

---

---

**TAX CERTIFICATE AND AGREEMENT**

By and Among

**DISTRICT OF COLUMBIA HOUSING FINANCE AGENCY,**  
as Issuer

**TRINITY PLAZA LLC,**  
as Borrower

and

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

---

**\$8,954,309**  
**District of Columbia Housing Finance Agency**  
**Multifamily Housing Mortgage Revenue Bonds**  
**(Trinity Plaza Project)**  
**Series 2013**

---

Dated as of October 11, 2013

---

---

## TAX CERTIFICATE AND AGREEMENT

The **DISTRICT OF COLUMBIA HOUSING FINANCE AGENCY** (the “**Issuer**”), a body corporate and an instrumentality of the District of Columbia, **U.S. BANK NATIONAL ASSOCIATION** (the “**Trustee**”), a national banking association duly authorized to exercise corporate trust powers in the District, as trustee, **TRINITY PLAZA LLC** (the “**Borrower**”), a District of Columbia limited liability company, hereby enter into this Tax Certificate and Agreement (together with the Exhibits attached hereto, the “**Tax Agreement**”) as of October 11, 2013 in connection with the issuance and delivery of the Issuer’s \$8,954,309 Multifamily Housing Mortgage Revenue Bonds (Trinity Plaza Project), Series 2013 (the “**Bonds**”).

### ARTICLE I PURPOSE

**Purpose of Tax Agreement.** The Issuer, the Borrower and the Trustee are delivering this Tax Agreement to Graves, Horton, Askew & Johns, LLC, Bond Counsel, with the understanding and acknowledgment that Bond Counsel will rely upon this Tax Agreement in rendering its opinion that interest on the Issue is excluded from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986, as amended (the “Code”).

### ARTICLE II DEFINITIONS AND REPRESENTATIONS

**Use of Defined Terms.** Unless the context or use indicates another meaning or intent, words and terms used in this Tax Agreement with initial capital letters shall have the meanings given below and in Exhibit A. Capitalized terms used herein and not defined herein shall have the meanings given to them where defined in the Indenture.

“**Indenture**” means the Trust Indenture dated as of October 1, 2013, by and between the Issuer and the Trustee, pursuant to which the Bonds are issued, as amended, modified, supplemented or restated from time to time.

“**Financing Agreement**” means (i) the Loan Agreement by and among the Issuer, the Trustee and the Borrower, dated as of October 1, 2013, pursuant to which the Proceeds of the Bonds will be made available to the Borrower.

“**Project**” means the residential rental housing facilities to be constructed and equipped, as identified in the Financing Agreement, which is a governmental purpose for purposes of the Code.

“**Project Fund**” means the Project Fund for the Bonds created under the Indenture.

“**Rebate Instructions**” means the Rebate Instructions, dated the date hereof, set forth in Exhibit A-1.

“**Regulatory Agreement**” mean the Tax Regulatory Agreement for the Project, dated as of October 1, 2013 and effective as of October 11, 2013 by and among the Issuer, the Borrower and the Trustee.

Reference in this Tax Agreement to a Section means a section of the Code. Reference in the Tax Agreement by number only (for example, “3.1”) means that numbered paragraph of this Tax Agreement. Reference to an Exhibit means an exhibit to this Tax Agreement.

ARTICLE III  
COVENANTS OF THE ISSUER AND THE BORROWER  
CONCERNING GENERAL (NON-ARBITRAGE) FEDERAL TAX MATTERS

**3.1. Tax Status and Eligibility for Financing.** The Borrower represents and warrants that it is a District of Columbia limited liability company authorized to do business in the District of Columbia and formed for the purpose of owning and operating the Project as a “qualified residential rental project” within the meaning of the Code.

**3.2. General Tax Covenants and Representations.**

(A) Compliance With Tax Requirements. The Issuer, to the extent within its authority and control, covenants that it will not knowingly take any action, or fail to take any action, and the Borrower covenants that it will not take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Issue under Section 103(a), provided, however, that notwithstanding the foregoing, the Issuer shall not be required to pay any amount as part of an investigation by or closing agreement with the Internal Revenue Service, except from moneys provided by or on behalf of the Borrower. The Issuer, to the extent within its authority and control, will not knowingly directly or indirectly, and the Borrower will not directly or indirectly, use or permit the use of any Proceeds or any other funds of the Issuer or the Borrower, or take or omit to take any action, that would cause the Issue to be or become “arbitrage bonds” within the meaning of Section 148(a) or to fail to meet any other applicable requirement of Sections 141, 142, 146, 147, 148, 149 and 150 (or their statutory predecessor) or cause the interest on the Issue, or any portion thereof to be includable in the gross income of the holders of the Issue for federal income tax purposes. To that end, the Issuer, as advised by Bond Counsel, and the Borrower will comply with all requirements of Sections 141, 142, 146, 147, 148, 149 and 150 (or their statutory predecessor) to the extent applicable to the Issue. In the event that at any time the Borrower is of the opinion that, for purposes of this 3.2, it is necessary to restrict or limit the yield on the investment of any money held by the Trustee or otherwise, the Borrower will so instruct the Trustee in writing.

The Issuer and the Borrower hereby covenant and agree that they will not enter into any arrangement, formal or informal, pursuant to which the Borrower (or any Related Party) will purchase the Issue or any of the Bonds in connection with the initial offering of the Issue.

(B) No Adverse Effect on Tax Exemption. The Borrower agrees that it will not take any action or omit to take any action, which action or omission would adversely affect the exclusion from gross income of the interest on the Issue for federal income tax purposes, and in the

event of such action or omission, it will, promptly upon having such brought to its attention, take such reasonable actions based upon an Opinion of Bond Counsel, and in all cases at the sole expense of the Borrower, as may rescind or otherwise negate such action or omission.

(C) Use of Proceeds. As set forth in Exhibit B, the Borrower shall use not less than 95% of the Net Proceeds to finance costs incurred in connection with the provision of property that is and will be used as a “qualified residential rental project” within the meaning of Section 142(d) of the Code. The Borrower shall use not more than 5% of the Net Proceeds for purposes or uses that do not satisfy the immediately preceding sentence. For purposes of this paragraph, any Issuance Costs of the Issue that are paid from Net Proceeds constitute uses of Net Proceeds for purposes or uses that do not satisfy the first sentence of this subparagraph (C).

(D) Issue Not Federally Guaranteed. The Issue is not Federally Guaranteed.

(E) Issuance Costs Limitation. The aggregate of the Issuance Costs paid or financed out of the Sale Proceeds will not exceed \$179,086.18, which is 2% of the Sale Proceeds.

(F) Prohibited Facilities. None of the Proceeds of the Issue will be used, directly or indirectly, to provide any airplane, skybox or other private luxury box, or health club facility, any facility primarily used for gambling or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(G) Internal Revenue Service Information Return. Within the time and on the form prescribed by the Internal Revenue Service under Section 149(e), the Issuer shall file with the Internal Revenue Service an Information Return setting forth the required information relating to the Issue. The information reported on that Information Return will be true, correct and complete to the best of the knowledge and belief of the Issuer, provided that such knowledge and belief may be based upon the advice of Bond Counsel and the representations of the Borrower. The Borrower shall prepare and submit, or cause to be submitted, true and complete amendments of, or supplements to, those statements if in an Opinion of Bond Counsel such amendments or supplements are deemed to be necessary or advisable.

(H) No Change in Use. No changes will be made in the Bond-Financed Facilities or in the use thereof that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Issue.

(I) Maturity. Exhibit B to this Tax Agreement sets forth the assets comprising the Bond-Financed Facilities, which are the only assets being financed with the Issue, and the Borrower’s computation of 120% of the weighted average of the reasonably expected economic lives of the assets comprising the Bond-Financed Facilities (48 years). The reasonably expected economic lives of the assets are based on the “asset depreciation range” midpoint lives, as set forth by the Internal Revenue Service, and, in the case of buildings, Revenue Procedure 62-21, and in all cases constitute the reasonable expectations of the Borrower based upon the particular assets, the circumstances of use and other factors that may impact the useful lives of the assets. The weighted average maturity of the Issue (\_\_\_\_\_ years) does not exceed 120% of the weighted average of the reasonably expected economic lives of the assets comprising the Bond-Financed Facilities.

(J) Not Hedge Bonds. The Issuer and the Borrower each represents that at least 85% of the Spendable Proceeds will be used to carry out the governmental purposes thereof within three years from the Issuance Date. The Issuer and the Borrower each represents that not more than 50%, if any, of the Proceeds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more (including but not limited to any investment contract or fixed yield investment having a maturity of four years or more). The reasonable expectations stated above are not based on and do not take into account (1) any expectations or assumptions as to the occurrence of changes in market interest rates or changes of federal tax law or regulations or rulings thereunder or (2) any prepayments of items other than items that are customarily prepaid.

(K) Applicable Elected Representative Approval. In accordance with the requirements of Section 147(f), the Issue was approved by the “applicable elected representative” of the Issuer on July 26, 2013, after a public hearing with respect to the issuance of the Issue held on July 8, 2013, following reasonable public notice thereof on June 20, 2013 in the *Washington Times*, all as set forth in the transcript of proceedings for the Issue.

(L) Volume Cap. An allocation of volume cap is required concerning the Issue under Section 146 of the Code. The Issuer represents that \$8,954,309 of the volume cap of the District of Columbia has been allocated to the Issue. This allocation is being made out of the carryforward volume cap allocations from 2010, which is shown on the Form 8328 (Carry Forward of Unused Election Private Activity Bond Volume Cap) filed for the Issuer. The Issuer has provided Bond Counsel with the certification by a District of Columbia official designated by District of Columbia law that the Issue satisfies Section 146 of the Code. The Issuer hereby elects to treat the entire amount of the Issue as being issued on the Issuance Date of the Issue for purposes of the Section 146 of the Code. The Issuer and the Borrower represent and covenant that all amounts available to be drawn down under the Bonds will be drawn down no later than December 31, 2016. To the best of the Issuer’s knowledge, such allocations have not been withdrawn, amended, revoked or suspended and remain in use full force and effect.

### **3.3. Qualified Residential Rental Project**

(A) Regulatory Agreement. All of the statements, representations and covenants of the Borrower set forth in the Regulatory Agreement are incorporated herein as if fully set forth in this Agreement.

(B) Low-Income Housing Tax Credits. Based upon the representations of the Borrower, the Issuer determines and finds that the amount of low-income housing tax credits projected to be allocated to the Project pursuant to Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the Project is located.

(C) Election. The Issuer hereby acknowledges that the Borrower has elected to comply with the income limit requirements set forth in Section 142(d)(1)(B) of the Code and has set aside a minimum of 40% of the units for occupancy by individuals whose median gross

income is 60% or less of the area median gross income (with adjustments for family size) for the term of the qualified project period (as defined in Section 142(d)).

(D) Eligible Costs. Notwithstanding anything contained in any of the documents executed in connection with the Issue to the contrary, all of the proceeds of the Issue shall, for federal income tax purposes, be (i) allocated on a pro rata basis to each building in the Project and the land on which such building is located and (ii) used exclusively to pay costs of construction of the Project that are includible in the aggregate basis of any building and the land on which the building is located (“Eligible Costs”) in a manner such that each building satisfies the requirements of Section 42(h)(4)(B) of the Code.

#### ARTICLE IV ARBITRAGE AND OTHER CERTIFICATIONS

**4.1. General.** The Issuer and the Borrower, by their respective officers signing this Tax Agreement, certify, represent, and covenant as set forth in this Article IV with respect to the Issue. All statements in this Article IV are of facts or, as to events to occur in the future, reasonable expectations as of the date of this Tax Agreement, which is the Issuance Date. In making the certifications, representations and covenants in this Article IV, the Issuer relies on the representations of the Borrower set forth in this Article IV relating to the Issue. To the best of the knowledge, information and belief of the undersigned, all expectations stated in this Article IV are the expectations of the Issuer and the Borrower, respectively, and are reasonable, all facts stated are materially true, and there are no other existing facts, estimates or circumstances that would or could materially change the statements made in this Article IV. The certifications and representations made in this Article IV are intended to be relied upon as certifications described in Treasury Regulations § 1.148-2(b). The Issuer and the Borrower acknowledge that any change in the facts or expectations from those set forth in this Article IV may result in different requirements or a change in status of the Issue or interest thereon under the Code, and that Bond Counsel is to be contacted if such changes are to occur or have occurred.

**4.2. Dates.** The Sale Date of the Issue is October 11, 2013, and the Issuance Date of the Issue is October 11, 2013. The Bonds will be draw-down bonds. The initial draw of the Bonds on the Issuance Date will be \$1,039,678, which is greater than the lesser of \$50,000 or 5% of the Issue Price of the Bonds. The latest maturity date of the Issue is October 1, 2050.

**4.3. Purpose of Issue.** The Issue is being issued to provide funds to pay costs of the Project by lending the Sale Proceeds of the Issue to the Borrower to be used to pay costs of the Project.

**4.4. Issue Price.** As set forth in part in the Bonds' Purchaser's Certificate attached hereto as Exhibit C, the Issue Price is \$8,954,309, computed as follows:

Par amount of Issue	\$8,954,309.00
Original issue premium or (discount)	(0.00)
Pre-Issuance Accrued Interest	<u>(0.00)</u>
Issue Price	\$8,954,309.00

**4.5. Sale Proceeds, Net Proceeds and Net Sale Proceeds.** The Sale Proceeds, Net Proceeds and Net Sale Proceeds are as follows:

Issue Price	\$8,954,309.00
Less: Pre-Issuance Accrued Interest	<u>(0.00)</u>
Sale Proceeds	\$8,954,309.00
Less: Deposit to Debt Service Reserve Fund	<u>(.00)</u>
Net Proceeds	\$8,954,309.00
Less: Minor Portion	<u>( 100,000.00)</u>
Net Sale Proceeds	\$8,854,309.00

**4.6. Disposition of Sale Proceeds.** The Sale Proceeds will be deposited as follows:

To pay costs of the Project	\$8,954,309.00
To deposit in the Debt Service Reserve Fund	0.00
To pay costs of issuance	0.00
To pay other bad costs	<u>0.00</u>
Total Sale Proceeds	\$8,954,309.00

**4.7. Higher Yielding Investments.** Gross Proceeds will not be invested in Higher Yielding Investments except for (A) the Minor Portion, and (B) those Gross Proceeds identified in Sections 4.8, 4.9 and 4.10, but only during the applicable Temporary Periods there described for those Gross Proceeds.

**4.8. Single Issue.** All of the obligations of the Issue were sold on the applicable Sale Date pursuant to the same plan of financing and the Debt Service for which is expected to be paid from substantially the same source of funds. Accordingly, all of the obligations of the Issue constitute a single "issue" for federal income tax purposes. No obligations, other than those comprising the Issue, have been or will be sold less than 15 days before or after the Sale Date and that the Debt Service for which is expected to be paid from substantially the same source of funds as the Issue (i.e., revenues of the Project). Whether Debt Service for obligations are expected to be paid from substantially the same source of funds is determined without regard to guarantees from a person who is not a Related Party to the Issuer. Accordingly, no obligations other than those comprising the Issue are a part of a single issue with the Issue.

#### **4.9. Use of Net Sale Proceeds; Temporary Periods.**

(A) Pre-Issuance Accrued Interest. No amount has been received as Pre-Issuance Accrued Interest.

(B) Issuance Costs and Other Bad Costs. \$-0- of the Sale Proceeds of the Issue will be used to pay Issuance Costs. \$-0- of the Sale Proceeds of the Issue will be used to pay other “bad” costs.

(C) Payment of Costs of the Project. The Sale Proceeds are expected to be used to pay a portion of the costs of the Project as set forth in Exhibit B. Such Sale Proceeds may be used to acquire or hold Higher Yielding Investments with respect to the Issue for a period ending on the third anniversary of the Issuance Date (such period being the Temporary Period for such amount), since the following three tests are reasonably expected to be satisfied:

(a) at least 85% of the Net Sale Proceeds will be allocated to expenditures on the Project allocable to the Issue by the end of the Temporary Period for such Net Sale Proceeds;

(b) within six months of the Issuance Date, the Borrower will incur a substantial binding obligation to a third party to expend at least 5% of the Net Sale Proceeds on the Project; and

(c) completion of the Project and the allocation of the Net Sale Proceeds to expenditures thereon with respect to the Project will proceed with due diligence.

Any Sale Proceeds that remain unspent on the third anniversary of the Issuance Date, which is the expiration date of the Temporary Period for such Proceeds, shall not be invested in Higher Yielding Investments with respect to the Issue after that date except as part of the Minor Portion. In complying with the foregoing sentence, “yield reduction payments” (within the meaning of Treasury Regulations §1.148-5(c)) paid to the United States may be taken into account.

**4.10. Use of Investment Proceeds; Temporary Periods.** Any Investment Proceeds will be used to pay costs of the Project, and such Investment Proceeds may be invested in Higher Yielding Investments during the Temporary Period identified in 4.8(C) or, if longer, one year from the date of receipt, such period being the Temporary Period for such Proceeds.

**4.11. Bona Fide Debt Service Fund.** Amounts deposited from time to time in any Bona Fide Debt Service Fund will be used to pay Debt Service within 13 months after the amounts are so deposited, such period being the Temporary Period for such amounts.

**4.12. Debt Service Reserve Fund.** Sale Proceeds in the amount of \$0.00 will be deposited in the Debt Service Reserve Fund. The amount of Sale Proceeds deposited in the Debt Service Reserve Fund does not exceed 10% of the stated principal amount of the Issue (\$895,430.90) (this limit being applicable because the net original issue discount in the Issue does not exceed the 2% of the stated redemption price at maturity of the Issue). At no time will the aggregate amounts held in the Debt Service Reserve Fund that are invested in Higher Yielding



Investments exceed the least of (i) 10% of the stated principal amount of the Issue (\$8,954,309), (ii) the maximum annual Debt Service for the Issue (\$\_\_\_\_\_), and (iii) 125% of the average annual Debt Service for the Issue (\$\_\_\_\_\_). The establishment and funding of the Debt Service Reserve Fund was a vital and necessary factor in marketing the Issue to the Bond Purchaser.

**4.13. No Other Replacement Fund or Assured Available Funds.** The Issuer has not established and does not expect to establish or use any sinking fund, debt service fund, redemption fund, reserve or replacement fund, or similar fund, or any other fund to pay Debt Service for the Issue other than the Capitalized Interest Account of the Project Fund, the Debt Service Reserve Fund, and the Revenue Fund. No other money or Investment Property is or will be pledged as collateral for the payment of Debt Service (or for the reimbursement of any others who may provide money to pay that Debt Service) for the Issue, or is or will be restricted, dedicated, encumbered, or set aside in any way as to afford the holders of the Issue reasonable assurance of the availability of such money or Investment Property to pay Debt Service for the Issue. No portion of the amounts in the Loan Account, the Costs of Issuance Account and the Capitalized Interest Account of the Project Fund, and the Revenue Fund may be used to acquire or hold Higher Yielding Investments except during any applicable Temporary Period.

**4.14. No Overissuance.** The Proceeds are not reasonably expected to exceed the amount needed for the governmental purposes of the Issue.

**4.15. Other Uses of Proceeds Negated.** Except as stated otherwise in this Article IV, none of the Proceeds will be used:

(A) to pay principal of or interest on, refund, renew, roll over, retire, or replace any other obligations issued by or on behalf of the Issuer or any other Governmental Unit,

(B) to replace any Proceeds of another issue that were not expended on the project for which such other issue was issued,

(C) to replace any money that was or will be used directly or indirectly to acquire Higher Yielding Investments,

(D) to make a loan to any person or other Governmental Unit,

(E) to pay any Working Capital Expenditure other than expenditures identified in Treasury Regulations §1.148-6(d)(3)(ii)(A) and (B) (i.e., Issuance Costs, Qualified Administrative Costs, reasonable charges for a Qualified Guarantee or for a Qualified Hedge), payments of the Rebate Amount, and costs, other than those already described, that do not exceed 5% of the Sale Proceeds and that are directly related to Capital Expenditures financed or deemed financed by the Issue, principal of or interest on an issue paid from unexpected excess Sale Proceeds or Investment Proceeds, and principal of or interest on an issue paid from investment earnings on a reserve or replacement fund that are deposited in a Bona Fide Debt Service Fund), or

(F) to reimburse any expenditures made prior to the Issuance Date except those that qualify as a Reimbursement Allocation, Preliminary Expenditures or are permitted to be reimbursed under Treasury Regulation §1.150-2. No portion of the Proceeds will be used, directly or indirectly, to repay a loan incurred by the Borrower.

No portion of the Issue is being issued solely for the purpose of investing Proceeds in Higher Yielding Investments.

**4.16. Disposition of Bond-Financed Facilities; Purchase of Issue.** There is no intention to sell or otherwise dispose of the Bond-Financed Facilities or any portion thereof during the term of the Issue except for dispositions of property in the normal course at the end of such property's useful life to the Borrower. Neither the Issuer nor the Borrower intends to purchase, directly or indirectly, any portion of the Issue in a transaction or series of transactions that would reduce the Yield.

**4.17. Minor Portion.** The Minor Portion with respect to the Issue is \$100,000.00. Such Minor Portion may be invested in Higher Yielding Investments.

**4.18. No Other Replacement Proceeds.** That portion of the Issue that is to be used to finance Capital Expenditures has a weighted average maturity that does not exceed 120% of the weighted average reasonably expected economic life of such Capital Expenditures.

**4.19. Obligation Regarding Rebate.** Pursuant to the provisions of the Financing Agreement, the Issuer has authorized, or will authorize, the Borrower to prepare and file Internal Revenue Service Form 8038-T and any other form necessary in connection with the Issuer's rebate obligations. The Trustee shall furnish information to and the Borrower shall engage (at the expense of the Borrower) an independent certified public accounting firm, law firm or other firm with experience in preparing rebate reports, which firm is acceptable to the Trustee, to calculate, within 30 days after the end of the fifth Bond Year and every fifth Bond Year thereafter and within 30 days after the retirement of the Issue, the Rebate Amount, if any, as of the end of that Bond Year or the date of such retirement. The Borrower shall immediately notify the Trustee of the Rebate Amount and shall deliver copies of the calculation thereof to the Trustee. The Trustee shall notify the Borrower in writing of the amount, if any, then on deposit in the Rebate Fund (including the value of any Eligible Investments held for the credit of the Rebate Fund based on a valuation made by the Trustee as of the end of such Bond Year). If the amount then on deposit in the Rebate Fund is in excess of the Rebate Amount, the Trustee shall forthwith pay that excess amount to the Borrower. If the amount then on deposit in the Rebate Fund is less than the Rebate Amount, the Borrower shall, within five days after receipt of the aforesaid notice from the Trustee, pay to the Trustee for deposit in the Rebate Fund an amount sufficient to cause such account to contain an amount equal to the Rebate Amount.

Within 60 days after each Computation Date, the Borrower shall pay to the United States, in accordance with Section 148(f), from the money then on deposit in the Rebate Fund, an amount equal to 90% (or such greater percentage not in excess of 100% as the Borrower directs the Trustee to pay) of the Rebate Amount as of such Computation Date. Within 60 days after the final Computation Date, the Borrower shall pay to the United States, in accordance with Section 148(f), from the money then on deposit in the Rebate Fund, an amount equal to 100% of the Rebate Amount as of such Computation Date and any money remaining in the Rebate Fund following such payment shall be paid to the Borrower.

The Trustee shall keep copies of the calculations made pursuant to this 4.19 and provided to the Trustee. The Trustee shall be entitled to rely on the calculations made pursuant to

this 4.19 and shall not be responsible for any loss or damage resulting from any action taken or omitted to be taken in reliance upon those calculations.

Notwithstanding anything herein to the contrary, the Borrower may cause the amount to be rebated to the United States, in accordance with Section 148(f), to be calculated under a different method or at different times and may make such rebate payments at different times, provided that the Borrower and the Trustee shall have received a written Opinion of Bond Counsel that using such method or timing of those calculations and making payments at such times will not adversely affect the exclusion of interest on the Issue from gross income for federal income tax purposes. The Borrower shall promptly notify the Issuer and the Trustee in writing of its use of such other method of calculation or making payment at such other time.

The Borrower agrees to pay all of the reasonable fees and expenses of its counsel, Bond Counsel, a certified public accountant and any other necessary consultant employed by the Borrower, the Trustee or the Issuer in connection with any of the requirements imposed by the Financing Agreement.

**4.20. No Avoidance of Rebate Amount.** No amounts that are required to be paid to the United States will be used to make any payment to a party other than the United States through a transaction or a series of transactions that reduces the amount earned on any Investment Property or that results in a smaller profit or a larger loss on any Investment Property than would have resulted in an arm's-length transaction in which the Yield on the Issue was not relevant to either party to the transaction.

**4.21. Rebate Exceptions.** Notwithstanding the foregoing, the computations and payments of amounts to the United States referred to in 4.19 need not be made to the extent that the Issuer will not thereby fail to comply with any requirements of Section 148(f) and the Rebate Instructions based on an Opinion of Bond Counsel, as described below in 5.1.

**4.22. Yield to Issuer on the Financing Agreement.**

(A) Except for an Issuer's Fee in an annual amount equal to the greater of (i) \$5,000 or (ii) 0.40% of the Bonds Outstanding that the Borrower is required to pay the Issuer pursuant to the Indenture, the Issuer's Bond Application Fee, and the Issuer's Financing Fee (collectively, the "Issuer's Program Fee"), the payments to be paid by the Borrower to the Issuer under the Financing Agreement will be in the same amounts as Debt Service on the Issue and will be held, together with any earnings thereon, by the Trustee in the Revenue Fund for the account of the Issuer until applied toward payment of Debt Service on the Issue. Based on the representations in the Bonds' Purchaser's Certificate attached hereto as Exhibit C, the Yield to the Issuer on the Financing Agreement, taking into account the Issuer's Program Fee and any allowable qualified administrative costs under Treasury Regulation §1.148-5(e)(3), will not exceed the Yield on the Issue by more than one and one-half percentage points (1.5%).

(B) The issuance of the Issue, the execution and delivery of the Financing Agreement and the execution and delivery of the Indenture are part of an Issuer program in which:

(i) The program involves the origination or acquisition of purpose investments (within the meaning of Treasury Regulation §1.148-1(b));

(ii) At least 95% of cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or political subdivisions, Tax-Exempt Organizations, persons who provide housing and related facilities, or any combination of the foregoing;

(iii) At least 95% of all of the amounts received by the Issuer from purpose investments under the program will be used for one or more of the following purposes: (a) to pay the principal, interest or redemption prices on issues that financed the program; (b) to pay or reimburse administrative costs of those issues or of the program; (c) to pay or reimburse anticipated future losses directly related to the program; (d) to finance additional purpose investments for the same general purposes of the program; or (e) to redeem and retire Issuer obligations at the next earliest possible date of redemption;

(iv) The program documents prohibit any obligor on a purpose investment financed by the program or any related party to that obligor from purchasing bonds of an issue that finance the program in an amount related to the amount of the purpose investment acquired from that obligor; and

(v) The Issuer has not waived the right to treat the investment as a program investment.

#### **4.23. [RESERVED].**

**4.24. Hedge Contracts.** Neither the Issuer nor the Borrower has entered into, or reasonably expects to enter into, any Hedge with respect to the Issue, or any portion thereof. The Issuer and the Borrower each acknowledges that entering into a Hedge with respect to the Issue, or any portion thereof, may change the Yield and that Bond Counsel should be contacted prior to entering into any Hedge with respect to the Issue in order to determine whether payments/receipts pursuant to the Hedge are to be taken into account in computing the Yield on the Issue.

## ARTICLE V MISCELLANEOUS

**5.1. Bond Counsel's Opinion.** Notwithstanding any provision of this Tax Agreement, if the Borrower provides to the Issuer a Bond Counsel's Opinion to the effect that any action required under this Tax Agreement is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of interest on the Issue pursuant to Section 103(a), the Issuer, the Borrower and the Trustee may rely conclusively on such opinion in complying with the provisions hereof, and the covenants hereunder will be deemed to be modified to that extent.

**5.2. Tax Covenants Survive Termination.** All covenants and obligations of the Issuer and the Borrower as specifically contained in this Tax Agreement as to either the Issuer or the Borrower will remain in effect and be binding upon the Issuer and the Borrower, respectively, to the extent specifically applicable as long as the Issue remains outstanding, notwithstanding any earlier termination of this Tax Agreement or any provision for payment of principal of and premium, if any, and interest on the Issue.

**5.3 Compliance Policy and Procedures.** The Issuer has covenanted that it will comply with the requirements of the Code and the Regulations necessary to establish and maintain the federal tax status of the Bonds as Tax Exempt Obligations. The Issuer has, therefore, established and adopted appropriate written procedures to comply with and monitor continued compliance with those requirements as described in this Tax Agreement. The Executive Director of the Issuer, currently Harry D. Sewell, has been charged with oversight of all matters certified to in this Tax Agreement, the remedial provisions under the Code and the Regulations applicable to the nonqualified portion of the Bonds and the arbitrage yield restriction and rebate requirements of Section 148 of the Code, including (without ensuring) proper expenditure of the Proceeds of the Bonds, the proper use of the Project and the proper maintenance of all relevant records. In connection with the foregoing, the Issuer has caused the Borrower to adopt its own compliance policy and procedures (the “Borrower Tax Exempt Bond Compliance Policy and Procedures”) to help the Borrower with its responsibility to monitor compliance with federal tax law requirements applicable to the Bonds and the Tax Agreement. Borrower’s Borrower Tax Exempt Bond Compliance Policy and Procedures is attached hereto as Exhibit D. The Borrower covenants and warrants that it will comply with the provisions of its Borrower Tax Exempt Bond Compliance Policy and Procedures.

[Balance of page intentionally left blank]

IN WITNESS WHEREOF, the Issuer, the Borrower and the Trustee have caused this Tax Agreement to be duly signed in their respective names by their duly authorized officers as of the date first above written.

**DISTRICT OF COLUMBIA HOUSING FINANCE  
AGENCY**

By: \_\_\_\_\_  
Harry D. Sewell  
Executive Director & CEO

**TRINITY PLAZA LLC,**  
a District of Columbia limited liability company  
By: Trinity Plaza Manager LLC,  
a District of Columbia limited liability company  
Its: Managing Member

By: \_\_\_\_\_  
Sarah Constant, Manager

**U.S. BANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
M. Dorsel Robinson  
Senior Vice President

## **LIST OF EXHIBITS**

Exhibit A – Definitions to Tax Certificate and Agreement

Exhibit A-1 – Rebate Instructions

Exhibit B – Useful Life Chart and Sources & Uses of Funds

Exhibit C – Bond Purchaser’s Certificate

Exhibit D - Compliance Policy and Procedures

## EXHIBIT A

### Definitions

The following terms, as used in Attachment A and in the Tax Certificate and Agreement to which it is attached and in the other Attachments to the Tax Certificate and Agreement, have the following meanings unless therein otherwise defined or unless a different meaning is indicated by the context in which the term is used. Capitalized terms used within these definitions that are not defined in Attachment A have the meanings ascribed to them in the Tax Certificate and Agreement to which this Attachment A is attached. The word “Issue,” in lower case, refers either to the Issue or to another issue of obligations or portion thereof treated as a separate issue for the applicable purposes of Section 148, as the context requires. The word “obligation” or “obligations,” in lower case, includes any obligation, whether in the form of bonds, notes, certificates, or any other obligation that is a “bond” within the meaning of Section 150(a)(1). All capitalized terms used in this Certificate include either the singular or the plural. All terms used in this Attachment A or in the Tax Certificate and Agreement to which this Attachment A is attached, including terms specifically defined, shall be interpreted in a manner consistent with Sections 103 and 141 to 150 and the applicable Regulations thereunder except as otherwise specified. All references to Section, unless otherwise noted, refer to the Code.

**“Advance Refunding Issue”** means any Refunding Issue that is not a Current Refunding Issue.

**“Advance Refunding Portion”** means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as an Advance Refunding Issue if it had been issued as a separate issue.

**“Available Construction Proceeds”** means an amount equal to (a) the sum of (i) the Issue Price of an issue, (ii) Investment Proceeds on that Issue Price, (iii) earnings on any reasonably required reserve or replacement fund allocable to the issue not funded from the Issue Price, and (iv) Investment Proceeds and earnings on (ii) and (iii), (b) reduced by the portions, if any, of the Issue Price of the issue (i) attributable to Pre Issuance Accrued Interest and earnings thereon, (ii) allocable to the underwriter’s discount, (iii) used to pay other Issuance Costs of the issue, and (iv) deposited in a reasonably required reserve or replacement fund allocable to the issue. “Available Construction Proceeds” does not include Investment Proceeds or earnings on a reasonably required reserve or replacement fund allocable to the issue for any period after the earlier of (a) the close of the two year period that begins on the Issuance Date or (b) the date the construction of the project financed by the issue is substantially completed, provided, however, that such Investment Proceeds or earnings shall be excluded from “Available Construction Proceeds” if the Issuer has timely elected such exclusion. If an issue is a Multipurpose Issue that includes a New Money Portion that is a Construction Issue, this definition shall be applied by substituting “New Money Portion” for “issue” each place the latter term appears. If an issue or the New Money Portion of a Multipurpose Issue, as applicable, is not a Construction Issue, and the Issuer makes the bifurcation election under Regulations §1.148-7(j)(1) and Section 148(f)(4)(C)(v) to treat the issue or the New Money Portion as two separate issues consisting of the Construction Portion and the Nonconstruction Portion, this definition shall be applied by substituting “Construction Portion” for “issue” each place the latter term appears.



**“Bifurcated Issue”** means a New Money Issue or the New Money Portion of a Multipurpose Issue that the Issuer, pursuant to Section 148(f)(4)(C)(v) and Regulations §1.148-7(j), has elected in its Tax Certificate and Agreement to bifurcate into a Construction Portion, which finances 100% of the Construction Expenditures, and a Nonconstruction Portion.

**“Bona Fide Debt Service Fund”** means a fund, including a portion of or an account in that fund (or in the case of a fund established for two or more issues, the portion of that fund properly allocable to an issue), or a combination of such funds, accounts or portions that is used primarily to achieve a proper matching of revenues with Debt Service on an issue within each Bond Year and that is depleted at least once each year except for a reasonable carryover amount not to exceed the greater of the earnings thereon for the immediately preceding Bond Year or one twelfth of the annual Debt Service on the issue for the immediately preceding Bond Year.

**“Bond Counsel’s Opinion”** or **“Opinion of Bond Counsel”** means an opinion or opinions of a nationally recognized bond counsel firm whose opinion is given with respect to the Issue when issued, or its successors or other nationally recognized bond counsel appointed by the Issuer.

**“Bond Year”** means the annual period relevant to the application of Section 148(f) to an issue, except that the first and last Bond Years may be less than 12 months long. The last day of a Bond Year shall be the close of business on the day preceding the anniversary of the Issuance Date of an issue unless the Issuer selects another date on which to end a Bond Year in the manner permitted by the Code.

**“Bond-Financed Facilities”** means the assets financed with the Net Proceeds of the Issue.

**“Capital Expenditures”** means costs of a type that are properly chargeable to a capital account (or would be so chargeable with a proper election) under general federal income tax principles, including capitalized interest computed taking into account the Placed in Service date.

**“Code”** means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

**“Commingled Fund”** means any fund or account of the Issuer that contains both Gross Proceeds of an issue and amounts in excess of \$25,000 that are not Gross Proceeds of the issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account.

**“Commingled Investment Proceeds”** means Investment Proceeds of an issue (other than Investment Proceeds held in a Refunding Escrow) that are deposited in a Commingled Fund with substantial tax or other revenues from governmental operations of the Issuer and that are

reasonably expected to be spent for governmental purposes within six months from the date of deposit in the Commingled Fund, using any reasonable accounting assumptions.

**“Computational Base”** means the amount of Gross Proceeds the Issuer or Conduit Borrower reasonably expects, as of the date a Guaranteed Investment Contract is required, to be deposited in that Guaranteed Investment Contract over its term.

**“Computation Date”** means each date on which the Rebate Amount for an issue is required to be computed under Regulations §1.148-3(e). In the case of a Fixed Yield Issue, the first Computation Date shall not be later than five years after the Issuance Date of the issue. Subsequent Computation Dates shall be not later than five years after the immediately preceding Computation Date for which an installment payment of the Rebate Amount was paid. In the case of a Variable Yield Issue, the first Computation Date shall be the last day of any Bond Year irrevocably selected by the Issuer ending on or before the fifth anniversary of the Issuance Date of such issue and subsequent Computation Dates shall be the last day of each Bond Year thereafter or each fifth Bond Year thereafter, whichever is irrevocably selected by the Issuer after the first date on which any portion of the Rebate Amount is required to be paid to the United States. The final Computation Date is the date an issue is retired.

**“Conduit Borrower”** means the obligor on a purpose investment.

**“Conduit Financing Issue”** means an issue the Proceeds of which are reasonably expected to be used to finance one or more Conduit Loans.

**“Conduit Loan”** means a purpose investment acquired by the Issuer with Proceeds of a Conduit Financing Issue, thereby effecting a loan to the Conduit Borrower.

**“Construction Expenditures”** means Capital Expenditures allocable to the cost of real property (including the construction or making of improvements to real property, but excluding acquisitions of interests in land or other existing real property) or constructed personal property within the meaning of Regulations §1.148-7(g).

**“Construction Issue”** means an issue at least 75% of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property that is, or upon completion will be, owned by a Governmental Unit or a 501(c)(3) Organization. If an issue is a Multipurpose Issue that includes a New Money Portion, this definition shall be applied by substituting “New Money Portion” for “Construction Issue” each place the latter term appears. If an election under Section 148(f)(4)(C)(v) and Regulations §1.148-7(j) is made to bifurcate an issue or the New Money Portion of a Multipurpose Issue, this definition shall be applied by substituting “Construction Portion” for “Construction Issue” each place the latter term appears.

**“Construction Portion”** means that portion of an issue or the New Money Portion of a Multipurpose Issue at least 75% of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property that is, or upon completion will be, owned by a Governmental Unit or a 501(c)(3) Organization and that finances 100% of the Construction Expenditures.

**“Controlled Group”** means a group of entities controlled directly or indirectly by the same entity or group of entities within the meaning of Regulations §1.150-1(e).

**“Current Refunding Issue”** means a Refunding Issue that is issued not more than 90 days before the last expenditure of any Proceeds of the Refunding Issue for the payment of Debt Service on the Refunded Bonds.

**“Current Refunding Portion”** means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as a Current Refunding Issue if it had been issued as a separate issue.

**“Debt Service”** means principal of and interest and any redemption premium on an issue.

**“Excess Gross Proceeds”** means all Gross Proceeds of an Advance Refunding Issue that exceed an amount equal to 1% of the Sale Proceeds of such Advance Refunding Issue, other than Gross Proceeds allocable to: (a) payment of Debt Service on the Refunded Bonds; (b) payment of Pre Issuance Accrued Interest on the Advance Refunding Issue and interest on the Advance Refunding Issue that accrues for a period up to the completion date of any capital project financed by the Prior Issue, plus one year; (c) a reasonably required reserve or replacement fund for the Advance Refunding Issue or Investment Proceeds of such fund; (d) payment of Issuance Costs of the Advance Refunding Issue; (e) payment of administrative costs allocable to repaying the Refunded Bonds, carrying and repaying the Advance Refunding Issue, or investments of the Advance Refunding Issue; (f) Transferred Proceeds allocable to expenditures for the governmental purpose of the Prior Issue (treating for this purpose all unspent Proceeds of the Prior Issue properly allocable to the Refunded Bonds as of the Issuance Date of the Advance Refunding Issue as Transferred Proceeds); (g) interest on purpose investments; (h) Replacement Proceeds in a sinking fund for the Advance Refunding Issue; and (i) fees for a Qualified Guarantee for the Advance Refunding Issue or the Prior Issue. If an issue is a Multipurpose Issue that includes an Advance Refunding Portion, this definition shall be applied by substituting “Advance Refunding Portion” for “Advance Refunding Issue” each place the latter term appears.

**“Federally Guaranteed”** means that (a) the payment of Debt Service on an issue, or the payment of principal or interest with respect to any loans made from the Proceeds of the issue, is directly or indirectly guaranteed in whole or in part by the United States or by an agency or instrumentality of the United States, within the meaning of Section 149(b), or (b) more than 5% of the Proceeds of an issue will be invested directly or indirectly in federally insured deposits or accounts. The preceding sentence does not apply to (a) Proceeds invested during an initial Temporary Period until such Proceeds are needed to pay costs of the project, (b) investments of a Bona Fide Debt Service Fund, (c) direct purchases from the United States of obligations issued by the United States Treasury, or (d) other investments permitted by Section 149(b) or Regulations §1.149(b)-1(b).

**“501(c)(3) Organization”** means an organization described in Section 501(c)(3) and exempt from tax under Section 501(a).

**“Fixed Yield Issue”** means an issue of obligations the Yield on which is fixed and determinable on the Issuance Date.

**“Future Value”** means the value of a Payment or Receipt at the end of a period determined using the economic accrual method as the value of that Payment or Receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the Yield on the applicable issue, using the same compounding interval and financial conventions that were used to compute that Yield.

**“Guaranteed Investment Contract”** means any Nonpurpose Investment that has specifically negotiated withdrawal or retirement provisions and a specifically negotiated interest rate and any agreement to supply investments on two or more future dates (e.g., a forward supply contract).

**“Governmental Unit”** means a state, territory or possession of the United States, the District of Columbia, or any political subdivision thereof referred to as a “State or local governmental unit” in Regulations §1.103-1(a). “Governmental Unit” does not include the United States or any agency or instrumentality of the United States.

**“Gross Proceeds”** means Proceeds and Replacement Proceeds of an issue.

**“Hedge”** means a contract entered into by the Issuer or the Conduit Borrower primarily to modify the Issuer’s or the Conduit Borrower’s risk of interest rate changes with respect to an obligation (e.g., an interest rate swap, an interest rate cap, a futures contract, a forward contract or an option).

**“Higher Yielding Investments”** means any Investment Property that produces a Yield that (a) in the case of Investment Property allocable to Replacement Proceeds of an issue and Investment Property in a Refunding Escrow, is more than one thousandth of one percentage point (.00001) higher than the Yield on the applicable issue, and (b) for all other purposes is more than one eighth of one percentage point (.00125) higher than the Yield on the issue.

**“Investment Proceeds”** means any amounts actually or constructively received from investing Proceeds of an issue in Investment Property.

**“Investment Property”** means investment property within the meaning of Sections 148(b)(2) and 148(b)(3), including any security (within the meaning of Section 165(g)(2)(A) or (B)), any obligation, any annuity contract and any other investment type property (including certain residential rental property for family units as described in Section 148(b)(2)(E) in the case of any bond other than a Private Activity Bond). Investment Property includes a Tax Exempt Obligation that is a “specified private activity bond” as defined in Section 57(a)(5)(C), but does not include other Tax Exempt Obligations.

**“Issuance Costs”** means costs to the extent incurred in connection with, and allocable to, the issuance of an issue, and includes underwriter’s compensation withheld from the Issue Price, counsel fees, financial advisory fees, rating agency fees, trustee fees, paying agent fees, bond registrar, certification and authentication fees, accounting fees, printing costs for bonds and offering documents, public approval process costs, engineering and feasibility study costs,

guarantee fees other than for a Qualified Guarantee and similar costs, but does not include fees charged by the Issuer.

**“Issuance Date”** means the date of physical delivery of an issue by the Issuer in exchange for the purchase price of the issue.

**“Issue Price”** means in the circumstances applicable to an issue:

(1) Public Offering. In the case of obligations actually offered to the general public in a bona fide public offering at the initial offering price for each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Certificate and Agreement of the Issuer, the aggregate of the initial offering price for each maturity (including any Pre-Issuance Accrued Interest and taking into account any original issue premium and original issue discount), which price is not more than the fair market value thereof as of the Sale Date, and at which initial offering price not less than 10% of the principal amount of each maturity, as of the Sale Date, was sold or reasonably expected to be sold (other than to bond houses, brokers or other intermediaries). In the case of publicly offered obligations that are not described in the preceding sentence, Issue Price means the aggregate of the initial offering price to the public of each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Certificate and Agreement of the Issuer, at which initial offering price not less than 10% of the principal amount of each maturity was sold to the public. Notwithstanding the foregoing, in no event shall the Issue Price of an issue exceed the fair market value of the issue as of the Sale Date thereof.

(2) Private Placement. In the case of obligations sold by private placement, the aggregate of the prices (including any Pre-Issuance Accrued Interest and original issue premium, but excluding any original issue discount) paid to the Issuer by the first purchaser(s) (other than bond houses, brokers or other intermediaries). Notwithstanding the foregoing, in no event shall the Issue Price of an issue exceed the fair market value of the issue as of the Sale Date thereof.

**“Minor Portion”** means an amount equal to the lesser of \$100,000 or 5% of the Sale Proceeds of an issue.

**“Multipurpose Issue”** means an issue the bonds of which are allocable to two or more separate governmental purposes within the meaning of Regulations §1.148-9(h).

**“Net Proceeds”** means the Sale Proceeds of an issue less the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue.

**“Net Sale Proceeds”** means the Sale Proceeds of an issue less (a) the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue and (b) the portion invested as a part of a Minor Portion for the issue.

**“New Money Issue”** means an issue that is not a Refunding Issue.

**“New Money Portion”** means that portion of a Multipurpose Issue other than the Refunding Portion.

**“Nonconstruction Portion”** means that portion of a New Money Issue or of the New Money Portion other than the Construction Portion.

**“Nonpurpose Investments”** means any Investment Property that is acquired with Gross Proceeds as an investment and not in carrying out any governmental purpose of an issue. “Nonpurpose Investments” does not include any investment that is not regarded as “investment property” or a “nonpurpose investment” for the particular purposes of Section 148 (such as certain investments in U.S. Treasury obligations in the State and Local Government Series and certain temporary investments), but does include any other investment that is a “nonpurpose investment” within the applicable meaning of Section 148.

**“Payment”** means payments actually or constructively made to acquire Nonpurpose Investments, as specified in Regulations §1.148-3(d)(1)(i) through (v).

**“Placed in Service”** means the date on which, based on all the facts and circumstances, a facility has reached a degree of completion that would permit its operation at substantially its design level and the facility is, in fact, in operation at such level.

**“Pre Issuance Accrued Interest”** means interest on an obligation that accrued for a period not greater than one year before its Issuance Date and that will be paid within one year after such Issuance Date.

**“Preliminary Expenditures”** means any Capital Expenditures that are “preliminary expenditures” within the meaning of Regulations §1.150-2(f)(2), i.e., architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project other than land acquisition, site preparation, and similar costs incident to commencement of construction. The aggregate amount of Preliminary Expenditures may not exceed 20% of the aggregate Issue Price of the issue or issues that financed or are reasonably expected to finance the project for which such Preliminary Expenditures are or were incurred.

**“Prior Issue”** means an issue of obligations all or a portion of the Debt Service on which is paid or provided for with Proceeds of a Refunding Issue. The Prior Issue may be a Refunding Issue.

**“Private Activity Bond”** means (a) obligations of an issue more than 10% of the Proceeds of which, directly or indirectly, are or are to be used for a Private Business Use and more than 10% of the Debt Service on which, directly or indirectly, is or is to be paid from or secured by payments with respect to property, or secured by property, used for a Private Business Use, or (b) obligations of an issue, the Proceeds of which are or are to be used to make or finance loans to any Private Person that, in the aggregate, exceed the lesser of 5% of such Proceeds or \$5,000,000. In the event of Unrelated or Disproportionate Use, the tests in (a) shall be applied by substituting 5% for 10% each place the latter term is used.

**“Private Business Use”** means use (directly or indirectly) in a trade or business carried on by any Private Person other than use as a member of, and on the same basis as, the general public. Any activity carried on by a Private Person (other than a natural person) shall be treated as a trade or business. In the case of a Qualified 501(c)(3) Bond, Private Business Use excludes use by a 501(c)(3) Organization that is not an unrelated trade or business activity by such 501(c)(3) Organization within the meaning of Section 513(a).

**“Private Person”** means any natural person or any artificial person, including a corporation, limited liability company, partnership, trust or other entity, other than a Governmental Unit. “Private Person” includes the United States and any agency or instrumentality of the United States.

**“Private Security or Payments”** means (i) any interest in property used or to be used for a Private Business Use, or in payments in respect of such property, that directly or indirectly secures any payment of principal of, or interest on, an issue, or (ii) payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a Private Business Use from which payments of principal of, or interest on, an issue are directly or indirectly derived, all as determined and measured in accordance with Treasury Regulations Section 1.141-4.

**“Proceeds”** means any Sale Proceeds, Investment Proceeds, and Transferred Proceeds of an issue. “Proceeds” does not include Replacement Proceeds.

**“Qualified Administrative Costs”** means the reasonable, direct administrative costs, other than carrying costs, of purchasing or selling Nonpurpose Investments such as separately stated brokerage or selling commissions. Qualified Administrative Costs do not include legal and accounting fees, recordkeeping, custody, and similar costs, general overhead costs and similar indirect costs of the Issuer such as employee salaries and office expenses and costs associated with computing the Rebate Amount. In general, Qualified Administrative Costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or a reasonably comparable investment if acquired with a source of funds other than Gross Proceeds of Tax-Exempt Obligations.

**“Qualified 501(c)(3) Bonds”** means an issue of obligations that satisfies the requirements of Section 145(a).

**“Qualified Guarantee”** means any guarantee of an obligation that constitutes a “qualified guarantee” within the meaning of Regulations §1.148-4(f).

**“Qualified Hedge”** means a Hedge that is a “qualified hedge” within the meaning of Regulations §1.148-4(h)(2).

**“Reasonable Retainage”** means an amount, with respect to an issue, not to exceed 5% of the Net Sale Proceeds of the issue, that is retained for reasonable business purposes relating to the property financed with Proceeds of the issue. For example, Reasonable Retainage may include a retention to ensure or promote compliance with a construction contract in circumstances in which the retained amount is not yet payable, or in which the Issuer reasonably determines that a dispute exists regarding completion or payment.

**“Rebate Amount”** means the excess of the future value, as of any date, of all receipts on Nonpurpose Investments acquired with Gross Proceeds of an issue over the future value, as of that date, of all payments on those Nonpurpose Investments, computed in accordance with Section 148(f) and Regulations §1.148-3.

**“Rebate Analyst”** means an independent individual, firm or entity experienced in the computation of the Rebate Amount pursuant to Section 148(f).

**“Receipt”** means amounts actually or constructively received from Nonpurpose Investments as specified in Regulations §1.148-3(d)(2)(i) through (iii).

**“Refunded Bonds”** means obligations of a Prior Issue the Debt Service on which is or is to be paid from Proceeds of a Refunding Issue.

**“Refunding Bonds”** means obligations of a Refunding Issue.

**“Refunding Issue”** means an issue the Proceeds of which are or are to be used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs of the Refunding Issue.

**“Refunding Escrow”** means one or more funds established as part of a single transaction, or a series of related transactions, containing Proceeds of a Refunding Issue and any other amounts to be used to pay Debt Service on Refunded Bonds of one or more issues.

**“Refunding Portion”** means that portion of a Multipurpose Issue the Proceeds of which are, or are to be, used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs properly allocable to the Refunding Portion.

**“Regulations”** or **“Reg.”** means Treasury Regulations.

**“Reimbursement Allocation”** means an allocation of the Proceeds of an issue for the reimbursement of Capital Expenditures paid prior to the Issuance Date of such issue that: (a) is evidenced on the books or records of the Issuer maintained with respect to the issue, (b) identifies either actual prior Capital Expenditures, or the fund or account from which the prior Capital Expenditures were paid, (c) evidences the Issuer’s use of Proceeds of the issue to reimburse a Capital Expenditure for a governmental purpose that was originally paid from a source other than the Proceeds of the issue, and (d) satisfies the following requirements: except for Preliminary Expenditures, (i) the Issuer adopted an official intent for the Capital Expenditure that satisfies Regulations §1.150-2(e) prior to, or within 60 days after, payment of the Capital Expenditure, and (ii) the allocation in reimbursement of that Capital Expenditure occurs or will occur within 18 months after the later of the date the Capital Expenditure was paid or the date the project resulting from such Capital Expenditure was Placed in Service or abandoned, but in no event more than 3 years after the Capital Expenditure was paid.



**“Related Party”** means, in reference to a Governmental Unit or 501(c)(3) Organization, any member of the same Controlled Group and, in reference to any person that is not a Governmental Unit or 501(c)(3) Organization, a “related person” as defined in Section 144(a)(3).

**“Replacement Proceeds”** means, with respect to an issue, amounts (including any investment income, but excluding any Proceeds of any issue) replaced by Proceeds of that issue within the meaning of Section 148(a)(2). “Replacement Proceeds” includes amounts, other than Proceeds, held in a sinking fund, pledged fund or reserve or replacement fund for an issue.

**“Sale Date”** means, with respect to an issue, the first date on which there is a binding contract in writing with the Issuer for the sale and purchase of an issue (or of respective obligations of the issue if sold by the Issuer on different dates) on specific terms that are not later modified or adjusted in any material respect.

**“Sale Proceeds”** means that portion of the Issue Price actually or constructively received by the Issuer upon the sale or other disposition of an issue, including any underwriter’s compensation withheld from the Issue Price, but excluding Pre Issuance Accrued Interest.

**“Spensible Proceeds”** means the Net Sale Proceeds of an issue.

**“Tax Exempt Obligation”** means any obligation or issue of obligations (including bonds, notes and lease obligations treated for federal income tax purposes as evidences of indebtedness) the interest on which is excluded from gross income for federal income tax purposes within the meaning of Section 150, and includes any obligation or any investment treated as a “tax exempt bond” for the applicable purpose of Section 148.

**“Tax Exempt Organization”** means a Governmental Unit or a 501(c)(3) Organization.

**“Temporary Period”** means the period of time, as set forth in the Tax Certificate and Agreement, applicable to particular categories of Proceeds of an issue during which such category of Proceeds may be invested in Higher Yielding Investments without the issue being treated as arbitrage bonds under Section 148.

**“Transferred Proceeds”** means that portion of the Proceeds of an issue (including any Transferred Proceeds of that issue) that remains unexpended at the time that any portion of the principal of the Refunded Bonds of that issue is discharged with the Proceeds of a Refunding Issue and that thereupon becomes Proceeds of the Refunding Issue as provided in Regulations §1.148-9(b). “Transferred Proceeds” does not include any Replacement Proceeds.

**“Unrelated or Disproportionate Use”** means Private Business Use that is not related to or is disproportionate to use by a Governmental Unit within the meaning of Section 141(b)(3) and Regulations §1.141-9.

**“Variable Yield Issue”** means any Issue that is not a Fixed Yield Issue.

**“Working Capital Expenditures”** means any costs of a type that do not constitute Capital Expenditures, including current operating expenses.

**“Yield”** has the meaning assigned to it for purposes of Section 148, and means that discount rate (stated as an annual percentage) that, when used in computing the present worth of all applicable unconditionally payable payments of Debt Service, all payments for a Qualified Guarantee, if any, and payments and receipts with respect to a Qualified Hedge, if any, as required by the Regulations, paid and to be paid with respect to an obligation (paid and to be paid during and attributable to the Yield Period in the case of a Variable Yield Issue), produces an amount equal to (a) the Issue Price in the case of a Fixed Yield Issue or the present value of the Issue Price at the commencement of the applicable Yield Period in the case of a Variable Yield Issue, or (b) the purchase price for yield purposes in the case of Investment Property, all subject to the applicable methods of computation provided for under Section 148, including variations from the foregoing. The Yield on Investment Property in which Proceeds or Replacement Proceeds of an issue are invested is computed on a basis consistent with the computation of Yield on that issue, including the same compounding interval of not more than one year selected by the Issuer.

**“Yield Period”** means, in the case of the first Yield Period, the period that commences on the Issuance Date and ends at the close of business on the first Computation Date and, in the case of each succeeding Yield Period, the period that begins immediately after the end of the immediately preceding Yield Period and ends at the close of business on the next succeeding Computation Date.

The terms “bond”, “obligation”, “reasonably required reserve or replacement fund”, “reserve or replacement fund”, “loan”, “sinking fund”, “purpose investment”, “same plan of financing”, “other replacement proceeds”, and other terms relating to Code provisions used but not defined in this Certificate shall have the meanings given to them for purposes of Sections 103 and 141 to 150 of the Code unless the context indicates another meaning.

(End of Attachment A)

## EXHIBIT A-1

### INSTRUCTIONS FOR COMPLIANCE WITH REBATE REQUIREMENTS OF SECTION 148(f) OF THE CODE.

The Issuer<sup>1</sup> covenanted in the operative documents to comply with the arbitrage rebate requirement of Section 148(f) of the Code. These Instructions provide guidance for that compliance, including the spending exceptions that free the Issue from all or part of the rebate requirements. Capitalized terms that are not defined in these Rebate Instructions are defined in Attachment A to the Tax Certificate and Agreement to which these Instructions are attached.

#### PART I: GENERAL

##### SECTION 1.01. REBATE GENERALLY.

The Rebate Amount with respect to the Issue must be paid (rebated) to the United States to prevent the bonds of the Issue from being arbitrage bonds, the interest on which is subject to federal income tax. In general, the Rebate Amount is the amount by which the actual earnings on Nonpurpose Investments purchased (or deemed to have been purchased) with Gross Proceeds of the Issue exceed the amount of earnings that would have been received if those Nonpurpose Investments had a Yield equal to the Yield on the Issue.<sup>2</sup> Stated differently, the Rebate Amount for the Issue as of any date is the excess of the Future Value, as of that date, of all Receipts on Nonpurpose Investments over the Future Value, as of that date, of all Payments on Nonpurpose Investments, computed using the Yield on the Issue as the Future Value rate.<sup>3</sup>

If the Issue is a Fixed Yield Issue, the Yield on the Issue generally is the Yield to maturity, taking into account mandatory redemptions prior to maturity. If the Issue is a Variable Yield Issue, the Yield on the Issue is computed separately for each Yield Period selected by the Issuer.

---

<sup>1</sup> For purposes of these Instructions, the term “Issuer” includes the borrower in a conduit financing issue.

<sup>2</sup> Amounts earned on the Bona Fide Debt Service Fund for the Issue are not taken into account in determining the Rebate Amount because the average annual Debt Service on the Issue does not exceed \$2,500,000.

<sup>3</sup> The scope of these Instructions does not permit a detailed description of the computation of the Rebate Amount with respect to the Issue. If you need assistance in computing the Rebate Amount on the Issue or want Graves, Horton, Askew & Johns, LLC to do the computations, please feel free to contact the Graves, Horton, Askew & Johns, LLC attorney with whom you normally consult to discuss engaging the Firm to provide such assistance.

## PART II: EXCEPTIONS TO REBATE

### SECTION 2.01. SPENDING EXCEPTIONS.

The rebate requirements with respect to the Issue are deemed to have been satisfied if any one of three spending exceptions (the 6-Month, the 18-Month, or the 2-Year Spending Exception, collectively, the “Spending Exceptions”) is satisfied. The Spending Exceptions are each independent exceptions. The Issue need not meet the requirements of any other exception in order to use any one of the three exceptions. For example, a Construction Issue may qualify for the 6-Month Spending Exception or the 18-Month Spending Exception even though the Issuer makes one or more elections under the 2-Year Exception with respect to the Issue.

The following rules apply for purposes of all of the Spending Exceptions except as otherwise noted.

Refunding Issues. The only spending exception available for a Refunding Issue<sup>4</sup> is the 6-Month Spending Exception.

Special Transferred Proceeds Rules. In applying the Spending Exceptions to a Refunding Issue, unspent Proceeds of the Prior Issue that become Transferred Proceeds of the Refunding Issue are ignored. If the Prior Issue satisfies one of the rebate Spending Exceptions, the Proceeds of the Prior Issue that are excepted from rebate under that exception are not subject to rebate either as Proceeds of the Prior Issue or as Transferred Proceeds of the Refunding Issue.

However, if the Prior Issue does not satisfy any of the Spending Exceptions and is not otherwise exempt from rebate, the Transferred Proceeds from the Prior Issue will be subject to rebate, even if the Refunding Issue satisfies the 6-Month Spending Exception. The Rebate Amount will be calculated on the Transferred Proceeds on the basis of the Yield of the Prior Issue up to each transfer date and on the basis of the Yield of the Refunding Issue after each transfer date.

Application of Spending Exceptions to a Multipurpose Issue. If the Issue is a Multipurpose Issue, the Refunding Portion and the New Money Portion are treated for purposes of the rebate Spending Exceptions as separate issues. Thus, the Refunding Portion is eligible to use only the 6-Month Spending Exception. The New Money Portion is eligible to use any of the three Spending Exceptions.

Expenditures for Governmental Purposes of the Issue. Each of the spending exceptions requires that expenditures of Gross Proceeds be for the governmental purposes of the Issue. These purposes include payment of interest (but not principal) on the Issue.

### SECTION 2.02. 6-MONTH SPENDING EXCEPTION.

The Issue will be treated as satisfying the rebate requirements if all of the Gross Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue within the six month period beginning on the Issuance Date and the Rebate Amount, if any, with

---

<sup>4</sup> For purposes of these Instructions, references to “Refunding Issue” include the Refunding Portion of a Multipurpose Issue.

respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or a Bona Fide Debt Service Fund if and to the extent that such Fund is subject to rebate (see footnote 3) is timely paid to the United States. If no bond of the Issue is a Private Activity Bond (other than a Qualified 501(c)(3) Bond) or a tax or revenue anticipation bond, the six month period is extended for an additional 6 months if the unexpended Gross Proceeds of the Issue at the end of the six month period do not exceed 5% of the Proceeds of the Issue.

For purposes of the 6-Month Spending Exception, Gross Proceeds required to be spent within six months do not include amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue.

#### SECTION 2.03. 18-MONTH SPENDING EXCEPTION.

The Issue (or the New Money Portion if the Issue is a Multipurpose Issue) is treated as satisfying the rebate requirement if the conditions set forth in (A), (B) and (C) are satisfied.

(A) All of the Gross Proceeds of the Issue (excluding amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue) are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

- (1) at least 15% within six months;
- (2) at least 60% within 12 months; and
- (3) 100% within 18 months, subject to the Reasonable Retainage exception described below.

(B) The Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund for the Issue, to the extent such Fund is subject to rebate (see footnote 3), is timely paid to the United States. And,

(C) The Gross Proceeds of the Issue qualify for the initial 3 year Temporary Period.

If the only unspent Gross Proceeds at the end of the 18th month are Reasonable Retainage, the requirement that 100% of the Gross Proceeds be spent by the end of the 18th month is treated as met if the Reasonable Retainage, and all earnings thereon, are spent for the governmental purposes of the Issue within 30 months of the Issuance Date.

For purposes of determining whether the spend-down requirements have been met as of the end of each of the first two spending periods, the amount of Investment Proceeds that the Issuer reasonably expects as of the Issuance Date to earn on the Sale Proceeds and Investment Proceeds of the Issue during the 18-month period are included in Gross Proceeds of the Issue. The final spend-down requirement includes actual Investment Proceeds for the entire 18 months.

The 18-Month Spending Exception does not apply to the Issue (or the New Money Portion, as applicable) if any portion of the Issue (or New Money Portion) is treated as meeting the rebate requirement under the 2-Year Spending Exception discussed below. This rule prohibits use of the 18-Month Spending Exception for the Nonconstruction Portion of a Bifurcated Issue. The only Spending Exception available for the Nonconstruction Portion of a Bifurcated Issue is the 6-Month Spending Exception.

**SECTION 2.04. 2-YEAR SPENDING EXCEPTION FOR CERTAIN CONSTRUCTION ISSUES.**

(A) In general. A Construction Issue no bond of which is a Private Activity Bond (other than a Qualified 501(c)(3) Bond or a Bond that finances property to be owned by a Governmental Unit or a 501(c)(3) Organization) is treated as satisfying the rebate requirement if the Available Construction Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

- (1) at least 10% within six months;
- (2) at least 45% within 1 year;
- (3) at least 75% within 18 months; and
- (4) 100% within two years, subject to the Reasonable Retainage exception described below.

Amounts in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund for the Issue are not treated as Gross Proceeds for purposes of the expenditure requirements. However, unless the Issuer has elected otherwise in the Tax Certificate and Agreement, earnings on amounts in a reasonably required reserve or replacement fund for the Issue are treated as Available Project Funds during the 2-year period and therefore must be allocated to expenditures for the governmental purposes of the Issue.

If the Issuer elected in the Tax Certificate and Agreement to exclude from Available Construction Proceeds the Investment Proceeds or earnings on a reasonably required reserve or replacement fund for the Issue during the 2-year spend-down period, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings from the Issuance Date must be timely paid to the United States. If the election is not made, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings after the earlier of the date construction is substantially completed or two years after the Issuance Date must be timely paid to the United States. The Rebate Amount, if any, with respect to earnings on amounts in a Bona Fide Debt Service Fund must be timely paid to the extent such Fund is subject to the rebate requirements (see footnote 3).

The Issue does not fail to satisfy the spending requirement for the fourth spend-down period (i.e., 100% within two years of the Issuance Date) if the only unspent Available Construction Proceeds are amounts for Reasonable Retainage if such amounts (together with all earnings on such amounts) are allocated to expenditures within 3 years of the Issuance Date.

For purposes of determining whether the spend down requirements have been met as of the end of each of the first three spend-down periods, Available Construction Proceeds include the amount of Investment Proceeds or earnings that the Issuer reasonably expected as of the Issuance Date to earn during the two year period unless the Issuer elects, on or before the Issuance Date, to apply these spend down requirements on the basis of actual facts rather than reasonable expectations. For purposes of satisfying the final spend-down requirement, Available Construction Proceeds include actual Investment Proceeds or earnings from the Issuance Date through the end of the two year period.

Available Construction Proceeds do not include Gross Proceeds used to pay Issuance Costs financed by the Issue, but do include earnings on such Proceeds. Thus, an expenditure of Gross Proceeds to pay Issuance Costs does not count toward meeting the spend-down requirements, but expenditures of earnings on such Gross Proceeds to pay Issuance Costs do count.

(B) 1½% penalty in lieu of rebate for Construction Issues. If the Issuer elected in the Tax Certificate and Agreement for a Construction Issue, or for the Construction Portion of a Bifurcated Issue, to pay a 1½% penalty in lieu of the Rebate Amount on Available Construction Proceeds in the event that the Construction Issue fails to satisfy any of the spend-down requirements, the 1½% penalty is calculated separately for each spend-down period, including each semiannual period after the end of the fourth spend-down period until all Available Construction Proceeds have been spent. The penalty is equal to 0.015 times the underexpended Proceeds as of the end of the applicable spend-down period. The fact that no arbitrage is in fact earned during such spend-down period is not relevant. The Rebate Amount with respect to Gross Proceeds other than Available Construction Proceeds (e.g., amounts in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund, to the extent subject to rebate (see footnote 3)) must be timely paid.

### PART III: COMPUTATION AND PAYMENT

#### SECTION 3.01. COMPUTATION AND PAYMENT OF REBATE AMOUNT.

If none of the Spending Exceptions described above is satisfied (and if the 1 1/2% penalty election for a Construction Issue or the Construction Portion of a Bifurcated Issue has not been made), then within 45 days after each Computation Date, the Issuer shall compute, or cause to be computed, the Rebate Amount as of such Computation Date. The first Computation Date is a date selected by the Issuer, but shall be not later than five years after the Issuance Date. Each subsequent Computation Date shall end five years after the previous Computation Date except that, in a Variable Yield Issue, the Issuer may select annual Yield Periods. The final Computation Date shall be the date the last obligation of the Issue matures or is finally discharged.

Within 60 days after each Computation Date (except the final Computation Date), the Issuer shall pay to the United States not less than 90% of the Rebate Amount, if any, computed as of such Computation Date. Within 60 days after the final Computation Date, the Issuer shall pay to the United States 100% of the Rebate Amount, if any, computed as of the final Computation Date. In computing the Rebate Amount, a computation credit of \$1,000 (as adjusted for cost-of-

living increases, \$1,590 for bond years ending in 2013) may be taken into account on the last day of each Bond Year to the Computation Date during which there are unspent Gross Proceeds that are subject to the rebate requirement, and on the final maturity date.

If the operative documents pertaining to the Issue establish a Rebate Fund and require the computation of the Rebate Amount at the end of each Bond Year, the Issuer shall calculate, or cause to be calculated, within 45 days after the end of each Bond Year the Rebate Amount, taking into account the computation credit of \$1,000 (as adjusted for cost-of-living increases, \$1,590 for bond years ending in 2013) for each Bond Year. Within 50 days after the end of each Bond Year, if the Rebate Amount is positive, the Issuer shall deposit in the Rebate Fund such amount as will cause the amount on deposit therein to equal the Rebate Amount, and may withdraw any amount on deposit in the Rebate Fund in excess of the Rebate Amount. Payments of the Rebate Amount to the Internal Revenue Service on a Computation Date shall be made first from amounts on deposit in the Rebate Fund and second from other amounts specified in the operative documents.

Each payment of the Rebate Amount or portion thereof shall be payable to the Internal Revenue Service and shall be made to the Internal Revenue Service Center, Ogden, UT 84201 by certified mail. Each payment shall be accompanied by Internal Revenue Service Form 8038-T and any other form or forms required to be submitted with such remittance.

#### SECTION 3.02. BOOKS AND RECORDS.

(A) The Issuer or Trustee as applicable, shall keep proper books of record and accounts containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the Gross Proceeds of the Issue. Such records shall specify the account or fund to which each Nonpurpose Investment (or portion thereof) held by the Issuer or Trustee is to be allocated and shall set forth as to each Nonpurpose Investment (1) its purchase price, (2) identifying information, including par amount, interest rate, and payments dates, (3) the amount received at maturity or its sales price, as the case may be, including accrued interest, (4) the amounts and dates of any payments made with respect thereto, and (5) the dates of acquisition and disposition or maturity.

The Issuer, Trustee, or Rebate Analyst, as applicable, shall retain the records of all calculations and payments of the Rebate Amount until six years after the retirement of the last obligation that is a part of the Issue.

#### SECTION 3.03. FAIR MARKET VALUE.

No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

The fair market value of any Nonpurpose Investment shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in an arms-length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding (i.e., the trade date rather than the settlement date). Except as otherwise provided in this Section, a Nonpurpose Investment that is not of a type



traded on an established securities market (within the meaning of Section 1273 of the Code) is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(A) Obligations purchased directly from the Treasury. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

(B) Safe harbor for Guaranteed Investment Contracts. The purchase price of a Guaranteed Investment Contract shall be treated as its fair market value on the purchase date if all the following conditions are met:

(1) The Issuer or broker makes a bona fide solicitation for a specified Guaranteed Investment Contract and receives at least three bona fide bids from reasonably competitive providers (of Guaranteed Investment Contracts) that have no material financial interest in the Issue.

(2) The Issuer purchases the highest-yielding Guaranteed Investment Contract for which a qualifying bid is made (determined net of broker's fees);

(3) The Yield on the Guaranteed Investment Contract (determined net of broker's fees) is not less than the Yield then available from the provider on reasonably comparable Guaranteed Investment Contracts, if any, offered to other persons from a source of funds other than Gross Proceeds of Tax-Exempt Obligations;

(4) The determination of the terms of the Guaranteed Investment Contract takes into account as a significant factor the Issuer's reasonably expected drawdown schedule for the amounts to be invested, exclusive of amounts deposited in a Bona Fide Debt Service Fund and a reasonably required reserve or replacement fund;

(5) The terms of the Guaranteed Investment Contract, including collateral security requirements, are reasonable; and

(6) The obligor on the Guaranteed Investment Contract certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with the Guaranteed Investment Contract.

(C) Safe harbor for certificates of deposit. The purchase price of a certificate of deposit shall be treated as its fair market value on the purchase date if all of the following requirements are met:

(1) The certificate of deposit has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal; and

(2) The Yield on the certificate of deposit is not less than (a) the Yield on reasonably comparable direct obligations of the United States, or (b) the highest Yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

Certificates evidencing the foregoing requirements should be obtained before purchasing any Guaranteed Investment Contract or certificate of deposit.

**SECTION 3.04. CONSTRUCTIVE SALE/PURCHASE.**

(A) Nonpurpose Investments that are held by the Issuer or Trustee as of any Computation Date (or Bond Year if the computations are required to be done annually) shall be treated for purposes of computing the Rebate Amount as of such date as having been sold for their fair market value as of such date. Investment Property which becomes allocated to Gross Proceeds of the Issue on a date after such Investment Property has actually been purchased shall be treated for purposes of the rebate requirements as having been purchased by the Issuer on such date of allocation at its fair market value on such date.

(B) For purposes of constructive or deemed sales or purchases of Investment Property (other than Investment Property in the Escrow Fund or that is otherwise not invested for a Temporary Period or is not part of a reasonably required reserve or replacement fund for the Issue) must be valued at its fair market value on the date of constructive or deemed sale or purchase.

(C) Except as set forth in (B), fixed rate Investment Property that is (1) issued with not more than 2% of original issue discount or original issue premium, (2) issued with original issue premium that is attributable exclusively to reasonable underwriters' compensation or (3) acquired with not more than 2% of market discount or market premium, may be treated as having a fair market value equal to its outstanding stated principal amount, plus accrued interest. Fixed rate Investment Property also may be treated as having a fair market value equal to its present value.

**SECTION 3.05. ADMINISTRATIVE COSTS.**

(A) Administrative costs shall not be taken into account in determining the payments for or receipts from a Nonpurpose Investment unless such administrative costs are Qualified Administrative Costs. Thus, administrative costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire Nonpurpose Investments generally do not increase the Payments for, or reduce the Receipts from, Nonpurpose Investments.

(B) Qualified Administrative Costs are taken into account in determining the Payments and Receipts on Nonpurpose Investments and thus increase the Payments for, or decrease the Receipts from, Nonpurpose Investments. In the case of a Guaranteed Investment Contract, a broker's commission or similar fee paid on behalf of either the Issuer or the provider is a Qualified Administrative Cost to the extent that (1) the amount of the fee treated as a Qualified Administrative Cost does not exceed the lesser of (a) \$37,000, or such higher amount as determined and published by the Internal Revenue Service as the "cost of living adjustment" for the calendar year in which the Guaranteed Investment Contract is acquired and (b) 0.2% of the Computational Base or, if more, \$4,000, and (2) the aggregate amount of broker's commissions or similar fees with respect to all Guaranteed Investment Contracts and Nonpurpose Investments acquired for a yield restricted defeasance escrow purchased with Gross Proceeds of the Issue treated as Qualified Administrative Costs does not exceed \$106,000, less the portion of such \$106,000 cap, if any, used in prior years with respect to the Issue.

## PART IV: COMPLIANCE AND AMENDMENT

### SECTION 4.01. COMPLIANCE.

The Issuer, Trustee or Rebate Analyst, as applicable, shall take all necessary steps to comply with the requirements of these Instructions in order to ensure that interest on the Issue is excluded from gross income for federal income tax purposes under Section 103(a) of the Code. However, compliance shall not be required in the event and to the extent stated therein the Issuer and the Trustee receive a Bond Counsel's Opinion that either (A) compliance with such requirement is not required to maintain the exclusion from gross income for federal income tax purposes of interest on the Issue, or (B) compliance with some other requirement in lieu of such requirement will comply with Section 148(f) of the Code, in which case compliance with the other requirement specified in the Bond Counsel's Opinion shall constitute compliance with such requirement.

### SECTION 4.02. LIABILITY.

If for any reason any requirement of these Instructions is not complied with, the Issuer and the Trustee, if applicable, shall take all necessary and desirable steps to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence. The Trustee shall have no duty or responsibility to independently verify any of the Issuer's, or the Rebate Analyst's, calculations with respect to the payments of the Rebate Amount due and owing to the United States. Under no circumstances whatsoever shall the Trustee be liable to the Issuer, any bondholder or any other person for any inclusion of the interest on the Issue in gross income for federal income tax purposes, or any claims, demands, damages, liabilities, losses, costs or expenses resulting therefrom or in any way connected therewith, so long as the Trustee acts only in accordance with these Instructions and the operative documents pertaining to the Issue.

GRAVES, HORTON, ASKEW & JOHNS, LLC

October \_\_, 2013

**EXHIBIT B**

**Useful Life Chart and Sources & Uses**

USEFUL LIFE CHART

(1) <u>Item</u>	(2) Original Useful Life	(3) 120% of (2)	(4) Placed in Service Date	(5) Elapsed Time from (4) to Issue Date	(6) <u>(3) + (5)</u>	(7) Original Cost of Item	(8) % Financed with Bonds	(9) Cost Financed by Bonds [(7) x (8)]	(10) Weighted Cost [(6) x (9)]	(11) Weighted Avg. Life [(10) ÷ (9)]
Building	40	48	10/11/2013*	0	48	\$8,954,309	100.000%	\$8,954,309	429,806,832	48

\* Conservative assumption based on units being occupied on the Issuance Date

## Sources and Uses

**EXHIBIT C**

**Pertaining to**

**\$8,954,309**

**District of Columbia Housing Finance Agency  
Multifamily Housing Mortgage Revenue Bonds  
(Trinity Plaza Project)  
Series 2013**

**BOND PURCHASER'S CERTIFICATE**

Bank of America, as Purchaser of the above-captioned Bonds, dated October 11, 2013, based on its knowledge regarding the sale of the Bonds, certifies that it has purchased all of the Bonds for investment and not for the purpose of resale to others, for a purchase price of \$8,954,309, there being no accrued interest, and the Bonds are not being reoffered to the public. The purchase price of \$8,954,309 is not less than the fair market value of the Bonds on the date of purchase. In the opinion of the Bond Purchaser, the establishment and continued existence of, and deposit of \$0.00 to, the Debt Service Reserve Fund (as provided in the Trust Indenture securing the Bonds) was a vital and necessary factor in its purchase of the Bonds. The maximum and average annual Debt Service on the Bonds are \$\_\_\_\_\_ and \$\_\_\_\_\_, respectively, and 125% of the average annual Debt Service on the Bonds is \$\_\_\_\_\_.

Dated: October 11, 2013

**BANK OF AMERICA**

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

## EXHIBIT D

### **BORROWER TAX EXEMPT BOND COMPLIANCE POLICY AND PROCEDURES FOR \$8,954,309 District of Columbia Housing Finance Agency Multifamily Housing Mortgage Revenue Bonds (Trinity Plaza Project) Series 2013**

#### **A. Purpose**

Conduit borrowers of proceeds of tax-exempt bonds must comply with federal tax rules pertaining to expenditure of proceeds for qualified costs, rate of expenditure, use of bond-financed property, investment of proceeds in compliance with arbitrage rules, and retention of records. The following policies are intended to establish compliance by Trinity Plaza LLC (the "*Borrower*") with these rules in connection with Issuer's issuance of tax-exempt bonds described in section 142(d) of Internal Revenue Code of 1986 (the "*Code*").

#### **B. Tax Requirements Associated with Sale and Issuance of Bonds**

Review and retention of tax documents related to the sale and issuance of bonds will be supervised by Sarah Constant, Managing Director of Mission First Housing Development Corporation (the "Compliance Officer").

1. Volume Cap. In connection with any issuance of bonds, the Borrower will ensure that the Issuer has unexpired and unused allocation of private activity bond ceiling under section 146 of the Code in an amount sufficient to cover that bond issue.
2. Issue Price. The "issue price" (as defined in the Code) of the bonds will be documented at the time of issuance. Certifications of an underwriter, placement agent or purchaser and a final numbers package will establish "issue price" and will be reviewed and included in the bond transcript.
3. Information Reporting. Form 8038 will be reviewed and filed not later than the 15<sup>th</sup> day of the 2<sup>nd</sup> calendar month following the quarter in which the bonds were issued. Filing of the Form 8038 will be confirmed with bond counsel.

#### **C. Expenditures of Proceeds – Timing and Qualified Costs**

Expenditure of bond proceeds and use of financed facilities will be reviewed by the Compliance Officer. Specifically, the Compliance Officer will:



1. Monitor the expenditure of proceeds to ensure (a) expenditure within the periods set forth in any tax certificate of the Borrower executed in connection with the issuance of the bonds, and (b) no improper reimbursement of expenditures paid prior to the date of issuance of the bonds.
2. Monitor the use of proceeds of the Borrower's bonds for compliance with the requirements of sections 142(d) relating to residential rental housing bonds as specified in a tax certificate of the Borrower executed in connection with the bond issuance. Such monitoring will occur annually.
3. Review of the use of proceeds may include spot-checks for compliance with respect to income certifications for the Qualified Project Period, as defined in section 142(d)(2)(A) of the Code.

#### **D. Investments and IRS Filings**

Investment of bond proceeds in compliance with the arbitrage bond rules and rebate of arbitrage will be supervised by the Compliance Officer.

1. Guaranteed investment contracts ("GIC") will be purchased only using the three-bid "safe harbor" (see Treasury Regulations § 1.148-5(d)(6)(iii), in compliance with the limitations on GIC brokers (see Treasury Regulations § 1.148-5(e)(2)(iii); provided, however, that to the extent that the safe harbor provisions cannot be met, the Borrower will consult with bond counsel.
2. Other investments will be purchased only in market transactions.
3. Calculations of rebate liability will be performed by outside consultants at the end of the construction period and at least every fifth bond year.
4. Rebate payments will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance of the applicable bonds and (b) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee, if applicable.

#### **E. Correction of violations**

The Borrower expects that its compliance with the procedures outlined above will prevent any violations of federal tax rules pertaining to its outstanding tax-exempt bonds. However, if the Borrower discovers a potential violation through its ongoing monitoring or otherwise, it will determine in conjunction with its bond counsel whether a violation actually exists. If it is found that a violation actually exists, the Borrower will determine whether (i) any remedial actions are available, or (ii) a voluntary closing agreement with the Internal Revenue Service is appropriate. Common examples of violations are as follows:

- a. Improper use of bond-financed facilities.
- b. Failure to pay rebate in a timely manner.
- c. Improper reimbursement of expenditures (too old or not capital).

#### **F. Records**

Management and retention of records related to tax-exempt bond issues will be supervised by the Compliance Officer.

1. Records will be retained for the life of the bonds plus any refunding bonds plus three (3) years. Records may be in the form of documents or electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.
2. Retainable records generally include transcript documents executed in connection with the issuance of the bonds (including the authorizing documents, offering materials, Form 8038, the tax certificate and bond use restriction agreement, and any elections made with respect to the bonds, if applicable), any amendments, and copies of rebate calculations and records of payments, including Forms 8038-T.
3. Retainable records pertaining to use of bond-financed facilities include the results of any monitoring or review performed (as described in paragraphs C.2, and C.3 above).
4. Retainable records pertaining to expenditures of bond proceeds include requisitions, appraisal and property purchase contracts, account statements and the final allocation of proceeds to expenditures.
5. Retainable records pertaining to investments include GIC documents under the Treasury Regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.
6. Retainable records include rent rolls, tenant income certifications and annual area median income figures.

#### **G. Training**

The Borrower will use its commercial reasonable efforts to ensure that any officers and employees responsible for carrying out these procedures are properly trained for that responsibility. Such training will include:

1. Ensuring access to the necessary records.
2. Ensuring that such persons have reviewed a copy of these procedures and the tax certificates and Forms 8038 related to the relevant bond issues.
3. Permitting attendance on free educational conference calls or webinars sponsored by the Internal Revenue Service, bond-related professional associations or law firms.
4. Permitting access to free educational websites, such as:

<http://www.irs.gov/taxexemptbond/index.html>

#### **H. Overall Responsibility**

Overall administration and coordination of this policy is the responsibility of the Compliance Officer.

Date: October 11, 2013