equipment

constituting a part of the Improvements, but solely from the Project Fund, from time to time, upon receipt by the Trustee of a certificate signed by the Authorized Tenant Representative in the form provided by *Appendix A* hereto which is incorporated herein by reference and accompanied by the following specific information:

- (a) Name of seller;
- (b) Name of the manufacturer;
- (c) A copy of the seller's invoice, purchase order or other like document evidencing the purchase by the Tenant of such machinery and/or equipment;
- (d) Common descriptive name of machinery or equipment;
- (e) Manufacturer's or seller's technical description of machinery or equipment;
- (f) Capacity or similar designation;
- (g) Serial number, if any; and
- (h) Model number, if any.

The sole obligation of the Issuer under this Section shall be to cause the Trustee to make such disbursements upon receipt of said certificates. The Trustee may rely fully on any such certificate and shall not be required to make any independent investigation in connection therewith, except that the Trustee shall investigate requests for reimbursements directly to the Tenant or Original Purchaser and shall require such supporting evidence as would be required by a reasonable and prudent corporate trustee. All machinery, equipment and/or personal property acquired, in whole or in part, from funds deposited in the Project Fund pursuant to this Section shall be a part of the Project.

**Section 5.6. Completion of Project.** The Tenant covenants and agrees to proceed diligently to complete the Improvements on or before the Completion Date. Upon completion of the Improvements, the Tenant shall cause the Authorized Tenant Representative to deliver a Certificate of Completion, in the form substantially as attached hereto as *Appendix B*, to the Trustee. In the event funds remain on hand in the Project Fund on the date the Certificate of Completion is furnished to the Trustee or on the Completion Date, whichever shall first occur, such remaining funds shall be transferred by the Trustee to the Principal and Interest Payment Account on the earlier of receipt of the Certificate of Completion or the Completion Date and shall be applied in accordance with the provisions of the Indenture.

**Section 5.7. Deficiency of Project Fund.** If the Project Fund shall be insufficient to pay fully all Project Costs and to fully complete the Improvements, lien free (except for Permitted Encumbrances), the Tenant covenants to pay the full amount of any such deficiency by making payments directly to the contractors and to the suppliers of materials, machinery,



equipment, property and services as the same shall become due, and the Tenant shall save Issuer and Trustee whole and harmless from any obligation to pay such deficiency.

**Section 5.8. Right of Entry by Issuer.** The duly authorized agents of Issuer shall have the right at any reasonable time and upon reasonable notice to the Tenant prior to the completion of the Improvements to have access to the Project or any part thereof for the purpose of inspecting the acquisition, installation or equipping thereof.

**Section 5.9. Machinery, Furnishings, Equipment and Other Personal Property Purchased by the Tenant.** If no part of the purchase price of an item of machinery, equipment, furnishings or other personal property is paid from funds deposited in the Project Fund pursuant to the terms of this Lease, then such item of machinery, furnishings, equipment or personal property shall not be deemed a part of the Project.

## ARTICLE VI

**Section 6.1. Liability Insurance.** As a condition precedent to payment of Costs of Issuance or disbursement of funds from the Project Fund pursuant to Article V hereunder, the following policies of insurance shall be in full force and effect:

(a) Comprehensive general liability insurance covering the Tenant's operations in or upon the Project (including coverage for all losses whatsoever arising from the ownership, maintenance, use or operation of any automobile, truck or other vehicle in or upon the Project) under which the Tenant shall be named as insured and the Issuer and the Trustee shall be named as additional insureds, as their interests in the Project shall appear, in an amount not less than \$1,000,000 per occurrence); which policy shall provide that such insurance may not be canceled by the issuer thereof without at least 10 days' advance written notice to the Issuer, the Tenant, and the Trustee, such insurance to be maintained throughout the life of this Lease. The policy should include blanket contractual liability coverage, independent contractors coverage and broad form property damage coverage.

(b) Worker's compensation with statutory benefits including employers liability in such amount as is satisfactory to Bondowners, or, if such limits are established by law, in such amounts.

(c) With regard to buildings and improvements constituting a part of the Project, builder's risk-completed value form insurance insuring the Project against fire, lightning and all other risks covered by the broadest form extended coverage endorsement then and from time to time thereafter in use in the State to the Full Insurable Value of the Project. Such policy or policies of insurance shall name Issuer, Tenant and the Trustee as insureds, as their respective interests may appear, and all payments received under such policy or policies by Issuer or Tenant shall be paid over to the Trustee and be deposited in the Project Fund.

**Section 6.2. Insurance After Completion.** The Tenant shall and covenants and agrees that it will, prior to or simultaneously with the expiration of the insurance provided for in the preceding section and throughout the Basic Term at its sole cost and expense, keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by

the broadest form extended coverage insurance endorsement then in use in the State in an amount equal to the Full Insurable Value thereof in such insurance company or companies as it may select and shall at all times maintain general accident and public liability insurance required pursuant to Section 6.1(a), all of which policies shall name Tenant, Issuer, and Trustee as insureds, as their interests appear, which policies shall not be cancelable except upon at least 10 days' prior written notice to Issuer and Trustee.

**Section 6.3. General Insurance Provisions.**

(a) Prior to the expiration dates of the expiring policies, or within 60 days of renewal, certificates of the policies provided for in this Article shall be delivered by the Tenant to the Trustee. All policies of such insurance and all renewals thereof shall name the Tenant as insured and the Issuer and the Trustee as additional insureds and loss payees as their respective interests may appear, shall contain a provision that such insurance may not be canceled or amended by the issuer thereof without at least 10 days' written notice to the Issuer, the Tenant and the Trustee and shall be payable to the Issuer, the Tenant and the Trustee as their respective interests appear. The Issuer and the Tenant each hereby agree to do anything necessary, be it the endorsement of checks or otherwise, to cause any such payment to be made to the Trustee, as long as such payment is required by this Lease to be made to the Trustee. Any charges made by the Trustee for its services shall be paid by the Tenant.

(b) Each policy of insurance hereinabove referred to shall be issued by an insurance company qualified under the laws of the State to assume the risks covered therein.

(c) Certificates of insurance evidencing the insurance coverage herein required shall be filed with the Trustee continuously during the term of this Lease, or immediately upon the change or transfer of such insurance coverage.

(d) Each policy of insurance hereinabove referred to may be subject to a reasonable deductible.

(e) Each policy of insurance required herein may be provided through blanket policies maintained by the Tenant.

(f) Anything in this Lease to the contrary notwithstanding, the Tenant shall be liable to the Issuer and Trustee pursuant to the provisions of this Lease or otherwise, as to any loss or damage which may have been occasioned by the negligence of the Tenant, its agents, licensees, contractors, invitees or employees.

**Section 6.4. Evidence of Title.** The Tenant shall purchase a policy of title insurance, insuring the Issuer's fee title interest in the Land, subject to Permitted Encumbrances, in an amount equal to the value of the Land and Improvements becoming a part of the Project. Such policy shall contain no survey exceptions not approved by the Original Purchaser of the Series 2019 Bonds. The Issuer and the Tenant agree that any and all proceeds therefrom during the Basic Term (a) if received before the completion of the Improvements shall be paid into and become a part of the Project Fund, (b) if received thereafter but before the Series 2019 Bonds and interest thereon have been paid in full, shall be paid into and become a part of the Principal

and Interest Payment Account, and (c) if received after the Series 2019 Bonds and interest thereon have been paid in full, shall belong and be paid to the Tenant.

## ARTICLE VII

**Section 7.1. Impositions.** The Tenant shall, during the Term of this Lease, bear, pay and discharge, before the delinquency thereof, any and all Impositions. In the event any Impositions may be lawfully paid in installments, the Tenant shall be required to pay only such installments thereof as become due and payable during the Term of this Lease as and when the same become due and payable.

**Section 7.2. Receipted Statements.** Unless the Tenant exercises its right to contest any Impositions in accordance with Section 7.4 hereof, the Tenant shall, within 60 days after the last day for payment, without penalty or interest, of an Imposition which the Tenant is required to bear, pay and discharge the same pursuant to the terms hereof, and deliver to the Issuer a photostatic or other suitable copy of the statement issued therefor duly receipted to show the payment thereof.

**Section 7.3. Issuer May Not Sell.** The Issuer covenants that except pursuant to Article XX hereof after an Event of Default has occurred and is continuing, without the Tenant's prior written consent, unless required by law, it will not sell or otherwise part with or encumber its leasehold interest in the Project at any time during the Term of this Lease.

**Section 7.4. Contest of Impositions.** The Tenant shall have the right, in its own or the Issuer's name or both, to contest the validity or amount of any Imposition by appropriate legal proceedings instituted at least 10 days before the Imposition complained of becomes delinquent if, and provided, the Tenant (i) before instituting any such contest, shall give the Issuer and the Trustee written notice of its intention to do so and, if requested in writing by the Issuer, shall deposit with the Trustee a surety bond of a surety company acceptable to the Issuer as surety, in favor of the Issuer, or cash or other form of security reasonably acceptable to the Issuer, in a sum of at least the amount of the Imposition so contested, assuring the payment of such contested Imposition together with all interest and penalties to accrue thereon and court costs, and (ii) diligently prosecutes any such contest and at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (iii) promptly pays any final judgment enforcing the Imposition so contested and thereafter promptly procures record release or satisfaction thereof. The Tenant shall hold the Issuer whole and harmless from any costs and expenses the Issuer may incur related to any such contest due to the Issuer's interest in the Project.

**Section 7.5. Ad Valorem Taxes.** The parties acknowledge that under the existing provisions of K.S.A. 79-201a, as amended, the property acquired, constructed or purchased with the proceeds of the Bonds is entitled to exemption from ad valorem taxation for a period up to 10 calendar years after the calendar year in which the Bonds are issued, provided the Issuer has complied with certain notice, hearing and procedural requirements established by law, and proper application has been made therefor. The Issuer and the Tenant acknowledge that the agreement with respect to such exemption and the Tenant's obligations to make certain payments

in lieu of taxes is set forth in full in the PILOT Agreement; provided, however, that the Issuer and the Tenant agree that an Event of Default under this Lease constitutes a default under the PILOT Agreement.

The Tenant shall submit to the Issuer all information necessary to file the application for exemption or the annual claim for exemption with the Kansas Board of Tax Appeals by no later than the 1<sup>st</sup> day of February of each year in which the exemption is in place.

## **ARTICLE VIII**

**Section 8.1. Use of Project.** Subject to the provisions of this Lease, the Tenant shall have the right to use the Project for any and all purposes allowed by law and contemplated by the constitution of the State and the Act. The Tenant shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. The Tenant shall comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease. The Tenant shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Tenant to comply with the provisions of this Article.

## **ARTICLE IX**

**Section 9.1. Sublease by the Tenant.** The Tenant may sublease individual apartment units in the Project for ordinary residential use without the further consent of the Issuer or the Owners of all of the Outstanding Bonds. Except as provided in this Section, the Tenant may sublease all or portions of the Project, other than apartment units, for use by others in the normal course of its business without the Issuer's prior consent or approval, but with not less than 10 days' prior written notice to the Issuer. Such notice shall identify the name of the subtenant, the type of entity of the subtenant and its state of organization or formation, if applicable, and provide a brief description of the nature of the business to be conducted by the proposed subtenant at the Project. If, within 10 days after receiving notice from the Tenant of its intent to enter into a sublease, the City Administrator provides written notice to the Tenant that, in his or her judgment, it is in the best interest of the Issuer to require the Governing Body's consent to the proposed sublease, such sublease shall not become effective until the Tenant receives the written consent of the Issuer to such sublease. In the event of any such subleasing, the Tenant shall remain fully liable for the performance of its duties and obligations hereunder, and no such subleasing and no dealings or transactions between the Issuer or the Trustee and any such subtenant shall relieve the Tenant of any of its duties and obligations hereunder. Any such sublease shall be subject and subordinate in all respects to the provisions of this Lease.

**Section 9.2. Assignment by the Tenant.** Except as provided in this Section and in Section 9.1, the Tenant may not assign or mortgage its interest or any part hereof in this Lease without the prior written consent of the Issuer. In the event of any such assignment, the Tenant shall remain fully liable for the performance of its duties and obligations hereunder, except to the

extent hereinafter provided, and no such assignment and no dealings or transactions between Issuer or the Trustee and any such assignee shall relieve the Tenant of any of its duties and obligations hereunder, except as may be otherwise provided in the following Section. The Issuer and the Tenant acknowledge that the Land is or will be encumbered by and subject to the terms of the Mortgage (as defined in the Indenture). The Issuer and the Tenant further acknowledge that this Lease is subordinate to the Mortgage. The Tenant shall provide notice to the Issuer within 60 days from the date the Mortgage is executed by the Tenant and the Lender.

**Section 9.3. Release of the Tenant.** If, in connection with an assignment by the Tenant of its interest in this Lease, (1) the Issuer and the Owners of 100% in aggregate principal amount of the Outstanding Bonds (including any Additional Bonds) shall file with the Trustee their prior written consent to such assignment and (2) the proposed assignee shall expressly assume and agree to perform all of the obligations of the Tenant under this Lease; then the Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment.

**Section 9.4. Mergers and Consolidations.** Notwithstanding the provisions of Sections 9.2 and 9.3 above, if the Tenant shall assign or transfer, by operation of law or otherwise, its interests in this Lease in connection with a transaction involving the merger or consolidation of the Tenant with or into, or a sale, lease or other disposition of all or substantially all of the property of the Tenant as an entirety to another person, association, corporation or other entity, and (1) the Issuer shall file with the Trustee its prior written consent to such assignment or transfer, (2) the proposed assignee, transferee or surviving entity shall expressly assume and agree to perform all of the obligations of the Tenant under this Lease, and (3) the Tenant shall furnish the Trustee and the Issuer with evidence in the form of financial statements accompanied by the certificate of an independent certified public accountant of recognized standing establishing that the net worth of such proposed assignee, transferee or surviving corporation or other entity immediately following such assignment or transfer will be at least equal to the net worth of the Tenant as shown by the most recent financial statement of the Tenant furnished to the Trustee pursuant to this Lease; then and in such event the Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment or transfer.

**Section 9.5. Covenant Against Other Assignments.** The Tenant will not assign or in any manner transfer its interests under this Lease, nor will it suffer or permit any assignment thereof by operation of law, except for Permitted Encumbrances and assignments or transfers of interest which are otherwise in accordance with the limitations, conditions and requirements herein set forth.

## ARTICLE X

**Section 10.1. Repairs and Maintenance.** The Tenant covenants and agrees that it will, during the Term of this Lease, at its own expense, keep and maintain the Project and all parts thereof in good condition and repair, ordinary wear and tear excepted, including but not limited to the furnishing of all parts, mechanisms and devices required to keep the machinery, equipment and personal property constituting a part of the Project in good mechanical and working order.

**Section 10.2. Removal, Disposition and Substitution of Machinery or Equipment.** The Tenant shall have the right, provided the Tenant is not in default in the payment of Basic Rent and Additional Rent, to remove and sell or otherwise dispose of any machinery or equipment which constitutes a part of the Project and is no longer used by the Tenant or, in the opinion of the Tenant, is no longer useful to the Tenant in its operations (whether by reason of changed processes, changed techniques, obsolescence, depreciation or otherwise), subject, however, to the following conditions:

(a) With respect only to such items of machinery or equipment that originally cost \$75,000 or more, to the following:

(i) Prior to any such removal, the Tenant shall prepare a certificate signed by the Authorized Tenant Representative (i) containing a complete description, including the make, model and serial numbers, if any, of any machinery and equipment constituting a part of the Project which it proposes to remove, (ii) stating the reasons for such removal, (iii) stating what disposition, if any, of the machinery or equipment is to be made by Tenant after such removal and the names of the party or parties to whom such disposition is to be made and any consideration to be received by the Tenant therefor, if any, and (iv) setting forth the original cost of such machinery or equipment.

(ii) Prior to any such removal, the Tenant shall furnish the certificate to the Trustee and pay any consideration received for such machinery or equipment as set forth in said certificate to the Trustee and the Trustee shall deposit such amount in the Principal and Interest Payment Account. Any money deposited in the Principal and Interest Payment Account pursuant to this Section shall be used to redeem Outstanding Bonds at their earliest optional redemption date.

(iii) The Tenant may remove any machinery or equipment constituting a part of the Project without complying with the provisions of subparagraph (ii) above; provided, however, that the Tenant shall promptly replace any such machinery or equipment so removed with machinery or equipment of the same or a different kind but which perform the same function as the machinery or equipment so removed, and the machinery or equipment so acquired by the Tenant to replace such machinery or equipment thereafter shall be deemed a part of the Project. The Tenant shall maintain accurate records of such replacements and upon request shall prepare a certificate of the Authorized Tenant Representative setting forth a complete description, including make, model and serial numbers, if any, of the machinery or equipment which the Tenant has acquired to replace the machinery or equipment so removed by the Tenant, stating the cost thereof and the respective acquisition dates.

(b) With respect to such items of machinery or equipment that originally cost less than \$75,000, the Tenant shall deliver to the Trustee a certificate setting forth the facts provided for in subsection (a)(i) above. In no event shall the Tenant pursuant to this subsection (b) remove items of machinery or equipment having an aggregate original cost of more than \$150,000.

All machinery or equipment constituting a part of the Project and removed by the Tenant pursuant to this Section shall become the absolute property of the Tenant and may be sold or otherwise disposed of by the Tenant subject to the certification requirements of this Section. In all cases, the Tenant shall pay all the costs and expenses of any such removal and shall immediately repair at its expense all damage to the Project caused thereby. The Tenant's rights under this Article to remove machinery or equipment constituting a part of the Project is intended only to permit the Tenant to maintain an efficient operation by the removal of such machinery and equipment no longer suitable to the Tenant's use for any of the reasons set forth in this Section and such right is not to be construed to permit a removal under any other circumstances and shall not be construed to permit the wholesale removal of such machinery or equipment by the Tenant.

## ARTICLE XI

**Section 11.1. Alteration of Project.** The Tenant shall have and is hereby given the right, at its sole cost and expense, to make such changes and alterations in and to any part of the Project as the Tenant from time to time may deem necessary or advisable without consent of the Issuer or the Trustee; provided, however, the Tenant shall not make any major change or alteration which will materially adversely affect the intended use or structural strength of any part of the Improvements. All changes and alterations made by the Tenant pursuant to the authority of this Article shall (a) be made in a workmanlike manner and in strict compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, shall be deemed a part of the Project; provided, however, that additions of machinery, equipment and/or personal property of the Tenant, not purchased or acquired from proceeds of the Bonds and not constituting a part of the Project shall remain the separate property of the Tenant and may be removed by the Tenant at any time; provided further, however, that all such additional machinery, furnishings, equipment and/or personal property which remain in the Project after the termination of this Lease for any cause other than the purchase of the Project pursuant to Article XVII hereof shall, upon and in the event of such termination, become the separate and absolute property of the Issuer.

## ARTICLE XII

**Section 12.1. Additional Improvements.** The Tenant shall have and is hereby given the right, at its sole cost and expense, to construct on the Land or within areas occupied by the Improvements, or in airspace above the Project, such additional buildings and improvements as the Tenant from time to time may deem necessary or advisable. All additional buildings and improvements constructed by the Tenant pursuant to the authority of this Article shall, during the Term, remain the property of the Tenant and may be added to, altered or razed and removed by the Tenant at any time during the Term hereof. The Tenant covenants and agrees (a) to make any repairs and restorations required to repair any damage to the Project because of the construction of, addition to, alteration or removal of, said additional buildings or improvements, (b) to keep and maintain said additional buildings and improvements in good condition and repair, ordinary wear and tear excepted, and (c) to promptly and with due diligence either raze and remove from the Land, in a good, workmanlike manner, or repair, replace or restore such of said additional buildings or improvements as may from time to time be damaged by fire or other

casualty, and (d) that all additional buildings and improvements constructed by the Tenant pursuant to this Article which remain in place after the termination of this Lease for any cause other than the purchase of the Project pursuant to Article XVII hereof shall, upon and in the event of such termination, be the property of the Issuer; provided, however, the Tenant shall have the right, prior to or within 60 days after the termination of this Lease, to remove from or about the Project the buildings, improvements, machinery, equipment, personal property, furnishings and trade fixtures which the Tenant owns under the provisions of this Lease and are not a part of the Project.

## **ARTICLE XIII**

**Section 13.1. Securing of Permits and Authorizations.** The Tenant shall not do or permit others under its control to do any work in or in connection with the Project or related to any repair, rebuilding, restoration, replacement, alteration of or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have first been procured and paid for. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease.

**Section 13.2. Mechanic's Liens.** The Tenant shall not do or suffer anything to be done whereby the Project, or any part thereof, may be encumbered by any mechanic's or other similar lien and if, whenever and so often as any mechanic's or other similar lien is filed against the Project, or any part thereof, the Tenant shall discharge the same of record within 60 days after the date of filing, unless such time is otherwise extended in accordance with Section 13.3 hereof. Notice is hereby given that the Issuer does not authorize or consent to and shall not be liable for any labor or materials furnished to the Tenant or anyone claiming by, through or under the Tenant upon credit, and that mechanic's or similar liens for any such labor, services or materials shall not attach to or affect the estate of the Issuer in and to the Project, or any part thereof.

**Section 13.3. Contest of Liens.** The Tenant, notwithstanding the above, shall have the right to contest any such mechanic's or other similar lien if within said 60-day period stated above it (a) notifies the Issuer and the Trustee in writing of its intention so to do, and if requested by the Issuer, deposits with the Trustee a surety bond issued by a surety company acceptable to the Issuer as surety, in favor of the Issuer, cash or other security reasonably acceptable to the Issuer, in the amount of the lien claim so contested, indemnifying and protecting the Issuer from and against any liability, loss, damage, cost and expense of whatever kind or nature growing out of or in any way connected with said asserted lien and the contest thereof, (b) diligently prosecutes such contest, at all times effectively staying or preventing any official or judicial sale of the Project or any part thereof or interest therein, under execution or otherwise, and (c) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof.



**Section 13.4. Utilities.** All utilities and utility services used by the Tenant in, on or about the Project shall be contracted for by the Tenant in the Tenant's own name and the Tenant shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

#### ARTICLE XIV

**Section 14.1. Indemnity.** The Tenant shall and hereby covenants and agrees to indemnify, protect, defend and save the Issuer and the Trustee harmless from and against any and all claims, demands, liabilities and costs, including attorneys' fees, arising from damage or injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on or about the Project during the Term hereof including any mechanic's materialmen's or similar liens against the Project, and upon timely written notice from the Issuer or the Trustee, the Tenant shall defend the Issuer and the Trustee in any action or proceeding brought thereon; provided, however, that nothing contained in this Section shall be construed as requiring the Tenant to indemnify the Issuer or the Trustee for any claim resulting from any willful, malicious or negligent act or omission of the Issuer or the Trustee, or their respective agents and employees. The Tenant also covenants and agrees, at its expense, to pay and to indemnify the Issuer and the Trustee from and against all costs, expenses and charges, including reasonable counsel fees (to the extent permitted by law), incurred in obtaining possession of the Project after default of the Tenant, or in enforcing any covenant or agreement of the Tenant contained in this Lease or the Indenture. Notwithstanding anything in this Section 14.1 to the contrary, however, the Tenant's indemnification obligations shall be limited to surplus cash not deposited in accounts controlled by the Lender and any insurance proceeds paid to the Tenant.

#### ARTICLE XV

**Section 15.1. Access to Project.** The Issuer, for itself and its duly authorized representatives and agents, including the Trustee, reserves the right to enter the Project at all reasonable times during usual business hours throughout the Term, upon reasonable notice to and subject to supervision by employees or agents of the Tenant, for the purpose of (a) examining and inspecting the same, (b) performing such work as may be made necessary by reasons of the Tenant's default under any of the provisions of this Lease, and (c) while an Event of Default is continuing hereunder, and with reasonable notice to the Tenant for the purpose of exhibiting the Project to prospective purchasers or lessees. The Issuer may, during the progress of said work mentioned in (b) above, keep and store on the Project all necessary materials, supplies and equipment and shall not be liable for necessary inconvenience, annoyances, disturbances, loss of business or other damage suffered by reason of the performance of any such work or the storage of such materials, supplies and equipment.

#### ARTICLE XVI

**Section 16.1. Option to Extend Term.** The Tenant shall have the option to extend the Basic Term of this Lease for the Additional Term provided that (a) the Tenant shall give the Issuer written notice of its intention to exercise each such option at least 30 days prior to the expiration of the Basic Term and (b) the Tenant is not in default hereunder in the payment of

Basic Rent or Additional Rent at the time it gives the Issuer such notice or at the time the Additional Term commences. In the event the Tenant exercises such option, the terms, covenants, conditions and provisions set forth in this Lease shall be in full force and effect and binding upon the Issuer and the Tenant during the Additional Term except that the Basic Rent during any extended term herein provided for shall be the sum of \$1,000.00 per year, payable in advance on the first Business Day of such Additional Term.

## ARTICLE XVII

**Section 17.1. Option to Purchase Project.** Subject to the provisions of this Article, the Tenant shall have the option to purchase the Issuer's fee title interest in the Project at any time during the Term hereof and for 10 days thereafter. The Tenant shall exercise its option by giving the Issuer written notice of the Tenant's election to exercise its option and specifying the date, time and place of closing, which date (the "Closing Date") shall neither be earlier than 30 days nor later than 180 days after the notice is given. The Tenant may not, however, exercise such option if the Tenant is in Default hereunder on the Closing Date unless all Defaults are cured upon payment of the purchase price specified in Section 17.2.

**Section 17.2. Termination of Lease; Purchase Price.** If said notice of election to purchase is given, the Issuer and the Tenant shall terminate this Lease and the Issuer shall convey to Tenant by special warranty deed all of its interest in the Project to the Tenant on the Closing Date free and clear of all liens and encumbrances except:

- (i) Permitted Encumbrances;
- (ii) those to which title was subject on the date of this Lease, or to which title became subject with the Tenant's written consent, or which resulted from any failure of the Tenant to perform any of its covenants or obligations under this Lease;
- (iii) outstanding taxes and assessments, general and special, if any, which have been assessed but not yet paid; and
- (iv) the rights of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the Project.

The purchase price to be paid by the Tenant at closing shall equal:

- (a) The full amount which is required to provide the Issuer and the Trustee with funds sufficient, in accordance with the provisions of the Indenture, to pay at maturity or to redeem and pay in full (i) the principal of all of the Outstanding Bonds, (ii) all interest due thereon to date of maturity or redemption, whichever first occurs, and (iii) all costs, expenses, and premiums incident to the redemption and payment of said Bonds in full, plus
- (b) \$100.

Nothing in this Article shall release or discharge the Tenant from its duty or obligation under this Lease to make any payment of Basic Rent or Additional Rent which, in accordance

with the terms of this Lease, become due and payable prior to the Closing Date, or its duty and obligation to fully perform and observe all covenants and conditions herein stated to be performed and observed by the Tenant prior to the Closing Date.

**Section 17.3. Closing of Purchase.** On the Closing Date the Issuer shall deliver to the Tenant the Deed and appropriate other instrument or instruments of assignment or release, properly executed and conveying or releasing the Issuer's interest in the Project to the Tenant free and clear of all liens and encumbrances except as set forth in the preceding Section above provided as follows: (i) the amount specified in clauses (a)(i), (a)(ii) and (a)(iii) of Section 17.2 shall be paid to the Trustee for deposit in the Principal and Interest Payment Account to be used to pay or redeem Bonds and the interest thereon as provided in the Indenture; and (ii) the amount specified in clause (b) of said Section 17.2 shall be paid to the Issuer; provided, however, nothing herein shall require the Issuer to deliver its appropriate instrument or instruments of assignment or release to the Tenant until after all duties and obligations of the Tenant under this Lease to the date of such delivery have been fully performed and satisfied. Upon the delivery to the Tenant of the Issuer's appropriate instrument or instruments of assignment or release and payment of the purchase price by the Tenant, this Lease shall *ipso facto* terminate, subject to the provisions of Section 20.2 hereof. Consistent with the provisions of Section 302 of the Indenture, Issuer and the Tenant acknowledge that the Tenant may submit the Bonds to Trustee for cancellation and receive a credit in respect to the principal amount thereof.

**Section 17.4. Effect of Failure to Complete Purchase.** If, for any reason, the purchase of the Project by the Tenant pursuant to valid notice of election to purchase is not effected on the Closing Date, this Lease shall be and remain in full force and effect according to its terms the same as though no notice of election to purchase had been given, except that if such purchase is not effected on the Closing Date because the Issuer is unable to convey its interest in the Project, the Tenant shall have the right to cancel this Lease forthwith if, but only if, the principal of and interest on the Bonds and all costs incident to the redemption and payment of the Bonds have been paid in full. The Tenant shall also have the right to exercise any legal or equitable remedies, in its own name or in the name of the Issuer, to obtain a conveyance of the Issuer's fee title interest in the Project.

**Section 17.5. Application of Condemnation Awards if Tenant Purchases Project.** The right of the Tenant to exercise its option to purchase the Project under the provisions of this Article shall remain unimpaired notwithstanding any condemnation of title to, or the use for a limited period of, all or any part of the Project. If the Tenant shall exercise its option and pay the purchase price as provided in this Article, all of the condemnation awards received by the Issuer after the payment of said purchase price, less all attorneys' fees and other expenses and costs incurred by the Issuer as the owner of the Project in connection with such condemnation, shall belong and be paid to the Tenant.

## **ARTICLE XVIII**

### **Section 18.1. Damage and Destruction.**

(a) If, during the Term, the Improvements are damaged or destroyed, in whole or in part, by fire or other casualty, the Tenant shall promptly notify the Issuer and the Trustee in writing as to the nature and extent of such damage or loss and whether it is practicable and desirable to rebuild, repair, restore or replace such damage or loss.

(b) If the Tenant shall determine that such rebuilding, repairing, restoring or replacing is practicable and desirable, the Tenant shall (at Tenant's expense) forthwith proceed with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing. In such case, any Net Proceeds of property and/or casualty insurance required by this Lease and received with respect to any such damage or loss to the Improvements shall be paid to the Trustee and shall be deposited in the Project Fund and shall be used and applied for the purpose of paying the cost of such rebuilding, repairing, restoring or replacing such damage or loss. Any amount remaining in the Project Fund after such rebuilding, repairing, restoring or replacing shall be paid to the Tenant.

(c) If the Tenant shall determine that rebuilding, repairing, restoring or replacing the Improvements are not practicable and desirable, any Net Proceeds of property and/or casualty insurance required by this Lease and received with respect to any such damage or loss to the Project shall be paid into the Principal and Interest Payment Account. Such moneys shall be used to redeem Bonds at their earliest optional redemption date. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection (c).

(d) The Tenant shall not, by reason of its inability to use all or any part of the Improvements during any period in which the Improvements are damaged or destroyed, or are being repaired, rebuilt, restored or replaced nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement or any abatement or diminution of the Basic Rent or Additional Rent payable by the Tenant under this Lease nor of any other obligations of the Tenant under this Lease except as expressly provided in this Section.

### **Section 18.2. Condemnation.**

(a) If, during the Term title to, or the temporary use of, all or any part of the Project shall be condemned by any authority exercising the power of eminent domain, the Tenant shall, within 10 days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify the Issuer and the Trustee in writing as to the nature and extent of such condemnation and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Tenant shall determine that such substitution is practicable and desirable, the Tenant shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute improvements. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceeds shall be paid to the Trustee for the account of the Tenant and shall be

deposited in the Project Fund and shall be used and applied for the purpose of paying the cost of such substitution. Any amount remaining in the Project Fund after such acquisition, construction or installation shall be paid to the Tenant.

(c) If the Tenant shall determine, in its sole discretion, that it is not practicable and desirable to acquire or construct substitute improvements, any Net Proceeds of condemnation awards received by the Tenant shall be paid into the Principal and Interest Payment Account. Such moneys shall be used to redeem Bonds at their earliest optional redemption date. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection (c).

(d) The Tenant shall not, by reason of its inability to use all or any part of the Improvements during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement or any abatement or diminution of the Basic Rent or Additional Rent payable by the Tenant under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The Issuer shall cooperate fully with the Tenant in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof so long as the Issuer is not the condemning authority. In no event will the Issuer voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the written consent of the Tenant.

**Section 18.3. Effect of Tenant's Defaults.** Anything in this Article to the contrary notwithstanding, the Issuer and the Trustee shall have the right at any time and from time to time to withhold payment of all or any part of the Net Proceeds from the Project Fund attributable to damage, destruction or condemnation of the Project to the Tenant or any third party if an Event of Default has occurred and is continuing, or the Issuer or Trustee has given notice to the Tenant of any Default which, with the passage of time, will become an Event of Default. In the event the Tenant shall cure any Defaults specified herein the Trustee shall make payments from the Net Proceeds to the Tenant in accordance with the provisions of this Article. However, if this Lease is terminated or the Issuer or the Trustee otherwise re-enters and takes control of the Project without terminating this Lease, the Trustee shall pay all the Net Proceeds held by it into the Principal and Interest Payment Account and all rights of the Tenant in and to such Net Proceeds shall cease.

## ARTICLE XIX

**Section 19.1. Change of Circumstances.** If a Change of Circumstances occurs, then the Tenant shall have the option to purchase the Project pursuant to Article XVII or the option to terminate this Lease by giving the Issuer notice of such termination within 90 days after the Tenant has actual knowledge of the event giving rise to such option. Such termination shall become effective when all of the Bonds Outstanding are paid or payment is provided for pursuant to the Indenture.

## ARTICLE XX

**Section 20.1. Remedies on Default.** Whenever any Event of Default shall have happened and be continuing, the Issuer may take any one or more of the following remedial actions:

(a) By written notice to the Tenant upon acceleration of maturity of the Bonds as provided in the Indenture, the Trustee may declare the aggregate amount of all unpaid Basic Rent or Additional Rent then or thereafter required to be paid under this Lease by the Tenant to be immediately due and payable as liquidated damages from the Tenant, whereupon the same shall become immediately due and payable by the Tenant provided, however, that the Owners of at least 100% in aggregate principal amount of the Outstanding Bonds must provide written consent to the Issuer and the Trustee to declare all unpaid Basic Rent immediately due;

(b) Give the Tenant written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 60 days after such notice is given and, if all defaults have not then been cured on the date so specified, the Tenant's leasehold interest of the Project shall cease, and this Lease shall thereupon be terminated, and the Issuer may re-enter and control the Project; or

(c) Give the Tenant written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 10 days after such notice is given and, if all defaults have not then been cured on the date so specified, this Lease shall thereupon be terminated, or

(d) Without terminating this Lease, conduct inspections or an Environmental Assessment of the Project, and re-enter the Project or take control thereof pursuant to legal proceedings or any notice provided for by law and this Lease. The Issuer or the Trustee acting on behalf of the Issuer may refuse to re-enter or take control of the Project if it has reasonable cause for such refusal. "Reasonable cause" shall include the presence on the Project of conditions which are in violation of any Environmental Law or the existence or threat of a remedial action against the Tenant under any Environmental Law resulting from conditions on the Project.

Having elected to re-enter or take control of the Project without terminating this Lease, the Issuer and the Trustee acting on behalf of Issuer shall use reasonable diligence to relet the Project, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as are deemed advisable, with the right to make alterations and repairs to the Project, and no such re-entry or taking of control of the Project shall be construed as an election to terminate this Lease, and no such re-entry or taking of control shall relieve the Tenant of its obligation to pay Basic Rent or Additional Rent (at the time or times provided herein), or of any of its other obligations under this Lease, all of which shall survive such re-entry or taking of control. The Tenant shall continue to pay the Basic Rent and Additional Rent provided for in this Lease until the end of the Term, whether or not the Project shall have been relet, less the net proceeds, if any of reletting the Project.

Having elected to re-enter or take control of the Project pursuant to subsection (d) hereunder, the Issuer or Trustee acting on behalf of the Issuer may (subject, however, to any restrictions against termination of this Lease in the Indenture), by notice to the Tenant given at any time thereafter while the Tenant is in default in the payment of Basic Rent or Additional Rent or in the performance of any other obligation under this Lease, elect to terminate this Lease in accordance with subsection (b) hereunder and thereafter proceed to sell its interest in the Project.

If, in accordance with any of the foregoing provisions of this Article, the Issuer shall have the right to elect to re-enter and take control of the Project, the Issuer may enter and expel the Tenant and those claiming through or under the Tenant and remove the property and effects of both or either by all lawful means without being guilty of any manner of trespass and without prejudice to any remedies for arrears of Basic Rent or Additional Rent or preceding breach of covenant.

Net proceeds of any reletting of the Project shall be deposited in the Principal and Interest Payment Account. "Net Proceeds" for this purpose shall mean the receipts obtained from reletting after deducting all expenses incurred in connection with such reletting or sale, including without limitation, all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation of the Project for reletting.

**Section 20.2. Survival of Obligations.** The Tenant covenants and agrees with Issuer and the Bondowners that until all Bonds and the interest thereon are paid in full or provisions made for the payment thereof in accordance with the Indenture, its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the Tenant shall be obligated to pay Basic Rent and Additional Rent (reduced by any net income the Issuer or the Trustee may receive from the Project after such termination) and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease. Notwithstanding any provision of this Lease or the Indenture, the Tenant's obligations under Section 14.1 hereof shall survive any termination, release or assignment of this Lease or the Indenture and payment or provisions for payment of the Bonds.

**Section 20.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Issuer 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 Lease or now or hereafter existing at law or in equity or by statute, subject to the provisions of the Indenture. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice required herein.

## ARTICLE XXI

**Section 21.1. Performance of Tenant's Obligations by Issuer.** If the Tenant shall fail to keep or perform any of its obligations as provided in this Lease, then the Issuer may (but

shall not be obligated to do so) upon the continuance of such failure on the Tenant's part for 90 days after notice of such failure is given the Tenant by the Issuer or the Trustee and without waiving or releasing the Tenant from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and the Tenant shall reimburse the Issuer for all sums so paid by the Issuer and all necessary or incidental costs and expenses incurred by the Issuer in performing such obligations through payment of Additional Rent. If such Additional Rent is not so paid by the Tenant within 10 Business Days of demand, the Issuer shall have the same rights and remedies provided for in Article XX in the case of default by the Tenant in the payment of Basic Rent.

## **ARTICLE XXII**

**Section 22.1. Surrender of Control.** Upon accrual of the Issuer's right of re-entry as the result of the Tenant's default hereunder or upon the cancellation or termination of this Lease by lapse of time or otherwise (other than as a result of the Tenant's purchase of the Project), the Tenant shall peacefully surrender control of the Project to the Issuer in good condition and repair, ordinary wear and tear excepted; provided, however, the Tenant shall have the right, prior to or within 60 days after the termination of this Lease, to remove from on or about the Project the buildings, improvements, machinery, equipment, personal property, furnishings and trade fixtures which the Tenant owns under the provisions of this Lease and which are not a part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Tenant. All buildings, improvements, machinery, equipment, personal property, furnishings and trade fixtures owned by the Tenant and which are not so removed from, on or about the Project prior to or within 60 days after such termination of this Lease shall become the separate and absolute property of the Issuer.

## **ARTICLE XXIII**

**Section 23.1. Notices.** All notices required or desired to be given hereunder shall be in writing and shall be delivered in person to the Notice Representative sent via United States mail, postage prepaid, certified or registered mail, return receipt requested, or overnight delivery that provides written evidence of delivery to the Notice Address. All notices given by certified or registered mail as aforesaid shall be deemed duly given as of the date of first attempted delivery at the Notice Address; notices given by overnight delivery shall be deemed duly given as of the date on the day after they are sent. Notwithstanding the foregoing provisions of this Section 23.1, notices, certificates or communications to the Trustee shall be deemed duly and fully given only upon receipt by the Trustee. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Tenant to the other shall also be given to the Trustee.

## **ARTICLE XXIV**

**Section 24.1. Net Lease.** The parties hereto agree (a) that this Lease is intended to be a net lease, (b) that the payments of Basic Rent and Additional Rent are designed to provide the Issuer and the Trustee with funds adequate in amount to pay all principal of and interest on



all Bonds as the same become due and payable and to pay and discharge all of the other duties and requirements set forth herein, and (c) that to the extent that the payments of Basic Rent and Additional Rent are not adequate to provide the Issuer and the Trustee with funds sufficient for the purposes aforesaid, the Tenant shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money as may from time to time be required for such purposes.

**Section 24.2. Funds Held by Trustee After Payment of Bonds.** If, after the principal of and interest on all Bonds and all costs incident to the payment of Bonds have been paid in full, the Trustee holds unexpended funds received in accordance with the terms hereof, such unexpended funds shall, except as otherwise provided in this Lease and the Indenture and after payment therefrom to the Issuer of any sums of money then due and owing by the Tenant under the terms of this Lease, be the absolute property of and be paid over forthwith to the Tenant.

## ARTICLE XXV

**Section 25.1. Rights and Remedies.** The rights and remedies reserved by the Issuer and the Tenant hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Issuer and the Tenant shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, and each party hereby waives the right to raise such defense in any proceeding in equity.

**Section 25.2. Waiver of Breach.** No waiver of a breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

**Section 25.3. Issuer Shall Not Unreasonably Withhold Consents and Approvals.** Wherever in this Lease it is provided that the Issuer shall, may or must give its approval or consent, or execute supplemental agreements, exhibits or schedules, the Issuer shall not unreasonably withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements, exhibits or schedules.

## ARTICLE XXVI

**Section 26.1. Quiet Enjoyment and Possession.** The Tenant shall enjoy peaceable and quiet possession of the Project as long as no Event of Default has occurred and is continuing.

## ARTICLE XXVII

**Section 27.1. Investment Tax Credit; Depreciation.** The Tenant shall be entitled to claim the full benefit of (1) any investment credit against federal or state income tax allowable with respect to expenditures of the character contemplated hereby under any federal or state income tax laws now or from time to time hereafter in effect, and (2) any deduction for depreciation with respect to the Project from federal or state income taxes. The Issuer agrees that it will upon the Tenant's request execute all such elections, returns or other documents which may be reasonably necessary or required to more fully assure the availability of such benefits to the Tenant.

## ARTICLE XXVIII

**Section 28.1. Amendments.** This Lease may be amended, changed or modified by an agreement in writing executed by the Issuer and the Tenant and consented to in writing by the Trustee and by the Owners of all of the Outstanding Bonds.

**Section 28.2. Granting of Easements.** If no Event of Default under this Lease shall have happened and be continuing, the Tenant may, at any time or times, (a) grant easements, licenses and other rights or privileges in the nature of beneficial easements with respect to any property included in the Project, free from any rights of the Issuer or the Bondowners, or (b) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Tenant shall determine, and the Issuer agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the Issuer of: (i) a copy of the instrument of grant or release or of the agreement or other arrangement, (ii) a written application signed by the Authorized Tenant Representative requesting such instrument, and (iii) a certificate executed by the Tenant stating (aa) that such grant or release is not detrimental to the proper conduct of the business of the Tenant, and (bb) that such grant or release will not impair the effective use or interfere with the efficient and economical operation of the Project and will not materially adversely affect the security of the Bondowners. If the instrument of grant shall so provide, any such easement or right and the rights of such other parties thereunder shall be superior to the rights of the Issuer and the right of the Bondowners and shall not be affected by any termination of this Lease or default on the part of the Tenant hereunder. If no Event of Default shall have happened and be continuing, any payments or other consideration received by the Tenant for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Tenant, but, in the event of the termination of this Lease because of Default of the Tenant, all rights then existing of the Tenant with respect to or under such grant shall inure to the benefit of and be exercisable by the Issuer.

**Section 28.3. Security Interests.** If requested in writing by the Owners of 100% of the Outstanding Bonds and at the expense of the Tenant, the Issuer and the Tenant agree to execute and deliver all instruments (including financing statements and statements of continuation thereof) necessary for perfection of and continuance of the security interest of the

Issuer in and to the Project. After receipt of such Bondowner request, the Issuer shall file or cause to be filed all such original instruments and the Trustee shall continue or cause to be continued the liens of such instruments for so long as the Bonds shall be Outstanding.

Under the Indenture, the Issuer will, as additional security for the Bonds assign, transfer, pledge and grant a security interest in certain of its rights under this Lease to the Trustee. The Trustee is hereby given the right to enforce, either jointly with the Issuer or separately, the performance of the obligations of the Tenant, and the Tenant hereby consents to the same and agrees that the Trustee may enforce such rights as provided in the Indenture and the Tenant will make payments required hereunder directly to the Trustee.

**Section 28.4. Construction and Enforcement.** This Lease shall be construed and enforced in accordance with the laws of the State. The provisions of this Lease shall be applied and interpreted in accordance with the rules of interpretation set forth in the Indenture. Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

**Section 28.5. Invalidity of Provisions of Lease.** If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

**Section 28.6. Covenants Binding on Successors and Assigns.** The covenants, agreements and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**Section 28.7. Section Headings.** The section headings hereof are for the convenience of reference only and shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof. The reference to section numbers herein or in the Indenture shall be deemed to refer to the numbers preceding each section.

**Section 28.8. Execution of Counterparts.** This Lease may be executed simultaneously in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

**Section 28.9. Limitation of Rights Under the Lease.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be inferred from this Lease is intended or shall be construed to give any person, other than the parties hereto and the Trustee and Bondowners, any right, remedy or claim under or with respect to this Lease, and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Trustee and the Bondowners as herein provided.

**Section 28.10. Integration.** This Lease contains the final and complete understanding of the parties as of the date hereof and constitutes their entire agreement regarding the subject matter hereof, all prior negotiations, representations and statements having been merged herein.

**Section 28.11. Electronic Storage.** The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproduction of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law. Notwithstanding the foregoing, and except as expressly authorized under Article II of the Indenture, no reproduction of any Bond certificate, in whole or in part, by electronic means or otherwise, shall be deemed to be or shall be relied upon as authentic, valid or original.

**Section 28.12 Subordination to Mortgage and Related Loan Documents.** The parties agree and acknowledge that this Lease, and any obligations of Tenant hereunder, are subject and subordinate to the Mortgage and related loan documents. Notwithstanding any provision in this Lease to the contrary, no obligations of the Tenant hereunder shall be payable except from (i) Surplus Cash (as defined in the HUD Regulatory Agreement) or (ii) funds that are not derived from (A) revenues of the Project (as defined in the Mortgage), or (B) any reserve or deposit made with the FHA lender or any other party as required by HUD in connection with the FHA loan documents or (iii) any lender funds. The provisions of the HUD Lease Addendum attached hereto as Appendix D are incorporated herein.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the Issuer has caused this Lease to be signed by an authorized official, such signature to be attested by an authorized officer, and its official seal to be applied, as of the date first above written.

**CITY OF SPRING HILL, KANSAS**

By: \_\_\_\_\_  
Steven M. Ellis, Mayor

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Glenda Gerrity, City Clerk

“ISSUER”

**ACKNOWLEDGMENT**

STATE OF KANSAS )  
 ) SS.  
COUNTIES OF JOHNSON AND MIAMI )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2019,  
by Steven M. Ellis, Mayor, and Glenda Gerrity, City Clerk.

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

My Commission Expires: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Tenant has caused this Lease to be signed by an authorized member, such signature to be attested by an authorized member, and its seal (if any) to be applied, as of the date first above written.

**BLACKHAWK APARTMENT HOMES II, LLC,**  
a Kansas limited liability company

By: \_\_\_\_\_  
Grant W. Merritt, Manager

[SEAL, if any]

“TENANT”

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  ) SS.  
COUNTY OF JOHNSON    )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2019, by Grant W. Merritt, as Manager and on behalf of Blackhawk Apartment Homes II, LLC, a Kansas limited liability company.

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

My Commission Expires: \_\_\_\_\_

**JOINDER AND INDEMNITY OF BLACKHAWK DEVELOPMENT , L.L.C.**

Blackhawk Development, L.L.C., the purchaser of the Bonds, as an inducement to the Issuer to enter into this Lease, shall and hereby covenants and agrees to indemnify, protect, defend and save the Issuer and the Trustee harmless from and against any and all claims, demands, liabilities and costs, including attorneys’ fees, arising from damage or injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on or about the Project during the Term hereof including any mechanic’s materialmen’s or similar liens against the Project, and upon timely written notice from the Issuer or the Trustee, the Tenant shall defend the Issuer and the Trustee in any action or proceeding brought thereon; provided, however, that nothing contained in this Section shall be construed as requiring the Tenant to indemnify the Issuer or the Trustee for any claim resulting from any willful, malicious or negligent act or omission of the Issuer or the Trustee, or their respective agents and employees. The Tenant also covenants and agrees, at its expense, to pay and to indemnify the Issuer and the Trustee from and against all costs, expenses and charges, including reasonable counsel fees (to the extent permitted by law), incurred in obtaining possession of the Project after default of the Tenant, or in enforcing any covenant or agreement of the Tenant contained in this Lease or the Indenture. This Joinder and Indemnity is hereby incorporated in and made a part of the Lease.

**BLACKHAWK DEVELOPMENT, L.L.C.,**  
a Kansas limited liability company

By: \_\_\_\_\_  
Grant W. Merritt, Manager

[SEAL, if any]

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  ) SS.  
COUNTY OF JOHNSON    )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2019, by Grant W. Merritt, as Manager and on behalf of Blackhawk Development, L.L.C., a Kansas limited liability company.

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

My Commission Expires: \_\_\_\_\_

**APPENDIX A**

**FORM OF CERTIFICATE FOR PAYMENT OF PROJECT COSTS**

**CITY OF SPRING HILL, KANSAS  
Project Fund  
(Blackhawk Apartments Project Phase II)  
Payment Order No. \_\_\_\_**

Security Bank of Kansas City  
701 Minnesota Avenue  
Kansas City, Kansas 66101  
Attn: Corporate Trust Department

You are hereby authorized and directed by the undersigned, the Authorized Tenant Representative, acting on behalf of Blackhawk Apartment Homes II, LLC (the “Tenant”) to disburse funds held by you as Trustee in the above-mentioned Project Fund for the purposes and in the amounts set forth in the Payment Schedules attached hereto and incorporated herein by reference (the “Payment Schedules”).

I hereby certify that the amounts requested in the attached Payment Schedules have either been advanced by the Tenant or are justly due to contractors, subcontractors, suppliers, vendors, materialmen, engineers, architects or other persons named in the Payment Schedules who have performed necessary and appropriate work in connection with any installation of machinery, equipment or personal property, or have furnished necessary and appropriate materials in the construction or acquisition of land, buildings and improvements constituting a part of the Project. I further certify that the fair value of such work or materials, machinery, and equipment is not exceeded by the amount requested, and such cost is one which may be capitalized for federal income tax purposes.

I further certify that, except for the amounts set forth in the Payment Schedules, there are no outstanding debts now due and payable for labor, wages, materials, supplies or services in connection with the construction of said buildings and improvements or the purchase and/or installation of machinery, equipment and personal property which, if unpaid, might become the basis of a vendor’s, mechanic’s, laborer’s or materialmen’s statutory or other similar lien upon the Land, the Project or any part thereof.

I further certify that no part of the amounts set forth in the Payment Schedules have been the basis for any previous withdrawal of any moneys from the said Project Fund.

I further certify that each of the representations and covenants on the part of the Tenant contained in the Lease dated as of \_\_\_\_ 1, 2019, by and between the City of Spring Hill, Kansas, as the Issuer, and the Tenant are now true and correct in all material respects and are now being materially complied with.



I further certify that the amounts set forth in the Payment Schedules constitute Project Costs, as said term is defined in the Lease, and that all insurance policies which are required to be in force as a condition precedent to disbursement of funds from the Project Fund pursuant to the provisions of Section 6.1 of the Lease are in full force and effect.

This certificate may be executed simultaneously in multiple counterparts, each of which shall be deemed to be an original but all of which together shall constitute one instrument.

DATED \_\_\_\_\_, 20\_\_.

---

Authorized Tenant Representative

**EXHIBIT A - Payment Order No. \_\_\_\_**

**PAYMENT SCHEDULE  
FOR BUILDINGS AND IMPROVEMENTS**

I hereby request payment of the amounts specified below to the payees whose names and addresses are stated below, and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete:

PAYMENT SCHEDULE

<u>Payee Name</u>	<u>Payee Address</u>	<u>Purpose or Nature of Payment</u>	<u>Amount</u>
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**EXHIBIT B - Payment Order No. \_\_\_\_**

**PAYMENT SCHEDULE  
FOR MACHINERY AND EQUIPMENT**

I hereby request payment of the amounts specified below to the payees whose names and addresses are stated below, and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete:

**PAYMENT SCHEDULE**

<b>Payee Name</b>	<b>Description of Equipment</b> (include name and address of manufacturer, descriptive name, technical description, capacity, serial number or model number as appropriate)	<b>Amount</b>
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## APPENDIX B

### FORM OF CERTIFICATE OF COMPLETION

The undersigned, being the Authorized Tenant Representative for Blackhawk Apartment Homes II, LLC (the “Tenant”), as Tenant under a certain Lease dated as of \_\_\_\_ 1, 2019, between the City of Spring Hill, Kansas (the “Issuer”), and the Tenant, and as beneficiary of the Issuer’s Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II) issued pursuant to a certain Trust Indenture dated as of \_\_\_\_ 1, 2019 (the “Indenture”), hereby certifies:

1. The Improvements (as defined in the Indenture) have been completed in accordance with the plans and specifications prepared at Tenant’s direction.
2. The Improvements have been completed in a good and workmanlike manner.
3. There are no mechanic’s, materialmen’s liens or other statutory liens on file encumbering title to the Land (as defined in the Indenture); all bills for labor and materials furnished for the Improvements which could form the basis of a mechanic’s materialmen’s or other statutory lien against the Land have been paid in full, and within the past four months no such labor or materials have been furnished which have not been paid for.
4. All Improvements are located or installed upon the Land.
5. All material provisions of applicable building codes have been complied with and, if applicable, a certificate of occupancy has been issued with respect to the Project.
6. All moneys remaining in the Project Fund being held by the Trustee under the Indenture should be transferred to the Principal and Interest Payment Account being held by the Trustee under the Indenture as required by Section 504 of the Indenture, to be applied as provided therein.



## APPENDIX C

### GLOSSARY OF WORDS AND TERMS

“Abandonment” means the voluntary relinquishment of all right, title, claim and possession, with the intention of terminating the leasehold interest in the Project, but without vesting it in any other person or entity and with the intention of not reclaiming future possession or resuming leasehold possession and enjoyment. The mere nonuse of the Project, lapse of time without claiming or using the Project or the temporary absence of the Tenant including, but not limited to, nonuse due to condemnation, damage or destruction of the Project, unaccompanied by any other evidence showing intention to abandon shall not, in and of itself, constitute abandonment.

“Additional Rent” means all fees, charges, costs and expenses of the Trustee (including reasonable attorney’s fees) payable under the Indenture, all Impositions, all Default Administration Costs (as defined in the Indenture), all other payments of whatever nature payable or to become payable pursuant to the Indenture or which the Tenant has agreed to pay or assume under the provisions of this Lease and any and all expenses (including reasonable attorneys’ fees) incurred by Issuer in connection with the issuance of the Bonds or the administration or enforcement of any rights under this Lease or the Indenture. The fees, charges, costs and expenses of the Trustee shall include all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds except (a) the reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed or (b) any tax or other government charge imposed on the Trustee in relation to the transfer, exchange, registration, redemption or payment of the Bonds.

“Additional Term” shall mean that term commencing on the last day of the Basic Term and terminating one year thereafter.

“Bankruptcy Code” means Title 11 of the United States Code, as amended.

“Basic Rent” means the annual amount which, when added to Basic Rent Credits, will be sufficient to pay, on the Payment Date, all principal of and interest on all Outstanding Bonds (as defined in the Indenture) which is due and payable on such Payment Date.

“Basic Rent Credits” means all funds on deposit in the Principal and Interest Payment Account and available for the payment of principal of and interest on the Bonds on any Payment Date.

“Basic Rent Payment Date” means February 1 and August 1 annually, commencing August 1, 2020, until the principal of and interest on all Outstanding Bonds have been fully paid or provision made for their payment in accordance with the provisions of the Indenture.

“Basic Term” means that term commencing as of the date of this Lease and ending 10 years beyond the term of the Mortgage; provided, however, that either party may terminate this Lease when: (i) all of the principal of and interest on all Outstanding Bonds shall have been paid in full or provision made for their payment in accordance with the provisions of the

Indenture; (ii) prior thereto with the consent of the United States Department of Housing and Urban Development (“HUD”); or (iii) as otherwise specified in this Lease.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, *et seq.*

“Certificate of Completion” means a written certificate signed by the Authorized Tenant Representative stating that (1) the Improvements have been completed in accordance with the plans and specifications prepared or approved by Issuer or Tenant, as the case may be; (2) the Improvements have been completed in a good and workmanlike manner; (3) no mechanic’s or materialmen’s liens have been filed, nor is there any basis for the filing of such liens, with respect to the Project; (4) all Improvements constituting a part of the Project are located or installed upon the Land; and (5) if required by ordinances duly adopted by Issuer or by applicable building codes, that an appropriate certificate of occupancy has been issued with respect to the Improvements. A form of Certificate of Completion is attached as *Appendix B*.

“Deed” means that certain special warranty deed from Tenant to Issuer dated as of \_\_\_\_\_ 1, 2019, conveying the Property described in *Schedule I* to Issuer.

“Default” means any event or condition the occurrence of which, with the lapse of time or the giving of notice or both, may constitute an Event of Default.

“Environmental Assessment” means an environmental assessment with respect to the Project conducted by an independent consultant satisfactory to the Issuer and Trustee which reflects the results of such inspections, records reviews, soil tests, groundwater tests and other tests requested, which assessment and results shall be satisfactory in scope, form and substance to the Issuer and the Trustee.

“Environmental Law” means CERCLA, SARA, and any other federal, state or local environmental statute, regulation or ordinance presently in effect or coming into effect during the Term of this Lease.

“Event of Bankruptcy” means an event whereby the Tenant shall: (i) admit in writing its inability to pay its debts as they become due; (ii) file a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Code as now or in the future amended, or file a pleading asking for such relief; (iii) make an assignment for the benefit of creditors; (iv) consent to the appointment of a trustee or receiver for all or a major portion of its property; (v) be finally adjudicated as bankrupt or insolvent under any federal or state law; (vi) suffer the entry of a final and nonappealable court order under any federal or state law appointing a receiver or trustee for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, which order, if the Tenant has not consented thereto, shall not be vacated, denied, set aside or stayed within 60 days after the day of entry; or (vii) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside.

“Event of Default” means any one of the following events:

(a) Failure of the Tenant to make any payment of Basic Rent within 10 days of the time and in the amounts required hereunder; or

(b) Failure of the Tenant to make any payment of Additional Rent at the times and in the amounts required hereunder, or failure to observe or perform any other covenant, agreement, obligation or provision of this Lease on the Tenant’s part to be observed or performed, and the same is not remedied within 60 days after the Issuer or the Trustee has given the Tenant written notice specifying such failure (or such longer period as shall be reasonably required to correct such default; provided that (i) the Tenant has commenced such correction within said 60-day period, and (ii) the Tenant diligently prosecutes such correction to completion); or

(c) An Event of Bankruptcy; or

(d) Abandonment of the Project by the Tenant.

“Full Insurable Value” means full actual replacement cost less physical depreciation.

“Hazardous Substances” shall mean “hazardous substances” as defined in CERCLA.

“Impositions” means all taxes and assessments, general and special, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or payable for or in respect of the Project or any part thereof, or any improvements at any time thereon or the Tenant’s interest therein, including any new lawful taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all water and sewer charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, which, if not paid when due, would encumber the Tenant’s title to the Project.

“Indenture” means the Trust Indenture delivered concurrently with this Lease, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of Article XI of the Indenture.

“Lease” means this Lease between the Issuer and the Tenant, as from time to time supplemented and amended in accordance with the provisions hereof and of the Indenture.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Project, the proceeds from the insurance or condemnation award remaining after the payment or all expenses (including the Tenant’s attorneys’ fees and any extraordinary expenses of the Trustee occasioned by such casualty or condemnation) incurred in the collection of such proceeds.



The term “Notice Address” shall mean:

(1) With respect to the Tenant:

Blackhawk Apartment Homes II, LLC  
23585 W. 207<sup>th</sup> Street  
Spring Hill, Kansas 66083  
Attn: Grant W. Merritt

(2) With respect to the Issuer:

City of Spring Hill, Kansas  
Spring Hill City Hall  
401 N. Madison Street  
Spring Hill, Kansas 66083  
Attn: City Attorney

(3) With respect to the Trustee:

Security Bank of Kansas City  
701 Minnesota Avenue  
Kansas City, Kansas 66101  
Attn: Corporate Trust Department

“PILOT Agreement” means the Payment in Lieu of Tax Agreement – Blackhawk Apartments Project Phase II, dated as of \_\_\_\_\_ 1, 2019, between the Issuer and the Tenant.

“Project Contracts” means a contract or contracts with respect to the acquisition and/or construction of the Improvements entered into by the Tenant or the Issuer.

“SARA” means the Superfund Amendments and Reauthorization Act of 1986, as now in effect and as hereafter amended.

“Term” means, collectively, the Basic Term and any Additional Term of the Lease.

**APPENDIX D**

**HUD LEASE ADDENDUM**

**Lease Addendum**

**U.S. Department of Housing  
and Urban Development**  
Office of Housing

OMB Approval No. 2502-0598  
(Exp. 06/30/2017)

**Public Reporting Burden** for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

### **INSTRUCTIONS FOR LEASEHOLD PROJECTS**

These instructions and the following Lease Addendum have been prepared for use in connection with mortgage insurance for projects given pursuant to the National Housing Act, as amended, found at 12 U.S.C. § 1701, *et seq.* (“**Act**”), where the mortgaged property is subject to a ~~ground~~ lease. The ~~ground~~ lease term and other provisions must comply with the section of the Act under which the note is endorsed for insurance. The ~~ground~~ lease provisions must not conflict with any Program Obligations<sup>1</sup> promulgated by the U.S. Department of Housing and Urban Development (“**HUD**”) with respect to such mortgage insurance. All ~~ground~~ rent amounts must have prior written approval by HUD.

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“**Program Obligations**” means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this

Lease Addendum rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site).

## LEASE ADDENDUM

Notwithstanding any other provisions of this ~~ground~~ lease, if and so long as this leasehold is subject to a security instrument insured, reinsured, or held by HUD or given to HUD in connection with a resale, or the Property<sup>2</sup> is acquired and held by HUD because of a default under the security instrument, the following provisions of this Lease Addendum shall be in effect:

- a) The tenant is authorized to obtain a loan, the repayment of which is to be insured by HUD and secured by a security instrument on this leasehold estate ~~and the improvements~~. The tenant is further authorized to execute all documents necessary as determined by HUD and otherwise to comply with Program Obligations for obtaining such an insured loan.
  
- b) In the event that HUD acquires title to this leasehold estate or otherwise acquires title to the tenant's interest herein, HUD shall have the option to purchase good and marketable fee simple title to the Property ~~and the landlord's interest, if any, in the improvements~~, free of all liens and encumbrances except such as may be waived or accepted by HUD. Such option shall be exercised within twelve (12) months after HUD so acquires such leasehold estate or the tenant's interest. The purchase price shall be the sum of Ten Dollars (\$10.00) payable in cash, by check drawn on the U.S. Treasury, by electronic funds transfer or by wire transfer, provided all rents are paid to date of transfer of title. HUD shall, within said twelve months, give written notice to the landlord of its election to exercise said option to purchase. The landlord shall, within thirty (30) days after HUD gives such notice, execute and deliver to HUD a warranty deed of conveyance to HUD as grantee conveying the said fee and interest and containing a covenant against the grantor's acts, but excepting therefrom acts of the tenant and those claiming by, through or under the tenant. Nothing in this option shall require the landlord to pay any taxes or assessments that were due and payable by the tenant.
  
- c) If approved by HUD, the tenant may convey, assign, transfer, lease, sublease or sell all or any part of its leasehold interest in the Property ~~and its interest in the improvements~~ without the need for approval or consent by any other person or entity.
  
- d) (i) Insurance policies shall be in an amount, and with such company or companies and in such form, and against such risks and hazards, as shall be approved by lender and HUD.
  - (ii) The landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the tenant to lender. The landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the tenant to lender.

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**"Property"** means the legally-described land, in addition to all buildings, fixtures, structures, alterations or other improvements and fixtures now constructed or at any time in the future constructed or placed upon the land, including any future replacements and additions hereafter located thereon.

e) (i) If all or any part of the Property ~~or the Improvements~~ or the leasehold estate shall be taken or damaged by condemnation, that portion of any award attributable to the ~~Improvements or the~~ tenant's interest in the leasehold estate or damage to the ~~Improvements or the~~ tenant's interest in the leasehold estate shall be paid to lender or otherwise disposed of as may be provided in the security instrument. Any portion of the award attributable solely to the underlying fee estate (~~exclusive of any Improvements~~) shall be paid to the tenant. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to the landlord bears to the total value of the Property as established by the amount HUD is to pay, as set forth in paragraph (b) of this Lease Addendum.

(ii) In the event of a negotiated sale of all or a portion of the Property, in lieu of condemnation, the proceeds shall be distributed and annual ground rent reduced as provided in cases of condemnation, but the approval of HUD and lender shall be required as to the amount and division of the payments to be received.

f) The landlord may terminate the ground lease prior to the expiration day of the full term of this ground lease ("**Expiration Date**") after a tenant default under this ground lease ("**Ground Lease Event of Default**"), but only under the following circumstances and procedures. If any Ground Lease Event of Default shall occur, then and in any such event, the landlord shall at any time thereafter during the continuance of such Ground Lease Event of Default and prior to any cure, give written notice of such default(s) ("**Notice of Default**") to the tenant, lender and HUD, specifying the Ground Lease Event of Default and the methods of cure, or declaring that a Ground Lease Event of Default is incurable. If the Ground Lease Event of Default is a failure to pay money, the landlord shall specify and itemize the amounts of such default. Failure to pay money shall be specified as a separate default and not combined with a non-monetary Ground Lease Event of Default. Within sixty (60) days from the date of giving the Notice of Default to the tenant, the tenant must cure a monetary default by paying the landlord all amounts specified in the Notice of Default and must cure any specified Ground Lease Event of Default that is capable of being cured within such period. During the period of 180 days commencing upon the date Notice of Default was given to lender and HUD, lender or HUD may: (a) cure any Ground Lease Event of Default; and (b) commence foreclosure proceedings or institute other state or federal procedures to enforce lender's or HUD's rights with respect to the leasehold ~~or the tenant Improvements~~. If the tenant, lender or HUD reasonably undertake to cure any Ground Lease Event of Default during the applicable cure period and diligently pursues such cure, the landlord shall grant such further reasonable time as is necessary to complete such cure. If HUD or lender commences foreclosure or other enforcement action within such 180 days, then its cure period shall be extended during the period of the foreclosure or other action and for 90 days after the ownership of the tenant's rights under the lease is established in or assigned to HUD or such lender or a purchaser at any foreclosure sale pursuant to such foreclosure or other action. The transfer of the tenant's rights under the lease to lender, HUD or purchaser, pursuant to such foreclosure or other action shall be deemed a termination of any incurable Ground

Lease Event of Default and such terminated ~~Ground~~ Lease Event of Default shall not give the landlord any right to terminate the lease. Such purchaser may cure a curable ~~Ground~~ Lease Event of Default within said 90 days. If after the expiration of all of the foregoing cure periods, no cure or termination of an existing ~~Ground~~ Lease Event of Default has been achieved as aforesaid, then and in that event, this lease shall terminate, and, on such date, the term of this lease shall expire and terminate and all rights of the tenant under the lease shall cease and the Property, subject to the security instrument and the rights of lender thereunder, shall be and become the property of the landlord. All costs and expenses incurred by or on behalf of the landlord (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any default by the tenant under this ~~ground~~ lease shall constitute additional rent hereunder. The landlord shall have no right to terminate this ~~ground~~ lease except as provided in this paragraph (f).

- g) Upon termination of this ~~ground~~ lease pursuant to paragraph (f) above, the landlord shall immediately seek to obtain possession of the Property and ~~Improvements~~. Upon acquiring such possession, the landlord shall notify HUD and lender in writing. Lender and HUD shall each have six (6) months from the date of receipt of such notice of acquisition to elect to take, as tenant, a new ~~ground~~ lease on the Property and ~~on the Improvements~~. Such new ~~ground~~ lease shall have a term equal to the unexpired portion of the term of this ~~ground~~ lease immediately prior to such termination and shall, except as otherwise provided herein, be on the same terms and conditions as contained in this ~~ground~~ lease, including without limitation, the option to purchase set forth under paragraph (b) above, except that lender's or HUD's liability for ~~ground~~ rent shall not extend beyond their occupancy under such ~~ground~~ lease. The landlord shall tender such new ~~ground~~ lease to lender or HUD within thirty (30) days after a request for such ~~ground~~ lease and shall deliver possession of the Property and ~~Improvements~~ immediately upon execution of the new ~~ground~~ lease. Upon executing a new ~~ground~~ lease, lender or HUD shall pay to the landlord any unpaid ~~ground~~ rent due or that would have become due under this ~~ground~~ lease to the date of the execution of the new ~~ground~~ lease, including any taxes which were liens on the Property and ~~Improvements~~ and which were paid by the landlord, less any net rentals or other income which the landlord may have received on account of the Property and ~~Improvements~~ since the date of default under this ~~ground~~ lease.
- h) The landlord agrees that within ten (10) days after receipt of written request from the tenant, it will join in any and all applications for permits, licenses or other authorizations required by any Governmental Authority<sup>3</sup> in connection with any work which the tenant may do hereunder and will also join in any grants for easements for electric telephone, telecommunications, cable, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the Property ~~or of any Improvements~~ and if, at the expiration of such ten (10) day period, the landlord shall not have joined in any such application, or grants for easements, the tenant shall have the right to execute such application and grants in the name of the landlord, and for that purpose, the landlord hereby irrevocably appoints the tenant as its attorney-in-fact to execute such papers on behalf of the landlord, only to the extent that a public body as landlord may do so within the exercise of its municipal powers and responsibilities.

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<sup>3</sup> “**Governmental Authority**” means any board, commission, department or body of any municipal, county, state, tribal or federal governmental unit, including any U.S. territorial government, and any public or quasi-public authority, or any subdivision of any of them, that has or acquires jurisdiction over the mortgaged property, including the use, operation or improvement of the mortgaged property.

- i) Nothing in this ~~ground~~ lease shall require the tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the landlord or any income excess profits or revenue tax, or any other tax, assessment charge or levy upon the rent payable by the tenant under this ~~ground~~ lease.
- j) All notices, demands and requests which are required to be given by the landlord, the tenant, lender or HUD in connection with this ~~ground~~ Lease shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.

All notices to lender or HUD shall be addressed as follows:

If to Lender:                   Gershman Investment Corp.  
16253 Swingley Ridge Rd., Suite 400  
Chesterfield, MO 63017  
Attn: Amy Michel

If to HUD:                       U.S. Department of Housing and Urban Development  
Kansas /Missouri State Office  
400 State Avenue,  
Gateway Tower II, Room 200  
Kansas City, Kansas 66101-2406  
Attn: Lawrence Park, Esq.

If to Tenant:                   Blackhawk Apartment Homes II, LLC  
23585 W. 207<sup>th</sup> Street  
Spring Hill, Kansas 66083  
Attn: Grant W. Merritt

If to Landlord:               City of Spring Hill, Kansas  
Spring Hill City Hall  
401 N. Madison Street  
Spring Hill, Kansas 66083  
Attn: City Attorney

- k) This ~~ground~~ lease shall not be modified without the written consent of HUD and lender.



- l) The provisions of this Lease Addendum benefit lender and HUD and are specifically declared to be enforceable against the parties to this lease and all other persons by lender and HUD. In the event of any conflict, inconsistency or ambiguity between the provisions of this Lease Addendum and the provisions of any other part of this ~~ground~~ lease, the provisions of this Lease Addendum shall prevail and control.

### Warning

Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability and administrative sanctions.

## SCHEDULE I

### DESCRIPTION OF PROPERTY

The following property leased to the City of Spring Hill, Kansas (the “Issuer”) in connection with the issuance by the Issuer of its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019, (Blackhawk Apartments Project Phase II), (the “Series 2019 Bonds”):

- (a) The following described real estate in Miami County, Kansas:

All that part of the Northwest Quarter of Section 26, Township 15, Range 23, in the City of Spring Hill, Miami County, Kansas, described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 26; thence North 87°43'39" East, along the South line of the Northwest Quarter of said Section 26, a distance of 425.50 feet, to the point of beginning; thence North 2°16'21" West, a distance of 90.07 feet; thence North 37°07'31" West, a distance of 211.39 feet; thence North 23°29'31" East, a distance of 27.31 feet; thence North 37°16'29" East, a distance of 59.27 feet; thence North 52°16'15" East, a distance of 214.55 feet; thence North 88°15'33" East, a distance of 130.58 feet; thence North 54°02'35" East, a distance of 35.56 feet; thence North 88°15'26" East, a distance of 26.00 feet; thence North 01°44'16" West, a distance of 80.11 feet; thence North 88°15'26" East, a distance of 33.54 feet; thence South 01°44'34" East, a distance of 556.39 feet, to a point on the South line of said Northwest Quarter; thence South 87°43'39" West, along said South line, a distance of 318.88 feet to the point of beginning.

Said real property constituting the “Land” as referred to in the Indenture and the Lease entered into by the Issuer concurrently with the issuance of the Series 2019 Bonds (the “Indenture” and the “Lease”), subject to the Permitted Encumbrances.

- (b) All buildings, building additions, improvements, machinery, furnishings and equipment now constructed, located or installed on the Land, all or any portion of the costs of which were paid from the proceeds of the Issuer’s Series 2019 Bonds, and which constitute Improvements as defined in the Indenture, together with any substitutions or replacements therefor, the property described in paragraphs (a) and (b) of this *Schedule I* together constituting the “Project” as referred to in the Indenture and the Lease.

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**CITY OF SPRING HILL, KANSAS**  
as Issuer

and

**SECURITY BANK OF KANSAS CITY**  
KANSAS CITY, KANSAS  
as Trustee

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**TRUST INDENTURE**

Dated as of \_\_\_\_\_ 1, 2019

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NOT TO EXCEED \$10,100,000  
INDUSTRIAL REVENUE BONDS  
(TAXABLE UNDER FEDERAL LAW)  
SERIES 2019  
(BLACKHAWK APARTMENTS PROJECT PHASE II)

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## TRUST INDENTURE

**THIS TRUST INDENTURE**, dated as of \_\_\_\_ 1, 2019 (the “Indenture”), between the City of Spring Hill, Kansas (the “Issuer”), and SECURITY BANK OF KANSAS CITY, Kansas City, Kansas (the “Trustee”);

### WITNESSETH:

**WHEREAS**, the Issuer is authorized by K.S.A. 12-1740 *et seq.*, as amended (the “Act”), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, and to enter into leases and lease-purchase agreements with any person, firm or corporation for said facilities and to issue revenue bonds for the purpose of paying the cost of any such facilities;

**WHEREAS**, pursuant to such authorization, the Issuer’s governing body has passed an ordinance (the “Ordinance”) authorizing the Issuer to issue its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II), in the principal amount not to exceed \$10,100,000 (the “Series 2019 Bonds”), for the purpose of financing a portion of the cost of acquiring, constructing and equipping an apartment complex (the “Improvements”), and authorizing the Issuer to lease the Project (as hereinafter more fully described) to Blackhawk Apartment Homes II, LLC, a Kansas limited liability company (the “Tenant”);

**WHEREAS**, pursuant to such Ordinance, the Issuer is authorized (i) to execute and deliver this Indenture for the purpose of issuing and securing the Series 2019 Bonds and any Additional Bonds as hereinafter defined (together with the Series 2019 Bonds, the “Bonds”), as hereinafter provided (ii) to accept a special warranty deed (the “Deed”), from Tenant, as grantor, and Issuer, as grantee, conveying to Issuer fee title to certain real property (the “Land”) on which the Improvements are or will be located (the Improvements and the Land, collectively, the “Project”) and (iii) to enter into a Lease of even date herewith (the “Lease”), between the Issuer and the Tenant, pursuant to which the Issuer shall lease back the Project to the Tenant, in consideration of rentals which are intended to be sufficient to provide for the payment of the principal of and interest on the Series 2019 Bonds as the same become due; and

**WHEREAS**, all things necessary to make the Series 2019 Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding limited obligations of the Issuer, and to make this Indenture a valid and legally binding pledge and assignment of the Trust Estate created in this Indenture made for the security of the payment of the principal of and interest on the Bonds issued under this Indenture, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Series 2019 Bonds, subject to these terms, have in all respects been duly authorized;



**NOW, THEREFORE, THIS INDENTURE WITNESSETH:**

**GRANTING CLAUSES**

That the Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts created in this Indenture, the purchase and acceptance of the Series 2019 Bonds by the Original Purchaser, and of other good and valuable consideration, the receipt of which is acknowledged, and in order to secure the payment of the principal of and interest on all of the Bonds issued and Outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions in this Indenture and in the Bonds contained, does pledge and assign unto the Trustee and its successors and assigns, the property described in paragraphs (a), (b) and (c) below (said property being referred to as the “Trust Estate”), to wit:

(a) The fee title interest in the real property situated in Miami County, Kansas, described in *Schedule I* attached, and constituting the Land (as defined herein), with all Improvements (as defined in this Indenture) now or hereafter located thereon, to the extent and subject to the limitations provided in the Lease.

(b) All right, title and interest of the Issuer in, to and under the Lease (except the Unassigned Tenant’s Rights), and all rents, revenues and receipts derived by the Issuer from the Project including, without limitation, all Basic Rent derived by the Issuer under and pursuant to and subject to the provisions of the Lease; provided that the pledge and assignment made shall not impair or diminish the obligations of the Issuer under the provisions of the Lease.

(c) All moneys and securities from time to time held by the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security under this Indenture by the Issuer or by anyone in its behalf, or with its written consent, to the Trustee, which is authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of this Indenture.

**TO HAVE AND TO HOLD**, all and singular, the Trust Estate with all rights and privileges pledged and assigned, or agreed or intended so to be, to the Trustee and its successors in trust and assigns;

**IN TRUST NEVERTHELESS**, upon the terms and subject to the conditions set forth in this Indenture, for the equal and proportionate benefit, protection and security of all Bonds issued and Outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

**PROVIDED, HOWEVER**, that if the Issuer shall pay, or cause to be paid, the principal of and interest on all the Bonds, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, or shall provide for the payment thereof (as provided in Article XIII of this Indenture), and shall pay or cause to be paid to the Trustee all

other sums of money due or to become due to it in accordance with the terms and provisions of this Indenture, then upon such final payments this Indenture and the rights hereby granted shall cease and be void; otherwise, this Indenture shall be and remain in full force and effect.

**THIS INDENTURE FURTHER WITNESSETH**, and it is expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured under this Indenture are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant with the Trustee and with the respective Owners from time to time of the Bonds, as follows:

## **ARTICLE I DEFINITIONS**

**Section 101. Definitions of Words and Terms.** In addition to the words and terms defined elsewhere in this Indenture, the capitalized words and terms used in this Indenture and in the Lease shall have the meanings assigned in the Glossary attached hereto as *Appendix B*, unless some other meaning is plainly intended.

### **Section 102. Rules of Interpretation.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(b) Wherever in this Indenture it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(c) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision.

(d) The Table of Contents and the Article and Section headings of this Indenture shall not be treated as a part of this Indenture or as affecting the true meaning of the provisions of this Indenture.

## **ARTICLE II THE BONDS**

**Section 201. Title and Amount of Bonds.** No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be

issued under this Indenture shall be designated as “City of Spring Hill, Kansas, Industrial Revenue Bonds (Taxable Under Federal Law) (Blackhawk Apartments Project Phase II),” with such other appropriate particular designation added to or incorporated in such title for the Bonds of any particular series of Additional Bonds as the Issuer may determine. The total principal amount of bonds that may be issued hereunder is expressly limited to an amount not to exceed \$10,100,000 aggregate principal amount of the Series 2019 Bonds and any Additional Bonds permitted under the terms of this Indenture.

**Section 202. Limited Nature of Obligations.**

(a) The Bonds and the interest thereon shall be limited obligations of the Issuer payable solely and only from the net earnings and revenues derived by the Issuer from the Project, including but not limited to the rents, revenues and receipts under the Lease (including, in certain circumstances, Bond proceeds and income from the temporary investment thereof), proceeds from sale of the Issuer’s fee title interest in the Project, and insurance and condemnation awards, and are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Bondowners, as provided in this Indenture. The Bonds and the interest thereon shall not be a debt or general obligation of Issuer or the State, or any municipal corporation thereof, and neither the Bonds, the interest, nor any judgment on or with respect to the Bonds, are payable in any manner from tax revenues of any kind or character. The Bonds shall not constitute an indebtedness or a pledge of the faith and credit of the Issuer, the State or any municipal corporation of the State, within the meaning of any constitutional or statutory limitation or restriction.

(b) No provision, covenant or agreement contained in this Indenture or the Bonds, or any obligation in this Indenture or imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit or powers of taxation. In making the agreements, provisions and covenants set forth in this Indenture, the Issuer has not obligated itself except with respect to the Project and the application of the payments, revenues and receipts therefrom as provided above. Neither the officers of the Issuer nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance of the Bonds.

**Section 203. Denomination, Numbering and Dating of Bonds.**

(a) The Bonds shall be fully registered bonds in the Authorized Denominations, not exceeding the principal amount of the Bonds maturing on the Principal Payment Date. The Bonds shall be substantially in the form set forth in Article IV of this Indenture. The bonds of each series of Bonds shall be numbered in such manner as the Trustee shall determine.

(b) The bonds of each series of Bonds shall be dated as provided in this Indenture or the Supplemental Indenture authorizing the issuance of such series of Bonds. The Bonds shall bear interest from their effective date of registration. The effective date of registration shall be the Interest Payment Date next preceding the date of authentication thereof by the Trustee, unless such date of authentication shall be an Interest Payment Date, in which case the effective date of registration shall be as of such date of authentication, or unless the date of authentication shall be prior to the first Interest Payment Date for such series of Bonds, in which case the effective date

of registration shall be the Dated Date of such series of Bonds; provided, however, that if payment of the interest on any Bonds of any series shall be in default at the time of authentication of any bond certificates issued in lieu of Bonds surrendered for transfer or exchange, the effective date of registration shall be as of the date to which interest has been paid in full on the Bonds surrendered.

**Section 204. Method and Place of Payment of Bonds.** Payment of the principal on each Bond shall be made by the Trustee on the Principal Payment Date to the person appearing on the registration books of the Issuer maintained by the Trustee as the registered owner by check or draft mailed to such Bondowner at the address appearing on such registration books. Final payment of principal on all Bonds shall be made by check or draft upon the presentation and surrender of the certificate(s) representing such Bonds at the stated maturity or earlier required redemption of the Bonds at the corporate trust office of the Paying Agent or at such other office designated by the Paying Agent. The interest payable on the Bonds on any Interest Payment Date shall be paid by check or draft mailed to the Registered Owner at such Registered Owner's address as it appears on the bond registration books of the Issuer kept by the Trustee, or at such other address as is furnished in writing by such Owner to the Paying Agent at the close of business on the Record Date for such interest. Notwithstanding the foregoing, the principal, redemption price of, and the interest on the Bonds is payable by electronic transfer in immediately available federal funds pursuant to written instructions from any Bondowner provided by the Owner to the Paying Agent not less than 5 days prior to the Record Date for such interest, which instructions shall include the name of the receiving bank (which shall be in the continental United States), its address, ABA routing number and the name, number and contact name related to such Bondowner's account at such bank and shall also acknowledge a wire transfer fee payable by such Bondowner. In addition, as provided in the Lease, the Bonds may be paid by presentation of the Bonds to the Trustee for cancellation.

**Section 205. Execution and Authentication of Bonds.**

(a) Bond certificates shall be executed on behalf of the Issuer by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its City Clerk, and shall have the corporate seal of the Issuer affixed to or imprinted on the certificates. In case any officer whose signature or facsimile thereof appears on any Bond certificates shall cease to be an officer before the delivery of such Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until delivery. Any Bond certificate may be signed by the persons whom, at the actual time of the execution of such Bond certificate, shall be the proper officers to sign although on the date of issuance of such Bond such persons may not have been such officers.

(b) The Bonds shall have an endorsed Certificate of Authentication substantially in the form set forth in Article IV of this Indenture, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purpose unless and until such Certificate of Authentication shall have been duly executed. Such executed Certificate of Authentication upon any Bond certificate shall be conclusive evidence that the Bonds described in such Bond certificate have been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond certificate shall be deemed to have been duly executed if signed by any authorized officer or

employee of the Trustee, but it shall not be necessary that the same officer or employee sign the Certificate of Authentication on all of the Bond certificates that may be delivered under this Indenture at any one time.

**Section 206. Registration, Transfer and Exchange of Bonds.**

(a) The Series 2019 Bonds may only be transferred (1) to the Issuer, the Original Purchaser and the Tenant, (2) with the written consent of the Issuer pursuant to a registration statement which has been declared effective under the 1933 Act, or (3) with the written consent of the Issuer to institutional “accredited investors” as defined in Rule 501(a) under the 1933 Act, or QIBs. By its acceptance of a Series 2019 Bond, each purchaser of a Series 2019 Bond (except for the Issuer, the Original Purchaser and the Tenant) will be deemed to (1) have represented that the Series 2019 Bonds are being acquired for investment and not with a view to distribution and (a) it is an institutional accredited investor or a fiduciary or agent (other than a United States bank or savings and loan association) that is acting on behalf of an institutional accredited investor, or (b) it is a QIB acting on behalf of itself or another QIB (and, if it is a QIB, acknowledges that it is aware that the seller may rely on an exemption from the provisions of Section 5 of the 1933 Act pursuant to Rule 144A), and (2) have agreed that any resale of the Series 2019 Bond will be made only in a transaction exempt from registration under the 1933 Act and only to an institutional accredited investor or to a QIB in a transaction made pursuant to Rule 144A under the 1933 Act, to the Issuer, the Original Purchaser or the Tenant or pursuant to an effective registration statement filed under the 1933 Act or pursuant to another available exemption from registration under the 1933 Act. Each Series 2019 Bond will bear a legend containing substantially the information set forth in this paragraph.

(b) The Trustee, the Issuer, the Original Purchaser and the Tenant shall have the right, prior to any offer, sale or transfer of the Series 2019 Bonds other than to the Issuer, the Original Purchaser or the Tenant, to require the delivery of an opinion of counsel, certifications or other information satisfactory to each of them with respect to the lawfulness of such offer, sale or transfer.

(c) Bonds may be transferred only upon the books maintained by Trustee for the registration and transfer of Bonds upon surrender of the certificate(s) representing such Bonds to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Bondowner or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such transfer, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange for such Bonds new Bond Certificate(s), registered in the name of the transferee, of any Authorized Denominations in an aggregate principal amount equal to the principal amount of such Bonds, of the same series and maturity and bearing interest at the same rate. In the event that any Bondowner fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Bondowner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Internal Revenue Code of 1986, as amended, such amount may be deducted by the Paying Agent from amounts otherwise payable to any Bondowner.

(d) In all cases in which Bonds shall be exchanged or transferred hereunder, the Issuer shall execute and the Trustee shall authenticate and deliver at the earliest practicable time

Bond certificates in accordance with the provisions of this Indenture. All Bond certificates surrendered in any such exchange or transfer shall immediately be canceled by the Trustee. The Issuer or the Trustee may make a charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid by the Bondowner before any such new Bond certificate shall be delivered. Neither the Issuer nor the Trustee shall be required to make any such exchange or transfer of Bonds on or after the Record Date preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion of the Bonds has been selected for redemption.

(e) All of the duties of the Trustee set forth in this Section 206 may be performed by any co-trustee or co-paying agent appointed by the Trustee, to the extent specified in the instrument appointing such co-trustee or co-paying agent.

**Section 207. Persons Deemed Owners of Bonds.** The person in whose name any Bond shall be registered as shown on the registration books required to be maintained by the Trustee by this Article shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of, or on account of the principal of and interest on, any such Bond shall be made only to or upon the order of such registered Owner or a duly constituted legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

**Section 208. Authorization of Series 2019 Bonds.**

(a) There shall be initially issued and secured pursuant to this Indenture a series of Bonds in the principal amount not to exceed \$10,100,000 for the purpose of providing funds to pay Project Costs, which series of Bonds shall be designated the “City of Spring Hill, Kansas, Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II).” The Series 2019 Bonds shall be dated the Dated Date, shall become due on the Principal Payment Date and in the principal amount (subject to prior redemption as provided in Article III of this Indenture) and shall bear interest from their Dated Date or the Interest Payment Date to which interest has been paid, which interest shall accrue on the Outstanding principal amount of the Series 2019 Bonds as shown on *Schedule A* to the Series 2019 Bond at the Interest Rate and shall mature on the Maturity Date. The Series 2019 Bonds shall be issued as a single bond up to the maximum principal amount authorized for the Bonds.

The Trustee shall, and is hereby irrevocably authorized by the Issuer, to endorse *Schedule A* to the Series 2019 Bond to evidence the funding of proceeds from the sale of the Series 2019 Bonds and the payment of principal of the Series 2019 Bonds, and each such notation and the principal amount shown on *Schedule A* shall be conclusive of the outstanding principal amount owing with respect to such Series 2019 Bonds, in the absence of manifest error; provided, however, that the Issuer’s obligations shall not be affected by any failure to endorse *Schedule A* correctly or at all.

(b) Interest on the Bonds shall be payable to the Owners on each Interest Payment Date in accordance with the provisions of Article II of this Indenture.

(c) The Trustee is designated as the Issuer's Paying Agent for the payment of the principal of and interest on the Series 2019 Bonds. The Trustee may appoint one or more financial institutions to act as co-paying agent for the Series 2019 Bonds.

(d) Upon the original issuance and delivery of the Series 2019 Bonds, the effective date of registration shall be their Dated Date.

(e) The Series 2019 Bonds shall be substantially in the form and manner set forth in Article IV of this Indenture and delivered to the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

(i) A copy of the Ordinance enacted by the Issuer's governing body authorizing the issuance of the Series 2019 Bonds and the execution of this Indenture, acceptance of the Deed, execution of the Lease and execution of the Bond Purchase Agreement.

(ii) An original executed counterpart of this Indenture.

(iii) A copy of the Deed.

(iv) An original executed counterpart of the Lease.

(v) An opinion of Bond Counsel to the effect that the Series 2019 Bonds constitute valid and legally binding obligations of the Issuer and that the interest on the Series 2019 Bonds is exempt from Kansas income taxation, subject to such limitations and restrictions as shall be described therein.

(vi) An opinion of counsel to the Tenant and the Original Purchaser to the effect that Lease and the Bond Purchase Agreement constitute valid and legally binding obligations of the Tenant and/or the Original Purchaser, as applicable, together with such other opinions as the Trustee shall require.

(vii) An original executed counterpart of the Bond Purchase Agreement.

(viii) Such other certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of the Series 2019 Bonds.

(f) When the documents specified in subsection (e) of this Section shall have been filed with the Trustee, and when certificates representing all the Series 2019 Bonds shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver the Series 2019 Bonds to or upon the order of the Original Purchaser, but only upon and to the extent of payment to the Trustee of the Purchase Price of the Series 2019 Bonds. The Original Proceeds, including accrued interest, if any, shall be immediately paid over to the Trustee, and the Trustee shall deposit and apply such proceeds as provided in Article V of this Indenture.

**Section 209. Authorization of Additional Bonds.**

(a) With the consent of the Owners of all Outstanding Bonds, Additional Bonds may be issued under and equally and ratably secured by this Indenture on a parity with the Series 2019 Bonds and any other Additional Bond Outstanding at any time and from time to time, upon compliance with the conditions provided in this Section, for any of the following purposes:

(i) To provide funds to pay all or any part of the costs of repairing, replacing or restoring Improvements in the event of damage, destruction or condemnation to or thereof.

(ii) To provide funds to pay all or any part of the costs of acquisition, construction or installation of such additional Land or Improvements as the Tenant may deem necessary or desirable and as will not impair the nature of the Project as a “facility” within the meaning and purposes of the Act.

(iii) To provide funds for refunding all or any part of the Bonds of any series then Outstanding, including the payment of interest to accrue to the designated redemption date and any expenses in connection with such refunding.

(b) Before any Additional Bonds shall be issued under the provisions of this Section, the Issuer’s governing body, in its sole discretion, shall enact an ordinance (i) authorizing the issuance of such Additional Bonds, fixing the amount and terms thereof and describing the purpose or purposes for which such Additional Bonds are being issued or describing the Bonds to be refunded, (ii) authorizing the Issuer to enter into a Supplemental Indenture for the purpose of providing for the issuance of and securing such Additional Bonds and, if required, (iii) authorizing the Issuer to enter into a supplemental lease with the Tenant to provide for rental payments at least sufficient to pay the principal of and interest on the Bonds then to be Outstanding (including the Additional Bonds to be issued) as the same become due, for the acquisition, purchase, construction or installation of additional Improvements, for the inclusion of any such addition, expansion or modification as a part of the Project, and for such other matters as are appropriate because of the issuance of the Additional Bonds proposed to be issued which, in the judgment of the Issuer, is not to the prejudice of the Issuer or the Bonds previously issued.

(c) Such Additional Bonds shall have the same designation as the Series 2019 Bonds, except for an identifying series letter or date and the addition of the word “Refunding” when applicable, shall be dated, shall be stated to mature on Principal Payment Dates in such year or years, shall bear interest at such rate or rates not exceeding the maximum rate then permitted by law, and shall be redeemable at such times and prices (subject to the provisions of Article III of this Indenture), all as may be provided by the Supplemental Indenture authorizing the issuance of such Additional Bonds. Except as to any difference in the date, the maturity or maturities, the rate or rates of interest or the provisions for redemption, such Additional Bonds shall be on a parity with and shall be entitled to the same benefit and security of this Indenture as the Series 2019 Bonds and any other Additional Bonds Outstanding at the time of the issuance of such Additional Bonds.



(d) Such Additional Bonds shall be substantially in the form and executed in the manner set forth in this Article and Article IV of this Indenture and certificates representing such Bonds shall be deposited with the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of such Bond certificates by the Trustee, there shall be filed with the Trustee the following:

(i) A copy of the ordinance enacted by the Issuer's governing body authorizing the issuance of such Additional Bonds and the execution of such Supplemental Indenture and the appropriate amendments or supplements to the Lease.

(ii) An original executed counterpart of the Supplemental Indenture providing for the issuance of the Additional Bonds.

(iii) An original executed counterpart of the amendment or supplement to the Lease, if required.

(iv) In the case of Additional Bonds being issued to refund Outstanding Bonds, such additional documents as shall be reasonably required by the Trustee to establish that provision has been made for the payment of all of the Bonds to be refunded in accordance with the provisions of Article XIII of this Indenture.

(v) The written consent of 100% of the Owners of the Bonds.

(vi) Such other instructions, certificates, opinions, statements, receipts and documents as the Trustee shall reasonably require for the delivery of such Additional Bonds.

(e) When the documents mentioned in subsection (d) of this Section shall have been filed with the Trustee, and when such Additional Bonds shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver such Additional Bonds to or upon the order of the purchasers thereof, but only upon payment to the Trustee of the Purchase Price of such Additional Bonds. The proceeds of the sale of such Additional Bonds (except Additional Bonds issued to refund Outstanding Bonds), including accrued interest thereon, if any, shall be immediately paid over to the Trustee and shall be deposited and applied by the Trustee as provided in Article V of this Indenture and in the Supplemental Indenture authorizing the issuance of such Additional Bonds. The proceeds (excluding accrued interest which shall be deposited in the Principal and Interest Payment Account) of all Additional Bonds issued to refund Outstanding Bonds shall be deposited by the Trustee, after payment or making provision for payment of all expenses incident to such financing, to the credit of a special trust fund, appropriately designated, to be held in trust for the sole and exclusive purpose of paying the principal of and interest on the Bonds to be refunded, as provided in Section 1302 of this Indenture and in the Supplemental Indenture authorizing the issuance of such refunding Bonds.

(f) Except as provided in this Section, the Issuer will not otherwise issue any obligations ratably secured and on a parity with the Bonds, but the Issuer may issue other obligations specifically subordinate and junior to the Bonds with the express written consent of the Original Purchaser and the Tenant.

**Section 210. Temporary Bonds.**

(a) Until definitive Bonds of any series are available for delivery, the Issuer may execute, and upon request of the Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, but subject to the same limitations and conditions as definitive Bonds, temporary printed, engraved, lithographed or typewritten Bonds, in the form of fully registered Bonds in the Authorized Denominations, substantially of the tenor set forth above and with such appropriate omissions, insertions and variations as may be required with respect to such temporary Bonds.

(b) If temporary Bonds shall be issued, the Issuer shall cause the definitive Bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it at its corporate trust office or at such other office as the Trustee shall designate of any temporary Bond shall cancel the same and authenticate and deliver in exchange for, without charge to the Owner, a definitive Bond or Bonds of an equal aggregate principal amount, of the same series and maturity and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged the temporary Bonds shall in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds to be issued and authenticated under the terms of this Indenture.

**Section 211. Mutilated, Lost, Stolen or Destroyed Bonds.** In the event any Bond certificate shall become mutilated, or be lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond certificate of like series, date and tenor as the Bond certificate mutilated, lost, stolen or destroyed. In the case of any mutilated Bond certificate, such mutilated Bond shall first be surrendered to the Trustee; and in the case of any lost, stolen or destroyed Bond certificate, there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. In the event any such Bond shall have matured, instead of issuing a substitute Bond certificate the Issuer may pay or authorize the payment of the same without surrender of the certificate. Upon the issuance of any substitute Bond certificate, the Issuer and the Trustee may require the payment of an amount sufficient to reimburse the Issuer and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection with the issuance thereof.

**Section 212. Cancellation and Destruction of Bonds Upon Payment.**

(a) All Bonds which have been paid or redeemed or which the Trustee has purchased or the certificates of which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity, shall be canceled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender of the certificates to the Trustee.

(b) All Bonds canceled under any of the provisions of this Indenture shall be delivered by the Trustee to the Issuer, or, upon request of the Issuer, shall be destroyed by the Trustee. The Trustee shall execute a certificate in triplicate describing the Bonds so delivered or destroyed, and shall file executed counterparts of such certificate with the Issuer and the Tenant.

### ARTICLE III REDEMPTION OF BONDS

**Section 301. Redemption of Bonds Generally.** The Series 2019 Bonds shall be subject to redemption prior to maturity in accordance with the terms and provisions of this Article. Additional Bonds shall be subject to redemption prior to maturity in accordance with the terms and provisions contained in this Article and as may be specified in the Supplemental Indenture authorizing such Additional Bonds; provided, however, no provision shall be made with respect to the redemption of any Additional Bonds which would result in, or constitute the creation of, a preference or priority of such Additional Bonds over the Series 2019 Bonds.

**Section 302. Redemption of Series 2019 Bonds.** The Bonds shall be subject to redemption as follows:

(a) ***Extraordinary Optional Redemption.*** In the event of a Change of Circumstances, the Series 2019 Bonds shall be subject to redemption and payment prior to the stated maturity, at the option of the Issuer, upon instructions from the Tenant, on any date at the par value of the principal amount, plus accrued interest to the redemption date, without premium, provided all of the Series 2019 Bonds are so redeemed and paid according to their terms.

(b) ***Optional Redemption.*** The Series 2019 Bonds shall be subject to redemption and payment prior to maturity, at the option of the Issuer, upon instructions from the Tenant, at any time, as a whole or in part, at the redemption price of the par value of the principal amount, without premium.

(c) ***Extraordinary Mandatory Redemption.*** The Series 2019 Bonds are subject to extraordinary mandatory redemption in whole by the Issuer in the event the Lease is terminated for any reason.

At its option, the Tenant or the Original Purchaser may deliver to the Trustee for cancellation the Series 2019 Bonds in any aggregate principal amount desired and receive a credit in respect to the payment of the applicable portion of the principal amount thereof pursuant to this Section. Such credit shall only apply to the extent the applicable principal portion of such Series 2019 Bonds has not been previously canceled by the Trustee or previously applied as a credit against any redemption or payment obligation hereunder. Each Series 2019 Bond so delivered shall be credited at 100% of the Outstanding principal amount on the obligation of the Issuer on the next redemption or payment date, and any excess of such amount shall be credited on future redemption or payment obligations for such Series 2019 Bonds. The cancellation of Series 2019 Bonds pursuant to this Section shall not result in Series 2019 Bonds Outstanding being in any amount less than an Authorized Denomination.

If the Tenant or the Original Purchaser intends to exercise the option granted by the preceding paragraph, the Tenant will furnish the Trustee and the Issuer with a certificate signed by its Authorized Tenant Representative indicating what portion of the principal amount of the Series 2019 Bonds will be cancelled and applied as a credit against redemption or payment obligations. Notwithstanding any provision herein to the contrary, it is the intent of the parties

that ownership of the Bonds by the Tenant or the Original Purchaser does not, in and of itself, extinguish the obligation for payment of the principal of and interest on the Bonds.

**Section 303. Selection of Bonds to be Redeemed.**

(a) Bonds shall be redeemed only in amounts resulting in Bonds Outstanding for a series being in Authorized Denominations. If less than all of the Outstanding Bonds of any series are to be redeemed and paid prior to maturity, such Bonds shall be redeemed in the manner selected by the Trustee. Bonds of less than a full maturity are to be selected by the Trustee in such equitable manner as it may determine.

(b) No portion of a Bond may be redeemed that would result in a Bond which is smaller than the then permitted minimum Authorized Denomination. For this purpose, the Trustee shall consider each Bond in a denomination larger than the minimum Authorized Denomination permitted by the Bonds at the time to be separate Bonds each in the minimum Authorized Denomination. Provisions of this Indenture that apply to Bonds called for redemption also apply to portions of Bonds called for redemption. If it is determined that one or more, but not all, of the face value represented by any fully registered Bond is selected for redemption, then the Owner of such Bond or such Owner's attorney or legal representative shall forthwith present and surrender such Bond to the Trustee (1) for payment of the redemption price (including interest to the redemption date) of the portion of the Bonds called for redemption, and (2) for exchange, without charge to the Owner of the Bond, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the redemption date to the extent of the principal amount thereof called for redemption (and to that extent only).

**Section 304. Trustee's Duty to Redeem Bonds.** The Trustee shall call Bonds for mandatory redemption immediately upon receipt of written advice from the Issuer that the event giving rise to mandatory redemption has occurred, and stating the redemption date. Upon receipt by the Trustee of such written advice, if required, and upon its own initiative if not required, the Trustee shall give at least 30 days' written notice of redemption to the Bondowners (unless waived) as provided in this Indenture. The Trustee shall call Bonds for redemption and payment as provided in this Indenture and shall give notice of redemption as provided in Section 305 of this Indenture upon receipt by the Trustee at least 45 days prior to the proposed redemption date (unless waived) of a written request of the Issuer together with a copy of the redemption instructions of the Tenant. Such instructions shall specify the principal amount and the respective maturities of Bonds to be called for redemption, the applicable redemption price or prices and the provision or provisions of this Indenture pursuant to which such Bonds are to be called for redemption. In the event of a mandatory redemption as provided in this Indenture, no instructions from the Tenant shall be necessary.

**Section 305. Notice of Redemption.** Notice of the call for any redemption identifying the Bonds or portions to be redeemed shall be given by the Trustee, in the name of the Issuer, by mailing by first-class mail, postage prepaid, a copy of the redemption notice at least 30 days prior to the date fixed for redemption (unless waived) to the Owner of each Bond to be redeemed at the address shown on the registration books maintained by the Trustee; provided,

however, that failure to give such notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of the Bonds. Any notice of redemption shall state the date of redemption, the place or places at which such Bonds shall be presented for payment, the series, maturities and numbers of the Bonds or portions of the Bonds to be redeemed (and in the case of the redemption of a portion of any Bond the principal amount being redeemed), the redemption price and shall state that interest on the Bonds described in such notice will cease to accrue from and after the redemption date. A copy of each such notice of redemption shall be provided to any authorized co-paying agent appointed by the Trustee.

**Section 306. Effect of Call for Redemption.** On or prior to the date fixed for redemption, funds or Government Securities maturing on or before the date fixed for redemption shall be deposited with the Trustee in amounts sufficient to provide for payment of the Bonds called for redemption, plus accrued interest to the redemption date. Upon the deposit of such funds or Government Securities, and notice having been given as provided in Section 305 of this Indenture, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

#### **ARTICLE IV FORM OF BONDS**

**Section 401. Forms Generally.** The Series 2019 Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall be, respectively, in substantially the form set forth in *Appendix A*. Any Additional Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall also be in substantially such form, with such necessary or appropriate variations, omissions and insertions as are permitted or required by this Indenture or any Supplemental Indenture. The Bonds may have endorsed thereon such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirement of law with respect thereto.

#### **ARTICLE V CUSTODY AND APPLICATION OF BOND PROCEEDS**

**Section 501. Creation of Project Fund.** There is established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated the "City of Spring Hill, Kansas, Project Fund for Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II)" (the "Project Fund"). The Trustee may create separate subaccounts in the Project Fund for each series of Bonds issued pursuant to this Indenture.

**Section 502. Deposits Into the Project Fund.** The following funds shall be paid over to and deposited by the Trustee into the Project Fund, as and when received:

(a) The proceeds from the sale of the Series 2019 Bonds, excluding such amounts, if any, as are required to be paid into the Principal and Interest Payment Account pursuant to Section 602 of this Indenture, but including the initial funding of all or a portion of the Purchase

Price for the Series 2019 Bonds and all subsequent advances made pursuant to the Bond Purchase Agreement.

(b) The earnings accrued on the investment of moneys in the Project Fund and required to be deposited into the Project Fund pursuant to Section 702 of this Indenture.

(c) The proceeds from the sale of any Additional Bonds (except Additional Bonds issued to refund Outstanding Bonds) (excluding such amounts thereof required to be paid into the Principal and Interest Payment Account pursuant to Section 602 of this Indenture).

(d) The Net Proceeds of casualty insurance, condemnation awards or title insurance required to be deposited into the Project Fund pursuant to the Lease.

(e) Any and all payments from any contractors or other suppliers by way of breach of contract, refunds or adjustments required to be deposited into the Project Fund pursuant to the Lease.

(f) Except as otherwise provided herein or in the Lease, any other money received by or to be paid to the Trustee from any other source for the purchase or construction and equipping of the Project, when accompanied by directions by the Tenant that such moneys are to be deposited into the Project Fund.

**Section 503. Disbursements From the Project Fund.**

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of Project Costs in accordance with the provisions of Article V of the Lease and the Trustee covenants and agrees to disburse such moneys in accordance with such provisions. If the Issuer so requests, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the Issuer.

(b) The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and after the Project has been completed and a certificate of payment of all costs filed as provided in Section 504 of this Indenture, the Trustee shall file a statement of receipts and disbursements with respect thereto with the Issuer, the Original Purchaser and the Tenant.

(c) In the event of casualty or condemnation, any Net Proceeds deposited in the Project Fund shall be disbursed by the Trustee in accordance with the provisions of Article XVIII of the Lease, and the Trustee covenants and agrees to disburse such moneys in accordance with such provisions

**Section 504. Disposition Upon Completion of the Bond Improvements.** The completion of the Bond Improvements and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee by the Tenant of the Certificate of Completion required by Section 5.6 of the Lease. As soon thereafter as practicable, but in no event later than the Completion Date, any balance remaining in the Project Fund shall without further authorization be deposited in the Principal and Interest Payment Account and applied by the Trustee solely to the payment of principal of the Bonds through the payment or redemption

thereof on any redemption date specified in Section 302 hereof or as otherwise permissible in the opinion of Bond Counsel.

**Section 505. Disposition Upon Acceleration.** If the principal of the Bonds shall have become due and payable pursuant to Section 901 of this Indenture, upon the date of payment by the Trustee of any moneys due as hereinafter provided in Article IX, any balance remaining in the Project Fund shall, without further authorization, be deposited in the Principal and Interest Payment Account by the Trustee.

## **ARTICLE VI REVENUES AND FUNDS**

**Section 601. Creation of the Principal and Interest Payment Account.** There is directed to be established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated the “City of Spring Hill, Kansas, Principal and Interest Payment Account for Industrial Revenue Bonds (Blackhawk Apartments Project Phase II)” (herein called the “Principal and Interest Payment Account”). The Trustee may create separate subaccounts in the Principal and Interest Payment Account for each series of Bonds issued pursuant to this Indenture.

**Section 602. Deposits Into the Principal and Interest Payment Account.** The Trustee shall deposit into the Principal and Interest Payment Account, as and when received, the following:

(a) All accrued interest, if any, on the Series 2019 Bonds paid by the Original Purchaser of the Bonds.

(b) If required by a Supplemental Indenture authorizing the issuance of Additional Bonds, an additional amount from the proceeds of such Additional Bonds, such additional amount not to exceed the sum which, when added to the accrued interest received from the sale of such Additional Bonds, will be sufficient to pay the interest accruing on such Additional Bonds during the estimated period of construction of the Project Additions financed through the issuance of such Additional Bonds.

(c) All Basic Rent payable by the Tenant to the Issuer specified in Section 3.1 of the Lease.

(d) Any amount in the Project Fund to be transferred to the Principal and Interest Payment Account pursuant to Section 504 hereof upon completion of the Bond Improvements and any amount remaining in the Project Fund to be transferred to the Principal and Interest Payment Account pursuant to Section 505 of this Indenture upon acceleration of the maturity of the Bonds.

(e) All interest and other income derived from investments of Principal and Interest Payment Account moneys as provided in Section 702 of this Indenture.

(f) All other moneys received by the Trustee under and pursuant to any of the provisions of the Lease, except Additional Rent, or when accompanied by directions from the

person depositing such moneys that such moneys are to be paid into the Principal and Interest Payment Account.

**Section 603. Application of Moneys in the Principal and Interest Payment Account.**

(a) Except as provided in subsection (d) of this Section, moneys in the Principal and Interest Payment Account shall be expended solely for the payment of the principal of and interest on the Outstanding Bonds as the same mature and become due or upon the redemption prior to maturity.

(b) The Issuer authorizes and directs the Trustee to withdraw sufficient funds from the Principal and Interest Payment Account to pay the principal of and interest on the Bonds as the same become due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal and interest.

(c) The Trustee, upon written direction of the Issuer and the Tenant, shall use any excess moneys in the Principal and Interest Payment Account (other than investment earnings credited to such account) to redeem Outstanding Bonds, interest accruing thereon prior to such redemption, in accordance with and to the extent permitted by Article III of this Indenture so long as the Tenant is not in Default with respect to payments of Basic Rent under the Lease and to the extent said moneys are in excess of amounts required for payment of Bonds theretofore matured or called for redemption and past due interest in all cases when such Bonds have not been presented for payment. The Tenant may also direct such excess moneys in the Principal and Interest Payment Account or such part of other moneys of the Tenant, as the Tenant may direct, to be applied by the Trustee for the purchase of Bonds in the open market for the purpose of cancellation.

(d) Any amount remaining in the Principal and Interest Payment Account after the principal of and interest on the Bonds shall have been paid in full or provision made therefor in accordance with Article XIII of this Indenture, shall be paid to the Tenant by the Trustee.

**Section 604. Payments Due on Saturdays, Sundays and Holidays.** In any case where the date of maturity of principal of or interest on the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of principal or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

**Section 605. Nonpresentment of Bonds.** In the event that any Bond shall not be presented for payment when the principal becomes due, either at its stated maturity or at the date called for redemption, or the Trustee is unable to locate the Owner for the payment of accrued interest or an accrued interest check remains uncashed, if funds sufficient to pay such Bond and accrued interest shall have been made available to the Trustee, all liability of the Issuer to the Bondowner for the payment of such Bond and accrued interest shall cease and be completely discharged, and the Trustee shall hold such funds, without interest, for the benefit of such Bondowner, who shall thereafter be restricted exclusively to such funds for any claim on, or with



respect to, such Bond and interest. If any Bond shall not be presented for payment within four years following the date when it becomes due, whether by maturity or otherwise, or the accrued interest cannot be paid as set out above, the Trustee shall repay to the Tenant the funds theretofore held by it for payment of such Bond and interest, and such Bond and interest shall thereafter be an unsecured obligation of the Tenant, subject to the defense of any applicable statute of limitation, and the Owner of the Bond shall be entitled to look only to the Tenant for payment, and then only to the extent of the amount so repaid, and the Tenant shall not be liable for any additional interest.

## **ARTICLE VII SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS**

**Section 701. Moneys To Be Held in Trust.** All moneys deposited with or paid to the Trustee for the account of any fund or account under any provision of this Indenture, and all moneys deposited with or paid to the Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Lease and, until used or applied as so provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except interest earned on investments made pursuant to Section 702 of this Indenture and such other interest as may be agreed upon.

**Section 702. Investment of Moneys in Funds.** Moneys held in the Project Fund and the Principal and Interest Payment Account shall be separately invested and reinvested by the Trustee at the written direction of the Tenant in Investment Securities which mature or are subject to redemption by the owner thereof prior to the date such funds will be needed. In the absence of such written direction of the Tenant, the Trustee shall invest moneys as provided for in subsection (v) of the definition of Investment Securities. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund or account in which such moneys are originally held, and except as otherwise specifically provided in this Indenture, the interest accruing on and any profit realized from such Investment Securities shall be credited to and accumulated in such fund or account, and any loss resulting from such Investment Securities shall be charged to such fund or account. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any fund or account is insufficient for the purposes of such fund or account. In determining the balance in any fund or account, investments in such fund or account shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or short-term investment department. The Trustee shall have no liability for any loss experienced on any investment made pursuant to this Section.

**Section 703. Record Keeping.** The Trustee shall maintain records demonstrating compliance with the provisions of this Article and with the provisions of Article VI for at least five years after the payment of all of the Outstanding Bonds.

## ARTICLE VIII GENERAL COVENANTS AND PROVISIONS

**Section 801. Payment of Principal of and Interest on the Bonds.** The Issuer covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project as described in this Indenture, promptly pay or cause to be paid the principal of and interest on the Bonds as the same become due and payable at the place, on the dates and in the manner provided in this Indenture and in the Bonds according to the true intent and meaning thereof, and to this end the Issuer covenants and agrees that it will use commercially reasonable efforts to cause the Project to be continuously leased as a revenue and income producing undertaking, and that, should there be a default under the Lease with the result that the right of possession of the Project is returned to the Issuer, the Issuer shall fully cooperate with the Trustee and with the Bondowners to protect the rights and security of the Bondowners and shall diligently proceed in good faith and use commercially reasonable efforts to secure another tenant for the Project to the end that at all times sufficient rents, revenues and receipts will be derived by Issuer from the Project to provide for payment of the principal of and interest on the Bonds as the same become due and payable. If the Issuer is unable to procure a new tenant who will enter into such a lease, the Issuer may take such good faith action as shall be in the best interests of the Bondowners which may include the sale of the Project, and if the Project is sold, after deducting all costs of the sale, any moneys derived from such sale shall be used for the purpose of paying the principal of and interest on the Bonds. Nothing herein shall be construed as requiring the Issuer to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

**Section 802. Authority To Execute Indenture and Issue Bonds.** The Issuer covenants that it is duly authorized under the constitution and laws of the State to execute this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent set forth in this Indenture; that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; and that the Bonds in the hands of the Owners are and will be valid and enforceable limited obligations of the Issuer according to the import thereof.

**Section 803. Performance of Covenants.** The Issuer covenants that it will use best efforts to endeavor to faithfully perform at all times any and all covenants, undertakings, stipulations and provisions on its part contained in this Indenture and in the Bonds.

**Section 804. Instruments of Further Assurance.** The Issuer covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues described to secure the payment of the principal of and interest on the Bonds. The Issuer covenants and agrees that, except as provided in this Indenture and in the Lease, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

**Section 805. Maintenance, Taxes and Insurance.** The Issuer represents that pursuant to the provisions of Articles VI, VII and X of the Lease, the Tenant has agreed to cause the Project to be maintained and kept in good condition, repair and working order, to pay, as the same respectively become due, all taxes, assessments and other governmental charges at any time lawfully levied or assessed upon or against the Project or any part thereof, and to keep the Project constantly insured to the extent provided for therein, all at the sole expense of the Tenant.

**Section 806. Inspection of Project Books.** The Issuer covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by the Tenant, such accountants or other agencies as the Trustee may from time to time designate.

**Section 807. Enforcement of Rights Under the Lease.** The Issuer covenants and agrees that it shall authorize the Trustee to enforce all of its rights and all of the obligations of the Tenant (at the expense of the Tenant) under the Lease to the extent necessary to preserve the Project in good order and repair, and to protect the rights of the Trustee and the Bondowners under this Indenture with respect to the pledge and assignment of the rents, revenues and receipts coming due under the Lease. The Trustee, as assignee of the Lease, in its name or in the name of the Issuer shall enforce all rights of the Issuer and all obligations of the Tenant under and pursuant to the Lease for and on behalf of the Bondowners, whether or not the Issuer is in default under this Indenture.

**Section 808. Possession and Use of Project.** So long as not otherwise provided in this Indenture, the Tenant shall be suffered and permitted to possess, use and enjoy the Project and appurtenances so as to carry out its obligations under the Lease.

**Section 809. Consent to Mortgage.** The Issuer and the Trustee consent to the Mortgage of the Project to the Lender, consent to the subjection of the Land to the Mortgage, and agree that this Indenture is subject and subordinate to the Mortgage loan and related documents.

## **ARTICLE IX REMEDIES ON DEFAULT**

### **Section 901. Acceleration of Maturity in Event of Default.**

(a) If an Event of Default shall have occurred and be continuing, the Trustee may, and upon the written request of Bondowners owning not less than 100% in aggregate principal amount of Bonds then Outstanding shall, by notice in writing delivered to the Issuer and the Tenant, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall then become and be immediately due and payable.

(b) If, at any time after such declaration, but before the Bonds shall have matured by their terms, all overdue installments of principal and interest on the Bonds, together with all Default Administration Costs, all overdue installments of Basic Rent and Additional Rent under the Lease and all other sums then payable by the Issuer under this Indenture shall either be paid or provision satisfactory to the Trustee shall be made for such payment, then and in every such case the Trustee may in its discretion, and shall upon the written consent of Bondowners owning

100% in aggregate principal amount of the Bonds Outstanding, rescind such declaration and annul such default in its entirety.

(c) In case of any rescission, then and in every such case the Issuer, the Trustee and the Bondowners shall be restored to their former position and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

**Section 902. Exercise of Remedies by the Trustee.**

(a) If an Event of Default shall have occurred and be continuing, the Trustee may, and if requested to do so in writing by Bondowners owning not less than 100% of the aggregate principal amount of Bonds Outstanding, and if indemnified to its satisfaction and satisfactory provision has been offered as to payment of Default Administration Costs and third-party liability, shall pursue and exercise any available remedy at law or in equity by suit, action, mandamus or other proceeding or exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondowners to enforce the payment of the principal of and interest on the Bonds then Outstanding, and to enforce and compel the performance of the duties and obligations of the Issuer as set forth in this Indenture.

(b) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating to, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Bondowners, and any recovery of judgment shall be for the equal benefit of the Owners of all Outstanding Bonds.

(c) In any litigation with the Tenant, after an Event of Default, the Trustee may, after obtaining the written approval of Bondowners owning 100% of the aggregate principal amount of Bonds Outstanding, enter into an agreement to settle the litigation upon such terms as the Trustee in its sole discretion determines to be in the best interest of the Bondowners, even if such settlement involves reletting the Project for less than the amount needed to pay the Owners of the Bonds Outstanding the full amounts of the principal and accrued interest on the Bonds.

**Section 903. Limitation on Exercise of Remedies by Bondowners.** No Bondowner shall have any right to institute any suit, action, or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy under this Indenture, unless (i) a default has occurred of which the Trustee has knowledge, (ii) such default shall have become an Event of Default, (iii) Bondowners owning 100% in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, (iv) satisfactory indemnity and provision for payment of Default Administration Costs and third-party liability shall have been offered to the Trustee and (v) the Trustee shall thereafter fail or refuse to exercise the powers granted in this Section to institute such action, suit or proceeding in its own name; and such knowledge and request are

declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy under this Indenture, it being understood and intended that no one or more Bondowners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by its, his or their action or to enforce any right under this Indenture except in the manner provided in this Indenture, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner provided here and for the equal benefit of all Bonds then Outstanding.

**Section 904. Right of Bondowners to Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, Bondowners owning 100% in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, and upon providing the Trustee indemnification satisfactory to it as provided above, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, and Trustee shall have the right to decline to follow such direction if the Trustee shall in good faith, and upon the advice of counsel, determine that proceeding as so directed would expose the Trustee to personal liability.

**Section 905. Remedies Cumulative.** No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Bondowners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondowners hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission or exercise of any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Trustee or by the Bondowners, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

**Section 906. Waivers of Events of Default.** The Trustee may in its discretion waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on Bonds, and shall do so upon the written request of Bondowners owning 100% in aggregate principal amount of all the Bonds then Outstanding and satisfaction of the conditions set forth in Section 901(b) of this Indenture. In case of any such waiver or rescission, or in case any proceedings taken by the Trustee under this Indenture on account of any such Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Bondowners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings have been taken.

**Section 907. Application of Moneys in Event of Default.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article and any other moneys held as part of the Trust Estate shall be applied as follows:

*FIRST:* Pro rata to the payment of all fees and expenses (including but not limited to attorneys' fees) and disbursements associated with the collection of such moneys incurred by or on behalf of the Issuer or the Trustee.

*SECOND:* Pro rata to the payment of all advances by the Issuer or the Trustee.

*THIRD:*

A. If the principal of all the Bonds shall not have become due and payable, all such moneys shall be applied:

*First:* Pro rata to the persons entitled thereto of all installments of interest then due and payable on the Bonds, with interest at the stated rate of interest on the Bonds.

*Second:* Pro rata to the persons entitled thereto of the unpaid principal of any of the Bonds (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture) with interest at the stated rate of interest on the Bonds.

B. If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied pro rata to the payment of the principal and interest then due and unpaid on all the Bonds to the persons entitled thereto with interest at the stated rate of interest on the Bonds.

C. If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled (under the provisions of this Article), then the moneys shall be applied in accordance with part "A" of this subsection.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is made and upon such date interest on the amount of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and shall not be required to make payment to the Owner of any unpaid Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all of the Bonds and interest thereon have been paid under the provisions of this Section, and all fees, expenses, advances and charges of the Trustee and the Issuer have been paid, any balance remaining in the Principal and Interest Payment Account shall be paid to the Tenant.

## **ARTICLE X THE TRUSTEE**

**Section 1001. Acceptance of the Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts in the manner in which a corporate trustee ordinarily would perform said trusts under a corporate indenture, and the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of its own affairs, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) Prior to the occurrence of an Event of Default and after the cure of all Events of Default which may have occurred, the Trustee's duties and responsibilities shall include only those expressly set forth in this Trust Indenture and those rights, duties, responsibilities, and obligations which are reserved to or imposed upon the Issuer under this Trust Indenture, and the Lease, excepting only such of those rights, duties, responsibilities, and obligations as may only be properly and lawfully exercised by or imposed upon the Issuer.

Upon the occurrence of an Event of Default the Trustee shall be and is hereby authorized to bring appropriate action for judgment or such other relief as may be appropriate and such action may be in the name of the Trustee or in the name of the Issuer and Trustee jointly; but in such case, neither the Issuer nor the Trustee shall have any obligation for any fees and expenses of such action except out of any funds available by reason of the ownership of the Project and moneys available under this Trust Indenture and the Lease. In addition, the Trustee may file such proof of claim and such other documents as may be necessary and advisable in order to have the claims of the Trustee and the Bondowners relative to the Bonds or the obligations relating thereto allowed in any judicial proceeding.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys or receivers. The Trustee shall be entitled to act upon and rely upon the opinion or advice of counsel, who may be counsel to the Trustee, the Issuer or the Tenant, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof.

(c) The Trustee, in its individual or any other capacity, may become the owner or pledgee of Bonds with the same rights which it would have if it were not Trustee.

(d) The Trustee may rely and shall be protected in acting or refraining from acting upon any ordinance, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this

Indenture or the Lease believed by it to be genuine and correct and to have been signed, presented or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent is a Bondowner, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in substitution thereof.

(e) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by the mayor of the Issuer or the Authorized Tenant Representative as sufficient evidence of the facts therein contained, and the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(g) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representative shall have the right to inspect any and all of the Project and all books, papers and records of the Issuer and Tenant pertaining to the Project and the Bonds, and to make such notes and copies as may be desired.

(h) The Trustee shall not be required to give any bond or surety with respect to the execution of its trusts and powers hereunder or otherwise with respect to the Project.

(i) The Trustee shall have the right, but shall not be required, to demand, with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purpose of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(j) The Trustee shall not be required to take notice of, or be deemed to have notice of, any default hereunder or under the Lease, except the failure by the Tenant to cause to be made any of the payments required to be made under the Lease or in accordance with Article VI hereof, or the failure by the Issuer to cause compliance by the Tenant with the provisions of Article VI of the Lease, unless the Trustee shall have been specifically notified in writing of such default by the Issuer or by Bondowners owning 100% in aggregate principal amount of all Bonds then Outstanding.

(k) The Trustee may inform the Bondowners of environmental hazards that the Trustee has reason to believe exist with respect to the Project, the Land or the Improvements, and



the Trustee shall have the right to take no further action with respect thereto, and, in such event, no fiduciary duty shall exist which imposes any obligation for further action by the Trustee with respect to the Project, the Land, the Improvements, the Trust Estate, or any portion thereof, if, in the opinion of the Trustee, such action would subject the Trustee to environmental or other liability for which the Trustee has not received indemnity satisfactory to it.

**Section 1002. Fees, Charges and Expenses of the Trustee; Lien for Fees and Costs and Additional Rent.** The Trustee shall be entitled to payment of or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, reasonable agent and counsel fees and other ordinary costs, charges and expenses reasonably and necessarily made or incurred by the Trustee in connection with such ordinary services and, in the event that it should become necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees, costs, expenses and charges of the Trustee as Paying Agent for the Bonds. The Trustee agrees that the Issuer shall have no liability for any fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Tenant for the payment of all fees, charges and expenses of the Trustee and any Paying Agents as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment prior to payment of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing advances, fees, costs and expenses incurred, for Default Administration Costs and for any unpaid Additional Rent owing under the Lease.

**Section 1003. Notice to Bondowners if Default Occurs.** If an Event of Default occurs, of which the Trustee is aware and of which it is required to take notice, the Trustee shall give written notice thereof to the Bondowners, as shown by the bond registration books required to be maintained by the Trustee and kept at the corporate trust office of the Trustee, unless such Event of Default has been cured or waived.

**Section 1004. Intervention by the Trustee.** In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Bondowners, the Trustee may intervene on behalf of the Bondowners and shall do so if requested in writing by Bondowners owning 100% of the aggregate principal amount of Bonds then Outstanding and if provided with indemnity satisfactory to the Trustee.

**Section 1005. Successor Trustee Upon Merger, Consolidation or Sale.** Any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

**Section 1006. Resignation of Trustee.** The Trustee may resign by an instrument in writing delivered by registered or certified mail to the Issuer and the Tenant to take effect not sooner than 90 days after its delivery, whereupon the Issuer, with the consent of the Tenant, shall immediately, in writing, designate a successor Trustee; provided, however, that the Trustee's resignation shall not become effective unless and until a successor Trustee is approved and qualified. In the event the Issuer and the Tenant do not promptly designate a successor trustee, then the Trustee shall have the right to petition a court of competent jurisdiction for the appointment of a successor.

**Section 1007. Removal of Trustee.** As long as no default or Event of Default shall have occurred and be continuing, the Trustee may be removed at any time by the Issuer and the Tenant; provided, that such removal shall not be effective unless and until a successor trustee is appointed and qualified, and provided further that such removal shall not become effective until after 60 days from the date written notice of such proposed removal is given to the Trustee by first-class mail. The Issuer and the Tenant, concurrently with giving notice to the Trustee, shall give notice by first-class mail of the proposed removal of the Trustee to all Bondowners. Unless Bondowners owning 100% of Bonds then Outstanding object in writing to the proposed removal of the Trustee, such removal shall become effective from the date specified in the notices, provided that the successor trustee shall have been qualified and have accepted the duties and responsibilities of the Trustee as of such date.

**Section 1008. Qualifications of Successor Trustee.** Every successor Trustee appointed pursuant to the provisions of this Article shall be a trust Tenant or bank in good standing, qualified to accept such trust and acceptable to Issuer and Tenant.

**Section 1009. Vesting of Trusts in Successor Trustee.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Tenant an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor and thereupon the duties and obligations of the predecessor shall cease and terminate; but such predecessor shall, nevertheless, on the written request of the Issuer, and upon the payment of fees and expenses owed to the predecessor, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

**Section 1010. Right of Trustee To Pay Taxes and Other Charges.** In case any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, and the Tenant has failed after 30 days' written notice to make such payment, the Trustee may pay such tax, assessment or governmental charge or insurance premium or rebate amount, without prejudice, however, to any rights of the Trustee or the Bondowners hereunder arising in consequence of such failure; and

any amount at any time so paid under this Section, with interest thereon from the date of payment at a rate per annum equal to the Trustee's published prime rate in effect at the time, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by Bondowners owning 100% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

**Section 1011. Trust Estate May Be Vested in Co-trustee.**

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) In the event that the Trustee appoints an additional individual or institution as a co-trustee or separate trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the Issuer be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, then any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

(d) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

**Section 1012. Annual Accounting.** The Trustee shall render an annual accounting to the Issuer, the Tenant and to any Bondowner requesting the same in writing and remitting the Trustee's reasonable charges for preparing such copies, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any

funds or accounts created by this Indenture as of the beginning and close of such accounting period.

**Section 1013. Recordings and Filings.** The parties hereto acknowledge that, if requested by the Bondowner of any series of Bonds, memorandum of leases with respect to the Lease and an assignment of leases with respect to the Issuer's assignment of certain rights under the Lease to the Trustee will be filed with the register of deeds of Miami County, Kansas. The Trustee agrees to file or cause to be filed any amendments to such documents or other security instruments reasonably requested by the Owners of the Bonds or the Issuer to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Bondowners and the rights of the Trustee hereunder; provided, however, the preparation and recording of any such documents or instruments shall be at the expense of the Tenant.

The Trustee shall cause all appropriate continuation statements of financing statements initially recorded by the Issuer to be recorded and filed in such manner and in such places as may be required by law to continue the effectiveness of such financing statements.

**Section 1014. Performance of Duties Under the Lease.** The Trustee hereby accepts and agrees to perform, in such manner as is consistent with the terms of those instruments and this Indenture, all duties and obligations assigned to it under the Lease.

## ARTICLE XI SUPPLEMENTAL INDENTURES

**Section 1101. Supplemental Indentures Not Requiring Consent of Bondowners.** The Issuer and the Trustee may from time to time, without the consent of or notice to any of the Bondowners, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture or to make any other change not prejudicial to the Bondowners;
- (b) To grant to or confer upon the Trustee for the benefit of the Bondowners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondowners or the Trustee or either of them;
- (c) To more precisely identify the Project or to substitute or add additional property thereto;
- (d) To subject to this Indenture additional revenues, properties or collateral; and
- (e) To issue Additional Bonds as provided in Section 209 hereof.

**Section 1102. Supplemental Indentures Requiring Consent of Bondowners.** The Trustee and the Issuer may amend any provision of this Indenture or the Bonds with the written consent of the Owners owning 100% in aggregate principal amount then Outstanding.

**Section 1103. Tenant's Consent to Supplemental Indentures.** Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article which affects any rights of the Tenant shall not become effective unless and until the Tenant shall have consented in writing to the execution and delivery of such Supplemental Indenture, provided that receipt by the Trustee of an amendment to the Lease executed by the Tenant in connection with the issuance of Additional Bonds under Section 209 hereof shall be deemed to constitute consent of the Tenant to the execution of a Supplemental Indenture pursuant to Section 209 hereof. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such Supplemental Indenture (other than a Supplemental Indenture proposed to be executed and delivered pursuant to Section 209 hereof) together with a copy of the proposed Supplemental Indenture to be mailed to the Tenant at least 15 days prior to the proposed date of execution and delivery of any such Supplemental Indenture.

## **ARTICLE XII LEASE AMENDMENTS**

**Section 1201. Lease Amendments.** The provisions of the Lease may be amended to the extent and upon the terms and conditions provided therein.

## **ARTICLE XIII SATISFACTION AND DISCHARGE OF INDENTURE**

### **Section 1301. Satisfaction and Discharge of the Indenture.**

(a) When the principal of and interest on all Bonds shall have been paid in accordance with their terms or provision has been made for such payment, as provided in Section 1302 hereof, and provision shall also have been made for paying all other sums payable hereunder, including the fees and expenses of the Trustee and the Paying Agents to the date of retirement of the Bonds, then the duties of the Trustee under this Indenture shall cease. Thereupon the Trustee shall discharge and release this Indenture and shall execute, acknowledge and deliver to the Issuer such instruments of satisfaction and discharge or release as shall be requisite to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the Issuer any property at the time subject to this Indenture which may then be in its possession, except amounts in the Principal and Interest Payment Account required to be paid to the Tenant under Section 603 hereof and except funds or securities in which such funds are invested and held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The Issuer is hereby authorized to accept a certificate by the Trustee that the principal of and interest due and payable upon all of the Bonds then Outstanding or such payment provided for in accordance with Section 1302 hereof as evidence of satisfaction of this Indenture, and upon receipt thereof shall deem this Indenture discharged.

### **Section 1302. Bonds Deemed To Be Paid.**

(a) Bonds shall be deemed to be paid within the meaning of this Indenture when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either

(i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) moneys sufficient to make such payment or (2) Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of the redemption of Bonds which by their terms may be redeemed prior to the stated maturities thereof, no deposit under clause (ii) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until proper notice of such redemption shall have been given in accordance with Article III of this Indenture or irrevocable instructions shall have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other Section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds and interest thereon shall be applied to and used solely for the payment of the particular Bonds and interest thereon with respect to which such moneys and Government Securities have been so set aside in trust.

## **ARTICLE XIV MISCELLANEOUS PROVISIONS**

### **Section 1401. Consents and Other Instruments by Bondowners.**

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(i) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(ii) The fact of ownership of Bonds and the amounts, number and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the Issuer maintained by the Trustee.

(b) In determining whether the Bondowners owning the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or

waiver under this Indenture, Bonds owned by the Tenant or any affiliate of the Tenant shall be disregarded and deemed not to be Outstanding under this Indenture, unless the Tenant and/or any affiliate of the Tenant is the owner of all of the Bonds, in which case such ownership shall not be disregarded, and except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. For purposes of this paragraph, the word “affiliate” means any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Tenant; and for the purposes of this definition, “control” means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Bonds and that the pledgee is not the Tenant or any affiliate of the Tenant.

**Section 1402. Limitation of Rights Under the Indenture.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be inferred from this Indenture or the Bonds is intended or shall be construed to give any person other than the parties hereto, and the Bondowners, any right, remedy or claim under or with respect to this Indenture, and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Tenant and the Bondowners as herein provided.

**Section 1403. Notices.** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Indenture shall be in writing and shall be deemed duly given or filed if the same shall be duly mailed by registered or certified mail, postage prepaid, or overnight delivery that provides written evidence of delivery to the Notice Representative.

All notices given by certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed; notices given by overnight delivery shall be deemed duly given as of the date on the day after they are sent. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Tenant to the other shall also be given to the Trustee. Notwithstanding the foregoing provisions of this Section, notices, certificates or communications to the Trustee shall be deemed duly and fully given only upon receipt by the Trustee. The Issuer, the Trustee and the Tenant may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

**Section 1404. Suspension of Mail Service.** If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Trustee shall constitute a sufficient notice.

**Section 1405. Severability.** If any provision of this Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any

other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

**Section 1406. Execution in Counterparts.** This Indenture 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 1407. Governing Law.** This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1408. Electronic Storage.** The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law. Notwithstanding the foregoing, and except as expressly authorized under Article II hereof, no reproduction of any Bond certificate, in whole or in part, by electronic means or otherwise, shall be deemed to be or shall be relied upon as authentic, valid or original.

**Section 1409. HUD Documents.** If any of the provisions of this Agreement conflict with the any term of the Note insured by HUD, the Mortgage, the HUD Regulatory Agreement, and/or the remaining HUD form documents executed by Tenant in connection with FHA Project Number 102-35282 (the “HUD Loan Documents”), the provisions of the HUD Loan Documents shall control.

*[Remainder of Page Intentionally Left Blank]*



IN WITNESS WHEREOF, the Issuer has caused this Indenture to be signed by an authorized official, such signature to be attested by an authorized officer and its official seal to be applied, as of the date first above written.

**CITY OF SPRING HILL, KANSAS**

By: \_\_\_\_\_  
Steven M. Ellis, Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Glenda Gerrity, City Clerk

“ISSUER”

**ACKNOWLEDGMENT**

STATE OF KANSAS )  
 ) SS.  
COUNTIES OF JOHNSON AND MIAMI )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2019, by Steven M. Ellis, Mayor, and Glenda Gerrity, City Clerk, respectively, of the City of Spring Hill, Kansas, a municipal corporation and political subdivision of the state of Kansas.

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

My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf and such signature to be attested by its duly authorized officers, and its corporate seal (if any) to be applied, all as of the date first above written.

**SECURITY BANK OF KANSAS CITY,**  
Kansas City, Kansas

By: \_\_\_\_\_  
Pete Gardner, Senior Vice President

[SEAL, if any]

ATTEST:

By: \_\_\_\_\_  
Erica Lemon, Assistant Vice President

“TRUSTEE”

**ACKNOWLEDGMENT**

STATE OF KANSAS                    )  
  ) SS.  
COUNTY OF WYANDOTTE        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2019, by Pete Gardner, as Senior Vice President, and Erica Lemon, as Assistant Vice President, on behalf of Security Bank of Kansas City, a Kansas state chartered banking association.

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

My Commission Expires: \_\_\_\_\_

**APPENDIX A**

**FORM OF BONDS**

**FACE OF THE BOND**

THE OWNER OF THIS BOND BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH BOND (1) TO THE ISSUER, THE ORIGINAL PURCHASER OR THE TENANT, (2) WITH THE WRITTEN CONSENT OF THE ISSUER PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT OF 1933 (THE "1933 ACT"), OR (3) WITH THE WRITTEN CONSENT OF THE ISSUER TO INSTITUTIONAL "ACCREDITED INVESTORS" AS DEFINED IN RULE 501(A) UNDER THE 1933 ACT, OR QUALIFIED INSTITUTIONAL BUYERS ("QIB"). BY ITS ACCEPTANCE OF A SERIES 2019 BOND, EACH PURCHASER OF A SERIES 2019 BOND (EXCEPT FOR THE ISSUER, THE ORIGINAL PURCHASER AND THE TENANT) WILL BE DEEMED TO (1) HAVE REPRESENTED THAT THE SERIES 2019 BONDS ARE BEING ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION AND (A) IT IS AN INSTITUTIONAL ACCREDITED INVESTOR OR A FIDUCIARY OR AGENT (OTHER THAN A UNITED STATES BANK OR SAVINGS AND LOAN ASSOCIATION) THAT IS ACTING ON BEHALF OF AN INSTITUTIONAL ACCREDITED INVESTOR, OR (B) IT IS A QIB ACTING ON BEHALF OF ITSELF OR ANOTHER QIB (AND, IF IT IS A QIB, ACKNOWLEDGES THAT IT IS AWARE THAT THE SELLER MAY RELY ON AN EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE 1933 ACT PURSUANT TO RULE 144A), AND (2) HAVE AGREED THAT ANY RESALE OF THE SERIES 2019 BOND WILL BE MADE ONLY IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE 1933 ACT AND ONLY TO AN INSTITUTIONAL ACCREDITED INVESTOR OR TO A QIB IN A TRANSACTION MADE PURSUANT TO RULE 144A UNDER THE 1933 ACT, TO THE ISSUER, THE ORIGINAL PURCHASER OR THE TENANT OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT FILED UNDER THE 1933 ACT OR PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE 1933 ACT. THE TRUSTEE, THE ISSUER, THE ORIGINAL PURCHASER AND THE TENANT SHALL HAVE THE RIGHT, PRIOR TO ANY OFFER, SALE OR TRANSFER OF THE SERIES 2019 BONDS OTHER THAN TO THE ISSUER, THE ORIGINAL PURCHASER OR THE TENANT, TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATIONS OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM WITH RESPECT TO THE LAWFULNESS OF SUCH OFFER, SALE OR TRANSFER.

No. \_\_\_\_\_

Not to exceed \$10,100,000

**UNITED STATES OF AMERICA  
STATE OF KANSAS  
CITY OF SPRING HILL, KANSAS**

**INDUSTRIAL REVENUE BOND  
(TAXABLE UNDER FEDERAL LAW)  
SERIES 2019  
(BLACKHAWK APARTMENTS PROJECT PHASE II)**

**Interest Rate**

**Maturity Date**

**Dated Date**

2.00%

February 1, 2030

\_\_\_\_\_, 2019

Registered Owner: Blackhawk Development, L.L.C.  
P.O. Box 464  
Spring Hill, Kansas 66083  
Tax Identification No. 48-1214793

Principal Amount: Up to Ten Million One Hundred Thousand and 00/100 Dollars as evidenced on *Schedule A* to this Series 2019 Bond

The City of Spring Hill, Kansas, a body politic and corporate incorporated as a city of the second class of the state of Kansas (the “Issuer”), for value received, promises to pay on the Maturity Date shown above unless called for redemption prior to said Maturity Date, but solely from the sources hereinafter referred to, to the Registered Owner identified above, or registered assigns, upon the presentation and surrender of this certificate, the aggregate amount of proceeds from the sale of the Series 2019 Bonds funded in accordance with Section 208 of the within described Indenture which amount shall not exceed \$10,100,000 (the “Principal Amount”), and to pay interest on the Outstanding Principal Amount as evidenced on *Schedule A* hereto at the Interest Rate per annum (computed on the basis of a 30/360-day basis) described above from the effective date of registration or from the most recent Interest Payment Date to which interest has been paid or duly provided for, payable on February 1 and August 1 of each year commencing August 1, 2019 (the “Interest Payment Dates”), until said Principal Amount has been paid.

The Principal Amount or redemption price of this Bond shall be paid by check or draft (provided instructions are provided as described herein) to the Registered Owner at the Maturity Date or redemption date thereof, upon presentation and surrender of this Bond at the principal corporate trust office of Security Bank of Kansas City, in the City of Kansas City, Kansas (the “Paying Agent” and “Trustee”). The interest payable on the Bonds on any Interest Payment Date shall be paid by check or draft mailed to the Registered Owner at such Registered Owner’s address as it appears on the bond registration books of the Issuer kept by the Trustee under the within mentioned Indenture, or at such other address as is furnished in writing by such Registered Owner to the Paying Agent at the close of business not less than 15 days preceding the Interest Payment Date (the “Record Date”). Notwithstanding the foregoing, the principal, redemption price of, and the interest on the Bonds is payable by electronic transfer in immediately available federal funds pursuant to written instructions from any Registered Owner provided by the Registered Owner to the Paying Agent not less than 5 days prior to the Record Date for such interest, which instructions shall include the name of the receiving bank (which shall be in the continental United States), its address, ABA routing number and the name, number and contact name related to such Registered Owner’s account at such bank and shall also acknowledge a wire transfer fee payable by such Registered Owner.

This Bond certificate evidences ownership of a part of a duly authorized series of Bonds of the Issuer designated “City of Spring Hill, Kansas, Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II),” in the principal amount not to exceed \$10,100,000 (the “Series 2019 Bonds”), issued for the purpose of financing a portion of the costs of acquiring, constructing and equipping an apartment complex (the “Improvements”) and certain real estate (the “Land”) on which the Improvements are or will be located (the Improvements and the Land, collectively, the “Project”), to be conveyed by Blackhawk Apartment Homes II, LLC, a Kansas limited liability company (the “Tenant”), to the

Issuer pursuant to a special warranty deed dated as of \_\_\_\_ 1, 2019 (the “Deed”), and leased back to the Tenant by the Issuer under the terms of a Lease dated as of \_\_\_\_ 1, 2019, between the Issuer and the Tenant (the “Lease”), all pursuant to the authority of and in conformity with the provisions, restrictions and limitations of the constitution and statutes of the state of Kansas, including particularly K.S.A. 12-1740 *et seq.*, as amended, and pursuant to proceedings duly had by the Governing Body of the Issuer.

The Series 2019 Bonds are issued under and are equally and ratably secured and entitled to the protection of the Trust Indenture, dated as of \_\_\_\_ 1, 2019 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Indenture”), between the Issuer and the Trustee. Subject to the terms and conditions set forth therein, the Indenture permits the Issuer to issue Additional Bonds (as defined therein) secured by the Indenture ratably and on a parity with the Series 2019 Bonds (the Series 2019 Bonds together with such Additional Bonds being herein referred to collectively as the “Bonds”). Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Bondowners, and the terms upon which the Bonds are issued and secured.

## **REDEMPTION OF BONDS**

**Extraordinary Optional Redemption.** In the event of a Change of Circumstances (as defined in the Indenture), the Series 2019 Bonds shall be subject to redemption and payment prior to the stated maturity thereof at the option of the Issuer, upon instructions from the Tenant, on any date, at the par value of the principal amount thereof, plus accrued interest thereon to the redemption date, without premium.

**Optional Redemption.** The Series 2019 Bonds are also subject to redemption and payment prior to maturity, in whole or in part, at any time, at the option of the Issuer, which option shall be exercised upon instructions from the Tenant, at the redemption price of the par value of the principal amount thereon, without premium.

**Extraordinary Mandatory Redemption.** The Series 2019 Bonds are subject to extraordinary mandatory redemption in whole by the Issuer in the event the Lease is terminated for any reason.

When any Bonds are called for redemption pursuant to the optional redemption previously described, unless waived by the Owner of this Bond, notice thereof identifying the Bonds to be redeemed will be given by mailing a copy of the redemption notice at least 30 days prior to the date fixed for redemption to the Owner of this Bond at the address shown on the registration books maintained by the Trustee; provided, however, that failure to give such notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds.

All Bonds called for redemption will cease to bear interest on the specified redemption date and shall no longer be secured by the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture.

The Series 2019 Bonds and the interest thereon are limited obligations of the Issuer payable exclusively out of the Trust Estate under the Indenture, including but not limited to the rents, revenues and receipts under the Lease, and are secured by a pledge of the Issuer's interest in the Project (including any Project Additions) as described in the Lease and a pledge and assignment of the Trust Estate, including all rentals and other amounts to be received by the Issuer under and pursuant to the Lease, all as provided in the Indenture. The Bonds and the interest thereon do not constitute a debt or general obligation of the Issuer, the state of Kansas or any municipal corporation thereof, and are not payable in any manner by taxation. The Bonds shall not constitute an indebtedness within the meaning of constitutional or statutory debt limitations or restrictions. Pursuant to the provisions of the Lease, Basic Rent is to be paid by the Tenant directly to the Trustee for the account of the Issuer and deposited in a special trust account created by the Issuer and designated "City of Spring Hill, Kansas, Principal and Interest Payment Account for Industrial Revenue Bonds (Taxable Under Federal Law) Series 2019 (Blackhawk Apartments Project Phase II)."

No Owner of Bonds shall have the right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable prior to the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and under the circumstances permitted by the Indenture.

This Bond certificate is transferable, as provided in the Indenture, only upon the registration books of the Issuer kept for that purpose at the above mentioned office of the Bond Registrar and Paying Agent by the Owner hereof in person or by his duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the Owner or such Owner's duly authorized attorney, and thereupon a new Bond certificate in the same aggregate principal amount, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The Tenant has agreed to pay as Additional Rent under the Lease all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds except (a) the reasonable fees and expenses in connection with the replacement of certificates mutilated, stolen, lost or destroyed or (b) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds. The Issuer, the Trustee and any Paying Agent may deem and treat the person in whose name this Bond certificate is registered as the absolute Owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

This Bond certificate shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, Issuer has caused this Bond certificate to be executed in its name by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk and its official seal to be affixed hereto or imprinted hereon, and has caused the Bonds to be dated the Dated Date shown herein.

CITY OF SPRING HILL, KANSAS

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

(Seal)

ATTEST:

\_\_\_\_\_  
City Clerk

**(FORM OF TRUSTEE’S CERTIFICATE OF AUTHENTICATION)**

This Bond certificate evidences ownership of the City of Spring Hill, Kansas, Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II), as described herein and in the within-mentioned Trust Indenture. The date of authentication of this Bond is \_\_\_\_\_, 2017.

Security Bank of Kansas  
Kansas City, Kansas  
Trustee

By \_\_\_\_\_  
Authorized Signature



(FORM OF ASSIGNMENT)

For value received, the undersigned hereby sells, assigns and transfer unto

\_\_\_\_\_  
Print or Type Name and Address of Transferee

the Bonds represented by this certificate and all rights thereunder, and hereby authorizes the transfer of the within Bond on the books kept by the Bond Registrar and Paying Agent for the registration and transfer of Bonds.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

[Seal of Bank]

\_\_\_\_\_  
(Name of Eligible Guarantor Institution)

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

Signature must be guaranteed by an eligible guarantor institution as defined by S.E.C. Rule 17 Ad-15 (17 C.F.R. 240. 17-Ad-15)



## APPENDIX B

### GLOSSARY OF WORDS AND TERMS

“*Act*” means K.S.A. 12-1740 *et seq.*, as amended.

“*Additional Bonds*” means any Bonds issued in addition to the Series 2019 Bonds pursuant to Section 209 of this Indenture.

“*Authorized Denominations*” means (a) with respect to the Series 2019 Bonds, the principal amount Outstanding as shown on *Schedule A* to the Series 2019 Bonds provided the minimum Authorized Denomination Outstanding at any time shall be at least \$100,000 and (b) with respect to any Additional Bonds, the denominations provided for in the indenture or supplemental indenture authorizing the issuance of such Additional Bonds.

“*Authorized Tenant Representative*” means Grant W. Merritt, manager of the Tenant, or such other person as is designated to act on behalf of the Tenant as evidenced by written certificate furnished to the Trustee, containing the specimen signature of such person and signed on behalf of the Tenant. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Tenant Representative.

“*Bond*” or “*Bonds*” means the Series 2019 Bonds and any Additional Bonds.

“*Bond Counsel*” means the firm of Kutak Rock LLP or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the Issuer and the Tenant.

“*Bond Improvements*” means the Improvements purchased, constructed or installed from Original Proceeds of the Series 2019 Bonds.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement dated as of \_\_\_\_\_ 1, 2019, by and among the Issuer, the Tenant and the Original Purchaser.

“*Bondowner*” means the Owner of any Bond and, with respect to the Series 2019 Bonds, means the Owner of 100% of the aggregate principal amount of the Outstanding Series 2019 Bonds.

“*Business Day*” means a day which is not a Saturday, Sunday or any day designated as a holiday by the Congress of the United States or by the legislature of the State and on which banks in the State are not authorized to be closed.

“*Change of Circumstances*” means the occurrence of any of the following events:

(a) title to, or the temporary use of, all or any substantial part of the Land or the Project shall be condemned by any authority exercising the power of eminent domain;

(b) title to such portion of the Land is found to be deficient or nonexistent to the extent that the Project is untenable or the efficient utilization of the Project by the Tenant is substantially impaired;

(c) substantially all of the Improvements are damaged or destroyed by fire or other casualty; or

(d) as a result of: (i) changes in the constitution of the State; or (ii) any legislative or administrative action by the State or any political subdivision thereof, or by the United States; or (iii) any action instituted in any court, the Lease shall become void or unenforceable, or impossible of performance without reasonable delay, or in any other way by reason of such changes of circumstances, unreasonable burdens or excessive liabilities are imposed upon the Issuer or the Tenant.

“*Completion Date*” means the date on which the Tenant files with the Trustee the Certificate of Completion required by Section 5.6 of the Lease or \_\_\_\_\_, whichever comes first.

“*Construction Period*” means the period from the beginning of acquisition or construction of Improvements to their Completion Date.

“*Costs of Issuance*” means any and all expenses of whatever nature incurred in connection with the issuance and sale of Bonds, including, but not limited to, initial fees of the Trustee, administrative fees or expenses of the Issuer, bond and other printing expenses and legal fees and expenses of Bond Counsel, Issuer’s counsel and counsel for the Tenant and publication expenses.

“*Dated Date*” means the date of issuance of the applicable series of Bonds.

“*Deed*” means that certain special warranty deed from Tenant to Issuer dated as of \_\_\_\_\_ 1, 2019 conveying the Project to Issuer.

“*Default Administration Costs*” means the reasonable fees, charges, costs, advances and expenses of the Trustee incurred in anticipation of an Event of Default, or after the occurrence of an Event of Default, including, but not limited to, counsel fees, litigation costs and expenses, the expenses of maintaining and preserving the Project and the expenses of re-letting or selling the Project.

“*Event of Default*” means one of the following events:

(a) Default in the due and punctual payment of any interest on any Bond, provided that the same shall not be a default until ten (10) days following the receipt of written notice asserting such default from the person or entity claiming such default;

(b) Default in the due and punctual payment of the principal of any Bond on the stated maturity or accelerated maturity date thereof, or at the redemption date thereof, provided that the same shall not be a default until ten (10) days following the receipt of written notice asserting such default from the person or entity claiming such default;

(c) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer in this Indenture or in any Bonds contained, and the continuance thereof for a period of thirty (30) days after written notice thereof shall have been given to the Issuer and the Tenant by the Trustee, or to the Trustee, the Issuer and the Tenant by Bondowners owning 100% in aggregate principal amount of Bonds then Outstanding; provided, however, if any default shall be such that it cannot be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer or the Tenant within such period and diligently pursued until such default is corrected; or

(d) An “Event of Default” as defined in the Lease.

“*Government Securities*” means direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America.

“*Improvements*” means all buildings, building improvements, machinery and equipment purchased in whole or in part from the proceeds of the Series 2019 Bonds or any Additional Bonds.

“*Indenture*” means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of Article XI of this Indenture.

“*Interest Payment Date*” means any date on which any interest is payable on any Bond. With respect to the Series 2019 Bonds, the Interest Payment Dates are February 1 and August 1 of each year commencing August 1, 2019.

“*Interest Rate*” means, (a) with respect to the Series 2019 Bonds, 2.00% per annum calculated on a 30/360-day basis and (b) with respect to any Additional Bonds, the rate provided for in the indenture or supplemental indenture authorizing the issuance of such Additional Bonds.

“*Investment Contract*” means an agreement to deposit all or any portion of the proceeds of the sale of the Bonds with a bank, with the deposits to bear interest at an agreed rate.

“*Investment Securities*” means any of the following securities, and to the extent the same are at the time permitted for investment of funds held by the Trustee pursuant to this Indenture:

(i) Government Securities;

(ii) obligations of the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, National Bank for Cooperatives, Federal Land Banks, Federal Home Loan Banks and Farmers Home Administration;

(iii) savings or other depository accounts or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee and its affiliates), provided that such deposits shall be either of a

bank, trust company or national banking association continuously and fully insured by the Federal Deposit Insurance Corporation, or continuously and fully secured by such securities as are described above in clauses (i) or (ii), which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such deposits and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association accepting such deposit or issuing such certificate of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Trustee an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking.

(iv) any Investment Contract or repurchase agreement with any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee) or government bond dealer reporting to, trading with, and recognizing as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in clauses (i) or (ii) above;

(v) any investment in shares or units of a money market fund or trust determined by Trustee to be suitable for and customarily used for investment of trust funds by trust departments of commercial banks;

(vi) investments in shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in clauses (i), (ii) or (iii) above.

“*Issuer*” means the City of Spring Hill, Kansas, a body politic and corporate incorporated as a city of the second class, duly organized and existing under the laws of the State, and its successors and assigns.

“*Land*” means the real property (or interests therein) described in *Schedule I*.

“*Lease*,” means the Lease delivered concurrently with this Indenture between the Issuer and the Tenant, as from time to time amended and supplemented in accordance with the provisions thereof and of Article XII of this Indenture.

“*Lender*” means Gershman Investment Corp., an Arkansas corporation, or its successor or assigns.

“*Maturity Date*” means the date on which the principal of any Bond becomes due and payable as therein and herein provided, whether at the stated maturity thereof or at a call for redemption or otherwise. With respect to the Series 2019 Bonds, the Maturity Date is February 1, 2030.

“*Mortgage*” means that certain Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of \_\_\_\_ 1, 2019, by Tenant, in favor of Lender.

“*Notice Representative*” means:

- (a) With respect to the Company, a managing member at its Notice Address (as defined in the Lease).
- (b) With respect to the Issuer, its duly acting clerk at its Notice Address (as defined in the Lease).
- (c) With respect to the Trustee, any corporate trust officer at its Notice Address (as defined in the Lease).

“*Ordinance*” means the Ordinance of the City passed on \_\_\_\_\_, 2019, authorizing issuance of the Series 2019 Bonds.

“*Original Proceeds*” means all sale proceeds, including accrued interest, from sale of the Series 2019 Bonds to the Original Purchaser and all investment earnings credited to the Project Fund prior to the Completion Date.

“*Original Purchaser*” or “*Purchaser*” means Blackhawk Development, L.L.C.

“*Outstanding*” means, as of a particular date all Bonds issued, authenticated and delivered under this Indenture (including any Supplemental Indentures), except:

- (a) Bonds canceled by the Trustee or delivered to the Trustee for cancellation pursuant to this Indenture;
- (b) Bonds for the payment or redemption of which moneys or investments have been deposited in trust with the Trustee and irrevocably pledged to such payment of redemption in accordance with the provisions of Section 1302 of this Indenture; and
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

“*Owner*” or “*Registered Owner*” means the owner of any Bond as shown on the registration books of the Trustee maintained as provided in this Indenture.

“*Paying Agent*” means the Trustee and its successors and assigns.

“*Payment Date*” means the Principal Payment Date or the Interest Payment Date on any Bond.

“*Permitted Encumbrances*” means any mortgages, liens or other encumbrances specifically described in *Schedule I*, including the Mortgage recorded in the Office of the Recorder of Deeds for Miami County, Kansas; easements and rights-of-way of record at the time of conveyance of the fee title interest in the Project to the Issuer, and any other exceptions not affecting marketability or the usefulness of the Project to Tenant.

“*Principal and Interest Payment Account*” means the “City of Spring Hill, Kansas Principal and Interest Payment Account for Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II)” created pursuant to Section 601 of this Indenture.

“*Principal Payment Date*” means any date on which principal on any Bond is due and payable, whether at the Maturity Date or earlier required redemption. With respect to the Series 2019 Bonds, the Principal Payment Date is the Maturity Date.

“*Project*” means the Land and the Improvements, together with any Project Additions.

“*Project Additions*” means any additional Improvements or any modifications, extensions or enlargements of the Improvements acquired, constructed or installed from proceeds of any series of Additional Bonds authorized and issued pursuant to this Indenture. It also includes any alterations or additions made to the Project to the extent provided in Articles XI and XII of the Lease.

“*Project Costs*” means those costs incurred in connection with the acquisition, construction or installation of any Improvements, including:

(a) all costs and expenses necessary or incident to the acquisition of such of the Bond Improvements as are acquired, constructed or in progress at the date of such issuance of the Series 2019 Bonds;

(b) fees and expenses of architects, appraisers, surveyors, engineers and other professional consultants for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of acquisition, construction, preparation of plans, drawings and specifications and supervision of construction and installation, as well as for the performance of all other duties of architects, appraisers, surveyors, engineers and other professional consultants in relation to the acquisition, construction or installation of the Improvements or the issuance of Bonds;

(c) all costs and expenses of constructing, acquiring or equipping Improvements;

(d) payment of interest actually incurred on any interim financing obtained from a lender unrelated to the Tenant or Original Purchaser for acquisition or performance of work on Improvements prior to the issuances of Additional Bonds;

(e) the cost of the title insurance policies and the cost of any insurance and performance and payment bonds maintained during the Construction Period in accordance with Article VI of the Lease, respectively;

(f) interest accruing on Additional Bonds prior to the Completion Date, if and to the extent any Original Proceeds of Additional Bonds deposited to the credit of the Principal and Interest Payment Account pursuant to Section 602 of this Indenture are insufficient for payment of such interest; and

(g) Costs of Issuance.



“*Project Fund*” means the account authorized and established with the Trustee pursuant to the Indenture and designated the “City of Spring Hill, Kansas, Project Fund for Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II)”.

“*Purchase Price*” means (a) with respect to the Series 2019 Bonds, an amount of money up to \$10,100,000, which may be funded in increments as provided in Section 4.2 of the Lease; provided, however, that the initial funding of the Series 2019 Bonds must occur on the date of original delivery of the Series 2019 Bonds to the Original Purchaser and may not be less than the lesser of \$100,000 or 5.00% of the maximum principal amount of the Series 2019 Bonds, and (b) with respect to any Additional Bonds, the amount set forth in the indenture or supplement to this Indenture authorizing the issuance of such Additional Bonds.

“*QIB*” means a qualified institutional buyer as defined in Rule 144A promulgated by the Securities and Exchange Commission under the Securities Act of 1933.

“*Record Date*” means the 15th day of the month in each year preceding each Interest Payment Date.

“*Rental Payments*” means the aggregate of the Basic Rent and Additional Rent payments provided for pursuant to Article III of the Lease.

“*Series 2019 Bonds*” means the City of Spring Hill, Kansas, Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II), in the aggregate principal amount not to exceed \$10,100,000.

“*State*” means the state of Kansas.

“*Supplemental Indenture*” means any indenture supplementing or amending this Indenture entered into by the Issuer and the Trustee pursuant to Article XI of this Indenture.

“*Tenant*” means Blackhawk Apartment Homes II, LLC, a Kansas limited liability company, and their successors and assigns.

“*Trust Estate*” means the Trust Estate described in the Granting Clauses of this Indenture.

“*Trustee*” means Security Bank of Kansas City, Kansas City, Kansas, a banking corporation or association incorporated under the laws of the United States or one of the states thereof, in its capacity as trustee, bond registrar and paying agent, and its successor or successors serving as Trustee under this Indenture.

“*Unassigned Issuer’s Rights*” means the rights of the Issuer pursuant to the Lease to indemnification, to consent, to receive notice, to receive purchase option payments, to be insured or to receive money for its own account for payment of fees or expenses advanced by the Issuer in connection with the Lease, all in accordance with the terms of the Lease.

“*1933 Act*” means the Securities Act of 1933, as amended.

## SCHEDULE I

### DESCRIPTION OF PROPERTY

The following property conveyed to the City of Spring Hill, Kansas (the “Issuer”) in connection with the issuance by the City of its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II) (the “Series 2019 Bonds”):

(a) The following described real estate in Miami County, Kansas:

All that part of the Northwest Quarter of Section 26, Township 15, Range 23, in the City of Spring Hill, Miami County, Kansas, described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 26; thence North 87°43'39" East, along the South line of the Northwest Quarter of said Section 26, a distance of 425.50 feet, to the point of beginning; thence North 2°16'21" West, a distance of 90.07 feet; thence North 37°07'31" West, a distance of 211.39 feet; thence North 23°29'31" East, a distance of 27.31 feet; thence North 37°16'29" East, a distance of 59.27 feet; thence North 52°16'15" East, a distance of 214.55 feet; thence North 88°15'33" East, a distance of 130.58 feet; thence North 54°02'35" East, a distance of 35.56 feet; thence North 88°15'26" East, a distance of 26.00 feet; thence North 01°44'16" West, a distance of 80.11 feet; thence North 88°15'26" East, a distance of 33.54 feet; thence South 01°44'34" East, a distance of 556.39 feet, to a point on the South line of said Northwest Quarter; thence South 87°43'39" West, along said South line, a distance of 318.88 feet to the point of beginning.

Said real property constituting the “Land” as referred to in the Indenture and the Lease entered into by the Issuer concurrently with the issuance of the Series 2019 Bonds (the “Indenture” and the “Lease”), subject to the Permitted Encumbrances.

(b) All buildings, building additions, improvements, machinery, furnishings and equipment now constructed, located or installed on the Land, all or any portion of the costs of which were paid from the proceeds of the Issuer’s Series 2019 Bonds, and which constitute Improvements as defined in the Indenture, together with any substitutions or replacements therefor, the property described in paragraphs (a) and (b) of this *Schedule I* together constituting the “Project” as referred to in the Indenture and the Lease.

When Recorded Return To:  
Tyler Ellsworth  
Kutak Rock LLP  
2300 Main Street, Suite 800  
Kansas City, MO 64108

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*(Space above reserved for the Register of Deeds' recording information)*

Title of Document: SPECIAL WARRANTY DEED

Date of Document: \_\_\_\_ 1, 2019

Grantor(s): BLACKHAWK APARTMENT HOMES II, LLC

Grantee(s): CITY OF SPRING HILL, KANSAS

Grantee Address: 401 N. MADISON STREET  
SPRING HILL, KANSAS 66083

Legal Description: See **Exhibit A** Attached Hereto

EXCEPTION #2 TO SALES VALIDATION QUESTIONNAIRE

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**PURSUANT TO K.S.A. 79-1437c AND K.S.A. 79-1437e,  
A REAL ESTATE SALES VALIDATION  
QUESTIONNAIRE IS NOT REQUIRED DUE TO EXCEPTION #2**

**SPECIAL WARRANTY DEED**

THIS INDENTURE made and entered into as of \_\_\_\_ 1, 2019, by and between BLACKHAWK APARTMENT HOMES II, LLC, a Kansas limited liability company (“Grantor”), and the CITY OF SPRING HILL, KANSAS, a municipal corporation duly organized and existing under the laws of the State of Kansas (“Grantee”) (Mailing address of Grantee is 401 N. Madison Street, Spring Hill, Kansas 66083).

WITNESSETH, THAT GRANTOR, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, to it in hand paid by Grantee (the receipt of which is hereby acknowledged) does by these presents, SELL, CONVEY AND CONFIRM, unto Grantee, its successors and assigns, the following described lots, tracts or parcels of land, lying, being and situated in the County of Miami, State of Kansas, to-wit:

See **Exhibit A** Attached Hereto

SUBJECT TO: (a) easements, rights-of-way, agreements, restrictions, covenants, mortgages, deeds of trust, reservations and other encumbrances of record, if any; (b) existing leases, tenancies and zoning laws; (c) taxes and assessments, general and special, not now due and payable; and (d) the rights of the public in and to any parts of the premises lying or being in public roads or alleys or highways.

TO HAVE AND TO HOLD, the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anyway appertaining unto the said Grantee and unto its successors and assigns forever; Grantor hereby covenanting that it is lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that it has good right to convey the same; that the said premises are free and clear from any encumbrances done or suffered by, through or under Grantor, except as above stated; and that it will warrant and defend the title of the said premises unto Grantee and unto its successors and assigns forever, against the lawful claims and demands against Grantor and Grantor’s successors and assigns, and all and every person or persons whomsoever, lawfully claiming or to claim the same by, through, or under Grantor, except as set forth above.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the Grantor has caused this Special Warranty Deed to be signed by an authorized signatory for the Grantor as of the date first above written.

**BLACKHAWK APARTMENT HOMES II, LLC,**  
a Kansas limited liability company

By: \_\_\_\_\_  
Grant W. Merritt, Manager

**ACKNOWLEDGMENT**

STATE OF KANSAS        )  
                                  ) SS.  
COUNTY OF JOHNSON    )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2019, by Grant W. Merritt, who acknowledged himself to be the Manager of Blackhawk Apartment Homes II, LLC, a Kansas limited liability company.

\_\_\_\_\_  
Notary Public  
Typed or printed name: \_\_\_\_\_

My Appointment Expires: \_\_\_\_\_

## **EXHIBIT A**

### **DESCRIPTION OF PROPERTY**

The following described real estate in Miami County, Kansas:

All that part of the Northwest Quarter of Section 26, Township 15, Range 23, in the City of Spring Hill, Miami County, Kansas, described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 26; thence North  $87^{\circ}43'39''$  East, along the South line of the Northwest Quarter of said Section 26, a distance of 425.50 feet, to the point of beginning; thence North  $2^{\circ}16'21''$  West, a distance of 90.07 feet; thence North  $37^{\circ}07'31''$  West, a distance of 211.39 feet; thence North  $23^{\circ}29'31''$  East, a distance of 27.31 feet; thence North  $37^{\circ}16'29''$  East, a distance of 59.27 feet; thence North  $52^{\circ}16'15''$  East, a distance of 214.55 feet; thence North  $88^{\circ}15'33''$  East, a distance of 130.58 feet; thence North  $54^{\circ}02'35''$  East, a distance of 35.56 feet; thence North  $88^{\circ}15'26''$  East, a distance of 26.00 feet; thence North  $01^{\circ}44'16''$  West, a distance of 80.11 feet; thence North  $88^{\circ}15'26''$  East, a distance of 33.54 feet; thence South  $01^{\circ}44'34''$  East, a distance of 556.39 feet, to a point on the South line of said Northwest Quarter; thence South  $87^{\circ}43'39''$  West, along said South line, a distance of 318.88 feet to the point of beginning.

EFFECTIVE DATE: \_\_\_\_\_, 2019

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**BOND PURCHASE AGREEMENT**

**AMONG**

**THE CITY OF SPRING HILL, KANSAS**

**BLACKHAWK DEVELOPMENT, L.L.C.**

**AND**

**BLACKHAWK APARTMENT HOMES II, LLC**

**DATED AS OF \_\_\_\_\_ 1, 2019**

**NOT TO EXCEED \$10,100,000  
INDUSTRIAL REVENUE BONDS  
(TAXABLE UNDER FEDERAL LAW)  
SERIES 2019  
(BLACKHAWK APARTMENTS PROJECT PHASE II)**

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## **BOND PURCHASE AGREEMENT**

On the basis of the representations and upon the terms and conditions of this Bond Purchase Agreement dated as of \_\_\_\_ 1, 2019 (the “Agreement”), and effective as of the date shown on the cover page hereof (the “Effective Date”) Blackhawk Development, L.L.C., a Kansas limited liability company (the “Purchaser”), offers to purchase up to \$10,100,000 principal amount of the Industrial Revenue Bonds (Taxable Under Federal Law), Series 2019 (Blackhawk Apartments Project Phase II) (the “Series 2019 Bonds”), to be issued by the City of Spring Hill, Kansas (the “Issuer”), pursuant to an Ordinance passed by the Governing Body of the Issuer on \_\_\_\_, 2019, and in accordance with a Trust Indenture dated as of \_\_\_\_ 1, 2019, between the Issuer and Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the “Indenture”). The Land, as defined in the Indenture, will be conveyed by Blackhawk Apartment Homes II, LLC (the “Tenant”) to the Issuer pursuant to a special warranty deed dated \_\_\_\_ 1, 2019 (the “Deed”), and the Project, as defined in the Indenture, will be leased to the Tenant under a Lease dated as of \_\_\_\_ 1, 2019, between the Issuer and the Tenant (the “Lease”). Except for the Unassigned Issuer Rights as defined in the Indenture, the Issuer’s rights under the Lease have been or will be assigned to the Trustee. All capitalized terms not defined in this Agreement shall have the definitions given them in the Indenture.

### **SECTION 1. REPRESENTATIONS AND WARRANTIES OF THE ISSUER**

The Issuer hereby represents and warrants to the Purchaser that:

(A) The Issuer is a duly organized and existing municipal corporation of the State of Kansas.

(B) To the best of the Issuer’s knowledge and belief: when delivered to and paid for by the Purchaser in accordance with the provisions of this Agreement, the Series 2019 Bonds will have been duly authorized, executed, authenticated, issued and delivered; and, the Series 2019 Bonds will constitute valid and binding special limited obligations of the Issuer payable solely and only from the revenues specified in the Indenture and in conformity with, and entitled to the benefit and security of, the Indenture and the Lease; and, this Agreement, the Series 2019 Bonds, the Indenture, the Deed and the Lease and all action taken by the Issuer in connection therewith shall be in conformity with K.S.A. 12-1740 *et seq.*, as amended.

(C) To the best of the Issuer’s knowledge, the execution and delivery of this Agreement, the Series 2019 Bonds, the Deed, the Lease and the Indenture and compliance with the provisions thereof, will not conflict with or constitute on the part of the Issuer a violation of, breach of or default under any statute, indenture, mortgage, declaration or deed of trust, note agreement or other agreement or instrument to which the Issuer is a party or by which the Issuer is bound, or, to the knowledge of the Issuer, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Issuer or any of its activities or properties.

(D) To the best of the Issuer’s knowledge, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or threatened against or affecting the Issuer, challenging or seeking to enjoin the



transactions contemplated by this Agreement, the Indenture, the Deed or the Lease, or contesting the validity or enforceability of the Series 2019 Bonds, the Deed, the Lease, the Indenture, this Agreement or any agreement or instrument to which the Issuer is a party, used or contemplated to be used in consummation of the transactions contemplated by this Agreement.

(E) Any certificate signed by any authorized officer or official of the Issuer and delivered to the Purchaser shall be deemed a representation by the Issuer to the Purchaser as to the truth of the statements therein made.

## **SECTION 2. REPRESENTATIONS AND WARRANTIES OF THE TENANT**

In order to induce the Issuer to issue the Series 2019 Bonds and the Purchaser to purchase the Series 2019 Bonds from the Issuer, the Tenant, as a party to the Lease, represents and warrants to the Issuer and the Purchaser as follows:

(A) The Tenant is a limited liability company duly organized and existing under the laws of the State of Kansas and in good standing under the laws of the State of Kansas, and has the power to own and lease its properties and do business in the State of Kansas.

(B) This Agreement is, and upon the final delivery of the Series 2019 Bonds, this Agreement, the Lease will be, in accordance with their respective terms, legal, valid and binding obligations of the Tenant. The Tenant's execution and delivery of the Lease and this Agreement will not conflict with, or constitute on the part of the Tenant a violation or breach of, or default under its articles of organization, operating agreement, or any instrument to which it is a party or by which it is bound or, to the best of its knowledge, any statute or rule or regulation of any court or governmental body having jurisdiction over it or any of its activities or properties or the transactions contemplated by such agreements. All consents, approvals and authorizations which are required for the consummation of the transactions by the Tenant contemplated by the Lease and this Agreement have been obtained.

(C) To the Tenant's knowledge there is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or threatened against or affecting the Tenant or any of its property wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated herein; would in any way adversely affect the validity or enforceability of the Series 2019 Bonds, the Lease, this Agreement or any instrument to which the Tenant is a party; or might result in any material adverse change in the financial condition or business of the Tenant.

## **SECTION 3. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants as follows:

(A) The Purchaser is purchasing the Series 2019 Bonds for investment solely for its own account and not with a view to, or for resale in connection with, the distribution thereof. The Purchaser understands that the Series 2019 Bonds have not been registered under the securities laws of any state or under the provisions of Section 5 of the Securities Act of 1933, as amended (the "Act"), and that the Series 2019 Bonds may not be transferred

unless they are subsequently registered under the Act and all applicable state laws requiring registration as a condition of resale, or unless an exemption from such registration is available, with the consequence that the Purchaser may therefore need to bear the risks of its investment for an indefinite time. The Purchaser also understands that no trading market now exists for the Series 2019 Bonds.

(B) The Purchaser acknowledges and agrees that the Series 2019 Bonds may only be transferred (1) to the Issuer, the Original Purchaser and the Tenant, (2) with the written consent of the Issuer pursuant to a registration statement which has been declared effective under the 1933 Act, or (3) with the written consent of the Issuer to institutional “accredited investors” as defined in Rule 501(a) under the 1933 Act, or qualified institutional buyers (“QIBs”). By its acceptance of a Series 2019 Bond, each purchaser of a Series 2019 Bond will be deemed to (1) have represented that the Series 2019 Bonds are being acquired for investment and not with a view to distribution and (a) it is an institutional accredited investor or a fiduciary or agent (other than a United States bank or savings and loan association) that is acting on behalf of an institutional accredited investor, or (b) it is a QIB acting on behalf of itself or another QIB (and, if it is a QIB, acknowledges that it is aware that the seller may rely on an exemption from the provisions of Section 5 of the 1933 Act pursuant to Rule 144A), and (2) have agreed that any resale of the Series 2019 Bond will be made only in a transaction exempt from registration under the 1933 Act and only to an institutional accredited investor or to a QIB in a transaction made pursuant to Rule 144A under the 1933 Act, to the Issuer, the Original Purchaser or the Tenant or pursuant to an effective registration statement filed under the 1933 Act or pursuant to another available exemption from registration under the 1933 Act. The Trustee, the Issuer, the Original Purchaser and the Tenant shall have the right, prior to any offer, sale or transfer of the Series 2019 Bonds other than to the Issuer, the Original Purchaser or the Tenant, to require the delivery of an opinion of counsel, certifications or other information satisfactory to each of them with respect to the lawfulness of such offer, sale or transfer.

(C) The Purchaser has undertaken to verify the accuracy, completeness and truth of any and all statements made or omitted to be made concerning any of the material facts relating to this transaction and warrants and acknowledges that the Purchaser is not relying on any party or person to undertake the furnishing or verification of information relating to this transaction. The Purchaser has been provided all documents, financial information, risk analysis and such other information as the Purchaser deems necessary in order to make an informed investment decision with respect to the investment in the Series 2019 Bonds and the risks which will be incurred which may interfere with or prevent the timely payment of the principal or the interest represented by the Series 2019 Bonds. The Purchaser is aware that there are certain economic variables and risks that could affect adversely the security of the investment in the Series 2019 Bonds, and the Purchaser is able to bear the economic risks of such investment.

(D) The Purchaser hereby acknowledges that the Series 2019 Bonds and the Basic Rent (as such term is defined in the Lease) are not general obligations of the Issuer or of the state of Kansas or any political subdivision thereof and that the Basic Rent pledged to the payment of the Series 2019 Bonds constitute obligations of the Tenant. The Purchaser acknowledges that the payment of any amount owing under the Indenture is limited to the

sources of payment and security described in the Indenture and that the Issuer makes no representation or warranty regarding the adequacy of any such sources of payment or security.

(E) The Purchaser has such knowledge and experience in business and financial matters, including: (i) the evaluation of investment risks associated with commercial real estate developments such as the Project, (ii) the evaluation of risks associated with the capabilities of entities such as the Tenant to develop, operate and maintain the Project, and (iii) the analysis, purchase and ownership of industrial revenue bonds and other investment vehicles similar in character to the Series 2019 Bonds, so as to enable it to understand and evaluate the risks of such investments and form an investment decision with respect thereto. the Purchaser has no need for liquidity in such investment and the Purchaser is (or any account for which it is purchasing is) able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof.

(F) The Purchaser acknowledges that the interest on the Series 2019 Bonds is not exempt from federal income taxation.

(G) The Purchaser has full power and authority to execute this Agreement and to perform its obligations hereunder.

(H) By all necessary action, the Purchaser has duly authorized and approved the execution and delivery of this Agreement.

(I) This Agreement is, and upon the final delivery of the Series 2019 Bonds, this Agreement will be, in accordance with their respective terms, legal, valid and binding obligations of the Purchaser. The Purchaser's execution and delivery of this Agreement will not conflict with, or constitute on its part a violation or breach of, or default under, its articles of organization or operating agreement, or any instrument to which it is a party or by which it is bound or, to the best of its knowledge, any statute or rule or regulation of any court or governmental body having jurisdiction over it or any of its activities or properties. All consents, approvals, authorizations and orders of governmental or regulatory authorities which are required for the consummation of the transactions contemplated by such documents have been obtained.

(J) To the Purchaser's knowledge there is no action, suit, proceeding, inquiry or investigation, before or by any court, public board or body pending or threatened against or affecting the Purchaser or any of its property wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated herein; would in any way adversely affect the validity or enforceability of this Agreement or any instrument to which the Purchaser is a party.

#### **SECTION 4. PURCHASE, SALE AND DELIVERY OF THE SERIES 2019 BONDS**

(A) On the basis of the representations, warranties and agreements herein contained, and subject to the satisfaction of the terms and conditions herein set forth, at the closing time stated below (the "Closing Time"), the Issuer agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Issuer the Series 2019 Bonds at a Purchase

Price equal to the principal amount of the Series 2019 Bonds funded in accordance with this Agreement up to a maximum principal amount of \$10,100,000. The Series 2019 Bonds shall mature, shall bear interest at the rate and shall have the terms established by the Indenture. Payment for the Series 2019 Bonds shall be made by wire-transferred Federal Reserve funds, payable to the order of the Issuer. Upon receipt of the initial funding of the Purchase Price of the Series 2019 Bonds in an amount not less than \$100,000, the Series 2019 Bonds, executed by the Issuer, and authenticated by the Trustee, will be delivered to the Purchaser at the Closing Time, at the offices of Kutak Rock LLP (“Bond Counsel”), Kansas City, Missouri, or at such place or address as may be agreed to by the Purchaser and the Issuer. The Closing Time shall be 9:00 a.m. on the Effective Date, or such other time as may be agreed to by the Purchaser and the Issuer.

(B) Subject to the conditions of this Section 4(B) and the further terms and conditions of this Agreement, the Purchaser shall fund the purchase of the Series 2019 Bonds in increments as provided in Section 208(a) of the Indenture and in Section 4.2 of the Lease, up to the maximum principal amount of the Series 2019 Bonds, as provided in the Indenture. The funding of the initial payment for the Series 2019 Bonds and all subsequent advances shall be made in immediately available funds to the order of the Trustee, for the account of the Issuer. After the initial funding of a portion of the Purchase Price at closing, each subsequent advance shall be subject to the following conditions:

(i) *Written Request.* Advances shall be made only in accordance with the provisions of Section 4.2 and Article V of the Lease upon the Tenant’s written request or on the request of any person or entity designated in writing by the Tenant to act on the Tenant’s behalf. Each written request shall identify the payees and the amounts to be paid to each and shall be accompanied by invoices, lien waivers, percentage completion certificates, and any other documentation deemed necessary by the Purchaser supporting the amounts requested to be paid.

(ii) *Funding Period.* Purchaser shall have no obligation to advance funds pursuant to this Agreement after the earlier of the Completion Date, the date the Lease terminates or the date in which the maximum principal amount of the Series 2019 Bonds have been funded under this Agreement.

(C) In addition to the foregoing, and on the basis of the same representations, warranties and agreements herein contained, and subject to the terms and conditions herein set forth, the Tenant agrees to pay from Tenant funds not related to the Bond proceeds all other reasonable Costs of Issuance at the Closing Time or agrees to make provision for payment of such costs according to their terms.

## **SECTION 5. CONDITIONS OF THE PURCHASER'S OBLIGATIONS**

The obligations of the Purchaser to purchase and pay for the Series 2019 Bonds will be subject to the accuracy of the representations and warranties on the part of the Issuer herein, to the performance by the Issuer and the Tenant of their respective obligations hereunder and to the following additional conditions precedent:

(A) The Ordinance, the Indenture, and the Lease shall have been duly authorized and executed by the respective parties thereto in the form hereto before approved by the Purchaser and shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Purchaser.

(B) At the Closing Time, the Purchaser shall receive in form and substance satisfactory to it:

(i) the opinion of Bond Counsel approving the issuance and delivery of the Series 2019 Bonds.

(ii) the opinion of counsel for the Tenant.

(iii) A certificate or certificates, satisfactory in form and substance to Bond Counsel and the Purchaser, of an authorized official of the Issuer dated the date of closing to the effect that, to the best of such official's knowledge and belief:

(a) each of the representations and warranties of the Issuer set forth in Section 1 hereof is true, accurate and complete in all material respects as of the Closing Time, and each of the agreements of the Issuer set forth in this Agreement to be complied with at or prior to the Closing Time has been complied with as of such time; and

(b) no litigation is pending, or to such official's knowledge threatened, to restrain or enjoin the issuance, execution, sale or delivery of the Series 2019 Bonds or contesting the issuance or the validity of the Series 2019 Bonds, the Ordinance, the Indenture, the Lease or this Agreement and that none of the proceedings or authority for the issuance of the Series 2019 Bonds has been repealed, revoked or rescinded.

(iv) A certificate or certificates, satisfactory in form and substance to Bond Counsel and the Purchaser, of an authorized member of the Tenant, dated the date of closing, to the effect that:

(a) each of the representations and warranties of the Tenant set forth in Section 2 hereof is true, accurate and complete in all material respects as of the Closing Time, and each of the agreements of the Tenant set forth in this Agreement to be complied with at or prior to the Closing Time has been complied with as of such time; and

(b) insofar as the signers of such certificate or certificates are aware, after reasonable investigation, since the date of this Agreement, there has been no material adverse change in the property or financial position of the Tenant or results of operation of the Tenant; and

(c) no litigation is pending, or to the knowledge of the Tenant threatened, to restrain or enjoin the issuance, execution, sale or delivery of the Series 2019 Bonds or in any way contesting or affecting any authority for issuance

or the validity of the Series 2019 Bonds, the Lease or this Agreement or the creation, existence, or powers of the Tenant to lease the Project.

(v) Certified conformed copies or manually executed counterparts of the Ordinance, the Indenture, and the Lease.

(vi) Such additional certificates, opinions, or documents as the Purchaser may reasonably request to evidence the due satisfaction at or prior to such time of all conditions then to be satisfied in connection with the transactions contemplated hereby.

(C) Subsequent to the Issuer's acceptance of this Agreement:

(i) There shall not have occurred any change, or any development involving a prospective change in or affecting particularly the business or properties of the Tenant which, in the judgment of the Purchaser, materially impairs the investment quality of the Series 2019 Bonds; or

(ii) Trading in securities generally on the New York Stock Exchange shall not have been suspended, minimum prices shall not have been established on such Exchange, nor a banking moratorium declared either by Federal or Kansas authorities; or

(iii) No order, decree or injunction of any court of competent jurisdiction, nor any order, ruling, regulation or administrative proceeding by any governmental body or board, shall have been issued or commenced nor shall any legislation have been enacted by the Congress, with the purpose or effect of prohibiting the issuing, offering or sale of the Series 2019 Bonds as contemplated hereby; or

(iv) The United States shall not be or become engaged in any major outbreak of armed hostilities which result in the declaration of national emergency.

If the conditions to the obligations of the Purchaser contained in this Agreement are not satisfied or if the obligations of the Purchaser shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and neither the Purchaser nor the Issuer shall have any further obligations hereunder.

## **SECTION 6. DEFAULT OF THE PURCHASER**

If the Purchaser defaults in its obligations to purchase the Series 2019 Bonds hereunder and other arrangements satisfactory to the Issuer and the Tenant for the purchase of the Series 2019 Bonds are not made within thirty-six (36) hours after default, this Agreement may be terminated by the Issuer without liability on its part if such default remains uncured for three (3) business days following the Purchaser's receipt of written notice from the Issuer.

## **SECTION 7. CONDITIONS OF THE ISSUER'S OBLIGATIONS**

The obligations of the Issuer to sell and deliver the Series 2019 Bonds will be subject to the accuracy of the representations and warranties on the part of the Tenant and Purchaser herein, to the performance by the Purchaser and the Tenant of their respective obligations hereunder and to the following additional conditions precedent:

(A) The Ordinance, the Indenture, the Deed and the Lease shall have been duly authorized and executed by the respective parties thereto in the form hereto before approved by the Purchaser and shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Purchaser. The Tenant shall have provided and there shall be in full force and effect all consents or other appropriate authorizations of the Tenant, as in the opinion of Bond Counsel, are necessary and appropriate in connection with the execution by the Tenant of the Deed, the Lease and other Tenant documents contemplated in connection with the issuance of the Series 2019 Bonds.

(B) At the Closing Time, the Issuer shall receive in form and substance satisfactory to Bond Counsel and to it:

(i) the opinion of Bond Counsel approving the issuance and delivery of the Series 2019 Bonds.

(ii) the opinions of Counsel for the Tenant and the Purchaser.

(iii) A certificate or certificates, satisfactory in form and substance to Bond Counsel and the Issuer, of an authorized member of the Tenant dated the date of closing to the effect that:

(a) each of the representations and warranties of the Tenant set forth in Section 2 hereof is true, accurate and complete in all material respects as of the Closing Time, and each of the agreements of the Tenant set forth in this Agreement to be complied with at or prior to the Closing Time has been complied with as of such time; and

(b) insofar as the signers of such certificate or certificates are aware, after reasonable investigation, since the date of this Agreement, there has been no material adverse change in the property or financial position of the Tenant or results of operation of the Tenant; and

(c) no litigation is pending, or to the knowledge of the Tenant threatened, to restrain or enjoin the issuance, execution, sale or delivery of the Series 2019 Bonds or in any way contesting or affecting any authority for issuance or the validity of the Series 2019 Bonds, the Lease or this Agreement or the creation, existence, or powers of the Tenant to lease the Project.

(iv) A certificate or certificates, satisfactory in form and substance to Bond Counsel and the Issuer, of authorized member of the Purchaser dated the date of closing to the effect that:

(a) each of the representations and warranties of the Purchaser set forth in Section 3 hereof is true, accurate and complete in all material respects as of the Closing Time, and each of the agreements of the Purchaser set forth in this Agreement to be complied with at or prior to the Closing Time has been complied with as of such time; and

(b) no litigation is pending, or to the knowledge of the Purchaser threatened, to restrain or enjoin the execution and delivery of this Agreement or in any way contesting or affecting any authority for the validity of this Agreement.

(v) Certified conformed copies or manually executed counterparts of the Ordinance, the Indenture, the Deed and the Lease.

(vi) Such additional certificates, opinions, or documents as the Issuer and Bond Counsel or the Purchaser may reasonably request to evidence the due satisfaction at or prior to such time of all conditions then to be satisfied in connection with the transactions contemplated hereby.

If the conditions to the obligations of the Issuer contained in this Agreement are not satisfied or if the obligations of the Issuer terminate for any reason permitted by this Agreement, this Agreement shall terminate and neither the Purchaser nor the Issuer shall have any further obligations hereunder.

## **SECTION 8. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY**

All representations and warranties of the Tenant and Purchaser herein shall remain operative and in full force and shall survive delivery of the Series 2019 Bonds.

## **SECTION 9. INDEMNITY**

The Tenant and the Purchaser will each indemnify and hold harmless the Issuer, each of its officials and employees and each person who controls the Issuer within the meaning of Section 15 of the Act (any such person being herein in this paragraph sometimes called an “Indemnified Party”), against all losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise, and will each reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon an allegation or determination that the Series 2019 Bonds or the obligations of the Issuer under the Indenture have been offered or sold in violation of provisions of the Act, the Securities Exchange Act of 1934, as amended, or the securities laws of any state or territory, or that the Indenture should have been qualified under the Trust Indenture Act of 1939, as amended. This indemnity agreement will not limit any other liability the Tenant and the Purchaser may otherwise have to any such Indemnified Party.

In the event and to the extent that any of the Indemnified Parties is entitled to indemnification from the Tenant and the Purchaser under the terms of the preceding paragraph in respect of any of the losses, claims, damages, liabilities or expenses referred to therein, but such indemnification is



unavailable to such Indemnified Party in respect of any such losses, claims, damages, liabilities or expenses, due to such indemnification being held impermissible or unenforceable under applicable law or otherwise, then the Tenant and the Purchaser, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the Tenant and the Purchaser in connection with the offering conduct which resulted in such claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The Tenant, the Purchaser and and Issuer, respectively, agree that it would not be just and equitable if contribution pursuant to this paragraph were determined by *pro rata* allocation or by any other method of allocation which does not take into account the equitable considerations referred to in the preceding sentences of this paragraph. The amount paid or payable by any of the Indemnified Parties as a result of the losses, claims, damages or liabilities referred to above in this paragraph shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Party in connection with defending such action or claim. The covenants and agreements in this paragraph and the preceding paragraph shall survive the delivery of the Series 2019 Bonds.

## **SECTION 10. PARTIES IN INTEREST**

This Agreement has been and is made solely for the benefit of the Issuer and its officers, agents and employees, the Tenant, the Purchaser and their respective successors, and no other person, partnership, association or corporation shall acquire or have any right under or by virtue of this Agreement.

## **SECTION 11. NOTICES**

All communications hereunder shall be in writing, and if sent to the Issuer, the Tenant or the Purchaser shall be mailed or delivered and confirmed to the address shown below:

To the Tenant:

Blackhawk Apartment Homes II, LLC  
P.O. Box 464  
Spring Hill, Kansas 66083  
Attn: Grant W. Merritt

To the Purchaser:

Blackhawk Development, L.L.C.  
P.O. Box 464  
Spring Hill, Kansas 66083  
Attn: Grant W. Merritt

To the Issuer:

City of Spring Hill, Kansas  
Spring Hill City Hall  
401 N. Madison Street  
Spring Hill, Kansas 66083  
Attn: City Attorney

**SECTION 12. APPLICABLE LAW**

This Agreement shall be governed by the laws of the State of Kansas and may not be assigned by the Issuer, the Tenant or the Purchaser.

**SECTION 13. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall be one and the same instrument, and any parties hereto may execute this agreement by signing any such counterpart.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Issuer, the Tenant and the Purchaser have caused their authorized representatives to execute and deliver this Agreement as of the date appearing on the first page hereof.

**CITY OF SPRING HILL, KANSAS,**  
as Issuer

By \_\_\_\_\_  
Steven M. Ellis, Mayor

IN WITNESS WHEREOF, the Issuer, the Tenant and the Purchaser have caused their authorized representatives to execute and deliver this Agreement as of the date appearing on the first page hereof.

**TENANT:**

**BLACKHAWK APARTMENT HOMES II, LLC,**  
a Kansas limited liability company

By: \_\_\_\_\_  
Grant W. Merritt, Manager

IN WITNESS WHEREOF, the Issuer, the Tenant and the Purchaser have caused their authorized representatives to execute and deliver this Agreement as of the date appearing on the first page hereof.

**PURCHASER:**

**BLACKHAWK DEVELOPMENT, L.L.C.,**  
a Kansas limited liability company

By: \_\_\_\_\_  
Grant W. Merritt, Manager