



STRATEGIC HOUSING  
FINANCE CORPORATION

of TRAVIS COUNTY

**SHFC Action V.H  
November 21, 2019**

**Resolution No. SHFC-2019-29:** To Approve the prescription of the form and substance of an Agreement to Issue Bonds for Multifamily Housing Revenue Bonds (Wildhorse Apartments), to be located at Wildhorse Ranch Trail just southeast of the 290 / 130 intersection, Travis County, Texas 78653; Authorize the execution of such agreement; Authorize the filing of an application with the Texas Bond Review Board for a reservation of an allocation of State volume cap for private activity bonds; and Authorize additional provisions relating thereto.

**WHEREAS**, Strategic Housing Finance Corporation of Travis County (the "Corporation") is authorized by the Texas Housing Finance Corporations Act, Local Government Code, Chapter 394, Vernon's Annotated Texas Civil Statutes, as amended (the "Act"), to issue revenue bonds, as defined in the Act, for the purpose of paying all or part of the cost of a Residential Development as defined in the Act, and to sell or lease the project to others or loan the proceeds of the bonds to others to finance all or part of the cost of the Residential Development; and

**WHEREAS**, the Act authorizes the Corporation: (a) to make loans to any person to provide financing for rental residential developments located within Travis County, Texas (the "County"), and intended to be occupied substantially (at least 90 percent) by persons of low and moderate income, as determined by the Corporation; (b) to issue its revenue bonds for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Corporation, including the revenues and receipts to be received by the Corporation from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Corporation in order to secure the payment of the principal or redemption price of and interest on such bonds; and

**WHEREAS**, the Corporation now desires to authorize, issue and sell its tax-exempt multifamily housing revenue bonds, to the extent authorized by law, to provide funds to defray all or part of the cost of acquiring, developing and/or constructing a certain Residential Development by Elmington Capital and/or its assigns (the "User"); and

**WHEREAS**, the User and the Corporation desire that the Corporation take some official action toward the issuance of such bonds prior to the commencement of acquisition, development and construction of such Residential Development; and

**WHEREAS**, the County, has authorized and approved creation of the Corporation to act on its behalf to further certain public purposes of the County.



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•/ TRAVIS COUNTY

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE STRATEGIC HOUSING FINANCE CORPORATION OF TRAVIS COUNTY, THAT:**

**Section 1:** The Corporation hereby authorizes and agrees that it will issue and sell its multifamily housing revenue bonds (the "Bonds") from time to time in one or more series pursuant to the provisions of Texas law to pay all or part of the cost of acquiring, developing, constructing and equipping the project described in Exhibit "A" to the Agreement to Issue Bonds attached hereto (the "Project"), together with certain costs of authorization, sale and issuance of the Bonds.

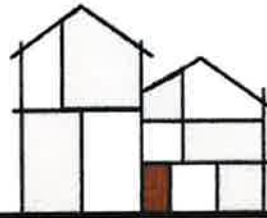
The Bonds will be issued and sold as more fully provided in the Agreement to Issue Bonds, and subject to the terms thereof, in a maximum aggregate principal amount now estimated to be not more than \$52,000,000.

**Section 2:** The proceeds of the Bonds will be used to finance a portion of the acquisition, construction, development and equipping of the Project.

**Section 3:** The Corporation will enter into a financing agreement with the User providing for financing of all or part of the cost of the Project.

**Section 4:** The Board of Directors of the Corporation (the "Board of Directors") hereby finds, determines and declares that (i) the Project is required and suitable for the promotion of the construction of new, improved, or expanded residential development in the County, (ii) the User has the business experience, financial resources and responsibility to provide reasonable assurance that the Bonds and the interest thereon to be paid from, or by reason of, payments made by the User under the financing agreement will be paid as the same become due, and (iii) the Project is in furtherance of the public purposes set forth in the Act.

**Section 5:** That neither the User nor any other party is entitled to rely on this Resolution as a commitment to loan funds, and the Corporation reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Corporation shall not be subject to any liability or damages of any nature. Neither the User nor any one claiming by, through or under the User, nor any investment banking firm or potential purchaser of the Bonds shall have any claim against the Corporation whatsoever as a result of any decision by the Corporation not to issue the Bonds.



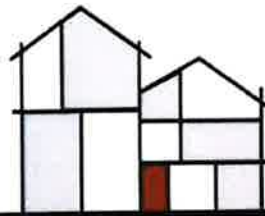
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**Section 6:** The Corporation hereby authorizes the filing of one or more Applications For Allocation of Private Activity Bonds with the Texas Bond Review Board ("BRB") for the year 2019 or 2020 (or a later year if determined by the officer executing such application) for the aggregate amount of up to \$52,000,000 of qualified residential mortgage bonds, and the President of the Corporation, the Executive Vice President of the Corporation, and/or the Director of Real Estate Development of the Corporation are designated as the authorized officers, acting together or individually, to execute and deliver such Application to the BRB and to take any other actions consistent with this Resolution, including the execution of documents necessary to withdraw a reservation, obtain a new reservation, obtain a carry forward of a volume cap reservation or an additional application to the BRB for a new reservation or a volume cap carry forward application for a subsequent calendar year, as may be determined necessary by the officer executing any such document.

**Section 7:** The Corporation authorizes participation in the financing, development and operation of the Project including but not limited to, acting as the sole member of, the general partner of the entity that will develop and operate the Development and participating in the application to the Texas Department of Housing and Community Affairs for low-income housing tax credits ,and that any officer of the Corporation, including but not limited to Patrick Howard as Executive Vice President and Robert Onion as Director of Real Estate Development, may act on behalf of the Corporation in connection with the Corporation's participation in the Project;

**Section 8:** This Resolution is a Declaration of Official Intent under U.S. Treasury Regulations for purposes of Sections 103 and 141 to 150 of the Internal Revenue Code of 1986, as amended. Based upon the representations of the User, the Corporation reasonably expects that certain of the costs of the Project may be reimbursed with the proceeds of the Bonds.



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**NOW, THEREFORE, BE IT FURTHER RESOLVED THAT THE BOARD OF DIRECTORS OF THE CORPORATION HEREBY:**

1. Approves Resolution SHFC-2019-29; and
2. Authorizes the officers, including, specifically, the Executive Vice President and Director of Real Estate Development, to execute all relevant documents, instruments, agreements, policies, and procedures and to take all actions on behalf of SHFC contemplated by the foregoing resolutions.

**Passed and approved the 21<sup>ST</sup> day of November, 2019**

  
\_\_\_\_\_  
Eddie Karam, *President, Board of Directors*

**Attested and approved as to form:**

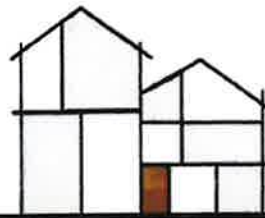
  
\_\_\_\_\_  
Patrick B. Howard, *Executive Vice President*

**CERTIFICATION**

The above resolution, adopted by the Board of Directors of the Strategic Housing Finance Corporation of Travis County at a meeting held on the 21<sup>st</sup> day of November, 2019, is hereby certified to be a true and correct copy of an official copy thereof on file among the official records of such Corporation.

WITNESS my hand and seal of office this 21st day of November, 2019.

By:   
Name:   
Title: 



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**Background Information:**

Staff has been working with Elmington Capital (Principals are Mark McCord and Hunter Nelson) for the last 8 months to identify sites in Travis County. Lloyd Griffin (Managing Director of Affordable Housing) of Berkadia Commercial Mortgage introduce me to them. The development firm headquarters are in Nashville, Tennessee. They have acquired/developed over 4,050 affordable apartments primarily in Tennessee. The Elmington team has extensive experience with 4% and 9% tax-exempt bond financing, tax-increment financing, HUD rental assistance, and historic tax credits. Elmington Property Management currently manages over 10,000 affordable units in 10 states, including 3<sup>rd</sup> party management agreements.

The subject property is located on Wildhorse Ranch Trail just southeast of the 290/ 130 intersection, Travis County, Texas 78653. The Project is expected to offer a variety of floor plans, including 120 1-bedroom units, 120 2-bedroom units and 76 3- bedroom units, subject to change. The proposed rents range from \$1,011 to \$1,390 depending on floor plan. Each unit is expected to include granite countertops, central heat and air conditioning, ceiling fans, dishwasher, garbage disposal, carpet, drapes/blinds, washer/dryer hookups, refrigerator and microwave. The residential units will be marketed to families earning 60% of the area median incomes Subject to change. The development will offer housing convenient to the fast-growing East Austin area, all accessible to downtown Austin, Manor, and the eastern corridor of the Austin metro area via 130. Property residents are served by the Manor ISD.

**Recommended Action:** Consider and take appropriate action regarding **Resolution No. SHFC-2019-29:** To Approve the prescription of the form and substance of an Agreement to Issue Bonds for Multifamily Housing Revenue Bonds (Wildhorse Apartments), to be located at Wildhorse Ranch Trail just southeast of the 290 / 130 intersection, Travis County, Texas 78653; Authorize the execution of such agreement; Authorize the filing of an application with the Texas Bond Review Board for a reservation of an allocation of State volume cap for private activity bonds, and Authorize additional provisions relating thereto.

**Alternate Option:**

The Board of Directors could elect to Not Approve the following Resolution:

- Resolution No. SHFC-2019-29





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**Fiscal Impact:**

This transaction will greatly enhance the financial position of SHFC through the collection of Bond issuance fee, Construction Administration fees, Developer's fees, and cash flow of the property upon stabilization.

**Attachment:**

A. Agreement to Issue Bonds

**Prepared by:**

Robert Orion – *Director of Real Estate Development*

**Approval:**

*Patrick B. Howard*

Patrick B. Howard, *Executive Vice President*

## **Exhibit A**

### **Description of the Project**

The Project is a proposed mixed income affordable housing community to be named Wildhorse Apartments (subject to change) to consist of approximately 316 units located on approximately 13.2 acres located on Wildhorse Ranch Trail just southeast of the 290 / 130 intersection, Travis County, Texas 78653. The Project is expected to offer a variety of floor plans, including 120 1-bedroom units, 120 2-bedroom units and 76 3-bedroom units, subject to change. The proposed rents range from \$1,011 to \$1,390 depending on floor plan. Each unit is expected to include granite countertops, central heat and air conditioning, ceiling fans, dishwasher, garbage disposal, carpet, drapes/blinds, washer/dryer hookups, refrigerator and microwave.

The residential units will be marketed to families earning 60% of the area median incomes subject to change. The development will offer housing convenient to the fast-growing East Austin area, all accessible to downtown Austin, Manor, and the eastern corridor of the Austin metro area via 130. Property residents are served by the Manor ISD.

The community will provide resident supportive services such as transportation to grocery and other essential retail, student achievement reading programs, adult education, financial literacy workshops, homebuyer education, counseling services, credit education classes, health and nutritional courses, latchkey programs for school age children and other appropriate programs, at no additional cost to residents subject to change based on local feedback and actual resident needs. Residents at the property will also enjoy a club house with swimming pool, an equipped fitness center, business center with computers and internet access, enclosed dog park, gazebo, service provider offices, and a large community room subject to change.

## AGREEMENT TO ISSUE BONDS

THIS AGREEMENT TO ISSUE BONDS, entered into as of the 21st day of November 2019, by and between Strategic Housing Finance Corporation of Travis County (the "Corporation"), created pursuant to the authority of the Texas Housing Finance Corporations Act, Local Government Code, Chapter 394, Tex. Rev. Civ. Stat. (the "Act"), and Elmington Capital and/or is assigns (the "User"), for the purpose of carrying out the public purpose set forth in the Act, including the promotion and development of new, expanded, or improved residential development to provide decent, safe, and sanitary housing for residents of Travis County, Texas.

### WITNESSETH

WHEREAS, Travis County, Texas (the "Unit") has authorized and approved the creation of the Corporation to act on behalf of the Unit for the public purpose of furthering on behalf of the Unit the promotion and development of new, expanded, or improved residential development to provide decent, safe, and sanitary housing for residents of the Unit; and

WHEREAS, the Corporation is authorized by the Act to acquire, construct, improve, maintain, equip and furnish and to lease or sell "residential developments," as that term is defined in the Act, or to make loans for the purpose of providing financing for all or part of the costs of a residential development, and the Corporation is further authorized to issue its bonds for the purpose of paying all or part of the costs of a residential development; and

WHEREAS, the User desires to acquire and construct a residential development, more particularly described in Exhibit "A" attached hereto, within the Unit (the "Project"), which project is suitable for the promotion of new, expanded or improved residential development to provide decent, safe, and sanitary housing for residents of Travis County, Texas; and

WHEREAS, pursuant to the Act, the Corporation is authorized to issue the bonds hereinafter described, which bonds shall never constitute an indebtedness or pledge of the faith and credit of the State of Texas (the "State"), of the Unit, or of any other political corporation, subdivision or agency of the State within the meaning of any State constitutional or statutory provision, shall never be paid in whole or in part out of any funds raised or to be raised by taxation or any other funds of the Unit, and shall never be paid in whole or in part out of any funds of the Corporation except those derived from or in connection with the sale or lease of the Project or the loan of funds to finance the Project; and

WHEREAS, to provide decent, safe, and sanitary housing for residents of Travis County, Texas, the Corporation agrees to issue at the request of the User, one or more series of the Corporation's housing finance revenue bonds (the "Bonds") for the purpose of paying all or part of the costs of constructing and acquiring the Project, or for the purpose of loaning the proceeds to the User in order to provide temporary or permanent financing of all or part of the cost of constructing and acquiring the Project, and the Corporation and the User deem it desirable and proper that this Agreement to Issue Bonds constitutes a formal record of such agreement and understanding in order that the User may proceed with or provide for the acquisition and construction of the Project; and



WHEREAS, the User has evidenced a desire to cooperate with the Corporation in the acquisition and construction of the Project and for the Corporation to authorize and issue the Bonds in the aggregate principal amount now estimated not to exceed \$52,000,000 to provide the funds to defray all or part of the cost of the acquisition and construction of the Project; and

WHEREAS, the Corporation and the User contemplate that the Project will be sold on an installment payment basis or leased to the User or that proceeds of the Bonds will be loaned to the User in order to provide temporary or permanent financing of all or part of the costs of the Project and that the installment purchase, rental, or loan payments therefor will be sufficient to pay the principal of and any premium and interest on the Bonds; and

WHEREAS, it is the desire of the Corporation that the acquisition and construction of the Project occur at the earliest possible time so as to provide decent, safe, and sanitary housing for residents of Travis County, Texas;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration and of the mutual benefits, covenants and agreements herein expressed, the Corporation and the User agree as follows:

1. The User shall commence with the acquisition and construction of the Project, which Project will be in furtherance of the public purpose of the Corporation and the Unit as aforesaid, and the User will provide, or cause to be provided, at its expense, the necessary interim financing to expedite the commencement of the acquisition and construction of the Project. On or prior to the issuance of the Bonds, the User will enter into a purchase, lease, or loan agreement on an installment payment basis (herein called the "Agreement") with the Corporation under which the Corporation will sell or lease the Project to the User or make a loan to the User, or to a financial institution designated by the User for the purpose of providing temporary or permanent financing of all or part of the costs of the Project, and the User will make installment payments sufficient to pay the principal of and any premium and interest on such series of Bonds. The Bonds shall never constitute an indebtedness or pledge of the faith and credit of the State, of the Unit, or of any other political corporation, subdivision or agency of the State within the meaning of any State constitutional or statutory provision, and the Bonds shall never be paid in whole or in part out of any funds raised or to be raised by taxation or any other funds of the Unit, and shall be payable from the funds of the Corporation derived from or in connection with the sale or lease of the Project or the loan of the proceeds of the Bonds.

2. On receipt of a ruling from the Internal Revenue Service (or the opinion of nationally recognized bond counsel) that interest paid on the Bonds is exempt from federal income taxation and subject to the requirements of the Policy Guidelines and the Act, and upon receipt of favorable reports from the Corporation's legal and financial advisors concerning the issuance of the Bonds and from the Corporation's engineering consultant concerning the environmental and traffic impact of the Residential Development; the Corporation hereby agrees to issue, pursuant to the terms of the Act, the Bonds, or from time to time, the portion thereof as may be the subject of such a ruling or opinion as aforesaid, in an appropriate principal amount not exceeding that which is the subject of a ruling or opinion as aforesaid, maturing in such amount and times,

bearing interest at the rate, payable on the dates and having such optional and mandatory redemption features and prices as are approved in writing by the User. The Corporation will deliver the Bonds to the purchaser designated by the User and will cooperate to the fullest extent in facilitating delivery of the Bonds.

3. The Corporation and the User agree that the Bonds may be issued either at one time or in several series from time to time as the User shall request in writing; provided, however, that the parties agree that the Bonds will be issued in an aggregate principal amount as will not exceed the amount that is the subject of a ruling or rulings or opinion or opinions as aforesaid. A request in writing for issuance of one or more series of Bonds shall not affect the obligation hereunder of the Corporation to issue the remaining Bonds as written requests therefor are received. It is further agreed that the proceeds of the Bonds or portions thereof, whether or not issued in a series, shall not be invested so as to constitute the Bonds or a portion thereof as arbitrage bonds under the Internal Revenue Code of 1986, as amended, and applicable regulations promulgated pursuant thereto.

4. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the sale or lease of the Project or from moneys realized from the loan of the proceeds of the Bonds to finance all or part of the costs of the Project.

5. The costs of the Project (the "Project Costs") may include any cost of acquiring, constructing, remodeling, repairing, renovating and improving the Project. Without limiting the generality of the foregoing, the Project Costs shall specifically include the cost of: (i) acquiring any land, rights-of-way, options to purchase land, easements, leasehold estates in land and interests of all kinds in land related to such Project; (ii) acquiring, constructing, repairing, renovating, remodeling or improving all buildings and structures to be used as or in connection with the Project; (iii) site preparation, including the cost of demolishing or removing any buildings or structures the removal of which is necessary or incident to providing the Project; (iv) machinery, equipment, furnishings and facilities necessary or incident to the equipping of the Project so that it may be placed in operation; (v) financing charges, start-up costs and interest prior to and during construction and for two years after completion of construction, whether or not capitalized; and (vi) architectural, engineering, legal and related services (including fees for legal counsel and the financial advisor to the Issuer), plans, specifications, surveys, studies, estimates of cost and of revenue, other expenses necessary or incident to planning, providing or determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Project, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, remodeling, repair, renovation or improvement of the Project, the placing of the Project in operation and all incidental expenses, costs and charges relating to the Project not enumerated above. The parties agree, upon request, to provide or cause to be provided to each other any data or information that may be reasonably required to verify any of the Project Costs enumerated in this paragraph. The User agrees that it will be responsible for and pay any Project Costs incurred whether before or after the date of this Agreement prior to issuance of the Bonds and will pay all Project Costs that are not or cannot be paid or reimbursed from the proceeds of the Bonds.

6. The User agrees that it will at all times indemnify and hold harmless the Corporation, the directors of the Corporation, the Unit, the Commissioners' Court of the Unit (both individually and as a group) and any officers, directors, employees, agents, consultants, servants and any other party acting for or on behalf of the Corporation or the Unit (such parties being hereinafter referred to as the "Indemnified Parties") against all losses, costs, damages, expenses and liabilities (collectively referred to hereinafter as "Losses") of whatsoever nature (including, but not limited to, attorney's fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) directly or indirectly resulting from, arising out of or relating to one or more Claims, as hereinafter defined, even if such Losses or Claims, or both, directly or indirectly result from, arise out of or relate to, or are asserted to have resulted from, arisen out of or related to, in whole or in part, one or more negligent acts or omissions of anyone or more of the Indemnified Parties in connection with the issuance of the Bonds or that in any way pertain to the duties or activities or lack thereof, whether real or alleged, of any such Indemnified Party incidental to the issuance of the Bonds. The term "Claims" as used herein shall mean all claims, lawsuits, causes of action and other legal actions and proceedings of whatever nature, including, but not limited to, claims, lawsuits, causes of action and other legal actions and proceedings involving bodily or personal injury or death of any person or damage to any property (including, but not limited to, persons employed by the Corporation, the Unit, the User or any other person and all property owned or claimed by the Corporation, the Unit, the User, any affiliate of the User or any other person) or involving damages relating to the issuance, offering, sale or delivery of the Bonds brought against the Corporation or the Unit or to which the Corporation or the Unit is party, even if groundless, false or fraudulent, that directly or indirectly result from, arise out of or relate to the issuance, offering, sale or delivery of the Bonds or the design, construction, installation, operation, use, occupancy, maintenance or ownership of the Project or any part thereof. The obligations of the User shall apply to all Losses or Claims, or both, that result from, arise out of or are related to any event, occurrence, condition or relationship prior to termination of this Agreement to Issue Bonds, whether such Losses or Claims, or both, are asserted prior to termination of this Agreement to Issue Bonds or thereafter. None of the Indemnified Parties shall be liable to the User for, and the User hereby releases each of them from all liability to the User for any injuries, damages or destruction to all or any part or parts of any property owned or claimed by the User that directly or indirectly result from, arise out of or relate to the issuance, offering, sale or delivery of the Bonds or the design, construction, installation, operation, use, occupancy, maintenance or ownership of the Project or any part thereof, even if such injuries, damages or destruction directly or indirectly result from, arise out of or relate to, in whole or in part, one or more negligent acts or omissions of anyone or more of the Indemnified Parties in connection with the issuance of the Bonds or in connection with the Project. Each Indemnified Party, as appropriate, shall reimburse the User for payments made by the User to the extent of any proceeds, net of all expenses of collection, actually received by them from any insurance with respect to the Loss sustained. At the request and expense of the User, each of the Indemnified Parties, as appropriate, shall have the duty to claim any such insurance proceeds and such Indemnified Party, as appropriate, shall assign their respective rights to such proceeds, to the extent of such required reimbursement, to the User. In case any action shall be brought against anyone or more of the Indemnified Parties, such Indemnified Party shall promptly notify the User in writing and the User shall have the right to assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The Indemnified Party shall have the right to employ separate counsel in any such

action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by the Indemnified Party unless the employment of such counsel has been authorized by the User. The User shall not be liable for any settlement of any such action without its consent, but, if any such action is settled with the consent of the User or if there be final judgment for the plaintiff of any such action, the User agrees to indemnify and hold harmless the Indemnified Parties from and against any Loss by reason of such settlement or judgment.

7. If within three (3) years from the date hereof (or such later date as shall be mutually satisfactory to the Corporation and the User) the Corporation and the User shall not have agreed to mutually acceptable terms for the Bonds and for the sale and delivery thereof and mutually acceptable terms and conditions of the Agreement, the User agrees that it will pay the Corporation for all unpaid Project Costs which the Corporation shall have incurred and this Agreement to Issue Bonds (other than the obligations of the parties under paragraph 6 hereof) shall thereupon terminate. In the event that the User elects, prior to any such termination, not to proceed with the issuance of the Bonds for any reason, it shall so notify the Corporation in writing and shall promptly pay to the Corporation all Project Costs incurred by the Corporation prior to such notification, and if payment is so made, the User's obligations under paragraph 5 above shall terminate from and after the date of such notification.

8. The User may, without the consent of the Corporation, transfer or assign this Agreement to Issue Bonds or transfer or assign any or all of its rights and delegate any or all of its duties hereunder to any of its subsidiaries or affiliates currently existing or hereafter created, but no such transfer, assignment or delegation shall, without the written consent and approval of the Corporation, relieve the User of its liability for payment of Project Costs under paragraphs 5 and hereof or indemnification under paragraph 6 hereof.

9. The provisions of paragraphs 5 and 6 of this agreement shall survive the expiration or termination of this Agreement to Issue Bonds and the closing of the transactions contemplated by the Agreement.

IN WITNESS WHEREOF, the Corporation, acting pursuant to a resolution of its Board of Directors, and the User have caused this Agreement to Issue Bonds to be executed by their duly authorized officers as of the year and date first above written.

**CORPORATION:**

Strategic Housing Finance Corporation of Travis County

By: Patrick Howard  
Patrick Howard, Executive Vice President

**USER:**

Elmington Capital

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