

## TAX CERTIFICATE

This Tax Certificate (the "Tax Certificate") is being executed by Tuxedo Place, L.P. (the "Company"), the beneficiary of the Orange County Industrial Development Agency's (the "Agency") \$10,500,000 Senior Facility Revenue Bonds (Tuxedo Place, L.P. Project), Series 1999 (the "Bonds") being issued on the date hereof.

The Bonds are being issued for the purpose of financing a portion of the cost of constructing and equipping a senior citizen residential rental housing project to be located in the Town of Tuxedo (the "Project"); and

WHEREAS, the Bonds are issued under and secured by an indenture of trust, dated as of August 1, 1999 (the "Indenture"), between the Issuer and The Bank of New York (the "Trustee"); and

WHEREAS, Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the, temporary or proposed Treasury Regulations relating thereto (the "Regulations") impose certain requirements relating to the investment and use of funds held by the Trustee under the Indenture in order to preserve the exclusion of interest on the Bonds from the gross income of the owners thereof for purposes of Federal income taxation pursuant to Section 103 of the Code; and

WHEREAS, the Company is executing this Certificate at the request of the Issuer in order to assure that such requirements as applied to the Bonds are fully satisfied on a continuous basis;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company certifies and covenants as follows:

### ARTICLE I

#### DEFINITIONS

Except as otherwise defined herein, the terms used herein shall for all purposes of this Certificate have the meanings specified in the Indenture, unless the context clearly requires otherwise. In addition, unless the context clearly requires otherwise, the following terms used in this Certificate shall have the following meanings:

"AMT Bond" means a specified private activity bond described in Section 57(a)(5)(C) of the Code.

"Applicable Annual Excess Earnings Report" has the meaning specified in Section 3.2.

"Bond Year" means the period beginning on the Date of Issuance and ending on each anniversary thereof.

"Bond Yield" means the Yield on the Bonds calculated in accordance with Regulations Section 1.148-4.

"Bonds" has the meaning specified in the recitations preceding this Article I.

"Code" has the meaning specified in the recitations preceding this Article I.

"Company" has the meaning specified in the recitations preceding this Article I.

"Date of Issuance" means September 28, 1999.

"Determination of Rebate Deficiency" means the receipt by the Trustee (or by the Issuer, if no Bonds are Outstanding) of evidence of a judgment or order of a court of competent jurisdiction, or a final ruling, technical advice or decision of the Internal Revenue Service, or a written opinion by Bond Counsel (selected by the Company and not objected to by the Trustee, or, if received when no Bonds are Outstanding, not objected to by the Issuer) to the effect that insufficient amounts have been paid to the United States, and stating the amount of the deficiency (including interest and any applicable penalty) then due. For purposes of this definition, a judgment or order of a court or a ruling or decision of the Internal Revenue Service shall be considered final if no appeal or action for a judicial review has been filed and the time for filing of such appeal or action has expired.

"Future Values of Nonpurpose Receipts and Nonpurpose Payments" means, in general terms, the future value, as of the Rebate Determination Date, of all amounts received or paid on or before the Rebate Determination Date, with respect to Nonpurpose Investments allocated to the Bonds, computed in compliance with Regulations Section 1.148-3 and the Regulations cited therein.

"Gross Proceeds" means:

(a) all amounts derived by the Issuer from the sale of the Bonds and deposited into the Construction Fund and Investment Proceeds derived therefrom;

(b) any other amounts that constitute "Gross Proceeds" of the Bonds under the Code and the Regulations.

"Higher Yielding Investments" has the meaning specified in Section 3.1.

"Indenture" has the meaning specified in the recitations preceding this Article I.

"Investment Excess" has the meaning specified in Section 3.2.

"Investment Proceeds" means amounts actually or constructively received from investing the proceeds of the Bonds and from reinvesting any such earnings, subject to the exceptions and qualifications set forth in the Regulations.

"Investment Property" means any security, obligation, annuity contract or investment-type property, provided that the term "Investment Property" shall not include any Tax-Exempt Bond.

"Issuer" has the meaning specified in the recitations preceding this Article I.

"Nonpurpose Investment" means any Investment Property acquired with Gross Proceeds of the Bonds.

"Nonpurpose Investment Yield Limit" means the Bond Yield.

"Project" has the meaning specified in the recitations preceding this Article I.

"Purchase Price" means the fair market value of a Nonpurpose Investment on the date it is purchased, or, if later, the date on which the Nonpurpose Investment is allocated to the Bonds, regardless of the amount actually paid for such Nonpurpose Investment, without taking into account fees and commissions paid in connection with the acquisition of such Nonpurpose Investment.

"Rebate Determination Date" means each of the following dates: (a) the last day of each Bond Year; and (b) the earlier of the scheduled final maturity date of the Bonds or any date prior thereto on which all outstanding Bonds are paid and retired.

"Regulations" has the meaning specified in the recitations preceding this Article I.

"Tax-Exempt Bond" means (i) any obligation, the interest on which is excludable from the gross income of the owner thereof for Federal income tax purposes, other than an AMT Bond, and (ii) an interest in a regulated investment company to the extent that at least 95% of the income to the holder of the interest is interest that is excludable from gross income under Section 103 (a) of the Code.

"Trustee" has the meaning specified in the recitations preceding this Article I.

"Value" means, in reference to a Nonpurpose Investment, the Purchase Price of the Nonpurpose Investment, unless the Nonpurpose Investment is required to be revalued periodically, in which case the value is equal to its most recent value as so periodically revalued.

"Yield" means, with respect to the Bonds, the Bond Yield and, with respect to any other obligation or Investment Property, the yield calculated in accordance with Regulations Section 1.148-5.

## ARTICLE II

### REBATE OF EXCESS EARNINGS

SECTION 2.1. DEBT SERVICE FUNDS. Future Values of Nonpurpose Receipts and Nonpurpose Payments with respect to Nonpurpose Investments held in the Debt Service Fund are disregarded

for purposes of the rebate requirement imposed by Section 148 of the Code if the gross earnings on such Fund are less than \$100,000. Consequently, Future Values of Nonpurpose Receipts and Nonpurpose Payments with respect to the Debt Service Fund shall be included in the computation of the amount to be paid to the United States government only in Bond Years during which such earnings equal or exceed \$100,000. Pursuant to Section 1.148-3(k), if the average annual debt service on the Bonds does not exceed \$2,500,000, the gross earnings on the Debt Service Fund shall be deemed not to exceed \$100,000 for this purpose.

SECTION 2.2. COMPANY TO PREPARE REPORTS. (A) Except as provided in subsections (B) or (C) of this Section 2.2, the Company shall prepare and file with the Trustee, not later than 30 days following each Rebate Determination Date and at such other times as may be required under Section 3.2(A) hereof, an Annual Excess Earnings Report in the form attached hereto as Exhibit A. Copies of each such Report shall be furnished by the Company to the Issuer and the Trustee. Each Report shall be dated as of such Rebate Determination Date and shall be numbered consecutively from one upward in chronological order.

(B) If all of the Gross Proceeds of the Bonds are actually applied to their ultimate use to carry out the purpose of the Bonds (other than the redemption of Bonds) before the date that is six months after the Date of Issuance, the Company shall not be required to cause to be prepared the Annual Excess Earnings Reports required by subsection (A) of this Section 2.2; provided, however, that if any such Gross Proceeds become available after such date, the Company shall prepare and file Annual Excess Earnings Reports not later than 30 days following each Rebate Determination Date occurring after such Gross Proceeds become available.

(C) If all of the Gross Proceeds of the Bonds are actually applied to their ultimate use to carry out the purpose of the Bonds (other than the redemption of Bonds) in accordance with the following schedule:

<u>Number of Months After Date of Issuance</u>	<u>Percentage of Adjusted Gross Proceeds Expended</u>
6	15% or more
12	60% or more
18	100%

the Company shall not be required to cause to be prepared the Annual Excess Earnings Reports required by subsection (A) of this Section 2.2; provided, however, that if any such spending target is missed or if any Gross Proceeds become available thereafter, the Company shall prepare and file the Annual Excess Earnings Reports not later than 30 days following each Rebate Determination Date after such event.

SECTION 2.3. TRUSTEE TO MAINTAIN RECORDS. The Trustee shall maintain records pertaining to the Funds created under the Indenture or hereunder and all transfers thereto, deposits thereto, disbursements and transfers therefrom and earnings thereon, including the amount and

source of each payment to, and the amount, purpose and payee of each payment from each such Fund. With respect to each Nonpurpose Investment, the Trustee shall maintain a record of the Purchase Price, purchase date, type of security, accrued interest paid, interest rate, principal amount, date of maturity, interest payment date, date of Equidafion and amount received upon liquidation. The Trustee shall furnish the Company with such information as the Trustee then possesses as shall be requested by the Company to enable the Company to complete the Annual Excess Earnings Reports. Such records and all Annual Excess Earnings Reports filed with the Trustee pursuant to this Certificate shall be retained by the Trustee for at least six years following the payment and retirement of the Bonds.

SECTION 2.4. PAYMENTS TO THE UNITED STATES. (A) To the extent and at the time set forth in Line 4 and footnote 9 of any Annual Excess Earnings Report filed with the Trustee, the Trustee shall, from moneys provided or made available to it pursuant to the Indenture or the Installment Sale Agreement, make payment to the United States of any and all amounts due and owing to the United States. Such payments shall be made from amounts on deposit in the Rebate Fund to the extent moneys are available in such Fund. If and to the extent sufficient amounts are not available in the Rebate Fund to make such payment, the Trustee shall notify the Company within 30 days following the most recent Rebate Determination Date of the amount (the "Deficiency Amount") necessary, together with amounts on deposit in the Rebate Fund, to enable the Trustee to make such payment to the United States. The Company shall pay the Deficiency Amount to the Trustee within five days of receipt of notice from the Trustee of the Deficiency Amount. Each such payment to the United States shall be mailed by certified mail (return-receipt requested) to the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255, and shall be accompanied by a copy of the Internal Revenue Service Form 8038-T, which the Company shall provide to the Trustee.

(B) In addition, upon a Determination of Rebate Deficiency, the Company shall promptly pay to the Trustee for payment to the United States (or directly to the United States if the Bonds are no longer Outstanding) an amount equal to the correct rebate amount plus interest and, if so required by the Commissioner of the Internal Revenue Service, the applicable penalty.

### ARTICLE III

### RESERVED

### ARTICLE IV

### PURCHASE AND SALE OF INVESTMENTS

With respect to the purchase and sale of investments hereunder, the Company covenants to comply with the provisions of this Article.

SECTION 4.1. PURCHASE AND SALE AT FAIR MARKET VALUE. (A) Whenever any Nonpurpose Investment is purchased or sold, such purchase or sale shall be made only at the fair market value of such Nonpurpose Investment.

(B) In general, the fair market value of a Nonpurpose Investment shall be the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arms length transaction. The price shall not be increased by brokerage commissions, administrative expenses, or similar expenses, except for certain qualified administrative costs described in Section 1.148-5(e)(2) of the Regulations.

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SECTION 4.2. GUARANTEED INVESTMENT CONTRACTS. Nonpurpose investments are permitted to be purchased or sold pursuant to a guaranteed investment contract only if all of the following conditions are satisfied:

(i) a *bona fide* solicitation for a specified guaranteed investment contract is made and at least three *bona fide* bids from providers of guaranteed investment contracts that have no material financial interest in the issue are received;

(ii) the highest yielding guaranteed investment contract for which a qualifying bid is made (determined net of brokers fees) is purchased;

(iii) the Yield on the guaranteed investment contract (determined net of brokers 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 bonds;

(iv) the determination of the terms of the guaranteed investment contract takes into account as a significant factor the reasonably expected draw down schedule of the amounts to be invested, exclusive of amounts deposited in debt service funds and reasonably required reserve or replacement funds;

(v) the terms of the guaranteed investment contract, including collateral security requirements, are reasonable; and

(vi) the obligor on the investment contract certifies the administrative costs that are reasonably expected to be paid to third parties in connection with the investment Contract.

SECTION 4.3. CERTIFICATES OF DEPOSIT. In the case of a certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal, the fair market value of the certificate is its purchase price if the Yield on the certificate is not less than (i) the Yield on reasonably comparable direct obligations of the United States, and (ii) 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.

SECTION 4.4. COMMINGLED FUNDS. Gross Proceeds of the Bonds may be invested in a commingled fund only if the commingled fund complies with the special accounting rules set forth at Section 1.148-6(e) of the Regulations. Generally, this requires that, not less frequently than as of the close of each fiscal period, all payments and receipts (including deemed payments and receipts) on investments held by a commingled fund must be allocated (but not necessarily distributed) among

the different investors in the fund in accordance with a consistently applied, reasonable ratable allocation method. For this purpose, the term "investor" means each different source of funds invested in a commingled fund, and the term "fiscal period" means any consistent fiscal period that does not exceed three months. Examples of reasonable ratable allocation methods include methods that allocate payments and receipts in proportion to either (A) the average daily balances of the amounts in the commingled fund from different investors during a fiscal period or (B) the average of the beginning and ending balances of the amounts in the commingled fund from different investors for a fiscal period that does not exceed one month. In the case of a commingled fund in which the Issuer and any related party own more than 25% of the beneficial interests in the fund, unless the weighted average maturity of all investments held by the fund during a particular fiscal year does not exceed 18 months (and the only investments held by the Commingled Fund during that time are obligations), the commingled fund must market-to-market all its investments either on the last day of each fiscal year or on the last day of each fiscal period.

**SECTION 4.5. LIMITATION.** Except as expressly permitted in the Arbitrage Certificate of the Issuer, Gross Proceeds shall not be invested in Nonpurpose Investments having a Yield above the Bond Yield.

**SECTION 4.6. VALUATION.** The value of an investment (including a payment or receipt on the investment) on a date must be determined by using one of the following valuation methods consistently applied:

- (a) a plain par investment (as defined in Section 1.148-1 of the Regulations) may be valued at its outstanding stated principal amount, plus any accrued unpaid interest on that date;
- (b) a fixed rate investment may be valued at its present value on that date; or
- (c) an investment may be valued at its fair market value (as described in Section 4.1 hereof) on that date.

A restricted Yield investment must be valued at its present value on that date. Except in the case of a restricted Yield investment, transferred proceeds allocations, universal cap allocations and commingled fund allocations, an investment must be valued at fair market value on the date that it is first allocated to the Bonds or first ceases to be allocated to the Bonds as a consequence of a disposition or deemed disposition.

## ARTICLE V

### MISCELLANEOUS

**SECTION 5.1. APPOINTMENT OF ATTORNEY-IN-FACT.** The Company acknowledges and agree that the continued exclusion of interest on the Bonds from the gross income of the owners thereof for purposes of Federal income taxation is dependent upon, among other things, full compliance from and after the date hereof with the provisions and requirements of the Arbitrage Certificate of the Issuer and this Certificate. The Company authorizes the Trustee to appoint, at the

08 expense of the Company, a third party as the Company's true and lawful attorney, in its name, place and stead, to take all action which may be required to assure such compliance in the event the Company fails to perform its obligations hereunder. It is expressly intended by the Company that the foregoing power of attorney is irrevocable and is coupled with an interest, and shall survive the sale or assignment of the Project by the Company or any interests in the Company by the owners thereof. The provisions of this Section are not intended to impose upon the Trustee any obligations in addition to those expressly set forth in the Indenture. In no event shall the Trustee have any duty or responsibility to pay the fees and expenses of any third party appointed hereunder or to incur any financial liability or expense under this Certificate.

SECTION 5.2. LIMITATION ON LIABILITY OF ISSUER AND TRUSTEE. No recourse shall be had for any claim based upon any obligation covenant or condition contained herein against the Issuer, the Trustee or any member, officer, employee or agent of the Issuer or the Trustee, under any rule of law or equity, statutory or constitutional provision or by the enforcement of any penalty or assessment, it being understood that the Company expressly assumes all responsibility for full compliance with the terms and conditions of this Certificate. The Company agrees to indemnify and hold harmless the Issuer and the Trustee (and all members, officers, employees or agents of the Issuer or Trustee) against any losses, claims or liabilities, joint or several, to which the Issuer or the Trustee (or such members, officers, employees or agents) may become subject under Federal or state laws or regulations, or otherwise, insofar as such losses, claims, damages or liabilities arise as a result of, or are based upon, (a) a breach of any obligation, covenant or condition contained herein, or (b) any action taken by the Trustee or the Issuer at the Company's direction.

#### SECTION 5.3. COMPLIANCE WITH CODE.

(a) The Company agrees and covenants that it shall at all times do and perform all acts and things necessary or desirable and within its reasonable control in order to ensure that interest paid on the Bonds shall, for the purpose of federal income taxation, be excludable from the gross income of the recipients thereof and exempt from such taxation, except in the event that such recipient is a Substantial User or Related Person.

(b) The Company acknowledges that the covenants and conditions set forth in this Tax Certificate are based upon the Code as it exists on the date hereof and that the Code may be subsequently interpreted or modified by the federal government in a manner which is inconsistent with covenants set forth herein. The Company agrees that any such subsequent modification or the interpretation of the Code, to the extent applicable to the Bonds, will be deemed a requirement that must be met pursuant to the general tax covenant set forth in (a) above.

SECTION 5.4. ALLOCATION OF NON-BOND PROCEEDS TO NON-QUALIFIED COSTS. The Company covenants to fund from sources other than Net Proceeds the cost of that portion of the Project Facility, if any, which represents Non-qualified Costs. Any funds paid toward the cost of the Project Facility from sources other than Net Proceeds will first be allocated to the cost of the portion of the Project Facility representing Non-qualified Costs. For purposes of this Tax Compliance Agreement, to the extent so allocated, the portion of the Project Facility financed with Bond Proceeds shall be deemed not to represent Non-qualified Costs.



SECTION 5.5. COMPOSITE ISSUES. The Company represents that no other bonds, the proceeds of which have been or are to be used for the benefit of the Company or any Principal User or Related Person or with respect to any facilities having the same Principal User or Related Person as the Project Facility have been sold or will be sold within 15 days of the sale of the Bonds. For purposes of this Section, obligations are considered sold on the earlier of the date a commitment letter or a bond purchase agreement is executed. The Issuer represents that the Bonds are not being issued concurrently with other obligations of the Issuer pursuant to the same plan of financing.


SECTION 5.6. FEDERAL GUARANTEES. The Company represents that neither payment of principal or interest on the Bonds nor payments under the Installment Sale Agreement are guaranteed, in whole or in part, by the United States (or any agency or instrumentality thereto).

SECTION 5.7. HEALTH CARE PROVIDER. The Company represents that the health care provider located at the Project Facility shall be limited to providing the following support services: assistance by medication management technicians in medication management and intake; maintenance of detailed medication records; consultation with a nurse as needed about health concerns and medication plans; assistance by non-medicinary certified aids each day during working hours in activities of daily living that include getting in and out of bed and chairs, washing, using the toilet, dressing, eating and bathing; and routine checks by staff members to insure the resident's general well-being. The Company further represents that the health care provider will not have licensed practical nurses on duty at the Project Facility and that no continued or frequent nursing, medical or psychiatric services will be made available at the Project Facility.

IN WITNESS WHEREOF, I have executed this Certificate on this 28th day of September, 1999.

TUXEDO PLACE, L.P.

BY: Seniors at Tuxedo, Inc., its General Partner

BY:   
William F. Helmer, President

## ANNUAL EXCESS EARNINGS REPORT

Report No. \_\_\_\_\_ Rebate Determination Date:<sup>1</sup> \_\_\_\_\_, \_\_\_\_\_

1. Bond Year:<sup>2</sup> \_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_
2. Bond Yield:<sup>3</sup> \_\_\_\_\_ %
3. Net Excess Earnings by Fund:

	Future Value of Nonpurpose <u>Fund</u>	<u>Receipts</u> <sup>4</sup>	Future Value of Nonpurpose <u>Payments</u> <sup>5</sup>	Net Excess <u>Earnings</u> <sup>6</sup>
Construction Fund	\$	\$	\$	\$
Bond Fund <sup>7</sup>	\$	\$	\$	\$
Total <sup>8</sup>	\$	\$	\$	\$

4. Current Required Payment to United States:<sup>9</sup>

## Notes and Instructions

1. A "Rebate Determination Date" is either (a) the last day of a Bond Year (see Note 3), or (b) the earlier of the scheduled final maturity date of the Bonds or any date prior thereto on which all outstanding Bonds are paid or retired.
2. Bond Yield shall be computed in accordance with Regulations Section 1.1484.
3. "Bond Year" means the period beginning on the Date of Issuance and ending on each anniversary thereof.
4. "Future Value of Nonpurpose Receipts" means, in general terms, the future value, as of the Rebate Determination Date, of all amounts received on or before the Rebate Determination Date with respect to Nonpurpose Investments allocated to the Bonds. A calculations necessary to determine the Future Value of Nonpurpose Receipts shall be made in compliance with the rules set forth in Regulations Section 1.148-3 and the Regulations cited therein.
5. "Future Value of Nonpurpose Payments" means, in general terms, the future value, as of the Rebate Determination Date, of all amounts paid on or before the Rebate Determination Date with respect to Nonpurpose Investments allocated to the Bonds, including computation credits, if any. A calculations necessary to determine the Future Value of Nonpurpose Payments shall be made in compliance with the rules set forth in Regulations Section 1.148-3 and the Regulations cited therein.
6. Calculate the difference between Future Value of Nonpurpose Receipts and Future Value of Nonpurpose Payments for each Fund. Net Excess Earnings for any Fund may be a negative number.
7. Future Values of Nonpurpose Receipts and Payments allocable to the Excess Earnings Account of the Bond Fund are not to be taken into account in computing Net Excess Earnings on each Rebate Determination Date. Future Values of all other Nonpurpose Receipts and Payments allocable to the Bond Fund (i.e., Nonpurpose Receipts and Payments not allocable to the Excess Earnings Account) are to be taken into account in computing the amount due to the United States government only in Bond Years during which gross earnings realized in that portion of the Bond Fund equal or exceed \$100,000 and average annual debt service on the Bonds exceeds \$2,500,000.
8. If total Net Excess Earnings exceeds the amount on deposit in the Excess Earnings Account, an amount equal to such excess shall immediately be paid by the Company to the Trustee, and shall immediately be deposited by the Trustee in the Excess Earnings Account.

If the amount on deposit in the Excess Earnings Account exceeds total Net Excess Earnings, an amount equal to such excess shall be transferred from the Excess Earnings Account to the Revenue Account of the Bond Fund.

9. On or before the 60th day following the fifth Bond Year and every fifth year thereafter 90% of the amount set forth in Line 4 must be retted to the Internal Revenue Service. In addition, on or before the 60th day following retirement of the Bonds, 100% of such amount must be retted to the Internal Revenue Service.

## CERTIFICATION

The undersigned hereby certifies that the computations reflected in the foregoing Annual Excess Earnings Report have been made in accordance the Section 148 of the Internal Revenue Code of 1986, as amended, and Regulations Sections 1.148-0 through 1.150-1 on the basis of information supplied to us.

TUXEDO PLACE, L.P.

BY: Seniors at Tuxedo, Inc., its General Partner

BY: \_\_\_\_\_  
William F. Helmer, President

## ACKNOWLEDGMENT AND CERTIFICATION

The undersigned hereby acknowledges receipt, of the foregoing Annual Excess Earnings Report completed by the Company and agrees to make any payment required thereunder in accordance with the Arbitrage Certificate executed by the Orange County Industrial Development Agency dated as of September 28, 1999 and the Indenture of Trust dated August 1, 1999.

THE BANK OF NEW YORK, as Trustee

By: \_\_\_\_\_  
Its: \_\_\_\_\_