

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**McKINNEY HOUSING FINANCE CORPORATION**

**AND**

**PALLADIUM USA INTERNATIONAL, INC.**

**“PALLADIUM MCKINNEY”**

THIS MEMORANDUM OF UNDERSTANDING (this “*MOU*”) is between the MCKINNEY HOUSING FINANCE CORPORATION (the “*McKinney HFC*”), a public, nonprofit housing finance corporation organized under Chapter 394 of the Texas Local Government Code, and PALLADIUM USA INTERNATIONAL, INC. a Delaware corporation, or its subsidiary (“*Developer*”), and is dated and effective as of [May 12], 2023.

The Developer is a developer of affordable housing in the State of Texas. The McKinney HFC is a public, nonprofit housing finance corporation whose mission is to provide safe, decent and sanitary housing for persons of low and moderate income. The Developer and the McKinney HFC hereby agree to work cooperatively to develop affordable housing at the following location, in accordance with the terms of this MOU:

Palladium McKinney being an approximately 172-unit development to be located in the City of McKinney, Collin County, Texas, financed with private activity bonds issued by the Texas Department of Housing and Community Affairs (“*TDHCA*”) and 4% Low Income Housing Tax Credits allocated by TDHCA (the “*Project*”).

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

**AGREEMENTS**

**A. OWNERSHIP STRUCTURE**

1. The Developer has formed a limited partnership named McKinney Virginia Parkway, Ltd. (the “*Partnership*”) for the purpose of owning the Project. A single-purpose entity, McKinney Virginia Parkway GP, LLC, to be wholly-owned by the McKinney HFC will serve as the sole General Partner of the Partnership (the “*General Partner*”).

2. The Developer has formed or will form a special limited partner of the Partnership named McKinney Virginia Parkway SLP, LLC, which is a subsidiary of Developer (the “*Special LP*”), with certain oversight and approval rights. Any such rights must be agreed to by the

McKinney HFC and may not, in the opinion of the McKinney HFC's counsel, result in the Special LP being deemed a General Partner for exercising its rights under the Partnership Agreement (as hereinafter defined).

3. Certain terms contained in this MOU and not contained in the Partnership Agreement or other transaction documents may be outlined in a Master Agreement, which shall be executed at Closing (as hereinafter defined).

4. The duties of the General Partner and the Special LP shall be set forth in a partnership agreement (the "*Partnership Agreement*") to be entered into among the General Partner, the Special LP, and an affiliate of PNC Bank, National Association, or its designated affiliate, as equity investor and a limited partner of Partnership (the "*Investor LP*"). The Partnership Agreement shall have terms consistent with those set forth in *Exhibit A*.

The General Partner's execution of the Partnership Agreement shall be subject to the following terms:

(i) The General Partner's representations shall be limited to those within the General Partner's actual knowledge and in no case shall due inquiry be required, it being understood and agreed that the General Partner will not be looked upon by the Special LP or the Investor LP to conduct Project-related diligence;

(ii) The General Partner shall be indemnified by the Guarantors (as defined in the Partnership Agreement) and the Partnership for any liabilities incurred under the Partnership Agreement, except for liabilities incurred as a result of the General Partner's gross negligence or willful misconduct and in no event shall such indemnification be contingent upon a ruling of a court of law;

(iii) The McKinney HFC shall be indemnified by the Partnership, Special LP and the Guarantors (as defined in the Partnership Agreement) for any liabilities incurred in connection with the Project, except for liabilities incurred as a result of the gross negligence or willful misconduct of the McKinney HFC, and in no event shall such indemnification be contingent upon a ruling of a court of law;

(iv) The General Partner shall not be required to covenant to undertake actions or obligations that the Special LP will be required to take under the Partnership Agreement; and

(v) The Partnership Agreement shall contain a provision wherein the Special LP and Investor LP acknowledge that the obligations of the General Partner under the Partnership Agreement are obligations solely of the General Partner and not the owner of the General Partner.

5. Title to the land for the Project shall be taken in the name of the McKinney HFC, or a subsidiary of the McKinney HFC (the "*Ground Lessor*"), and the Ground Lessor shall then enter

into a long-term ground lease (the “*Ground Lease*”) with the Partnership, as tenant, holding an interest in the improvements that constitute the Project. Funding for the acquisition of the land will come from the financing of the Project and may be paid to the Ground Lessor in the form of an up-front Ground Lease payment. Upon expiration of the 99-year term of the Ground Lease, ownership of the improvements constituting the Project shall revert to the McKinney HFC. In the event that the Project is sold, the Ground Lease shall provide for a transfer of title to the land to a purchaser upon payment of \$100.00.

## B. DUE DILIGENCE

As a condition to the McKinney HFC’s participation in the Project, the McKinney HFC requires the Developer to provide due diligence information on the Project and its proposed financing and operations pursuant to the due diligence required by McKinney HFC. The Developer shall deliver the due diligence items before the Closing (as herein defined). Failure of the Developer to deliver to the McKinney HFC due diligence items acceptable to the McKinney HFC shall be grounds for the McKinney HFC to terminate this MOU in its sole discretion.

## C. FINANCING

1. On behalf of the Partnership, the Developer has applied for a reservation of \$40,000,000 in private activity bond volume cap in connection with multifamily housing bonds to be issued by TDHCA (the “*Bonds*”). The Developer shall be responsible for selecting the manner in which the Bonds will be sold to facilitate debt financing for the Project and negotiating the financing terms of the Bonds on behalf of the Partnership; *provided*, that the McKinney HFC shall have the right to review and approve the financing arrangements and the terms and conditions of any Bond or loan documents.

2. On behalf of the Partnership, the Developer applied for a commitment of low-income housing Tax Credits (the “*Tax Credits*”) from TDHCA. If the Partnership receives a commitment of Tax Credits, the Developer shall be responsible for selecting the manner in which the Tax Credits will be sold to facilitate equity financing (the “*Equity*”) for the Project, and negotiating the equity financing terms on behalf of the Partnership. McKinney HFC hereby recognizes and approves the identity of the Investor LP as stated herein. McKinney HFC shall have the right to review and approve the financing arrangements and the terms and conditions of any Equity financing documents. The Equity financing documents are expected to include the Partnership Agreement.

3. If the Project receives a commitment of Tax Credits, the Developer will apply for construction and permanent financing (the “*Loan*”) on behalf of the Partnership. The Developer has selected and McKinney HFC here by recognizes and approves Cedar Rapids Bank and Trust Company, an Iowa-state chartered banking corporation as the lender of the Loan. The Developer shall be responsible for negotiating the loan terms on behalf of the Partnership; *provided*, that the

McKinney HFC shall have the right to review and approve the financing arrangements and the terms and conditions of any Loan documents.

4. The Developer shall pay all costs and fees associated with applying for the Bonds, the Loan and the Tax Credits, which costs, along with all other pre-development costs incurred by the Developer (to the extent included within the approved budget), shall be reimbursed at Closing (as defined herein) from the proceeds of the Bonds and Equity. In the event this MOU is terminated or the transaction fails to close as contemplated herein, the Developer shall be solely responsible for all costs described above and the McKinney HFC and its affiliates shall have no responsibility for payment or reimbursement of such costs.

5. THE DEVELOPER SHALL PROVIDE ANY GUARANTEES OF CONSTRUCTION COMPLETION, OPERATING EXPENSES, TAX CREDIT DELIVERY, AND THE LIKE THAT MAY BE REQUIRED IN CONJUNCTION WITH THE BOND FINANCING OR THE EQUITY FINANCING. NEITHER THE MCKINNEY HFC, THE GENERAL PARTNER NOR ANY OF THEIR AFFILIATES WILL PROVIDE ANY GUARANTEES OR INDEMNITIES IN CONNECTION WITH THE FINANCING OF THE PROJECT AND SHALL NOT BE LISTED AS A SECTION 50 GUARANTOR SHOULD THE PROJECT BE FINANCED WITH A HUD-INSURED LOAN.

#### D. DESIGN AND CONSTRUCTION

1. The Developer shall provide comprehensive development services to the Partnership pursuant to a Development Agreement to be entered into by the Partnership and Developer.

2. The Developer shall prepare and promptly provide the McKinney HFC a detailed development budget for the Project.

3. The Developer shall be responsible for obtaining the services of design professionals for the design of the site plan and design of the Project. The McKinney HFC will be provided copies of the final plans and specifications for the Project, including all construction contracts. The McKinney HFC shall have the right to review, comment and approve such plans, specifications and contracts prior to the execution of the contracts, such approval not to be unreasonably withheld, conditioned or delayed and provided that Developer shall have a final consent right to any such documents.

4. In order to secure an exemption from state sales tax for the acquisition of building materials, the McKinney HFC or a subsidiary of the McKinney HFC shall serve as the general contractor (the "*Contractor*") and BBlbc, LLC, shall serve as master subcontractor (the "*Master Subcontractor*"), which McKinney HFC hereby recognizes and approves. In connection with its participation as Contractor as described in the previous sentence, the McKinney HFC shall be entitled to a fee equal to \$125,000. Such fee shall be a contractual obligation of the Partnership, payable to the Contractor half at Closing (as defined herein) and half upon issuance of the final certificate of occupancy for the Project.

5. The Developer shall be solely responsible for obtaining all governmental approvals and permits needed in order to construct and operate the Project.

6. The Developer shall guarantee to the Partnership, the Investor LP and any lender, delivery of the Project on time and within the approved budget (as it may be amended or revised from time to time with appropriate approvals). The Developer shall provide, upon approval by the Investor LP and any lender, any approved and final material change orders or any material changes in the scope of work or plans and specifications (costing over \$100,000 for a single change or \$500,000 in the aggregate) during construction.

7. The Project shall be constructed so as to comply with ADA and Section 504 requirements, as applicable under federal and state law.

8. The Master Subcontractor, shall pay Catalyst Builders, Inc. a Construction Management Fee of \$600,000.00 monthly in *pro-rata* installments based on the percentage of overall completion of construction throughout the twenty-four (24) month construction period as set forth in the Construction Management Fee Agreement.

#### E. MANAGEMENT AND OPERATION

Omnium Management Company, Inc. (d/b/a Palladium Management Company) or such other Developer designated affiliate shall serve as the property manager (the “*Manager*”) for the Project, which will be memorialized in a management agreement (the “*Management Agreement*”).

#### F. SOCIAL SERVICES

The Developer will be responsible for initiating and arranging for social services to be provided (as required by TDHCA) for the residents of the Project. The General Partner shall have the right to monitor the provision of such social services during the Tax Credit compliance.

#### G. COMMUNITY SUPPORT

The Developer shall be solely responsible for interfacing with the local governmental officials in connection with support for the Project.

#### H. TAX EXEMPTION

The ownership structure contemplated herein is expected to generate ad valorem tax exemption for the Project. The McKinney HFC, on behalf of the Partnership, shall work with the applicable appraisal district to obtain confirmation of the availability of such exemption. If at any time the Project is determined to be subject to ad valorem taxation, the McKinney HFC and the General Partner shall forfeit its right to any residual value or net cash flow as defined in the Partnership Agreement, so long as the Project remains subject to ad valorem taxation. The

McKinney HFC shall use good faith efforts to cure the loss of the ad valorem tax exemption, and the forfeiture of residual value or net cash flow shall be pro-rated (if applicable) during any period of loss of the ad valorem tax exemption; *provided, however*, that in no event shall the General Partner, the Contractor, the McKinney HFC or any affiliate thereof be required to repay any amounts received prior to the loss of such exemption. In the event the 100% ad valorem tax exemption is lost for any reason and not restored, then the fee estate in the land shall (at Partnership's option) be conveyed to the Partnership at a nominal cost to the Partnership and the Ground Lease shall be terminated to allow the Partnership to establish an exempt structure in the future; *provided, however*, that if the fee estate is conveyed to the Partnership and the General Partner is removed after the 15-year tax credit compliance period (the "*Compliance Period*") other than for (i) a loss of the tax exemption due to the actions of the General Partner or its affiliates, (ii) a sale of the Project or (iii) cause, then the Partnership shall pay to the General Partner the original acquisition price of the land.

#### I. FEES AND EXPENSES

1. The Developer shall be entitled to receive a development fee (the "*Development Fee*") for its services in developing the Project. The amount of the Development Fee shall be equal to 15% of the Project's total development costs, as calculated pursuant to applicable TDHCA guidelines. All payments of Development Fee shall be made pro-rata with 75% going to Developer and 25% going to the McKinney HFC or its subsidiary (the "*McKinney HFC Share*"). The McKinney HFC Share shall be paid by the Partnership pro rata with the Developer's share of the Development Fee.

2. The Investor LP shall be entitled to receive 10% of net cash flow, and after the Investor LP receives its 10%, the General Partner shall be entitled to receive a fee equal to 25% of net cash flow (including any cash flow distributed pursuant to a sale or refinance of the Project) for its services in such capacity and the Special LP shall be entitled to receive a fee equal to 75% of net cash flow (including any cash flow distributed pursuant to a sale or refinance of the Project) for its services in such capacity. Such fees shall be payable from the Partnership's net cash flow only after payment of the Development Fee in full. All fees, distributions or sale or refinancing proceeds payable to the General Partner pursuant to the terms of the Partnership Agreement shall be retained by the General Partner, and the General Partner shall not be required, under any circumstance, to share any such fees, distributions or sale or refinancing proceeds with the Developer.

3. The General Partner and Special LP shall each be entitled to receive a Partnership Management Fee in the amount of \$10,000 per year, starting in the year both stabilization and cash flow distributions commence, for its services in connection with Management of the Partnership, which shall increase by 3% per annum and shall accrue without interest to the extent cash flow is insufficient to pay the Partnership Management Fee.

5. Neither party shall enter into any contractual relationship or agreement relating to the Project that would cause either financial or legal liability to the other, without the other party's prior written consent.

6. The following costs incurred by the McKinney HFC in connection with this MOU consisting of (i) GP Counsel (as defined herein) fees, which shall equal a total of \$115,000 (*plus* actual, out-of-pocket expenses not exceeding \$1,500), (ii) Hilltop Securities (as defined herein) fees, which shall equal a total of \$115,000 and (iii) City Attorney fees not to exceed \$5,000, shall be included in the Project's development budget and shall either be paid directly to, or reimbursed by the Partnership to the McKinney HFC concurrently with the closing on the Loan (the "*Closing*").

7. Reserved.

8. The Developer acknowledges and agrees that it is the intent of the parties hereto that the McKinney HFC shall bear no out-of-pocket costs or expenses in connection with the Project.

#### J. LONG TERM OWNERSHIP

At the end of the Compliance Period, the General Partner, the McKinney HFC, or the McKinney HFC's designated affiliate shall have a right of first refusal to acquire the Project on the same terms as any third-party offer received by the Partnership that it intends to accept. In addition, as of the Closing, the General Partner, or other McKinney HFC affiliate shall have an option to acquire the interests of the Investor LP and the Special LP and an option to acquire the Project. Notwithstanding the McKinney HFC's purchase option and right of first refusal, should the Project be sold to a third party, the McKinney HFC will agree to transfer the land to such third party upon payment of \$100.

In the event the Special LP desires to sell or refinance the Project (any such sale may take the form of a sale of all, but not less than all, of the ownership interest in both the general and limited partner(s)), the McKinney HFC and the General Partner shall cooperate with the Special LP in connection with such efforts. Nothing contained in this paragraph shall affect, limit or impair any purchase option or right of first refusal that either the McKinney HFC or its affiliates may be entitled to exercise.

The Developer (or an affiliate of the Developer) shall have an option to purchase the Investor LP interests, but at all times subject to the purchase option in favor of the McKinney HFC or its affiliates noted above.

#### K. PURCHASE OPTIONS

*Guarantors' Repurchase Option—Default.* If (i) the General Partner takes any action (or omits to take an action that is explicitly required by the Partnership Agreement) within its sole and exclusive control and such action or inaction results in an event of default under any of the Bond

financing documentation, the Loan documents, the Equity financing documentation, the Project obligations, or the Partnership Agreement; or (ii) the General Partner takes any action (or omits to take an action that is explicitly required by the Partnership Agreement) within its sole and exclusive control and such action or inaction causes any guarantors any quantifiable liability which such guarantor actually pays under its guaranty agreement(s), or (iii) the Project's loss of its ad valorem tax exemption for any reason other than a change in the Texas Constitution or other applicable State law or the negligence of the McKinney HFC or the General Partner, which loss remains uncured for a period of 60 days ((i), (ii) and (iii) are referred to as "*Repurchase Events*") then the guarantor, and/or its respective successors and assigns or designees, shall have the sole and exclusive option (with the consent of the Investor LP) to purchase either from the McKinney HFC its ownership interest in the General Partner (the "*HFC Ownership Interest*") or from the General Partner its general partner interest in the Partnership (the "*GP Ownership Interest*") for the sum of \$100.00, plus all unpaid fees and unreimbursed expenses earned by the General Partner to the date of the Repurchase Event, which shall be exercisable by any one or more of the guarantors, their successors and assigns or designees, upon 15 business days written notice by guarantors to the McKinney HFC and the General Partner (the "*Purchase Option*") and the other guarantors. It shall not be a Repurchase Event and this Purchase Option will not apply if the event of default or the cause of guarantor's liability or the repayment of the Bonds, Loan, or Equity is caused in whole or part by a matter or item over which guarantors or an affiliate has full control or for which it is otherwise responsible. For purposes of this paragraph, the term "caused" shall only include matters within the full or partial control of the application person or entity. The options granted by this Paragraph K. apply only to the acquisition of the HFC Ownership Interest and the GP Ownership Interest and are granted for \$100.00 and other good and valuable consideration, the receipt of which is hereby confirmed and acknowledged. These options in no way refer to, nor applies to, any other real or personal property owned by the McKinney HFC in the Project, now or in the future, other than the HFC Ownership Interest. These options are solely related to the exercise of control of the affairs of the Partnership to ensure compliance and performance of the Project objectives and to ensure protection of the guarantors with respect to the guaranteed obligations.

#### L. MISCELLANEOUS

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

2. Each party hereto is prohibited from assigning any of its interests, benefits or responsibilities hereunder to any unrelated third party, without the prior written consent of the other party.

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



4. The McKinney HFC's execution of this MOU is subject to approval by the McKinney HFC's Board of Directors.

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

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

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

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

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

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

- (a) The McKinney HFC and the Developer sign a mutual consent to terminate this MOU;
- (b) The Project has not received a commitment for Tax Credits by December 31, 2023;
- (c) Loan and Equity financing for the Project are not closed by December 31, 2023;
- (e) The terms of the Loan and Equity financing documentation for the Project are unacceptable to the McKinney HFC, in its sole discretion, and the McKinney HFC provides the Developer notice of such fact and a 30-day opportunity to provide financing terms that are acceptable to the McKinney HFC and the Developer, but the Developer does not do so;
- (f) The McKinney HFC's Board of Directors takes action to disapprove the Project;
- (g) Reserved;

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

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

11. Upon termination of this MOU for any of the reasons cited above, neither party shall have any ongoing obligation to the other with respect to this MOU nor the Project.

12. In addition, the provisions of this MOU with respect to the Project will be terminated when the General Partner is admitted to the Partnership and the McKinney HFC and the Developer and their affiliates, as applicable, enter into definitive agreements with respect to the governance of the Partnership and the development, construction, financing, and operation of the Project as contemplated herein.

13. The parties acknowledge that the General Partner, the McKinney HFC and its affiliates will be represented in this transaction by Chapman and Cutler LLP (“*GP Counsel*”) in a legal capacity and Hilltop Securities Inc. in a financial advisory capacity (“*Hilltop Securities*”). The Partnership, the Developer, the Special LP and their affiliates will be represented by separate counsel and will not be entitled to rely on GP Counsel for representation in this matter and acknowledges that no financial advisory relationship will exist among the Partnership, the Developer, the Special LP and their affiliates and Hilltop Securities.

EXECUTED to be effective as of the date above shown.

McKINNEY HOUSING FINANCE CORPORATION

By \_\_\_\_\_  
Tyler Underwood  
Vice President

PALLADIUM USA INTERNATIONAL, INC.

By \_\_\_\_\_  
Thomas E. Huth  
President

## EXHIBIT A

### PARTNERSHIP AGREEMENT TERMS

The following is a summary of terms that the McKinney HFC will require in the Partnership Agreement. The following list is not intended to be exhaustive and is intended to supplement and not limit the terms of the MOU.

#### REPRESENTATIONS

- The General Partner will make representations only as to its existence and due authorization and execution of Partnership documents.
- The General Partner will become a partner in the Partnership at Closing, therefore pre-closing items must be addressed by the Special LP or other Developer affiliate. Under no circumstances will the General Partner execute documents on behalf of the Partnership that are effective prior to the General Partner's admission to the Partnership.
- The General Partner is not performing due diligence on the Project. Therefore, any representations regarding the Project must be provided by the Special LP.
- The General Partner's representations are generally as to its own knowledge. The knowledge of the General Partner may not be qualified by phrases such as "after due inquiry." The General Partner will make no inquiry.

#### COVENANTS

- The General Partner may covenant not to take affirmative actions, but the General Partner cannot covenant not to permit or allow others to do things.
- The General Partner cannot covenant to maintain the property tax exemption, but the General Partner shall agree to cooperate with the Special LP in making any required filings.
- Any covenants relating to the operation of the Partnership or the construction or operation of the Project should be made by the Special LP (including, but not limited to, qualification for tax credits).
- The General Partner will not covenant to maintain adequate capital.

#### INDEMNITIES AND GUARANTEES

- The General Partner should be indemnified for all losses other than those caused by its gross negligence or willful misconduct.
- The General Partner's indemnification should not be conditioned on a court determination.
- The General Partner will indemnify only for its own gross negligence or willful misconduct. The General Partner will not indemnify for actions or inactions of the Special LP.
- The General Partner will not provide completion guarantees, environmental guarantees, credit guarantees, or covenant to make up for cash flow short falls.
- The General Partner will not be required to make loans to the Partnership.

- If the Partnership is required to provide a guarantee, the guarantee should either be limited to the assets of the Partnership or should explicitly state that the guarantee is not intended to be recourse to the General Partner.

#### DUTIES AND OBLIGATIONS FOR ADMINISTRATION OF PARTNERSHIP

- The General Partner will make a broad delegation to the Special LP with respect to the administration of the Partnership and the operation of the Project which shall include, but not be limited to, the right of Special LP to execute any documents related to construction draws, trust requisitions, and capital contributions.
- The Special LP will be responsible for obtaining any insurance required by the Partnership Agreement or other Partnership documents and will name the General Partner and Contractor as additional insured parties where applicable.
- The Special LP will be responsible for ensuring any requirements for maintaining the ad valorem tax exemption are met, including any ongoing correspondence with the applicable appraisal district. The General Partner will agree to provide reasonable cooperation at the direction of the Special LP with respect to the ad valorem tax exemption.
- All reports that are required by the Investor LP shall be made by the Special LP, and any penalties imposed for late reports shall be imposed only on the Special LP.
- Notices required by the Investor LP shall be made by the Special LP.

#### OPTIONS/RIGHTS OF FIRST REFUSAL

- The McKinney HFC will be granted the option and right of first refusal described in the MOU.
- The Special LP may be granted an option to acquire the Investor LP's Partnership interests, but only under an event of default, as specified in the Memorandum of Understanding and/or Partnership Agreement, shall the Special LP be granted an option to purchase the Project or the General Partner's Partnership interests.

#### TAXES AND ALLOCATIONS

- The Special LP will be responsible for the preparation of the tax return and tax filings. The General Partner will cooperate with the Special LP to the extent its signature is required.
- Losses in excess of capital accounts are allocated to the Special LP rather than the General Partner.
- The General Partner will not have a deficit restoration obligation either annually or on liquidation.
- The Special LP will be the "partnership representative" for the purposes of tax audits.
- If the Partnership has an adjustment on audit, the GP will pay its allocated share but will not put additional funds into the Partnership.

## REMOVAL

- Unless a removal is caused by its own gross negligence, willful misconduct, General Partner's and/or McKinney HFC's causing of the loss of the tax exemption, or General Partner's or McKinney HFC's causing of an event of default as set forth in the Memorandum of Understanding and/or the Partnership Agreement, the General Partner will not be liable for the costs related to removal or replacement.
- The General Partner will not be liable for events after removal.

## MISCELLANEOUS

- The governing law, jurisdiction and venue will be Texas.