

File No. 161201

Committee Item No. 8

Board Item No. 16

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date November 16, 2016

Board of Supervisors Meeting

Date November 29, 2016

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
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OTHER (Use back side if additional space is needed)

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|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>California Debt Limit Allocation Committee Resolution</u> |
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Completed by: Linda Wong Date November 10, 2016

Completed by: Linda Wong Date November 18, 2016

1 [Multifamily Housing Revenue Bond - 500-510 Folsom ("Transbay Block 9") - Not to Exceed  
2 \$132,000,000]

3 **Resolution authorizing the issuance and sale of multifamily housing revenue bonds in**  
4 **an aggregate principal amount not to exceed \$132,000,000 for the purpose of providing**  
5 **financing for the construction of a 311-unit multifamily rental housing project located in**  
6 **the City at 500-510 Folsom Street; approving the form of and authorizing the execution**  
7 **of an indenture of trust providing the terms and conditions of the bonds and**  
8 **authorizing the issuance thereof; approving the form of and authorizing the execution**  
9 **of a regulatory agreement and declaration of restrictive covenants; approving the form**  
10 **of and authorizing the execution of a loan agreement; approving the form of and**  
11 **authorizing the execution of a bond purchase agreement; authorizing the collection of**  
12 **certain fees; ratifying and approving any action heretofore taken in connection with the**  
13 **bonds and the project, as defined herein; granting general authority to City officials to**  
14 **take actions necessary to implement this Resolution, as defined herein; and related**  
15 **matters, as defined herein.**

16  
17 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
18 "Board") desires to provide for a portion of the costs of the construction by Block 9 MRU  
19 Residential, LLC, a Delaware limited liability company, and 500 Folsom, L.P., a California  
20 limited partnership (collectively, the "Borrowers"), of a 311-unit affordable multifamily housing  
21 residential rental development located at 500-510 Folsom Street in San Francisco, California  
22 (commonly known as "Transbay Block 9") (the "Project"), to provide housing for persons and  
23 families of low and very low income through the issuance of multifamily housing revenue  
24 bonds; and  
25

1           WHEREAS, The City and County of San Francisco (the "City") is authorized to issue  
2 revenue bonds, notes and other obligations for such purpose pursuant to the Charter of the  
3 City, Article I of Chapter 43 of the Administrative Code of the City and, to the extent  
4 applicable, Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the Health  
5 and Safety Code of the State of California (collectively, the "Act"); and

6           WHEREAS, The interest on the Bonds (as hereinafter defined) may qualify for tax  
7 exemption under Section 103 of the Internal Revenue Code of 1986, as amended, (the  
8 "Code"), only if the Bonds are approved in accordance with Section 147(f) of the Code; and

9           WHEREAS, This Board is the elected legislative body of the City and is the applicable  
10 elected representative required to approve the issuance of the Bonds within the meaning of  
11 Section 147(f) of the Code; and

12           WHEREAS, Following a public hearing on March 18, 2016, at which there was an  
13 opportunity for persons to comment on the issuance of the Bonds, this Board, on April 26,  
14 2016, adopted Resolution No. 156-16, approving the issuance of the Bonds solely for the  
15 purposes of Section 147(f) of the Code in an amount not to exceed \$175,000,000; and

16           WHEREAS, On July 20, 2016, the California Debt Limit Allocation Committee  
17 ("CDLAC"), in its Resolution No. 16-84, allocated to the Project \$132,000,000 in qualified  
18 private activity bond volume cap pursuant to Section 146 of the Code; and

19           WHEREAS, There has been prepared and presented to the Board for consideration at  
20 this meeting the documentation required for the issuance and sale of the Bonds, and such  
21 documentation is on file with the Clerk of the Board of Supervisors (the "Clerk of the Board");  
22 and

23           WHEREAS, It appears that each of the documents which is now before this Board is  
24 substantially in appropriate form and is an appropriate instrument to be executed and  
25 delivered for the purposes intended; and

1           WHEREAS, The Board finds that the public interest and necessity require that the City  
2 at this time make arrangements for the issuance and sale of the Bonds; and

3           WHEREAS, The Bonds will be limited obligations of the City, the sole source of  
4 repayment of which shall be payments made by the Borrowers under the Loan Agreement  
5 (hereinafter defined), together with the investment income of certain funds and accounts held  
6 under the Trust Indenture (hereinafter defined); and

7           WHEREAS, The City has engaged Quint & Thimmig LLP and Amira Jackmon, Attorney  
8 at Law, as co-bond counsel with respect to the Bonds ("Co-Bond Counsel"); and

9           WHEREAS, Citibank, N.A. (the "Bank") and Deutsche Bank AG, New York Branch or  
10 an affiliate (together with the Bank, the "Bond Purchasers") have expressed their intention to  
11 purchase the Bonds authorized hereby; now, therefore, be it

12           RESOLVED, By this Board of Supervisors of the City and County of San Francisco as  
13 follows:

14           Section 1. Approval of Recitals. The Board hereby finds and declares that the above  
15 recitals are true and correct.

16           Section 2. Approval of Issuance of the Bonds. In accordance with the Act and the Trust  
17 Indenture (hereinafter defined), the City is hereby authorized to issue the Bonds, such Bonds  
18 to be issued in one or more series and/or subseries, and designated as "City and County of  
19 San Francisco, California Multifamily Housing Revenue Bonds, Series 2016E (Lower 500  
20 Folsom Residential)" or such other designation as may be necessary or appropriate to  
21 distinguish such series from every other series of bonds or notes of the City, in an aggregate  
22 principal amount not to exceed \$132,000,000 (the "Bonds"), with an interest rate not to  
23 exceed twelve percent (12%) per annum for the Bonds, and which shall have a final maturity  
24 date not later than forty (40) years from the date of issuance. The Bonds shall be in  
25 substantially the form set forth in and otherwise in accordance with the Trust Indenture, and

1 shall be executed by the manual signature of the Mayor of the City (the "Mayor") and as  
2 further provided in the Trust Indenture.

3       Section 3. Approval of Trust Indenture. The Indenture of Trust (the "Trust Indenture"),  
4 by and between the City and U.S. Bank, National Association (the "Trustee"), in the form  
5 presented to the Board, a copy of which is on file with the Clerk of the Board, is hereby  
6 approved. The Mayor, the Director of the Mayor's Office of Housing and Community  
7 Development (the "Director"), or any Authorized City Representative (as such term is defined  
8 in the Trust Indenture) is hereby authorized to execute the Trust Indenture (collectively,  
9 "Authorized Representatives" and each, an "Authorized Representative"), approved as to form  
10 by the City Attorney of the City (the "City Attorney"), in substantially said form, together with  
11 such additions thereto and changes therein as the City Attorney and Co-Bond Counsel may  
12 approve or recommend in accordance with Section 8 hereof.

13       Section 4. Approval of Regulatory Agreement and Declaration of Restrictive  
14 Covenants. The Regulatory Agreement and Declaration of Restrictive Covenants (the  
15 "Regulatory Agreement"), by and between the City and the Borrowers, in the form presented  
16 to the Board, a copy of which is on file with the Clerk of the Board, is hereby approved. Each  
17 Authorized Representative is hereby authorized to execute the Regulatory Agreement,  
18 approved as to form by the City Attorney, in substantially said form, together with such  
19 additions thereto and changes therein as the City Attorney and Co-Bond Counsel may  
20 approve or recommend in accordance with Section 8 hereof.

21       Section 5. Approval of Loan Agreement. The Loan Agreement (the "Loan Agreement"),  
22 by and among the City and the Borrowers, in the form presented to the Board, a copy of which  
23 is on file with the Clerk of the Board, is hereby approved. Each Authorized Representative is  
24 hereby authorized to execute the Loan Agreement, in substantially said form, together with  
25

1 such additions thereto and changes therein as the City Attorney and Co-Bond Counsel may  
2 approve or recommend in accordance with Section 8 hereof:

3       Section 6. Approval of Bond Purchase Agreement. The form of bond purchase  
4 agreement relating to the Bonds (the "Bond Purchase Agreement"), by and among the Bond  
5 Purchasers, Hilltop Securities Inc., as Placement Agent, the City and the Borrowers, in the  
6 form presented to the Board, a copy of which is on file with the Clerk of the Board, is hereby  
7 approved. Each Authorized Representative is hereby authorized to execute the Bond  
8 Purchase Agreement, in substantially said form, together with such additions thereto and  
9 changes therein as the City Attorney and Co-Bond Counsel may approve or recommend in  
10 accordance with Section 8 hereof.

11       Section 7. Issuer Fees. The City, acting through the Mayor's Office of Housing and  
12 Community Development ("MOHCD"), shall charge a fee for the administrative costs  
13 associated with issuing the Bonds in an amount not to exceed 0.25% of the maximum  
14 aggregate principal amount of the Bonds. Such fee shall be payable at the Bond closing and  
15 may be contingent on the issuance and delivery of the Bonds. The City shall also charge an  
16 annual fee for monitoring compliance with the provisions of the Regulatory Agreement in an  
17 amount not to exceed 0.125% of the outstanding aggregate principal amount of the Bonds,  
18 but no less than \$2,500 annually, for the term of the Regulatory Agreement. The initial  
19 monitoring fee shall be payable at Bond closing. The Board hereby authorizes MOHCD to  
20 charge and collect the fees described in this section.

21       Section. 8. Modifications, Changes, Additions. Any Authorized Representative  
22 executing the Trust Indenture, the Regulatory Agreement, the Loan Agreement or the Bond  
23 Purchase Agreement (collectively, the "City Agreements"), in consultation with the City  
24 Attorney and Co-Bond Counsel, is hereby authorized to approve and make such  
25 modifications, changes or additions to the City Agreements as may be necessary or

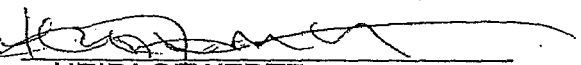
1 advisable, provided that any such modification does not authorize an aggregate principal  
2 amount of the Bonds in excess of \$132,000,000, provide for a final maturity on the Bonds later  
3 than forty (40) years from the date of issuance thereof, or provide for the Bonds to bear  
4 interest at a rate in excess of twelve percent (12%) per annum. The approval of any  
5 modification, addition or change to any of the aforementioned documents shall be evidenced  
6 conclusively by the execution and delivery of the document in question.

7 Section 9. Ratification. All actions heretofore taken by the officers and agents of the  
8 City with respect to the issuance of the Bonds, as consistent with the documents herein and  
9 this Resolution, are hereby approved, confirmed and ratified.

10 Section 10. General Authority. The proper officers of the City are hereby authorized  
11 and directed, for and in the name and on behalf of the City, to do any and all things and take  
12 any and all actions and execute and deliver any and all certificates, agreements and other  
13 documents, including but not limited to assignments, subordinations, tax documents and  
14 those documents described in the City Agreements, which they, or any of them, may deem  
15 necessary or advisable in order to consummate the lawful issuance of the Bonds. Any such  
16 actions are solely intended to further the purposes of this Resolution, and are subject in all  
17 respects to the terms of the Resolution. No such actions shall increase the risk to the City or  
18 require the City to spend any resources not otherwise granted herein. Final versions of any  
19 such documents shall be provided to the Clerk of the Board for inclusion in the official file  
20 within 30 days of execution by all parties.

1 Section 11. File. All documents referenced herein as being on file with the Clerk of the  
2 Board are located in File No. 161261, which is hereby declared to be a part of this  
3 Resolution as if set forth fully herein.

4  
5 APPROVED AS TO FORM:  
6 DENNIS J. HERRERA  
City Attorney

7  
8 By   
HEIDI GEWERTZ  
Deputy City Attorney  
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**MAYOR'S OFFICE OF HOUSING  
AND COMMUNITY DEVELOPMENT  
CITY AND COUNTY OF SAN FRANCISCO**



**EDWIN M. LEE  
MAYOR**

**OLSON LEE  
DIRECTOR**

October 28, 2016

Honorable Jane Kim  
City and County of San Francisco  
Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

RE: Resolution Authorizing the Issuance of Multifamily Housing Revenue Bonds for Transbay Block 9: 500-510 Folsom Street

With this memo, I am submitting to you for introduction at the Board of Supervisors meeting on Tuesday, November 1, 2016, a resolution regarding qualified mortgage revenue bonds for 500-510 Folsom Street or Transbay Block 9, an inclusionary housing development sponsored by Essex Portfolio, L.P., and BRIDGE Housing Corporation (together the "Developers"). The Developers will construct a building which is 42 stories and includes 436 unit market rate units, including two manager's units, and 108 below market rate units, including one manager's unit, ("BMR Units") for a total of 545 units, along with parking, ground floor retail and other improvements. The 108 BMR Units plus one manager's unit will be located within the lower 21 floors of the building and distributed among 202 market rate units. The BMR units will be a mix of 34 studios, 61 one-bedroom, and 14 two-bedroom units, including a manager's unit, and will be affordable housing units (serving households at and below 50% Area Median Income). Funds generated from the execution and delivery of the Bonds would be used fund costs associated with the lower 21 floors of the building.

This is the follow-up legislation to the resolution you sponsored in April of 2016 that authorized the Mayor's Office of Housing and Community Development ("MOHCD") to apply to the California Debt Limit Allocation Committee ("CDLAC") for an allocation not to exceed \$175,000,000 in qualified mortgage revenue indebtedness. An allocation of \$132,000,000 was obtained on July 20, 2016.

MOHCD has previously issued bonds for both affordable rental housing and for first time homeownership. These financings are conduit financings, which do not require the City to

pledge repayment of the bonds. Rather, the bondholders' only recourse for payment is the project revenues themselves and the credit enhancement provided by lenders.

Introduction on November 1, 2016 ensures that project team has enough time to close the Project's financing and begin construction by December 7, 2016.

The attached resolution has been approved as-to-form by Deputy City Attorney Heidi Gewertz. I am enclosing a brief description of the Project for your review.

If you have any questions about the resolution or the project, please contact Gretchen Heckman at the Office of Community Investment and Infrastructure at 749-2439.

Thank you,

A handwritten signature in black ink, appearing to read "Mara Blitzer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mara Blitzer  
Director of Housing Development

## Project Description

### 500-510 Folsom Street (aka, Transbay Block 9)

500-510 Folsom Street (aka Transbay Block 9) is a high-density, mixed-income/mixed-use residential project located between Folsom Street and Clementina Street, and between First Street and Ecker Street, within the boundaries of the Transbay Redevelopment Project Area. The 31,559 SF (.72 AC) site is located two blocks south of the future Transbay Transit Center. The approximately 729,240-square-foot structure will include 6700 square feet of retail space on Folsom Street, 6 floors of below grade automobile parking with 226 spaces, 2,400 square feet of public open space, and 9,800 square feet of roof top open space to be shared by all residents. (together, the "Building").

The Developer shall construct a Building which is 42 stories and includes 436 unit market rate units which includes two manager's units and 108 below market rate units plus one manager's unit ("BMR Units") for a total of 545 units. The BMR Units will be located within the lower 21 floors of the Building and distributed among 202 market rate units. The BMR units will be affordable to households earning up to 50% of Area Median Income (AMI). The average size of all residential units is anticipated to be approximately 720 net square feet and the unit interiors for the BMR Units will be equivalent to the market rate units also located within the lower 21 floors.

The Building is envisioned to be an architecturally innovative and environmentally sustainable enhancement to the Transbay District, providing a variety of housing styles for a mix of incomes. The site design will connect new residents to the adjoining neighborhood with a pedestrian-oriented approach that enhances street life with multi-level open spaces and onsite gathering places, including a new midblock pedestrian connection through the site between Folsom and Clementina Streets, multiple retail entrances and a Plaza along Folsom, adjacent to the main building entrance with outdoor seating and lighting.

This Type I construction Building will be conceived as two mid-rise buildings that bracket a highrise tower, with low-rise townhomes that create an engaging edge along Clementina Street. The tower at Folsom is articulated into a series of shaded, glass, cubic volumes that are scaled to relate to the height and mass of the midrise buildings. Metal vertical fins and operable windows will help reduce solar heat gain, allow for natural ventilation, and further animate the building facades. These elements provide a unique architectural identity that will distinguish Block 9 as a residential community. All residents access the building through a single entrance on Folsom Street at the base of the tower. The two podium buildings, clad primarily in lightweight textured cementitious panels, provide a solid visual foundation for the lighter, more transparent glass tower. Along Clementina Street, the townhouse exteriors, while reminiscent of traditional San Francisco residential architecture with bay windows, is decisively modern. Open staircases provide individual entries while disability access is provided from First Street.

The Building will implement a host of sustainable design features working in harmony to reduce energy and water consumption while creating a healthy living environment and is committed to achieving a minimum LEED® Silver certification.

Construction is anticipated to begin in the Winter of 2016.





## CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

915 Capitol Mall, Room 311  
Sacramento, CA 95814  
p (916) 653-3255  
f (916) 653-6827  
cdlac@treasurer.ca.gov  
www.treasurer.ca.gov/cdlac

### MEMBERS

JOHN CHIANG, CHAIRMAN  
State Treasurer

EDMUND G. BROWN JR.  
Governor

BETTY T. YEE  
State Controller

### EXECUTIVE DIRECTOR

JEREE GLASSER-HEDRICK

July 20, 2016

Olson Lee  
Director  
City and County of San Francisco  
1 South Van Ness Avenue, 5th Flr.  
San Francisco, CA 94103

### RE: RESOLUTION ATTESTING TO THE TRANSFER OF PRIVATE ACTIVITY BOND ALLOCATION

Dear Mr. Lee,

Enclosed is a copy of Resolution No. 16-84, adopted by the California Debt Limit Allocation Committee (the "Committee") on July 20, 2016, authorizing the City and County of San Francisco to use \$132,000,000 of its unused 2015 Carryforward Allocation, for the 500 Folsom Apartments (aka Transbay 9) Project.

While your application was for a portion of the 2016 State Ceiling on Qualified Private Activity Bonds, because you had remaining carryforward allocation, the Committee decided to transfer some or all of that allocation to this Project. The Resolution establishes the terms and conditions under which the allocation has been granted. Please read it carefully and keep a copy in your permanent files. You are advised to consult bond counsel regarding the making of a carryforward election pursuant to the rules of the Internal Revenue Service.

The following is additional information pertaining to the use of the allocation for this Project:

1. **Performance Deposit:** Pursuant to Section 5050 of the Committee's Regulations, the performance deposit certified in support of this project (\$100,000) is to remain on deposit until you receive written authorization from the Committee that it may be released. This written release will be provided once the Committee receives the "Report of Action Taken" form indicating that the allocation transferred was used for the issuance of bonds for the specific Project and the payment of the second installment of the CDLAC filing fee. The full amount of the deposit will be released upon the Committee's approval if at least 80% of the allocation is used for the issuance of bonds. If an amount less than 80% of the allocation is used to issue bonds, a proportionate amount of the deposit will be subject to forfeiture.

2. **Reporting of Issuance:** Enclosed is a "Report of Action Taken" form to be used to report the issuance of bonds pursuant to Section 9 of the Resolution.

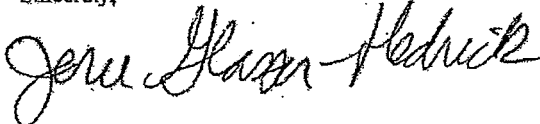
3. **IRS Certification:** The IRS-required certification will be prepared and sent to bond counsel once the Committee receives the "Report of Action Taken" form.

4. **Second Installment of Filing Fee:** Enclosed is an invoice for this Project. Please note that this is a change from past practice where the Committee's invoice for the second installment of the filing fee was sent with the IRS Certification after the Report of Action Taken. The Committee will no longer forward an invoice with the IRS Certification. The invoice attached herein should be considered final, due and payable upon the issuance of bonds.

Olson Lee  
July 20, 2016  
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5. Certification of Compliance: Enclosed is a Certification of Compliance to be submitted to the Applicant annually by the Applicant's specified deadline, but no later than March 1st of each year on sponsor letterhead pursuant to Section 13 of the Resolution. In addition, an Annual Applicant Public Benefits and On-going Compliance Self-Certification form must be submitted annually on March 1st of each year pursuant to Section 5144 of the CDLAC Regulations. A copy of the Please consult the Committee's Regulations for a full explanation of the use of allocation. Do not hesitate to contact me should you have questions.

Sincerely,



JEREE GLASSER-HEDRICK  
Executive Director

Enclosures

c: Pam Sims, City and County of San Francisco  
Paul J. Thimmig, Esq., Quint & Thimmig LLP  
Carrie Horton, TBF, LP

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

RESOLUTION NO. 16-84

A RESOLUTION TRANSFERRING A PORTION OF THE 2016 STATE CEILING  
ON QUALIFIED PRIVATE ACTIVITY BONDS FOR A  
QUALIFIED RESIDENTIAL RENTAL PROJECT

WHEREAS, the California Debt Limit Allocation Committee ("Committee") has received an application ("Application") from the City and County of San Francisco ("Applicant") for the transfer to the Applicant of a portion of the 2016 State Ceiling on Qualified Private Activity Bonds under Section 146 of the Internal Revenue Code of 1986, as amended, for use by the Applicant to issue bonds or other obligations ("Bonds") for a Project as specifically described in Exhibit A ("Project") (capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Regulations of the Committee implementing the Allocation of the State Ceiling on Qualified Private Activity Bonds); and

WHEREAS, the Project Sponsor has represented and the Applicant has confirmed in the Application certain facts and information concerning the Project; and

WHEREAS, in evaluating the Project and allocating a portion of the State Ceiling on Qualified Private Activity Bonds to the Applicant for the benefit of the Project, the Committee has relied upon the written facts and information represented in the Application by the Project Sponsor and the Applicant; and

WHEREAS, previously the Committee transferred to the Applicant a portion of the 2015 State Ceiling on Private Activity Bonds for rental projects on a carryforward basis ("Carryforward Allocation"); and

WHEREAS, to fully utilize the remaining Carryforward Allocation, the Committee must approve its transfer to other projects with the same issuer; and

WHEREAS, it is appropriate for the Committee to make a transfer of a portion of the 2016 State Ceiling on Qualified Private Activity Bonds ("Allocation") in order to benefit such Project described in the Application and/or to authorize the transfer of remaining Carryforward Allocation to the Projects described in the Application; and

NOW, THEREFORE, the California Debt Limit Allocation Committee resolves as follows:

**Section 1.** There is hereby transferred to the Applicant authorization to use \$132,000,000 of its remaining 2015 Carryforward for the Project. Such Allocation may be used only by the Applicant and only for the issuance of Bonds for the Project, as specifically described in Exhibit A. All of the terms and conditions of Exhibit A are incorporated herein as though set forth in full (this resolution, together with Exhibit A are hereafter referred to collectively as this "Resolution").

**Section 2.** The terms and conditions of this Resolution shall be incorporated in appropriate documents relating to the Bonds. The Project Sponsor and the Applicant, and all their respective successors and assignees, will be bound by such terms and conditions. The Applicant shall monitor the Project for compliance with the terms and conditions of this Resolution. In addition, the Project shall be subject to the monitoring provisions of California Code of Regulations, title 4, section 10337(c) and section 5220 of the Committee's Regulations.

**Section 3.** Any modification to the Project made prior to the issuance of the Bonds must be reported to the Executive Director and, if the Executive Director determines such modification to be material in light of the Committee's Regulations, shall require reconsideration by the Committee before the Allocation may be used for the Project. Once the Bonds are issued, the terms and conditions set forth in this Resolution shall be enforceable by the Committee through an action for specific performance or any other available remedy. The Committee may consent to changes in the terms and conditions set forth in this Resolution as changed circumstances may dictate.

**Section 4.** Any material changes in the structure of the bond sale structure prior to the issuance of the Bonds and not previously approved by the Committee shall require approval of the Committee Chair or the Executive Director.

**RESOLUTION NO. 16-84**

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**Section 5.** The transfer of proceeds from the sale of bonds to a project other than the Project subject to this Resolution is allowable only with the prior approval of the Executive Director in consultation with the Chair, except when the Project is unable to utilize any of its allocation and the Applicant is requesting the transfer of the entire Allocation to different project(s). In such case, prior approval of the Committee must be obtained. Any transfer made pursuant to this section may only be made to another project of the same issuer that has been previously approved by the Committee.

**Section 6.** The Applicant is not authorized to use any Allocation transferred hereby from the 2016 State Ceiling to make a carryforward election with respect to the Project. The Applicant is not authorized to transfer any Allocation or Carryforward Allocation to any governmental unit in the State other than this Committee.

**Section 7.** The Allocation transferred herein to the Applicant shall automatically revert to this Committee unless the Applicant has issued Bonds for the Project by the close of business on **January 30, 2017**. Upon the discretion of the Executive Director, the expiration may be extended pursuant to the provisions in Article 8, Chapter 1 of the Committee's Regulations.

**Section 8.** Within twenty-four (24) hours of using the Allocation to issue Qualified Private Activity Bonds, the Applicant shall notify the Committee at [CDLAC@treasurer.ca.gov](mailto:CDLAC@treasurer.ca.gov) that the Allocation has been used. This notice shall identify the Applicant, the project or program, the date the Allocation was used, and the amount of Allocation used.

**Section 9.** Within fifteen (15) calendar days of the Bond closing, the Applicant or its counsel shall formally transmit to the Committee information regarding the issuance of the Bonds by submitting a completed Report of Action Taken in a form prescribed by and made available by the Committee.

**Section 10.** Any differences between the amount of Bonds issued and the amount of the Allocation granted in Section 1 of this Resolution shall automatically revert to the Committee. If at any time prior to the expiration date set forth in Section 7 hereof the Applicant determines that part or all of the Allocation will not be used to issue Bonds by that date, the Applicant shall take prompt action by resolution of its governing Board or by action of its authorized officer to return such unused Allocation to the Committee. Any unused amount of the Carryforward Allocation authorized in Section 1 of the Resolution shall be retained by the Applicant for the period allowed by Section 146.F.3.A. of the Internal Revenue Code regarding carryforward elections. Use of any unused Carryforward Allocation shall be in accordance with Section 5132 of the Committee's Regulations regarding carryforward elections.

**Section 11.** The staff of the Committee is authorized and directed to transmit a copy of this Resolution to the Applicant together with a request that the Applicant retain a copy of this Resolution in the Applicant's official records for the term of the Bonds under this Allocation or the term of the income and rental restrictions, whichever is longer. The Committee staff is further directed to retain a copy of this Resolution in the files of the Committee (or any successor thereto) for the same period of time.

**Section 12.** In consideration of the Allocation transferred to, and the Carryforward Allocation authorized for use by the Applicant and the Project Sponsor, the Applicant and the Project Sponsor shall comply with all of the terms and conditions contained in this Resolution and ensure that these terms and conditions are included in the documents related to the Bonds. Further, the Applicant and the Project Sponsor expressly agree that the terms and conditions of this Resolution may be enforced by the Committee through an action for specific performance or any other available remedy, provided however, that the Committee agrees not to take such action or enforce any such remedy that would be materially adverse to the interests of Bondholders. In addition, the Applicant and the Project Sponsor shall ensure that the Bond documents, as appropriate, expressly provide that the Committee is a third party beneficiary of the terms and conditions set forth in this Resolution.

**Section 13.** In coordination with the Applicant, the Project Sponsor or its successor-in-interest shall provide certifications of compliance with the terms and conditions set forth in this Resolution annually on March 1st of each year or when reasonably requested by the Committee.

**Section 14.** This Resolution shall take effect immediately upon its adoption.

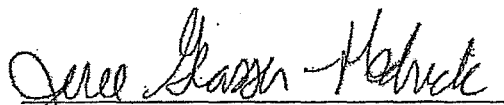


CERTIFICATION

I, JEREE GLASSER-HEDRICK, Executive Director of the California Debt Limit Allocation Committee, hereby certify that the above is a full, true, and correct copy of the Resolution adopted at a meeting of the Committee held in the Jesse Unruh Building, 915 Capitol Mall, Room 587, Sacramento, California 95814, on July 20, 2016 at 11:05 a.m. with the following votes recorded:

AYES: Timothy Schaefer for State Treasurer John Chiang  
Eraina Ortega for Governor Edmund G. Brown Jr.  
Alan LoFaso for State Controller Betty T. Yee

NOES: None  
ABSTENTIONS: None  
ABSENCES: None

  
\_\_\_\_\_  
JEREE GLASSER-HEDRICK, Executive Director

Date: July 20, 2016

**RESOLUTION NO. 16-84**  
**(QUALIFIED RESIDENTIAL RENTAL PROJECT)**  
**EXHIBIT A**

1. Applicant: City and County of San Francisco
2. Application No.: 16-420
3. Project Sponsor: TBF, LP (Bridge 500 Folsom LLC & Essex 500 Folsom LLC)
4. Project Management Co.: Essex Portfolio, L.P.
5. Project Name: 500 Folsom Apartments (aka Transbay 9)
6. Type of Project: New Construction/Family
7. Location: San Francisco, CA
8. Private Placement Purchaser: Citibank, N.A.
9. The Private Placement Purchaser at the time of issuance will be the same as represented in the application.  
**Applicable**
10. Total Number of Units: 308 plus 3 manager units
11. Total Number of Restricted Rental Units: 108
12. The term of the income and rental restrictions for the Project will be at least 55 years.
13. The Project will utilize Gross Rents as defined in Section 5170 of the Committee's Regulations.  
**Applicable**
14. Income and Rental Restrictions:  
For the entire term of the income and rental restrictions, the Project will have:  
  
At least 62 Qualified Residential units rented or held vacant for rental for persons or families whose income is at 50% or below of the Area Median Income.  
  
At least 46 Qualified Residential units rented or held vacant for rental for persons or families whose income is at 60% or below of the Area Median Income.
15. For acquisition and rehabilitation projects, a minimum of \$15,000 in hard construction costs will be expended for each Project unit.  
**Not Applicable**
16. A minimum of \$0,000 of public funds will be expended for the Project.  
**Not Applicable**
17. At a minimum, the financing for the Project shall include a Taxable Tail in the amount of \$0,000. Taxable debt may only be utilized for Project related expenses, not for the cost of issuance, for which the Project Sponsor could otherwise have used tax-exempt financing.  
**Not Applicable**
18. If the Project received points for having large family units, for the entire term of the income and rental restrictions, the Project will have at least three-bedroom or larger units.  
**Not Applicable**
19. For a period of fifteen (15) years after the Project is placed in use, the Project will provide to Project residents high-speed Internet or wireless (WiFi) service in each Project unit.  
**Not Applicable**

RESOLUTION NO. 16-84

Exhibit A

Page 2 of 3

- 20. For a period of fifteen (15) years after the Project is placed in use, the Project will offer to Project residents an after school programs of an ongoing nature on-site or there must be an after school program available to Project residents within 1/2 mile of the Project or except where Project will provide no cost round trip transportation. The programs shall include, but are not limited to: tutoring, mentoring, homework club, and art and recreation activities to be provided weekdays throughout the school year for at least 10 hours per week.  
**Not Applicable**
- 21. For a period of fifteen (15) years after the Project is placed in use, the Project will offer to Project residents instructor-led educational, health and wellness, or skill building classes. The classes shall include, but are not limited to: financial literacy, computer training, home-buyer education, GED, resume building, ESL, nutrition, exercise, health information/awareness, art, parenting, on-site food cultivation and preparation and smoking cessation. Classes shall be provided at a minimum of 84 hours per year (drop-in computer labs, monitoring and technical assistance shall not qualify) and be located within 1/2 mile of the Project or except where Project will provide no cost round trip transportation.  
**Not Applicable**
- 22. For a period of fifteen (15) years after the Project is placed in use, the Project will offer to Project residents 20 hours or more per week of licensed childcare on-site or there must be 20 hours or more per week of licensed childcare available to Project residents within 1/2 mile of the Project or except where Project will provide no cost round trip transportation.  
**Not Applicable**
- 23. For a period of fifteen (15) years after the Project is placed in use, the Project will offer to Project residents health and wellness services and programs within 1/2 mile of the Project or except where Project will provide no cost round trip transportation. Such services and programs shall provide individualized support for tenants (not group classes) but need to be provided by licensed individuals or organizations. The services shall include, but are not limited to: visiting nurses programs, intergenerational visiting programs, and senior companion programs. Services shall be provided for a minimum of 100 hours per year.  
**Not Applicable**
- 24. For a period of fifteen (15) years after the Project is placed in use, the Project will offer to Project residents a bona fide service coordinator. The responsibilities must include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or enrichment activities for tenants (such as holiday events, tenant council, etc.)  
**Not Applicable**
- 25. Minimum sustainable specifications will be incorporated into the project design per Section 5205 of the CDLAC Regulations.  
**Applicable**

Section Waived:

- Energy Efficiency
- Landscaping
- Roofs
- Exterior Doors
- Appliances (ENERGY STAR)
- Window Coverings
- Water Heater
- Floor Coverings
- Insulation (GreenGuard Emission Criteria)

- 26. The project commits to becoming certified under any one of the following programs upon completion:
  - a. Leadership in Energy & Environmental Design (LEED) **Not Applicable**
  - b. Green Communities **Not Applicable**
  - c. GreenPoint Rated Multifamily Guidelines **Not Applicable**

RESOLUTION NO. 16-84

Exhibit A

Page 3 of 3

27. The Project will exceed the minimum energy efficiency certification requirements for New Construction/ Adaptive Reuse:
- |                               |                |
|-------------------------------|----------------|
| a. LEED for Homes (Silver)    | Not Applicable |
| b. LEED for Homes (Gold)      | Not Applicable |
| c. Green Point Rated (Silver) | Not Applicable |
| d. Green Point Rated (Gold)   | Not Applicable |
28. The Project is a New Construction or Adaptive Reuse Project that commits to Energy Efficiency (including heating, cooling, fan energy, and water heating but not the following end uses: lighting, plug load, appliances, or process energy)
- |        |                |
|--------|----------------|
| a. 9%  | Not Applicable |
| b. 15% | Not Applicable |
| c. 24% | Not Applicable |
| d. 30% | Not Applicable |
29. The Project is a New Construction or Adaptive Reuse Project that commits to Energy Efficiency with renewable energy that provides the following percentages of project tenants' energy loads (Offset of Tenants' Load):
- |        |                |
|--------|----------------|
| a. 20% | Not Applicable |
| b. 30% | Not Applicable |
| c. 40% | Not Applicable |
30. The project is a Home Energy Rating System (HERS II) Rehabilitation Project that commits to improve energy efficiency above the current modeled energy consumption of the building(s) by:
- |        |                |
|--------|----------------|
| a. 15% | Not Applicable |
| b. 20% | Not Applicable |
| c. 25% | Not Applicable |
| d. 30% | Not Applicable |
31. The project is a Rehabilitation Project that commits to developing, and/or managing the Project with the following Photovoltaic generation or solar energy:
- |   |                |
|---|----------------|
| a. Photovoltaic generation that offsets tenants loads               | Not Applicable |
| b. Photovoltaic generation that offsets 50% of common area load.    | Not Applicable |
| c. Solar hot water for all tenants who have individual water meters | Not Applicable |
32. The project is a Rehabilitation Project and will implement sustainable building management practices that include: 1) development of a project-specific maintenance manual including replacement specifications and operating information on all energy and green building features; and 2) Undertaking formal building systems commissioning, retro-commissioning or re-commissioning as appropriate (continuous commissioning is not required).  
Not Applicable
33. The project is a Rehabilitation project that individually meters or sub-meters currently master-metered gas, electricity, or central hot water systems for all tenants.  
Not Applicable
34. The project will commit to irrigate only with reclaimed water, greywater, or rainwater (excepting water used for  
Not Applicable
35. The project will commit to having at least one (1) nonsmoking building. If the project only has one (1) building, it will be subject to a policy developed by the Sponsor that prohibits smoking in contiguous designated units. These restrictions will be incorporated into the lease agreements for the appropriate units.  
Applicable
36. The project will commit to having a parking ratio equivalent to or less than 1 parking stall per single room occupancy or  
Applicable

The following certification must be submitted by the Project Sponsor (on Project Sponsor letterhead) to the Applicant (Issuer) who will retain the document for a minimum of three years.

**CERTIFICATION OF COMPLIANCE**

Project Name: 500 Folsom Apartments (aka Transbay 9)

*(If project has changed name since the award of allocation please note the original project name as well as the new project name)*

Name of Bond Issuer: City and County of San Francisco

CDLAC Application No.: 16-420

Pursuant to Section 13 of Resolution No. 16-84 (the "Resolution"), adopted by the California Debt Limit Allocation Committee (the "Committee") on July 20, 2016, I, \_\_\_\_\_, an Officer of the Project Sponsor, hereby certify under penalty of perjury that, as of the date of this Certification, the above-mentioned Project is in compliance with all of the terms and conditions set forth in the Resolution.

I further certify that I have read and understand the CDLAC Resolution, which specifies that once the Bonds are issued, the terms and conditions set forth in the Resolution Exhibit A, shall be enforceable by the Committee through an action for specific performance, negative points, withholding future allocation or any other available remedy.

*Please check if applicable:*

The project is currently in the Construction or Rehabilitation phase (i.e. the project is not placed in service).

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Officer

\_\_\_\_\_  
Title of Officer

\_\_\_\_\_  
Phone Number

STATE OF CALIFORNIA  
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE  
ACCOUNTING SERVICES  
915 Capitol Mall, Room 311  
Sacramento, CA 95814  
(916) 653-3255

FILING FEE INVOICE

PAYMENT IS DUE WITHIN 30 DAYS OF BOND CLOSING

Date: July 20, 2016

Invoice No.: FY 16-004  
Application No.: 16-420  
Analyst Initials: RCF

To: Pam Sims  
Development Specialist  
City and County of San Francisco  
1 South Van Ness Avenue, 5th Flr.  
San Francisco, CA 94103

2<sup>nd</sup> Installment of fee levied pursuant to Section 8869.90 of the California Government Code:

NAME OF ISSUER: City and County of San Francisco  
NAME OF PROJECT: 500 Folsom Apartments (aka Transbay 9)  
ALLOCATION AWARD DATE: July 20, 2016  
ALLOCATION AWARD AMOUNT: \$132,000,000  
AMOUNT DUE:  
Allocation award x .00035 = \$ 46,200.00  
Less initial application fee = \$ 600.00  
Amount Due = \$ 45,600.00

Issuer or bond trustee to complete the following (please use ink):

BOND ISSUANCE DATE:

PRINCIPAL AMOUNT OF BOND ISSUE: \$

AMOUNT OF BOND ALLOCATION USED: \$

The application fee is based on the amount of allocation used to issue bonds. Please complete the following *only if* the amount of allocation used is less than the amount of allocation awarded, and remit the *revised* amount due.

REVISED AMOUNT DUE:  
Amount issued x .00035 = \$  
Less initial application fee = \$ 600.00  
Revised Amount Due = \$

PLEASE WRITE APPLICATION NUMBER ON YOUR CHECK, OR  
RETURN A COPY OF THIS INVOICE WITH YOUR PAYMENT.

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**INDENTURE OF TRUST**

**by and between the**

**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA,  
as City**

**and**

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

**dated as of December 1, 2016**

**relating to:**

**\$132,000,000**

**City and County of San Francisco, California  
Multifamily Housing Revenue Bonds, Series 2016E  
(Lower 500 Folsom Residential)**

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## INDENTURE OF TRUST

This INDENTURE OF TRUST, dated as of December 1, 2016 (this "Indenture"), is by and between the City and County of San Francisco, California, a municipal corporation duly organized and existing pursuant to its charter and the laws and constitution of the State of California (herein called the "City"), and U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, as Trustee hereunder (herein called the "Trustee"): Capitalized terms used in this Indenture have the meanings given to them in the Recitals hereto and in Section 1.01 hereof.

### RECITALS:

**WHEREAS**, pursuant to Section 9.107 of the Charter of the City, and Article I of Chapter 43 of the City's Administrative Code and, to the extent applicable, Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the California Health and Safety Code (collectively, the "Act"), the City proposes to issue its City and County of San Francisco, California Multifamily Housing Revenue Bonds, Series 2016E (Lower 500 Folsom Residential) (the "Bonds"); and

**WHEREAS**, the proceeds of the Bonds will be used to fund a loan (the "Loan") to Block 9 MRU Residential, LLC, a Delaware limited liability company (the "Market Borrower") and 500 Folsom, L.P., a California limited partnership (the "Affordable Borrower," and together with the Market Borrower, the "Borrowers") pursuant to the Loan Agreement, dated as of December 1, 2016 (the "Loan Agreement"), between the City and the Borrowers, and as provided in the Construction Funding Agreement, dated as of December 1, 2016 (the "Construction Funding Agreement"), among the Borrowers, the Trustee, and Citibank, N.A., as Bondholder Representative, and Citibank, N.A., as Servicer, all in order to provide financing for the construction of a multifamily rental housing project identified as "Lower 500 Folsom Residential," consisting of 311 housing units (including three manager's units), in the first 21 floors of a 42 floor multifamily housing development located at 500 Folsom Street in the City (the "Initial Project"); and

**WHEREAS**, the Initial Project will include 108 rental housing units all of which will be affordable to very low income tenants and one manager's unit (the "Affordable Project"), and 200 rental housing units which will be rented at market rates and two managers units (the "Market Project"); and

**WHEREAS**, to evidence their payment obligations under the Loan Agreement, the Borrowers will execute and deliver a Multifamily Note dated as of the Closing Date (referred to herein as the "Note"); and the obligations of the Borrowers under the Note will be secured by a lien on and security interest in the Initial Project pursuant to a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing of even date herewith (the "Deed of Trust"), made by the Borrowers in favor of the City, and assigned by the City without recourse to the Trustee; and

**WHEREAS**, it is contemplated that, on the Release Date, which is to occur on or before the Conversion Date, the Affordable Project will be released from the lien of the Deed of Trust and will no longer constitute collateral for the repayment of the Loan, and, with the exception of the Regulatory Agreement, to which both the Market Borrower and the Affordable Borrower will remain parties, the Market Borrower will constitute the sole obligated party under the Note, the Loan Agreement and the other Loan Documents; and

WHEREAS, prior to the Release Date, all references in this Indenture to the "Project" shall be to the Initial Project, and from and after the Release Date, all such references to the "Project" shall be to the Market Project only and, similarly, all references to the "Borrowers" prior to the Release Date shall be to the Affordable Borrower and Market Borrower, collectively, and thereafter such references to the "Borrowers" shall be to the Market Borrower only; and

WHEREAS, in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof and of the interest and premium, if any, thereon, the City has authorized the execution and delivery of this Indenture; and

WHEREAS, all conditions, things and acts required by the Act, and by all other laws of the State, to exist, have happened and have been performed in satisfaction of conditions precedent to and in connection with the issuance of the Bonds exist, have happened, and have been performed in due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to issue the Bonds for the purposes, in the manner and upon the terms herein provided; and

WHEREAS, all acts and proceedings required by law necessary to make the Bonds, when executed by the City, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal limited obligations of the City, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth, in accordance with its terms, have been done and taken; and the execution and delivery of this Indenture have been in all respects duly authorized.

#### AGREEMENT:

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the Bond Obligations and the Borrower Payment Obligations and the performance of the covenants herein and in the Bonds contained, to declare the terms and conditions on which the Bonds are secured, and in consideration of the premises and of the purchase of the Bonds by the Bondholders, and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the City by these presents does grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Trustee (except as limited by this Indenture) for the benefit of the Bondholders, a lien on and security interest in the following described property (excepting, however, the Reserved Rights):

(a) All right, title and interest of the City in, to and under the Loan Agreement and the Note, including, without limitation, all rents, revenues and receipts derived by the City from the Borrowers relating to the Project and including, without limitation, the Initial Bond Fund Deposit, all Pledged Revenues, Loan Payments and Additional Payments derived by the City under and pursuant to, and subject to the provisions of, the Loan Agreement;

(b) All right, title and interest of the City in, to and under, together with all rights, remedies, privileges and options pertaining to, the Bond Documents, and all other payments, revenues and receipts derived by the City under and pursuant to, and subject to the provisions of, the Bond Documents;

(c) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held by the Trustee under this Indenture (but excluding the Expense Fund and the Rebate Fund), subject to the

provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein;

(d) Any and all moneys and investments from time to time on deposit in, or forming a part of, the Remaining Bond Proceeds Account and the Remaining Bond Proceeds Account Earnings Subaccount, any Negative Arbitrage Deposit and any other amounts held under the Contingency Draw-Down Agreement, subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

(e) Any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of this Indenture as additional security by the City or anyone on its behalf or with its consent, or which pursuant to any of the provisions hereof or of the Loan Agreement may come into the possession or control of the Trustee or a receiver appointed pursuant to this Indenture; and the Trustee is hereby authorized to receive any and all such property as and for additional security for the Bonds and to hold and apply all such property subject to the terms hereof;

TO HAVE AND TO HOLD all said property, rights and privileges of every kind and description, real, personal or mixed, hereby and hereafter (by supplemental indenture or otherwise) granted, bargained, sold, alienated, remised, released, conveyed, assigned, transferred, mortgaged, hypothecated, pledged, set over or confirmed as aforesaid, or intended, agreed or covenanted so to be, together with all the appurtenances thereto appertaining (said property, rights and privileges being herein collectively called, the "Trust Estate") unto the Trustee and its successors and assigns forever;

BUT IN TRUST, NEVERTHELESS, for the benefit and security of the Bondholders, as herein provided, and otherwise to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, the City covenants and agrees with the Trustee, for the equal and proportionate benefit of the respective Registered Owners from time to time of the Bonds, as follows:

## ARTICLE I

### DEFINITIONS AND GENERAL PROVISIONS

Section 1.01. Definitions. Unless otherwise expressly provided or unless the context otherwise requires, the terms defined in this Section 1.01 shall, for all purposes of this Indenture and of any indenture supplemental hereto or agreement supplemental thereto, have the meanings herein specified, as follows:

The term "Act" shall mean, collectively, Section 9.107 of the Charter of the City, Article I of Chapter 43 of the San Francisco Administrative Code of the City and County of San Francisco, and, to the extent applicable, Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the California Health and Safety Code.

The term "Act of Bankruptcy" shall mean the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) under any applicable bankruptcy, insolvency, reorganization, or similar law, now or hereafter in effect; provided that, in the case of an involuntary proceeding, such proceeding is not dismissed within 90 days after the commencement thereof.

The term "Additional Payments" shall mean the payments payable by the Borrowers pursuant to Section 5.1(d) and Section 6.14 of the Loan Agreement.

The term "Administrator" shall mean the City, or any substitute or replacement administrator appointed by the City as agent of the City in the administration of the Regulatory Agreement.

The term "Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

The term "Affordable Borrower" means 500 Folsom, L.P., a California limited partnership, and its permitted successors and assigns under the Bond Documents to which it is a party.

The term "Affordable Project" shall have the meaning set forth in the third Recital above.

The term "Agreement" or "Loan Agreement" shall mean the Loan Agreement, dated as of December 1, 2016, between the City and the Borrowers, pursuant to which the City agrees to lend the proceeds of the Bonds to the Borrowers, as originally executed or as it may from time to time be supplemented or amended in accordance with its terms.

The term "Agreement of Environmental Indemnification" shall mean the Agreement of Environmental Indemnification, dated as of the date thereof, executed by the Borrowers and the Guarantor for the benefit of the Bondholder Representative, the Servicer, the Trustee, and any lawful holder, owner or pledgee of the Note from time to time.

The term "Amortization Schedule" shall mean the schedule of monthly debt service payments on the Note as set forth therein, as such schedule may be amended from time to time.

The term "Approved Accounting Method" shall mean generally accepted accounting principles consistently applied throughout the applicable period and applicable to entities organized as the Borrowers in the United States of America as of the date of the applicable

financial report, or such other modified accrual or cash basis system of accounting approved by the Bondholder Representative which approval shall not be unreasonably withheld, conditioned or delayed.

The term "Assignment of Equity Interests" shall mean the Assignment of Equity Investor Capital Contributions, Pledge and Security Agreement, dated as of the date hereof, executed by the Affordable Borrower and the Market Borrower for the benefit of the Servicer, the Trustee, and any lawful owner or pledgee of the Note from time to time.

The term "Authorized Amount" shall mean \$132,000,000, the authorized maximum principal amount of the Bonds.

The term "Authorized Borrower Representative" shall mean any person or persons who at the time and from time to time may be designated and authorized to act on behalf of the Borrowers by a written certificate of the Borrowers furnished to the City, the Bondholder Representative, the Trustee and the Servicer and containing the specimen signature of such person and signed on behalf of each of the Borrowers by their respective Borrower Controlling Entity, which certificate may designate one or more alternates.

The term "Authorized City Representative" shall mean the Mayor of the City, the Director or the Deputy Director of the Mayor's Office of Housing and Community Development, or any other person designated to act in such capacity by a Certificate of the City containing the specimen signature of any of such persons which certificate may designate an alternate or alternates.

The term "Authorized Denomination" shall mean \$100,000 principal amount and any multiple of \$0.01 in excess thereof; provided, however, that (i) in any event, the aggregate principal amount of the Outstanding Bonds, if less than \$100,000, is an Authorized Denomination; and (ii) if a Credit Facility is in effect hereunder, "Authorized Denomination" shall mean (a) during any Daily Interest Rate Mode and Weekly Interest Rate Mode, \$100,000 principal amount and any multiple of \$5,000 in excess thereof, and (b) during any Term Rate Mode or Fixed Interest Rate Mode, \$5,000 principal amount and any multiple of \$5,000 in excess thereof.

The term "Bankruptcy Code" shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, or any substitute or replacement legislation.

The term "Beneficial Owner" shall mean the person in whose name a Bond is recorded as beneficial owner of such Bond by the Trustee or by a Securities Depository, a Participant or an Indirect Participant on the records of the Trustee or of a Securities Depository, a Participant or an Indirect Participant, as the case may be, or such person's subrogee.

The term "Bond Counsel" shall mean any attorney at law or other firm of attorneys selected by the City, of nationally recognized standing in matters pertaining to the federal tax status of interest on bonds issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America, but shall not include counsel for either the Affordable Borrower or the Market Borrower.

The term "Bond Counsel Approving Opinion" shall mean an opinion of Bond Counsel substantially to the effect that, based on existing laws, regulations, rulings and court decisions, the Bonds constitute valid and binding obligations of the City and that the interest on the Bonds is excluded from gross income for federal income tax purposes (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

The term "Bond Counsel No Adverse Effect Opinion" shall mean an opinion of Bond Counsel substantially to the effect that, in respect of an action, such action will not, in and of itself, adversely affect any exclusion of interest on the Bonds from gross income for purposes of federal income taxation (subject to the inclusion of customary exceptions).

The term "Bond Coupon Rate" shall mean the rate of interest accruing on the Bonds based on the Interest Rate Mode then in effect; provided that, following an Event of Default hereunder, the Bond Coupon Rate shall equal the Default Rate. In addition, the Bond Coupon Rate shall include any interest payable under the Note in excess of interest at the foregoing rate. At no time may the Bond Coupon Rate exceed the Maximum Rate.

The term "Bond Documents" shall mean (i) the Loan Documents, (ii) this Indenture, (iii) the Regulatory Agreement, (iv) the Tax Certificate, (v) the Bond Purchase Agreement, (vi) the Continuing Disclosure Agreement, (vii) UCC financing statements, (viii) such assignments of management agreements, contracts and other rights as may be reasonably required under the terms of any of the Bond Documents, (ix) all other documents evidencing, securing, governing or otherwise pertaining to the Bonds or any other Bond Documents, and (x) all amendments, modifications, renewals and substitutions of any of the foregoing.

The term "Bond Fund" shall mean the fund by that name established pursuant to Section 5.02 hereof.

The term "Bond Obligations" shall mean the obligation of the City to pay the principal and purchase price of and the interest and premium, if any, on all Bonds as required by this Indenture.

The term "Bond Payment Date" shall mean (i) during any MMD Index Rate Mode, SIFMA Index Rate Mode, Weekly Interest Rate Mode or Daily Interest Rate Mode, the first Thursday of each month, following the conversion to such an Interest Rate Mode and ceasing on the Maturity Date; (ii) during any Fixed Interest Rate Mode or Term Rate Mode, (A) during a period when a Credit Facility does not enhance the Bonds pursuant to Section 2.12, the first day of each month, commencing on January 1, 2017 and ceasing on the Maturity Date or the last day on which the Bonds are in a Term Rate Mode, as applicable, and (B) during a period when a Credit Facility enhances the Bonds pursuant to Section 2.12, each June 1 and December 1, commencing on the succeeding June 1 or December 1 following the conversion to such Fixed Interest Rate Mode or Term Rate Mode, and ceasing on the Maturity Date or the last day on which the Bonds are in a Term Rate Mode, as applicable; or (iii) any date the Bonds are subject to redemption pursuant to the provisions hereof and the Maturity Date. In any case where any Bond Payment Date is not a Business Day, then payment need not be made on such date, but may be made on the next succeeding Business Day without accruing additional interest.

The term "Bond Purchase Agreement" shall mean the Bond Purchase Agreement by and among the City, the Bond Purchasers, the Placement Agent and the Borrowers, executed in connection with the Bonds.

The term "Bond Purchase Date" shall mean, collectively, the date on which the Bonds are subject to optional tender and purchase pursuant to the provisions of Section 11.01(a) hereof and each Mandatory Tender Date.

The term "Bond Purchasers" shall mean, collectively, Citi and DB.



The term "Bond Register" shall mean the register maintained by the Trustee pursuant to Section 2.06 of this Indenture for the registration and transfer of the Bonds.

The term "Bondholder Representative" shall mean the Person or Persons who are designated by the Holders of a Majority Share to act as provided in Section 12.16(a) of this Indenture. Citi shall be the initial Bondholder Representative. The Bondholder Representative may appoint a third party to act as its representative in certain capacities, provided it does so in writing and provides such written designation to the Trustee and the City.

The term "Bonds" shall mean the City and County of San Francisco, California Multifamily Housing Revenue Bonds, Series 2016E (Lower 500 Folsom Residential), issued and Outstanding hereunder.

The term "Bondowner," "Holder," "holder," "Bondholder," "Owner of the Bonds," "Registered Owner" or "owner of the Bonds" shall mean the person in whose name the Bonds are registered in the Bond Register maintained by the Trustee under Section 2.06.

The term "Book-Entry System" shall mean a book-entry system established and operated for the recordation of Beneficial Owners pursuant to Section 2.10 of this Indenture.

The term "Borrowers" means, collectively, the Affordable Borrower and the Market Borrower; provided, however, that from and after the Release Date, the term "Borrowers" shall mean only the Market Borrower.

The term "Borrower Controlling Entity" shall mean, if the respective Borrower is a partnership, any general partner or managing general partner of that Borrower, or if the respective Borrower is a limited liability company, the manager or managing member of that Borrower, or if the respective Borrower is a for profit corporation, the shareholders of that Borrower holding, in the aggregate, more than 50% of the voting control of that Borrower, or if the respective Borrower is a non-profit corporation, two thirds or more of the board of directors of that Borrower.

The term "Borrower Payment Obligations" shall mean all payment obligations of the Borrowers under the Loan Documents and each of the other Bond Documents, including, but not limited to, the Loan Payments and the Additional Payments.

The term "Business Day" means a day of the week (but not a Saturday, Sunday, or holiday) on which the Principal Office of Trustee is open to the public for carrying on substantially all of Trustee's business functions.

The term "Cap Agreement" shall mean any interest rate cap agreement between the Borrowers or their designee and any counterparty, as such agreement may be amended, supplemented or substituted from time to time, a security interest in which Cap Agreement shall be granted to the Trustee.

The term "Cap Agreement Requirements" shall mean an interest rate cap with a strike rate of 6%, a term of least 5 years, provided by a provider rated "AA" (or its equivalent) or higher by a Rating Agency and acceptable to the Bondholder Representative and otherwise consistent with industry standards, as determined by the Bondholder Representative in its sole discretion, or at a strike rate and maturity as otherwise approved in the sole discretion of Bondholder Representative.

The term "Cap Fee Escrow" shall mean the escrow account to be held by the Servicer to provide for payments made by the Borrowers as required by Section 5.8 of the Loan Agreement for the purchase of a subsequent Cap Agreement.

The term "Cap Payments" shall mean payments received from time to time by the Trustee in accordance with the Cap Agreement.

The term "Capitalized Interest Account" shall mean the Capitalized Interest Account of the Construction Fund created pursuant to Section 3.03(a) of this Indenture.

The term "Certificate of Authentication" shall mean the Certificate of Authentication attached to each Bond.

The term "Certificate of Completion" shall mean the certificate delivered by the Borrowers, in accordance with Section 3.03(g) hereof in such form as determined by the Borrowers, which contains a certification regarding the "97% Requirement" referred to in Section 3.03(b) hereof has been satisfied.

The term "Certificate of the City" shall mean a certificate of the City signed by an Authorized City Representative.

The term "Certified Resolution" shall mean a copy of a resolution of the City, certified by the Clerk of the Board of Supervisors of the City, to have been duly adopted by the City and to be in full force and effect on the date of such certification.

The term "Citi" shall mean Citibank, N.A., a national banking association.

The term "City" shall mean the City and County of San Francisco, California, a municipal corporation, duly organized and existing under its charter and the laws and constitution of the State of California, the issuer of the Bonds hereunder, and its successors and assigns.

The term "Closing Date" shall mean December \_\_, 2016, the date of initial delivery of the Bonds and funding of the Initial Disbursement.

The term "Code" or "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, and with respect to a specific section thereof, such reference shall be deemed to include (i) the regulations promulgated by the United States Department of the Treasury under such section, (ii) any successor provision of similar import hereafter enacted, (iii) any corresponding provision of any subsequent Internal Revenue Code, and (iv) the regulations promulgated under the provisions described in (ii) and (iii).

The term "Completion Guaranty" shall mean the Completion Loan and Repayment Guaranty, dated as of the date of this Indenture and delivered by the Guarantor.

The term "Computation Date" shall have the meaning assigned to such term in Section 1.148-3(e) of the Regulations.

The term "Condemnation" shall mean any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Project, whether direct or indirect.

The term "Construction Fund" shall mean the fund by that name established pursuant to Section 3.03(a) hereof.

The term "Construction Funding Agreement" shall mean the Construction Funding Agreement, dated as of December 1, 2016, among the Trustee, Citi, as Bondholder Representative, Citi, as Servicer, and the Borrowers, as originally executed or as it may from time to time be supplemented or amended in accordance with its terms.

The term "Construction Period" means the period beginning on the Closing Date and ending on the date on which the Certificate of Completion is delivered.

The term "Contingency Draw-Down Agreement" means the Contingency Draw-Down Agreement, dated as of December 1, 2016, among the Bondholder Representative, the Borrowers and the Trustee relating to possible conversion of the Bond issue from a draw down bond issue to a fully funded bond issue.

The term "Continuing Disclosure Agreement" shall mean that Continuing Disclosure Agreement, dated as of the date hereof, between the Borrowers and the Trustee, as dissemination agent, pursuant to which the Borrowers agree to provide certain information with respect to the Project, the Borrowers and the Bonds subsequent to the Closing Date, as amended, supplemented or restated from time to time.

The term "Control" shall mean, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise. For purposes of this definition the term "beneficial equity interest" shall mean (i) in the case of a partnership, the partnership interests, (ii) in the case of a limited liability company, the voting membership interests, (iii) in the case of a corporation which issues voting shares, the issued and outstanding voting shares, and (iv) in the case of tax exempt corporation, the board of director members.

The term "Conversion Agreement" shall mean that certain Agreement Regarding Conversion dated as of the date thereof by the Borrowers for the benefit of the Trustee, as amended, supplemented or restated from time to time.

The term "Conversion Date" shall have the meaning ascribed thereto in the Conversion Agreement.

The term "Conversion Notice" means a written notice by the Servicer to the City, the Trustee and the Borrowers (i) stating that each of the conditions to conversion in the Conversion Agreement has been satisfied or, if any of such conditions to conversion has not been satisfied it has been waived in writing by the Servicer, and (ii) specifying the Conversion Date.

The term "Costs of Issuance Deposit" shall mean the amount of \$\_\_\_\_\_.

The term "Costs of Issuance Fund" shall mean the Costs of Issuance Fund created pursuant to Section 5.02 of this Indenture.

The term "Credit Facility" shall mean (i) a letter of credit, surety bond, insurance policy, standby purchase agreement, guaranty, mortgage backed security or other credit facility, collateral purchase agreement or similar agreement issued by a financial institution (including without limitation Fannie Mae or Freddie Mac) which provides security for the payment of (a)

the principal of and interest on the Bonds (but in no case less than all of the Outstanding Bonds) when due, and (b) the Purchase Price of the Bonds, in each case satisfactory to the applicable Rating Agency rating the Bonds, or (ii) any substitute credit enhancement for any of the above.

The term "Credit Facility Provider" shall mean the provider of a Credit Facility.

The term "Daily Interest Rate" shall mean (i) the rate of interest per annum during a Daily Interest Rate Mode determined by the Remarketing Agent on an Interest Rate Determination Date to be the lowest interest rate for the Interest Rate Period commencing on such Interest Rate Determination Date and applicable through the next succeeding Interest Rate Determination Date, in the reasonable judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Bonds could be remarketed at par, plus the accrued interest, if any; or (ii) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Daily Interest Rate for whatever reason, or the Daily Interest Rate cannot be determined pursuant to clause (i) for whatever reason (including that a date is not a Business Day), the USD-SIFMA Municipal Swap Index then in effect; provided that in no event shall the Daily Interest Rate exceed the Maximum Rate.

The term "Daily Interest Rate Mode" shall mean the interest rate mode during any period when the Bonds bear interest at a Daily Interest Rate.

The term "DB" shall mean Deutsche Bank AG, New York Branch.

The term "Debt Service" means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

The term "Deed of Trust" shall mean the Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, executed by the Borrowers in favor of the City, for the purpose of securing the obligations of the Borrowers under the Loan Documents, as such deed of trust may be originally executed or as from time to time supplemented or amended.

The term "Default" shall mean (i) the occurrence of an event, which, under any Bond Document, would, after the giving of notice and the expiration of all applicable cure periods, be an Event of Default under the applicable Bond Document, or (ii) a Loan Agreement Default.

The term "Default Rate" means a rate per annum equal to the lesser of (i) the maximum rate permitted by applicable law, or (ii) the default rate set forth in the Note, in each case compounded monthly (computed on the basis of actual days elapsed in a 365- (or 366-) day year), as applicable.

The term "Defeasance Rate" shall mean the lesser of (i) 12% per annum and (ii) the known interest rate on the Bonds for a given period.

The term "Determination of Taxability" shall mean, (i) a determination by the Commissioner or any District Director of the Internal Revenue Service, (ii) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which City and Borrowers were afforded the opportunity to participate, (iii) a determination by any court of competent jurisdiction, (iv) the enactment of legislation or (v) receipt by Trustee

or Bondholder Representative, at the request of the City, the Borrowers, the Trustee or the Bondholder Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Bonds is includable in gross income for federal income tax purposes of any Bondholder or any former Bondholder, other than a Bondholder who is a "substantial user" of the Project or a "related person" (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (i) or (iii) shall be deemed to have occurred if the City (at the sole expense of the Borrowers) or the Borrowers are contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (a) a final determination from which no appeal may be taken with respect to such determination, (b) abandonment of such appeal by the City or the Borrowers, as the case may be, or (c) one year from the date of initial determination.

The term "Dissemination Agent" shall have the meaning ascribed thereto in the Continuing Disclosure Agreement.

The term "Draw-Down Notice" shall have the meaning ascribed thereto in the Contingency Draw-Down Agreement.

The term "Eligible Funds" shall mean (i) in the case of Bonds that are not credit enhanced with a Credit Facility, any moneys held by the Trustee in any fund or account under this Indenture and available, pursuant to the provisions hereof, to be used to pay principal of, premium, if any, or interest on, the Bonds, and (ii) in the case of Bonds that are credit enhanced by a Credit Facility, (a) remarketing proceeds received from the Remarketing Agent or any purchaser (other than funds provided by a Borrower, any general partner, member or guarantor of a Borrower or the City), (b) proceeds received pursuant to the Credit Facility, (c) proceeds of the Bonds received contemporaneously with the issuance and sale of the Bonds, (d) refunding bond proceeds, (e) proceeds from the investment or reinvestment of money described in clauses (a), (b) and (c) above, or (f) money delivered to the Trustee and accompanied by a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if either of the Borrowers, any general partner, member or guarantor of either of the Borrowers, or the City were to become a debtor in a proceeding under the Bankruptcy Code: (1) payment of such money to holders of the Bonds would not constitute an avoidable preference under Section 547 of the Bankruptcy Code and (2) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Bonds.

The term "Equipment" shall have the meaning given to the term "Personalty" in the Deed of Trust.

The term "Equity Account" shall mean the Equity Account of the Construction Fund created pursuant to Section 3.03(a) of this Indenture.

The term "ERISA" shall mean the Employment Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated hereunder.

The term "ERISA Affiliate" shall mean all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with a Borrower, are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

The term "Event of Default" shall have the meaning ascribed thereto in Section 7.01 of this Indenture.

The term "Exceptions to Non-Recourse Guaranty" shall mean the Exceptions to Non-Recourse Guaranty, dated as of the date of this Indenture, by the Guarantor.

The term "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

The term "Expense Fund" shall mean the Expense Fund created pursuant to Section 5.02 of this Indenture.

The term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Obligation-State and Local Government Series that is acquired in accordance with applicable regulations of the United States Department of the Treasury, Bureau of Public Debt, or (iv) the investment is the Local Agency Investment Fund of the State of California, but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States.

The term "Final Computation Date" shall have the meaning assigned to such term in Section 1.148-3(e) of the Regulations.

The term "Fitch Ratings" means Fitch Ratings, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

The term "Fixed Interest Rate" shall mean \_\_\_\_%.

The term "Fixed Interest Rate Mode" shall mean the interest rate mode during any period when the Bonds bear interest at a Fixed Interest Rate, which mode shall end on the earlier of the Maturity Date or the first date on which no Bonds remain Outstanding.

The term "Government Obligations" shall mean noncallable, nonprepayable (i) direct, general obligations of the United States of America, or (ii) any obligations unconditionally guaranteed as to the full and timely payment of all amounts due thereunder by the full faith and credit of the United States of America (including obligations held in book-entry form), but specifically excluding any mutual funds or unit investment trusts invested in such obligations.

The term "Governmental Authority" shall mean any court, board, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) now or hereafter in existence.

The term "Gross Proceeds" shall mean, without duplication, the aggregate of: (i) the net amount (after payment of all expenses of issuing the Bonds) of Bond proceeds received by the City as a result of the sale of the Bonds; (ii) all amounts received by the City as a result of the investment of the Bond proceeds; (iii) any amounts held in any fund to the extent that the City reasonably expects to use the amounts in such fund to pay any Bond Obligations; and (iv) any

securities or obligations pledged by the City or by the Borrowers as security for the payment of any Bond Obligation.

The term "Guarantor" shall have the meaning ascribed thereto in the Deed of Trust.

The term "Highest Rating Category" shall mean, with respect to an Investment Security, that the Investment Security is rated by each Rating Agency in the highest rating given by that Rating Agency for that general category of security. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the term "Highest Rating Category" means, with respect to an Investment Security, that the Investment Security is rated by S&P or Moody's in the highest rating given by that rating agency for that general category of security. By way of example, the Highest Rating Category for tax-exempt municipal debt established by S&P is "A 1+" for debt with a term of one year or less and "AAA" for a term greater than one year, with corresponding ratings by Moody's of "MIG-1" (for fixed rate) or "VMIG-1" (for variable rate) for three months or less and "Aaa" for greater than three months. If at any time (i) the Bonds are not rated, (ii) both S&P and Moody's rate an Investment Security and (iii) one of those ratings is below the Highest Rating Category, then such Investment Security will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, an Investment Security rated "AAA" by S&P and "Aa3" by Moody's is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Investment Security will be deemed to be rated below the Highest Rating Category. For example, an Investment Security rated "AAA" by S&P and "A1" by Moody's is not rated in the Highest Rating Category.

The term "Holder of a Majority Share" shall mean the Holder (or Beneficial Owner, if the Bonds are registered with a Book-Entry System pursuant to Section 2.10 of this Indenture) of more than 50% of the aggregate principal amount of all Outstanding Bonds (or beneficial interests therein), excluding from the numerator and the denominator for such calculation any Subordinate Bonds and excluding the Holder of Subordinate Bonds.

The term "Improvements" shall have the meaning ascribed thereto in the Deed of Trust.

The term "Indemnified Party" shall have the meaning ascribed thereto in Section 6.15 of the Loan Agreement.

The term "Indenture" shall mean this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any supplemental indenture entered into pursuant to the provisions hereof.

The term "Indexing Agent" shall mean the indexing agent appointed by the Bondholder Representative to determine the Bond Coupon Rate during the SIFMA Index Rate Mode or the MMD Index Rate Mode in accordance with the provisions of this Indenture. The initial Indexing Agent shall be the Trustee.

The term "Indirect Participant" shall mean a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository through a Participant.

The term "Initial Bond Fund Deposit" shall mean any initial deposit to the Bond Fund to be made pursuant to Section 3.03(a) hereof from funds provided by the Borrowers pursuant to Section 5.1(k) of the Loan Agreement. On the Closing Date, the Initial Bond Fund Deposit shall be \$0.

The term "Initial Disbursement" means the initial advance of the proceeds of the Bonds by the Bond Purchasers on the Closing Date, in the amount of \$\_\_\_\_\_.

The term "Initial Project" means, collectively, the Affordable Project and the Market Project.

The term "Installment Computation Date" shall mean any Computation Date other than the first Computation Date or the Final Computation Date.

The term "Interest Period Reset Date" shall mean the date on which the interest rate on the Bonds converts from the Interest Rate Mode applicable to the Bonds prior to such date to a new Interest Rate Mode. An Interest Period Reset Date shall be an Interest Rate Adjustment Date for the Interest Rate Mode in effect prior to such change.

The term "Interest Rate Adjustment Date" shall mean any date on which the interest rate on the Bonds may be adjusted, either as the result of the conversion of the current Interest Rate Mode on the Bonds to a different Interest Rate Mode, or by adjustment of the interest rate on the Bonds within the applicable Interest Rate Mode. The Interest Rate Adjustment Date shall be the Interest Period Reset Date and thereafter, for each succeeding Interest Rate Period, the first day of the next Interest Rate Period if the Bonds bear interest at the Term Rate; Thursday of each week if the Bonds bear interest at the Weekly Interest Rate, the MMD Index Rate or the SIFMA Index Rate; and the Interest Rate Determination Date if the Bonds bear interest at the Daily Interest Rate.

The term "Interest Rate Determination Date" shall mean (i) with respect to the Fixed Interest Rate and the Term Rate, the tenth Business Day preceding an Interest Rate Adjustment Date; (ii) with respect to the Weekly Interest Rate, the MMD Index Rate and the SIFMA Index Rate, not later than 5:00 p.m., New York, New York time, on Wednesday of each week, or the next preceding Business Day if such Wednesday is not a Business Day; provided that upon any conversion to the Weekly Interest Rate Mode, MMD Index Rate Mode or SIFMA Index Rate Mode from a different Interest Rate Mode, the first Interest Rate Determination Date shall mean not later than 5:00 p.m., New York, New York time, on the Business Day preceding the Interest Rate Adjustment Date; and (iii) with respect to the Daily Interest Rate, not later than 7:45 a.m., New York, New York time, on each Business Day.

The term "Interest Rate Mode" shall mean any of those modes of interest with respect to the Bonds permitted by this Indenture, specifically, the Daily Interest Rate Mode, the Weekly Interest Rate Mode, the MMD Index Rate Mode, the SIFMA Index Rate Mode, the Term Rate Mode and the Fixed Interest Rate Mode. The initial Interest Rate Mode shall be as set forth in Section 2.02(e) hereof.

The term "Interest Rate Period" shall mean that period of time for which the interest rate with respect to the Bonds has been determined by the Remarketing Agent or otherwise as provided in the definition of the applicable Interest Rate Mode, commencing on the applicable Interest Rate Adjustment Date, and terminating on the day immediately preceding the following Interest Rate Adjustment Date, if any.

The term "Investment Agreement" shall mean any investment agreement, between the Trustee and the provider thereof, entered into by the Trustee at the written request of the Borrowers; provided such investment agreement must constitute an Investment Security.



The term "Investment Income" shall mean the earnings on any investment of the amounts on deposit in the funds and accounts established under this Indenture.

The term "Investment Securities" shall mean any of the following (including any funds comprised of the following, which may be funds maintained or managed by the Trustee and its affiliates), but only to the extent that the same are acquired at Fair Market Value:

(a) Government Obligations.

(b) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America (other than the Federal Home Loan Mortgage Corporation) or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.

(c) Obligations, in each case rated in the Highest Rating Category, of (i) any state or territory of the United States of America, (ii) any agency, instrumentality, authority or political subdivision of a state or territory or (iii) any public benefit or municipal corporation the principal of and interest on which are guaranteed by such state or political subdivision.

(d) Any written repurchase agreement entered into with a Qualified Financial Institution whose unsecured short term obligations are rated in the Highest Rating Category.

(e) Commercial paper rated in the Highest Rating Category.

(f) Interest bearing negotiable certificates of deposit, interest bearing time deposits, interest bearing savings accounts and bankers' acceptances, issued by a Qualified Financial Institution if either (A) the Qualified Financial Institution's unsecured short term obligations are rated in the Highest Rating Category or (B) such deposits, accounts or acceptances are fully collateralized by investments described in clauses (a) or (b) of this definition or fully insured by the Federal Deposit Insurance Corporation.

(g) an agreement held by the Trustee for the investment of moneys at a guaranteed rate with a Qualified Financial Institution whose unsecured long-term obligations are rated in the Highest Rating Category or the Second Highest Rating Category, or whose obligations are unconditionally guaranteed or insured by a Qualified Financial Institution whose unsecured long-term obligations are rated in the Highest Rating Category or Second Highest Rating Category; provided that such agreement is in a form acceptable to the Bondholder Representative; and provided further that such agreement includes the following restrictions:

(1) the invested funds will be available for withdrawal without penalty or premium, at any time that (A) the Trustee is required to pay moneys from the Fund(s) established under this Indenture to which the agreement is applicable, or (B) any Rating Agency indicates that it will lower or actually lowers, suspends or withdraws the rating on the Bonds on account of the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement;

(2) the agreement, and if applicable the guarantee or insurance, is an unconditional and general obligation of the provider and, if applicable, the guarantor or insurer of the agreement, and ranks pari passu with all other unsecured unsubordinated obligations of the provider, and if applicable, the guarantor or insurer of the agreement;

(3) the Trustee receives an Opinion of Counsel, which may be subject to customary qualifications, that such agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and, if applicable, an Opinion of Counsel that any guaranty or insurance policy provided by a guarantor or insurer is legal, valid, binding and enforceable upon the guarantor or insurer in accordance with its terms; and

(4) the agreement provides that if during its term the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement, is withdrawn, suspended by any Rating Agency or falls below the Second Highest Rating Category, the provider must, within 10 days, either: (A) collateralize the agreement (if the agreement is not already collateralized) with Investment Securities described in paragraph (a) or (b) by depositing collateral with the Trustee or a third party custodian, such collateralization to be effected in a manner and in an amount reasonably satisfactory to the Bondholder Representative, or, if the agreement is already collateralized, increase the collateral with Investment Securities described in paragraph (a) or (b) by depositing collateral with the Trustee or a third party custodian, in an amount reasonably satisfactory to the Bondholder Representative, (B) at the request of the Trustee or the Bondholder Representative, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium unless required by law or (C) transfer the agreement, guarantee or insurance, as applicable, to a replacement provider, guarantor or insurer, as applicable, then meeting the requirements of a Qualified Financial Institution and whose unsecured long-term obligations are then rated in the Highest Rating Category or the Second Highest Rating Category. The agreement may provide that the down-graded provider may elect which of the remedies to the down-grade (other than the remedy set out in (B)) to perform.

Notwithstanding anything else in this Paragraph (g) to the contrary and with respect only to any agreement described in this Paragraph or any guarantee or insurance for any such agreement which is to be in effect for any period after the Conversion Date, any reference in this Paragraph to the "Second Highest Rating Category" will be deemed deleted so that the only acceptable rating category for such an agreement, guarantee or insurance will be the Highest Rating Category.

(h) Subject to the ratings requirements set forth in this definition, shares in any money market mutual fund (including those of the Trustee or any of its affiliates) registered under the Investment Company Act of 1940, as amended, that have been rated AAAM-G or AAAM by S&P or Aaa by Moody's so long as the portfolio of such money market mutual fund is limited to Government Obligations and agreements to repurchase Government Obligations. If approved in writing by the Bondholder Representative, a money market mutual fund portfolio may also contain obligations and agreements to repurchase obligations described in paragraphs (b) or (c). If the Bonds are rated by a Rating Agency, the money market mutual fund must be rated AAAM-G or AAAM by S&P, if S&P is a Rating Agency, or Aaa by Moody's, if Moody's is a Rating

Agency. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the money market mutual fund must be rated AAAM-G or AAAM by S&P or Aaa by Moody's. If at any time (i) the Bonds are not rated, (ii) both S&P and Moody's rate a money market mutual fund and (iii) one of those ratings is below the level required by this paragraph, then such money market mutual fund will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency.

(i) Any other investment authorized by the laws of the State and otherwise permissible under the Debt Policy of the City Controller's Office (as in effect from time to time), if such investment is approved in writing by the Bondholder Representative.

Investment Securities shall not include any of the following:

(1) Except for any investment described in the next sentence, any investment with a final maturity or any agreement with a term greater than one year from the date of the investment. This exception (1) shall not apply to any obligation that provides for the optional or mandatory tender, at par, by the holder of such obligation at least once within one year of the date of purchase, Government Obligations irrevocably deposited with the Trustee for payment of Bonds pursuant to Section 14.2, and Investment Securities listed in paragraphs (g) and (i).

(2) Except for any obligation described in paragraph (a) or (b), any obligation with a purchase price greater or less than the par value of such obligation.

(3) Any asset-backed security, including mortgage backed securities, real estate mortgage investment conduits, collateralized mortgage obligations, credit card receivable asset-backed securities and auto loan asset-backed securities.

(4) Any interest-only or principal-only stripped security.

(5) Any obligation bearing interest at an inverse floating rate.

(6) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

(7) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index.

(8) Any investment described in paragraph (d) or (g) with, or guaranteed or insured by, a Qualified Financial Institution described in clause (iv) of the definition of Qualified Financial Institution if such institution does not agree to submit to jurisdiction, venue and service of process in the United States of America in the agreement relating to the investment.

(9) Any investment to which S&P has added an "r" or "t" highlighter.

The term "Investor Letter" shall mean a letter in substantially the form attached to this Indenture as EXHIBIT C, duly executed by a purchaser of Bonds and delivered to the Trustee.

The term "Investor Limited Partner" shall mean Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation, and its successors and assigns.

The term "Issuance Costs" means all costs and expenses of issuance of the Bonds, including, but not limited to: (i) any Bond Purchasers' discount and fees; (ii) counsel fees, including bond counsel and Borrowers' counsel, as well as any other specialized counsel fees incurred in connection with the issuance of the Bonds or the Loan; (iii) the City's fees and expenses incurred in connection with the issuance of the Bonds, including fees of any counsel or advisor to the City, and the City administrative fee for processing the request of the Borrowers to issue the Bonds; (iv) fees of the Bondholder Representative and its counsel; (v) Trustee's fees and Trustee's counsel fees; (vi) paying agent's and certifying and authenticating agent's fees related to issuance of the Bonds; (vii) accountant's fees related to issuance of the Bonds; (viii) publication costs associated with the financing proceedings; and (ix) costs of engineering and feasibility studies necessary to the issuance of the Bonds.

The term "Issuer's Closing Fee" shall mean the City's issuance fee specified in Section 18 of the Regulatory Agreement payable by the Borrowers to the City on or before the Closing Date from amounts in the Costs of Issuance Fund, or otherwise.

The term "Issuer's Ongoing Fee" shall mean the City's annual fee with respect to the Bonds in the amount as set forth in and in accordance with and pursuant Section 6.11 of the Loan Agreement and Section 18 of the Regulatory Agreement.

The term "Late Charge" shall mean the amount due and payable as a late charge on overdue payments under the Note, as provided in Section 7 of the Note and Section 5.1(i) of the Loan Agreement.

The term "Leases" shall mean the leases (with changes for the identity of the tenant, the term, the rental amount and the unit number and other changes as permitted under the Loan Documents) entered into for apartments units within the Project on the standard form of lease that has been approved by the Bondholder Representative.

The term "Legal Requirements" shall mean statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting all or part of the Project or any property or the construction, rehabilitation, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to the Borrowers, at any time in force affecting all or part of the Project, including any that may (i) require repairs, modifications or alterations in or to all or part of the Project, or (ii) in any way limit the use and enjoyment thereof.

The term "Letter of Representations" shall mean any letter of representations between the City and a Securities Depository.

The term "Liabilities" shall have the meaning set forth in Section 6.15 of the Loan Agreement.

The term "Lien" shall mean any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease; consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

The term "Limited Partnership Agreement" shall mean the [Amended and Restated] Agreement of Limited Partnership of the Affordable Borrower dated as of the date thereof, as amended, supplemented or restated from time to time.

The term "Loan" shall mean the loan of the proceeds of the Bonds made by the City to the Borrowers pursuant to the Loan Agreement and the Construction Funding Agreement for the purpose of financing the construction of the Project.

The term "Loan Agreement" shall mean the Agreement, as defined herein.

The term "Loan Agreement Default" shall mean any event of default set forth in 7.1(a) of the Loan Agreement. A Loan Agreement Default shall "exist" if a Loan Agreement Default shall have occurred and be continuing beyond any applicable cure period.

The term "Loan Amount" shall mean the amount of \$132,000,000.

The term "Loan Documents" shall mean the Loan Agreement, the Note, the Conversion Agreement, the Deed of Trust, the Construction Funding Agreement, the Contingency Draw-Down Agreement, the Exceptions to Non-Recourse Guaranty, the Agreement of Environmental Indemnification, the Completion Guaranty, the Replacement Reserve Agreement, the Assignment of Equity Interests and all other documents or agreements evidencing or relating to the Loan.

The term "Loan Payment Date" shall mean (i) when the Bonds are in the SIFMA Index Rate Mode, the MMD Index Rate Mode, the Daily Interest Rate Mode or the Weekly Interest Rate Mode, the Friday immediately preceding the Bond Payment Date, or, if such day is not a Business Day, the immediately succeeding day that is a Business Day, (ii) when the Bonds are in the Fixed Interest Rate Mode or the Term Rate Mode, (A) the 25th day of the month preceding the related Bond Payment Date during a period when a Credit Facility does not enhance the Bonds pursuant to Section 2.12, commencing December 25, 2016, and (B) the 25th day of each month during a period when a Credit Facility enhances the Bonds pursuant to Section 2.12, or (iii) any other date on which the Note is prepaid or paid, whether at the scheduled maturity or upon the redemption or acceleration of the maturity thereof.

The term "Loan Payments" shall mean the monthly loan payments payable pursuant to the Note and transferred to the Trustee by the Servicer, which payments shall include amounts necessary to fund the amounts payable for Third Party Fees.

The term "Management Agreement" shall mean the Management Agreement between the Borrowers and the Manager, pursuant to which the Manager is to manage the Project, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

The term "Manager" shall mean the management company to be employed by the Borrowers and approved by any Bondholder Representative in accordance with the terms of the Deed of Trust, the Loan Agreement or any of the other Bond Documents. The property manager as of the Closing Date is \_\_\_\_\_.

The term "Mandatory Tender Date" shall mean (i) a Substitution Date, (ii) any date when the Bonds are converted from one Interest Rate Mode to a different Interest Rate Mode (other than changes from the Daily Interest Rate to the Weekly Interest Rate or from the Weekly Interest Rate to the Daily Interest Rate), (iii) the Interest Rate Adjustment Date associated with the end of an Interest Rate Period when the Bonds bear interest at a Term Rate, and (iv) the expiration date of the Credit Facility, if applicable, if not renewed or otherwise substituted.

The term "Market Borrower" means Block 9 MRU Residential, LLC, a Delaware limited liability company, and its permitted successors and assigns under the Bond Documents to which it is a party.

The term "Market Project" shall have the meaning set forth in the third Recital above.

The term "Maturity Date" shall mean [\_\_\_\_\_ 1, 2051].

The term "Maximum Rate" shall mean the lesser of (i) 12% per annum and (ii) the maximum interest rate that may be paid on the Bonds under applicable State law.

The term "MMD Index Rate" shall mean a rate equal to the index rate resets of tax exempt variable rate issues known as Municipal Market Data General Obligation, AAA Index, with a designated maturity most closely approximating the period of time for which the MMD Index Rate may apply, as published on any Business Day by Municipal Market Data, a Thomson Financial Services Company, or its successors, plus a spread established by the Bondholder Representative; provided that in no event shall the MMD Index Rate exceed the Maximum Rate.

The term "MMD Index Rate Mode" shall mean the interest rate mode during any period when the Bonds bear interest at the MMD Index Rate.

The term "Moody's" means Moody's Investors Service, Inc., and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

The term "Negative Arbitrage Deposit" has the meaning set forth in the Contingency Draw-Down Agreement.

The term "Nonpurpose Investment" shall mean any investment property (as defined in Section 148(b) of the Code) that is acquired with the Gross Proceeds of the Bonds and which is not acquired to carry out the governmental purpose of the Bonds.

The term "Note" means the promissory note evidencing the obligation of the Borrowers to repay the Loan, dated the Closing Date, in the stated principal amount of the Loan Amount and executed by the Borrowers in favor of the City, as assigned by the City without recourse to the Trustee, as it may be amended, supplemented or replaced from time to time.

The term "Notice of Interest Rate Conversion" shall have the meaning ascribed hereto in Section 2.11 and attached hereto as EXHIBIT E.

The term "Notice of Subordination of Bonds" shall have the meaning ascribed thereto in Article XIII and substantially in the form attached hereto as EXHIBIT F.

The term "Office of the Trustee" shall mean the applicable office of the Trustee at the address set forth in Section 12.06, or at such other place or places as may be designated by the Trustee from time to time.

The term "Opinion of Counsel" shall mean a written opinion from an attorney or firm of attorneys, acceptable to the City, the Trustee and the Bondholder Representative with experience in the matters to be covered in the opinion.

The term "Other Charges" shall mean all maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Project, now or hereafter levied or assessed or imposed against the Project or any part thereof.

The term "Outstanding," when used as of any particular time with reference to Bonds, shall, subject to the provisions of Section 12.08(e), mean all Bonds theretofore authenticated and delivered by the Trustee under this Indenture except:

- (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;
- (b) Bonds for the payment or redemption of which moneys or securities in the necessary amount (as provided in Section 10.02) shall have theretofore been deposited with the Trustee (whether upon or prior to the maturity or the redemption date of such Bonds);
- (c) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the terms of Section 2.05 or 2.07;
- (d) Bonds not tendered when required under the provisions of this Indenture which are deemed tendered; and
- (e) the principal of the Bonds authorized but not yet drawn-down and delivered by the Bond Purchasers, as applicable.

The term "Participant" shall mean a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository.

The term "Permitted Encumbrances" shall have the meaning given such term in the Deed of Trust.

The term "person" or "Person" shall mean an individual, a limited liability company, a corporation, a partnership, a limited partnership, a limited liability partnership, a trust, an unincorporated organization or a government or any agency or political subdivision thereof.

The term "Placement Agent" shall mean FMS Bonds, Inc., a Florida corporation.

The term "Plan" shall mean (i) an employee benefit or other plan established or maintained by a Borrower or any ERISA Affiliate or to which a Borrower or any ERISA Affiliate makes or is obligated to make contributions and (ii) which is covered by Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

The term "Pledged Bonds" shall mean Bonds (or portions thereof) purchased with moneys drawn under the Credit Facility.

The term "Pledged Bonds Remarketing Date" shall have the meaning ascribed to such term in Section 11.05(c) hereof.

The term "Pledged Revenues" shall mean the amounts pledged under this Indenture to the payment of the principal of and premium and interest on the Bonds, consisting of the following: (i) all income, revenues, proceeds and other amounts to which the City is entitled (other than amounts received by the City with respect to the Reserved Rights) and which are held by the Trustee, derived from or in connection with the Project and the Bond Documents, including all Loan Payments due under the Loan Agreement and the Note, all Cap Payments, if any, payments with respect to the Loan Payments made under the Swap Agreement, if applicable, and all amounts obtained through the exercise of the remedies provided in the Bond Documents and all receipts of the Trustee credited under the provisions of this Indenture against said amounts payable, and (ii) moneys held in the funds and accounts established under this Indenture, together with investment earnings thereon (except any amounts on deposit in the Expense Fund and the Rebate Fund). "Pledged Revenues" shall not include, in any event, payments to the United States, the Trustee, the City (by, on behalf, or pursuant to a specified covenant in the Loan Agreement hereafter referenced), or the Administrator pursuant to Sections 2.3, 2.4, 5.1(h), 5.1(i), 5.1(j), 6.14, 6.15, 6.17(i) or 7.4 of the Loan Agreement, Sections 2.05(c), 3.04, 6.07 or 8.06 of this Indenture, or Sections 8 or 18 of the Regulatory Agreement.

The term "Pre-Conversion Loan Equalization Payment" shall mean a partial prepayment of the Loan in accordance with the Conversion Agreement in connection with Conversion.

The term "Prepayment Premium" shall mean, as applicable, (i) any premium payable by the Borrowers pursuant to the Loan Documents in connection with a prepayment of the Note (including any prepayment premium as set forth in the Note) and (ii) any premium payable on the Bonds pursuant to this Indenture.

The term "Principal Office" shall mean the office of the Trustee located at the address set forth in Section 12.06(a) hereof, or at such other place as the Trustee shall designate by notice given under said Section 12.06.

The term "Principal Reserve Amount" shall mean initially zero percent (0.0%) of the aggregate principal amount of the Bonds originally issued and delivered, but upon delivery of a Written Notice of the Borrowers, with the Written Consent of the Bondholder Representative, may mean any amount designated by the Borrowers with the Written Consent of the Bondholder Representative, provided, however, that such amount shall never exceed twenty percent (20%) of the aggregate principal amount of the Outstanding Bonds.

The term "Principal Reserve Fund" shall mean the Principal Reserve Fund established pursuant to Section 5.02.

The term "Principal Reserve Fund Deposit" shall mean each deposit required to be made pursuant to the Principal Reserve Fund Deposit Schedule.

The term "Principal Reserve Fund Deposit Schedule" shall mean the Principal Reserve Fund Deposit Schedule (if any) attached to the Note which may be revised from time to time by the Bondholder Representative as provided in Section 4.01(e) or Section 5.10.



The term "Project" shall mean, prior to the Release Date, the Initial Project, and from and after the Release Date, the Market Project.

The term "Project Costs" has the meaning given such term in the Regulatory Agreement.

The term "Proportionate Basis" when used with respect to the redemption of Bonds, shall mean that the aggregate principal amount of each maturity (and series, if applicable) to be redeemed shall be determined as nearly as practicable by multiplying the total amount of funds available for redemption by the ratio which the principal amount of Bonds of each maturity (of such series, if applicable) then Outstanding and to be redeemed bears to the principal amount of all Bonds (of such series, if applicable) then Outstanding and to be redeemed; provided that if the amount available for redemption of Bonds of any maturity is insufficient to redeem a multiple of the minimum Authorized Denomination, such amount shall be applied to the redemption of the highest possible integral multiple (if any) of the minimum Authorized Denomination. For purposes of the foregoing, the Bonds shall be deemed to mature in the years and in the amounts of the sinking fund installments as set forth in Section 4.01(g). Any Bonds purchased with moneys that would otherwise be applied to redemption on a Proportionate Basis on the next succeeding Bond Payment Date shall be taken into account in determining "Proportionate Basis" with respect to such redemption. When used with respect to the purchase of Bonds "Proportionate Basis" shall have the same meaning as set forth above (substituting purchase for redeem or redemption, and purchased for redeemed).

The term "Purchase Price" shall mean (i) the price paid for the purchase of Bonds in lieu of redemption pursuant to Section 4.05 of this Indenture, which shall be equal to the applicable Redemption Price, and (ii) if Bonds are subject to optional or mandatory tender in any Interest Rate Mode, the price payable to Bondholders equal to the principal amount of the Outstanding Bonds plus accrued interest thereon to the date of purchase.

The term "Qualified Financial Institution" shall mean any of: (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, a savings and loan association, or an insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by the Bondholder Representative the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (vii) any other entity which is acceptable to the Bondholder Representative. With respect to an entity which provides an agreement held by the Trustee for the investment of moneys at a guaranteed rate as set out in paragraph (g) of the definition of the term "Investments Securities" or an entity which guarantees or insures, as applicable, the agreement, a "Qualified Financial Institution" may also be a corporation or limited liability company organized under the laws of any state of the United States of America.

The term "Qualified Project Costs" shall have the meaning given such term in the Regulatory Agreement.

The term "Rating Agency" shall mean any one and each of S&P, Moody's and Fitch Ratings then rating the Bonds or the Securities or any other nationally-recognized statistical

rating agency then rating the Bonds or the Securities, which has been approved by the Bondholder Representative.

The term "Rebate Amount" shall mean, for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the Bonds.

The term "Rebate Analyst" shall mean the rebate analyst selected by the Borrowers prior to the Closing Date and acceptable to the City and the Bondholder Representative. The Rebate Analyst as of the Closing Date is \_\_\_\_\_.

The term "Rebate Analyst's Fee" shall mean the fee of the Rebate Analyst in the amount of \$\_\_\_ on the Closing Date and \$\_\_\_\_\_ on each Rebate calculation date thereafter, commencing on the fifth anniversary of the Closing Date, and each fifth anniversary thereafter. The Rebate Analyst's Fee is payable by the Trustee to the Rebate Analyst upon receipt of an invoice from the Expense Fund.

The term "Rebate Fund" shall mean the Rebate Fund created pursuant to Section 5.02 of this Indenture.

The term "Record Date" shall mean (i) while the Bonds bear interest in the MMD Index Rate Mode, the SIFMA Index Rate Mode, the Weekly Interest Rate Mode and the Daily Interest Rate Mode, the day immediately prior to any Bond Payment Date, or (ii) while the Bonds bear interest in the Term Rate Mode or the Fixed Interest Rate Mode, the fifteenth (15th) calendar day of the month preceding the applicable Bond Payment Date.

The term "Redemption Date" shall mean any date designated as a date upon which Bonds are to be redeemed pursuant to this Indenture.

The term "Redemption Price" shall mean the sum of (a) the outstanding principal amount of the Bonds to be redeemed, (b) accrued and unpaid interest on the Bonds to be redeemed to the date of redemption (including any additional interest required to be paid under the Note following a Determination of Taxability) and (c) the Prepayment Premium, if any.

The term "Registered Holder" shall mean the Person or Persons in whose name or names the Bonds are registered in the Bond Register.

The term "Registered Owners" shall have the meaning set forth in the definition of "Bondholders."

The term "Regulations" means the Income Tax Regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any predecessor statute to the Code.

The term "Regulatory Agreement" shall mean the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, by and between the City and the Borrowers, as in effect on the Closing Date and as thereafter amended in accordance with its terms.

The term "Reimbursement Agreement" shall mean any reimbursement agreement between the Borrowers and the Credit Facility Provider, as such agreement may be amended from time to time.

The term "Related Person" shall mean a "related person" within the meaning of Section 147(a) of the Code.

The term "Release Conditions" means the conditions to the occurrence of the Release Date set forth in the Construction Funding Agreement.

The term "Release Date" means the date on which the Affordable Project is released from the lien of the Deed of Trust, the Affordable Borrower is released as an obligor under the Loan Documents and all of the Release Conditions have been satisfied in accordance with the Loan Agreement.

The term "Remaining Bond Proceeds Account" has the meaning set forth in the Contingency Draw-Down Agreement.

The term "Remaining Bond Proceeds Account Earnings Subaccount" has the meaning set forth in the Contingency Draw-Down Agreement.

The term "Remarketing Agent" shall mean any remarketing agent satisfying the requirements of Section 8.16 hereof and approved by the Bondholder Representative and the City.

The term "Remarketing Agreement" shall mean any remarketing agreement between the Remarketing Agent and the Borrowers for purposes of remarketing the Bonds, as such agreement may be amended from time to time.

The term "Remarketing Proceeds Fund" shall mean the Remarketing Proceeds Fund created pursuant to Section 5.02.

The term "Rents" shall have the meaning ascribed thereto in the Deed of Trust.

The term "Replacement Reserve Agreement" shall mean any Replacement Reserve Agreement between the Borrowers and the Trustee, as the same may be amended, restated or supplemented from time to time.

The term "Reserved Rights" means those certain rights of the City under the Loan Agreement to indemnification and to payment or reimbursement of fees and expenses of the City, including the Issuer's Ongoing Fee as well as the fees and expenses of counsel, and indemnity payments, its right to give and receive notices and to enforce notice and reporting requirements and restrictions on transfer of ownership, its right to inspect and audit the books, records and premises of the Borrowers and of the Project, its right to collect attorney's fees and related expenses, its right to specifically enforce the Borrowers' covenant to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the City), its right to receive notices under the Loan Agreement, its rights to give or withhold consent to amendments, changes, modifications and alterations to the Loan Agreement as specifically set forth herein, and to the extent not included above, the rights specifically reserved by the City under Section 5.14 of this Indenture.

The term "Resolution" shall mean the resolution of the City authorizing the issuance of the Bonds and the execution and delivery of the Bond Documents to which it is a party.

The term "Responsible Officer" of the Trustee shall mean any officer of the Trustee assigned to administer its duties hereunder.

The term "Review Fee" shall mean the three thousand (\$3,000) fee payable to Servicer in connection with the review of requests from the Borrower in connection with events requiring the consent and/or approval of the Bondholder Representative or the Bondowners, including, but not limited to, subordinate financings and easements.

The term "Second Highest Rating Category" shall mean, with respect to an Investment Security, that the Investment Security is rated by each Rating Agency in the second highest rating category given by that Rating Agency for that general category of security. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the term "Second Highest Rating Category" means, with respect to an Investment Security, that the Investment Security is rated by S&P or Moody's in the second highest rating category given by that rating agency for that general category of security. By way of example, the Second Highest Rating Category for tax-exempt municipal debt established by S&P is "AA" for a term greater than one year, with corresponding ratings by Moody's of "Aa." If at any time (i) the Bonds are not rated, (ii) both S&P and Moody's rate an Investment Security and (iii) one of those ratings is below the Second Highest Rating Category, then such Investment Security will not be deemed to be rated in the Second Highest Rating Category. For example, an Investment rated "AA" by S&P and "A" by Moody's is not rated in the Second Highest Rating Category.

The term "Secondary Market Transaction" shall have the meaning set forth in Section 9.1.1 of the Loan Agreement.

The term "Securities" shall have the meaning ascribed thereto in Section 9.1.1 of the Loan Agreement.

The term "Securities Act" shall mean the Securities Act of 1933, as amended.

The term "Securities Depository" shall mean The Depository Trust Company and any substitute for or successor to such securities depository that shall maintain a Book-Entry System with respect to the Bonds.

The term "Securities Depository Nominee" shall mean the Securities Depository or the nominee of such Securities Depository in whose name the Bonds shall be registered on the registration books of the City while the Bonds are in a Book-Entry System.

The term "Senior Bonds" shall mean, initially, the Bonds; provided that the Bondholder Representative may designate any Authorized Denomination of Bonds as "Senior Bonds" pursuant to Article XIII in connection with the designation of Subordinate Bonds.

The term "Servicer" shall mean the Servicer contracting with or appointed by the Bondholder Representative to service the Loan. The initial servicer shall be Citi.

The term "Servicer Remittance Date" shall mean the first Business Day immediately preceding the Bond Payment Date, commencing on December 30, 2016.

The term "Servicing Agreement" shall mean any servicing agreement or master servicing agreement, among the Servicer, the Trustee, the Swap Counterparty (if any, as approved by the Bondholder Representative), and the Bondholder Representative relating to the servicing of the Loan and any amendments thereto or any replacement thereof.

The term "SIFMA" shall mean the Securities Industry & Financial Markets Association (formerly The Bond Markets Association), and any successor thereto.

The term "SIFMA Index Rate" shall mean a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by SIFMA (formerly The Bond Markets Association) or any Person acting in cooperation with or under the sponsorship of SIFMA and acceptable to the Bondholder Representative, plus a spread established by the Bondholder Representative at the time the SIFMA Index Rate becomes effective; provided that in no event shall the SIFMA Index Rate exceed the Maximum Rate.

The term "SIFMA Index Rate Mode" shall mean the interest rate mode during any period when the Bonds bear interest at the SIFMA Index Rate.

The term "S&P" shall mean S&P Global Ratings, and its successors and assigns or, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, any other nationally recognized rating agency designated by the City.

The term "State" shall mean the State of California.

The term "Subordinate Bonds" shall mean any Authorized Denomination of Bonds so designated by the Bondholder Representative as "Subordinate Bonds" pursuant to Article XIII.

The term "Substitution Date" shall mean any Business Day established for the mandatory tender and purchase of the Bonds in connection with the delivery to the Trustee of a Credit Facility pursuant to Section 2.12 hereof.

The term "supplemental indenture" or "indenture supplemental hereto" shall mean any indenture hereafter duly authorized and entered into between the City and the Trustee in accordance with the provisions of Article IX of this Indenture.

The term "Surplus Fund" shall mean the Surplus Fund created pursuant to Section 5.02 of this Indenture.

The term "Swap Agreement" shall mean any interest rate exchange, hedge or similar agreement, entered into in order to hedge or manage the interest payable on all or a portion of the Bonds, whether then existing or to be entered into, which agreement may include, without limitation, an interest rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), between the Borrowers or their designee and the Swap Counterparty, and as shall be set forth in an International Swaps and Derivatives Association, Inc. Master Agreement, including the Schedule thereto, and any Confirmation entered into thereunder between the Borrowers and the Swap Counterparty, as such agreement may be amended, supplemented or substituted from time to time.

The term "Swap Counterparty" shall mean any Person entering into a Swap Agreement with the Borrowers.

The term "Tax Certificate" means the Certificate as to Arbitrage, by the City and the Borrowers, delivered on the Closing Date.

The Term "Taxes" shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the Project.

The Term "Tax-Exempt Bonds Account" shall mean the Tax-Exempt Bonds Account of the Construction Fund created pursuant to Section 3.03(a).

The Term "Tender Agent" shall mean initially the Trustee, and any successor tender agent appointed under this Indenture.

The Term "Term" shall mean the term of the Loan Agreement pursuant to Section 8.8 of the Loan Agreement.

The Term "Term Rate" shall mean (i) the rate of interest per annum with respect to a Term Rate Mode determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date and ending on the date determined by the Remarketing Agent, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Bonds could be remarketed at par, plus the accrued interest, if any, on the Interest Rate Adjustment Date for that Interest Rate Period; or (ii) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Term Rate for whatever reason, or the Term Rate cannot be determined pursuant to clause (i) for whatever reason, the interest rate then in effect with respect to the Bonds, without adjustment; provided that in no event shall the Term Rate exceed the Maximum Rate.

The Term "Term Rate Mode" shall mean the Interest Rate Mode at any time the Bonds bear interest at the Term Rate.

The Term "Third Party Fees" shall mean the Issuer's Ongoing Fee, the Trustee's Fee and the Rebate Analyst's Fee.

The Term "Title Insurance Policy" shall mean the mortgagee title insurance policy, in form acceptable to the Bondholder Representative, issued with respect to the Project and insuring the lien of the Deed of Trust.

The Term "Transfer" shall have the meaning ascribed thereto in the Deed of Trust.

The Term "Trust Estate" shall mean the Trust Estate described in the granting clauses of this Indenture.

The term "Trustee" means (a) U.S. Bank National Association, a national banking association organized under the laws of the United States of America, or (b) any successor Trustee under the provisions hereof.

The term "Trustee's Fee" shall mean (i) the fee payable to the Trustee on the Closing Date of \$4,000.00, and (ii) the annual fee of the Trustee in the amount \$3,000.00. The Trustee's Fee referred to in the foregoing clause (ii) is payable annually in arrears from the Expense Fund on each December 1, commencing on December 1, 2017, so long as any of the Bonds are Outstanding.

The term "UCC" shall mean the Uniform Commercial Code as in effect in the State.

The Term "USD-SIFMA Municipal Swap Index" shall mean, for any day, a per annum rate, expressed as a decimal, equal to: (i) if such day is an Interest Rate Determination Date, (a) the level of the index which is issued weekly and which is compiled from the weekly interest rate resets of tax-exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a U.S. Government Securities Business Day, the next succeeding U.S. Government Securities Business Day; or (b) if such index is no longer published, then (1) any comparable rate, as determined by the Indexing Agent, or (2) if there is no comparable rate, as determined by the Indexing Agent, the rate for such day shall be 85% of the interest rate on 30-day high grade unsecured commercial paper notes sold through dealers by major corporations as reported in The Wall Street Journal on the day such USD-SIFMA Municipal Swap Index would otherwise be determined as provided herein for such Interest Rate Period; and (ii) if such day is not an Interest Rate Determination Date, the rate for such day shall be the rate determined pursuant to the preceding clause (i) of this definition for the next preceding Interest Rate Determination Date.

The Term "U.S. Government Securities Business Day" means any day except for a Saturday, Sunday or a day on which SIFMA recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. government securities.

The Term "Weekly Interest Rate" shall mean (i) the rate of interest per annum during a Weekly Rate Mode determined by the Remarketing Agent on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate for the Interest Rate Period of one week (or less in the case of any such Interest Rate Period commencing on an Interest Period Reset Date which is not a Thursday) commencing on the applicable Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Bonds could be remarketed at par, plus the accrued interest, if any, on the Interest Rate Adjustment Date for that Interest Rate Period; or (ii) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Weekly Interest Rate for whatever reason, or the Weekly Interest Rate cannot be determined pursuant to clause (i) for whatever reason, the USD-SIFMA Municipal Swap Index then in effect; provided that in no event shall the Weekly Interest Rate exceed the Maximum Rate.

The Term "Weekly Interest Rate Mode" shall mean the interest rate mode during any period when the Bonds bear interest at the Weekly Interest Rate.

The terms "Written Consent," "Written Demand," "Written Direction," "Written Election," "Written Notice," "Written Order," "Written Request" and "Written Requisition" of the City or the Borrowers shall mean, respectively, a written consent, demand, direction, election, notice, order, request or requisition signed on behalf of the City by an Authorized City Representative, or on behalf of the Borrowers by an Authorized Borrower Representative.

The terms "Yield" shall mean yield as defined in Section 148(h) of the Code and any regulations promulgated thereunder.

Section 1.02. Rules of Construction. (a) The singular form of any word used herein, including the terms defined in Section 1.01, shall include the plural, and vice versa, unless the

context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders.

(b) All references herein to "Articles," "Sections" and other subdivisions hereof are to the corresponding Articles, Sections or subdivisions of this Indenture as originally executed; and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Indenture.

(d) The terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants."

(e) All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well. Singular terms shall include the plural as well as the singular, and vice versa.

(f) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the Approved Accounting Method. All references herein to "Approved Accounting Method" refer to such principles as they exist at the date of application thereof.

(g) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(h) References to the Bonds as "tax-exempt" or to the tax exempt status of the Bonds are to the exclusion of interest on the Bonds (other than any Bonds held by a "substantial user" of the Project or a "related person" within the meaning of Section 147 of the Code) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

#### Section 1.03. Ownership of Bonds; Effect of Action by Bondholders.

(a) The ownership of the Bonds shall be proved by the Bond Register.

(b) Any request, demand, authorization, direction, notice, consent, waiver or other action by Bondholders shall bind every future Bondholder and the Registered Owner of every Bond issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the City in reliance thereon, whether or not notation of such action is made upon such Bonds.

(c) In determining whether the Bondowners of a requisite aggregate principal amount of Outstanding Bonds have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions of this Indenture, the Loan Agreement or any other Bond Document, Bonds which are owned by or held for the account of a Borrower, the City or any other obligor on the Bonds, or any Affiliate of any one of said entities shall be disregarded and deemed not to be Outstanding for the purpose of any such determination.



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Section 1.04. Date of Indenture. The date of this Indenture is intended as and for a date for the convenient identification of this Indenture and is not intended to indicate that this Indenture was executed and delivered on said date.

Section 1.05. Designation of Time For Performance. Except as otherwise expressly provided herein, any reference in this Indenture to the time of day shall mean the time of day in the city where the Trustee maintains its place of business for the performance of its obligations under this Indenture.

Section 1.06. Interpretation. The parties hereto acknowledge that each of them, and the initial Bond Purchasers and the Bondholder Representative, and in each case their respective counsel, have participated in the drafting and revision of this Indenture. Accordingly, the parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Indenture or any amendment or supplement or exhibit hereto or thereto.

## ARTICLE II

### THE BONDS

Section 2.01. Authorization. There are hereby authorized to be issued bonds of the City designated as "City and County of San Francisco, California Multifamily Housing Revenue Bonds, Series 2016E (Lower 500 Folsom Residential)." Any Subordinate Bonds designated by the Bondholder Representative pursuant to Article XIII of this Indenture shall be entitled "City and County of San Francisco Multifamily Housing Revenue Bonds, Series 2016E-S (Lower 500 Folsom Residential) (Subordinate Series)." No Bonds may be issued hereunder except in accordance with this Article II. The maximum aggregate principal amount of Bonds which may be issued and Outstanding under this Indenture shall not exceed the Authorized Amount.

Section 2.02. Terms of Bonds. (a) *Form of Bonds*. The Bonds shall be substantially in the respective forms set forth in Exhibit A or Exhibit G hereto, as applicable, with necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture, including any supplemental indenture.

(b) *Principal Amount*. The total principal amount of the Bonds that may be issued hereunder is hereby expressly limited to the Authorized Amount, provided that the principal amount of Bonds Outstanding at any time shall include only those Bonds for which the purchase price has been advanced from time to time by the Bond Purchasers. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The Bonds are being issued initially as drawdown Bonds as provided herein and in the Bond Purchase Agreement.

(c) *Registered Bonds; Numbering; Authorized Denominations*. The Bonds shall be issuable on the Closing Date in Authorized Denominations as specified by the Bondholder Representative. Thereafter, the Bonds shall be issuable in any Authorized Denomination required to effect transfers, exchanges or redemptions permitted or required by this Indenture.

The Bonds shall be issuable as registered bonds without coupons. The Bonds shall be numbered consecutively from R1-1 upwards, and any Subordinate Bonds shall be numbered consecutively from S1-1 upwards.

(d) *Dated Date; Maturity*. The Bonds shall be dated the Closing Date, and shall mature on the Maturity Date.

(e) *Interest Rate; Accrual of Interest*. The Bonds shall bear interest at the Bond Coupon Rate. The Bond Coupon Rate for each Interest Rate Period while the Bonds bear interest in the SIFMA Index Rate Mode or the MMD Index Rate Mode shall be determined by the Indexing Agent on each Interest Rate Determination Date. The Indexing Agent will promptly after such determination notify the Trustee, the Borrowers and the Bondholder Representative of the applicable Bond Coupon Rate. The Trustee can conclusively rely on the Bond Coupon Rate information provided to it by the Indexing Agent.

Interest shall be calculated on the basis of a 360 day year of twelve 30-day months so long as interest is payable at the MMD Index Rate, Term Rate or the Fixed Interest Rate. Interest on the Bonds shall be computed on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed so long as interest is payable at the SIFMA Index Rate, Daily Interest Rate or Weekly Interest Rate.

Interest on the Bonds shall accrue on the outstanding Bonds as provided in the second paragraph of Section 3.02 from the date of their initial delivery; provided that interest on any Bond authenticated subsequent to the initial delivery date shall accrue from the Bond Payment Date next preceding the date of authentication, unless (i) authenticated prior to the first Bond Payment Date, in which event interest on such Bonds shall accrue from the initial delivery date, or (ii) authenticated on a Bond Payment Date, in which event interest on such Bonds shall accrue from the date of authentication. If, as shown by the records of the Trustee, interest on the Bonds is in default, interest on Bonds issued in exchange for Bonds surrendered for registration of transfer or exchange shall accrue from the date to which interest has been paid in full on the Bonds, or, if no interest has been paid on the Bonds, from the initial delivery date. The amount of interest payable on the Bonds on each Bond Payment Date shall be the amount of interest accrued thereon from the preceding Bond Payment Date (or other date as described above) to, but not including, the Bond Payment Date on which interest is being paid.

(f) *Initial Interest Rate.* The Bonds initially shall bear interest in the Fixed Interest Rate Mode.

(g) *Interest Payments.* Interest shall be due and payable on the Bonds, in arrears, on each applicable Bond Payment Date from Eligible Funds. Priority of interest payments shall be provided in Section 5.01(c). In any case where any Bond Payment Date is not a Business Day, then payment need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if such payment was made on the originally scheduled date and no interest shall accrue for the period after such Bond Payment Date through the date payment is actually made.

(h) *Principal Payments.* Principal of the Bonds shall be payable as provided in Section 2.03 on the applicable Maturity Date and upon redemption or acceleration thereof.

(i) *Usury.* The City intends to conform strictly to the usury laws applicable to this Indenture and the Bonds and all agreements made in the Bonds, this Indenture and the Bond Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Bondholders as interest or the amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed under any law which a court of competent jurisdiction may deem applicable hereto. If, from any circumstances whatsoever, the fulfillment of any provision of the Bonds, this Indenture or the other Bond Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Bondholders shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Bondholders, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrowers. This paragraph shall control every other provision of the Bonds, this Indenture and all other Bond Documents.

In determining whether the amount of interest charged and paid might otherwise exceed the limit prescribed by law, the City intends and agrees that (i) interest shall be computed upon the assumption that payments under the Loan Agreement and other Bond Documents will be paid according to the agreed terms, and (ii) any sums of money that are taken into account in the calculation of interest, even though paid at one time, to the extent permitted by applicable law shall be spread over the actual term of the Bonds.

Section 2.03. Payment of Bonds. Payment of the Bond Obligations with respect to any Bond shall be made in lawful money of the United States to the person appearing on the Bond registration books of the Trustee as the registered owner thereof on the Record Date immediately preceding such Interest Payment Date or other date for payment of the Bonds upon the redemption thereof, such principal and interest to be paid by check mailed on the Interest Payment Date by first class mail, postage prepaid, to the registered owner at its address as it appears on such registration books, except that the Trustee may, at the request of any registered owner of Bonds, make payments of principal and interest on such Bonds by wire transfer to the account within the United States designated by such owner to the Trustee in writing, any such designation to remain in effect until withdrawn in writing.

No presentation or surrender of Bonds shall be required in connection with any partial redemption of any Bond. The Trustee shall maintain a record of the remaining Outstanding of each maturity of Bonds and shall, upon any transfer or exchange, issue the replacement Bond in the principal amount Outstanding.

Section 2.04. Execution of Bonds. The Bonds shall be signed in the name and on behalf of the City with the manual or facsimile signature of its Mayor. The Bonds shall then be delivered to the Trustee for authentication by the Trustee. In case any officer who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the City, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issuance, shall be as binding upon the City as though the officer(s) who signed the same had continued to be such officer(s) of the City. Also, any Bond may be signed on behalf of the City by such person(s) as on the actual date of the execution of such Bond shall be the proper officer(s) although on the nominal date of such Bond any such person shall not have been such officer.

Only such of the Bonds as shall bear thereon a certificate of authentication in the form set forth in Exhibit A or Exhibit G, as applicable, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

Section 2.05. Transfer of Bonds. (a) Bonds in Authorized Denominations may, in accordance with the terms of this Indenture but in any event subject to the provisions of Section 2.05(b) hereof, be transferred upon the books of the Trustee required to be kept pursuant to the provisions of Section 2.06, by the person in whose name the respective Bonds are registered, in person or by the Bondowner's duly authorized attorney, upon surrender of such Bonds for cancellation at the Principal Office of the Trustee, accompanied by a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Bonds shall be surrendered for transfer, the City shall execute and the Trustee shall authenticate and deliver new, fully registered Bonds in Authorized Denominations to the transferee thereof.

(b) The following shall apply to all transfers of the Bonds after the initial delivery of the Bonds:

(i) Unless the Bonds are rated "A," without regard to a modifier (or the equivalent) or better by a Rating Agency, the Bonds shall be sold and subsequently transferred only to purchasers that are Qualified Institutional Buyers (as defined in Rule 144A of the Securities Act, and referred to herein as a "QIB"), or "accredited investors" as defined in Rule 501 promulgated under the Securities Act (referred to herein as "Accredited Investors") that execute and deliver to the Trustee an Investor Letter in substantially the form attached hereto as EXHIBIT C. Notwithstanding the preceding

sentence, no Investor Letter shall be required for either of the Bond Purchasers to sell or transfer Bonds to (A) an affiliate of a Bond Purchaser, (B) a QIB, or (C) a special purpose entity, a trust or custodial arrangement, from which the Bonds may not be sold except to (x) QIBs, or (y) Accredited Investors who will sign an investor letter to substantially the same effect as the Investor Letter.

(ii) Every Bond presented or surrendered for transfer or exchange shall contain, or be accompanied by, all necessary endorsements for transfer.

The Trustee shall not authenticate or register a Bond unless the foregoing conditions of this Section 2.05(b) have been satisfied. Failure to comply with this Section 2.05(b) shall cause any purported transfer to be null and void.

(c) The Trustee shall require the payment by the Bondholder requesting any such transfer of any tax, fee or other governmental charge required to be paid with respect to such transfer, but any such transfer shall otherwise be made without charge to the Bondholder requesting the same. The cost of printing any Bonds and any services rendered or any expenses incurred by the Trustee in connection therewith shall be paid by the Borrowers.

(d) The Trustee shall not transfer the Bonds without prior written notice to the City (which may be in the form of transmittal of the executed Investor's Letter to the City, together with an indication of the date of the proposed transfer).

(e) The Trustee shall not be required (i) to transfer or exchange any Bonds during any period beginning at the opening of business fifteen (15) days before the day of the mailing of a notice of redemption of the Bonds and ending at the close of business on the day of such mailing, or (ii) to transfer or exchange any Bonds so selected for redemption, or (iii) to transfer any Bonds without receipt of a duly executed Investor Letter to the extent required by subsection (b) above, except as permitted by said subsection (b).

Section 2.06. Bond Register. The City hereby appoints the Trustee as registrar and authenticating agent for the Bonds. The Trustee will keep or cause to be kept at its Principal Office sufficient books (referred to herein as the "Bond Register") for the transfer of the Bonds, which shall at all reasonable times upon reasonable notice be open to inspection by the City, the Bondholder Representative and the Borrowers; and, upon presentation for such purpose, the Trustee as registrar shall, under such reasonable regulations as it may prescribe, transfer or cause to be transferred, on said books, Bonds as hereinbefore provided.

The ownership of registered Bonds shall be proved by the Bond Register held by the Trustee. The Trustee and the City may conclusively assume that such ownership continues until written notice to the contrary is served upon the Trustee. The fact and the date of execution of any request, consent or other instrument and the amount and distinguishing numbers of Bonds held by the person so executing such request, consent or other instrument may also be proved in any other manner which the Trustee may deem sufficient. The Trustee may nevertheless, in its discretion, require further proof in cases where it may deem further proof desirable.

Any request, consent, or other instrument or writing of the Holder of any Bond shall bind every future Holder of the same Bond and the Holder of every Bond issued in exchange thereof or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the City in accordance therewith or reliance thereon.

Section 2.07. Mutilated Destroyed, Lost and Stolen Bonds.

(a) If (i) any mutilated Bonds are surrendered to the Trustee, or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Bonds, and (ii) there is delivered to the Trustee such security or indemnity as may be required by the Trustee or the City to save the City and the Trustee harmless, then, in the absence of notice to the Trustee that such Bonds have been acquired by a bona fide purchaser, the City shall execute and the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bonds, new Bonds of like series, tenor and principal amount, bearing numbers not contemporaneously outstanding. In the event any Bond shall have matured, instead of issuing a replacement Bond as provided above, the Trustee may pay the same upon receipt by the Trustee of indemnity satisfactory to it.

(b) Upon the issuance of any new Bonds under this Section, the Trustee shall require the payment by the Registered Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses connected therewith.

(c) Every new Bond issued pursuant to this Section in lieu of any destroyed, lost or stolen Bonds shall constitute an original additional contractual obligation of the City, whether or not the destroyed, lost or stolen Bonds shall be at any time enforceable by anyone, and shall be entitled to all the security and benefits of this Indenture.

(d) The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed lost or stolen Bonds.

Section 2.08. Persons Deemed Owners. The City, the Trustee and any agent of the City or the Trustee may treat the person in whose name the Bonds are registered as the owner of the Bonds for the purpose of receiving payment of the Bond Obligations and for all other purposes whatsoever whether or not the Bonds are overdue, and, to the extent permitted by law, none of the City, the Trustee or any such agent shall be affected by notice to the contrary.

Section 2.09. Cancellation. Any Bonds surrendered for payment, redemption, transfer or exchange, shall be promptly canceled and retained or destroyed by the Trustee in accordance with its document retention policies. No Bonds shall be authenticated in lieu of or in exchange for any Bonds canceled as provided in this Section, except as expressly provided by this Indenture.

Section 2.10. Book-Entry System.

(a) The Bonds shall be issued pursuant to a Book-Entry System administered by the Securities Depository with no physical distribution of Bond certificates to be made except as provided in this Section 2.10.

(b) So long as a Book-Entry System is in effect for the Bonds, one Bond in the aggregate principal amount of each maturity of the Senior Bonds will be issued and deposited with the Securities Depository to be held in its custody. Such Bond or Bonds shall be registered in the name of the Securities Depository Nominee. The Book-Entry System will be maintained by the Securities Depository and the participants and indirect participants and will evidence beneficial ownership of the Bonds in Authorized Denominations, with transfers of ownership effected on the records of the Securities Depository, the participants and the indirect participants pursuant to rules and procedures established by the Securities Depository, the

Participants and the Indirect Participants. The principal or purchase price of and any premium on each Bond shall be payable to the Securities Depository Nominee or any other person appearing on the Bond Register maintained by the Trustee as the registered Bondholder or his registered assigns or legal representative. So long as the Book-Entry System is in effect, the Securities Depository will be recognized as the sole Bondholder for all purposes. Transfers or exchanges, payments of principal, purchase price, interest and any premium and notices to Participants and Indirect Participants will be the responsibility of the Securities Depository, and transfers or exchanges, payments of principal, purchase price, interest and any premium and notices to Beneficial Owners will be the responsibility of the Participants and the Indirect Participants. No other party (including the Trustee and the City) will be responsible or liable for such transfers or exchanges, payments or notices or for maintaining, supervising or reviewing such records maintained by the Securities Depository, the Participants or the Indirect Participants. While the Book-Entry System is in effect, notwithstanding any other provisions set forth herein, payments of principal or purchase price of, redemption premium, if any, and interest on the Bonds shall be made to the Securities Depository Nominee or the Securities Depository, as the case may be, by wire transfer in immediately available funds to the account of such entity. Notwithstanding the provisions of this Section 2.10(b), Subordinate Bonds may not be issued pursuant to a Book-Entry System administered by the Securities Depository with no physical distribution of Bond certificates to be made except as provided in this Section 2.10(b).

(c) The City, subject to the applicable rules of the Securities Depository, may at any time, at the written request of the Bondholder Representative or the Borrowers (with the written consent of the Bondholder Representative), elect (i) to provide for the replacement of any Securities Depository as the depository for the Bonds with another qualified Securities Depository, or (ii) to discontinue the maintenance of the Bonds under a Book-Entry System. Upon written notice of such election from the City, the Trustee shall give 30 days' prior notice of such election to the Securities Depository (or such fewer number of days as shall be acceptable to such Securities Depository and the Trustee). The Bondholder Representative may elect from time to time to discontinue the Book-Entry System solely for purposes of the Bonds it beneficially owns by providing a written notice to the Trustee at least 30 days prior to the effective date of such election.

(d) Upon the discontinuance of the maintenance of the Bonds under a Book-Entry System, the City will cause Bonds to be issued directly to the Beneficial Owners of such Bonds, or their designees, as further described below. In such event, the Trustee shall make provisions to notify Participants and the Beneficial Owners, by mailing an appropriate notice to the Securities Depository, or by other means deemed appropriate by the Trustee, that Bonds will be directly issued to the Beneficial Owners thereof as of a date set forth in such notice, which shall be a date at least 10 days after the date of mailing of such notice (or such fewer number of days as shall be acceptable to the Securities Depository and the Trustee). Upon such event, the City, at the expense of the Borrowers, or, if requested by the Bondholder Representative, at its expense, shall promptly have prepared Bonds in certificated form registered in the names of the Beneficial Owners thereof shown on the records of the Participants provided to the Trustee, as of the date set forth in the notice described above. Bonds issued to the Beneficial Owners, or their designees, shall be in fully registered form substantially in the forms set forth in EXHIBIT A or EXHIBIT G, as applicable. In such event, this Indenture may be amended as the parties deem necessary pursuant to Section 9.01(f) in order to reflect the use of certificated Bonds.

(e) If any Securities Depository is replaced as the depository for the Bonds with another qualified Securities Depository, the City, at the expense of the Borrowers, will issue Bonds to the replacement Securities Depository Bonds substantially in the forms set forth in

EXHIBIT A or EXHIBIT G, as applicable registered in the name of such replacement Securities Depository.

(f) The City, the Borrowers and the Trustee shall have no liability for the failure of any Securities Depository to perform its obligation to any Participant, any Indirect Participant or any Beneficial Owner of any Bonds, and none of them shall be liable for the failure of any Participant, Indirect Participant or other nominee of any Beneficial Owner of any Bonds to perform any obligation that such Participant, Indirect Participant or other nominee may incur to any Beneficial Owner.

(g) The terms and provisions of the Letter of Representations are incorporated herein by reference and, in the event there shall exist any inconsistency between the substantive provisions of the Letter of Representations and any provisions of this Indenture, then, for as long as the initial Securities Depository shall serve with respect to the Bonds, the terms of the Letter of Representations shall govern. The Trustee shall comply with all the rules, regulations, policies and procedures of the Securities Depository in order to effectuate the provisions and intent of this Indenture, the City and the Bondholder Representative, including, without limitation, the obligation to make all required elections to ensure the pro rata partial redemption payments required in Section 4.04.

(h) The City, the Borrowers and the Trustee may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Participants in the Book-Entry System; (ii) a certificate of any Participant as to the identity of any Indirect Participant and (iii) a certificate of any Participant or Indirect Participant as to the identity of, and the respective principal amount of Bonds beneficially owned by, the Beneficial Owners.

#### Section 2.11. Conversion of Interest Rate Modes.

(a) On any Interest Period Reset Date occurring after the Bonds may first be optionally redeemed at a price of not greater than par plus accrued interest to the redemption date pursuant to Section 4.01(a), Bonds bearing interest at one Interest Rate Mode may be converted to a different Interest Rate Mode upon receipt by the Trustee and the Remarketing Agent of a written Notice of Interest Rate Conversion substantially the form as set forth in EXHIBIT E hereto from the Authorized Borrower Representative not less than 30 days prior to such Interest Period Reset Date. Such direction to convert the interest rate on the Bonds to a different Interest Rate Mode shall be accompanied by (i) a Bond Counsel No Adverse Effect Opinion delivered to the Trustee (with reliance letters to the Bondholder Representative, the Credit Facility Provider, the City and the Remarketing Agent) with respect to the conversion; (ii) in the case of a conversion to an Interest Rate Mode of 270 days or longer, either (1) an Opinion of Counsel delivered to the City, the Remarketing Agent and the Trustee stating that Securities and Exchange Commission Rule 15c2-12 provides an exemption with respect to the Bonds or (2) evidence satisfactory to the City delivered to the City that the requirements of such Rule are being complied with; (iii) evidence satisfactory to the Trustee that the interest component of the Credit Facility, if applicable, is equal to the amounts set forth in subsection (b) below; and (iv) written certificates of the Remarketing Agent and the City stating that they have received certifications, opinions or other evidence satisfactory to them that there has been or will be compliance with any applicable state or federal securities law requirements.

(b) If the Bonds bear interest at the Daily Interest Rate or the Weekly Interest Rate, the Borrowers shall be required to provide a Credit Facility with an interest coverage period that shall be sufficient to maintain the rating on the Bonds as required and confirmed by the Rating Agency. If the Bonds bear interest at the MMD Index Rate, the SIFMA Index Rate, the Term Rate or the Fixed Interest Rate and are covered by a Credit Facility, the interest coverage



period shall be sufficient to maintain the rating on the Bonds as required and confirmed by the Rating Agency. Notwithstanding any provision of this paragraph, no conversion of Interest Rate Modes shall be effective if (A) the Borrowers make an election on or prior to the day immediately succeeding any Interest Rate Determination Date not to proceed with the proposed conversion or (B) the Trustee has not received on the effective date of such conversion each of the items described in clauses (i) – (iv) of Section 2.11(a) above, to the extent applicable. In either such event, the Interest Rate Mode for the Bonds will remain as the Interest Rate Mode then in effect for the Bonds without regard to any proposed conversion. The Bonds will continue to be subject to tender for purchase on the scheduled effective date of the proposed conversion without regard to the failure of such proposed conversion. If the Trustee shall have sent any notice to Holders regarding the proposed conversion, in the event of a failure of such conversion as specified above, the Trustee shall promptly notify all Holders and the City of such failure, of the reason for such failure, and of the continuation of the Interest Rate Mode then in effect.

(c) The determination of the interest rate for the Bonds upon a conversion shall be conclusive and binding upon the Borrowers, the Trustee, the Credit Facility Provider and the respective Holders of the Bonds.

(d) On the related Interest Rate Determination Date, the Remarketing Agent or the Indexing Agent, as the case may be, shall give the Trustee, the Credit Facility Provider and the Borrowers electronic notice of the interest rate to be borne by the Bonds for the following Interest Rate Period; provided that if the interest rate is determined pursuant to clause (b) of the definition of Daily Interest Rate, Weekly Interest Rate or Term Rate on the Interest Rate Determination Date, the Trustee shall give such notice to the Borrowers and the Credit Facility Provider.

(e) If the interest rate on the Bonds is converted to a different Interest Rate Mode, at least 25 days prior to the Interest Period Reset Date the Trustee shall notify the Holders of all outstanding Bonds by first class mail that, upon such Interest Period Reset Date, the Bonds shall be converted to a different Interest Rate Mode, and that all Bonds shall be subject to a mandatory tender pursuant to Section 11.02.

Section 2.12. Delivery of Credit Facility. The Borrowers may, on any Bond Payment Date or Interest Period Reset Date occurring after the Bonds may first be optionally redeemed at a price of not greater than par plus accrued interest to the redemption date pursuant to Section 4.01(a), arrange for the delivery to the Trustee of a Credit Facility. Any Credit Facility shall satisfy the following conditions, as applicable:

(a) The Credit Facility shall (i) be in an amount equal to the aggregate principal amount of the Bonds Outstanding from time to time plus the interest component necessary to provide coverage reasonably satisfactory to the Rating Agency; (ii) provide for payment in immediately available funds to the Trustee upon receipt of the Trustee's request for such payment with respect to any Bond Payment Date and Bond Purchase Date; (iii) if the Credit Facility is provided to secure Bonds during a Term Rate Mode, provide an expiration date no earlier than the earliest of (A) the day following the last day of such Interest Rate Period; (B) ten (10) days after the Trustee receives notice from the Credit Facility Provider of an Event of Default hereunder or a default under and as defined in the Reimbursement Agreement and a direction to redeem all Outstanding Bonds; (C) the date on which all Bonds are paid in full and this Indenture is discharged in accordance with its terms; and (D) the date on which the Bonds become secured by an alternate Credit Facility in accordance with the terms of the Reimbursement Agreement; (iv) unless waived by the City in its sole discretion, result in the Bonds receiving a long-term rating or short-term rating, or both, as applicable for the Interest

Rate Mode then in effect, for the long term rating in one of the two highest rating categories of the Rating Agency without regard to pluses or minuses, and for the short term rating in the highest rating category of the Rating Agency without regard to pluses or minuses; and (v) have a stated expiration or termination date not sooner than one year following its effective date.

(b) In connection with the delivery of a Credit Facility, the Trustee must receive (i) an opinion of counsel to the Credit Facility Provider issuing the Credit Facility, in form and substance reasonably satisfactory to the City and the Trustee, relating to the due authorization and issuance of the Credit Facility, its enforceability, that the statements made relating to the Credit Facility and Reimbursement Agreement contained in any disclosure document or supplement to the existing disclosure document related to the Bonds are true and correct in all material respects, that the Credit Facility and the Bonds enhanced by the Credit Facility are not required to be registered under the Securities Act of 1933, and, if required by the Rating Agency, that payments made by the Credit Facility Provider pursuant to the Credit Facility will not be voidable under Section 547 of the Bankruptcy Code and would not be prevented by the automatic stay provisions of Section 362(a) of the Bankruptcy Code, in the context of a case or proceeding by or against a Borrower, a Borrower Controlling Entity or by the City under the Bankruptcy Code; (ii) a Bond Counsel No Adverse Effect Opinion delivered to the Trustee with respect to the delivery of such Credit Facility; and (iii) such other opinions, certificates and agreements as the Bondholder Representative or its counsel and counsel to the Borrowers, City and Trustee reasonably require.

## ARTICLE III

### ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

Section 3.01. Authentication and Delivery of the Bonds. Upon the execution and delivery of this Indenture, the City shall execute the Bonds and deliver them to the Trustee. Upon payment of the Issuer's Closing Fee described in Section 18 of the Regulatory Agreement and satisfaction of the conditions set forth in this Section 3.01, and without any further action on the part of the City, the Trustee shall authenticate the Bonds in an aggregate principal amount not exceeding the Authorized Amount, and shall deliver them pursuant to the Written Order of the City hereinafter mentioned. Prior to the authentication and delivery of any of the Bonds by the Trustee, there shall have been delivered to the Trustee each of the following:

(a) Executed counterparts of this Indenture, the Loan Agreement, the Construction Funding Agreement, the Regulatory Agreement, the Bond Purchase Agreement, the Tax Certificate, the Continuing Disclosure Agreement, the Note, the Deed of Trust, the Swap Agreement, if any, and any UCC financing statement required by the Deed of Trust;

(b) A certified copy of the Resolution;

(c) The Initial Disbursement received from the Bond Purchasers;

(d) An executed Investor Letter from each of the Bond Purchasers;

(e) The Initial Bond Fund Deposit and the Costs of Issuance Deposit;

(f) A Bond Counsel Approving Opinion;

(g) A written request and authorization by the City to the Trustee to authenticate and deliver the Bonds to or for the account of the Bond Purchasers upon receipt of the Initial Disbursement;

(h) An Opinion of Counsel from Bond Counsel to the effect that the Bonds are exempt from registration under the Securities Act of 1933, as amended, and this Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended;

(i) Certificates evidencing insurance required to be maintained as provided for in the Deed of Trust as approved by the Bondholder Representative;

(j) one or more opinions of counsel to the Borrowers addressed to the City, the Bondholder Representative and the Trustee, in form and substance satisfactory to the City and the Bondowner, regarding the enforceability against the Borrowers of each of the documents to which the Borrowers are parties; and

(k) Any other documents or opinions that the Trustee, the City, the Bond Purchasers or Bond Counsel may reasonably require.

Section 3.02. Application of Proceeds of Bonds. The Initial Disbursement and subsequent disbursements of the proceeds received from the sale of the Bonds shall be disbursed in accordance with this Section 3.02 of this Indenture. The Bonds are issued as draw-down Bonds. The Bond Purchasers shall fund the purchase price of the Bonds from time to time, in accordance with the Bond Purchase Agreement, to provide funds for deposit in the

Construction Fund for the payment of requisitions therefrom. The initial purchase of Bonds by the Bond Purchasers on the Closing Date will be in the amount of the Initial Disbursement, comprised of a purchase of Bonds by Citi in an amount equal to \$ \_\_\_\_\_ and a purchase of Bonds by DB in an amount equal to \$ \_\_\_\_\_. Amounts funded in such manner shall be noted on the principal draw-down schedule attached to each Bond, as applicable, and acknowledged thereon by the Trustee. In lieu of notation on the Bonds by the Trustee of the principal amount funded with respect to the Bonds, the Trustee may record such information in the Bond recordkeeping system maintained by the Trustee.

Upon deposit with the Trustee by the Bond Purchasers of each installment of the purchase price of each draw-down Bond and notation on the applicable Bond principal schedule by the Trustee, the aggregate amount of Bonds purchased shall be deemed Outstanding and shall begin to accrue interest. Notwithstanding anything herein to the contrary, the aggregate purchase price of the Bonds funded by the Bond Purchasers may not exceed the Authorized Amount and no additional amounts may be funded after the earlier of the Conversion Date or December 1, 2019, unless there is delivered to the Trustee and the City a Bond Counsel No Adverse Effect Opinion to the effect that such additional funding will not adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation.

The City consents to the terms of the Contingency Draw-Down Agreement and agrees to take all actions requested in writing by the Bondholder Representative that are reasonably required of the City in connection with the conversion of the Bond issue to a fully funded Bond issue pursuant to the provisions of the Contingency Draw-Down Agreement in the event a Draw-Down Notice is filed by the Bondholder Representative or the Borrowers, all at the expense of the Borrowers. The City shall deliver and deposit with the Bondholder Representative such additional documents, financing statements, and instruments as the Bondholder Representative or Trustee may reasonably request in writing delivered to the City from time to time with respect to any amounts held under the Contingency Draw-Down Agreement for the better perfecting and assuring to the Trustee of its lien and security interest in and to the Trust Estate, at the expense of the Borrowers.

Except at the written direction of the Bondholder Representative, which direction shall include instructions as to the accrual of interest, installment purchases of Bonds shall occur only on Bond Payment Dates pursuant to the schedule attached to the Bond Purchase Agreement.

Section 3.03. Disbursement of Bond Proceeds and Other Closing Funds; Establishment of Construction Fund. (a) There is hereby created and established with the Trustee a separate fund which shall be designated the "Construction Fund," and within such Construction Fund a Capitalized Interest Account, a Tax-Exempt Bonds Account and an Equity Account, which fund and accounts shall be applied only as provided in this Section 3.03. The Initial Disbursement on the Closing Date shall be deposited by the Trustee as follows: \$ \_\_\_\_\_ in the Tax-Exempt Bonds Account of the Construction Fund and \$ \_\_\_\_\_ in the Capitalized Interest Account of the Construction Fund. [From the amounts received from the Borrowers on the Closing Date, the Trustee shall deposit \$ \_\_\_\_\_ to the Equity Account of the Construction Fund, consisting of a deposit by or on behalf of the Borrower.]

Subsequent to the Closing Date, (i) advances of the purchase price of the Bonds shall be deposited by the Trustee in the Tax-Exempt Bonds Account of the Construction Fund; and (ii) amounts received from the Borrowers (exclusive of Pledged Revenues), the Investor Limited Partner or a General Partner, shall be deposited by the Trustee into the Equity Account of the Construction Fund.

(b) The Trustee shall use moneys in the Tax-Exempt Bonds Account and the Equity Account of the Construction Fund for Project Costs, as provided herein; provided, however, that any moneys on deposit in the Capitalized Interest Account of the Construction Fund shall only be used to make payments on the Note (including payments under the Swap Agreement, if applicable) pursuant to Section 5.1(a) of the Loan Agreement and as otherwise provided in Section 3.03(d) below. The amounts on deposit in the Tax-Exempt Bonds Account shall not be applied to the payment of Costs of Issuance. The amounts on deposit in the Equity Account of the Construction Fund shall be disbursed pursuant to the provisions of Section 3.03(h).

Not less than 97% of the Bond proceeds representing net proceeds of the Bonds, including Investment Income on moneys in the Tax-Exempt Bonds Account, will be expended for Qualified Project Costs (the "97% Requirement"). Amounts on deposit in the Tax-Exempt Bonds Account of the Construction Fund shall be allocated to, and disbursed from time to time by the Trustee, for the sole purpose of paying Qualified Project Costs and other costs that are the subject of a Written Requisition and approved in writing by the Servicer as provided in the next sentence, which Written Requisition shall include a certification of compliance with the 97% Requirement.

Before any payment shall be made from any account within the Construction Fund, there shall be filed with the Trustee a Written Requisition of the Borrowers substantially in the form attached hereto as EXHIBIT B-1 and approved in writing by the Servicer for each such payment (upon which the Trustee may conclusively rely). Notwithstanding the foregoing, upon the use of all of the moneys in the Capitalized Interest Account, the Trustee may withdraw amounts from the Equity Account of the Construction Fund without a Written Requisition to pay interest on the Bonds.

In connection with a Written Requisition:

Only the signature of an authorized officer of the Servicer shall be required on a Written Requisition during any period in which an Event of Default by the Borrowers has occurred and is then continuing under the Loan (notice of which default has been given in writing by an authorized officer of the Servicer to the Trustee and the City, and the Trustee shall be entitled to conclusively rely on any such Written Notice as to the occurrence and continuation of such a default).

The Trustee shall disburse amounts in the Construction Fund upon receipt of a Written Requisition signed only by the Servicer (and without any need for any signature by an Authorized Borrower Representative), so long as the amount to be disbursed is to be used solely to make payments of principal, interest and/or fees due under the Bond Documents.

The Trustee shall be entitled to conclusively rely upon any Written Requisition in determining whether to disburse amounts from the Construction Fund.

The Trustee may conclusively rely on all Written Requisitions, the execution of the Written Requisitions by the Authorized Borrower Representative and the approval of all Written Requisitions by the Servicer, as required by this Section, as conditions of payment from the Construction Fund, which Written Requisitions constitute, as to the Trustee, irrevocable determinations that all conditions to payment of the specified amounts from the Construction Fund have been satisfied. These documents shall be retained by the Trustee, subject at all reasonable times to examination by the Borrowers, the Investor Limited Partner, the City, the Servicer and the agents and representatives thereof. The Trustee is not required to inspect the Project or the construction work or to make any independent investigation with respect to the matters set forth in any Requisition or other statements, orders, certifications and approvals

received by the Trustee. The Trustee is not required to obtain completion bonds, lien releases or otherwise supervise the acquisition, construction, renovation, equipping, improvement and installation of the Project.

(c) Upon receipt of each Written Requisition submitted by the Borrowers and approved in writing by the Servicer, the Trustee shall within three (3) Business Days make payment from the appropriate account within the Construction Fund in accordance with such Written Requisition. The Trustee shall have no duty to determine whether any requested disbursement from the Construction Fund complies with the terms, conditions and provisions of the Bond Documents, constitute payment of Qualified Project Costs or complies with the 97% requirement. The approval in writing of a Written Requisition by the Servicer shall be deemed a certification and, insofar as the Trustee and the City are concerned, shall constitute conclusive evidence that all of the terms, conditions and requirements of the Bond Documents applicable to such disbursement have been fully satisfied or waived and the Written Requisition from the Borrowers shall, insofar as the Trustee and the City are concerned, constitute conclusive evidence that the costs described in the Written Requisition constitute Qualified Project Costs or other permitted Project costs. Each Written Requisition shall include an exhibit that allocates the requested disbursement among the Bonds and the funds received by the Trustee from the Borrowers, and that provides the Trustee with the information described in Section 3.03(j) below. The Trustee shall, immediately upon each receipt of a completed Written Requisition of the Borrowers and approved in writing by the Servicer, as provided in the Construction Funding Agreement, initiate procedures with the provider of the Investment Agreement, if any, to make withdrawals under any Investment Agreement as necessary to fund the Written Requisition.

The Trustee shall immediately notify the Borrowers, the Servicer and the Bondholder Representative if there are not sufficient funds available to make the transfers as and when required by this subsection (b). Except as provided in the next sentence, all such payments shall be made by check or draft payable, or by wire transfer, either (i) directly to the person, firm or corporation to be paid, (ii) to the Borrowers and such person, firm or corporation, or (iii) upon the Bondholder Representative's receipt of evidence that the Borrowers have previously paid such amount and Written Direction to the Trustee as to such, to the Borrowers. Upon the occurrence of an Event of Default of which the Trustee has knowledge as provided herein, which is continuing under the Bond Documents, with the Written Consent of the Bondholder Representative, the Trustee may apply amounts on deposit in the Construction Fund to the payment of principal of and interest on the Bonds. If a Written Requisition signed by the Authorized Borrower Representative and countersigned by an authorized officer of the Bondholder Representative is received by the Trustee, the requested disbursement shall be paid by the Trustee as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Trustee. Upon final disbursement of all amounts on deposit in the Construction Fund, the Trustee shall close the Construction Fund.

(d) After the Closing Date, the Borrowers, with the written consent of the Bondholder Representative, may deposit additional funds into the Capitalized Interest Account. Moneys on deposit in the Capitalized Interest Account of the Construction Fund, together with investment earnings thereon which shall be retained therein, shall be transferred to the Bond Fund and applied pursuant to Section 5.03 on each Loan Payment Date in an amount equal to the Loan Payments (excluding Third Party Fees) due on such date; provided that, upon receipt of a Written Direction of the Borrowers, moneys on deposit in the Capitalized Interest Account of the Construction Fund shall be transferred to the Servicer on each Loan Payment Date in an amount as set forth in such Written Direction which amount shall represent Loan Payments (excluding Third Party Fees) due on such Loan Payment Date. Upon the request of the Trustee, the Servicer shall provide the Trustee with a schedule of the Loan Payment Dates and

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corresponding Loan Payment amounts. The transfer of moneys from the Capitalized Interest Account of the Construction Fund to the Bond Fund or the Servicer as set forth above shall occur automatically on each Loan Payment Date without the need for a Written Requisition of the Borrowers, or consent of the Bondholder Representative.

(e) Immediately prior to any mandatory redemption of Bonds pursuant to Section 4.01(c) or (d), any amounts then remaining in the Construction Fund attributable to the proceeds of the Bonds (as determined by the Written Requisitions from the Construction Fund received by the Trustee from the Borrowers and approved by the Servicer) shall, at the written direction of the Bondholder Representative, be transferred to the Bond Fund to be applied to the redemption of Bonds pursuant to Sections 4.01(c) or (d) or the purchase of Bonds in lieu of redemption pursuant to the provisions of Section 4.05 hereof.

(f) Amounts on deposit in the Construction Fund shall be invested as provided in Section 5.13. All Investment Income earned on amounts on deposit in each account of the Construction Fund shall be retained in and credited to and become a part of the amounts on deposit in that account of the Construction Fund.

(g) When the Project has been completed, the Borrowers shall deliver a Certificate of Completion, which contains a certification regarding the "97% Requirement" referred to in subsection (b), to the Trustee, the City, the Servicer and the Bondholder Representative. On the date that is six months after the date on which the Trustee shall have received the Certificate of Completion, the Trustee shall transfer the balance of any moneys remaining in the Construction Fund attributable to the proceeds of the Bonds (as determined by the Written Requisitions from the Construction Fund received by the Trustee from the Borrowers and approved by the Servicer) in excess of the amount to be reserved for payment of unpaid Project costs to the Bond Fund and apply such funds to the redemption of Bonds in accordance with Section 4.01(b).

(h) After the Closing Date, amounts on deposit in the Equity Account of the Construction Fund shall be disbursed from time to time by the Trustee to pay designated amounts as set forth in and upon receipt of a Written Requisition of the Borrowers signed by an Authorized Borrower Representative, the Bondholder Representative and the Servicer.

(i) None of the Trustee, the Bondholder Representative or the City shall be responsible for the application by the Borrowers of monies disbursed to the Borrowers in accordance with this Section 3.03.

(j) The Borrower has advised the City of the Borrowers' intent that the proceeds of the Bonds be used exclusively to pay the Project Costs which are includable in the aggregate basis of any building (the "Allowable Costs"), in order to comply with Section 42(h)(4)(B) of the Internal Revenue Code of 1986, as amended. The City hereby authorizes and directs that the Trustee, in reliance solely of the representations of the Borrowers in clause (vii) of each Written Requisition of the Borrowers, maintain such accounting and other records as shall be necessary to carry out the Borrowers' intent with respect to tracing the use of the Bond proceeds, and the City shall have no responsibility whatsoever with respect thereto. Each Written Requisition of the Borrowers shall identify: the respective amounts of proceeds of the Bonds and the other sources of funds comprising each respective disbursement, and shall represent that proceeds of the Bonds will only be expended for Allowable Costs or will be deposited in a specially designated account which can be used only to pay Allowable Costs, and that the proceeds of any other sources of funds will be deposited into another, separate account.

Section 3.04. City Administrative Fee. The Trustee shall collect the City's annual Issuer Ongoing Fee described in clause (ii) of the second paragraph of Section 18 of the Regulatory

Agreement (and referred to in Section 5.1(h) of the Loan Agreement) and promptly upon receipt remit it to the City. The Trustee may establish a fund or account in its records to deposit and disburse the amounts collected by it for payment of the City's annual Issuer Ongoing Fee.



## ARTICLE IV

### REDEMPTION OF BONDS

Section 4.01. Redemption of Bonds. (a) *Optional Redemption.* On and after \_\_\_\_\_ 1, 2019, the Bonds may be redeemed in whole or in part, on any Bond Payment Date (and during any Fixed Interest Rate Mode or Term Rate Mode during which a Credit Facility enhances the Bonds, on the first Business Day of each month) or, upon satisfaction of the conditions set forth in Section 10.03, on any Business Day, in each case upon prepayment of the Note by the Borrowers pursuant to Section 5.2 of the Loan Agreement at the applicable Redemption Price. The Bonds may be redeemed pursuant to this Section 4.01(a) upon notice to the Bondholders, given by the Trustee in accordance with Section 4.02. Except as otherwise provided under Section 10.03, no such optional redemption of Bonds shall be permitted unless the Trustee shall have received Eligible Funds in an amount that will be sufficient to pay the Redemption Price of the Bonds by 12:00 p.m. New York City time on the date that the Bonds are to be redeemed.

In connection with a prepayment pursuant to Section 10.03, the Borrowers may exercise such option by giving Written Notice to the Trustee, Bondholder Representative and Servicer of its election to prepay the Note, not fewer than thirty (30) Days prior to the proposed redemption date; provided, however, if, at the time of such exercise, the Bonds are held in a Book-Entry System, the Borrowers shall give any such greater notice as is required by the depository system then holding the Bonds. Any such notice shall specify the date fixed for optional redemption and contain a certification of the Borrowers to the effect that all conditions precedent to such optional redemption have been (or will be, as of the optional redemption date) satisfied. The Trustee shall, not fewer than eight (8) Business Days prior to the date set for such optional redemption, deliver a Written Certificate to the Borrowers setting forth the amount of accrued interest and Prepayment Premium, if any, that will be due and payable as of the date fixed for optional redemption.

(b) *Mandatory Redemption From Amounts Transferred From Construction Fund.* The Bonds shall be redeemed in whole or in part, at the Redemption Price, in the event and to the extent amounts remaining in the Construction Fund are transferred to the Bond Fund pursuant to Section 3.03(g) hereof, on the first Bond Payment Date for which notice of redemption can be given in accordance with Section 4.02 hereof.

(c) *Mandatory Redemption From Mandatory Prepayment of Note.* The Bonds shall be redeemed in whole or in part, at the Redemption Price, upon mandatory prepayment of the Note by the Borrowers as required by Section 5.3 of the Loan Agreement on the earliest Business Day for which notice can be given in accordance with Section 4.02; provided that in the case of a prepayment pursuant to Section 5.3(e) of the Loan Agreement, such redemption date must occur within 90 days of the Determination of Taxability.

(d) *Mandatory Redemption For Loan Agreement Default.* The Bonds shall be redeemed in whole or in part, at the Redemption Price, upon the acceleration of the Note pursuant to Section 7.2 of the Loan Agreement and upon written direction of the Bondholder Representative to the Trustee, in the event of the occurrence of a Loan Agreement Default and the expiration of the applicable grace period or notice and cure period, if any, specified therein, on the earliest Business Day for which notice can be given as required by Section 4.02.

In the case of a default under Section 7.1(j) of the Loan Agreement, the Bonds shall be redeemed in whole and the Trustee shall apply amounts on deposit in the Construction Fund, together with other amounts received from the Borrowers pursuant to Section 5.1(d) or 5.3 of the Loan Agreement, to the payment of the Redemption Price.

(e) *Mandatory Redemption From Amounts Transferred From Principal Reserve Fund.* On each Bond Payment Date, Bonds shall be redeemed, in part, at the Redemption Price, in an amount equal to the amount which has been transferred from the Principal Reserve Fund to the Bond Fund pursuant to Section 5.10. If no Principal Reserve Fund Deposit Schedule is attached to the Note, no such redemption shall occur.

In the event of a conversion to semi-annual Bond Payment Dates pursuant to Article II, in lieu of the mandatory redemption of Bonds as set forth in the preceding paragraph of this Section 4.01(e), the Bondholder Representative shall provide the Trustee with a Mandatory Redemption Schedule to be attached hereto at such time as the Bonds shall be subject to mandatory sinking fund redemption, in part, at the Redemption Price pursuant to such schedule.

(f) *Mandatory Redemption From Pre-Conversion Loan Equalization Payment.* The Bonds shall be redeemed, in whole or in part, at the Redemption Price on the earliest Business Day for which notice can be given as required by Section 4.02 in the event that the Borrowers make a Pre-Conversion Loan Equalization Payment and the Trustee has received a written direction from the Bondholder Representative to redeem Bonds, in a principal amount equal to the amount of the Note prepaid by the Borrowers.

(g) *Mandatory Sinking Fund Redemption.* The Bonds shall be subject to redemption in part on each Bond Payment Date in the amounts and on the dates set forth in the Mandatory Sinking Fund Redemption Schedule attached to the Note, at a redemption price equal to the principal amount of the Bonds to be redeemed plus accrued but unpaid interest to the date of redemption, from amounts paid by the Borrowers as principal under the Note without regard to Authorized Denomination. A revised Mandatory Sinking Fund Redemption Schedule, calculated so as to maintain level payments of debt service on the Bonds, may be delivered to the Trustee at any time by agreement of the Borrowers and the Bondholder Representative, accompanied by a Bond Counsel No Adverse Effect Opinion addressed to the Trustee.

If less than all of the Bonds have been redeemed other than from sinking fund installments applicable to such Bonds, the principal amount of the Bonds to be redeemed in each month from sinking fund installments shall be decreased pro rata among all sinking fund installments applicable to such Bonds. Any such proportional redemption shall be confirmed in writing by the Trustee to the Bondholder Representative and a new Mandatory Sinking Fund Redemption Schedule shall be provided by the Bondholder Representative to the Trustee, the City and the Borrowers.

In the event of (i) a conversion to semi-annual Bond Payment Dates pursuant to Article XI hereof or (ii) a partial prepayment of the Note after the occurrence of such conversion, the Bondholder Representative will provide the Trustee, the City and the Borrowers with a revised Mandatory Sinking Fund Schedule to be attached to the Note and the Bonds shall be subject to redemption pursuant to such revised schedule.

(h) *Mandatory Redemption Upon Sale of Project.* The Bonds shall be redeemed in whole but not in part at the Redemption Price upon the Written Direction of the Bondholder Representative no later than the day before (a) any sale of the Project, restructuring of a Borrower or any other event that would cause or be deemed to cause an assumption of obligations of an unrelated party for purposes of Treasury Regulation §1.150-1(d)(2) (any such event referred to herein as a "Transfer") which Transfer would occur within six months of a "refinancing" (as contemplated by such Treasury Regulation), or (b) any "refinancing" that would occur within six months of a Transfer. Any mandatory redemption pursuant to the

foregoing sentence would occur following a mandatory prepayment of the Note pursuant to Section 5.3(d) of the Loan Agreement.

Section 4.02. Notice of Redemption. Not fewer than fifteen (15) days, nor more than thirty (30) days before the Redemption Date of any Bonds to be redeemed, or in the case of an optional redemption pursuant to Section 4.01(a) or a mandatory redemption pursuant to Section 4.01(h), not fewer than five (5) Business Days nor more than seven (7) Business Days before the Redemption Date, the Trustee shall cause a notice of any such redemption to be mailed by first class mail (but by certified mail to the Bondholder Representative), postage prepaid, to the Registered Owners of the Bonds (with a copy to the Borrowers and the City), provided that no prior notice of redemption shall be required in the case of a redemption pursuant to Section 4.01(g). Such notice shall also be given by registered, certified or overnight mail, or by facsimile transmission promptly confirmed in writing, to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

The redemption notice shall identify the Bonds or portions thereof to be redeemed and shall state: (a) the date of such notice and the redemption date; (b) the Redemption Price; (c) the original date of execution and delivery of the Bonds to be redeemed; (d) the interest borne by the Bonds to be redeemed; (e) the date of maturity of the Bonds; (f) the numbers and CUSIP numbers of the Bonds to be redeemed; (g) that the Redemption Price of any Bond is payable only upon the surrender of the Bond to the Trustee at the Office of Trustee; (h) the address at which the Bonds must be surrendered; and (i) that interest on the Bonds called for redemption ceases to accrue on the redemption date, provided that, subject to the last paragraph of this Section 4.02, on such redemption date Eligible Funds are on deposit in the Bond Fund sufficient to pay the Redemption Price of the Bonds in full.

Any notice mailed pursuant to this Section, except in connection with a defeasance under Section 10.02 or 10.03, may state that the scheduled redemption is conditional to the extent that Eligible Funds are not held by the Trustee on the redemption date; in which case, all Bonds shall be returned to the holders thereof and remain outstanding under the terms and conditions of this Indenture.

Section 4.03. Effect of Redemption. Notice of redemption having been given as aforesaid, the Bonds or portions thereof designated for redemption shall become due and payable on the Redemption Date at the Redemption Price and, from and after such date (unless the Borrowers shall fail to make a payment of the Redemption Price with Eligible Funds), such Bonds or portions thereof shall cease to bear interest from and after the Redemption Date whether or not such Bonds are presented and surrendered for payment on such date. If any Bond or portion thereof called for redemption is not so paid upon presentation and surrender thereof on the Redemption Date, such Bond or portion thereof shall continue to bear interest at the rate or rates provided for thereon until paid and the Registered Owners thereof shall have all of the rights and be subject to the limitations set forth in Article VII hereof. Upon surrender of the Bonds for redemption in accordance with said notice, the Bonds shall be paid by the Trustee on behalf of the City at the Redemption Price to the extent of Eligible Funds held by the Trustee on such Redemption Date. Installments of interest due on or prior to the Redemption Date shall be payable to the Registered Owners as of the relevant Record Dates, without surrender thereof, according to the terms of the Bonds and the provisions of this Indenture.

Section 4.04. Partial Redemption; Selection of Bonds. Redemption of Bonds, in part, shall be made on a Proportionate Basis from all maturities of Senior Bonds then Outstanding, and once no Senior Bonds remain Outstanding, from all maturities of Subordinate Bonds. All

partial redemptions of Bonds shall be made pro rata (or as nearly as practicable thereto, but in no event, in amounts less than \$5,000 except as provided in Section 4.01(g) hereof) within a maturity based on the principal amount of Outstanding Bonds held by such Holder and the aggregate principal amount of Outstanding Bonds within such maturity; provided that, no Bond shall be in an amount less than an Authorized Denomination following such partial redemption unless a pro rata redemption would require all Outstanding Bonds to be in an amount less than an Authorized Denomination; provided further that, at no time shall a single entity owning a majority of the Bonds prior to such partial redemption lose its status as the Holder of a Majority Share solely because of such partial redemption. In the event such partial redemption inadvertently leads to the entity owning a majority of Bonds prior to such partial redemption owning less than a majority solely as a result of such partial redemption, such entity shall continue to exercise the rights provided hereunder for a beneficial owner of a majority of the Bonds, and the Trustee shall endeavor to remedy the relative proportions of ownership of Bonds as soon as possible but no later than the next date on which Bonds will be redeemed.

Upon surrender of any Bond for redemption in part, the City shall execute and the Trustee shall authenticate and deliver to the Registered Owner, at the expense of the Borrowers, a new Bond or Bonds, in Authorized Denominations equal to the unredeemed portion of the Bond so surrendered.

Section 4.05. Purchase in Lieu of Redemption. The Borrowers shall have the option to cause the Bonds to be purchased in whole but not in part by the Borrowers or their designee in lieu of redemption pursuant to Section 4.01(a) and the Bondholder Representative or the Borrowers shall have the option to cause the Bonds to be purchased in lieu of redemption pursuant to Sections 4.01(c) and 4.01(d). Such option may be exercised by delivery to the Trustee on or prior to the Business Day preceding the Redemption Date of a written notice of the Borrowers or Bondholder Representative, as applicable, specifying that the Bonds shall not be redeemed, but instead shall be subject to purchase pursuant to this Section. Upon delivery of such notice, the Bonds shall not be redeemed but shall instead be subject to mandatory tender at the Purchase Price on the date that would have been the Redemption Date; provided that payment of such Purchase Price shall be made only in Eligible Funds.

Section 4.06. Purchase of Subordinate Bonds in Lieu of Redemption. The Borrowers shall have the option to cause the Bonds to be purchased by the Borrowers or their designee in lieu of redemption pursuant to Section 4.01(f). Such option may be exercised by delivery to the Trustee on or prior to the Business Day preceding the Redemption Date of a written notice of the Borrowers specifying that the Bonds shall not be redeemed, but instead shall be subject to purchase pursuant to this Section. Upon delivery of such notice, the Bonds shall not be redeemed but shall instead be subject to mandatory tender at the Purchase Price on the date that would have been the Redemption Date and such Bonds so purchased shall become Subordinate Bonds upon compliance with the provisions of Article XIII.

Section 4.07. Deposit of Redemption Price or Purchase Price. On (except as provided in Section 4.01(a) with respect to Section 10.03) or prior to any Redemption Date or date of purchase in lieu of redemption, and as a condition to such redemption or purchase, the Borrowers shall, only to the extent of amounts due under the Note and the Loan Agreement, deposit or cause there to be deposited with the Trustee or applied in accordance with this Indenture, Eligible Funds in an amount sufficient to pay the Redemption Price or Purchase Price, as the case may be, of all of the Bonds to be redeemed or purchased on that date. Such money shall be held in trust for the benefit of the persons entitled to such Redemption Price or Purchase Price and shall not be deemed to be part of the Trust Estate.

## ARTICLE V

### PLEDGE; FUNDS

Section 5.01. Pledge. (a) *Pledge.* The pledge and assignment of and the security interest granted in the Trust Estate pursuant to the granting clauses hereof and of the Pledged Revenues for the payment of the principal of, premium, if any, and interest on the Bonds, in accordance with their terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Bonds by the Trustee or by any person authorized by the Trustee to deliver the Bonds. The Trust Estate so pledged and then or thereafter received by the Trustee shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the City irrespective of whether such parties have notice thereof.

(b) *Money Held by Trustee.* All money required to be deposited with or paid to the Trustee for the account of any of the funds created by this Indenture shall be held by the Trustee in trust for the benefit of the Bondholders, and except for (i) money held in the Expense Fund and the Rebate Fund, and (ii) money deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien hereof.

(c) *Application of Pledged Revenues.* All money received by the Trustee from the Borrowers (to the extent there is no Servicer) or the Servicer, or as a Cap Payment from the cap provider, and all other Pledged Revenues shall be disbursed or transferred, as appropriate, when received by the Trustee, in the following order of priority:

- (i) To the Rebate Fund, an amount equal to the Rebate Amount, if any, then required to be deposited therein pursuant to the Loan Agreement;
- (ii) To the Expense Fund, an amount needed to pay any Third Party Fees;
- (iii) To the Bond Fund, the amount of any due and owing Bond Obligations;  
and
- (iv) To the Surplus Fund.

To the extent a Servicing Agreement is in effect from time to time, any sums received by the Trustee directly from the Borrowers shall be remitted to the Servicer to be applied in accordance with the Servicing Agreement.

(d) *Limited Liability.* None of the City, the members of the Board of Supervisors, the directors, officers, officials, employees, attorneys or agents of the City, or any person executing the Bonds is liable personally on the Bonds or subject to any personal liability or accountability by reason of their issuance. The Bonds are limited obligations of the City, payable only as provided herein, and are not a general obligation, nor are they secured by a pledge of the faith and credit, of the City, the State or any of its political subdivisions, nor are the Bonds payable out of any funds or properties other than those of the City expressly pledged for the payment thereof under this Indenture. The Bonds do not constitute indebtedness within the meaning of any constitutional or statutory debt limitation. The issuance of the Bonds shall not directly, indirectly, or contingently obligate the City, State of California or any political subdivision

thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

No recourse shall be had for the payment of the Bond Obligations against any past, present or future supervisor, officer, official, director, employee or agent of the City, or of any successor thereto, as such, either directly or through the City or any successor to the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such supervisors, officers, officials, directors, employees or agents, as such, is hereby expressly waived and released as a condition of, and consideration for, the execution and issuance of the Bonds.

The City shall not be liable for payment of the Bond Obligations or any other costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Indenture, the Bonds or any other documents, except only to the extent amounts are received for the payment thereof from the Borrowers under the Loan Agreement.

Section 5.02. Establishment of Funds. There are established with the Trustee the following trust funds and accounts:

- (i) The Bond Fund;
- (ii) [intentionally omitted];
- (iii) The Construction Fund (and the Capitalized Interest Account, the Tax-Exempt Bonds Account and the Equity Account therein);
- (iv) The Rebate Fund;
- (v) The Expense Fund;
- (vi) The Costs of Issuance Fund;
- (vii) The Remarketing Proceeds Fund;
- (viii) The Principal Reserve Fund; and
- (ix) The Surplus Fund.

Section 5.03. Bond Fund. The City and the Borrowers shall have no interest in the Bond Fund or the moneys therein, which shall always be maintained by the Trustee completely separate and segregated from all other moneys held hereunder and from any other moneys of the City and the Borrowers.

The Trustee shall deposit into the Bond Fund the amounts required by Section 5.01(c) together with any other amounts received by the Trustee that are subject to the lien and pledge of this Indenture, including any Pledged Revenues not otherwise specifically directed in writing to be deposited into other funds created by this Indenture.

On each Bond Payment Date the Trustee shall apply all amounts on deposit in the Bond Fund in the following order of priority:

First, to pay or provide for the payment of the interest due on the Senior Bonds on the next Bond Payment Date;

Second, to the Principal Reserve Fund in an amount equal to the Principal Reserve Fund Deposit as indicated in the Principal Reserve Fund Deposit Schedule;

Third, to pay or provide for the payment of the Redemption Price of Bonds pursuant to Sections 4.01(b), (c), (d), (e), (f), (g) or (h), provided moneys have been transferred or deposited into the Bond Fund for such purpose;

Fourth, if the conditions set forth in Section 13.01 have been satisfied, to pay or provide for the payment of the interest due on the Subordinate Bonds on the next Bond Payment Date;

Fifth, if the conditions set forth in Section 13.01 have been satisfied, once no Senior Bonds remain Outstanding, to redeem Subordinate Bonds on the next Bond Payment Date in an amount equal to the amounts paid by the Borrowers as scheduled principal payments under the Note for the prior calendar month;

Sixth, all Pledged Revenues remaining after the foregoing shall be transferred to the Surplus Fund and held therein.

If the amounts held in the Bond Fund are insufficient to pay the principal of or interest on the Senior Bonds when due (together with any Third Party Fees), the Trustee shall charge the Surplus Fund to cover such deficiency. To the extent so directed by the Bondholder Representative, the Trustee shall also pay any other amounts owing the City or the Trustee under the Bond Documents from amounts on deposit in the Surplus Fund or transfer amounts in the Surplus Fund to the Servicer to be applied in accordance with the Servicing Agreement. The Trustee shall notify the Bondholder Representative of such deficiency only if amounts on deposit in the Surplus Fund are insufficient to make such payment. The Trustee shall obtain the prior written approval of the Bondholder Representative prior to accepting any additional collateral as part of the Trust Estate in the form of Pledged Revenues, Surplus Fund proceeds, or otherwise.

Section 5.04. Expense Fund. The Trustee shall deposit in the Expense Fund the amount referred to in Section 5.01(c)(ii). Amounts on deposit in the Expense Fund shall be used to pay the Third Party Fees as and when the same become due. In the Loan Agreement, the Borrowers have agreed to pay directly to the City or the Trustee any extraordinary fees and expenses of the City or the Trustee, as the case may be, that are not included within the Issuer's Ongoing Fee or the Trustee's Fee and not otherwise paid from the Surplus Fund.

Section 5.05. Costs of Issuance Fund. Amounts in the Costs of Issuance Fund shall be disbursed by the Trustee only to pay Costs of Issuance upon receipt of a written closing memorandum provided to the Trustee by or on behalf of the City on the date of initial execution and delivery of this Indenture and, thereafter, upon receipt of a Written Requisition of the Borrowers which Requisition shall state the amount to be paid, the payee and the purpose for such payment. Upon the receipt of written direction from the Borrowers indicating all costs of issuance have been paid or the date that is ninety (90) days following the Closing Date, whichever date is later, the Trustee shall transfer all amounts remaining in the Costs of Issuance Fund to the Equity Account of the Construction Fund and shall close the Costs of Issuance Fund.

Section 5.06. Rebate Fund. (a) The Trustee shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Trustee by the Borrowers for deposit thereto and each amount directed by the Borrowers to be transferred thereto.

(b) Within 15 days after each receipt or transfer of funds to the Rebate Fund in accordance with Section 5.01(c) hereof, the Trustee shall withdraw from the Rebate Fund and pay to the United States of America the entire balance of the Rebate Fund.

(c) All payments to the United States of America pursuant to this Section shall be made by the Trustee for the account and in the name of the City and shall be paid through the United States Mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such forms to be provided to the Trustee by the Borrowers or the Rebate Analyst as set forth in the Loan Agreement).

(d) The Trustee shall preserve all statements, forms and explanations received from the Borrowers and delivered to the Trustee pursuant to this Section 5.06, and all records of transactions in the Rebate Fund, until six years after the retirement of all of the Bonds.

(e) The Trustee may conclusively rely on the instructions of the Borrowers or the Rebate Analyst with regard to any actions to be taken by it pursuant to this Section and shall have no liability for any consequences of any failure of the Borrowers or the Rebate Analyst to perform its duties or obligations or to supply accurate or sufficient instructions. Except as specifically provided in Section 5.06(b) above, the Trustee shall have no duty or responsibility with respect to the Rebate Fund or the Borrowers' duties and responsibilities with respect thereto except to follow the Borrowers' or the Rebate Analyst's specific written instruction related thereto.

(f) If at any time during the term of this Indenture the City, the Trustee or the Borrowers desire to take any action which would otherwise be prohibited by the terms of this Section, such person shall be permitted to take such action if it shall first obtain and provide to the other persons named herein, a Bond Counsel No Adverse Effect Opinion addressed to the Trustee and the City and an opinion of Bond Counsel that such action shall be in compliance with the laws of the State and the terms of this Indenture.

(g) Moneys and securities held by the Trustee in the Rebate Fund shall not be deemed funds of the City and are not pledged or otherwise subject to any security interest in favor of the Owners to secure the Bonds or any other obligations.

(h) Moneys in the Rebate Fund may be separately invested and reinvested by the Trustee, at the request of and as directed in writing by the Borrowers, in Investment Securities, subject to the Code. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in the Rebate Fund is insufficient for its purposes.

(i) Notwithstanding anything to the contrary in this Indenture, no payment shall be made by the Trustee to the United States if the Borrowers shall furnish to the City and the Trustee an opinion of Bond Counsel to the effect that such payment is not required under Section 148(d) and (f) of the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds. In such event, the Borrowers shall be entitled to withdraw funds from the Rebate Fund to the extent the Borrowers shall provide a Bond Counsel No Adverse Effect Opinion addressed to the City and the Trustee with respect to such withdrawal.



(j) The Trustee shall keep and make available to the City and the Borrowers records concerning the investments of all funds held by the Trustee pursuant to this Indenture including date bought and sold, price and commission paid, and bids taken, if any, and shall keep all such records until six years after the date on which no Bonds are Outstanding in order to enable the Borrowers or the Rebate Analyst to make the computations required under section 148(f) of the Code.

(k) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 5.06 need not be made to the extent that neither the City nor the Borrowers will thereby fail to comply with any requirements of section 148(f) of the Code based on a Bond Counsel No Adverse Effect Opinion addressed to the City and the Borrowers, a copy of which shall be provided to the Trustee.

Section 5.07. Surplus Fund. The Trustee shall disburse all amounts on deposit in the Surplus Fund as provided in Section 5.03.

Section 5.08. Application of Funds and Accounts Upon Event of Default. Upon the occurrence of an Event of Default, the Trustee shall, unless otherwise directed in a written direction from the Bondholder Representative, apply all moneys in the funds and accounts established under this Indenture pursuant to Section 7.04.

Section 5.09. Remarketing Proceeds Fund. Amounts received from the Remarketing Agent on the Bond Purchase Date pursuant to Section 11.03(d) shall be deposited to the Remarketing Proceeds Fund and shall be used solely to purchase remarketed or deemed remarketed Bonds pursuant to Section 11.03(d).

Section 5.10. Principal Reserve Fund. (a) The Trustee shall deposit into the Principal Reserve Fund all of the monthly payments made by the Borrowers in accordance with the Principal Reserve Fund Deposit Schedule (if applicable); provided, however, that such monthly payments may be deferred as such Schedule may be amended in writing by the Borrowers and the Bondholder Representative and provided to the Trustee by the Bondholder Representative upon delivery of a Bond Counsel No-Adverse-Effect Opinion. Investment Income earned on amounts on deposit in the Principal Reserve Fund shall be retained in the Principal Reserve Fund.

(b) The Trustee shall pay, apply or transfer amounts on deposit in the Principal Reserve Fund as follows:

(1) if the aggregate amount on deposit in the Principal Reserve Fund on the tenth Business Day of any month is greater than the Principal Reserve Amount, then all amounts on deposit in the Principal Reserve Fund (rounded downward to the nearest minimum Authorized Denomination) in excess of the Principal Reserve Amount shall be applied to the redemption of Bonds pursuant to Section 4.01(e); and

(2) on the Bond Payment Date following receipt by the Trustee of Investment Income on moneys in the Principal Reserve Fund, pay such Investment Income to the Borrowers; and

(3) if the aggregate amount on deposit in the Principal Reserve Fund on the tenth day of any month is equal to the principal amount of the Bonds outstanding then all amounts on deposit in the Principal Reserve Fund shall be applied to the redemption of Bonds pursuant to Section 4.01(e); and

(4) with the Written Consent of the Borrowers and the Bondholder Representative, disbursed for any other purpose, including disbursement to the Borrowers; provided that, upon the occurrence of an Event of Default, no such Written Consent of the Borrowers shall be required for the Bondholder Representative to instruct the Trustee to disburse such funds as it so directs to cover any amounts due with respect to the Loan or the Bonds.

The Principal Reserve Fund Deposit Schedule may be revised from time to time by the Written Direction of the Bondholder Representative to reflect an unscheduled redemption of Bonds in part. The Trustee shall conclusively rely on such Written Direction when determining amounts to be redeemed pursuant to Section 4.01(e).

Section 5.11. [intentionally omitted].

Section 5.12. Additional Funds. The Trustee is hereby authorized to establish and create from time to time such other funds and accounts or subaccounts as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards) received by the Trustee pursuant to the terms hereof or of any of the other Bond Documents.

Section 5.13. Investment of Moneys. (a) Any money held as part of the funds and accounts shall be invested or reinvested by the Trustee solely pursuant to written direction from the Borrowers in Investment Securities. The Borrowers shall comply with all requirements of the Tax Certificate in directing such investments. All such Investment Securities shall mature or be subject to withdrawal or redemption without discount or penalty prior to the next Bond Payment Date. In addition, following receipt by a Responsible Officer of Written Notice of an Event of Default, Loan Agreement Default or Default, the Trustee shall invest and reinvest the money it holds as part of the funds and accounts in Investment Securities. Except as described below, any investment made with money on deposit in a fund or account shall be held by or under control of the Trustee and shall be deemed at all times a part of the fund or account where such money was on deposit, and the interest and profits realized from such investment shall be credited to such fund or account and any loss resulting from such investment shall be charged to such fund or account. In the absence of the receipt of any investment instructions as provided herein, the Trustee may invest all money under its control in investments described in clause (h) of the definition of Investment Securities. Notwithstanding the foregoing, amounts in the Construction Fund shall be invested in the Investment Agreement, if any.

(b) Any investment of money may be made by the Trustee through its own bond department, investment department or other commercial banking department or affiliate of the Trustee providing investment services. The Trustee, any such department or the Trustee's affiliates may receive reasonable and customary compensation in connection with any investment made under this Indenture.

(c) The Trustee shall have no liability or responsibility for any depreciation of the value of any investment made in accordance with the provisions of this Section or for any loss resulting from such investment or redemption, sale or maturity thereof.

(d) Unless otherwise confirmed in writing, an account statement delivered by the Trustee to the Borrowers shall be deemed written confirmation by said party that the investment transactions identified therein accurately reflect the investment directions given to the Trustee by said party, unless said party notifies the Trustee in writing to the contrary within thirty (30) days of the date of receipt of such statement.

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(e) The City (and the Borrowers by virtue of their execution of the Loan Agreement) acknowledges that to the extent regulations of the Office of the Comptroller of the Currency or other applicable regulatory entity grant the City or the Borrowers the right to receive brokerage confirmations of security transactions as they occur, the City and the Borrowers specifically waive receipt of such confirmations to the extent permitted by law. The Trustee will furnish to the City, the Bondholder Representative and the Borrowers periodic cash transaction statements that include detail for all investment transactions made by the Trustee hereunder.

(f) Except as otherwise provided in subsection (g) of this Section, the City and the Borrowers (by virtue of their execution of the Loan Agreement) covenant that all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of Section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Indenture or the Code) at Fair Market Value.

(g) The City acknowledges (and the Borrowers by virtue of their execution of the Loan Agreement) that investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code and (unless valuation is undertaken at least annually) investments in any reserve fund shall be valued at their present value (within the meaning of Section 148 of the Code).

(h) The Trustee shall be entitled to assume, absent receipt by the Trustee of written notice to the contrary, that any investment which at the time of purchase is an Investment Security remains an Investment Security. The Trustee may transfer investments from any fund or account to any other fund or account in lieu of cash when a transfer is required or permitted by the provisions of this Indenture.

Section 5.14. Assignment to Trustee; Enforcement of Obligations. The City hereby transfers, assigns and sets over to the Trustee, for the benefit of the Bondowner, and the Trustee hereby accepts, the Trust Estate including all rights and privileges the City has under the Loan Agreement and the other Loan Documents (except for the City's rights under Sections 2.3, 2.4, 5.1(d)(ii) and (iv), 5.1(e)(i), 5.1(h), 6.2, 6.6, 6.11, 6.14, 6.15, 6.16, 6.17, 6.19, 6.20, 6.21, 6.23, 6.42, 6.43, 6.44, 7.4 and 8.2 of the Loan Agreement and except to amounts payable to the United States of America pursuant to Section 5.1(d)(i) of the Loan Agreement); and any Pledged Revenues which are collected or received by the City shall be deemed to be held, and to have been collected or received, by the City as the agent of the Trustee, and shall forthwith be paid by the City to the Trustee.

Upon the occurrence of an Event of Default, the Trustee shall proceed as provided in Article VII hereof.

Section 5.15. Swap or Cap Agreements. The Trustee shall only accept a Cap Agreement or Swap Agreement at the written direction of the Bondholder Representative. In the event the Trustee does not receive a subsequent Swap Agreement or Cap Agreement three (3) Business Days prior to expiration of the then current Swap Agreement or Cap Agreement, held by the Trustee, the Trustee shall immediately provide written notice to the Bondholder Representative that it has not received a subsequent Swap Agreement or Cap Agreement to be in effect following termination of the current Swap Agreement or Cap Agreement, as applicable.

It is acknowledged that, as of the Closing Date, there will be no Swap Agreement or Cap Agreement.

## ARTICLE VI

### COVENANTS OF THE CITY

Section 6.01. Payment of Principal and Interest. The City shall punctually pay, but only out of Pledged Revenues as herein provided, the Bond Obligations at the times and places and in the manner provided herein and in the Bonds, according to the true intent and meaning thereof. When and as paid in full, the Bonds shall be delivered to the Trustee and shall forthwith be destroyed by the Trustee.

Section 6.02. Preservation of Revenues; Amendment of Documents. The City shall not take any action to interfere with or impair the pledge and assignment hereunder of Pledged Revenues and the assignment to the Trustee of the Trust Estate, or the Trustee's enforcement of any rights hereunder or thereunder, shall not take any action to impair the validity or enforceability of the Loan Agreement, the Deed of Trust or the other Loan Documents, and shall not waive any of its rights under or any other provision of or permit any amendment of the Loan Agreement, the Deed of Trust or the other Loan Documents, without the prior written consent of the Bondholder Representative.

Section 6.03. Compliance with Indenture. The City shall not issue, or permit to be issued, any Bonds secured or payable in any manner out of Pledged Revenues other than in accordance with the provisions of this Indenture; it being understood that the City reserves the right to issue obligations payable from and secured by sources other than the Pledged Revenues and the Trust Estate assigned herein. The City shall faithfully observe and perform all the covenants, conditions and requirements hereof applicable to the City. So long as any Bonds are Outstanding, the City shall not create any pledge, lien or charge of any type whatsoever upon all or any part of the Pledged Revenues or the Trust Estate, other than the lien of this Indenture.

Section 6.04. Further Assurances. Whenever and so often as requested so to do by the Trustee, the City, at the expense of the Borrowers, shall promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and promptly do or cause to be done all such other and further things, as may be necessary or reasonably required in order to further and more fully vest in the Trustee and the Bondholders all of the rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred upon them by this Indenture and to perfect and maintain as perfected such rights, interests, powers, benefits, privileges and advantages.

Section 6.05. No Arbitrage. The City shall not take, nor knowingly permit nor suffer to be taken by the Trustee or otherwise, any action with respect to the Gross Proceeds of the Bonds which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of the issuance of the Bonds would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code and Regulations promulgated thereunder.

Section 6.06. Limitation of Expenditure of Proceeds. To the best knowledge of the City, not less than ninety-seven percent (97%) of the amount advanced as the purchase price of the Bonds, plus premium (if any) paid on the purchase of the Bonds by the Bond Purchasers, less original issue discount, will be used for Qualified Project Costs and less than twenty-five percent (25%) of such amount will be used for land or an interest in land.

Section 6.07. Rebate of Excess Investment Earnings to United States. The City hereby covenants to cause the Borrowers (solely by the inclusion of Sections 5.1(d)(i) and 6.17(i) in the Loan Agreement) to calculate or cause to be calculated excess investment earnings to the extent

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required by Section 148(f) of the Code and the Borrowers shall cause payment of an amount equal to excess investment earnings to the United States in accordance with the Regulations, all at the sole expense of the Borrowers.

Section 6.08. Limitation on Issuance Costs. To the best knowledge of the City, an amount not in excess of two percent (2%) of the amount advanced as the purchase price of the Bonds will be used to pay for, or provide for the payment of, Issuance Costs.

Section 6.09. Federal Guarantee Prohibition. The City shall take no action if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of the Code.

Section 6.10. Prohibited Facilities. To the best knowledge of the City, no portion of the proceeds of the Bonds will be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises. To the best knowledge of the City, no portion of the proceeds of the Bonds will be used for an office unless the office is located on the premises of the facilities constituting the Project and unless not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

Section 6.11. Use Covenant. The City shall not use any proceeds of Bonds or any other funds of the City, directly or indirectly, in any manner, and shall not take any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 142(d) of the Code by reason of the Bonds not meeting the requirements of Section 142(d) of the Code.

Section 6.12. Status of City. The City is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of California, has the power and authority to (a) enter into the Bond Documents to which it is a party and the transactions contemplated thereby, (b) issue the Bonds to finance the Project, and (c) carry out its other obligations under this Indenture and the Bonds, and by proper action has duly authorized the City's execution and delivery of, and its performance under, such Bond Documents and all other agreements and instruments relating thereto.

Section 6.13. No Default by City. The City is not in default under or in violation of, and the execution and delivery of the Bond Documents to which it is a party and its compliance with the terms and conditions thereof will not conflict or constitute a default under or a violation of, (a) the Act, (b) to its knowledge, any other existing laws, rules, regulations, judgments, decrees and orders applicable to it, or (c) to its knowledge, the provisions of any agreements and instruments to which the City is a party, a default under or violation of which would prevent it from issuing and selling the Bonds, financing the Project, executing and delivering the Bond Documents to which it is a party or consummating the transactions contemplated thereby, and, to its knowledge, no event has occurred and is continuing under the provisions of any such agreement or instrument or otherwise that with the lapse of time or the giving of notice, or both, would constitute such a default or violation (it being understood, however, that the City is making no representations as to the necessity of registering the Bonds pursuant to any securities laws or complying with any other requirements of securities laws).

Section 6.14. No Known Litigation. To the City's knowledge, no litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to the knowledge of the City, threatened against the City with respect to (a) the organization and existence of the City, (b) its authority to execute or deliver the Bond Documents to which it

is a party, (c) the validity or enforceability of any such Bond Documents or the transactions contemplated thereby, (d) the title of any officer of the City who executed such Bond Documents or (e) any authority or proceedings relating to the execution and delivery of such Bond Documents on behalf of the City, and no such authority or proceedings have been repealed, revoked, rescinded or amended but are in full force and effect.

Section 6.15. Private Activity Bond Allocation. The California Debt Limit Allocation Committee has provided an allocation of the State's 2015 private activity bond volume cap under section 146 of the Code to the City for the Bonds, the City has timely made any required carry forward election with respect to such allocation, and the City will comply with the requirements of the Code with respect to such allocation. The City hereby elects to apply the alternative option under clause (2) of the first paragraph of Section 3.01 of IRS Notice 2011-63 with respect to the issue date of the Bonds; and, in connection therewith, has directed Bond Counsel to include the information on Form 8038 filed for the Bonds that is required by section 3.03 of said Notice.

Section 6.16. Immunities and Limitations of Responsibility of City.

(a) The City shall be entitled to the advice of counsel (who, except as otherwise provided, may be counsel for any Bondholder), and the City shall be wholly protected as to action taken or omitted in good faith in reliance on such advice. The City may rely conclusively on any communication or other document furnished to it hereunder and reasonably believed by it to be genuine. The City shall not be liable for any action (a) taken by it in good faith and reasonably believed by it to be within its discretion or powers hereunder, or (b) in good faith omitted to be taken by it because such action was reasonably believed to be beyond its discretion or powers hereunder, or (c) taken by it pursuant to any direction or instruction by which it is governed hereunder, or (d) omitted to be taken by it by reason of the lack of any direction or instruction required hereby for such action; nor shall it be responsible for the consequences of any error of judgment reasonably made by it. The City shall in no event be liable for the application or misapplication of funds or for other acts or defaults by any person, except its own officers and employees. When any payment or consent or other action by it is called for hereby, it may defer such action pending receipt of such evidence (if any) as it may require in support thereof. The City shall not be required to take any remedial action (other than the giving of notice) unless indemnity in a form acceptable to the City is furnished for any expense or liability to be incurred in connection with such remedial action, other than liability for failure to meet the standards set forth in this Section 6.12. The City shall be entitled to reimbursement from the Borrowers for their expenses reasonably incurred or advances reasonably made, with interest at the rate of interest on the Bonds, in the exercise of its rights or the performance of its obligations hereunder, to the extent that it acts without previously obtaining indemnity. No permissive right or power to act which the City may have shall be construed as a requirement to act; and no delay in the exercise of a right or power shall affect its subsequent exercise of the right or power.

(b) In furtherance of the covenants in Sections 6.05, 6.06, 6.07, 6.08, 6.09, 6.10, 6.11 and 6.15 hereof, the City, the Trustee and the Borrowers shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into this Indenture and made a part of this Indenture as if set forth in this Indenture in full. In the event of a conflict between the terms of this Indenture and the Tax Certificate, the terms of the Tax Certificate shall control. In making the representations and agreements set forth in Sections 6.05, 6.06, 6.08, 6.09, 6.10 and 6.11, the City is relying solely upon the representations and warranties of the Borrowers in the Loan Agreement, in the Regulatory Agreement and in the Tax Certificate. A default by the Borrowers in any of their covenants, representations and agreements in the Loan Agreement, Regulatory Agreement or Tax Certificate upon which the

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City is relying in the various sections of this Article VI shall not be considered a default hereunder by the City.

(c) The Borrowers have agreed to indemnify the City and the Trustee against certain acts and events as set forth in Section 8 of the Regulatory Agreement and Section 6.15 of the Loan Agreement. Such indemnities shall survive payment of the Bonds and discharge of the Indenture.

THE CITY MAKES NO REPRESENTATION, COVENANT OR AGREEMENT AS TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWERS OR THE PROJECT AND DOES NOT REPRESENT OR WARRANT AS TO ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWERS IN CONNECTION WITH THE SALE OF THE BONDS OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

## ARTICLE VII

### DEFAULT

Section 7.01. Events of Default. Any one or more of the following shall constitute an event of default (an "Event of Default") under this Indenture (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) If any Senior Bonds are Outstanding, a default in the payment of any interest upon the Senior Bonds when such interest becomes due and payable; or

(b) If any Senior Bonds are Outstanding, a default in the payment of principal of, or premium on, the Senior Bonds when such Senior Bond principal or premium becomes due and payable, whether at its stated maturity, by declaration of acceleration or call for mandatory redemption, purchase or otherwise; or

(c) After no Senior Bonds remain Outstanding, a default in the payment of any interest upon the Subordinate Bonds when such interest becomes due and payable; or

(d) After no Senior Bonds remain Outstanding, a default in the payment of principal of, or premium on, the Subordinate Bonds when such Subordinate Bond principal or premium becomes due and payable, whether at its stated maturity, by declaration of acceleration or call for redemption, purchase or otherwise; or

(e) Default in the performance or breach of any material covenant or warranty of the City in this Indenture (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of thirty (30) days after there has been given written notice, as provided in Section 12.06, to the City and the Borrowers by the Trustee or to the City, the Borrowers and the Trustee, by the Bondholder Representative, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" under this Indenture; provided that, so long as the City has commenced to cure such failure to observe or perform within the thirty (30) day cure period and the subject matter of the default is not capable of cure within said thirty (30) day period and the City is diligently pursuing such cure to the Trustee's satisfaction, with the Bondholder Representative's Written Direction or Written Consent, then the City shall have an additional period of time as reasonably necessary (not to exceed thirty (30) days unless extended in writing by the Bondholder Representative) within which to cure such default; or

(f) A failure to pay any Third Party Fees after the thirtieth (30th) day after written notice of the failure to pay; or

(g) Receipt by the Trustee of a written notice from a Credit Facility Provider that a default or event of default has occurred and is continuing under the Reimbursement Agreement; or

(h) Failure of a Credit Facility Provider to honor any drawing in accordance with the terms of the Credit Facility; or



(i) A Credit Facility Provider shall (i) commence a proceeding under any federal or state insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for 90 days and such Credit Facility Provider is not replaced in such 90 day period; or (ii) have a receiver, conservator, liquidator or trustee appointed for it or for the whole or any substantial part of its property and such Credit Facility Provider is not replaced in a reasonable time thereafter; or

(j) Any other "Default" or "Event of Default" under any of the other Bond Documents (taking into account any applicable grace periods therein).

The Trustee will promptly notify the City, the Borrowers, the Servicer and the Bondholder Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default.

Section 7.02. Acceleration of Maturity; Rescission and Annulment. (a) Subject to the provisions of Section 7.11, upon the occurrence of an Event of Default under Section 7.01, then and in every such case, the Trustee may (but only with the Written Consent of the Bondholder Representative) and, at the Written Direction of the Bondholder Representative, the Trustee shall declare the principal of all the Bonds and the interest accrued to be immediately due and payable, by notice to the City and the Borrowers and upon any such declaration, all principal of and prepayment premium, if any, and interest on the Bonds shall become immediately due and payable.

(b) At any time after such a declaration of acceleration has been made pursuant to subsection (a), the Bondholder Representative (if it gave Written Consent or written direction pursuant to Section 7.02(a)) may by Written Notice to the City, the Borrowers and the Trustee, rescind and annul such declaration and its consequences if:

(i) There has been deposited with the Trustee a sum sufficient to pay (1) all overdue installments of interest on the Bonds, (2) the principal of and redemption premium on the Bonds that has become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in the Bonds, (3) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in the Bonds, (4) all sums paid or advanced by the Bondholder Representative and the reasonable compensation, expenses, disbursements and advances of the Bondholder Representative, its agents and counsel (but only to the extent not duplicative with subclauses (1)-(3) above), and (5) any amounts owing to the City under any of the Bond Documents and any past due Third Party Fees have been paid in full;

(ii) All Events of Default, other than the non-payment of the principal of the Bonds which have become due solely by such declaration of acceleration, have been cured or have been waived in writing as provided in Section 7.11; and

(iii) A Swap Agreement or Cap Agreement complying with the provisions of the Loan Agreement is in effect.

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

(c) Notwithstanding the occurrence and continuation of an Event of Default, it is understood that the Trustee shall pursue no remedies against the Borrowers, the Project or the Construction Fund if no Loan Agreement Default has occurred and is continuing. An Event of Default hereunder shall not in and of itself constitute a Loan Agreement Default.

Section 7.03. Additional Remedies; Bondholder Representative Enforcement.

(a) Upon the occurrence of an Event of Default, the Trustee may, subject to the provisions of this Section 7.03 and the last paragraph of Section 7.12, proceed to protect and enforce its rights and the rights of the Bondholders by mandamus or other suit, action or proceeding at law or in equity. No remedy conferred by this Indenture upon or remedy reserved to the Trustee or to the Bondholders is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity or by statute.

(b) Upon the occurrence and continuation of any Event of Default, the Bondholder Representative may proceed forthwith to protect and enforce its rights and the rights of the Bondholders, the Bonds and this Indenture by such suits, actions or proceedings as the Bondholder Representative, in its sole discretion, shall deem expedient.

(c) Notwithstanding anything to the contrary contained in this Indenture, the Trustee shall not exercise any of its rights or remedies under this Article VII or otherwise hereunder or under any of the other Bond Documents as a result of the occurrence of an Event of Default hereunder unless and until instructed by Written Direction to do so by the Bondholder Representative. The Trustee shall in such event exercise such rights and remedies as so instructed by the Bondholder Representative (if it gave Written Direction to the Trustee pursuant to this Section 7.03(c)); provided, that before taking any action requested by the Bondholder Representative (except for acceleration of the Bonds), the Trustee may require reasonably satisfactory security or an indemnity bond reasonably satisfactory to it from the Bondholder Representative for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its own negligence or willful misconduct by reason of any such action so taken.

(d) Whether or not an Event of Default has occurred, any and all consents and approvals of the Trustee required under the Deed of Trust, the Note or any other Bond Document shall be given only with the prior Written Consent of the Bondholder Representative, in its sole discretion.

(e) Whether or not an Event of Default has occurred, and except as provided in subsections 7.03(f) and (g), the Bondholder Representative, in its sole discretion, shall have the sole right to direct the Trustee to waive or forebear any term, condition, covenant or agreement of the Deed of Trust, the Loan Agreement, the Note or any other Bond Documents applicable to the Borrowers, or any breach thereof, other than a covenant that would adversely impact the tax-exempt status of the Bonds, and provided that the City may enforce specific performance with respect to the Reserved Rights.

(f) If the Borrowers default in the performance or observance of any covenant, agreement or obligation of the Borrowers set forth in the Regulatory Agreement, and if such Default remains uncured for a period of 60 days after the Borrowers and the Bondholder Representative receive Written Notice from the Trustee or the City stating that an Event of Default under the Regulatory Agreement has occurred and specifying the nature of the Event of Default, the Trustee shall have the right to seek specific performance of the provisions of the

Regulatory Agreement or to exercise its other rights or remedies thereunder; provided, however, that any such forbearance by the Trustee in the exercise of its remedies under the Bond Documents shall not be construed as a waiver by the Trustee or the Bondholder Representative of any Conditions to Conversion.

(g) If the Borrowers default in the performance of their obligations under the Loan Agreement to make rebate payments, to comply with continuing disclosure requirements or to make payments to the Trustee owed pursuant to Sections 5.1(d), 6.14 or 6.15 of the Loan Agreement for fees, expenses or indemnification, the Trustee shall have the right to exercise all its rights and remedies thereunder (subject to the last paragraph of Section 7.12); provided, however, that any such forbearance by the Trustee in the exercise of its remedies under the Bond Documents shall not be construed as a waiver by the Trustee or the Bondholder Representative of any Conditions to Conversion nor a waiver of any of the Trustee's rights.

Section 7.04. Application of Money Collected. Any money received by the Trustee from the Servicer for distribution hereunder shall be applied in the following order, at the date or dates fixed by the Trustee as directed by the Bondholder Representative and, in case of the distribution of such money on account of the Bond Obligations, upon presentation of the Bonds and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

- (i) First, the amount of any Issuer's Ongoing Fee, Trustee Fee, Rebate Analyst Fee, and any other amounts due and owing to the City then due and payable under the Bond Documents, except to the extent of any funds then on deposit in the Expense Fund or otherwise held by the Trustee to pay the same;
- (ii) Second, any amount due and payable under the Bonds; and
- (iii) Third, the payment of the remainder, if any, to the Servicer to be applied according to the Servicing Agreement.

Any money collected by the Trustee pursuant to this Article, and any other sums then held by the Trustee as part of the Trust Estate following an Event of Default hereunder, shall be remitted to the Servicer to be applied in accordance with the Servicing Agreement.

Section 7.05. Remedies vested in Trustee and Bondholder Representative. All rights of action and claims under this Indenture or the Bonds may be prosecuted and enforced by the Trustee without the possession of the Bonds or the production thereof in any proceeding relating thereto. Subject to the rights of the Bondholder Representative to direct proceedings hereunder, any such proceeding instituted by the Trustee shall be brought in its own name as Trustee of an express trust. Any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the benefit of the Bondholders, in respect of whom such judgment has been recovered, subject to the provisions of Section 7.04.

Section 7.06. Limitation on Suits; Rights of Bondholders. Subject to the provisions of Section 7.12 of this Indenture and to rights specifically given to the Bondholder Representative, no Bondholder shall have any right to institute any proceeding, judicial or otherwise, under or with respect to this Indenture, or for the appointment of a receiver or Trustee or for any other remedy hereunder, unless:

- (i) Such Bondholder previously has given Written Notice to the Trustee of a continuing Event of Default;

(ii) Such Bondholder shall have made Written Request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(iii) Such Bondholder (either alone or together with other Bondholders) has offered to the Trustee in writing reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and the Trustee has thereafter failed or refused to exercise remedies hereunder; and

(iv) No remedies have been exercised by either the Bondholder Representative or the Trustee for a period of sixty (60) days from the date the Bondholder provided reasonable indemnity pursuant to clause (iii) above.

Section 7.07. Unconditional Right of Bondholders to Receive Principal, Premium and Interest. Notwithstanding any other provision in this Indenture, other than those set forth in Article III, to the contrary, the Bondholders shall have the right which is absolute and unconditional to receive payment of the Bond Obligations when due and, subject to Section 7.06, to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the Written Consent of all of the Bondholders.

Section 7.08. Restoration of Positions. If the Trustee, the Bondholder Representative or any of the Bondholders shall have instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, the Bondholder Representative or to the Bondholders, then and in every such case the City, the Trustee, the Bondholder Representative and the Bondholders shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the City, the Trustee, the Bondholder Representative and the Bondholders shall continue as though no such proceeding had been instituted.

Section 7.09. Rights and Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Trustee, the Bondholder Representative or the Bondholders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 7.10. Delay or Omission Not Waiver. No delay or omission of the Trustee, the Bondholder Representative or of the Bondholders to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee, the Bondholder Representative or the Bondholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee, the Bondholder Representative or by the Bondholders, as the case may be. No waiver of any default or Event of Default pursuant to Section 7.11, whether by the Trustee, the Bondholder Representative or the Bondholders, shall extend to or shall affect any subsequent default or Event of Default hereunder or shall impair any rights or remedies consequent thereon.

Section 7.11. Waiver of Past Defaults. Before any judgment or decree for payment of money due has been obtained by the Trustee, the Bondholder Representative (or, in the event of a monetary default, all of the Bondholders) may, subject to Section 7.06, by Written Notice to the

Trustee, the City and the Borrowers, waive any past default hereunder or under the Loan Agreement and its consequences except for default in obligations due the City pursuant to or under the Unassigned City's Rights. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture and the Loan Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 7.12. Remedies Under Loan Agreement or Note. As set forth in this Section 7.12 but subject to the last paragraph of this Section 7.12, the Trustee, at the Written Direction of the Bondholder Representative, shall have the right, in its own name or on behalf of the City, to declare any default and exercise any remedies under the Loan Agreement or the Note, whether or not the Bonds have been accelerated or declared due and payable by reason of an Event of Default. Any money collected by the Trustee pursuant to the exercise of any remedies under the Loan Agreement or the Note shall be applied as provided in Section 7.04.

If an Event of Default has occurred and is continuing, the Trustee, at the Written Direction of the Bondholder Representative, shall enforce the Bond Documents and pursue the rights and remedies thereunder whether or not the Bonds have been accelerated or declared due and payable.

Notwithstanding anything to the contrary contained in this Indenture, the Trustee shall not exercise any of its rights or remedies under the Loan Agreement, the Note or any of the other Bond Documents as a result of the occurrence of a Loan Agreement Default, or an Event of Default under the Deed of Trust or any default or event of default under any of the other Bond Documents and the expiration of the applicable grace period or notice and cure period, if any, specified therein, unless and until instructed to do so in writing by the Bondholder Representative. The Trustee shall in such event exercise such rights and remedies as so instructed by the Bondholder Representative; provided that the Bondholder Representative shall have offered to the Trustee in writing indemnity reasonably satisfactory to the Trustee against the costs and expenses to be incurred by the Trustee in compliance with any such instructions, provided, however, such indemnity need not protect the Trustee against losses caused by the Trustee's negligence or willful misconduct.

Section 7.13. Waiver of Appraisal and Other Laws. (a) To the extent permitted by law, the City will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture; and the City, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws. The City, for itself and all who may claim under it, waives, to the extent that it may lawfully do so, all right to have the property in the Trust Estate marshaled upon any enforcement hereof.

(b) If any law in this Section referred to and now in force, of which the City or its successor or successors might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section.

Section 7.14. Suits to Protect the Trust Estate. Subject to the provisions of Section 7.12, the Trustee, at the Written Direction of the Bondholder Representative, shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Trust Estate by any acts that may be unlawful or in violation of this Indenture and to protect its interests and the interests of the Bondholders in the Trust Estate and in the rents, issues, profits, revenues and other income arising therefrom, including power

to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Bondholders or the Trustee.

Section 7.15. Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Indenture invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 7.16. Assumption of Obligations. In the event that the Trustee, the Bondholder Representative, the Bondholders or its respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall have the right, to be exercised in its sole discretion, to succeed to the rights and the obligations of the Borrowers under the Loan Agreement, the Note, the Regulatory Agreement and any other Bond Documents to which the Borrowers are parties. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrowers.

Section 7.17. Limitation of Liability to Pledged Revenues. Notwithstanding anything herein or in any other instrument to the contrary, the City shall not be required to advance any moneys derived from the proceeds of taxes collected by the City, by the State or by any political subdivision thereof or from any source of income of any of the foregoing other than the Pledged Revenues for any of the purposes mentioned in this Indenture, whether for the payment of the Bond Obligations or for any other purpose of this Indenture. The Bonds are limited obligations of the City, and are payable from and secured by the Pledged Revenues and the Trust Estate only.

## ARTICLE VIII

### THE TRUSTEE AND AGENTS

Section 8.01. Duties, Immunities and Liabilities of Trustee. In consideration of the recitals hereinabove set forth and for other valuable consideration, the City hereby agrees to employ the Trustee to receive, hold, invest and disburse the moneys received pursuant to the Loan Agreement for credit to the various funds and accounts established by this Indenture; to execute, deliver and transfer the Bonds; and to apply and disburse the payments received from the Borrowers pursuant to the Loan Agreement to the Owners of Bonds; and to perform certain other functions; all as herein provided and subject to the terms and conditions of this Indenture. The Trustee shall perform such duties and only such duties as are specifically set forth in this Indenture and no additional covenants or duties of the Trustee shall be implied in this Indenture.

Subject to its rights to indemnification pursuant to Section 8.06, the Trustee is directed to enter into the Loan Documents to which it is a party and other related documents, solely in its capacity as Trustee.

The Trustee, on behalf of the City, may (but shall not be required or obligated) perform and observe any such agreement or covenant of the City under the Loan Agreement, all to the end that the City's rights under the Loan Agreement may be unimpaired and free from default.

The Trustee shall keep and maintain adequate records pertaining to the funds and accounts established hereunder, including all deposits to and disbursements from said funds and accounts. The Trustee shall retain in its possession all certifications and other documents presented to it, all such records and all records of principal, interest and premium paid on the Bonds, subject to the inspection of the Borrowers, the City, the Bondholder Representative, the Servicer and their representatives at all reasonable times and upon reasonable prior notice.

The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as reasonable persons familiar with such matters would exercise or use under similar circumstances in the conduct of their own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action or its own negligent failure to act, except that:

(a) The duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Trustee conforming to the requirements of this Indenture;

(b) At all times (1) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or officers or by any agent or attorney of the Trustee appointed with due care unless (except as otherwise provided in Section 8.02(e)) the Trustee was negligent in ascertaining the pertinent facts; and (2) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the City, accompanied by an opinion of Bond Counsel

as provided herein or in accordance with the directions of the holders of not less than a majority, or such other percentage as may be required hereunder, in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture;

(c) The Trustee shall not be required to take notice or be deemed to have notice of (i) any default hereunder or under the Loan Agreement, except defaults under Section 7.01(a), (b), (c) or (d) hereof, unless a Responsible Officer of the Trustee shall be specifically notified in writing of such default by the City or the owners of at least a majority in aggregate principal amount of all Bonds then Outstanding, or (ii) any default under the Regulatory Agreement unless a Responsible Officer of the Trustee shall be specifically notified in writing of such default by the City;

Upon the occurrence of any Event of Default hereunder and provided that a responsible officer of the Trustee is aware of or has received Written Notice of the existence of such default, promptly, and in any event within fifteen (15) days, with respect to the City, the Borrowers, the Servicer, the Bondholder Representative and within thirty (30) days with respect to any other Bondholder, the Trustee shall transmit to the City, the Bondholder Representative, the Borrowers, the Investor Limited Partner and the Servicer in the manner and at the addresses for notices set forth in Section 12.06 and by mail to the Bondholders as their names and addresses appear in the Bond Register, notice of such Event of Default hereunder known to the Trustee pursuant to Section 8.01(c), unless such Event of Default shall have been cured or waived.

(d) Before taking any action under Article VII hereof or this Section 8.01 at the request or direction of the Bondholders, the Trustee may require that a satisfactory indemnity bond be furnished by the Bondholders, for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken;

(e) Upon any application or request by the City or the Bondowner to the Trustee to take any action under any provision of this Indenture, the City or Bondowner, as applicable, shall furnish to the Trustee a certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished;

(f) The Trustee may execute any of the powers hereunder or perform any duties hereunder either directly or through agents or attorneys;

(g) Neither the City nor the Borrowers shall be deemed to be agents of the Trustee for any purpose, and the Trustee shall not be liable for any noncompliance of any of them in connection with their respective duties hereunder or in connection with the transactions contemplated hereby;

(h) The Trustee shall be entitled to rely upon telephonic notice for all purposes whatsoever so long as the Trustee reasonably believes such telephonic notice has been given by a person authorized to give such notice;



(i) The immunities extended to the Trustee also extend to its directors, officers and employees;

(j) Under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Bonds, it being the obligation of the Trustee to administer, for the benefit of the Bondholders, the various funds and accounts established hereunder;

(k) No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy;

(l) The Trustee shall not be liable for any action taken or not taken by it in accordance with the direction of the Bondowner related to the exercise of any right, power or remedy available to the Trustee; and

(m) The Trustee shall have no duty to review any financial statements or budgets filed with it by the Borrowers under the Loan Agreement.

(n) The Trustee acknowledges that Borrowers have an obligation to pay certain fees to the City pursuant to Section 18 of the Regulatory Agreement. The Trustee further acknowledges that in order to preserve the tax-exempt status of the Bonds, the Borrowers must comply with requirements for rebate of excess investment earnings to the federal government to the extent applicable. The Trustee agrees to send the Borrowers a notification or reminder, with a copy to the City, of: (1) the Borrower's payment obligations under clause (ii) of the second paragraph of Section 18 of the Regulatory Agreement by December 1 of each year, commencing December 1, 2017, and ending on the earlier of the date on which the Bonds are paid or redeemed in full, and (2) the Borrowers' obligation to rebate excess investment earnings by the date which is sixty (60) days after the earlier of the Bond maturity date or date the Bonds are paid in full, said notice to be given by the Trustee on the earlier of the maturity date or date of payment in full of the Bonds. However, in no event shall the Trustee be liable to the City, the Bondowner or the Borrowers for the failure to so notify or remind the Borrowers.

(o) Without limiting the duties of the Trustee expressly set forth in this Indenture, the Trustee shall have no obligation or responsibility whatsoever in connection with (i) any federal or state tax-exempt status of the Bonds or the interest thereon; (ii) the consequences of investment or non-investment of any funds or accounts relating to the Bonds under Section 148 of the Code; (iii) the calculation of any amount required to be rebated to the United States under Section 148 of the Code; or (iv) compliance by the City or the Borrowers with the provisions of the Tax Certificate.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties as Trustee or in the exercise of any of its rights or powers as Trustee. Whether or not therein expressly so provided, every provision of this Indenture, the Loan Agreement, the Regulatory Agreement or any other document relating to the conduct, powers or duties of, or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Article VIII.

Section 8.02. Right of Trustee to Rely Upon Documents, Etc. Except as otherwise provided in Section 8.01:

(a) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond or other paper or document reasonably believed by it to be genuine and to have been signed and presented by the proper party or parties;

(b) Any consent, demand, direction, election, notice, order or request of the City mentioned herein shall be sufficiently evidenced by a Written Consent, Written Demand, Written Direction, Written Election, Written Notice, Written Order or Written Request of the City, and any resolution of the City may be evidenced to the Trustee by a Certified Resolution;

(c) The Trustee may consult with counsel (who may be counsel for the City, counsel for the Trustee or Bond Counsel) and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel;

(d) Whenever in the administration of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the City; and such Certificate of the City shall, in the absence of negligence or bad faith on the part of the Trustee, be full warrant to the Trustee for any action taken or suffered by it under the provisions of this Indenture upon the faith thereof; and

(e) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

Section 8.03. Trustee Not Responsible for Recitals. The recitals contained herein and in the Bonds shall be taken as the statements of the City, and the Trustee assumes no responsibility for the correctness of the same or for the correctness of the recitals in the Loan Agreement or the Regulatory Agreement. The Trustee shall have no responsibility with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the Bonds. The Trustee makes no representations as to the value or condition of any assets pledged or assigned as security for the Bonds, or as to the right, title or interest of the City therein, or as to the security provided thereby or by this Indenture, the Loan Agreement, the Deed of Trust or the other Loan Documents, or as to the compliance of the Project with the Act, or as to the tax-exempt status of the Bonds, or as to the technical or financial feasibility of the Project, or as to the validity or sufficiency of this Indenture as an instrument of the City or of the Bonds as obligations of the City. The Trustee shall not be accountable for the use or application by the City of any of the Bonds authenticated or delivered hereunder or of the use or application of the proceeds of such Bonds by the City or the Borrowers or their agents.

Section 8.04. Intervention by Trustee. The Trustee may intervene on behalf of the owners of the Bonds in any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of owners of the

Bonds and, subject to the provisions of Section 8.01(d), but shall do so only if requested in writing by the Bondowners.

Section 8.05. Moneys Received by Trustee to be Held in Trust. All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law or as otherwise provided herein. The Trustee shall be under no liability for interest on any moneys received by it hereunder except such as it may agree with the City to pay thereon.

Section 8.06. Compensation and Indemnification of Trustee and Agents.

(a) The Trustee shall be entitled to receive compensation from the Borrowers for its services as Trustee, as provided in Section 5.1(j) of the Loan Agreement, and shall be indemnified by the Borrowers as provided in Section 6.15 of the Loan Agreement and Section 8 of the Regulatory Agreement. The Trustee acknowledges and agrees that, unless otherwise specifically agreed to in writing by the City (in the City's sole and absolute discretion), the City shall not be responsible for the fees and expenses of the Trustee, and is providing no indemnification to the Trustee.

(b) If any property, other than cash, shall at any time be held by the Trustee subject to this Indenture, or any supplemental indenture, as security for the Bonds, the Trustee, if and to the extent authorized by a receivership, bankruptcy or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Indenture as such security for the Bonds, shall be entitled to but not obligated to make advances for the purpose of preserving such property or of discharging tax liens or other prior liens or encumbrances thereon. The rights of the Trustee to compensation for services and to payment or reimbursement for expenses, disbursements, liabilities and advances shall have and is hereby granted a lien and a security interest prior to the Bonds in respect of all property and funds held or collected by the Trustee as such, except funds held in trust by the Trustee in the Bond Fund, which amounts shall be held solely for the benefit of the Bondholders and used only for the payment of principal of and premium, if any, and interest on the Bonds. The Trustee's rights to immunities, indemnities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive the Trustee's resignation or removal and final payment of the Bonds.

Section 8.07. Qualifications of Trustee. There shall at all times be a trustee hereunder, which shall be a corporation, banking association or trust company, in each case having trust powers, doing business and having a principal corporate trust office in California and shall

(a) either (i) have a combined capital and surplus of at least \$100,000,000 and be subject to supervision or examination by federal or state authority, or (ii) be a wholly-owned subsidiary of a bank, trust company or bank holding company meeting on an aggregate basis the tests set out in clause (i); and

(b) be able to comply with the terms and conditions of this Indenture, including, without limitation, Section 8.11 and Exhibit D, and to comply with the terms of the Loan Agreement applicable thereto.

If such corporation, banking association, or trust company publishes reports of conditions at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 8.07 the combined capital and surplus of such corporation, banking association or trust company shall be deemed

to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 8.07, the Trustee shall resign immediately in the manner and with the effect specified in Section 8.08(b) below.

Section 8.08. Removal, Resignation and Appointment of Successor Trustee.

(a) *Removal of Trustee.* The City may remove the Trustee at any time, and shall remove the Trustee if at any time requested to do so by an instrument in writing signed by the Bondholder Representative or if at any time the Trustee shall cease to be eligible in accordance with Section 8.07 hereof, or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or any substantial portion thereof or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee and thereupon the City shall appoint a successor Trustee by an instrument in writing. Any successor Trustee appointed by the City under Section 8.08(c) of this Indenture shall be subject to the approval of the Bondholder Representative, which approval shall not unreasonably be withheld or delayed.

(b) *Resignation of Trustee.* The Trustee may at any time resign by giving written notice of such resignation by first class mail, postage prepaid, to the City, the Bondholder Representative, the Borrowers, the Bondowners and to the Servicer. Upon receiving such notice of resignation, the City shall appoint a successor Trustee by an instrument in writing. The Trustee shall not be relieved of its duties until such successor Trustee has accepted appointment, other than pursuant to court order.

(c) *Appointment of Successor Trustee.* Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon the acceptance of appointment of the successor Trustee; provided, however, that under any circumstances the successor Trustee shall be qualified as provided in subsection (a) of this Section 8.08. If no qualified successor Trustee shall have been appointed and have accepted appointment within forty-five (45) calendar days following giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or the Bondholder may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the City and its predecessor Trustee a written acceptance thereof, and to the predecessor Trustee an instrument indemnifying the predecessor Trustee for any costs or claims arising during the time the successor Trustee serves as Trustee hereunder, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the written request of the City or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance, including a quitclaim deed, and further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trust and conditions herein set forth. Upon request of the successor Trustee, the City shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the successor Trustee shall mail, by first class mail, postage prepaid, a notice of the

succession of such Trustee to the trusts hereunder to the Bondholders at the addresses shown on the registration books.

Section 8.09. Merger or Consolidation of Trustee. Any corporation or association into which the Trustee may be merged or with which it may be consolidated, or any corporation or association resulting from any merger or consolidation to which the Trustee shall be a party, or any corporation or association succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding, provided that such successor Trustee shall be eligible under the provisions of the first sentence of Section 8.07.

Section 8.10. Paying Agents. The Trustee, with the written approval of the City and the Bondowner, may appoint and at all times have one or more paying agents in such place or places as the Trustee may designate, for the payment of the principal of, and the interest (and premium, if any) on, the Bonds. It shall be the duty of the Trustee to make such arrangements with any such paying agent as may be necessary and feasible to assure, to the extent of the moneys held by the Trustee for such payment, the availability of funds for the prompt payment of the principal of and interest and premium, if any, on the Bonds presented at either place of payment. The paying agent initially appointed hereunder is the Trustee.

Section 8.11. City Contracting Provisions. The Trustee covenants and agrees to comply with the provisions set forth in Exhibit D to this Indenture.

Section 8.12. Requirements for Bondholder Representative Consent and Instruction to the Trustee. Notwithstanding anything to the contrary contained herein or in any of the other Bond Documents, except the provisions of Article IX hereof regarding the consent or approval of Bondholders to any supplement or amendment to this Indenture, the Loan Agreement, the Note or to any of the other Bond Documents, the following provisions shall govern and control with respect to any consents, determinations, elections, approvals, waivers, acceptances, satisfactions or expression of opinion of or the taking of any discretionary act or the giving of any instructions or the taking of actions by the Bondholder Representative or the other Bondholders hereunder or under any of the other Bond Documents.

(a) The City and Trustee acknowledge that, concurrently with the issuance of the Bonds, the Bond Purchasers have designated the Person identified in the definition of "Bondholder Representative" as the initial Bondholder Representative. The Bondholder Representative shall have the authority to bind the Bondholders for all purposes hereunder and under each of the other Bond Documents, including, without limitation, for purposes of exercising the rights of the Bondholder Representative under Section 12.16. The Trustee shall be entitled to rely upon the acts of any such Bondholder Representative as binding upon the Bondholder Representative and the Bondholders.

(b) The Bondholder Representative shall continue to act in such capacity and the Trustee shall continue to rely on the actions of such Bondholder Representative for all purposes hereunder and under each of the Bond Documents until such time as the Holders of a Majority Share designate a new Bondholder Representative.

Section 8.13. Loan Servicing. The City and the Trustee acknowledge that the Bondholder Representative shall have the right to appoint the Servicer to service and administer the Loan as set forth in the Servicing Agreement. The City and the Trustee shall not be responsible for monitoring the performance of the Servicer or for any acts or omissions of the Servicer. The Bondholder Representative may, in its sole discretion, terminate or replace the Servicer.

Section 8.14. Requests From Rating Agency. If the Bonds are at any time rated by a Rating Agency, the Trustee shall promptly, during such time, respond in writing, or in such other manner as may be reasonably requested, to requests from the Rating Agency for information deemed necessary by the Rating Agency in order to maintain the rating assigned thereby to the Bonds. The Trustee shall promptly furnish any such requested information in its possession to the Rating Agency. During any period the Bonds are rated by a nationally recognized Rating Agency, the Trustee shall provide to any such Rating Agency with Written Notice upon the occurrence of: (a) the resignation or removal of the Trustee; (b) acceptance of appointment as successor Trustee hereunder; (c) the redemption or Mandatory Tender and purchase of all Bonds; (d) a material change in this Indenture or the Loan Agreement; (e) the expiration, termination, reduction, modification or amendment of the Credit Facility; (f) the defeasance in whole of the Bonds; (g) any conversion of Interest Rate Modes; and (h) any declaration by the Trustee of an acceleration of the payment of the principal of and interest on the Bonds pursuant to this Indenture. The Trustee shall also notify any Rating Agency of any material changes to any of the documents to which the Trustee is a party, upon its receipt of written notification of any such changes.

Section 8.15. Concerning the Remarketing Agent. Any Remarketing Agent shall be appointed by the Borrowers with the consent of the City and the Credit Facility Provider, if any, or the Bondholder Representative (to the extent there is no Credit Facility Provider), and shall meet the qualifications set forth in this Section and Section 8.16. The Remarketing Agent shall designate to the Trustee its principal office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the City, the Credit Facility Provider, if any, the Borrowers and the Trustee. In addition, the Remarketing Agent will agree particularly to:

(a) compute the Weekly Interest Rate, Daily Interest Rate, Term Rate and Fixed Interest Rate, as applicable, and give notices of such computations to the Trustee on each applicable Interest Rate Determination Date, all in accordance with this Indenture; and

(b) keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the City, the Trustee, the Credit Facility Provider, if applicable, and the Borrowers at all reasonable times.

The Remarketing Agent shall be entitled to advice of legal counsel on any matter relating to the Remarketing Agent's obligations hereunder and shall be entitled to act upon the opinion of such counsel in the exercise of reasonable care in fulfilling such obligations.

Section 8.16. Qualifications of Remarketing Agent. The Remarketing Agent shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least thirty (30) days' notice of such resignation to the City, the Borrowers, the Bondholder Representative, the Credit Facility Provider, if any, and the Trustee. The Remarketing Agent may be removed at any time by the Borrowers, with the written consent of the Credit Facility Provider, if any, or, in the absence of a Credit Facility, the Bondholder Representative, which consent shall not be unreasonably withheld. To effect such removal, the Authorized Borrower Representative shall give at least thirty (30) days' notice of such removal to the Remarketing Agent, the City, the Credit Facility Provider, if any, the Bondholder Representative and the Trustee.

Upon any resignation of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any money and Bonds held by it in such capacity to its successor or, if there be no successor, to the Trustee.

In the event that the Remarketing Agent shall resign, or be removed or dissolved, or if the property or affairs of the Remarketing Agent shall be taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the Borrowers (with the consent of the City) shall not have appointed a successor Remarketing Agent, the Trustee, notwithstanding the provisions of the first paragraph of this Section, shall ipso facto be deemed to be the Remarketing Agent until the appointment by the Borrowers (with the consent of the City) of a successor Remarketing Agent; however, the Trustee shall not remarket Bonds or fix the interest rate for the Bonds, but shall be required only to implement the purchase of Bonds pursuant to a draw on the Credit Facility as provided for in Section 5.3.

The Trustee, within thirty (30) days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to the Rating Agency, if any, and to the registered Holders of the Bonds.

With respect to the Remarketing Agent, the term its "successors" shall include any entity to which its remarketing trading and sales activities are transferred.

Section 8.17. Tender Agent. (a) The Trustee, with the written consent of the Bondholder Representative, shall appoint the Tender Agent for the Bonds, subject to the conditions set forth in Section 8.18. The Trustee shall initially serve as the Tender Agent. The Tender Agent shall designate to the Trustee its principal office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the City, the Credit Facility Provider, if any, and the Trustee under which the Tender Agent acknowledges its qualifications and authority to act as Tender Agent under this Indenture and agrees, particularly, as follows:

(1) The Tender Agent shall, upon receipt of a tender notice from any Bondholder (or DTC Participant, with respect to a Bond in "book entry only" form), give prompt telephonic notice thereof to the Trustee, the Credit Facility Provider, if any, and the Remarketing Agent, specifying the amount of Bonds to be purchased and the Bond Purchase Date, and shall, not later than the following Business Day, confirm such telephonic notice in writing and deliver to the Remarketing Agent, the Credit Facility Provider and the Trustee and the a copy of such tender notice.

(2) On each Bond Purchase Date, the Tender Agent shall give the Remarketing Agent, the Credit Facility Provider, if any, and the Trustee telephonic notice, confirmed in writing by the following Business Day, of the principal amount of Bonds delivered pursuant to Section 11.01.

(3) The Tender Agent shall hold all Bonds delivered to it pursuant to Section 11.01 in trust for the benefit of the respective Bondholders which shall have so delivered such Bonds until such Bonds are required by this Indenture to be delivered to the respective purchasers thereof.

(4) The Tender Agent shall cancel all Bonds for which it has received written notice of remarketing from the Remarketing Agent and shall authenticate new Bonds in a like aggregate principal amount in the names and in the denominations set forth in the

written notice given to the Tender Agent by the Remarketing Agent pursuant to Section 11.01.

(5) The Tender Agent shall deliver Bonds to the purchasers thereof in accordance with Section 11.03 and shall establish the Bond Purchase Fund under Section 11.03(d). The Tender Agent shall remit the Purchase Price of tendered Bonds to the tendering Bondholders in accordance with Section 11.04.

(6) The Tender Agent shall deliver to the Trustee all tendered Bonds canceled.

(7) The Tender Agent shall keep such books and records as shall be consistent with prudent industry practice and shall make such books and records available for inspection by the City, the Trustee and the Credit Facility Provider at all reasonable times.

(8) The Tender Agent shall send to the Trustee a copy of its transfer journal evidencing all changes in registration of the Bonds within two (2) days of making such changes.

(b) The Tender Agent shall pay to tendering Bondholders the Purchase Price of any Bonds for which it has received a Tender Notice and which have not been remarketed pursuant to Section 11.03, but solely from the sources listed in Section 11.04; and the Tender Agent shall pay to tendering Bondholders the Purchase Price of any Bonds for which it has received a tender notice and which have been remarketed pursuant to Section 11.03, but solely from amounts received from the Remarketing Agent.

Section 8.18. Qualifications of Tender Agent. (a) The Tender Agent shall be a commercial bank, national banking association or trust company with a principal office, or with an affiliate with an office, in New York, New York; provided, however, that the Tender Agent, or an affiliate, shall only be required to have an office in New York, New York when the Bonds are physical, having a capitalization of at least \$10,000,000 and authorized by law to perform all the duties imposed upon it by this Indenture; provided that, in any event, the Trustee may serve as the Tender Agent so long as the Bonds are in "book entry only" form. The Tender Agent shall be an affiliate of the Trustee (unless the Tender Agent is the Trustee), unless the Trustee has no affiliate meeting the requirements of the first sentence of this Section, in which case the selection of the Tender Agent shall be an entity appointed by the Trustee with the written consent of the Credit Facility provider and the Borrowers.

(b) The Tender Agent may at any time resign and be discharged by giving at least sixty (60) days' notice to the Trustee, the City, the Borrowers, the Credit Facility Provider, if any, and the Bondholder Representative. The Tender Agent may be removed at any time, with the written consent of the Credit Facility Provider, if any, or in the absence of a Credit Facility, the Bondholder Representative, by an instrument signed by the Trustee and filed with the Tender Agent, the Remarketing Agent and the City.

(c) In the event of the resignation or removal of the Tender Agent, the Tender Agent shall pay over, assign and deliver any moneys and Bonds held by it in such capacity, and shall deliver all books and records relating thereto, to its successor or, if there be no successor, to the Trustee.

(d) In the event that the Trustee shall fail to appoint a Tender Agent hereunder, or in the event that the Tender Agent shall resign or be removed, or be dissolved, or if the property



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or affairs of the Tender Agent shall be taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the Trustee shall not have appointed its successor as Tender Agent, the Trustee, notwithstanding the provisions of the first paragraph of this Section 8.18, shall be deemed to be the Tender Agent for all purposes of this Indenture until the appointment by the Trustee of the Tender Agent or a successor Tender Agent, as the case may be, notwithstanding the fact that the Trustee may not meet the qualifications set forth in the first paragraph of this Section 8.18.

(e) Insofar as such provisions may be applicable, the Tender Agent shall enjoy the same protective provisions in the performance of its duties hereunder as are specified in Sections 8.01 and 8.03 with respect to the Trustee. The Tender Agent shall perform such duties, and only such duties, as are specifically set forth in this Indenture and the Loan Agreement and no implied covenants shall be read into this Indenture or the Loan Agreement against the Tender Agent.

## ARTICLE IX

### MODIFICATION OF INDENTURE; AMENDMENTS TO LOAN AGREEMENT AND BOND DOCUMENTS

Section 9.01. Supplemental Trust Indentures Without Bondholders Consent. The City and the Trustee from time to time may enter into a Supplemental Indenture, without the consent of any Bondholders, but with the consent of the Bondholder Representative and the Borrowers (to the extent such Supplemental Indenture materially affects the rights, duties, obligations or other interests of the Borrowers and provided that if the Borrowers are in default under the Bond Documents or the documents relating to the Loan, no consent of the Borrowers shall be required unless such Supplemental Indenture has a material adverse effect on the rights, duties, obligations or other interests of the Borrowers) as are necessary or desirable to:

(a) Cure any ambiguity or formal defect or omission or correct or supplement any provision herein that may be inconsistent with any other provision herein;

(b) Grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders or the Trustee;

(c) Amend any of the provisions of this Indenture to the extent required to maintain the exclusion from gross income of interest on the Bonds for federal income tax purposes;

(d) Add to the covenants and agreements of the City in this Indenture other covenants and agreements thereafter to be observed by the City or to surrender any right or power herein reserved to or conferred upon the City;

(e) Make any change herein that is required by any Rating Agency in order to obtain a rating by such Rating Agency on the Bonds;

(f) Amend, alter, modify or supplement this Indenture in a manner necessary or desirable in connection with either the use or maintenance of the Book-Entry System for the Bonds, or the issuance of certificated Bonds following the termination of the Book-Entry System for the Bonds;

(g) Make any other change, which is not materially adverse to the interests of the Bondholders;

(h) During a Daily Interest Rate Mode or a Weekly Interest Rate Mode, to modify, alter, amend or supplement this Indenture in any other respect, including amendments which would otherwise be described in Section 9.02, if notice of the proposed supplemental indenture is given to Bondholders (in the same manner as notices of redemption are given) at least fifteen (15) days before the effective date thereof and, on or before such effective date, the Bondholders have the right to demand purchase of their Bonds pursuant to Section 11.01;

(i) Modify, alter, amend or supplement this Indenture in connection with the delivery of any Credit Facility, or upon the occurrence of any Interest Rate Adjustment Date; or

- (j) Implement or modify any secondary market disclosure requirements.

The Trustee will provide the Borrowers with at least ten Business Days Written Notice of any proposed Supplemental Indenture. Immediately after the execution of any Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause a notice of the proposed execution of such Supplemental Indenture to be mailed, postage prepaid, to the Bondholders. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the designated Office of the Trustee for inspection by Bondholders. A failure on the part of the Trustee to mail the notice required by this Section shall not affect the validity of such Supplemental Indenture.

Notwithstanding the foregoing or the provisions of Section 9.02, the City and the Trustee may make amendments to Exhibit D hereto at any time, without any requirement for the consent of the Bondholder Representative, the Borrowers, the Servicer or the Bondowners thereto.

Section 9.02. Supplemental Trust Indentures With Bondholders' Consent. Except as otherwise provided in Section 9.01, the Bondholder Representative shall have the right, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the City and the Trustee, of each Supplemental Indenture as shall be deemed necessary or desirable by the City, the Borrowers or the Bondholder Representative for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing herein contained shall permit, or be construed as permitting, without the consent of the Bondholders of all of the Bonds affected by such Supplemental Indenture, (a) an extension in the payment of any Bond Obligation with respect to any Bond issued hereunder, or (b) a reduction in any Bond Obligation payable under or with respect to any Bond, or the rate of interest on any Bond, or (c) the creation of a lien upon or pledge of the money or other assets pledged to the payment of the Bonds hereunder, or the release of any such assets from the lien of this Indenture, or (d) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Indenture or to any amendment, change or modification to the Bond Documents as provided in this Article IX, or (f) an extension or reduction, in the payment of any other amount payable on or in connection with any Bond issued hereunder. Nothing herein contained, however, shall be construed as making necessary the approval of Bondholders (other than the Bondholder Representative) of the execution of any Supplemental Indenture authorized in Section 9.01.

If at any time the City or the Borrowers shall request the Trustee to enter into a Supplemental Indenture for any of the purposes of this Section, the Trustee shall, at the expense of the Borrowers, cause notice of the proposed execution of such Supplemental Indenture to be mailed, postage prepaid, to the Bondholders. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the designated Office of the Trustee for inspection by Bondholders. The Trustee shall not, however, be subject to any liability to any Bondholders by reason of its failure to mail the notice required by this Section 9.02, and any such failure shall not affect the validity of such Supplemental Indenture when consented to and approved as provided in this Section.

Whenever, at any time within one year after the date of mailing of such notice, the City delivers to the Trustee an instrument or instruments in writing purporting to be executed by the Bondholder Representative which instrument or instruments shall refer to the proposed Supplemental Indenture described in such notice and shall specifically consent to and approve the execution thereof in substantially the form of the copy thereof referred to in such notice,

thereupon but not otherwise, the Trustee may, subject to the provisions of the first paragraph of this Section 9.02, execute such Supplemental Indenture in substantially such form.

Subject to the provisions of the first paragraph of this Section 9.02, if, at the time of the execution of such supplemental trust indenture, the Bondholder Representative shall have consented to and approved the execution thereof as herein provided, no Bondholder shall have any right to object to the execution of such supplemental trust indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 9.03. Effect of Supplemental Indenture. Upon the execution of any supplemental indenture pursuant to the provisions of this Article IX, this Indenture shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the City, the Trustee, and all owners of Outstanding Bonds shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.04. Opinion of Counsel as to Supplemental Indenture. Subject to the provisions of Section 8.01 or 8.02, as applicable, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to the provisions of this Article IX is authorized and permitted by this Indenture.

Section 9.05. Notation of Modification on Bonds; Preparation of New Bonds. Bonds authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article IX may bear a notation, in form approved by the City as to any matter provided for in such supplemental indenture, and if such supplemental indenture shall so provide, new Bonds, so modified as to conform, in the opinion of the City, to any modification of this Indenture contained in any such supplemental indenture, may be prepared and executed by the City and authenticated by the Trustee and delivered without cost to the holders of the Bonds then Outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

Section 9.06. Amendments to Loan Agreement and Bond Documents Not Requiring Consent of Bondholders. The City shall not consent to any amendment, change or modification of the Loan Agreement or any other Bond Document (other than this Indenture) without the prior Written Consent of the Trustee, the Borrowers and the Bondholder Representative. The City, the Bondholder Representative and the Trustee may, without the consent of or notice to any other Bondholders, but only with the consent of the Borrowers, consent to any amendment, change or modification of any of the above-mentioned documents as are necessary or desirable to:

(a) Cure any ambiguity or formal defect or omission, correct or supplement any provision therein;

(b) Grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders or the Trustee;

(c) Amend any of the provisions therein to the extent required to maintain the exclusion from gross income of interest on the Bonds for federal income tax purposes;

(d) Add to the covenants and agreements of the City therein other covenants and agreements thereafter to be observed by the City or to surrender any right or power therein reserved to or conferred upon the City;

(e) Make any change that is required by any Rating Agency in order to obtain or maintain a rating by such Rating Agency on the Bonds;

(f) Amend, alter, modify or supplement such document in a manner required in connection with either the use or maintenance of the Book-Entry System for the Bonds, or the issuance of certificated Bonds following the termination of the Book-Entry System for the Bonds;

(g) Make any other change, which is not materially adverse to the interests of the Bondholders of the Bonds;

(h) During a Daily Interest Rate Mode or a Weekly Interest Rate Mode, to modify, alter, amend or supplement the Loan Agreement in any other respect including amendments which would otherwise be described in Section 9.07, if notice of the proposed amendments is given to Bondholders (in the same manner as notices of redemption are given) at least fifteen (15) days before the effective date thereof and, on or before such effective date, the Bondholders have the right to demand purchase of their Bonds pursuant to Section 11.01; or

(i) To modify, alter, amend or supplement the Loan Agreement in connection with the delivery of a Credit Facility to the extent such modification, alteration, amendment or supplement will not materially adversely affect the interest of the Bondholders, or upon the occurrence of any Interest Rate Adjustment Date.

Section 9.07. Amendments to Loan Agreement and Bond Documents Requiring Consent of Bondholders. Except for the amendments, changes or modifications corresponding to those provided in Section 9.06, neither the City nor the Trustee shall consent to any other amendment, change or modification of the Loan Agreement or the other Bond Documents (other than this Indenture) without the consent of the Bondholder Representative; provided, however, that nothing herein shall permit or be construed as permitting, without the consent of the Bondholders of all of the Bonds, (a) an extension of the time of payment of any amounts payable under the Note, the Loan Agreement or the Bonds, or (b) a reduction in the amount of any payment to be made with respect to the Note, the Loan Agreement, or the Bonds, or the rate of interest on the Note or any Bond, or (c) the creation of a lien upon or pledge of the money or other assets pledged to the payment of the Note, Loan Agreement or the Bonds hereunder, or the release of any such assets from the lien of this Indenture, or (d) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (e) a reduction in the aggregate principal amount of the Bonds required for consent to any such amendment, change or modification as provided herein, or (f) an extension or reduction in the payment of any other amount payable on or in connection with the Note, the Loan Agreement or any Bond issued hereunder. If at any time the City or the Borrowers request consent to any such proposed amendment, change or modification of any of such documents, other than an amendment, change, or modification permitted by Section 9.06, the Trustee shall, at the expense of the Borrowers, cause notice of such proposed amendment, change or modification to be mailed, postage prepaid, to Bondholders. Such notice shall briefly set forth the nature of such proposed amendment,

change or modification and shall state that copies of the amendment to such document embodying the same are on file at the designated Office of the Trustee for inspection by Bondholders. The Trustee shall not, however, be subject to any liability to any Bondholders by reason of its failure to mail the notice required by this Section, and any such failure shall not affect the validity of such supplement or amendment to such document when consented to and approved as provided in this Section.

Whenever, at any time within one year after the date of mailing such notice, the City delivers to the Trustee an instrument or instruments in writing purporting to be executed by the Bondholder Representative which instrument or instruments shall refer to the proposed amendment or supplement to the document described in such notice and shall specifically consent to and approve the execution thereof in substantially the form of the copy thereof referred to in such notice, thereupon but not otherwise, the City and/or the Trustee may execute such amendment in substantially the form on file as provided above, without liability or responsibility to any Bondholder of any Bond, whether or not such Bondholder has consented thereto.

Section 9.08. Amendments to the Credit Facility. The Trustee may, without the consent of, or notice to, any of the Bondholders enter into any amendment, change or modification of the Credit Facility (a) as may be required by the provisions of the Credit Facility, (b) to cure any formal defect, omission, inconsistency or ambiguity in the Credit Facility, (c) in any manner which is not prejudicial to the interests of the Bondholders (which shall be conclusively evidenced by an Opinion of Counsel delivered to the Trustee, the City and the Credit Facility Provider or by a written confirmation from the Rating Agency of the then existing rating on the Bonds delivered to the Trustee, the City and the Credit Facility Provider) or (d) as required by the Rating Agency to maintain the then current rating on the Bonds.

## ARTICLE X

### DEFEASANCE

Section 10.01. Discharge of Indenture. Whenever all Bond Obligations have been fully paid and the Bonds are no longer outstanding, and all fees, costs and expenses due and payable hereunder and under the other Bond Documents have been paid in full, then (a) this Indenture and the lien, rights and interests created hereby shall cease, determine and become null and void (except as to any surviving rights of transfer or exchange of the Bonds herein or therein provided for) and (b) the Trustee shall execute and deliver a termination statement and such instruments of satisfaction and discharge as may be necessary and pay, assign, transfer and deliver all cash and securities then held by it hereunder as a part of the Trust Estate in accordance with Section 10.05 hereof.

The City or the Borrowers may at any time surrender to the Trustee for cancellation by it any Bonds previously authenticated and delivered which the City or the Borrowers lawfully may have acquired in any manner whatsoever, and such Bonds upon such surrender and cancellation shall be deemed to be paid and retired.

Section 10.02. Trust for Payment of Debt Service. (a) The City shall, at the Written Request of the Borrowers, and at the expense of the Borrowers, on any date provide for the payment of any of the Bonds by establishing an escrow (at the sole expense of the Borrowers) for such purpose with the Trustee and depositing therein cash and/or Government Obligations that (assuming the due and punctual payment of the principal of and interest on such Government Obligations, or; in connection with a defeasance for a period of no more than 35 days, Investment Securities described in clause (h) of the definition thereof or otherwise approved in writing by the Bondholder Representative (the "Special Defeasance Obligations"), but without reinvestment) will provide funds sufficient to pay the principal, premium, if any, and interest on the Bonds at the Defeasance Rate which may apply to the Bonds as the same become due and payable until the maturity or redemption of the Bonds; provided, however, that:

(i) Such Government Obligations or Special Defeasance Obligations must not be subject to redemption prior to their respective maturities at the option of the City of such Government Obligations or Special Defeasance Obligations,

(ii) If the Bonds are to be redeemed prior to their maturity, either (i) the Trustee shall receive evidence that irrevocable written notice of such redemption has been given in accordance with the provisions of this Indenture and the Bonds or (ii) the City shall confer on the Trustee irrevocable written authority for the giving of such notice on behalf of the City,

(iii) Prior to the establishment of such escrow the City, the Trustee and the Bondholder Representative must receive (1) an Opinion of Counsel stating in effect that upon the occurrence of an Act of Bankruptcy of either of the Borrowers, its respective Borrower Controlling Entity or any Guarantor, money and investments in such trust will not be recoverable from the Trustee or the Bondholders under provisions of the Bankruptcy Code relating to voidable preferences and (2) an Bond Counsel No Adverse Effect Opinion, and

(iv) Except in the case of a gross-funded cash defeasance, prior to the establishment of such escrow, the Trustee must receive a report by an independent certified public accountant stating in effect that the principal and interest payments on

the Government Obligations in such escrow, without reinvestment, together with the cash initially deposited therein, will be sufficient to make the required payments from such trust.

(b) Notwithstanding subsection (a) above, if the Borrowers deposit funds with the Trustee sufficient to effectuate an optional redemption of the Bonds pursuant to Section 4.01(a) one Business Day prior to the date on which the Bonds are to be redeemed, and all other fees, costs and expenses due and payable hereunder and under the other Bond Documents have been paid in full, then:

(i) The Trustee shall hold such funds in trust for the benefit of Bondholders,

(ii) The conditions set forth in clauses (ii) – (iv) in subsection (a) above shall not apply, and

(iii) The Trustee shall release on such day any liens created by this Indenture and any collateral held in the Trust Estate for the benefit of Bondholders (other than such deposited funds) including, but not limited to, the Deed of Trust, pursuant to the provisions of Section 10.01.

(c) Cash and/or Government Obligations or Special Defeasance Obligations deposited with the Trustee pursuant to this Section shall not be a part of the Trust Estate but shall constitute a separate, irrevocable trust fund for the benefit of the Bondholders to be paid from such fund. Such cash and the principal and interest payable on such Government Obligations or Special Defeasance Obligations shall be applied by the Trustee first to the payment of Bond principal, premium, if any, and interest on the Bonds and any other amounts due under this Indenture; any amounts not needed for such purpose shall be remitted to the Borrowers.

(d) The obligations hereunder relating to paying agent, registrar and transfer agent functions and the provisions of Section 5.06 and Article VIII shall survive defeasance.

Section 10.03. Special Defeasance. The provisions of Section 10.02(a)(iii) and (iv) above shall not apply to any defeasance when:

(a) Ten (10) Business Days prior to the date set for redemption of all the Bonds, the Borrowers give Written Notice to the City, the Trustee and the Bondholder Representative of their intention to prepay the Note and redeem of the Bonds on a date ten (10) Business Days after the filing of such Written Notice;

(b) The Borrowers deposit with the Trustee on the date seven (7) Business Days prior to the date fixed for redemption sufficient funds, to which may be invested only in Special Defeasance Obligations, in an amount sufficient, without need for reinvestment, to pay the Redemption Price of the Bonds and all other amounts due and owing under this Indenture on the date fixed for redemption; and

(c) At the time the Borrowers deposit the funds described in subparagraph (ii) above, the Borrowers instruct the Trustee to give irrevocable notice of redemption of the Bonds on the Redemption Date.

Section 10.04. Payment of Bonds after Discharge of Indenture. Notwithstanding any provisions of this Indenture, any moneys deposited with the Trustee or any paying agent in trust for the payment of the Bond Obligations with regard to any Bonds remaining unclaimed



for two (2) years after the principal of all the Outstanding Bonds has become due and payable (whether at maturity or upon call for redemption or by declaration as provided in this Indenture), shall then be paid to the City, and the holders of such Bonds shall thereafter be entitled to look only to the City for payment thereof, and only to the extent of the amount so paid to the City, and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease. In the event of the payment of any such moneys to the City as aforesaid, the holders of the Bonds in respect of which such moneys were deposited shall thereafter be deemed to be unsecured creditors of the City for amounts equivalent to the respective amounts deposited for the payment of such Bonds and so paid to the City (without interest thereon).

Section 10.05. Final Balances. Notwithstanding the person or persons that are the Registered Holders of the Bonds, any moneys remaining in any fund or account created under this Indenture after payment or provision for payment in full of all Bond Obligations, all fees, charges and expenses of the City, the Trustee, the Credit Facility Provider, the Swap Counterparty, the Rebate Analyst, the Servicer, the Bondholder Representative and the Bond Purchasers the payment of all parties to whom moneys are owed pursuant to Section 5.01(c) and all other amounts required to be paid hereunder or under the Bond Documents, and after payment of any other amounts due under any Servicing Agreement relating to the Loan, shall be paid to the Borrowers.

## ARTICLE XI

### OPTIONAL AND MANDATORY TENDERS

#### Section 11.01. Optional Tenders.

(a) While the Bonds bear interest at the Daily Interest Rate or Weekly Interest Rate, on each Interest Rate Adjustment Date, each Holder of Bonds shall have the option to tender for purchase at 100% of the principal amount thereof plus accrued interest, if any, all of the Bonds owned by such Holder, or such lesser principal amount thereof (in denominations of \$100,000 or integral multiples of \$5,000 in excess thereof, provided that the untendered portion of any Bond shall be \$100,000 or more in principal amount) as such Holder may specify in accordance with the terms, conditions and limitations set forth below. The purchase price for each such Bond, or portion thereof, shall be payable in lawful money of the United States of America by check or draft, shall equal the principal amount, or such portion thereof, to be purchased and accrued interest, if any, and shall be paid in full on the applicable Bond Purchase Date by check or wire transfer at the direction of the Holder but only upon delivery and surrender of such Bond to the Trustee.

(b) To exercise the option granted in Section 11.01(a), the Holder shall (i) no later than seven (7) calendar days (or the next preceding Business Day if such seventh day is not a Business Day) prior to the Bond Purchase Date in the case of Bonds in the Weekly Interest Rate Mode and no later than 8:00 a.m., New York, New York time, on the Bond Purchase Date in the case of Bonds in the Daily Interest Rate Mode, give notice to the Trustee by telecopy or in writing, with a copy to the Remarketing Agent, which states (A) the name and address of the Holder, (B) the principal amount, CUSIP number and Bond numbers of the Bonds to be purchased, (C) that such Bonds are to be purchased on the related Bond Purchase Date pursuant to the terms hereof, and (D) that such notice is irrevocable; and (ii) deliver to the Office of the Trustee the Bonds to be purchased in proper form, or in the case of a Beneficial Owner, no later than 10:00 a.m. New York, New York time on the Bond Purchase Date, cause the transfer of the Beneficial Owner's interest on the records of the Depository, in accordance with the instructions of the Trustee. Upon receipt, the Trustee shall immediately forward such notice to the Remarketing Agent.

(c) Any Bonds for which a notice of tender has been given by the Holder shall be deemed to be tendered for remarketing notwithstanding any failure of delivery of such Bonds to the Trustee. Subject to the right of such non-delivering Holders to receive the Purchase Price of such Bonds and interest accrued thereon to the day preceding the applicable Bond Purchase Date, such Bonds shall be null and void and the Trustee shall authenticate and deliver new Bonds in replacement thereof pursuant to the remarketing of such Bonds or the pledge of such Bonds to the Credit Facility Provider in lieu of remarketing such Bonds as described in Section 11.05. Any Beneficial Owners who have elected to tender their Beneficial Ownership interests pursuant to Section 11.01(b) shall be obligated to transfer such Beneficial Ownership interests on the record of the Securities Depository.

(d) Upon the giving of the notice pursuant to Section 11.01(a) with respect to Bonds or portions of Bonds, the Holder's tender of such Bonds or portions thereof shall be irrevocable. If less than all of a Bond so delivered or deemed tendered is to be purchased, the Trustee shall, pursuant to this Indenture, authenticate one or more Bonds in exchange therefor, registered in the name of such Holder, having the aggregate principal amount being retained by such Holder, and shall deliver such authenticated Bond or Bonds to such Holder.

(e) While tendered Bonds are in the custody of the Trustee pending purchase pursuant hereto, the tendering Holders thereof shall be deemed the Owners thereof for all purposes, and interest accruing on tendered Bonds through the day preceding the applicable Bond Purchase Date is to be paid from the Bond Fund as if such Bonds had not been tendered for purchase.

(f) Notwithstanding anything herein to the contrary, any Bond or portion thereof tendered under this Section 11.01 will not be purchased if such Bond or portion thereof matures or is redeemed on or prior to the applicable Bond Purchase Date.

#### Section 11.02. Mandatory Tenders.

(a) Holders of Bonds shall be required to tender their Bonds to the Trustee on any Mandatory Tender Date. Any Bond required to be tendered on a Mandatory Tender Date that is not tendered as of such date shall be deemed to have been tendered to the Trustee on such date and shall thereafter cease to bear interest and no longer be considered to be Outstanding hereunder subject to the right of the Holders of such Bonds to receive the Purchase Price of such Bonds and interest accrued thereon to the Bond Purchase Date.

(b) At least 25 days prior to any Mandatory Tender Date, the Trustee shall notify the Remarketing Agent and the Holders of all Outstanding Bonds by first-class mail of the Mandatory Tender Date and advise the Holders that all Bonds shall be subject to mandatory tender on such Mandatory Tender Date from the sources available pursuant to Section 11.03, at a Purchase Price equal to the principal amount thereof plus accrued interest, if any.

#### Section 11.03. Remarketing of Bonds.

(a) Upon the receipt by the Remarketing Agent of any notice from the Trustee that any Bondholder (or Participant or Indirect Participant or any Beneficial Owner making an election pursuant to Section 11.01(b) with respect to any Bonds in "book entry only" form) has delivered a notice pursuant to Section 11.01(b), or upon receipt of any notice from the Trustee of Bonds deemed to have been tendered in accordance with the provisions of Section 11.02, the Remarketing Agent shall offer for sale and use its best efforts to market the Bonds referred to in such notice from a Bondholder or such notice from the Trustee at a price of par plus accrued interest to the Bond Purchase Date, in accordance with the Remarketing Agreement; provided, however, that the Remarketing Agent shall not knowingly offer for sale or sell such Bonds to the City, either of the Borrowers or any Borrower Controlling Entity, member or any guarantor of a Borrower. The Remarketing Agent has no obligation to remarket Bonds registered in the name of a Borrower, the Credit Facility Provider or any Borrower Controlling Entity, member or guarantor of a Borrower unless the Credit Facility shall be in full force and effect after such remarketing.

(b) No Bond or portion thereof tendered pursuant to Section 11.01 or Section 11.02 shall be remarketed at a price less than 100% of the principal amount thereof plus accrued interest, if any. The Remarketing Agent shall have the right to purchase any Bond tendered or deemed tendered pursuant to Section 11.01 or Section 11.02 at 100% of the principal amount thereof, and to thereafter sell such Bond. Any such purchase shall constitute a remarketing hereunder.

(c) By 4:00 p.m., New York, New York time on the Business Day immediately prior to each Bond Purchase Date (other than in the case of the exercise of an optional tender right when the Bonds are in Daily Interest Rate Mode) or by 10:00 a.m., New York, New York time on the Bond Purchase Date (in the case of the exercise of an optional tender right when the Bonds

are in Daily Interest Rate Mode), the Remarketing Agent shall give telephonic notice, promptly confirmed in writing and transmitted by facsimile, to the Trustee, the Borrowers and the Credit Facility Provider stating the principal amount of Bonds that have been remarketed successfully, specifying the names, addresses, and taxpayer identification numbers of the purchasers of, and the principal amount and denominations of, such Bonds, if any, for which it has found purchasers as of such date, and the Purchase Price at which the Bonds are to be sold (which shall be par plus accrued interest to the Bond Purchase Date).

(d) The Remarketing Agent shall deliver to the Trustee, no later than 10:30 a.m., New York, New York time, on the Bond Purchase Date, in immediately available funds, the remarketing proceeds to the extent the Bonds have been successfully remarketed. Upon receipt by the Trustee of such amount from the Remarketing Agent, the Trustee, shall transfer the registered ownership of the Bonds to the respective new purchasers and deliver such Bonds to such purchasers upon deposit of the Purchase Price with the Trustee. The Trustee shall hold all Bonds delivered to it in trust for the benefit of the respective Bondholders which shall have so delivered such Bonds until money representing the Purchase Price of such Bonds shall have been delivered to or for the account of or to the order of such Bondholders. The Trustee shall remit the Purchase Price of such Bonds to the tendering Bondholder or Bondholders entitled to the same as provided in Sections 11.01 or 11.02. In the event that the Remarketing Agent or any purchaser that shall have been identified by the Remarketing Agent to the Trustee shall fail to pay the Purchase Price for any Bonds prior to 10:30 a.m., New York, New York time, on the Bond Purchase Date, the Trustee shall not be obligated to accept such amount after such time. The Trustee will immediately notify by telephone, the Credit Facility Provider, the Borrowers and the Remarketing Agent of any such failure to receive the Purchase Price for such Bonds. On the Bond Purchase Date, the Trustee shall notify by telephone, the Credit Facility Provider, the Borrowers and the Remarketing Agent of the amount of funds held by the Trustee as of 10:30 a.m., New York, New York time, on such date constituting the Purchase Price of the Bonds remarketed by the Remarketing Agent, promptly confirmed in writing and transmitted by facsimile. The Trustee shall hold all money delivered to it for the purchase of Bonds (including any remarketing proceeds, proceeds from the Borrowers pursuant to Section 11.04(b)(ii) hereof or proceeds of draws on the Credit Facility) in trust in a non-commingled account to be known as the "Bond Purchase Fund" for the benefit of the person or entity which shall have so delivered such money until the Bonds purchased with such money shall have been delivered to or for the account of such person. Such money shall be held uninvited except as directed in writing by the Credit Facility Provider and then only in Investment Securities of the type described in clauses (a) and (b) of the definition thereof. The City and the Borrowers shall not have any right, title or interest in such money.

(e) If all of the Bonds shall have been called for redemption during any period when the Bonds bear interest at the Daily Interest Rate or Weekly Interest Rate, the Bonds may continue to be remarketed until the redemption date, provided the purchasers of such Bonds are given notice of the call for redemption prior to purchase of any Bonds.

(f) Anything herein to the contrary notwithstanding, no Bonds shall be purchased or remarketed pursuant to this Section if an Event of Default hereunder shall have occurred and be continuing and would not be cured as a result of such tender and remarketing of the Bonds or following a declaration of acceleration of the Bonds; nor shall any Bond be purchased pursuant to this Section if such Bond is registered in the name of the City, a Borrower or the Credit Facility Provider, or known by the Trustee (the Trustee shall have no duty to inquire as to any such nominees) to be registered in the name of any Borrower Controlling Entity, member or guarantor of a Borrower or any nominee of the City, a Borrower, the Credit Facility Provider, or any such Borrower Controlling Entity, member or guarantor of a Borrower unless the Credit Facility will be in full force and effect after such purchase with respect to such Bonds after such

purchase, nor shall any Bond be purchased if, following a failed remarketing pursuant to the provisions of this Section, the Trustee does not have sufficient proceeds to pay the Purchase Price to tendering Holders of the Bonds, taking into account draws from any incoming or outgoing Credit Facility and Eligible Funds received from the Borrowers pursuant to Section 11.04(b). In the event of such failed remarketing, the Bonds shall remain Outstanding in the Interest Rate Mode in effect immediately preceding the related Mandatory Tender Date.

Section 11.04. Trustee to Pay Purchase Price.

(a) In the event that either the Trustee shall not have received notice of successful remarketing of tendered Bonds by the day that is one (1) Business Day prior to the Bond Purchase Date (other than in the case of the exercise of an optional tender when the Bonds are in the Daily Interest Rate Mode) or by 10:00 a.m. New York, New York time on the Bond Purchase Date (in the case of the exercise of an optional tender when the Bonds are in the Daily Interest Rate Mode), or the proceeds of remarketing of any tendered Bond have not been received by the Trustee on or prior to 10:30 a.m., New York, New York time on the Bond Purchase Date, the Trustee shall, within the time required by the terms of the Credit Facility, draw on the then existing Credit Facility in an amount sufficient to enable the Trustee to pay the Purchase Price of each such Bond when due.

(b) On each Bond Purchase Date, the Borrowers shall pay or cause to be paid to the Trustee the Purchase Price of any Bonds tendered pursuant to, and in accordance with, Section 11.01 or Section 11.02 and which have not been remarketed pursuant to this Section 11.04, but only from (i) money obtained by the Trustee pursuant to the Credit Facility then in effect to enable the Trustee to pay the Purchase Price of such tendered Bonds, which amounts shall be received by the Trustee at or before 12:00 p.m., New York, New York time, on the Bond Purchase Date; and (ii) Eligible Funds from the Borrowers to the extent that money obtained pursuant to (i) above are insufficient on any date to pay the Purchase Price of tendered Bonds.

(c) Upon receipt of such Purchase Price and upon receipt of the Bonds tendered for purchase pursuant to Section 11.01 or Section 11.02, the Trustee shall pay such Purchase Price to the Registered Holders thereof; provided, that if the Purchase Price was theretofore paid from the proceeds of a draw on the Credit Facility, the Trustee shall pay such amount to the Credit Facility Provider. Any amounts drawn under the Credit Facility to purchase Bonds shall be used solely for such purpose. Any Bonds so purchased with amounts drawn under the Credit Facility by the Trustee shall be purchased for the account of the Borrowers and registered as provided in the Reimbursement Agreement. Amounts drawn under the Credit Facility that are not used to purchase Bonds pursuant to this Section 11.04 shall be remitted by the Tender Agent or the Trustee to the Credit Facility Provider promptly upon payment of the Purchase Price of the Bonds.

(d) Except with respect to any Bonds purchased in lieu of redemption or acceleration pursuant to the provisions hereof, the City, the Borrowers or any Borrower Controlling Entity, member or any guarantor of a Borrower may not purchase any Bonds, from the Remarketing Agent or otherwise.

Section 11.05. Delivery of Purchased Bonds and Remarketing of Pledged Bonds.

Bonds purchased by the Trustee on a Bond Purchase Date shall be delivered as follows:

(a) Bonds sold by the Remarketing Agent pursuant to Section 11.03 shall be delivered to the purchasers thereof. The Remarketing Agent and the Trustee shall take such actions as may be necessary to reflect the transfer of any beneficial ownership

interests to the purchasers thereof in the Book-Entry System maintained by the Securities Depository.

(b) Bonds not sold by the Remarketing Agent pursuant to Section 11.03 shall be held as Pledged Bonds by the Trustee, as agent for the Credit Facility Provider or the Borrowers, as the case may be, subject to any instructions from the Credit Facility Provider or the Borrowers to deliver the Pledged Bonds to the Credit Facility Provider or the Borrowers and to the pledge in favor of the Credit Facility Provider or the Borrowers created pursuant to the provisions of the Reimbursement Agreement. Any Pledged Bonds held by the Trustee shall not be released or transferred except to the Credit Facility Provider, a Borrower or to the Remarketing Agent at the written direction of the Credit Facility Provider or a Borrower as provided in the last paragraph of this Section. Bonds not sold by the Remarketing Agent shall be deemed purchased by the Credit Facility Provider upon application of the proceeds of a draw on the Credit Facility to pay the Purchase Price thereof or by a Borrower upon receipt and application of Eligible Funds from the Borrowers pursuant to Section 11.04(b)(ii) to pay the Purchase Price thereof.

(c) The Remarketing Agent shall use its best efforts to remarket Pledged Bonds. Upon the remarketing of the Pledged Bonds, the Remarketing Agent shall notify the Credit Facility Provider, the Trustee and the Borrowers of such remarketing, the name, address and social security or other tax identification number of the purchaser, and the date (the "Pledged Bonds Remarketing Date") that the purchaser shall deliver the Purchase Price to the Trustee by 11:00 a.m., New York, New York time. The Pledged Bonds Remarketing Date shall be at least two Business Days after the date the notice of the purchase is given by the Remarketing Agent.

(d) No later than 11:00 a.m., New York, New York time, on each Pledged Bonds Remarketing Date, the Remarketing Agent shall pay to the Trustee, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Pledged Bonds on such Pledged Bonds Remarketing Date; provided, that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Pledged Bonds to pay the Purchase Price plus accrued interest, if any, to the Trustee in immediately available funds. The proceeds from the remarketing of the Pledged Bonds shall be segregated from any funds of the Borrowers or the City and shall in no case be considered to be or be assets of the Borrowers or the City. The Trustee shall deposit such funds in the Bond Purchase Fund and shall pay the Credit Facility Provider such funds by wire transfer on the Pledged Bonds Remarketing Date. The Credit Facility Provider shall deliver any Pledged Bonds held by the Credit Facility Provider (or evidence of book entry interests in such Pledged Bonds) which have been so remarketed to the Trustee against payment on the Pledged Bonds Remarketing Date. With respect to any Pledged Bonds not so held by the Credit Facility Provider, the Credit Facility Provider shall direct the Trustee to release such Pledged Bonds which have been so remarketed to the Remarketing Agent against payment therefor on the Pledged Bonds Remarketing Date. Notwithstanding the foregoing, no Pledged Bonds shall be released until the Trustee shall have received evidence that the Credit Facility Provider has reinstated amounts available to be drawn on the Credit Facility to an amount not less than 100% of the outstanding principal of, plus 35 days' interest (or such larger days' interest if the Rating Agency of the Bonds so requires) on the Bonds computed at the Maximum Rate. On the Pledged Bonds Remarketing Date, the Trustee shall authenticate and deliver, if applicable, new Bonds in replacement of the remarketed Pledged Bonds to the purchasers thereof.

(e) The Pledged Bonds are pledged to the Credit Facility Provider or the Borrowers, as applicable, and are secured by the Trust Estate.

## ARTICLE XII

### MISCELLANEOUS

Section 12.01. Successors of City. All the covenants, stipulations, promises and agreements contained in this Indenture, by or on behalf of the City, shall bind and inure to the benefit of its successors and assigns, whether so expressed or not. If any of the powers or duties of the City shall hereafter be transferred by any law of the State of California, and if such transfer shall relate to any matter or thing permitted or required to be done under this Indenture by the City, then the body or official who shall succeed to such powers or duties shall act and be obligated in the place and stead of the City as in this Indenture provided.

Section 12.02. Limitation of Rights to Parties and Bondholders. Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the City, the Trustee, the Borrowers, the Bondholder Representative and the Bondowners any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the City, the Trustee, the Borrowers, the Bondholder Representative and the Bondowners. The Bondowner is an intended third party beneficiary of this Indenture.

Section 12.03. Waiver of Notice. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 12.04. Destruction of Bonds. Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the City of any Bonds, the Trustee may, in lieu of such cancellation and delivery, destroy such Bonds and deliver a certificate of such destruction to the City.

Section 12.05. Separability of Invalid Provisions. In case any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, but this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

Section 12.06. Notices. (a) It shall be sufficient service of any notice, request, demand or other paper on the City, the Trustee, the Tender Agent, the Bondholder Representative, the Investor Limited Partner or the Borrowers if the same shall, except as otherwise provided herein, be duly mailed by first class mail, postage prepaid, or given by telephone or telecopier and confirmed by such mail, and to the other parties and addressed as follows:

The City:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 316  
San Francisco, California 94102  
Attention: City Controller  
Fax: (415) 554-7466



with copies to (none of which copies shall constitute notice to the City):

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 140  
San Francisco, California 94102  
Attention: City Treasurer  
Fax: (415) 554-4672

City and County of San Francisco  
Mayor's Office of Housing and Community  
Development  
One South Van Ness, 5th Floor  
San Francisco, California 94103  
Attention: Director  
Fax: (415) 701-5501

Office of the City Attorney  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 234  
San Francisco, California 94102  
Attention: Finance Team  
Fax: (415) 554-4755

City and County of San Francisco  
Office of Public Finance  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 336  
San Francisco, California 94102  
Attention: Finance Team  
Fax: (415) 554-4864

The Trustee or the Tender Agent:

U.S. Bank National Association  
One California Street, Suite 1000  
Mail Code - SF-CA-SFCT  
San Francisco, California 94111  
Attention: Andrew Fung, Vice President  
Fax: (415) 677-3769

If to the Borrowers:

to each of the Affordable Borrower and the Market Borrower prior to the Release Date, and thereafter only to the Market Borrower, unless the notice is otherwise intended to be to or include the Affordable Borrower, and then to (or also to) the Affordable Borrower

If to the Affordable Borrower:

500 Folsom, L.P.  
c/o Essex 500 Folsom, LLC  
1100 Park Place, Suite 200  
San Mateo, California 94403  
Attention: Legal Department (Jordan Ritter and  
Anika Fischer)  
Fax: (650) 655-7811

and to: 500 Folsom, L.P.  
c/o Essex 500 Folsom, LLC  
1100 Park Place, Suite 200  
San Mateo, California 94403  
Attention: Mark Mikl  
Fax: (650) 655-7810

and to: BRIDGE 500 Folsom LLC  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, California 94108  
Attention: Ann Silverberg, Executive Vice  
President  
Fax: (415) 495-4898

and to: BRIDGE 500 Folsom LLC  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, California 94108  
Attention: Rebecca V. Hlebasko, General Counsel  
Fax: (415) 495-4898

and with a copy to (which shall  
not constitute notice to the  
Affordable Borrower): Chernove & Associates, Inc.  
16027 Ventura Boulevard., Suite 660  
Encino, California 91436  
Attention: Sheldon B. Chernove, Esq.  
Fax: (818) 377-8102

and with a copy (which shall not  
constitute notice to the  
Affordable Borrower) to: Wells Fargo Affordable Housing Community  
Development Corporation  
MAC D1053-170  
301 S. College Street  
Charlotte, NC 28288  
Attention: Director of Tax Credit Asset  
Management

and with a copy (which shall not  
constitute notice to the  
Affordable Borrower) to: Sidley Austin LLP  
555 West Fifth Street, Suite 4000  
Los Angeles, CA 90013  
Attention: Cynthia Christian, Esq.

If to the Market Borrower: Block 9 MRU Residential, LLC  
1100 Park Place, Suite 200  
San Mateo, CA 94403  
Attention: Legal Department (Jordan Ritter and  
Anika Fischer)  
Fax: (650) 655-7811

and to: Block 9 MRU Residential, LLC  
1100 Park Place, Suite 200  
San Mateo, CA 94403  
Attention: Mark Mikl  
Fax: (650) 655-7810

and with a copy to (which shall not constitute notice to the Market Borrower): Chernove & Associates, Inc.  
16027 Ventura Boulevard., Suite 660  
Encino, California 91436  
Attention: Sheldon B. Chernove, Esq.  
Fax: (818) 377-8102

If to the Bondholder Representative: Citibank, N.A.  
390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Transaction Management Group  
Deal ID# 23410  
Fax: (212) 723-8209

and to: Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager / Asset Manager  
Deal ID# 23410  
Fax: (805) 557-0924

Prior to the Conversion Date, with a copy to: Citibank, N.A.  
390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Account Specialist  
Deal ID# 23410  
Fax: (212) 723-8209

Following the Conversion Date, with a copy to: Citibank, N.A.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Deal ID # 23410  
Fax: (215) 328-0305

and a copy of any notices of default sent to: Citibank, N.A.  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Deal ID # 23410  
Fax: (646) 291-5754

The City, the Trustee, the Tender Agent, the Bondholder Representative, the Borrowers and the Investor Limited Partner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Copies of all notices provided to Borrowers under the Loan Documents shall also be provided to the Investor Limited Partner at the address provided in this Section 12.06.

(b) Where this Indenture provides for giving of notice to the Trustee, such notice shall also be given to the Bondholder Representative and the Servicer. Failure to provide any such duplicate notice pursuant to the foregoing sentence, or any defect in any such duplicate notice so provided, shall not be treated as a failure to give the primary notice or affect the validity thereof or the effectiveness of any action taken pursuant thereto. Any notice required by this Indenture to be delivered by the City shall be delivered by it to the Trustee, which shall be responsible for delivering it to the other parties entitled to receive such notice. If such notice is timely provided by the City to the Trustee, it shall be deemed to be timely given to all parties entitled to receive such notice.

Section 12.07. Authorized Representatives. Whenever under the provisions of this Indenture the approval of the City or the Borrowers is required for any action, and whenever the City or the Borrowers are required to deliver any notice or other writing, such approval or such notice or other writing shall be given, respectively, on behalf of the City by the Authorized City Representative or on behalf of the Borrowers by the Authorized Borrower Representative, and the City, the Trustee and the Borrowers shall be authorized to act on any such approval or notice or other writing and neither party hereto nor the Borrowers shall have any complaint against the others as a result of any such action taken.

Section 12.08. Evidence of Rights of Bondholders. (a) Any request, consent or other instrument required by this Indenture to be signed and executed by Bondholders may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Bondholders in person or by agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the ownership of any Bonds, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the City if made in the manner provided in this Section 12.08.

(b) The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument or writing acknowledged to him the execution thereof.

(c) The ownership of the Bonds shall be proved by the Bond Register maintained pursuant to Section 2.06 hereof. The fact and the date of execution of any request, consent or other instrument and the amount and distinguishing numbers of Bonds held by the person so executing such request, consent or other instrument may also be proved in any other manner which the Trustee may deem sufficient. The Trustee may nevertheless, in its discretion, require further proof in cases where it may deem further proof desirable.

(d) Any request, consent or vote of the holder of any Bond shall bind every future holder of the same Bond and the holder of any Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the City in pursuance of such request, consent or vote.

(e) In determining whether the holders of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned by the City or by any other direct or indirect obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the City or any other direct or indirect obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such

determination, provided that, for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver, only Bonds which the Trustee, as applicable, knows to be so owned shall be disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this subsection (d) if the pledgee shall establish to the satisfaction of the Trustee and the City the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the City or any other direct or indirect obligor on the Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Solely for purposes of the limitation expressed in this paragraph (d), the Borrowers shall be deemed to be an indirect obligor on the Bonds.

(f) In lieu of obtaining any demand, request, direction, consent or waiver in writing, the Trustee may call and hold a meeting of the Bondholders upon such notice and in accordance with such rules and regulations as the Trustee considers fair and reasonable for the purpose of obtaining any such action.

Section 12.09. Waiver of Personal Liability. No officer, official, agent, member of the Board of Supervisors or employee of the City, and no officer, official, agent or employee of the State of California or any department, board or agency of any of the foregoing, shall be individually or personally liable for the payment of the principal of or premium or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such person from the performance of any official duty provided by law or by this Indenture.

Section 12.10. Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the date provided therefor in this Indenture and, in the case of any payment, no interest shall accrue for the period from and after such date.

Section 12.11. Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same instrument.

Section 12.12. Governing Law, Venue. The formation, interpretation and performance of this Indenture shall be governed by the laws of the State of California. Venue for all litigation arising from or in connection with the Bonds or this Indenture shall be in San Francisco, California.

Section 12.13. Successors. Whenever in this Indenture either the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 12.14. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

Section 12.15. Assignment or Delegation by Trustee. The services to be performed by Trustee are personal in character and neither this Indenture nor any duties or obligations of the Trustee hereunder may be assigned or delegated by the Trustee unless first approved by City by written instrument executed and approved in the same manner as this Indenture.

Section 12.16. Bondholder Representative; Trustee's, Credit Facility Provider's and Servicer's Consents. (a) The entity designated in the definition of "Bondholder Representative" hereto shall be the initial Bondholder Representative. The Bondholder Representative may provide written notice to the Trustee designating particular individuals authorized to act as its representative in certain capacities, or to execute any consent, waiver, approval, direction or other instrument on behalf of the Bondholder Representative, provided that such designation is in writing, and any notice to the Trustee of such designation may be amended or rescinded by the Bondholder Representative at any time, provided that any such amendment or rescission shall be in writing. The Bondholder Representative may be removed and a successor appointed by a Written Notice given by the Holders of a Majority Share to the Trustee and the Borrowers. The removal and reappointment shall be effective immediately upon receipt of such notice by the Trustee. The Holders of a Majority Share may appoint any Person to act as Bondholder Representative, including, without limitation, the Servicer. If, for any reason, no Bondholder Representative shall then be appointed, all references to Bondholder Representative herein and in the other Bond Documents shall be deemed to refer to the Holders of a Majority Share.

(b) In the event that for any reason, no Credit Facility Provider shall then exist, all references to Credit Facility Provider herein shall be treated as if null and void and of no effect.

(c) Whenever pursuant to this Indenture or any other Bond Document, the Bondholder Representative or the Credit Facility Provider, if any, exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Bondholder Representative or the Credit Facility Provider, if any, the decision of the Bondholder Representative or the Credit Facility Provider, if any, to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein or therein provided) be in the sole discretion of the Bondholder Representative or the Credit Facility Provider and shall be final and conclusive.

Whenever this Indenture or any Bond Document requires the consent, determination, election, approval, waiver, acceptance, satisfaction or expression of opinion of, or the taking of any discretionary act by, the Trustee (as expressly provided or as assignee of the City) or the Servicer (all of the foregoing being referred to as "Consent" in this Section 12.16), (i) the right, power, privilege and option of the Trustee to withhold or grant its Consent shall be deemed to be the right, power, privilege and option of the Bondholder Representative to withhold or grant such Consent, and the Trustee shall have no responsibility for any action or inaction with respect thereto, except as may be otherwise set forth in this Indenture, (ii) the right, power, privilege and options of the Servicer to withhold or grant its Consent may, in the Bondholder Representative's discretion with respect to any individual Consent, be deemed to be the right, power, privilege and option of the Bondholder Representative to withhold or grant such Consent and, in such event, the Servicer shall have no responsibility for any action or inaction with respect thereto, except as may be otherwise set forth in this Indenture, and (iii) the right, power, privilege and options of the Trustee, Bondholder Representative and the Servicer to withhold or grant their Consent may, in the Credit Facility Provider's (if any) discretion with respect to any individual Consent, be deemed to be the right, power, privilege and option of the Credit Facility Provider (if any) to withhold or grant such Consent and, in such event, the Trustee, the Servicer, and the Bondholder Representative shall have no responsibility for any action or inaction with respect thereto, except as may be otherwise set forth in this Indenture.

The Trustee and the Servicer shall not grant or withhold any Consent until it has obtained the consent of the Bondholder Representative or the Credit Facility Provider, if applicable, and the Trustee and the Servicer shall grant or withhold any Consent as so directed by the Bondholder Representative.

(d) The Bondholder Representative and the Credit Facility Provider, if any, are third party beneficiaries hereof, and accordingly will be entitled to rely on the rights granted to them herein. No implied covenants, fiduciary duties or other Liabilities shall attach to the Bondholder Representative.

Section 12.17. Preservation and Inspection of Documents; Electronic Transactions. All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession so long as there are any Bonds Outstanding and for six years thereafter and shall be subject at all reasonable times and upon reasonable prior notice to the inspection of the City, any other Trustee, the Bondholder Representative and any Bondholder and their agents and their representatives, any of whom may make copies thereof.

The transactions described in this Indenture may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

## ARTICLE XIII

### SUBORDINATE BONDS

#### Section 13.01. Conversion Between Senior and Subordinate Bonds.

(a) Senior Bonds shall be converted to Subordinate Bonds and Subordinate Bonds shall be converted to Senior Bonds to the extent Senior Bonds are purchased in lieu of redemption pursuant to Section 4.05 and upon the election of the Bondholder Representative in its sole discretion transmitted in writing in the form attached as EXHIBIT F to the Trustee.

(b) In connection with such conversion, the Registered Holder of the Senior Bonds shall transmit the definitive Senior Bonds or Subordinate Bonds, as applicable; to the Trustee which shall then cancel such Senior Bonds or Subordinate Bonds, as applicable, and authenticate Senior Bonds or Subordinate Bonds, as applicable, in the amounts stipulated in Written Direction provided to the Trustee by the Bondholder Representative in the form attached as EXHIBIT F.

(c) Subordinate Bonds shall be subject and subordinate in all respects to the Bonds (other than Subordinate Bonds) and the Loan (including payments, if any, under the Note in respect of Bonds other than Subordinate Bonds) and to all terms, covenants, conditions and liens of the Bond Documents affecting the Bonds (other than Subordinate Bonds) and/or the Loan and the Loan Agreement. Payment of the indebtedness evidenced by the Subordinate Bonds is and shall be subject and subordinate in all respects, including in respect of the right to payment, to the prior payment in full of all amounts due and payable in respect of the (i) Bonds (other than Subordinate Bonds), and (ii) the Loan (including payments under the Note in respect of Bonds other than Subordinate Bonds). The owners of Subordinate Bonds expressly subject and subordinate all of their right, title and interest in and to the Subordinate Bonds in all respects to (1) the Trust Estate, (2) the payment in full of the Bonds other than Subordinate Bonds, (3) the payment in full of the Loan, and (4) the liens of the Deed of Trust and of the Trust Estate. In addition, notwithstanding anything contained in this Indenture, the Loan Agreement, the Note or the Deed of Trust to the contrary, the City and the Holders of the Subordinate Bonds agree, and the Trustee acknowledges, that:

(i) The sole source of funds available to the City for the payment of the principal of, premium, if any, and interest on, the Subordinate Bonds shall be the payments, if any, made by the Borrowers under the Note in respect of the Subordinate Bonds, which payments, if any, may be made only out of, and to the extent of, excess cash flow (as defined in Section 13.01(f));

(ii) Payments, if any, of the principal of, and interest on, the Note in respect of Subordinate Bonds may be made only after all current and past due obligations (A) in respect of the Bonds (other than Subordinate Bonds) and the Loan (including payments under the Note in respect of Bonds other than Subordinate Bonds), (B) under the Loan Agreement, and (C) under the Swap Agreement, have been paid in full;

(iii) The obligation of the Borrowers to make payments, if any, on the Note in respect of Subordinate Bonds is and shall be subject and subordinate in all respects to the obligations of the Borrowers to pay all amounts due (A) in respect of the Bonds (other than Subordinate Bonds) and the Loan (including payments under the Note in respect of Bonds other than Subordinate Bonds), whether under the Bond Documents or otherwise, (B) under the Loan Agreement, and (C) under the Swap Agreement;



(iv) So long as any amounts remain currently due and owing (A) in respect of the Bonds (other than Subordinate Bonds) and the Loan, whether under the Bond Documents or otherwise, (B) under the Loan Agreement, or (C) under the Swap Agreement (as confirmed in the latter case by the Servicer), the Trustee shall not be entitled to make any payment in respect of Subordinate Bonds, notwithstanding a default or any arrearage in the payment of any amounts owing under or with respect to any Subordinate Bonds; and

(v) Unpaid interest on Subordinate Bonds stemming from insufficient Excess Cash Flow shall not accrue, and shall be deemed canceled.

Failure to make any payment in respect of Subordinate Bonds shall not constitute an Event of Default. The occurrence of any default with respect to the Bonds (other than Subordinate Bonds) or the Loan or under this Indenture or the Loan Agreement with respect to the Bonds (other than Subordinate Bonds) or to the Loan shall constitute a default under this Indenture or the Loan Agreement with respect to all Subordinate Bonds.

(d) The Trustee shall not, after the Trustee receives a Default Notice (as defined in Section 13.01(f)) or otherwise acquires knowledge of a default or an Event of Default by a Borrower with respect to the Bonds (other than Subordinate Bonds), the Loan or under any Bond Document, make any payments in respect of Subordinate Bonds unless and until such default or Event of Default has been cured or waived by the Bondholder Representative and the other Bondholders (other than the Holders of Subordinate Bonds). Upon the occurrence of any Event of Default attributable to any default or Event of Default (under and as defined in any Bond Document), all Subordinate Bonds shall, at the Written Direction of the Trustee, be cancelled and deemed satisfied for all purposes.

(e) Bonds purchased in lieu of redemption pursuant to Section 6.9 which become Subordinate Bonds registered in the name of the Borrowers or their designee shall, if they remain registered in the name of the Borrowers or their designee, be cancelled by the Trustee in accordance with the provisions of Section 2.09 on the fifth (5th) anniversary date of the registration of such Bonds in the name of the Borrowers or their designee.

(f) For purposes of this Section 13.01, the following terms shall have the meanings set forth below:

"Excess Cash Flow" means, for any period, the excess of the gross revenues generated by the Deed of Trust Property from all sources for such period, excluding, however, the proceeds of casualty insurance (other than rent loss insurance); condemnation proceeds, capital contributions, loans or advances, rental income prepaid more than one month in advance and other unusual or extraordinary cash items the use and application of which is restricted or encumbered by the Loan Documents or the Swap Agreement over the sum of: (i) all debt service, including interest expense and the amortization of all principal coming due in respect of the Loan and the Bonds (other than Subordinate Bonds) during such period (whether by maturity, mandatory sinking fund payment, redemption, acceleration or otherwise), and all debt service on subordinate debt encumbering the Deed of Trust Property and permitted by the Bondholder Representative, provided that such subordinate debt is not payable solely out of excess available cash flow, (ii) all payments coming due from Borrowers under the Swap Agreement during such period, (iii) operating, overhead, ownership and other expenditures (whether ordinary, capital or extraordinary expenditures (other than those paid from the proceeds of insurance or out of escrows or reserves to the extent not required to be replenished)), including, but not limited to, all direct and indirect costs,

charges and expenses of owning, operating, maintaining and repairing the Deed of Trust Property, further including, without limitation, insurance, taxes, assessments and other public charges and all expenditures (capital or otherwise) required for the proper maintenance of the Deed of Trust Property in accordance with the Loan Documents (exclusive, at the option of the Borrowers, of (A) payments made to affiliates in excess of market norms, (B) developer fees (however characterized) and (C) property management fees in excess of 4% of gross rent), (iv) all other obligations under the Loan Documents, including, but not limited to, the payment of all fees, costs and expenses and other expenditures (whether for capital expenditures, repairs or replacements (other than those paid from the proceeds of insurance or out of escrows or reserves to the extent not required to be replenished)), and the funding of any reserves or escrows required under the Loan Documents (including, but not limited to, replacement reserves, reserves for taxes, insurance, water and sewer charges and other similar impositions), operating reserves and interest rate hedge reserves, (v) all other obligations of the Borrowers under the Swap Agreement (including, without limitation payments due upon early termination of the Swap Agreement) and the Bond Documents (other than in respect of the Subordinate Bonds), and (vi) all other amounts that the Borrowers are required to pay or set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

"Default Notice" means a written notice from the Servicer or the Trustee to the Borrowers stating that a Default or Event of Default by the Borrowers has occurred with respect to the Bonds (other than Subordinate Bonds), the Loan or under any Bond Document.

IN WITNESS WHEREOF, the CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA has caused this Indenture to be signed in its name and U.S. BANK NATIONAL ASSOCIATION, in token of its acceptance of the duties of the Trustee hereunder has caused this Indenture to be signed in its name, all as of the day and year first above written.

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Olson Lee,  
*Director, Mayor's Office of Housing and  
Community Development*

Approved as to form:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Heidi J. Gewertz,  
*Deputy City Attorney*

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Andrew Fung,  
*Vice President*

[Signature Page to Indenture of Trust – Lower 500 Folsom Residential]

**EXHIBIT A**  
**FORM OF BOND**

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THIS BOND MAY BE OWNED ONLY BY A QUALIFIED INSTITUTIONAL BUYER OR OTHER ENTITY AUTHORIZED UNDER THE TERMS OF THE INDENTURE, AND THE HOLDER HEREOF, BY THE ACCEPTANCE OF THIS BOND (A) REPRESENTS THAT IT IS A QUALIFIED INSTITUTIONAL BUYER OR OTHER ENTITY AUTHORIZED UNDER THE INDENTURE TO BE AN OWNER OF BONDS AND (B) ACKNOWLEDGES THAT IT CAN ONLY TRANSFER THIS BOND TO ANOTHER QUALIFIED INSTITUTIONAL BUYER OR OTHER ENTITY AUTHORIZED UNDER THE TERMS OF THE INDENTURE.

**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA**  
**MULTIFAMILY HOUSING REVENUE BOND, SERIES 2016E**  
**(LOWER 500 FOLSOM RESIDENTIAL)**

No. R-1

\$ \_\_\_\_\_

Dated Date	Maturity Date	CUSIP No.
December __, 2016	_____, 1, 2051	_____

REGISTERED OWNER:

PRINCIPAL AMOUNT:

DOLLARS

The CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation and chartered city and county of the State of California, duly organized and existing under its charter and the laws of the State of California (herein called the "City"), for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption or tender), on the Maturity Date specified above, the Principal Amount specified above, and to pay interest thereon, at the Bond Coupon Rate (as defined in the Indenture defined below), payable on each Bond Payment Date, commencing January 1, 2017, to the person whose name appears on the registration books as of the Record Date and to pay any other amounts as specified in the Indenture; provided however, that if the Bond Payment Date is not also a Business Day, then payment need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if such payment was made on originally scheduled payment date. All capitalized terms not otherwise defined in this Bond shall have the meaning ascribed thereto in the Indenture (as hereinafter defined).

Principal of, and premium, if any, on this Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of U.S. Bank National Association (the "Trustee" and "Bond Registrar"), or its successor.

This is a draw-down Bond. The principal amount of this Bond as of any given date shall be equal to (i) the total amount of principal advanced by the applicable Bond Purchaser, less (ii) any payment of principal on the Bonds received by the Holders thereof. Principal amounts advanced by the applicable Bond Purchaser shall be noted on the principal draw-down schedule attached to this Bond and acknowledged thereon by the Trustee.

Interest on this Bond shall be calculated on the basis of a 360 day year comprised of twelve 30 day months, or a year of 365 or 366 days, as applicable, for the actual number of days elapsed, as provided in the Indenture. The amount of interest payable on the Bonds on each Bond Payment Date shall be the amount of interest accrued thereon from the preceding Bond Payment Date (or such other date as described in the Indenture) to, but not including, the Bond Payment Date on which interest is being paid. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee.

This Bond is one of a duly authorized issue of bonds of the City designated as "City and County of San Francisco, California Multifamily Housing Revenue Bonds, Series 2016E (Lower 500 Folsom Residential)" (the "Bonds"), in the aggregate principal amount of up to \$132,000,000, authorized to be issued pursuant to and in accordance with Section 9.107 of the Charter of the City, Article I of Chapter 43 of the San Francisco Administrative Code of the City and, to the extent applicable, Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code (collectively, the "Act"), and issued under and secured by an Indenture of Trust, dated as of December 1, 2016 (the "Indenture"), between the City and U.S. Bank National Association, as trustee (the "Trustee"). Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights thereunder of the owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities the Trustee, and of the rights and obligations of the City thereunder, to all of the provisions of which Indenture the holder of this Bond, by acceptance hereof, assents and agrees. The proceeds of the Bonds will be used to make a loan to Block 9 MRU Residential LLC and 500 Folsom, L.P., a California limited partnership (collectively, the "Borrowers") pursuant to a Loan Agreement, dated as of December 1, 2016 (the "Loan Agreement") between the City and the Borrowers, and under the terms of a Construction Funding Agreement, dated as of December 1, 2016, among the Borrowers, the Trustee, Citibank, N.A., as Bondholder Representative, and Citibank, N.A., as Servicer, all in order to finance the construction of a residential rental project in the City.

NONE OF THE CITY, THE MEMBERS OF ITS BOARD OF SUPERVISORS, THE OFFICERS, OFFICIALS, EMPLOYEES, ATTORNEYS OR AGENTS OF THE CITY, OR ANY PERSON EXECUTING THE BONDS IS LIABLE PERSONALLY ON THE BONDS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THEIR ISSUANCE. THE BONDS ARE LIMITED OBLIGATIONS OF THE CITY, PAYABLE ONLY AS PROVIDED IN THE INDENTURE, AND ARE NOT A GENERAL OBLIGATION, NOR ARE THEY SECURED BY A PLEDGE OF THE FAITH AND CREDIT, OF THE CITY OR THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER ARE THEY LIABLE ON THE BONDS, NOR ARE THE BONDS PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE CITY EXPRESSLY PLEDGED FOR THE PAYMENT THEREOF UNDER THE INDENTURE. THE BONDS DO NOT CONSTITUTE INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION. THE ISSUANCE OF THE BONDS SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY OR THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF TO LEVY OR TO PLEDGE ANY FORM OF

TAXATION WHATEVER THEREFOR OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT OR FUTURE OFFICER, OFFICIAL, DIRECTOR, EMPLOYEE, AGENT, OR MEMBER OF THE BOARD OF SUPERVISORS OF THE CITY, OR OF ANY SUCCESSOR THERETO, AS SUCH, EITHER DIRECTLY OR THROUGH THE CITY OR ANY SUCCESSOR TO THE CITY, UNDER ANY RULE OF LAW OR EQUITY, STATUTE OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, OFFICIALS, DIRECTORS, EMPLOYEES, AGENTS OR MEMBERS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND.

The Bonds are limited obligations of the City and, as and to the extent set forth in the Indenture, are payable solely from, and secured by a pledge of and lien on, the Pledged Revenues (as that term is defined in the Indenture), consisting primarily of amounts paid by the Borrowers pursuant to the Loan Agreement. Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the City and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional tender rights and provisions, mandatory and optional redemption rights and tender provisions, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By purchase of this Bond, the registered owner hereof authorizes the Bondholder Representative to exercise such rights and remedies afforded to it as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations (including those in Section 2.05(b) of the Indenture) provided in the Indenture, including, without limitation, the delivery of an Investor Letter to the extent required under the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The City and the Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, and the City and the Trustee shall not be affected by any notice to the contrary.

The schedule of drawings attached as Exhibit A hereto shall be used by the Trustee to record the payment of the purchase price of the Bonds from time to time (such purchase price to be paid from time to time by the owners of the Bonds as provided in the Indenture), which shall evidence the principal amount of the Bonds purchased by the owners of the Bonds from time to time. The Trustee shall credit any advanced funds toward the purchase price of the Bonds on the schedule of drawings attached hereto as Exhibit A. The total amount outstanding under the Bonds may not exceed \$132,000,000 at any time and no portion of the purchase price therefor shall be accepted after the first to occur of (i) the Conversion Date (as defined in the Loan Agreement), or (ii) December 1, 2019.

The Indenture contains provisions permitting the City and the Trustee to execute supplemental indentures adding provisions to, or changing or eliminating any of the provisions of, the Indenture, subject to the limitations set forth in the Indenture.

The City hereby certifies that all of the conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of California (including the Act).

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

In the event of any conflict between the terms of this Bond and the terms of the Indenture, the terms of the Indenture shall control.

Unless this Bond is presented by an authorized representative of The Depository Trust Company to the Trustee for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the City or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the City and County of San Francisco has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its Clerk, all as of the Closing Date, and the manual or facsimile seal of the City and County of San Francisco to be impressed or reproduced hereon.

CITY AND COUNTY OF SAN  
FRANCISCO

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

[SEAL]

ATTEST:

\_\_\_\_\_  
*Clerk of the Board of Supervisors*

FORM OF CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within mentioned Indenture and issued under the provisions of the within mentioned Indenture.

Date of Authentication: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
*Authorized Signatory*



FORM OF ASSIGNMENT

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

---

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney,  
to transfer the same on the registration books of the Trustee with full power of substitution in  
the premises.

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

Signatures Guaranteed:

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Note: Signature(s) must be guaranteed by an eligible guarantor.

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Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

**SCHEDULE OF DRAWINGS**

<u>Purchase Amount</u>	<u>Purchase Date</u>	<u>Outstanding Principal</u>	<u>Signature of Trustee</u>
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EXHIBIT B-1

FORM OF WRITTEN REQUISITION  
OF THE BORROWERS – CONSTRUCTION FUND

Draw # \_\_\_\_\_

To: U.S. Bank National Association, as trustee (the "Trustee") under that certain Indenture of Trust, dated as of December 1, 2016 (the "Indenture"), between the Trustee and the City and County of San Francisco, California, pursuant to which the City and County of San Francisco, California Multifamily Housing Revenue Bonds, Series 2016E (Lower 500 Folsom Residential) (the "Bonds") were issued.

1. You are requested to disburse funds from the Construction Fund pursuant to Section 3.03 of the Indenture in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference. An invoice or other appropriate evidence of the obligations described on Schedule I is attached hereto.

2. The undersigned certifies that:

(i) there has been received no notice (A) of any lien, right to lien or attachment upon, or claim affecting the right of the payee to receive payment of, any of the moneys payable under such requisition to any of the persons, firms or corporations named therein, and (B) that any materials, supplies or equipment covered by such requisition are subject to any lien or security interest, or if any notice of any such lien, attachment, claim or security interest has been received, such lien, attachment, claim or security interest has been released, discharged, insured or bonded over or will be released, discharged, insured or bonded over upon payment of the requisition;

(ii) such requisition contains no items representing payment on account of any percentage entitled to be retained at the date of the certificate;

(iii) the obligation stated on the requisition has been incurred in or about the construction, development or equipping of the Project, each item is a proper charge against such Account of the Construction Fund, and the obligation has not been the basis for a prior requisition that has been paid;

(iv) such requisition contains no items representing any Issuance Costs or any other amount constituting an issuance cost under Section 147(g) of the Code;

(v) not less than 97% of the sum of: (A) the amounts requisitioned by this Requisition to be funded with the proceeds of the Bonds plus (B) all amounts allocated to the Bonds previously disbursed from the Tax-Exempt Proceeds Account of the Construction Fund, have been or will be applied by the Borrowers to pay Qualified Project Costs;

(vi) as of the date hereof no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under this Indenture or under the Loan Agreement or, to our knowledge, an Event of Default under the Indenture; and

(vii) attached as Schedule I to this Requisition is an exhibit that allocates the amount requested hereby among the Bonds and funds provided to the Trustee from the

Borrowers, and that provides the Trustee with the information required for compliance with Section 3.03(j) of the Indenture and as described in Section 3.4(b) of the Loan Agreement.

[3. The undersigned has provided you with this Requisition an endorsement to the Deed of Trust title insurance policy delivered to the Trustee at closing increasing the affirmative mechanics and materialmen's lien coverage to an amount equal to the aggregate amount paid out of the Construction Fund including the amount to be paid under the requisitions then being submitted, together with any lien waivers or reports with respect to title to the Project required for the issuance of such endorsement.]

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

500 Folsom, L.P.,  
a California limited partnership

By: Essex 500 Folsom, LLC,  
a Delaware limited liability company,  
its Administrative General Partner

By: Essex Portfolio, L.P.,  
a California limited partnership  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation  
its General Partner

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

By: BRIDGE 500 Folsom LLC,  
a California limited liability company,  
its Managing General Partner

By: MCB Family Housing, Inc.,  
a California nonprofit public benefit  
corporation,  
its sole member

By: \_\_\_\_\_  
Ann Silverberg, Vice President

Block 9 MRU Residential, LLC,  
a Delaware limited liability company

By: Essex Portfolio, L.P.,  
a California limited partnership,  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its General Partner

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

Approved by:

Citibank, N.A., as Servicer

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

EXHIBIT B-2

FORM OF WRITTEN REQUISITION  
OF THE BORROWERS – COSTS OF ISSUANCE FUND

To: U.S. Bank National Association, as trustee (the "Trustee") under that certain Indenture of Trust, dated as of December 1, 2016 (the "Indenture"), between the Trustee and the City and County of San Francisco, California.

1. You are requested to disburse funds from the Costs of Issuance Fund pursuant to Section 5.05 of the Indenture in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference. An invoice or other appropriate evidence of the obligations described on Schedule I is attached hereto.

2. The undersigned certifies that as of the date hereof no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under this Indenture or under the Loan Agreement or, to our knowledge, an Event of Default under the Indenture.

Dated:

500 Folsom, L.P.,  
a California limited partnership

By: Essex 500 Folsom, LLC,  
a Delaware limited liability company,  
its Administrative General Partner

By: Essex Portfolio, L.P.,  
a California limited partnership  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation  
its General Partner

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

By: BRIDGE 500 Folsom LLC,  
a California limited liability company,  
its Managing General Partner

By: MCB Family Housing, Inc.,  
a California nonprofit public benefit  
corporation,  
its sole member

By: \_\_\_\_\_  
Ann Silverberg, Vice President

Block 9 MRU Residential, LLC,  
a Delaware limited liability company

By: Essex Portfolio, L.P.,  
a California limited partnership,  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its General Partner

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

## EXHIBIT C

### FORM OF INVESTOR LETTER

[Date]

City and County of San Francisco  
San Francisco, California

U.S. Bank National Association, as Trustee  
San Francisco, California

\$132,000,000

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2016E  
(LOWER 500 FOLSOM RESIDENTIAL)

Ladies and Gentlemen:

The undersigned (the "Investor") hereby represents and warrants to you as follows:

1. The Investor proposes to purchase the above-captioned bonds (the "Bonds") issued pursuant to that certain Indenture of Trust, dated as of December 1, 2016 (the "Indenture"), by and between the City and County of San Francisco, California (the "City") and U.S. Bank National Association, as Trustee (the "Trustee"). The Investor understands that the Bonds are not rated by any securities rating agency, and will only be sold to the Investor with the above-addressed parties relying upon the representations and warranties of the Investor set forth herein. The Investor acknowledges that no offering document has been prepared in connection with the issuance and sale of the Bonds. The Investor has requested and received all materials which the Investor has deemed relevant in connection with its purchase of the Bonds (the "Offering Information"). The Investor has reviewed the documents executed in conjunction with the issuance of the Bonds, including, without limitation, the Indenture and the Loan Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Indenture.

2. The Investor hereby waives the requirement of any "due diligence investigation or inquiry" by the City, by each official of the City, by each employee of the City, by each member of the Board of Supervisors of the City, and by counsel to the City, the Trustee, counsel to the Trustee and Bond Counsel in connection with the authorization, execution and delivery of the Bonds and Investor's purchase of the Bonds. The Investor recognizes and agrees that the City, by each official of the City, each employee of the City, each member of the Board of Supervisors of the City, counsel to the City, the Trustee, counsel to the Trustee and Bond Counsel have made no representations or statements (expressed or implied) with respect to the accuracy or completeness of any of the materials reviewed by the Investor in connection with the Investor's purchase of the Bonds. In making an investment decision, the Investor is relying upon its own examination of the City, the Borrowers, the Project and the terms of the offering.

3. The Investor has been provided an opportunity to ask questions of, and the Investor has received answers from, representatives of the City and the Borrowers regarding the terms and conditions of the Bonds, and the Investor has obtained all additional information requested by it in connection with the Bonds.



4. The Investor has sufficient knowledge and experience in business and financial matters in general, and investments such as the Bonds in particular, and is capable of evaluating the merits and risks involved in an investment in the Bonds. The Investor is able to bear the economic risk of, and an entire loss of, an investment in the Bonds.

5. The Investor is purchasing the Bonds solely for its own account for investment purposes and has no present intention to resell or distribute the Bonds, provided that the Investor reserves the right to transfer or dispose of the Bonds, at any time, and from time to time, in its complete and sole discretion, subject, however, to the restrictions described in paragraphs 6 through 8 of this Letter. The Investor hereby agrees that the Bonds may only be transferred in accordance with the Indenture, including Section 2.05 thereof.

6. The Investor agrees that it will only offer, sell, pledge, transfer or exchange the Bonds (or any legal or beneficial interest therein) (i) in accordance with an available exemption from the registration requirements of Section 5 of the Securities Act of 1933, as amended (the "1933 Act"), (ii) in accordance with any applicable state securities laws, and (iii) in accordance with the transfer restrictions set forth in the Bonds and the Indenture.

7. The Investor is a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act of 1933, as amended ("Rule 144A"), an "accredited investor" as defined in Rule 501 promulgated under the Securities Act of 1933, as amended, or other permitted transferee under Section 2.05 of the Indenture; it understands that the Bonds may be offered, resold or transferred only to a person who is a "qualified institutional buyer," an "accredited investor," or another entity permitted under the Indenture.

8. If the Investor sells the Bonds (or any legal or beneficial interest therein), the Investor or its agent will, to the extent required by the Indenture, obtain for the benefit of each of you from any subsequent purchaser an Investor Letter in the form of this Letter or such other materials as are required by the Bonds and the Indenture to effect such sale and purchase. The Investor understands and agrees that the Trustee is not authorized to register any transfer of the Bonds prior to receipt of such Investor Letter, to the extent required by the Indenture.

9. None of the Trustee, Bond Counsel, counsel to the City, the City, its Board of Supervisors, or any of its employees or agents will have any responsibility to the Investor for the accuracy or completeness of information obtained by the Purchaser from any source regarding the Project, the City, the Borrowers or their financial conditions or regarding the Bonds, the provisions for payment thereof, or the sufficiency of any security therefor, including, without limitation, any information specifically provided by any of such parties contained in the Offering Information. The Investor acknowledges that, as between Investor and all of such parties: (a) the Investor has assumed responsibility for obtaining such information and making such review as the Investor has deemed necessary or desirable in connection with its decision to purchase the Bonds and (b) the Offering Information and any additional information specifically requested from the City or the Borrowers and provided to the Investor prior to closing constitute all the information and review, with the investigation made by Investor (including specifically the Investor's investigation of the City, the Project and the Borrowers) prior to its purchase of the Bonds, that Investor has deemed necessary or desirable in connection with its decision to purchase the Bonds.

10. The Investor understands that (a) the Bonds have not been registered with any federal or state securities agency or commission, and (b) no credit rating has been sought or obtained with respect to the Bonds, and the Investor acknowledges that the Bonds are a speculative investment and that there is a high degree of risk in such investment.

11. The Investor acknowledges that the Bonds are a limited obligation of the City, payable solely from the revenues or other amounts provided by or at the direction of the Borrowers, and is not an obligation payable from the general revenues or other funds of the City, the State of California or any political subdivision of the State of California. The Investor acknowledges that the City is issuing the Bonds on a conduit, nonrecourse basis, and has no continuing obligations with respect thereto except as expressly set forth in the Indenture.

12. The Investor has the authority to purchase the Bonds and to execute this letter and other documents and instruments required to be executed by the Investor in connection with its purchase of the Bonds. The individual who is executing this letter on behalf of the undersigned is a duly appointed, qualified and acting officer of the Investor and authorized to cause the Investor to make the certifications, representations and warranties contained herein by the execution of this letter on behalf of the Investor.

13. The Investor acknowledges that no offering document has been produced in connection with the issuance or sale of the Bonds.

14. The Investor agrees to indemnify and hold harmless the City, the City's officials, officers, employees and agents, and the members of the governing board of the City with respect to any claim asserted against any of them that is based upon the Investor's sale, transfer or other disposition of its interests in the Bonds in violation of the provisions hereof or of the Indenture or any inaccuracy in any statement made by the Investor in this letter.

15. The Investor acknowledges that interest on a Bond is not excludable from gross income of the owner thereof for federal income tax purposes for any period during which such Bond is owned by a person who is a substantial user of the facilities financed by the Bonds or any person considered to be related to such substantial user (within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended).

The Investor acknowledges that the sale of the Bonds to the Investor is made in reliance upon the certifications, representations and warranties herein by the addressees hereto.

Very truly yours,

[PURCHASER]

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

## EXHIBIT D

### CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

The following provisions shall apply to the Indenture as if set forth in the text thereof. Capitalized terms used but not defined in this Appendix shall have the meanings given in the Indenture.

1. Nondiscrimination; Penalties.

(a) *Non Discrimination in Contracts.* The Trustee shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. The Trustee shall incorporate by reference in any subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require any subcontractors to comply with such provisions. The Trustee is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) *Nondiscrimination in the Provision of Employee Benefits.* San Francisco Administrative Code 12B.2. The Trustee does not as of the date of this Indenture, and will not during the term of this Indenture, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(c) *Condition to Contract.* As a condition to the Indenture, the Trustee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Indenture. By entering into this Indenture, the Trustee confirms that it has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

3. Tropical Hardwood and Virgin Redwood Ban. Under San Francisco Environment Code Section 804(b), the City urges the Trustee not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

4. Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require the Trustee to remove from, City facilities personnel of such Trustee who the Commission has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The Commission shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled

substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

5. Compliance with Americans with Disabilities Act. The Trustee shall provide the services specified in the Indenture in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

6. Sunshine Ordinance. The Trustee acknowledges that this Indenture and all records related to its formation, such Trustee's performance of services provided under the Indenture, and the City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

7. Limitations on Contributions. By executing this Indenture, The Trustee acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of the Trustee's board of directors; the Trustee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in such Trustee; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by such Trustee. The Trustee must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

8. Requiring Minimum Compensation for Covered Employees. The Trustee shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. The Trustee is subject to the enforcement and penalty provisions in Chapter 12P. By entering into this Indenture, the Trustee certifies that it is in compliance with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. The Trustee shall comply with San Francisco Administrative Code Chapter 12Q. The Trustee shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. The Trustee is subject to the enforcement and penalty provisions in Chapter 12Q.

10. Prohibition on Political Activity with City Funds. In performing the services provided under the Indenture, the Trustee shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Indenture from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The Trustee is subject to the enforcement and penalty provisions in Chapter 12G.

11. Nondisclosure of Private, Proprietary or Confidential Information. If this Indenture requires the City to disclose "Private Information" to a Trustee within the meaning of San Francisco Administrative Code Chapter 12M, the Trustee shall use such information consistent with the restrictions stated in Chapter 12M and in this Indenture and only as necessary in performing the services provided under the Indenture. The Trustee is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of services provided under the Indenture, the Trustee may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to a Trustee, such information must be held by such Trustee in confidence and used only in performing the Indenture. The Trustee shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

12. Consideration of Criminal History in Hiring and Employment Decisions. The Trustee agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Indenture. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of the Trustees' obligations under Chapter 12T is set forth in this Section. The Trustee is required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Indenture shall have the meanings assigned to such terms in Chapter 12T.

The requirements of Chapter 12T shall only apply to an Trustee's operations to the extent those operations are in furtherance of the performance of this Indenture, shall apply only to applicants and employees who would be or are performing work in furtherance of this Indenture, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code §§ 21.35, including the enforcement and penalty provisions, is incorporated into this Indenture. Under San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

14. Conflict of Interest. By entering into the Indenture, the Trustee certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Indenture.

15. Assignment. The services provided under the Indenture to be performed by the Trustee are personal in character and neither this Indenture nor any duties or obligations may be assigned or delegated by a Trustee unless first approved by the City by written instrument executed and approved in the same manner as this Indenture. Any purported assignment made in violation of this provision shall be null and void.

16. Food Service Waste Reduction Requirements. The Trustee shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the provided remedies for noncompliance.

17. Cooperative Drafting. This Indenture has been drafted through a cooperative effort of the City and the Trustee, and all parties have had an opportunity to have the Indenture reviewed and revised by legal counsel. No party shall be considered the drafter of this Indenture, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Indenture.

18. Laws Incorporated by Reference. The full text of the laws listed in this Appendix \_\_, including enforcement and penalty provisions, are incorporated into this Indenture by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Appendix A are available at [www.sfgov.org](http://www.sfgov.org) under "Open Gov."

19. Sugar-Sweetened Beverage Prohibition. The Trustee agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Indenture.

**EXHIBIT E**  
**FORM OF**  
**NOTICE OF INTEREST RATE CONVERSION**

U.S. BANK NATIONAL ASSOCIATION

[REMARKETING AGENT]

Re: City and County of San Francisco, California Multifamily Housing Revenue Bonds,  
Series 2016E (Lower 500 Folsom Residential)

Ladies and Gentlemen:

The undersigned is the Authorized Borrower Representative with respect to the above-referenced bonds (the "Bonds") as such term is defined in the Indenture of Trust, dated as of December 1, 2016 (the "Indenture"), between the City and County of San Francisco, California (the "City") and U.S. Bank National Association, as trustee (the "Trustee").

Pursuant to Section 2.11 of the Indenture you are hereby notified that the Bonds are to be remarketed on [insert remarketing date] and the interest thereon shall be converted to [ ] effective [insert effective date] (the "Effective Date"). The Bonds shall be in a [ ] mode from the Effective Date through [ ] or the prior redemption thereof.

The [Remarketing Agent] hereby certifies that such conversion is not reasonably expected to result in a deferral of, or a reduction in, any scheduled payment of interest or principal.

This notice is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

AUTHORIZED BORROWER  
REPRESENTATIVE

By: \_\_\_\_\_  
Authorized Signatory

EXHIBIT F

NOTICE OF SUBORDINATION OF BONDS

U.S. BANK NATIONAL ASSOCIATION

[REMARKETING AGENT]

Re: City and County of San Francisco, California Multifamily Housing Revenue Bonds, Series 2016E (Lower 500 Folsom Residential)

Ladies and Gentlemen:

The undersigned is the Bondholder Representative with respect to the above-referenced bonds (the "Bonds") as such term is defined in the Indenture of Trust, dated as of December 1, 2016 (the "Indenture"), between the City and County of San Francisco, California (the "City") and U.S. Bank National Association, as trustee (the "Trustee").

Pursuant to Article XIII of the Indenture you are hereby notified and instructed that the enclosed Bonds shall be cancelled and exchanged for Senior Bonds and Subordinate Bonds in the amounts stipulated below:

Tax Exempt Bonds Exchanged and Cancelled:	[\$Principal Amount]
Tax Exempt Senior Bonds Issued:	[\$Principal Amount]
Tax Exempt Subordinate Bonds Issued:	[\$Principal Amount]

This notice is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[MAJORITY BONDHOLDER]

By: \_\_\_\_\_  
Authorized Signatory



EXHIBIT G

FORM OF SUBORDINATE BOND

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THIS BOND MAY BE OWNED ONLY BY A QUALIFIED INSTITUTIONAL BUYER OR OTHER ENTITY AUTHORIZED UNDER THE TERMS OF THE INDENTURE, AND THE HOLDER HEREOF, BY THE ACCEPTANCE OF THIS BOND (A) REPRESENTS THAT IT IS A QUALIFIED INSTITUTIONAL BUYER OR OTHER ENTITY AUTHORIZED UNDER THE INDENTURE TO BE AN OWNER OF BONDS AND (B) ACKNOWLEDGES THAT IT CAN ONLY TRANSFER THIS BOND TO ANOTHER QUALIFIED INSTITUTIONAL BUYER OR OTHER ENTITY AUTHORIZED UNDER THE TERMS OF THE INDENTURE.

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE BOND,  
SERIES 2016E-S (SUBORDINATE SERIES)  
LOWER 500 FOLSOM RESIDENTIAL

No. S-1

[\$ \_\_\_\_\_]

DATED DATE:	MATURITY DATE:	CUSIP NO.:
_____, 20__	_____, 20__	_____

REGISTERED OWNER: [ \_\_\_\_\_ ]

PRINCIPAL AMOUNT: [ \_\_\_\_\_ ]

The CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation and chartered city and county of the State of California, duly organized and existing under its charter and the laws of the State of California (herein called the "City"), for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption or tender), on the Maturity Date specified above, the Principal Amount specified above, and to pay interest thereon, at the Bond Coupon Rate (as defined below), payable on each Bond Payment Date, commencing [ \_\_\_\_\_ ], to the person whose name appears on the registration books as of the Record Date and to pay any other amounts as specified in the Indenture (hereinafter defined). All capitalized terms not otherwise defined in this Subordinate Bond shall have the meaning ascribed thereto in the Indenture (as hereinafter defined).

Principal of, and premium, if any, on this Subordinate Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of U.S. Bank National Association, as trustee (the "Trustee" and "Bond Registrar"), or its successor.

Interest on this Bond shall be calculated on the basis of a 360 day year comprised of twelve 30 day months, or a year of 365 or 366 days, as applicable, for the actual number of days elapsed, as provided in the Indenture. The amount of interest payable on the Bonds on each Bond Payment Date shall be the amount of interest accrued thereon from the preceding Bond Payment Date (or such other date as described in the Indenture) to, but not including, the Bond Payment Date on which interest is being paid. Interest on this Subordinate Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for

payment of private and public debts, at the designated payment office of the Trustee or its successor.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee.

The indebtedness evidenced by this Subordinate Bond is and shall be subordinate in right of payment to the prior payment in full of all then current amounts due and payable to the Senior Bonds (as defined in the Indenture), to the extent and in the manner provided in the Indenture. The Indenture securing this Subordinate Bond is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Bonds. The rights and remedies of the holder and each subsequent holder of this Subordinate Bond under the Indenture are subject to the terms thereof.

This Subordinate Bond is issued under and secured by an Indenture of Trust, dated as of December 1, 2016 (the "Indenture"), as amended and supplemented, between the City and the Trustee. This Subordinate Bonds is subordinate to the Senior Bonds (as defined in the Indenture).

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the City and the Trustee, the terms on which the Subordinate Bonds are issued and secured, the manner in which interest is computed on this Subordinate Bond, mandatory and optional tender rights and provisions, mandatory and optional redemption rights and tender provisions, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Subordinate Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Subordinate Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

NONE OF THE CITY, THE MEMBERS OF ITS BOARD OF SUPERVISORS, THE OFFICERS, OFFICIALS, EMPLOYEES, ATTORNEYS OR AGENTS OF THE CITY, OR ANY PERSON EXECUTING THE SUBORDINATE BONDS IS LIABLE PERSONALLY ON THE SUBORDINATE BONDS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THEIR ISSUANCE. THE SUBORDINATE BONDS ARE LIMITED OBLIGATIONS OF THE CITY, PAYABLE ONLY AS PROVIDED IN THE INDENTURE, AND ARE NOT A GENERAL OBLIGATION, NOR ARE THEY SECURED BY A PLEDGE OF THE FAITH AND CREDIT, OF THE CITY OR THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER ARE THEY LIABLE ON THE SUBORDINATE BONDS, NOR ARE THE SUBORDINATE BONDS PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE CITY EXPRESSLY PLEDGED FOR THE PAYMENT THEREOF UNDER THE INDENTURE. THE SUBORDINATE BONDS DO NOT CONSTITUTE INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION. THE ISSUANCE OF THE SUBORDINATE BONDS SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY OR

THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATEVER THEREFOR OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM OR INTEREST ON THIS SUBORDINATE BOND AGAINST ANY PAST, PRESENT OR FUTURE OFFICER, OFFICIAL, DIRECTOR, EMPLOYEE, AGENT, OR MEMBER OF THE BOARD OF SUPERVISORS OF THE CITY, OR OF ANY SUCCESSOR THERETO, AS SUCH, EITHER DIRECTLY OR THROUGH THE CITY OR ANY SUCCESSOR TO THE CITY, UNDER ANY RULE OF LAW OR EQUITY, STATUTE OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, OFFICIALS, DIRECTORS, EMPLOYEES, AGENTS OR MEMBERS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS SUBORDINATE BOND.

The registered owner of this Subordinate Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Subordinate Bond, the registered owner hereof authorizes the Bondholder Representative to exercise such rights and remedies afforded to the Bondholder Representative on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Subordinate Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture, including, without limitation, the delivery of an Investor Letter to the extent required under the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The City and the Trustee may deem and treat the person in whose name this Subordinate Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the City nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the City to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Subordinate Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

None of the directors, members, officers, agents, employees or representatives of the City or any person executing the Subordinate Bonds shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or

otherwise, all such liability being expressly released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Subordinate Bonds.

This Subordinate Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until the Bond Registrar shall have executed the Certificate of Authentication appearing hereon.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Subordinate Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Subordinate Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the City or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the City and County of San Francisco has caused this Subordinate Bond to be executed in its name by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its Clerk, all as of the Dated Date above, and the manual or facsimile seal of the City and County of San Francisco to be impressed or reproduced hereon.

CITY AND COUNTY OF SAN  
FRANCISCO

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

[SEAL]

ATTEST:

\_\_\_\_\_  
*Clerk of the Board of Supervisors*

FORM OF CERTIFICATE OF AUTHENTICATION

This Subordinate Bond is one of the Subordinate Bonds described in the within mentioned Indenture and issued under the provisions of the within mentioned Indenture.

Date of Authentication: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Authorized Signatory

FORM OF ASSIGNMENT

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

\_\_\_\_\_

\_\_\_\_\_

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within-mentioned registered Subordinate Bond and hereby irrevocably constitute(s) and appoint(s)

\_\_\_\_\_ attorney,  
to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

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

Signatures Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.



DRAFT 10/27/2016

**NO FEE RECORDING PURSUANT TO  
GOVERNMENT CODE 27383**

**WHEN RECORDED RETURN TO:**

QUINT & THIMMIG LLP  
900 Larkspur Landing Circle, Suite 270  
Larkspur, CA 94939-1726  
Attn: Paul J. Thimmig, Esq.

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APN:

PROPERTY ADDRESS: 500-510 Folsom Street, San Francisco, California

**REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

by and among the

**CITY AND COUNTY OF SAN FRANCISCO,**

**BLOCK 9 MRU RESIDENTIAL, LLC**

and

**500 FOLSOM, L.P., A CALIFORNIA LIMITED PARTNERSHIP**

Dated as of December 1, 2016

Relating to:

City and County of San Francisco, California  
Multifamily Housing Revenue Bonds,  
Series 2016E (Lower 500 Folsom Residential)

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REGULATORY AGREEMENT AND DECLARATION OF  
RESTRICTIVE COVENANTS

This REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Regulatory Agreement") is made and entered into as of December 1, 2016, by and among the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, organized and existing under the laws of the State of California (together with any successor to its rights, duties and obligations, the "City"), BLOCK 9 MRU RESIDENTIAL, LLC, a Delaware limited liability company (the "Market Borrower"), and 500 FOLSOM, L.P., a California limited partnership (the "Affordable Borrower" and, together with the Market Borrower, the "Owners"), Owners of the land described in Exhibit A attached hereto.

RECITALS

A. WHEREAS, pursuant to the Charter of the City, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code (collectively, the "Act"), the City is authorized to issue revenue bonds to finance the construction and development of multifamily rental housing; and

B. WHEREAS, the Board of Supervisors of the City has authorized the issuance of multifamily mortgage revenue bonds under the Act in connection with the construction of a multifamily residential rental housing project located on the site described in Exhibit A-1 hereto and to be known as "Lower 500 Folsom Residential," consisting of 311 housing units in the first 21 floors of a 42 floor multifamily housing development located at 500-510 Folsom Street in the City (the "Site"), of which 109 housing units are owned by the Affordable Borrower and will be rented at affordable rents to qualified tenants as more particularly described in this Agreement (the "Affordable Project"), and of which 202 housing units are owned by the Market Borrower and will be rented at market rents (the "Market Project" and, together with the Affordable Project, the "Project") which Project shall be subject to the terms and provisions hereof; and

C. WHEREAS, the Site will have a total of 545 units with 234 units located on the upper 21 floors of the building (the "Upper 21 Floors"), which portion of the building is not encumbered by this Agreement it being understood that the Affordable Project shall be the means by which the affordability restrictions imposed by the Code and the Act are satisfied and that the residential units within the Market Project and in the Upper 21 Floors shall not be subject to any affordability or income restriction imposed by this Agreement; and,

D. WHEREAS, in furtherance of the purposes of the Act and as a part of the City's plan of financing affordable housing, the City is issuing its revenue bonds designated "City and County of San Francisco, California Multifamily Housing Revenue Bonds, Series 2016E (Lower 500 Folsom Residential)" (the "Bonds") pursuant to the terms of an Indenture of Trust of even date herewith (the "Indenture"), by and between the City and U.S. Bank, National Association, as trustee (the "Trustee"), the proceeds of which Bonds are to be loaned to the Owners (the "Loan") pursuant to a Loan Agreement, of even date herewith (the "Loan Agreement"), by and among the City and the Owners and as provided in the Construction Funding Agreement, dated as of

December 1, 2016 (the "Construction Funding Agreement"), among the Borrowers, the Trustee, Citibank, N.A., as Bondholder Representative and Citibank, N.A., as Servicer; and

E. WHEREAS, the City hereby certifies that all things necessary to make the Bonds, when issued as provided in the Indenture, the valid, binding and limited obligations of the City have been done and performed, and the execution and delivery of the Indenture and the issuance of the Bonds, subject to the terms thereof, in all respects have been duly authorized; and

F. WHEREAS, the Code and the regulations and rulings promulgated with respect thereto and the Act prescribe that the use and operation of the Project be restricted in certain respects and in order to ensure that the Project will be constructed, equipped, used and operated in accordance with the Code and the Act, the City and the Owners have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the construction and operation of the Project.

#### AGREEMENT

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

1. Definitions and Interpretation. Capitalized terms used herein have the meanings assigned to them in this Section 1, unless the context in which they are used clearly requires otherwise:

"Act" - The Charter of the City, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California, as now in effect and as it may from time to time hereafter be amended or supplemented.

"Adjusted Income" - The adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) as calculated in the manner prescribed pursuant to Section 8 of the Housing Act, or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act.

"Administrative General Partner" - Essex 500 Folsom, LLC, a Delaware limited liability company, and/or any other Person that the partners of the Affordable Borrower have selected to be a general partner of Affordable Borrower, and any successor general partner of the Affordable Borrower, in each case to the extent permitted under the Loan Documents and hereunder.

"Affiliated Party" - (a) a Person whose relationship with the Owners would result in a disallowance of losses under Section 267 or 707(b) of the Code, (b) a Person who together with the Owners are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein), (c) a partnership and each of its partners (and their spouses and minor children) whose relationship with the Owners would result in a disallowance of losses under Section 267 or 707(b) of the Code, and (d) an S corporation and each of its

shareholders (and their spouses and minor children) whose relationship with the Owners would result in a disallowance of losses under Section 267 or 707(b) of the Code.

“Affordable Borrower” – 500 Folsom, L.P., a California limited partnership.

“Affordable Project” – the portion of the Project which is owned by the Affordable Borrower and comprised of, among other things, the 108 rental housing units, all of which will be affordable to Very Low Income Tenants, plus one manager’s unit, and is more particularly described in Exhibit A-1.

“Annual Monitoring Report” has the meaning set forth in Section 5(l).

“Area” - The HUD Metro Fair Rent Market Area (HMFA), or successor area determined by HUD in which the Project is located.

“Authorized Owner Representative” - Any person who at the time and from time to time may be designated as such, by written certificate furnished to the City and the Trustee containing the specimen signature of such person and signed on behalf of (i) the Affordable Borrower by the general partner(s) of the Affordable Borrower and (ii) the Market Borrower by the manager or managing member of the Market Borrower, which certificate may designate an alternate or alternates.

“Available Unit” - Residential units in the Affordable Project (except for not more than one unit set aside for a resident manager) that are actually occupied and residential units in the Affordable Project that are vacant and have been occupied at least once after becoming available for occupancy.

“Bond Counsel” - An attorney or a firm of attorneys of nationally recognized standing in matters pertaining to the issuance, sale and delivery of bonds issued by states and their political subdivisions including as the context requires matters pertaining to the Act and the Code, who is selected by the City and duly admitted to the practice of law before the highest court of the State.

“Bondholder Representative” – Citibank, N.A., and its successor and assigns.

“Bonds” – City and County of San Francisco, California Multifamily Housing Revenue Bonds, Series 2016E (Lower 500 Folsom Residential), issued pursuant to the Indenture.

“CDLAC” - The California Debt Limit Allocation Committee.

“CDLAC Requirements” - The requirements described in Section 7 of this Regulatory Agreement.

“CDLAC Resolution” - The Resolution described in Section 7 of this Regulatory Agreement.

“Certificate of Continuing Program Compliance” - The Certificate with respect to the Project to be filed by the Owners with the City and the Program Administrator, which shall be

substantially in the form attached to this Regulatory Agreement as Exhibit D, or such other form as is provided by the City.

“Certificate of Preference” - A residential Certificate of Preference issued by the City pursuant to the City’s Certificate of Preference Program, as further described in attached Exhibit J.

“City” the City and County of San Francisco, California.

“City Median Income” the “Maximum Income by Household Size” derived by the Mayor’s Office of Housing and Community Development and published annually, based on the unadjusted area median income for the Area, as determined annually by HUD in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act and Section 3009a of the Housing and Economic Recovery Act of 2008 or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination, and being adjusted for household size, but unadjusted for high housing cost area.

“Closing Date” - The date of the issuance of the Bonds, being December [ ], 2016.

“Code” - The Internal Revenue Code of 1986, as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bonds, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Completion Certificate” - The certificate of completion of the construction of the Project required to be delivered to the City and the Bondholder Representative by the Owners pursuant to Section 2 of this Regulatory Agreement, which shall be substantially in the form attached to this Regulatory Agreement as Exhibit C.

“Completion Date” - The date of completion of the construction of the Project, as that date shall be certified as provided in Section 2 of this Regulatory Agreement.

“CTCAC” - The California Tax Credit Allocation Committee.

“EAHP Certificate-Holder” - A person or household that has been issued a certificate under the Ellis Act Housing Preference Program, as further described in Exhibit J.

“Facilities” - The multifamily buildings, structures and other improvements on the Site related to the Project to be constructed, improved, and equipped, and all fixtures and other property related to the Project owned by the either the Affordable Borrower or the Market Borrower and located on the Site, or used in connection with such buildings, structures and other improvements (but excluding those associated with the Upper 21 Floors).

“Housing Act” - The United States Housing Act of 1937, as amended.

“Housing Authority” - The Housing Authority of the City and County of San Francisco and any successors.

“Housing Law” – Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended.

“HUD” – The United States Department of Housing and Urban Development, its successors and assigns.

“Income Certification Form” – A fully completed and executed Income Certification Form substantially in the form attached to this Regulatory Agreement as Exhibit B, or such other form as may be provided by the City.

“Indenture” – The Indenture of Trust, of even date herewith, between the City and the Trustee.

“Inducement Date” – April 26, 2016, the date of adoption of the Inducement Resolution.

“Inducement Resolution” - Resolution No. 156-16 adopted by the City on the Inducement Date, indicating its intention to issue Tax Exempt obligations to finance a portion of the Project.

“Investor Limited Partner” – Wells Fargo Affordable Housing Community Development Corporation, and any successor investor limited partner of the Affordable Borrower.

“Loan” – The loan of the proceeds of the Bonds made to the Owners pursuant to the Loan Agreement to provide financing for the construction of the Project.

“Loan Agreement” – The Loan Agreement, of even date herewith, among the City and the Owners, pursuant to which the Loan was made.

“Managing General Partner” – BRIDGE 500 Folsom, LLC, and any successor managing member of the Affordable Borrower.

“Market Borrower” – Block 9 MRU Residential, LLC, a Delaware limited liability company, solely in its capacity as the owner of the Market Project and not in its capacity as the owner of the Upper 21 Floors.

“Market Project” – the portion of the Project which is owned by the Market Borrower and comprised of, among other things, the 202 rental housing units (including two manager’s units) and is more particularly describe in Exhibit A-2.

“Median Income for the Area” the median gross income for the Area, as determined in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act and Section 3009a of the Housing and Economic Recovery Act of 2008 or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act, including adjustments for household size.

“Mortgage” - The Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated for reference purposes as of the date hereof, executed by the Owners and granting a first lien on the Project for the benefit of the City and assigned to the Trustee, including

any amendments and supplements thereto as permitted by the Indenture, which Mortgage will be released as a lien on the Affordable Project as provided in the Loan Documents (as defined in the Indenture).

“OCII” – The Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State of California.

“Owners” – The Affordable Borrower and the Market Borrower, and their permitted successors and assigns.

“Partnership Agreement” - The Amended and Restated Agreement of Limited Partnership relating to Affordable Borrower, by and among the Administrative General Partner, the Managing General Partner, the Investor Limited Partner and \_\_\_\_\_, as a special limited partner.

“Program Administrator” - A governmental agency, a financial institution, a certified public accountant, an apartment management firm, a mortgage insurance company or other business entity performing similar duties or otherwise experienced in the administration of restrictions on bond financed multifamily housing projects, which shall be the City initially and, at the City’s election, any other person or entity appointed by the City who shall enter into an administration agreement in a form acceptable to the City.

“Project” - The Affordable Project and the Market Project.

“Project Costs” - To the extent authorized by the Code, the Regulations and the Act, any and all costs incurred by the Owners with respect to the construction of the residential component of the Project, whether paid or incurred prior to or after the Inducement Date, including, without limitation, costs for site preparation, the planning of housing and related facilities and improvements, the acquisition of property, the removal or demolition of existing structures, the construction of housing and related facilities and improvements, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractor’s and Owners’ overhead and supervisors’ fees and costs directly allocable to the Project, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, county or entity for expenditures made for the Project), and interest accrued during construction and prior to the Completion Date.

“Qualified Project Costs” - The Project Costs incurred after the date which is sixty days prior to the Inducement Date and that are chargeable to a capital account with respect to the Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Owners or but for the proper election by the Owners to deduct those amounts, within the meaning of Treasury Regulations Section 1.103-8(a)(1); provided, however, that only such portion of the interest accrued during construction of the Project shall constitute a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs, and provided further that such interest shall cease to be a Qualified Project Cost on the Completion Date, and provided still further that if any portion of the Project is being constructed by an Affiliated Party (whether as a general contractor or a subcontractor), “Qualified Project Costs” shall include only (a) the actual out-of-pocket costs incurred by such Affiliated

Party in constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Affiliated Party, and (c) any overhead expenses incurred by the Affiliated Party which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such Affiliated Party due to early completion of the Project (or any portion thereof). Qualified Project Costs do not include Costs of Issuance.

“Qualified Project Period” - The period beginning on the later of the Closing Date or the first day on which at least ten percent (10%) of the units in the Project are first occupied, and ending on the later of the following:

- (a) the date that is thirty (30) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied;
- (b) the first date on which no Tax Exempt private activity bonds with respect to the Project are Outstanding;
- (c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates;
- (d) the date that is fifty-five (55) years after the Closing Date; or
- (e) such later date as may be provided in Section 5 or Section 7 hereof.

“Regulations” - The income tax regulations promulgated by the United States Department of the Treasury pursuant to the Code from time to time.

“Regulatory Agreement” - This Regulatory Agreement and Declaration of Restrictive Covenants, together with any amendments hereto or supplements hereof.

“Restricted Unit” - A Very Low Income Unit.

“Servicer” - Shall have the meaning assigned to such term in the Indenture.

“Site” - The parcel or parcels of real property described in Exhibit A-3, which is attached hereto, and all rights and appurtenances thereto, and in which the Owners have an interest.

“State” - The State of California.

“Tax Certificate” - Collectively, the Certificate as to Arbitrage of the City, dated the date of issuance of the Bonds, executed and delivered by the City and the Owners, as amended or supplemented from time to time, and the Certificate Regarding Use of Proceeds of the Borrower, dated the date of issuance of the Bonds, as amended or supplemented from time to time.

“Tax Exempt” means, with respect to the status of interest on the Bonds, that such interest is excluded from gross income for federal income tax purposes; provided, however, that such



interest may be includable directly or indirectly for purposes of calculating other tax liabilities, including any alternative minimum tax, under the Code.

“Tenant”, at any time of determination thereof, all persons who together occupy a single residential unit in the Project, and upon the occupancy of a unit by any individual in addition to the previous Tenant of such unit, such unit shall be deemed to be occupied by a new Tenant.

“Trustee” – Shall have the meaning assigned to such term in the Indenture.

“Very Low Income Tenant” any Tenant whose Adjusted Income does not exceed fifty percent (50%) of the lower of City Median Income or Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not qualify as Very Low Income Tenants. The determination of a Tenant’s status as a Very Low Income Tenant shall initially be made by the Owners on the basis of an Income Certification Form executed by the Tenant upon such Tenant’s occupancy of a Restricted Unit in the Affordable Project and upon annual recertification thereafter.

“Very Low Income Units” – the dwelling units in the Affordable Project required to be rented to, or designated for occupancy by, Very Low Income Tenants pursuant to Section 4 of this Regulatory Agreement.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender used in this Regulatory Agreement shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms shall be determined by reference to this Section 1 notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

## 2. Construction of the Project.

(a) The Owners hereby represent, as of the date hereof, and covenant, warrant and agree as follows:

(i) The Owners have incurred, or will incur within six months after the Closing Date, a substantial binding obligation to commence the construction of the Project, pursuant to which the Owners are or will be obligated to expend at least the lesser of (i) 2-1/2 percent of the aggregate principal amount of the Bonds or (ii) \$100,000.

(ii) The Owners' reasonable expectations respecting the total cost of construction of the Project and the disbursement of Bond proceeds are accurately set forth in the Tax Certificate, which has been delivered to the City on the Closing Date.

(iii) the Owners expect to expend the maximum authorized amount of the Loan for Project Costs within 3 years of the Closing Date.

(iv) On the Completion Date the Owners will submit to the City and the Bondholder Representative a duly executed and completed Completion Certificate.

(v) On the date on which fifty percent (50%) of the units in the Project are first rented, the Owners will submit to the City and the Bondholder Representative a duly executed and completed Certificate as to Commencement of Qualified Project Period, in the form of Exhibit E hereto.

(vi) Money on deposit in any fund or account in connection with the Bonds, whether or not such money was derived from other sources, shall not be used by or under the direction of the Owners in a manner which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and the Owners specifically agree that the investment of money in any such fund shall be restricted as may be necessary to prevent the Bonds from being "arbitrage bonds" under the Code.

(vii) On or concurrently with the final draw by the Owners of amounts representing proceeds of the Bonds, the expenditure of such draw, when added to all previous disbursements representing proceeds of the Bonds, will result in not less than 97 percent of all disbursements of Bond proceeds having been used to pay or reimburse the Owners for Qualified Project Costs and less than 25 percent of all disbursements having been used to pay for the acquisition of land or any interest therein.

(viii) All of the amounts received by the Owners from the proceeds of the Bonds and earnings from the investment of such proceeds will be used to pay Project Costs; and no more than two percent (2%) of the proceeds of the Bonds shall be used to pay issuance costs of the Bonds, within the meaning of Section 147(g) of the Code.

(b) Each of the Owners hereby represents, as of the date hereof and as to itself and to that portion of the Project which it owns, and covenants, warrants and agrees as follows:

(i) The Owners will proceed with due diligence to complete the construction of the Project.

(ii) The Owners (and any person related to it within the meaning of Section 147(a)(2) of the Code) will not take or omit to take any action if such action or omission would in any way cause the proceeds from the sale of the Bonds to be applied in a manner contrary to the requirements of the Indenture, the Loan Agreement or this Regulatory Agreement.

(iii) The statements made in the various certificates delivered by the Owners to the City on the Closing Date are true and correct.

(iv) The Owners will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the exclusion from gross income for federal income tax purposes of the Holder of the Bonds (other than with respect to interest on any portion thereof for a period during which such portion is held by a "substantial user" of any facility financed with the proceeds of the Bonds or a "related person," as such terms are used in Section 147(a) of the Code), and, if it should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

(v) The Owners will take such action or actions as may be necessary, in the written opinion of Bond Counsel to the City, to comply fully with the Act, the Code and all applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service to the extent necessary to maintain the exclusion from gross income for federal income tax purposes of the Holder of the Bonds (other than with respect to interest on any portion of thereof for a period during which such portion is held by a "substantial user" of any facility financed with the proceeds of the Bonds or a "related person," as such terms are used in Section 147(a) of the Code).

3. Qualified Residential Rental Property. The Owners hereby acknowledge and agree that the Project will be owned, managed and operated as a "qualified residential rental project" (within the meaning of Section 142(d) of the Code). The City hereby elects to have the Project meet the requirements of Section 142(d)(1)(A) of the Code and the Owners hereby elect to comply with Section 142(d)(1)(A) of the Code. To that end, and for the term of this Regulatory Agreement, the Owners hereby represent, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Project is being constructed for the purpose of providing affordable multifamily residential rental property, and the Owners shall own, manage and operate the Project as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with applicable provisions of Section 142(d) of the Code and Section 1.103-8(b) of the Regulations, and the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the residential dwelling units in the Project will be similarly constructed units, and, to the extent required by the Code and the Regulations, each residential dwelling unit in the Project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range (which may be a countertop cooking range), refrigerator and sink.

(c) None of the residential dwelling units in the Project will at any time be used on a transient basis (e.g., subject to leases that are less than 30 days' duration) (including use as a corporate suite), or be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home, retirement house or trailer court or park.

(d) No part of the Project will at any time be owned as a condominium or by a cooperative housing corporation, nor shall the Owners take any steps in connection with a conversion to such ownership or uses. Other than obtaining a final subdivision map on the Project and a Final Subdivision Public Report from the California Department of Real Estate and, the Owners shall not take any steps in connection with a conversion of the Project to a condominium ownership except with the prior written opinion of Bond Counsel that the interest on the Bonds will not become taxable thereby under Section 103 of the Code.

(e) All of the residential dwelling units in the Project will be available for rental on a continuous basis to members of the general public and the Owners will not give preference to any particular class or group in renting the residential dwelling units in the Project, except to the extent required by (i) this Regulatory Agreement, (ii) any regulatory or restrictive use agreement to which the Affordable Project is subject pursuant to Section 42 of the Code, (iii) any additional tenant income and rent restrictions imposed by any other federal, State or local governmental agencies, (iv) the Declaration of Restrictions, made as of February 10, 2105, by Block 9 Residential, LLC, a Delaware Limited Liability Company, in favor of OCII and recorded on February 10, 2015 as Document 2015-K018314-00 in the Official Records of San Francisco County and (v) any other legal or contractual requirement not excepted by clauses (i) through (iv) of this paragraph, upon receipt by the Owners, the Trustee and the City of an opinion of Bond Counsel to the effect that compliance with such other requirement will not adversely affect the Tax Exempt status of interest on the Bonds.

(f) The Site consists of a parcel or parcels that are contiguous and all of the Facilities will comprise a single geographically and functionally integrated project for residential rental property (including the portions of the common areas allocated to the Project), as evidenced by the ownership, management, accounting and operation of the Project.

(g) No residential dwelling unit in the Project shall be occupied by the Owners. Notwithstanding the foregoing, if the Project contains five or more residential dwelling units, this subsection shall not be construed to prohibit occupancy of residential dwelling units by one or more resident managers or maintenance personnel any of whom may be the Owner; provided that the number of such managers or maintenance personnel is not unreasonable given industry standards in the area for the number of residential dwelling units in the Project.

(h) The Owners shall not discriminate on the basis of race, creed, religion, color, sex, source of income (e.g., AFDC, Section 8 or SSD), physical disability (including HIV/AIDS), age, national origin, ancestry, marital or domestic partner status, sexual preference or gender identity in the rental, lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the construction, operation and management of the Project, except to the extent required hereby.

(i) Should involuntary noncompliance with the provisions of Section 1.103-8(b) of the Regulations be caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the Closing Date which prevents the City from enforcing the requirements of the Regulations, or condemnation or similar event, the Owners covenant that, within a "reasonable period" determined in accordance with the Regulations, it will either prepay the Bonds or, if permitted

under the provisions of the Mortgage and the Indenture, apply any proceeds received as a result of any of the preceding events to reconstruct the Project to meet the requirements of Section 42(d) of the Code and the Regulations.

(j) The Owners agree to maintain the Project, or cause the Project to be maintained, during the term of this Regulatory Agreement (i) in a reasonably safe condition and (ii) in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof such that the Project shall be substantially the same condition at all times as the condition it is in at the time of the completion of the construction of the Project with the proceeds of the Bonds. Notwithstanding the foregoing, the Owners' obligation to repair or rebuild the Project in the event of casualty or condemnation shall be subject to the terms of the Loan Agreement and the Mortgage.

(k) The Project will have three hundred eleven (311) residential dwelling units, three (3) of which will be manager's units.

(l) The Owners will not sell dwelling units within the Project.

4. Restricted Units. The Owners hereby represent, as of the date hereof, and warrant, covenant and agree as follows:

(a) Income and Rent Restrictions. In addition to the requirements of Section 5, hereof, the Owners shall comply with the income and rent restrictions of this Section 4(a), as applied to the Affordable Project, and any conflict or overlap between any two or more of such provisions shall be resolved in favor of the most restrictive of such provisions, that is, in favor of the lowest income and rent restriction.

(i) Very Low Income Units. A total of one hundred eight (108) units in the Affordable Project shall be rented to and continuously occupied by households who qualify as Very Low Income Tenants. The monthly rent charged for all the Very Low Income Units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 50% of the lower of City Median Income or Median Income for the Area.

(ii) Low Income Units. Reserved.

(iii) Income Restrictions Pursuant to the Code. Pursuant to the requirements of Section 142(d) of the Code, for the Qualified Project Period, not less than twenty percent (20%) of the total number of completed units in the Project, or sixty-two (62) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed fifty percent (50%) of the lower of City Median Income or Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not be qualified Tenants pursuant to this sentence. The Owners shall satisfy the requirements of this Section 4(a)(iii) by complying with the requirements of Section 4(a)(i), to the extent such compliance meets the requirements of Section 142(d)(1)(A) of the Code.

(iv) Income and Rent Restrictions Pursuant to the Act. Pursuant to the requirements of Section 52080(a)(1)(A) of the Housing Law, for the Qualified Project Period, not less than twenty percent (20%) of the total number of completed units in the Project, or sixty-two (62) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed fifty percent (50%) of the lower of City Median Income or Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not be qualified Tenants pursuant to this sentence. Pursuant to the requirements of the Section 52080(a)(1)(A) of the Housing Law, the monthly rent charged for such units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 50% of the Median Income for the Area. The Owners shall satisfy the requirements of this Section 4(a)(iv) by complying with the requirements of Section 4(a)(i), to the extent such compliance meets the requirements of Section 52080(a)(1)(B) of the Housing Law.

(v) CDLAC Requirements. To the extent the income and rent restrictions contained in the CDLAC Requirements are more restrictive, the Owners shall comply with the CDLAC Requirements.

(b) Over-Income Tenants. Notwithstanding the foregoing provisions of Section 4(a), no Tenant qualifying as a Very Low Income Tenant upon initial occupancy shall be denied continued occupancy of a Restricted Unit in the Project because, after admission, the aggregate Adjusted Income of all Tenants in the Restricted Unit increases to exceed the qualifying limit for such Restricted Unit.

However, should the aggregate Adjusted Income of Tenants in a Restricted Unit, as of the most recent determination thereof, exceed one hundred forty percent (140%) of the applicable income limit for such Restricted Unit occupied by the same number of Tenants, the next Available Unit of comparable or smaller size in the Affordable Project must be rented to (or held vacant and available for immediate occupancy by) a Very Low Income Tenant. The unit occupied by such Tenant whose aggregate Adjusted Income exceeds such applicable income limit shall continue to be treated as occupied by a Very Low Income Tenant for purposes of the requirements of Section 4(a) hereof unless and until an Available Unit of comparable or smaller size is rented to persons other than Very Low Income Tenants. Moreover, a unit previously occupied by a Very Low Income Tenant and then vacated shall be considered occupied by a Very Low Income Tenant until reoccupied, other than a reoccupation for a temporary period, at which time the character of the unit shall be re-determined. In no event shall such temporary period exceed thirty-one (31) days.

(c) Income Certifications. The Affordable Borrower will obtain, complete and maintain on file an Income Certification Form for each Tenant (i) immediately prior to the initial occupancy of a Restricted Unit by such Tenant, and (ii) thereafter, annually, together with such information, documentation and certifications as are required therein or by the City, in its discretion, to substantiate the Tenant's Income Certification Form. In addition, the Affordable Borrower will provide such further information as may be required in the future by the State of California, the City (on a reasonable basis), the Program Administrator and by the Act, Section 142(d) of the Code or the Treasury Regulations, as the same may be amended from time to time,

or in such other form and manner as may be required by applicable rules, rulings, policies, procedures or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code.

(d) Certificate of Continuing Program Compliance. Upon the commencement of the Qualified Project Period, and on each February 1st thereafter (or such other date as shall be requested in writing by the City or the Program Administrator) during the term of this Regulatory Agreement, the Owners shall advise the Program Administrator of the status of the occupancy of the Project by delivering to the Program Administrator (with a copy to the Trustee) a Certificate of Continuing Program Compliance (a form of which is attached hereto as Exhibit D). The Owners shall also timely provide to the City such information as is requested by the City to comply with any reporting requirements applicable to it with respect to the Bonds or the Project under any federal or State law or regulation, including without limitation, CDLAC regulations.

(e) Recordkeeping. The Affordable Borrower will maintain complete and accurate records pertaining to the Restricted Units. The Market Borrower will maintain complete and accurate records pertaining to the rental of the residential units in the Market Project. The Owners will permit any duly authorized representative of the City, the Program Administrator (if other than the City), the Trustee, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Owners pertaining to the Project upon reasonable notice during normal business hours, including those records pertaining to the occupancy of the Restricted Units, but specifically excluding any material which may be legally privileged.

(f) Annual Certification to Secretary of Treasury. The Owners shall submit to the Secretary of the Treasury annually on or before March 31 of each year, or such other date as is required by the Secretary of the Treasury, a completed Internal Revenue Service Form 8703, and shall provide a copy of each such form to the Program Administrator and the Trustee. Failure to comply with the provisions of this paragraph will subject the Owners to penalty, as provided in Section 6652(j) of the Code.

(g) Lease Provisions Regarding Income Certification Reliance. All leases pertaining to Restricted Units do and shall contain clauses, among others, wherein each Tenant who occupies a Restricted Unit: (1) certifies the accuracy of the statements made in the Income Certification Form, (2) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such Tenant; that such Tenant will comply promptly with all requests for information with respect thereto from the Owners or the Program Administrator on behalf of the City, and that the failure to provide accurate information in the Income Certification Form or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the tenancy of such Tenant; (3) acknowledges that the Owners have relied on the Income Certification Form and supporting information supplied by the Tenant in determining qualification for occupancy of the Restricted Unit, and that any material misstatement in such certification (whether intentional) will be cause for immediate termination of such lease or rental agreement; and (4) agrees that the Tenant's income is subject to annual certification in accordance with Subsection 4(c) hereof and that failure to cooperate with the annual recertification process reasonably instituted by the Owners pursuant to Subsection 4(d) above may provide grounds for termination of the lease.

(h) Maintenance of Tenant Lists and Applications. All tenant lists, applications and waiting lists relating to the Affordable Project shall at all times be kept separate and identifiable from any other business which is unrelated to the Affordable Project and shall be maintained, as required from time to time by the Program Administrator on behalf of the City, in a reasonable condition for proper audit and subject to examination during normal business hours by representatives of the Project, the City or the Trustee. Failure to keep such lists and applications or to make them available to the City or the Trustee shall be a default hereunder.

(i) Tenant Lease Subordination. All tenant leases or rental agreements shall be subordinate to this Regulatory Agreement.

(j) No Encumbrance, Demolition or Non-Rental Residential Use. The Owners shall not take any of the following actions:

(i) other than as previously approved by the City, encumber any portion of the Project or grant commercial leases of any part thereof, or permit the conveyance, transfer or encumbrance of any part of the Project (except for apartment leases), except (i) pursuant to the provisions of this Regulatory Agreement and on a basis subordinate to the provisions of this Regulatory Agreement, to the extent applicable, (ii) upon receipt by the Owners, the Trustee and the City of an opinion of Bond Counsel that such action will not adversely affect the Tax Exempt status of interest on the Bonds, or (iii) upon a sale, transfer or other disposition of the Project in accordance with the terms of this Regulatory Agreement;

(ii) demolish any part of the Project or substantially subtract from any real or personal property of the Project (other than in the ordinary course of business or in the performance of repairs or restoration following a casualty or condemnation); or

(iii) permit the use of the dwelling accommodations of the Project for any purpose except rental residences.

(k) Compliance with Regulatory Agreement. The Owners shall exercise reasonable diligence to comply with the requirements of this Regulatory Agreement and shall notify the City within fifteen (15) days and correct any noncompliance within sixty (60) days after such noncompliance is first discovered or would have been discovered by the exercise of reasonable diligence, unless such noncompliance is not reasonably susceptible to correction within sixty (60) days, in which event the Owners shall have such additional time as may be reasonably necessary to effect such correction provided the Owners have commenced such correction after discovery and are diligently prosecuting such correction.

##### 5. Additional Requirements of the City.

(a) Minimum Lease Term. The term of the lease for any Restricted Unit shall be not less than one (1) year.

(b) Limitation on Rent Increases. Annual rent increases on a Restricted Unit shall be limited to the percentage of the annual increase in the applicable Median Income for the Area for that Unit. Rent increases which are permitted but not made in a given year may not be carried forward and made in any subsequent year.



(c) Appointment of Program Administrator. The Owners acknowledge that the City may appoint a Program Administrator (other than the City), at the sole cost and expense of the City, to administer this Regulatory Agreement and to monitor performance by the Owners of the terms, provisions and requirements hereof. In such event, the Owners shall comply with any reasonable request by the City to deliver to any such Program Administrator, in addition to or instead of the City, any reports, notices or other documents required to be delivered pursuant hereto, and to make the Project and the books and records with respect thereto available for inspection during normal business hours with reasonable notice by the Program Administrator as an agent of the City. The Owners shall have the right to rely on any consent or direction given by the Program Administrator on the same basis as if given by the City.

(d) Management Agent. The Owners shall not enter into any agreement providing for the management or operation of the Project with any party other than Essex Management Corporation without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

(e) Certificate of Preference Program. To the fullest extent permitted by law, the Owners shall comply with the City's Certificate of Preference Program pursuant to San Francisco Administrative Code Section 24.8 and attached Exhibit J, to the extent such compliance is not in conflict with any other requirements imposed on the Project pursuant to Section 142(d) of the Code, the Act, the CDLAC Resolution, or CTCAC.

(f) Nondiscrimination Based on Section 8, Household Size, or Source of Income. The Owners shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act, or any successor program or similar State or local governmental assistance program. The Owners shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants and the Owners shall not refuse to rent to any tenant on the basis of household size as long as such household size does not exceed two (2) persons for a studio unit; three (3) persons for a one-bedroom unit; five (5) persons for a two-bedroom unit and seven (7) persons for a three-bedroom unit. The Owners shall not collect any additional fees or payments from such a tenant except security deposits or other deposits required of all tenants. The Owners shall not collect security deposits or other deposits from Section 8 certificate or voucher holders in excess of that allowed under the Section 8 program. The Owners shall not discriminate against tenant applicants on the basis of legal source of income (e.g., TANF, Section 8 or SSI), and the Owners shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (i.e., ability to pay shall be demonstrated if such a tenant can show that the same percentage or more of the tenant's income has been consistently paid on time for rent in the past as will be required to be paid for the rent applicable to the unit to be occupied, provided that such tenant's expenses have not increased materially).

(g) Overincome Provisions after Expiration of Qualified Project Period. Notwithstanding the provisions of Section 4(b), from and after the expiration of the Qualified Project Period, in the event that Owners' certification of the Very Low Income Tenant's income, pursuant to Section 4(c), indicates that the Very Low Income Tenant's income exceeds one hundred twenty percent (120%) of the Median Income for the Area, the Owners shall terminate

such lease upon one hundred twenty (120) days prior written notice to the Tenant, and the lease for each Restricted Unit shall contain a statement to the foregoing effect. Notwithstanding the foregoing, the Owners shall not be required to terminate the Very Low Income Tenant's lease if any regulation or statute governing the Project or the financing thereof prohibits the termination of the Tenant's lease in this manner.

(h) Consideration for Restrictions. It is hereby acknowledged and agreed that any restrictions imposed on the operation of the Project herein and which are in addition to those imposed pursuant to Section 142(d) of the Code or the Act are at the request of the Owners, and that the Owners have voluntarily agreed to such additional restrictions in order to obtain financial assistance from the City and an allocation of private activity bond volume cap from CDLAC.

(i) Amendment or Waiver by City; Conflicting Provisions. The requirements of Section 4(a)(i) and (ii) and of Section 5 hereof may be amended, modified or waived (but not increased or made more onerous), at the City's sole discretion, by written amendment signed by the City and the Owners, or expressly waived by the City in writing, but no such waiver by the City shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement except to the extent the City and the Trustee have received an opinion of Bond Counsel to the effect that any such provision is not required by the Code or the Act and may be waived without adversely affecting the Tax Exempt status of interest on the Bonds. Any requirement of Section 4(a)(i) and (ii) or Section 5 shall be void and of no force and effect if the City, the Trustee and the Owners receive a written opinion of Bond Counsel to the effect that compliance with such requirement would be in conflict with the Act or any other applicable state or federal law.

(j) Extension of Qualified Project Period. Notwithstanding any other provision herein, the Qualified Project Period shall not expire earlier than, and the requirements of this Section 5 shall be in effect until, the date that is fifty-five (55) years after the Closing Date.

(k) Marketing and Tenant Selection Plan. Owners will market the Restricted Units in accordance with the marketing and tenant selection plan approved by the City, which shall be substantially in the form attached hereto as Exhibit K. Owners must keep records of (a) activities implementing the affirmative marketing plan; (b) advertisements; and (c) other community outreach efforts for a period of at least three (3) years.

(l) Annual Reporting. Owners must file with the City annual report forms (the "Annual Monitoring Report") no later than one hundred twenty (120) days after the end of Borrower's business year. The Annual Monitoring Report must be in substantially the form attached as Exhibit I or as later modified during the Compliance Term.

6. Additional Requirements of State Law. In addition to the requirements set forth above, the Owners hereby agree that it shall also comply with each of the requirements of Section 52080 of the Housing Law, including the following:

(a) Tenants Under Section 8 of the Housing Act. The Owners shall accept as tenants, on the same basis as all other prospective tenants, low-income persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under

Section 8 of the Housing Act, and shall not permit any selection criteria to be applied to Section 8 certificate or voucher holders that is more burdensome than the criteria applied to all other prospective tenants.

(b) Availability on Priority Basis. The Restricted Units shall remain available on a priority basis for occupancy at all times.

(c) Binding Covenants and Conditions. The covenants and conditions of this Regulatory Agreement shall be binding upon successors in interest of the Owners.

(d) Recordation of Regulatory Agreement. This Regulatory Agreement shall be recorded in the office of the county recorder of the City and County of San Francisco, California, and shall be recorded in the grantor-grantee index under the names of the Owners as grantor and to the name of the City as grantee.

(e) Restricted Income Units of Comparable Quality. The Restricted Units shall be of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants and shall be distributed throughout the Project.

(f) Availability Following Expiration of Qualified Project Period. Following the expiration or termination of the Qualified Project Period, except in the event of foreclosure and redemption of the Bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units reserved for occupancy as required by Subsection 4(a)(iv) shall remain available to any eligible Tenant occupying a reserved unit at the date of such expiration or termination, at the rent determined by Subsection 4(a)(iv), until the earliest of (1) the household's income exceeds 140% of the maximum eligible income specified therein, (2) the household voluntarily moves or is evicted for good cause, as deemed in the Act, (3) 30 years after the date of the commencement of the Qualified Project Period, and (4) the Owners pay the relocation assistance and benefits to households if required by Section 7264(b) of the California Government Code.

(g) Availability Preceding Expiration of Qualified Project Period. During the three (3) years prior to the later of (i) the expiration of the Qualified Project Period or (ii) the date that is 55 years after the date of commencement of the Qualified Project Period, the Owners shall continue to make available to eligible households Restricted Units that have been vacated to the same extent that non-Restricted Units, if any, are made available to non-eligible households.

(h) Notice and Other Requirements. The Owners shall comply with all applicable requirements of Section 65863.10 of the California Government Code, including the requirements for providing notices in Sections (b), (c), (d) and (e) thereof, and shall comply with all applicable requirements of Section 65863.11 of the California Government Code.

(i) Syndication of the Affordable Project. As provided in Section 52080(e) of the Housing Law, the City hereby approves the syndication of tax credits with respect to the Affordable Project, pursuant to Section 42 of the Code, to the Investor Limited Partner, or any affiliate thereof or successor thereto, pursuant to the terms of the Partnership Agreement. Any syndication of tax credits with respect to the Affordable Project to an affiliate of the Investor Limited Partner shall not require the prior written approval of the City if the Partnership

Agreement will not be amended, modified or supplemented in connection with such syndication; provided, however, that the Investor Limited Partner shall provide to the City, at least five (5) Business Days prior to the effective date of any such syndication, written notice of such syndication certifying that no amendment, modification or supplement to the Partnership Agreement will be effected in connection with such syndication, together with copies of any assignments of limited partnership interests and any other syndication documents. Any other syndication of the Affordable Project shall be subject to the prior written approval of the Director of the Mayor's Office of Housing Community Development of the City, which approval shall be granted only after the City determines that the terms and conditions of such syndication (1) shall not reduce or limit any of the requirements of the Act or regulations adopted or documents executed pursuant to the Act, (2) shall not cause any of the requirements of the City set forth in this Section 6 hereof to be subordinated to the syndication agreement, and (3) shall not result in the provision of fewer Restricted Units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

7. CDLAC Requirements. The Owners hereby agree that the construction, equipping and operation of the Project and the financing thereof is and shall be in compliance with the conditions set forth in Exhibit A to CDLAC Resolution No. 16-84 adopted on July 20, 2016, attached hereto as Exhibit G (the "CDLAC Resolution"), which conditions (the "CDLAC Requirements") are incorporated herein by reference and are made a part hereof. The Owners shall prepare and submit to the City a Certificate of Compliance in substantially the form attached hereto as Exhibit G, executed by an Authorized Owner Representative.

8. Indemnification. As to itself and as to that portion of the Project it owns, each of the Owners hereby releases the City, the Bondholder Representative and their respective officers, members, directors, officials and employees from, and each Owner covenants and agrees to indemnify, hold harmless and defend the City and the Bondholder Representative and the officers, members, directors, officials, agents and employees of each of them (collectively, the "Indemnified Parties," and each an "Indemnified Party") from and against any and all claims, losses, costs, damages, demands, expenses, taxes, suits, judgments, actions and liabilities of whatever nature, joint and several (including, without limitation, costs of investigation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments), directly or indirectly (a) by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated hereby or otherwise in connection with the Affordable Project or the Market Project (as applicable), the Bonds, or the execution or amendment of any document relating thereto; (b) arising from any cause whatsoever in connection with the approval of financing for the Project or the making of the Loan or otherwise, including without limitation, any advances of the Loan, or any failure by the Servicer, as defined in the Indenture, to make any advance thereunder; (c) arising from any act or omission of such Owner or any of its agents, servants, employees or licensees, in connection with the Loan or the Project; (d) arising in connection with the issuance and sale, resale or reissuance of any bonds or any certifications or representations made by any person other than the City or the party seeking indemnification in connection therewith and the carrying out by the Owners of any of the transactions contemplated by the Indenture, the Loan Agreement and this Regulatory Agreement; (e) arising in connection with the operation of the Affordable Project or the Market Project (as applicable), or the conditions, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, installation, or

construction of, the Affordable Project or the Market Project (as applicable) or any part thereof; and (f) arising out of or in connection with the exercise by the Bondholder Representative or the Servicer of their powers or duties under the Indenture, the Loan Agreement, this Regulatory Agreement or any other agreements in connection therewith to which either of them is a party; provided, however, that this provision shall not require an Owner to indemnify (i) the Bondholder Representative from any claims, costs, fees, expenses or liabilities arising from the negligence or willful misconduct of the Bondholder Representative, or (ii) the City for any claims, costs, fees, expenses or liabilities arising solely from the willful misconduct of the City. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the applicable Owner(s), upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party; and the applicable Owner(s) shall assume the payment of all reasonable fees and expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Notwithstanding the foregoing, no indemnification obligation shall give rise to an obligation to pay principal and interest on the Loan, which is not otherwise set forth in the Indenture, the Loan Agreement, the Bonds or any other agreement relating to the Bonds. Each of the Owners, as to itself and as to that portion of the Project which it owns, also shall pay and discharge and shall indemnify and hold harmless the City and the Bondholder Representative from (i) any lien or charge upon payments by such Owner(s) to the City and the Bondholder Representative hereunder and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Affordable Project or the Market Project, as applicable. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the City or the Bondholder Representative shall give prompt notice to the applicable Owner(s), and such Owner(s) shall have the sole right and duty to assume, and will assume, the defense thereof, including the engagement of counsel approved by the Indemnified Party in such party's reasonable discretion, provided that if the Indemnified Party is the City, the selection of counsel rests in the sole discretion of the City Attorney, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. If a potential conflict exists between an Owner's defense and the interests of an Indemnified Party, then such Indemnified Party shall have the right to engage separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the applicable Owner(s) shall pay the reasonable fees and expenses of such separate counsel.

Notwithstanding any transfer of the Project to another Owner in accordance with the provisions of Section 11 of this Regulatory Agreement, each Owner shall remain obligated to indemnify the City pursuant to this Section 8 if a subsequent Owner fails to so indemnify the City, unless at the time of transfer the City has consented to the transfer to the extent such consent is required hereunder.

The provisions of this Section 8 shall survive the term of the Bonds and this Regulatory Agreement.

The obligations of the Owners under this Section are independent of any other contractual obligation of the Owners to provide indemnity to the Indemnified Parties or otherwise, and the obligation of the Owners to provide indemnity hereunder shall not be interpreted, construed or limited in light of any other separate indemnification obligation of the Owners. The Indemnified Parties shall be entitled simultaneously to seek indemnity under this Section and any other provision under which they are entitled to indemnification.

In addition, the applicable Owner(s) will pay upon demand all of the fees and expenses paid or incurred by the Indemnified Parties in enforcing the provisions hereof.

9. Consideration. The City has issued the Bonds and made the Loan to provide funds for the purpose of financing the Project, all for the purpose, among others, of inducing the Owners to construct, equip and operate the Project. In consideration of the making of the Loan by the City, the Owners have entered into this Regulatory Agreement and have agreed to restrict the use of the Project on the terms and conditions set forth herein.

10. Reliance. The City and the Owners hereby recognize and agree that the representations, warranties, covenants and agreements set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds, and in the exclusion from gross income for federal income tax purposes of the interest on the Bonds. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owners and Very Low Income Tenants, and upon audits of the books and records of the Owners pertaining to the Project. In addition, the City may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the City hereunder in good faith and in conformity with such opinion.

11. Sale or Transfer of the Project. Each of the Owners intends to hold that portion of the Project which it owns for its own account, has no current plans to sell, transfer or otherwise dispose of its portion of the Project (except, as to the Affordable Borrower, in accordance with the option and the right of first refusal described in the Partnership Agreement), and, except as otherwise provided herein, hereby covenant and agree not to sell, transfer or otherwise dispose of the Project, or any portion thereof (other than for individual tenant use as contemplated hereunder and/or pursuant to the aforementioned option and right of first refusal) or interest therein, including any interest in an Owner, without obtaining the prior written consent of the City, which consent shall not be unreasonably withheld, and receipt by the City of (i) evidence satisfactory to the City that such Owner's purchaser or transferee has assumed in writing and in full, such Owner's duties and obligations under this Regulatory Agreement, (ii) an opinion of counsel of the transferee that the transferee has duly assumed the obligations of the Owner(s) under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee, (iii) evidence acceptable to the City that either (A) the purchaser or assignee has experience in the ownership, operation and management of rental housing projects in the City such as the Affordable Project or the Market Project (as applicable) without any record of material violations of discrimination restrictions or other state or federal laws or regulations applicable to such projects, or (B) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subparagraph (A) above or (C) if the purchaser or assignee does not have management experience, the City may cause the Program Administrator to provide on-site training in program compliance if the City determines such training is necessary,

(iv) evidence satisfactory to the City that no event of default exists under this Regulatory Agreement, the Loan Agreement or any document related to the Loan, and payment of all fees and expenses of the City and the Trustee due under any of such documents is current, and (v) an opinion of Bond Counsel to the effect that such transfer will not, in itself, cause interest on the Bonds to become includable in the gross income of the recipients thereof for federal income tax purposes; provided, however, that with respect to a transfer of the Affordable Project only, from and after the Release Date subsection (iv) above shall be amended to include only the Regulatory Agreement. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Affordable Project and/or the Market Project in violation of this Section 11 shall be null, void and without effect, shall cause a reversion of title to the applicable Owner(s), and shall be ineffective to relieve the Owner(s) of their obligations under this Regulatory Agreement. Nothing in this Section 11 shall affect any provision of any other document or instrument between an Owner and any other party which requires such Owner to obtain the prior written consent of such other party in order to sell, transfer or otherwise dispose of the Project. Not less than 60 days prior to consummating any sale, transfer or disposition of any interest in the Project, the applicable Owner(s) shall deliver to the City a notice in writing explaining the nature of the proposed transfer. Notwithstanding the foregoing, the provisions of this Section 11 shall not apply to the transfer of all or any portion of (a) the limited partner interest of the Investor Limited Partner (which is instead subject to paragraph (i) of Section 6), (b) the Administrative General Partner interest to an affiliate of the Administrative General Partner, (c) the Managing General Partner interest to an affiliate of the Managing General Partner, (d) the manager or managing member interest of the Market Borrower to an affiliate of the manager or managing member of the Market Borrower or (e) the transfer of any non-managing member interest in the Market Borrower. In addition, the City's prior approval shall not be required for any transfer of the Investor Limited Partner's interest in the Affordable Borrower pursuant to the Partnership Agreement as amended from time to time.

12. Term. Subject to the following paragraph of this Section 12, Section 8 hereof and to any other provision expressly agreed herein to survive the termination of this Regulatory Agreement, this Regulatory Agreement and all of the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for the longer of (a) the Qualified Project Period or (b) fifty-five (55) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied.

The terms of this Regulatory Agreement to the contrary notwithstanding, this Regulatory Agreement shall terminate and be of no further force and effect in the event of (i) involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency after the Closing Date, which prevents the City from enforcing such provisions, or (ii) foreclosure, exercise of power of sale, transfer of title by deed in lieu of foreclosure, or condemnation or a similar event, but only if, in case of the events described in either clause (i) or (ii) above, within a reasonable period, either the Bonds are paid in full or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, exercise of power of sale, or the delivery of a deed in lieu of foreclosure or a similar event, the Owners or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtain an ownership

interest in the Project for federal income tax purposes. The Owners hereby agree that, following any foreclosure, exercise of power of sale, transfer of title by deed in lieu of foreclosure or similar event, neither the Owners nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes. Notwithstanding any other provisions of this Regulatory Agreement to the contrary, this entire Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the City and the Owners subject to compliance with any of the provisions contained in this Regulatory Agreement only if there shall have been received an opinion of Bond Counsel that such termination will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds or the exemption from State personal income taxation of the interest on the Bonds. The Owners shall provide written notice of any termination of this Regulatory Agreement to the City.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

13. Covenants to Run With the Land. The Owners hereby subject the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City and the Owners hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owners' successors in title to the Project; provided, however, that on the termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. No breach of any of the provisions of this Regulatory Agreement shall defeat or render invalid the lien of a mortgage made in good faith and for value encumbering the Site.

14. Burden and Benefit. The City and the Owners hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Owners' legal interest in the Project is rendered less valuable thereby. The City and the Owners hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Very Low Income Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Bonds were issued.

15. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Site.

16. Enforcement. If an Owner defaults in the performance or observance of any covenant, agreement or obligation of such Owner set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after written notice thereof shall have been given by the City to the applicable Owner(s) (provided, however, that the City may at its sole option extend such period if the default is of the nature which would reasonably require more



than 60 days to cure and if the Owner(s) provide the City, if requested by the City, with an opinion of Bond Counsel to the effect that such extension will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds), then the City may declare an "event of default" to have occurred hereunder, and, subject to the provisions of the Indenture, may take any one or more of the following steps:

(a) by mandamus or other suit, action or proceeding at law or in equity, require the applicable Owner(s) to perform its/their obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the City hereunder; or

(b) have access to and inspect, examine and make copies of all of the books and records of the applicable Owner(s) pertaining to the Affordable Project and/or the Market Project (as applicable); or

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the applicable Owner(s) hereunder.

Notwithstanding anything contained in this Regulatory Agreement to the contrary, the occurrence of an event of default under this Regulatory Agreement shall not be deemed, under any circumstances whatsoever, to be a default under the Mortgage except as may be otherwise specified in the Mortgage.

Notwithstanding anything contained in this Regulatory Agreement to the contrary, the City agrees that any cure of any default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the applicable Owner(s) and shall be accepted or rejected on the same basis as if made or tendered by such the Owner.

17. Recording and Filing. The Owners shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the City and County of San Francisco and in such other places as the City may reasonably request. The Owners shall pay all fees and charges incurred in connection with any such recording.

18. Payment of Fees. Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Indenture and/or the Loan Agreement, the Owners shall continue to pay the City's annual administrative fee as calculated and described below. Upon the occurrence of an event of default hereunder, the Owners shall continue to pay to the City compensation for any services rendered by any of them hereunder and reimbursement for all expenses incurred by it in connection therewith.

The Owners shall pay to the City (i) an initial issuance fee of \$330,000 (which is equal to one quarter of one percent (0.25%) of the par amount of the Bonds) and (ii) an annual administrative fee not to exceed one eighth of one percent (0.125%) of the principal amount of the Bonds then outstanding, but no less than \$2,500, commencing on the Closing Date and thereafter on each anniversary date of the Closing Date thereafter during the term of this Agreement.

In case any action at law or in equity, including an action for declaratory relief, is brought against the Owner(s) to enforce the provisions of this Regulatory Agreement, such Owner(s) agree to pay reasonable attorney's fees and other reasonable expenses incurred by the City, the Bondholder Representative, and/or the Program Administrator in connection with such action.

19. Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California.

20. Amendments. To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Bond Counsel filed with the City, the Trustee and the Owners, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement which must be complied with in order to maintain the Tax Exempt status of interest on the Bonds, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements. Otherwise, this Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the City and County of San Francisco, provided that any amendment to the CDLAC Requirements shall also be subject to the consent of CDLAC.

21. City Contracting Provisions. The Owners covenant and agree to comply with the provisions set forth in Exhibit H to this Regulatory Agreement, which is incorporated in and made a part of this Regulatory Agreement by this reference.

22. Notice. All notices, certificates or other communications shall be sufficiently given and shall be deemed given on the date personally delivered or on the second day following the date on which the same have been mailed by first class mail, postage prepaid, addressed as follows:

If to the City:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 316  
San Francisco, California 94102  
Attention: City Controller

With copies to:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 140  
San Francisco, California 94102  
Attention: City Treasurer

City and County of San Francisco  
Mayor's Office of Housing and  
Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attention: Director

And

Office of the City Attorney  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, California 94102  
Attention: Finance Team

If to the Owner:

500 Folsom, L.P.  
c/o Essex 500 Folsom, LLC  
1100 Park Place  
Suite 200  
San Mateo, CA 94403  
Attention: Legal Department (Jordan Ritter and Anika  
Fischer)  
Fax: (650) 655-7811

And

Block 9 MRU Residential, LLC  
1100 Park Place  
Suite 200  
San Mateo, CA 94403  
Attention: Legal Department (Jordan Ritter and Anika  
Fischer)  
Fax: (650) 655-7811

With a copy to:

500 Folsom, L.P.  
c/o Essex 500 Folsom, LLC  
1100 Park Place  
Suite 200  
San Mateo, CA 94403  
Attention: Mark Mikl  
Fax: (650) 655-7810

And

Block 9 MRU Residential, LLC  
1100 Park Place  
Suite 200  
San Mateo, CA 94403  
Attention: Mark Mikl  
Fax: (650) 655-7810

BRIDGE 500 Folsom LLC  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: Ann Silverberg, EVP  
Fax: (415) 495-4898

And

BRIDGE 500 Folsom LLC  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: Rebecca V. Hiebasko, General Counsel  
Fax: (415) 495-4898

And with copy to (which  
shall not constitute notice to  
Borrower):

Chernove & Associates, Inc.  
16027 Ventura Blvd., Suite 600  
Encino, CA 91436  
Attention: Sheldon B. Chernove, Esq.  
Fax: (818) 377-8102

If to the Investor Limited  
Partner:

Wells Fargo Affordable Housing Community  
Development Corporation  
MAC D1053-170  
301 S. College Street  
Charlotte, NC 28288  
Attention: Director of Tax Credit Asset Management

With a copy to:

Sidley Austin LLP  
555 West Fifth Street, Suite 4000  
Los Angeles, CA 90013  
Attention: Cynthia Christian, Esq.

If to the Bondholder  
Representative:

Citibank, N.A.  
390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Transaction Management Group  
Deal ID# 23410  
Fax: (212) 723-8209

With a copy to:

Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Deal ID# 23410  
Fax: (805) 557-0924

If to the Trustee:

U.S. Bank National Association  
Global Corporate Trust Services  
One California Street, Suite 1000  
San Francisco, CA 94111  
Attention: Andrew Fung  
Phone: (415) 677-3593  
Email: andrew.fung@usbank.com

Any of the foregoing parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, documents or other communications shall be sent.

23. Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

24. Multiple Counterparts. This Regulatory Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

25. Third-Party Beneficiaries. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are entered into for the benefit of various parties, including CDLAC. The parties hereto acknowledge that the Bondholder Representative is a third party beneficiary of this Regulatory Agreement. CDLAC shall accordingly have contractual rights in this Regulatory Agreement and shall be entitled (but not obligated) to enforce, in accordance with Section 16 hereof, the terms hereof and the terms of the CDLAC Resolution. In addition, CDLAC is intended to be and shall be a third-party beneficiary of this Regulatory Agreement. Notwithstanding the above, CDLAC shall be entitled solely to enforce the terms of the CDLAC Resolution, and any enforcement of the terms and provisions of the CDLAC Resolution by CDLAC shall not adversely affect the interests of the Bondholder Representative, and shall otherwise be subject to the terms, conditions and limitations otherwise applicable to the enforcement of remedies under this Regulatory Agreement. Pursuant to Section 52080(k) of the Housing Law, the provisions of Section 6 hereof may be enforced either in law or in equity by any resident, local agency, entity, or by any other person adversely affected by the Owners' failure to comply with that Section.

[Signatures appear on next page]

IN WITNESS WHEREOF, the City and the Owners have executed this Regulatory Agreement by their duly authorized representatives, all as of the date first written hereinabove.

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Olson Lee, Director  
Mayor's Office of Housing and  
Community Development

Approved as to Form:

DENNIS J. HERRERA  
City Attorney

By \_\_\_\_\_  
Deputy City Attorney

[Signatures continue on following page.]

OWNER:

500 FOLSOM, L.P.,  
a California limited partnership,

By: Essex 500 Folsom, LLC,  
a Delaware limited liability company,  
its Administrative General Partner

By: Essex Portfolio, L.P.,  
a California limited partnership  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation  
its General Partner

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

By: BRIDGE 500 Folsom LLC,  
a California limited liability company,  
its Managing General Partner

By: MCB Family Housing, Inc.,  
a California nonprofit public benefit corporation  
its sole member

By: \_\_\_\_\_  
Ann Silverberg,  
Vice President

BLOCK 9 MRU RESIDENTIAL, LLC  
a Delaware limited liability company

By: Essex Portfolio, L.P.,  
a California limited partnership,  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its General Partner

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



**EXHIBIT A-1**

**LEGAL DESCRIPTION OF THE AFFORDABLE PROJECT**

All that certain real property situated in the City and County of San Francisco, State of California, more particularly described as follows:

**EXHIBIT A-2**

**LEGAL DESCRIPTION OF THE MARKET PROJECT**

**EXHIBIT A-3**

**LEGAL DESCRIPTION OF THE SITE**

**EXHIBIT B**  
**INCOME CERTIFICATION FORM**

**EXHIBIT C**

**COMPLETION CERTIFICATE**

CITY AND COUNTY OF SAN FRANCISCO  
Mayor's Office of Housing and  
Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103

The undersigned (the "Owners") provide this certification pursuant to the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 1, 2016, by and among the City and County of San Francisco and the Owners (the "Regulatory Agreement"). Capitalized terms used herein but not defined shall have the meanings given in the Regulatory Agreement.

The undersigned hereby certifies that:

- (a) all aspects of the construction of the Project were substantially completed and available for occupancy by tenants in the Project as of \_\_\_\_\_ (the "Completion Date").
- (b) the aggregate amount disbursed on the Loan to date is \$\_\_\_\_\_;
- (c) all amounts disbursed on the Loan have been applied to pay or reimburse the undersigned for the payment of Project Costs and none of the amounts disbursed on the Loan has been applied to pay or reimburse any party for the payment of costs or expenses other than Project Costs; and
- (d) as shown on the attached sheet (showing the breakdown of expenditures for the Project and the source of the funds which were used to pay such costs), at least ninety-five percent (95%) of the amounts disbursed on the Loan have been applied to pay or reimburse the Owners for the payment of Qualified Project Costs and less than twenty-five percent (25%) of the amounts disbursed on the Loan, exclusive of amounts applied to pay the costs of executing and delivering the Note, have been applied to pay or reimburse the Owners for the cost of acquiring land.

[Signatures appear on next page]

OWNER:

500 FOLSOM, L.P.,  
a California limited partnership,

By: Essex 500 Folsom, LLC,  
a Delaware limited liability company,  
its Administrative General Partner

By: Essex Portfolio, L.P.,  
a California limited partnership  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation  
its General Partner

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

By: BRIDGE 500 Folsom LLC,  
a California limited liability company,  
its Managing General Partner

By: MCB Family Housing, Inc.,  
a California nonprofit public benefit corporation  
its sole member

By: \_\_\_\_\_  
Ann Silverberg,  
Vice President

BLOCK 9 MRU RESIDENTIAL, LLC  
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By: Essex Portfolio, L.P.,  
a California limited partnership,  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its General Partner

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

**EXHIBIT D**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

Project Name: 500 Folsom Apartments (aka Transbay 9)

CDLAC Application Number(s): 16-420

CDLAC Resolution Number(s): 16-84

Property Address: 500-510 Folsom Street, San Francisco, California

Project Completion Date (if completed, otherwise mark NA):

Name of Obligation:

The undersigned, being the authorized representatives of Block 9 MRU Residential, LLC, a Delaware limited liability company, and 500 Folsom, L.P., a California Limited Partnership (the "Owners"), hereby certifies that he/she has read and is thoroughly familiar with the provisions of the various documents associated with the Owners' participation in the City and County of San Francisco (the "City") Multifamily Housing Program, such documents including:

1. the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 1, 2016 (the "Regulatory Agreement"), by and among the Owners and the City; and
2. the Loan Agreement, dated as of December 1, 2016, by and among the City and the Owners.

The undersigned further certifies that:

A. There have been no changes to the ownership entity, principals or property management of the Project since the Bonds were issued, or since the last certification was provided (as applicable), except as described below:

(If so please attach a request to revise the CDLAC Resolution, noting all pertinent information regarding the change, otherwise state "NONE")

If Project has not yet been placed in service, mark N/A for the balance of the items below:

B. During the preceding twelve-months (i) such Project was continually in compliance with the Regulatory Agreement executed in connection with such loan from the City and (ii) and \_\_\_% of the units in the Project were occupied by Very Low Income Tenants (minimum of 20%).

C. As of the date of this Certificate, the following percentages of completed residential units in the Project (as defined in the Regulatory Agreement) (i) are occupied by Very Low Income Tenants (as such term is defined in the Regulatory Agreement), or (ii) are currently vacant and



being held available for such occupancy and have been so held continuously since the date a Very Low Income Tenant vacated such unit, as indicated below:

Occupied by Very Low Income Tenants:

1 bedroom units: Unit Nos. \_\_\_\_\_

2 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

3 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

4 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

Total percentage occupied by Very Low Income Tenants: \_\_\_\_\_

Held vacant for occupancy continuously since last occupied by a Very Low Income Tenant:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

Vacant Units:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

It hereby is confirmed that each tenant currently residing in a unit in the Affordable Project has completed an Income Certification Form in the form approved by the City and that since commencement of the Qualified Project Period (as such term is defined in the Regulatory Agreement), not less than \_\_% of the occupied units in the Project have been rented to (or are vacant and last occupied by) Very Low Income Tenants. The undersigned hereby certifies that the Owners are not in default under any of the terms and provisions of the above documents.

D. The units occupied by Very Low Income Tenants are of similar size and quality to other units and are dispersed throughout the Project.

E Select appropriate certification: [No unremedied default has occurred under this Regulatory Agreement, the Bonds, the Loan Agreement or the Mortgage.] [A default has occurred under the \_\_\_\_\_. The nature of the default and the measures being taken to remedy such default are as follows: \_\_\_\_\_.]

F. There has been no change of use for the Project, except as follows: (please describe if any, or otherwise indicate "NONE")

G. Select appropriate certification: The undersigned hereby certifies that the Project [has satisfied all] [except as described below, has satisfied all] of the requirements memorialized in the Exhibit A of the CDLAC Resolution, a copy of which is attached hereto (i.e. qualifying project completion, qualifying depreciable asset purchase, qualifying loan originations, the use of public funds, manager units, income rent restrictions, sustainable building methods, etc., as applicable), and thus has achieved all public benefit requirements (excluding service amenities) as presented to CDLAC.

[Describe any requirements not satisfied: \_\_\_\_\_]

H: As captured in Exhibit A of the Resolution, the Project has committed to and is currently providing the following service amenities for a minimum of ten years, on a regular and ongoing basis, which are provided free of charge (with the exception of day care services):

Please check the services that apply or write N/A where appropriate:

\_\_\_\_\_ After-school Programs

\_\_\_\_\_ Educational, health and wellness, or skill building classes

\_\_\_\_\_ Health and Wellness services and programs (not group classes)

\_\_\_\_\_ Licensed Childcare provided for a minimum of 20 hours per week (Monday-Friday)

\_\_\_\_\_ Bona-Fide Service Coordinator/ Social Worker

1) For this reporting period, attached is evidence (i.e. MOUs, contracts, schedules, calendars, flyers, sign-up sheets, etc.) confirming that the above listed services are being provided and have met the requirements of Exhibit A of the Resolution.

2) If any of the above services requirements were not met, what corrective action is being taken to comply?

(Please also attach the completed project sponsor certification form as provided in the CDLAC Resolution)

(Please also attach the completed Occupancy and Rent Information form attached hereto)

I. The representations set forth herein are true and correct to the best of the undersigned's knowledge and belief, and the undersigned acknowledges and agrees that the City will be relying solely on the foregoing certifications and accompanying documentation, if any, in making its certification to CDLAC pursuant to Section 5144 of the CDLAC Regulations, and agrees to provide to the City such documentation or evidence, in support of the foregoing certifications, as the City or CDLAC may request.

Date: \_\_\_\_\_

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

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

**EXHIBIT E**

**SAMPLE CERTIFICATE AS TO  
COMMENCEMENT OF QUALIFIED PROJECT PERIOD**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City and County of San Francisco  
Mayor's Office of Housing and  
Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, CA 94103  
Attention: Executive Director

City and County of San Francisco, California  
Multifamily Housing Revenue Bonds,  
Series 2016E (Lower 500 Folsom Residential)

The undersigned, being the authorized representative(s) of Block 9 MRU Residential, LLC, a Delaware limited liability company, and 500 Folsom, L.P., a California Limited Partnership, hereby certifies that: (complete blank information):

Ten percent (10%) of the dwelling units in the Project financed in part from the proceeds of the captioned Bonds were first occupied on \_\_\_\_\_;

Fifty percent (50%) of the dwelling units in the Project financed in part from the proceeds of the captioned Bonds were first occupied on \_\_\_\_\_.

DATED:

OWNER:

500 FOLSOM, L.P.,  
a California limited partnership,

By: Essex 500 Folsom, LLC,  
a Delaware limited liability company,  
its Administrative General Partner

By: Essex Portfolio, L.P.,  
a California limited partnership  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation  
its General Partner

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

By: BRIDGE 500 Folsom LLC,  
a California limited liability company,  
its Managing General Partner

By: MCB Family Housing, Inc.,  
a California nonprofit public benefit corporation  
its sole member

By: \_\_\_\_\_  
Ann Silverberg,  
Vice President

BLOCK 9 MRU RESIDENTIAL, LLC  
a Delaware limited liability company

By: Essex Portfolio, L.P.,  
a California limited partnership,  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its General Partner

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

Acknowledged:

City and County of San Francisco

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

**EXHIBIT F**  
**CDLAC RESOLUTION**

**EXHIBIT G**

**SAMPLE CERTIFICATE OF COMPLIANCE  
(CDLAC RESOLUTION)**

Project Name: 500 Folsom Apartments (aka Transbay 9)

CDLAC Application No.: 16-420

Pursuant to Section 13 of Resolution No. 16-84 (the "Resolution"), adopted by the California Debt Limit Allocation Committee (the "Committee") on July 20, 2016, I, \_\_\_\_\_, an Officer of the Project Sponsor, hereby certify under penalty of perjury that, as of the date of this Certification, the above-mentioned Project is in compliance with all of the terms and conditions set forth in the Resolution.

I am an Officer of the Project Sponsor, hereby certify under penalty of perjury that, as of the date of this Certification, the above-mentioned Project is in compliance with all of the terms and conditions set forth in the Resolution.

I further certify that I have read and understand Section 3 of the Resolution, which specifies that once the Bonds are issued, the terms and conditions set forth in the Resolution Exhibit A shall be enforceable by the Committee through an action for specific performance, negative points, withholding future allocation or any other available remedy.

*Please check if applicable:*

\_\_\_\_ The project is currently in the Construction or Rehabilitation phase (i.e. the project is not placed in service).

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Officer

\_\_\_\_\_  
Title of Officer

\_\_\_\_\_  
Phone Number

## EXHIBIT H

### CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

The following provisions shall apply to this Regulatory Agreement (this "Agreement") as if set forth in the body thereof. Capitalized terms used but not defined in this Exhibit shall have the meanings given in this Regulatory Agreement.

1. Nondiscrimination; Penalties.

(a) *Non Discrimination in Contracts.* The Owners shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. The Owners shall incorporate by reference in any subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require any subcontractors to comply with such provisions. The Owners are subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) *Nondiscrimination in the Provision of Employee Benefits.* San Francisco Administrative Code 12B.2. The Owners do not as of the date of this Agreement, and will not during the term of this Agreement, in any of their operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(c) *Condition to Contract.* As a condition to this Agreement, the Owners shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Agreement. By entering into this Agreement, the Owners confirm that they have read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

3. Tropical Hardwood and Virgin Redwood Ban. Under San Francisco Environment Code Section 804(b), the City urges the Owners not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

4. Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require the Owners to remove from, City facilities personnel of such Owners who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The Commission shall have the right of final



approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

5. Compliance with Americans with Disabilities Act. The Owners shall provide the services specified in the Agreement in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

6. Sunshine Ordinance. The Owners acknowledge that this Agreement and all records related to their formation, the Owners' performance of services provided under the Agreement, and the City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

7. Limitations on Contributions. By executing this Agreement, the Owners acknowledge that they are familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of the Owners' board of directors; the Owners' chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in such Owners; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by such Owners. The Owners must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

8. Requiring Minimum Compensation for Covered Employees. The Owners shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. The Owners are subject to the enforcement and penalty provisions in Chapter 12P. By entering into this Agreement, the Owners certify that they are in compliance with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. The Owners shall comply with San Francisco Administrative Code Chapter 12Q. The Owners shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. The Owners are subject to the enforcement and penalty provisions in Chapter 12Q.

10. Prohibition on Political Activity with City Funds. In performing the services provided under this Agreement, the Owners shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The Owners are subject to the enforcement and penalty provisions in Chapter 12G.

11. Nondisclosure of Private, Proprietary or Confidential Information. If this Agreement requires the City to disclose "Private Information" to the Owners within the meaning of San Francisco Administrative Code Chapter 12M, the Owners shall use such information consistent with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services provided under the Agreement. The Owners are subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of services provided under the Agreement, the Owners may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to an Owner, such information must be held by such Owner in confidence and used only in performing the Agreement. The Owners shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

12. Consideration of Criminal History in Hiring and Employment Decisions. The Owners agree to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of the Owners' obligations under Chapter 12T is set forth in this Section. The Owners are required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

The requirements of Chapter 12T shall only apply to an Owner's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code §§ 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Under San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly

presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

14. Conflict of Interest. By entering into the Agreement, each Owner certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

15. Assignment. The services provided under the Agreement to be performed by the Owners are personal in character and neither this Agreement nor any duties or obligations may be assigned or delegated by the Owners unless first approved by the City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

16. Food Service Waste Reduction Requirements. The Owners shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the provided remedies for noncompliance.

17. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of the City and the Owners, and all parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

18. Laws Incorporated by Reference. The full text of the laws listed in this Exhibit H, including enforcement and penalty provisions, are incorporated into this Agreement by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Exhibit H are available at [www.sfgov.org](http://www.sfgov.org) under "Open Gov."

19. Sugar-Sweetened Beverage Prohibition. The Owners agrees that they will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

**EXHIBIT I**  
**FORM OF ANNUAL MONITORING REPORT**

[To be attached]

## EXHIBIT J

### OPERATIONAL RULES FOR SAN FRANCISCO HOUSING LOTTERIES AND RENTAL LEASE UP ACTIVITIES

In order to implement consistent and transparent marketing practices for all affordable housing under the purview of the Mayor's Office of Housing and Community Development (MOHCD), the following policies and procedures have been adopted. The Borrower hereby acknowledges and agrees to follow these procedures as outlined below.

If ever there is a conflict between a recorded development agreement and this document, the executed development agreement will prevail. Likewise, when state and federal funding sources conflict with anything outlined in this document, they too shall prevail.

#### HOUSING PREFERENCE PROGRAMS

The Borrower hereby agrees that first preference in occupying units designated for Very Low Income Households (Low Income Units) will be given to persons who have been issued a Residential Certificate of Preference (COP) and who meet all qualifications for the unit.

The Borrower further agrees that second preference in occupying units designated for Low Income Households will be given to persons who have been issued an Ellis Act Housing Preference Program (EAHP) Certificate and who meet all qualifications for the unit; provided, however, if the Project will include funds from the California Department of Housing and Community Development, this EAHP priority (and the corresponding requirements set forth below) will not apply for so long as the Project is subject to the requirements associated with such financing.

For new residential developments going through the initial lease-up process, the EAHP priority shall apply to twenty percent (20%) of the Low Income Units. Thus, if the number of units available exceeds the number of qualified applicants who hold a COP or other preference as dictated by specific loan documents or marketing plan, the next priority will go to EAHP certificate holders for up to twenty percent (20%) of the total Low Income Units. The EAHP priority does not apply at initial lease-up or sale to buildings having four (4) or fewer Low Income Units. However, the EAHP priority does apply to these same units upon re-rental.

Low Income Units with other occupancy priorities required by law, contract, or program rules may apply the COP and EAHP after other preferences, with COP holders being granted priority above EAHP certificate holders. Preferences required by a former Redevelopment Project Area Plan are not pre-empted by the COP Program or the Ellis Act Housing Preference Program. Preferences required by the LOSP, Direct Access to Housing Program, Housing First Program, or other government programs are not pre-empted by the Ellis Act Housing Preference Program.

#### **Marketing and Tenant Selection Plan**

The Borrower agrees to supply Mayor's Office of Housing and Community Development (MOHCD or the City) with a complete and updated marketing and tenant selection plan in form and substance acceptable to the City ("Marketing and Tenant Selection Plan"), including resident selection criteria, at least six months prior to construction completion. The Marketing and Tenant Selection Plan shall be submitted on a template form as provided by MOHCD, substantially in the form attached as Exhibit K. This Marketing and Tenant Selection Plan shall not be changed without providing the City with at least fourteen (14) calendar days' written notice.

New rental units shall be marketed for at least a twenty-eight (28) -day period, including a listing on the MOHCD website and on MOHCD's email housing alert system. Applicants shall submit

an abridged lottery application form only and supply full income and other documentation if selected in the lottery process to proceed with a rental.

### **Outreach to Certificate Holders**

The City shall furnish the following:

- Written and/or printed notices to EAHP certificate holders advising them that units will soon be available.
- Names and addresses of COP certificate holders. MOHCD shall address printed notices created by Borrower using an MOHCD provided template. Borrower is responsible for the full cost of the mailing to COP certificate holders.
- Assistance to qualified tenants in filing COP and EAHP applications or referral to an appropriate housing counseling organization.

The Borrower agrees to:

- Written and mailed notices to COP certificate holders advising them that units are available using a template provided by MOHCD. COP mailings are at the cost of the Borrower.
- During the application period, conduct at least one general informational meeting for all persons interested in applying for occupancy in the development, at which the Borrower shall review application procedures.
- Specifically for COP and EAHP certificate holders, make support services staff available to provide assistance throughout the application process, as it may be needed, with the goal of maximizing COP/EAHP participation to the extent possible. The Borrower shall ensure that COP/EAHP certificate holders are aware that such assistance is available.

### **Application**

The Borrower agrees to use a pre-lottery application template provided by MOHCD. After the lottery, the Borrower may require applicants to complete an additional application provided such additional application is included in the Marketing and Tenant Selection Plan and pre-approved by MOHCD.

### **Pre-Lottery Application Status Reports**

The Borrower agrees to supply the City with the names, addresses, and housing preference certificate numbers (when available) of all applicants, including whether or not they indicate they are eligible for COP or EAHP priority status. The City will provide a template to be used to provide this status report, at a minimum, every seven (7) calendar days from the initial date applications are accepted. The City will, in turn, verify within seven (7) calendar days which such applicants are qualified as COP or EAHP certificate holders.

After the application period has closed, and at least five (5) business days prior to lottery proceedings, a non-prioritized list of all interested applicants will be provided to MOHCD on the template provided. The list shall include applicant names, addresses, and whether the applicant holds a COP or an EAHP certificate. If MOHCD does not receive this final applicant list within five (5) business days prior to the lottery, it will be cause to postpone the lottery proceedings until the complete list is received.

### **Lottery**

The Borrower shall ensure that all COP certificate holders receive first priority for occupancy and EAHP certificate holders receive second priority for occupancy in twenty percent (20%) of units, except in cases where approved and documented occupancy priorities preempt the COP and EAHP preferences. EAHP certificate holders who are not offered a unit in the twenty percent (20%) set aside shall have equal chance at any remaining units as other qualified applicants.

The Borrower shall hold a public lottery to select renters. Applicants who submit a complete application by the application deadline receive a numbered lottery ticket whose twin ticket is entered into the lottery. Upon pre-approval from the City, lotteries may also be conducted using names of applicants.

When a Borrower chooses to receive applications by mail, applicants must be notified that applications must be post marked prior to the application deadline. Borrowers receiving applications via mail must allow five (5) business days from the application deadline before scheduling the lottery to allow for mail delivery. As stated above, the final application list is due to MOHCD at least five (5) business days prior to the lottery, therefore Borrowers who elect to receive applications via mail must allow ten (10) business days from the application deadline to the lottery date.

Lotteries are held in a public, accessible location. Applicants are invited to attend lotteries, but attendance is not mandatory.

To conduct the lottery, the City and/or the Borrower shall pull application tickets from a vessel and order and record the lottery results in rank order by application ticket number. When using names, Borrower shall pre-enter all applicant names onto individual name cards. All EAHP certificate holders should have two name cards. Names shall be pulled from a vessel in rank order. There should be separate lotteries held for each preference. First, COP certificate holders will be drawn and ranked, followed by EAHP certificate holders, followed by applicants from the general population. The EAHP certificate holder's second card will be included in the general lottery. Electronic lotteries are not allowed.

The Borrower should use a large computer or projector screen or hand printed flip chart sheets to display all numbers/names drawn and the sequenced lottery number assigned for each preference lottery and the general lottery. This can be done by listing all applicants in separate columns under each preference category.

The Borrower should record each name card/number ticket assigned a lottery number onto the applicant list template provided by MOHCD. A computer master list as well as a hand printed paper list for double checking. Results will remain projected on a screen or posted flip chart paper throughout the lottery drawing process for the public to view and record results.

The Borrower shall record the order of lottery numbers/names drawn and produce a final ranked lottery list for each preference and for the general lottery. Once the lottery preferences have been confirmed and applied, the Borrower must notify applicants of their position in the lottery by posting the results on Borrower's website or another public site and/or by mail.

### **Post-Lottery Lease up Instructions**

The Borrower agrees to contact each applicant in lottery rank order to set up an interview where the Borrower will receive supporting documents from the applicant (i.e., income documentation, tax returns, and bank statements).

The Borrower agrees to income qualify each household member based on the supporting documents submitted by the applicant. Income qualification cannot be based solely on what's reported by the applicant on the application.

In accordance with San Francisco Administrative Code Section 12H and applicable laws of the State of California, Borrower shall not use citizen status as a qualification for selection. Borrower shall not ask for social security information prior determining the household's income eligibility.

The Borrower shall comply with San Francisco Police Code Article 49, Sections 4901-4920 (the "Fair Chance Ordinance") and the specific screening requirements set forth in Exhibit I (Tenant Screening Criteria Policy).

The Borrower agrees to offer units in ranked order to applicants who meet all qualifications. If an applicant is still in the review process and the applicant behind them in lottery rank order has been approved, the first applicant must be offered a specific unit that is reserved for that applicant until all qualifications have been reviewed and approved.

**In the case where an applicant is denied for housing and appeals the denial, the Borrower agrees to hold a comparable unit until the final decision has been made regarding the appeal. Should Borrower determine that an applicant's denial appeal will be denied, Borrower will inform MOHCD of this decision with documentation used to sustain the denial. MOHCD will confirm the denial is in accordance with Borrower's eligibility requirements. Borrower agrees to be in compliance with all Fair Chance Ordinance appeals process requirements.**

If ineligibility is determined, the applicant will be notified in writing within one week after such determination is made, with a copy to the City. These applicants will also appear on the status report.

#### **Post-Lottery Status Report**

Every seven (7) business days following any lottery the Borrower shall supply the City with a lease-up status report on a MOHCD-provided template. MOHCD has the right to audit the Borrower's lease up procedure and applicant files within 24 hour notice during the lease up period.

#### **Response Deadline**

Applicants who have been accepted and notified in writing by the Borrower shall have at least ten (10) calendar days thereafter to enter into a lease agreement. If the applicant fails to affirmatively respond, the application may be closed, making that unit available to the next eligible tenant. Written notice shall be provided to applicants whose applications are closed after 10 days due to a lack of response. Rejection of the unit by a COP or EAHP certificate holder and closed applications must be shown on the status report to the City.

#### **Final Documentation**

Within fourteen (14) calendar days after execution of a lease, the Borrower shall supply the City with a copy of the following for all COP and EAHP tenants:

- signed copy of lease



- copy of complete application
- a demographic report on all COP and EAHP applicants

### **Retention Policy**

For MOHCD auditing purposes, Borrowers are required to keep all supporting documents for each applicant that has been interviewed for at least one year after the interview.

### **Re-rental of Low Income Units**

Upon re-rental of any Low Income Unit or when re-opening the project waitlist to new applicants, the Borrower shall notify the City in advance of any vacancy or waitlist opportunity. In no event shall the City be notified fewer than thirty (30) days before the date of re-occupancy for a vacant unit. In no event shall the City be notified fewer than thirty (30) days before a closed waitlist is re-opened for new applications. Violation of the thirty (30) day notification requirement may delay re-occupancy.

Waitlist applications shall be entered into a lottery as described above. All lottery procedures listed in this document apply to wait list openings. Appeals, response deadline, application forms, and final documentation requirements listed above shall apply to all re-rentals.

Borrowers filling unit vacancies off a waitlist must accept applications from approved COP and EAHP certificate holders at any time, regardless of whether the waitlist is closed to other applicants. If a COP or EAHP certificate holder is found eligible for a Low Income Unit in the building, they shall be placed at the top of the waitlist.

No more than seven (7) calendar days following the date that any new applications are accepted for a waitlist, the Borrower shall supply the City with a status report listing names, addresses and certificate numbers (when available) of COP and EAHP certificate holders indicating the status of each application as of that date and the reason for any rejections.

The City will, in turn, verify within seven (7) calendar days which such applicants are qualified as COP or EAHP certificate holders.

On an annual basis and each time a new waitlist lottery is conducted, the City shall be provided with a complete list of all applicant names, lottery rank on the waitlist, and whether they hold a COP or EAHP certificate upon finalization of the waitlist.

**EXHIBIT K**

**[TO BE UPDATED]**

<p><b>How are utilities paid by the renter?</b></p>	<p>Rentē pays own utility bills directly.</p> <p>-OR-</p> <p>Renter is charged a flat rate of \$___ by a third party vendor for the following utilities: _____ on a monthly basis.</p> <p>-OR-</p> <p>All utilities are paid by the building.</p>
<p><b>Other fees and/or building rules</b></p>	<p>Please list any fees for pets, mandatory insurance, bounced check, etc. here.</p>
<p><b>Contact Person</b></p>	
<p><b>Phone</b></p>	
<p><b>Email</b></p>	
<p><b>Website</b></p>	
<p><b>How to obtain an application</b></p>	
<p><b>Application deadline</b></p>	<p>_____, 5pm</p> <p>Applications must be <u>received</u> in paper form (no faxes or emails) by 5pm on the date of the deadline.</p>
<p><b>Address to which application should be delivered</b></p>	<p>Office:  Rental Manager Name:  Address:  City/State/Zip Code:  Attn:</p>
<p><b>Open House Dates (if applicable)</b></p>	<p>Date:  Time:</p> <p>Date:  Time:</p> <p>Date:  Time:</p>
<p><b>Information Session</b></p>	<p>Enter date, time and location</p>
<p><b>Lottery</b></p>	<p>Enter date, time and location</p> <p>(Consider working with City to rent Main Library Koret Auditorium if a larger lottery is anticipated.)</p> <p>Applicants do not need to be present at the lottery. Results will be posted to (place your web URL here) within two weeks of the lottery.</p>

<b>Special Note(s)</b>	
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**VII. Application/Selection Process and Timeline**

The City and County of San Francisco's requirements for the marketing, application process, lottery process, tenant selection process and tenant screening criteria are defined by Exhibits H, I, J, & K.

[Please complete the following timeline as part of your Marketing Plan]

Timeline of Entire Process (add info as needed)

Task Name	Date
Submittal of Marketing Plan to MOHCD	
Marketing period (3 months)	
Copy of Advertisements to required newspapers	
Applications Available to public	
Informational Workshop #1	
Informational Workshop #2	
Additional Community Outreach (if applicable)	
Application Deadline	
Lottery	
Demographic Summary of all Applicants to MOHCD	
Certificate of Preference count to MOHCD	
Application Review / Approval Process- start date	
Lease-up process / timeline	
Initial MOHCD approvals returned	
First Occupancy	
Construction start date- projected	
Project Closing- projected date	

**VIII. Document Review**

I/We certify that I/we and all agents involved in the process of renting affordable units have read Exhibits, H, I, J & K.

Representative (sign) \_\_\_\_\_

Representative (print) \_\_\_\_\_

Title (print) \_\_\_\_\_

Company (print) \_\_\_\_\_

Date (print) \_\_\_\_\_

## Flyer Template

### Affordable Homes for Rent in San Francisco

Exterior Photo	Interior Photo
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**3 two-bedroom + 3 three-bedroom “Below Market Rate” rental units available  
Bayside Village, 1125 Laurel Court, San Francisco**

- New Units with Modern Design + Amenities
- (2) Two-bedroom units for \_\_\_\_ available to households at or under 55% of median income
- Renter households must earn no more than the income levels listed below:

Household Size	One Person	Two Person	Three Person	Four Person	Five Person
<b>55% of Median Income 2014</b>	\$37,350	\$42,750	\$48,050	\$53,400	\$57,650

**Applications must be received by 5pm on [Date] to [Address], San Francisco, CA 94114.**

Contact Smith Rentals at [(415) 282-1000] or [[john@smithrentals.com](mailto:john@smithrentals.com)] for application and information on the units and view the full unit posting at [www.sfmohcd.org](http://www.sfmohcd.org).

Units are monitored through the San Francisco Mayor’s Office of Housing and Community Development and are subject to monitoring and other restrictions. Visit [www.sfmohcd.org](http://www.sfmohcd.org) for program information.

**Information session**  
[Day], [Date], [Time]  
[Address]

**Open House Dates**  
June 2, 5-6pm; June 12, 12-1pm; June 25, 5-6pm

All applicants are encouraged to apply. Lottery preference will be given to Certificate of Preference and Ellis Act Housing Preference holders\* and households that live or work in San Francisco.

Unit #	Bedroom Count	Bath Count	Square Feet	Floor	Rent	Income Maximum	Minimum Monthly Household Income Required	Deposit Required
E113	Studio	1	448	1	\$939	55% of AMI	\$2347.50	\$939
E114	1	1	605	1	\$1066	55% of AMI	\$2665	\$1066
E105	2	1	846	1	\$1192	55% of AMI	\$2980	\$1192

*\*Certificate of Preference holders are primarily households displaced in Redevelopment Project Areas during the 1960's and 1970's, but may also include other persons displaced by Agency action. Ellis Act Housing Preference holders are long term San Francisco tenants who were evicted because of the Ellis Act. Contact 415-701-5613 for more information.*



## COP Postcard Template

### Affordable Homes for Rent in San Francisco

Exterior Photo	Interior Photo

**3 two-bedroom (\$rent amount)+ 3 three-bedroom (\$rent amount) rental units available at Bayside Village, 1125 Laurel Court**

- Renter Households must have a minimum monthly income of \$\_\_\_\_\_
- Renter households must earn no more than the income levels listed below:

Household Size	One Person	Two Person	Three Person	Four Person	Five Person
55% of Median Income 2012	\$39,650	\$45,300	\$51,000	\$56,650	\$61,200

*\*Certificate of Preference holders are primarily households displaced in Redevelopment Project Areas during the 1960's and 1970's, but may also include other persons displaced by Agency action. Ellis Act Housing Preference holders are long term San Francisco tenants who were evicted because of the Ellis Act. Contact 415-701-5613 for more information.*



**Side Two:**  
**Mayor's Office of Housing & Community Development**  
**1 South Van Ness, 5<sup>th</sup> Floor**  
**San Francisco, CA 94103**

**Applications must be received by**  
**5pm on Friday, April 13, 2012 to:**  
Makras Real Estate, 1193 Church St.  
San Francisco, CA 94114.

For more information & to apply Contact JM Rentals  
(415) 282-8400 or [victor@jmrentals.com](mailto:victor@jmrentals.com) or  
[www.sfmohcd.org](http://www.sfmohcd.org)

**Information session**  
**Monday, June 2, 2012, 6pm**  
**123 Hyde Street**

**Open House Dates**  
**June 2, 5-6pm; June 12, 12-1pm; June 25, 5-6pm**





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**LOAN AGREEMENT**

by and among the

**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA,**

**500 FOLSOM, L.P.,  
a California limited partnership,**

and

**BLOCK 9 MRU RESIDENTIAL, LLC,  
a Delaware limited liability company**

**dated as of December 1, 2016**

relating to:

**\$132,000,000**

**City and County of San Francisco, California  
Multifamily Housing Revenue Bonds, Series 2016E  
(Lower 500 Folsom Residential)**

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The interest of the City and County of San Francisco, California (the "City") in this Loan Agreement (except for certain rights described herein) has been pledged and assigned to U.S. Bank National Association, as trustee (the "Trustee"), under that certain Indenture of Trust, dated as of December 1, 2016, by and between the City and the Trustee.

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EXHIBIT A CITY AND COUNTY OF SAN FRANCISCO CONTRACTING PROVISIONS

## LOAN AGREEMENT

THIS LOAN AGREEMENT (as supplemented and amended from time to time, the "Loan Agreement"), dated as of December 1, 2016, is by and among the City and County of San Francisco, California, a municipal corporation duly organized and existing pursuant to its charter and the laws and constitution of the State of California (the "City"), Block 9 MRU Residential, LLC, a Delaware limited liability company (the "Market Borrower"), and 500 Folsom, L.P., a California limited partnership (the "Affordable Borrower" and, together with the Market Borrower, the "Borrowers").

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS AND INTERPRETATION

Section 1.1. Definitions. Capitalized terms used in this Loan Agreement have the meanings given to such terms in Section 1.01 of the Indenture of Trust, dated as of December 1, 2016, between the City and U.S. Bank National Association, as trustee.

Section 1.2. Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Loan Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

Section 1.3. Titles and Headings.

(a) The titles and headings of the articles and sections of this Loan Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Loan Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

(b) All accounting terms not otherwise defined in Section 1.01 of the Indenture, when used in this Loan Agreement, shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the Approved Accounting Method. All references herein to "Approved Accounting Method" refer to such method as it exists at the date of the application thereof.

(c) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(d) References to the Bonds as "tax exempt" or the tax exempt status of the Bonds are to the exclusion of interest on the Bonds (other than Bonds held by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City represents, warrants and covenants that:

(a) The City is a municipal corporation, duly organized and validly existing under its charter and the constitution and laws of the State. Under the provisions of the Act, the City has the power to enter into the transactions on its part contemplated by this Loan Agreement, the Indenture, the Bond Purchase Agreement and the Regulatory Agreement (collectively, the "City Documents") and to carry out its obligations hereunder and thereunder. The financing of the Project constitutes and will constitute a permissible public purpose under the Act. By proper action, the City has authorized the execution, delivery and due performance of its obligations under the City Documents.

(b) Neither the execution and delivery of the Bonds and the City Documents, nor the City's compliance with the terms, conditions or provisions on the part of the City in the Bonds and the City Documents, to the knowledge of the City without investigation, conflicts in any material respect with or results in a material breach of any of the terms, conditions or provisions of any constitution or statute of the State, or of any agreement, instrument, judgment, order or decree to which the City is now a party or by which it is bound or constitutes a material default by the City under any of the foregoing.

(c) The City has not created and will not create any debt, lien or charge upon the asset and monies explicitly pledged to the repayment of the Bonds under the Indenture, and has not made and will not make any pledge or assignment of or create any encumbrance thereon, other than the pledge and assignment thereof under the Indenture.

(d) The City has complied and will comply with all material provisions of the Act to be complied with by the City applicable to the Bonds and the transactions contemplated by this Loan Agreement and the other City Documents.

(e) The Bonds are being issued under the Indenture, and are secured by the Indenture pursuant to which the City's interest in this Loan Agreement (other than the Reserved Rights) is pledged and assigned to the Trustee. The City covenants that it has not pledged and will not pledge or assign its interest in this Loan Agreement other than to the Trustee under the Indenture.

(f) No litigation or administrative action of any nature has been served on the City and is now pending (i) seeking to restrain or enjoin the execution and delivery of the Indenture, this Loan Agreement or the Regulatory Agreement, or in any manner questioning the proceedings or authority of the City relating thereto or otherwise affecting the validity of the Bonds, or (ii) challenging the existence or authority of the City or its officers or that of the members of the Board of Supervisors or its officers and, to the knowledge of the City, none of the foregoing are threatened.

The City makes no representation or warranty that the Project will be adequate or sufficient for the purposes of the Borrowers. Nothing in this Agreement shall be construed as requiring the Authority to provide any financing for the Project other than the proceeds of the Bonds.

Section 2.2. Representations, Warranties and Covenants of the Borrowers. (a) Each of the Affordable Borrower and the Market Borrower with respect to itself, and not with respect to the other Borrower, hereby represents, warrants and covenants that:

(i) It is in good standing in the State and has full legal right, power and authority under the laws of the United States of America and the State (A) to enter into this Loan Agreement and the other Bond Documents to which it is a party; (B) to perform its obligations hereunder and thereunder; and (C) to consummate the transactions on its part contemplated by the Bond Documents. The Person executing the Bond Documents for it to which it is a party is fully authorized to execute the same. The Bond Documents to which it is a party have been duly authorized, executed and delivered by it. Its sole business is the ownership, management and operation of its respective interests in the Project.

(ii) Upon the execution and delivery thereof by the parties thereto, each of the Bond Documents to which it is a party will constitute a valid and binding obligations of it, enforceable upon it in accordance with its respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting creditors' rights generally and by judicial discretion in the exercise of equitable remedies.

(iii) The execution and delivery of the Bond Documents to which it is a party, the performance by it of its obligations hereunder and thereunder and the consummation of the transactions on its part contemplated hereby and thereby will not violate its formation documents, or any law, regulation, rule or ordinance or any order, judgment or decree of any federal, state or local court and do not conflict with, or constitute a breach of, or a default under, any document, instrument or commitment to which it is a party or by which it or any of its property is bound.

(iv) No consent or approval of any trustee or holder of any indebtedness of it, and to the best of its knowledge and only with respect to it, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except no representation is made with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery by it of the Bond Documents to which it is a party, or the consummation of any transaction on its part herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

(v) No litigation or administrative action of any nature has been served on it and is now pending (i) seeking to restrain or enjoin the execution and delivery of any of the Bond Documents, or in any manner questioning the proceedings or authority of it relating thereto or otherwise affecting the validity of the Bonds, or (iii) challenging the existence or authority of it or its partners or members, as applicable, and, to its knowledge none of the foregoing are threatened.

(vi) It has not received any written notice declaring that it is not in default under any document, instrument or commitment to which it is a party or to which it or any of its property is subject which default would or could affect its ability to carry out its obligations under this Loan Agreement and the other Bond Documents to which it is a party.

(vii) It acknowledges, represents and warrants that it understands the nature and structure of the Project; that it is familiar with the provisions of all of the documents and instruments relating to the financing of the Project to which it is a party; that it understands the risks inherent in such transactions, including without limitation the risk of loss of its interests in the Project; and that it has not relied on the City for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the City in any manner except to issue the Bonds in order to provide funds to make the Loan.

(viii) It has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on any of the Bonds to be included in the gross income of the owners thereof for purposes of federal income taxation (other than a "substantial user" of the Project or a "related person," as such terms are used in Section 147(a) of the Code).

(ix) It covenants that it will not take, or knowingly cause or suffer to be taken by the Trustee, any action with respect to the proceeds of the Bonds which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Bonds would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

(x) It is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property, and it has no knowledge of any Person contemplating the filing of any such petition against it. As of the Closing Date, it has the ability to pay its debts as they become due.

(xi) No statement of fact made by it in any Bond Documents to which it is a party contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein in light of the circumstances in which they were made, not misleading. There is no material fact or circumstance presently known to it that has not been disclosed to the Bondholder Representative and the City which materially and adversely affects the Project or its business, operations or financial condition or business prospect or its ability to meet its obligations under this Loan Agreement and the other Bond Documents to which it is a party in a timely manner.

(xii) It is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of its assets constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3 101.

(xiii) It has not received written notice of default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which would materially adversely affect its financial condition or its business. There has not been committed by it or any Affiliate of it involved with the operation or use of the Project any act or omission affording any Governmental Authority the right of forfeiture as against its interests in the Project or any part thereof or any moneys paid in performance of its obligations under any Bond Document to which it is a party.

(xiv) All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the City or the Bondholder Representative in respect of the Project by or on its behalf, to the best of its knowledge, (A) are accurate and complete in all material respects, (B) accurately represent the financial condition of the Project as of the date of such reports, and (C) to the extent



prepared by an independent certified public accounting firm, have been prepared in accordance with the Approved Accounting Method, except as disclosed therein. Other than as discussed in its financial information provided to the Bondholder Representative in writing, it has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no materially adverse change in its financial condition, operations or business from that set forth in said financial statements.

(xv) It has not received written notice of any Condemnation or other proceeding that has been commenced and, to its' knowledge, no Condemnation or other proceeding has commenced or is contemplated, threatened or pending with respect to all or part of the Project or for any relocation of any roadways providing access to the Project.

(xvi) It is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

(xvii) Its interests in the Bond Documents are not subject to, and it has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(xviii) It has not received written notice from any insurance company or bonding company of any defect or inadequacy in the Project, or any part thereof, which would adversely affect the Project's insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond.

(xix) It hereby represents, covenants and agrees to comply with the provisions of all applicable state laws relating to the Bonds and the Project.

(xx) It is not (A) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; or (B) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended.

(xxi) It has not accepted its interests in the Loan or entered into any Bond Document with the actual intent to hinder, delay or defraud any creditor, and it has received reasonably equivalent value in exchange for its obligations under the Bond Documents. Giving effect to the transactions contemplated by the Bond Documents, the fair saleable value of its assets exceeds and will, immediately following the execution and delivery of the Bond Documents, exceed the its total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. To the best of its' knowledge, the fair saleable value of its assets (which assets shall include any interests it may have in any cash proceeds held in escrow or pursuant to the Investment Agreement in connection with either the Bonds or any subordinate debt of the Project) is and will, immediately following the execution and delivery of the Bond Documents, be greater than its then liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Its assets do not and, immediately following the execution and delivery of the Bond Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. It does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of its obligations).

(xxii) Unless prior Written Notice is given to the City, the Trustee and the Bondholder Representative, it has not used and will not use any trade name, and has not done and will not do business under any name other than its actual name set forth herein. Its principal place of business is its primary address for notices as set forth in Section 12.06 of Indenture, and it has no other place of business, other than the Project and such principal place of business.

(xxiii) By its execution and delivery of this Loan Agreement, it approves the form and substance of the Indenture, and agrees to carry out the responsibilities and duties specified in the Indenture to be carried out by it.

(b) The Borrowers represent, warrant and covenant that:

(i) Any certificate signed by an Authorized Borrower Representative and delivered pursuant to this Loan Agreement or the other Bond Documents shall be deemed a representation and warranty by the Borrowers as to the statements made therein.

(ii) The Project is located wholly within the City.

(iii) The Borrowers will take all actions on their part to be taken to obtain all necessary certificates, approvals, permits and authorizations with respect to the construction and operation of the Project from applicable local governmental agencies and agencies of the State and the federal government.

(iv) The Borrowers shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income of the owners thereof for federal income tax purposes of the interest on the Bonds (other than the exclusion from gross income of the interest on the Bonds in respect of a "substantial user" of the Project or a "related person," as such terms are used in Section 147(a) of the Code). The Borrowers intend to utilize all of the units that comprise the Project as multifamily rental housing during the Qualified Project Period.

(v) Not in excess of two percent (2%) of the proceeds of the Bonds will be used to pay Issuance Costs.

(vi) The construction and operation of the Project in the manner presently contemplated and as described herein, in the Construction Funding Agreement and in the Regulatory Agreement will not conflict with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto. The Borrowers will cause the Project to be operated in all material respects in accordance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.

(vii) In the event the Loan proceeds are not sufficient to complete the construction and equipping of the Project and the payment of all Issuance Costs, the Borrowers will furnish or cause to be furnished any additional moneys necessary to complete the construction and equipping of the Project and to pay all Issuance Costs.

(viii) All of the proceeds from the Loan plus the income from the investment of the proceeds of the Loan will be used to pay or reimburse the Borrowers for Project Costs, and at least ninety-seven percent (97%) of the proceeds of the Loan will be used to

pay or reimburse the Borrowers for Qualified Project Costs and less than twenty-five percent (25%) of such amount will be used to pay or reimburse the Borrowers for the cost of land or any interest therein. The Borrowers shall assure that the proceeds of the Loan are expended so as to cause the Bonds to constitute "qualified residential rental bonds" within the meaning of Section 142(d) of the Code.

(ix) The estimated total cost of the financing of the construction of the Project is equal to or in excess of the principal amount of the Loan.

(x) The Borrowers have marketable title to the Project, free and clear of all Liens except the Permitted Encumbrances. The Deed of Trust, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (A) a valid, first priority monetary lien on the fee interest in the Project and (B) perfected security interests in and to, and perfected collateral assignments of, all personalty included in the Project (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To the Borrowers' knowledge, there are no delinquent real property taxes or assessments, including water and sewer charges, with respect to the Project, nor are there any claims for payment for work, labor or materials affecting the Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Bond Documents.

(xi) The Project and the use thereof will comply, to the extent required, in all material respects with all applicable Legal Requirements.

(xii) No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Bond Document.

(xiii) To the best of the Borrowers' knowledge, the Project is or will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service it for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Project are or will be located in the public right-of-way abutting the Project or through a valid easement, and all such utilities are or will be connected so as to serve the Project without passing over other property absent a valid easement. All roads necessary for the use of the Project for its current purpose have been or will be completed and, if required, dedicated to public use and accepted by all Governmental Authorities. Except for Permitted Encumbrances, the Project does not share ingress and egress through an easement or private road or share on-site or off-site recreational facilities and amenities that are not located on the Project and under the exclusive control of the Borrowers, or where there is shared ingress and egress or amenities, there exists an easement or joint use and maintenance agreement under which (A) access to and use and enjoyment of the easement or private road and/or recreational facilities and amenities is perpetual, (B) the parties who benefit from and who are burdened by such easement and/or recreational facilities and amenities must be specified, (C) the Borrowers' responsibilities are specified and the manner of calculation of the Borrowers' share of expenses is specified, and (D) the failure to pay any maintenance fee with respect to an easement will not result in a loss of usage of the easement.

(xiv) The Borrowers have obtained the insurance required by Section 6.39 hereof and has delivered to the Servicer copies of insurance policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Loan Agreement and the Deed of Trust.

(xv) The Project will be used as a multifamily residential rental project and other appurtenant and related uses (including approximately 6,750 square feet of retail space which is not part of the Project, and the construction and equipping of which are not being financed with proceeds of the Loan, as the costs thereof are not Project Costs), which use is consistent with the zoning classification for the Project. All certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use or legal, nonconforming use, as applicable, occupancy and operation of the Project (collectively, the "Licenses") required at this time for the construction, development and equipping of the Project have been or will be obtained. To the Borrowers' knowledge, all Licenses obtained by the Borrowers have been validly issued and are in full force and effect. The Borrowers have no reason to believe that any of the Licenses required for the future use and occupancy of the Project and not heretofore obtained by the Borrowers will not be obtained by the Borrowers in the ordinary course following the Completion Date. No Licenses will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project, including any transfer pursuant to foreclosure sale under the Deed of Trust or deed in lieu of foreclosure thereunder. No proceedings that would result in a change of the zoning of the Project not consistent with the presently contemplated uses of the Project described in this paragraph are, to the best of the Borrowers' knowledge, pending or threatened.

(xvi) As of the Closing Date, no structure within the property subject to the Deed of Trust lies or is located in an identifiable or designated Special Flood Hazard Area. Subsequent to the Closing Date, if the property subject to the Deed of Trust is determined to be in a Special Flood Hazard Area, the Borrowers will obtain appropriate flood insurance as required under the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994 as amended or as required by the Servicer pursuant to its underwriting guidelines.

(xvii) The Project, including all Improvements, parking facilities, systems, fixtures, Equipment and landscaping, are or, after completion of the construction thereof and receipt of certificates of occupancy applicable thereto, will be in good and habitable condition in all material respects and in good order and repair in all material respects (reasonable wear and tear excepted).

(xviii) The physical configuration of the Project is not in material violation of the Americans with Disabilities Act, if required under applicable law.

(xix) All of the Improvements included in determining the appraised value of the Project will lie wholly within the boundaries and building restriction lines of the Project, and no improvement on an adjoining property encroaches upon the Project, and no easement or other encumbrance upon the Project encroaches upon any of the Improvements, so as to affect the value or marketability of the Project, except those insured against by the Title Insurance Policy or disclosed in the survey of the Project as approved by the Servicer.

(xx) All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal

Requirements in connection with the transfer of the Project to the Borrowers have been or will be paid on or prior to the Closing Date. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Bond Documents to which the Borrowers are a party have been or will be paid.

(xxi) There is no secured or unsecured indebtedness with respect to the Project or any residual interest therein, other than Permitted Encumbrances and the permitted secured indebtedness described in Section 6.33, except an unsecured deferred developer fee and construction management fee not to exceed the amount permitted by Bondholder Representative as determined on the Closing Date.

(xxii) The Project, as designed, will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, the Americans with Disabilities Act of 1990 ("ADA"), to the extent required (as evidenced by an architect's certificate to such effect).

(xxiii) The Project satisfies all requirements of the Act and the Code applicable to the Project.

(xxiv) The Project is, as of the date of issuance of the Bonds, in compliance with all requirements of the Regulatory Agreement to the extent such requirements are applicable; and the Borrowers intend to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code, and pursuant to leases which comply with all applicable laws.

(c) The Market Borrower represents, warrants and covenants that:

(i) It is a limited liability company, duly organized and existing under the laws of the State of Delaware.

(ii) It intends to hold its interests in the Project for its own account, and has no current plans to sell and has not entered into an agreement to sell any of its interests in the Project.

(d) The Affordable Borrower represents, warrants and covenants that:

(i) It is a limited partnership, duly organized and existing under the laws of the State.

(ii) It intends to hold its interest in the Project for its own account, and has no current plans to sell and has not entered into any agreement to sell any of its interests in the Project. It is hereby acknowledged, however, that the Affordable Borrower's partnership agreement does refer to certain rights of one or more of its partners to acquire the Affordable Borrower's interests in the Affordable Project, or to acquire certain of the partners' interests in the Affordable Borrower, and for the possible acquisition of the Affordable Project or the acquisition of the partners' interests in the Affordable Borrower following the fifteen year tax credit compliance period as referenced in the Borrower's partnership agreement, and those provisions shall not result in a breach of this Section 2.2(d)(ii).

It is hereby acknowledged that, for purposes of this Loan Agreement, the term "knowledge" with regard to any person means known to, or with reasonable investigation should be known to, such person, and if such person is an entity, to any officer, director, general partner, or manager of such person.

Section 2.3. Hazardous Waste Covenant. In addition to and without limitation of any other representations, warranties and covenants made by the Borrowers under this Loan Agreement and under the other Loan Documents, the Borrowers further represent, warrant and covenant that the Borrowers will not use or permit Hazardous Materials (as defined hereinafter) on, from, or affecting the Project (a) in any manner which violates federal, state or local laws, ordinances, rules, or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, or (b) in a manner that would create a material adverse effect on the Project. Without limiting the foregoing, the Borrowers shall not cause or permit the Project or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Borrowers cause or knowingly permit, as a result of any intentional or unintentional act or omission on the part of the Borrowers or any tenant or subtenant, a release of Hazardous Materials on to the Project or on to any other property in a manner which violates federal, state, or local laws, ordinances, rules or regulations or in a manner that would create a material adverse effect on the Project. The Borrowers shall comply with and require compliance by all tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, and shall obtain and comply with, and require that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Borrowers shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other action required by a governmental authority under an applicable statute or regulation to clean up and remove all Hazardous Materials, on, from, or affecting the Project in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations.

The Borrowers shall defend, indemnify, and hold harmless the City from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release, or threatened release of any Hazardous Materials which are on or from the Project which affect, the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on or from the Project, and/or (c) any violation of laws, orders, regulations, requirements or demands of government authorities, or written requirements of the City, which are based upon or in any way related to such Hazardous Materials including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. In the event the Project is foreclosed upon, or a deed in lieu of foreclosure is tendered, or this Loan Agreement is terminated, the Borrowers shall deliver the Project in a manner and condition that shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Project.

For the purposes of this Section 2.3 and Section 2.4, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C.

Sections 9601 et seq.), and in the regulations promulgated pursuant thereto, or any other federal, state or local environmental laws, ordinances, rules, or regulations. The provisions of this Section 2.3: (a) shall not apply to lawful conditions permitted by an O&M Program (defined in the Loan Documents) or the safe and lawful use and storage of quantities of (i) pre-packaged supplies, cleaning materials, petroleum products, household products, paints, solvents, lubricants and other materials customarily used in the construction, renovation, operation, maintenance or use of comparable multifamily properties, (ii) cleaning materials, household products, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Project; and (iii) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Project's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws (defined in the Deed of Trust), (b) shall be in addition to any and all other obligations and liabilities the Borrowers may have to the City at common law, and (c) with respect to any liability or cost arising as a result of acts or omissions of the Borrowers during the term of this Loan Agreement, shall survive the termination of this Loan Agreement. This Section 2.3 shall not obligate the Borrowers in any way with respect to any acts or omissions of any entity that succeeds the Borrowers or either of them as owner of the Project.

The indemnifications and protections set forth in this Section 2.3 (i) shall be extended, with respect to the City, to the members of its Board of Supervisors, officers, employees, agents and servants and persons under the City's control or supervision, and (ii) shall be for the full and equal benefit of the Trustee, as assignee of the City under the Indenture.

Anything to the contrary in this Loan Agreement notwithstanding, the covenants of the Borrowers contained in this Section 2.3 shall remain in full force and effect after the termination of this Loan Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought, and (ii) payment in full or the satisfaction of such claim or cause of action and of all expense and charges incurred by the City relating to the enforcement of the provisions herein specified.

For the purposes of this Section 2.3, neither of the Borrowers shall be deemed an employee, agent or servant of the City or person under City's control or supervision.

Section 2.4. Additional Environmental Matters. (a) The Borrowers shall require in any management agreement for the Project that the management company shall operate and maintain the Project in material compliance with all applicable federal, state, regional, county or local laws, statutes, rules, regulations or ordinances, concerning the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601 et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq., and the Clean Air Act of 1970, 42 U.S.C. Section 4321, and all rules, regulations and guidance documents promulgated or published thereunder, and any state, regional, county or local statute, law, rule, regulation or ordinance relating (i) to releases, discharges, emissions or disposal of Hazardous Materials to air, water, land or ground water, (ii) to the withdrawal or use of ground water, (iii) to the use, handling or disposal or polychlorinated biphenyls ("PCBs"), asbestos or urea formaldehyde, (iv) to the treatment, storage, disposal or management of hazardous substances (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof) and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the Project or the property adjacent to or

surrounding the Project, (v) to the exposure of persons to toxic, hazardous or other controlled, prohibited or regulated substances or (vi) to the transportation, storage, disposal, management or release of gaseous or liquid substances and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder.

(b) The Borrowers shall keep the Project free and clear of any liens or encumbrances securing payment of the costs of any response, removal or remedial action or cleanup of Hazardous Materials (as defined in Section 2.3).

(c) The Borrowers covenant and agree that they will not knowingly conduct or allow to be conducted any business, operations or activity on the Project, or employ or use the Project to manufacture, treat, store (except as permitted under the Bond Documents), or dispose of any Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof), or any other substance the disposal of which is prohibited, controlled or regulated under applicable law, or which poses a threat or nuisance to safety, health or the environment, including, without limitation, any business, operation or activity which would violate the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901 et seq., or cause or knowingly allow to be caused, a release or threat of release, of a non-diminimis quantity of hazardous substances on the Project as defined by, and within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601 et seq., or any similar state, county, regional or local statute providing for financial responsibility for cleanup for the release or threatened release of substances provided for thereunder.

(d) The Borrowers covenant and agree that they shall take all appropriate response action, including any removal and remedial action, in the event of a release, emission, discharge or disposal of Hazardous Materials in, on, under or about the Project for which the Borrowers are liable under state, federal or local environmental rules or regulations.

(e) The Borrowers shall, as soon as practicable and in any event within fifteen (15) days of its receipt thereof, notify the City and the Bondholder Representative of any notice, letter, citation, order, warning, complaint, claim or demand that (i) the Borrowers or any tenant has violated, or is about to violate, any federal, state, regional, county or local environmental, health or safety statute, law, rule, regulation, ordinance, judgment or order; (ii) there has been a release, or there is a threat of release, of Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof) from the Project; (iii) the Borrowers or either of them or any tenant may be or is liable, in whole or in part, for the costs of cleaning up, remediating, removing or responding to a release of Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof); or (iv) the Project is subject to a lien in favor of any governmental entity for any environmental law, rule or regulation arising from or costs incurred by such governmental entity in response to a release of a Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof).

(f) During the period in which this Loan Agreement is in effect, the Borrowers hereby grant the City and the Trustee, and their respective agents, attorneys, employees, consultants and contractors, an irrevocable license and authorization upon reasonable prior written notice of not less than three (3) days, or twenty-four (24) hours in the case of an emergency, to enter upon and inspect the Project and perform such tests, including, without limitation, subsurface testing, soils and ground water testing, and other tests which may physically invade the Project, as the City or the Trustee, in their respective reasonable discretion, determine are necessary to protect the lien created by the Deed of Trust. Such entry, inspection, and testing shall be



conducted in a manner which does not interfere with any tenant's right of occupancy or disturb any tenant's right of peaceable quiet enjoyment. The provisions of this Section 2.4 shall be for the full and equal benefit of the City, and of the Trustee as assignee of the City under the Indenture.

Section 2.5. Survival of Representations and Covenants. All of the representations and warranties in Sections 2.1, 2.2, 2.3 and 2.4 and elsewhere in the Bond Documents (i) shall survive for so long as any portion of the Borrower Payment Obligations remains due and owing, except that the representations and warranties of the Affordable Borrower shall terminate and be of no further force and effect as to matters arising from and after the Release Date, and (ii) shall be deemed to have been relied upon by the Servicer, the Trustee, the Bondholder Representative and the Bondholders notwithstanding any investigation heretofore or hereafter made by the Servicer, the Trustee, the Bondholder Representative or the Bondholders or on its behalf, provided, however, that the representations, warranties and covenants set forth in Sections 2.3 and 2.4 shall survive in perpetuity and shall not be subject to the exculpation provisions of Section 5.4.

### ARTICLE III

#### THE LOAN

Section 3.1. Closing of the Loan. The closing of the Loan shall not occur until the following conditions are met:

(a) the City shall have received an original executed counterpart of this Loan Agreement, the Note, the Tax Certificate, the Regulatory Agreement, the Bond Purchase Agreement and the Deed of Trust, together with evidence satisfactory to the City of the recordation of the Regulatory Agreement and the Deed of Trust in the official records of the County Recorder of the City, which may be by telephonic notice from a title company (or, in lieu of such recordation, that such documents have been delivered to an authorized agent of the title company for recordation under binding recording instructions from Bondowner's counsel or such other counsel as may be acceptable to the City and Bondowner);

(b) no Event of Default nor any event which with the passage of time and/or the giving of notice would constitute an Event of Default under this Loan Agreement shall have occurred and the Borrowers shall have so certified in writing;

(c) all legal matters incident to the transactions contemplated by this Loan Agreement shall be concluded to the reasonable satisfaction of counsel to the City;

(d) counsel to the Borrowers shall have delivered one or more opinions in form satisfactory to counsel to the City, Bond Counsel and counsel to the Bondholder Representative regarding the enforceability against the Affordable Borrower and the Market Borrower of each of the documents to which the Borrowers are parties;

(e) delivery to the Trustee for deposit in the Costs of Issuance Fund, or into escrow with the title company (or separate escrow company, if applicable), of all amounts required to be paid in connection with the origination of the Loan and any underlying real estate transfers or transactions (including all Issuance Costs), as specified in written instructions delivered to the title company by counsel to the Bondholder Representative (or such other counsel as may be acceptable to the

Bondholder Representative) and/or as specified in a closing memorandum of the Bondholder Representative; and

(f) the Construction Funding Agreement shall have been executed by the parties thereto, and all conditions to the purchase of the Bonds provided therein and in the Bond Purchase Agreement shall have been satisfied as evidenced by the advancement by the Bond Purchasers of the Initial Disbursement.

Section 3.2. Commitment to Execute the Note. The Borrowers shall execute and deliver the Note, the Construction Funding Agreement, the Regulatory Agreement, the Tax Certificate and the Deed of Trust simultaneously with the execution by them of this Loan Agreement.

Section 3.3. Making of the Loan. The City hereby makes to the Borrowers and agrees to fund, and the Borrowers hereby accept from the City, upon the terms and conditions set forth herein and in the Construction Funding Agreement, the Loan and agree to have the proceeds of the Loan applied and disbursed in accordance with the provisions of this Loan Agreement and the Construction Funding Agreement.

Section 3.4. Disbursement of Loan Proceeds and Other Amounts. (a) The City hereby authorizes and directs the first funding and disbursement of the Loan on the Closing Date in an amount equal to the Initial Disbursement, subject to the conditions set forth in Section 3.1 above and the conditions set forth in the Construction Funding Agreement. Subject to the foregoing, the Borrowers hereby authorize the City to disburse on the date of execution and delivery of the Note, the Initial Disbursement representing the first advance of the principal amount of Loan to be transferred to or for the benefit of the Borrowers to be used to pay Qualified Project Costs.

(b) The Trustee shall make disbursements of the remaining principal amount of the Loan directly to or for the benefit of the Borrowers subject to Section 3.03 of the Indenture, and on the terms and subject to the conditions set forth in the Construction Funding Agreement, and as follows: the parties express and acknowledge their mutual intent that the proceeds of the Loan which are proceeds of the Bonds be used exclusively to pay the Project Costs which are includable in the aggregate basis of any building (the "Allowable Costs"), in order to comply with Section 42(h)(4)(B) of the Internal Revenue Code of 1986, as amended. The City hereby authorizes and requests that the Borrowers maintain such accounting and other records as shall be necessary to carry out the mutual intent of the parties with respect to tracing the use of the Bond proceeds, and the City shall have no responsibility whatsoever with respect thereto. To further evidence their mutual intent, each disbursement of proceeds of the Loan shall: (i) identify the respective amounts of proceeds of the Bonds and the other sources of funds comprising each such disbursement, and (ii) be made such that proceeds of the Bonds may be deposited in a specially designated account which can be used only to pay Allowable Costs, and that the proceeds of the other sources of funds may be deposited into another, separate account or that such proceeds may otherwise be traced on the books and records of the Borrower in a manner sufficient to carry out the intent of the parties expressed hereinabove, and the Borrowers (and not the City) shall be responsible for all such matters.

(c) Moneys in the Costs of Issuance Fund shall be disbursed by the Trustee in accordance with the instructions received from the City or the Borrowers pursuant to Section 5.05 of the Indenture.

## ARTICLE IV

### LIMITED LIABILITY

Section 4.1. Limited Liability of the City. Notwithstanding anything herein or in any other instrument to the contrary, the City shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Loan Agreement, the Bonds or any of the other Loan Documents, except only to the extent amounts are received for the payment thereof from the Borrowers under this Loan Agreement. All obligations and any liability of the City shall be further limited as provided in Sections 5.01(d), 6.16, 7.17 and 12.09 of the Indenture.

The Borrowers hereby acknowledge that the City's sole source of moneys to repay the Bonds will be provided by the payments made by the Borrowers pursuant to this Loan Agreement, together with investment income on certain funds and accounts held by the Trustee under the Indenture, and hereby agree that if the payments to be made hereunder shall ever prove insufficient to pay all Bond Obligations as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon written notice from the Trustee, the Borrowers shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such Bond Obligations, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrowers, the City or any third party, subject to any right of reimbursement from the Trustee, the City or any such third party, as the case may be, therefor.

Section 4.2. Limitation on Liability of Bondholder Representative's Officers, Employees, Etc. Any obligation or liability whatsoever of the Bondholder Representative that may arise at any time under this Loan Agreement or any other Loan Document shall be satisfied, if at all, out of the Bondholder Representative's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the Project or any of the Bondholder Representative's shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

## ARTICLE V

### REPAYMENT OF THE LOAN

Section 5.1. Loan Repayment. (a) The Borrowers shall make Loan Payments in accordance with and subject to the terms of the Note. Each Loan Payment made by the Borrowers shall be made in funds immediately available to the Trustee or the Servicer by 2:00 p.m., New York City time, on the Loan Payment Date. Each such payment shall be made to the Trustee or the Servicer by deposit to such account as the Trustee or Servicer, as applicable, may designate by Written Notice to the Borrowers. Whenever any Loan Payment shall be stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrowers shall make Loan Payments in accordance with the Note in the amounts and at the times necessary to make all payments due and payable on the Bonds. All payments made by the Borrowers hereunder or by the Borrowers under the other Bond Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

(b) Except as otherwise set forth in the Indenture, the Borrowers and the City each acknowledge that neither the Borrowers nor the City has any interest in any moneys deposited in the funds or accounts established under the Indenture and such funds or accounts shall be in

the custody of and (except for monies in the Rebate Fund and monies due the City on deposit in the Expense Fund) held by the Trustee in trust for the benefit of the Bondholders.

(c) Unless there is no Servicer, payments of principal and interest on the Note shall be paid by the Borrowers to the Servicer. If there is no Servicer, payments of principal and interest on the Note shall be paid by the Borrowers directly to Trustee.

(d) The Borrowers shall pay to the Trustee on demand the following amounts; provided, however that the Borrowers shall not be responsible for any costs associated with any securitization of the Bonds:

(i) the Rebate Amount then due, if any, to be deposited by the Trustee in the Rebate Fund as specified in Section 5.06 of the Indenture and the costs incurred to calculate such Rebate Amount (to the extent such costs are not included in the Loan Payment);

(ii) all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Trustee and the City (above and beyond the Trustee's Fee or the Issuer's Ongoing Fee) incurred under the Indenture, as and when the same become due;

(iii) all Issuance Costs and fees, charges and expenses, including agent and counsel fees incurred in connection with the issuance of the Bonds, as and when the same become due, to the extent not paid from the Costs of Issuance Fund;

(iv) all charges, costs, advances, indemnities and expenses, including agent and counsel fees (other than Issuance Costs paid on the Closing Date), of the City incurred by the City at any time in connection with the Bonds or the Project, including, without limitation, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of the Bond Documents or any other documents relating to the Project or the Bonds or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit; and

(v) all late charges due and payable under the terms of the Note and Section 5.1(l) herein; provided, however, that all payments made pursuant to this subsection (e) shall be made to the Servicer, if there is no Servicer, such payments shall be made to the Trustee.

(e) The Borrowers shall pay to the party entitled thereto as expressly set forth in this Loan Agreement or the other Bond Documents:

(i) all expenses incurred in connection with the enforcement of any rights under this Loan Agreement, the Regulatory Agreement, the Indenture or any other Loan Document or Bond Document by the City, the Servicer, the Bondholder Representative, the Trustee or the Bondholders;

(ii) all other payments of whatever nature that the Borrowers have agreed to pay or assume under the provisions of this Loan Agreement, the Indenture and any other Bond Document; and

(iii) all expenses, costs and fees relating to inspections of the Project required by the Bondholder Representative or the Servicer in accordance with the Bond Documents or to reimburse such parties for such expenses, costs and fees.

(f) The Borrowers further agree to pay all taxes and assessments, general or special, including, without limitation, all ad valorem taxes, concerning or in any way related to the Project, or any part thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments with respect thereto; provided, however, that the Borrowers reserve the right to contest in good faith the legality of any tax or governmental charge concerning or in any way related to the Project. In addition, the Borrowers agree to pay any loan fee, processing fee and all title, escrow, recording and closing costs and expenses, any appraisal costs and all other reasonable fees and costs associated with or required in connection with the Bonds, the Regulatory Agreement and Indenture; including but not limited to any such amounts described in Section 8.06 of the Indenture.

(g) The Borrowers hereby acknowledge and consent to the assignment by the City to the Trustee of the City's rights under the Note, the Deed of Trust, this Loan Agreement and the other Loan Documents (excepting only the Reserved Rights), and the appointment of the Trustee as agent of the City to collect the payments on the Loan (to the extent made to the Trustee under Section 5.1(c)), all as set forth herein and in the Indenture.

(h) The Borrowers hereby agree to pay the City fees and expenses described in Section 18 of the Regulatory Agreement.

(i) The Borrowers agree to pay to the City within fifteen (15) days after receipt of request for payment thereof, all expenses of the City (including salaries and wages of City employees) related to the financing of the Project (and not including matters related solely to the construction of the Project) that are not otherwise required to be paid by the Borrowers under the terms of this Loan Agreement (including Section 5.1(d)(iv) above) and are not paid from disbursements of the Loan or from the Expense Fund under the Indenture, including, without limitation, legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bonds.

(j) The Borrowers agree to pay to the Trustee, immediately upon demand for payment thereof, its fees and all reasonable out-of-pocket expenses of the Trustee in connection with its serving as Trustee under the Indenture that are not otherwise required to be paid by the Borrowers under the terms of this Loan Agreement, including, without limitation, legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bonds.

(k) The Borrowers shall deposit or cause to be deposited with the Trustee on the Closing Date an amount equal to the Initial Bond Fund Deposit and other deposits as set forth in Section 3.02 of the Indenture. The Borrowers shall deposit or cause to be deposited with the Trustee on the date of execution and delivery of this Loan Agreement an amount equal to the Costs of Issuance Deposit.

(l) If any Borrower Payment Obligation is not paid by or on behalf of the Borrowers when due, the Borrowers shall pay to the Servicer a Late Charge in the amount and to the extent set forth in the Note, if any. Any such Late Charge shall not be deemed to be additional interest or a penalty, but shall be deemed to be liquidated damages because of the difficulty in computing the actual amount of damages in advance. Late Charges shall be secured by the applicable Bond Documents. Any action regarding the collection of a Late Charge will be without prejudice to any other rights, nor act as a waiver of any other rights, that the Servicer, the City, the Trustee or the Bondholder Representative may have as provided herein, at law or in equity.

Section 5.2. Optional Prepayment of Note. The Borrowers shall have the option to prepay the Note to the extent and in the manner set forth therein, exercisable by Written Notice to the City and the Trustee given at least 60 days prior to the proposed prepayment date (or such shorter time as agreed to by Bondholder Representative in its sole discretion), for the purpose of redeeming Outstanding Bonds in accordance with Section 4.01(a) of the Indenture on a permitted redemption date of the Bonds or paying the Bonds at maturity.

In connection with any such proposed prepayment, if the Bonds are not credit enhanced by a Credit Facility, the Borrowers shall deposit funds with the Trustee by 12:00 p.m. New York City time on the date of prepayment at a prepayment price equal to the principal balance of the Note to be prepaid, plus interest thereon to the date of prepayment and the amount of any Prepayment Premium payable under the Note, plus any Additional Payments due and payable hereunder through the date of prepayment. Such amounts shall be applied to the redemption of Bonds and payment of all amounts due hereunder. The Borrowers shall deliver such certifications and shall satisfy such conditions as set forth in Section 4.01(a) of the Indenture with respect to the optional redemption of Bonds. If the Bonds are not then callable, the prepayment price set forth above shall be calculated pursuant to Section 10.02 of the Indenture.

Section 5.3. Mandatory Prepayment of Note. The Borrowers shall prepay the Note at the direction of the Bondholder Representative, in whole or in part, at a prepayment price equal to the principal balance of the Note to be prepaid, plus accrued interest plus any other amounts payable under the Note or this Loan Agreement, for the purpose of redeeming the Bonds as provided in Sections 4.01(b) through 4.01(g) of the Indenture, upon the occurrence of any event or condition described below:

(a) in whole or in part, if the Project shall have been damaged or destroyed to the extent that it is not practicable or feasible to rebuild, repair or restore the damaged or destroyed property within the period and under the conditions described in the Deed of Trust following such event of damage or destruction; or

(b) in whole or in part, if title to, or the use of, all or a portion of the Project shall have been taken under the exercise of the power of eminent domain by any governmental authority and the proceeds of any condemnation award with respect to the Project are not applied to the restoration of the Project but are applied to and result in a prepayment of the Note under the conditions described in the Deed of Trust; or

(c) in whole or in part, to the extent that insurance proceeds or proceeds of any condemnation award with respect to the Project are not applied to restoration of the Project in accordance with the provisions of the Deed of Trust;

(d) in whole, on the date fifteen (15) days prior to (or such other date consented to in writing by the Bondholder Representative) the date on which the Bonds may become subject to mandatory redemption pursuant to Section 4.01(h) of the Indenture;

(e) upon an Determination of Taxability, in whole on any date specified in a Written Notice of the Borrowers to the City and the Trustee given at least 20 days prior to the proposed prepayment date, which date shall be no more than 90 days after the date of the Determination of Taxability; and

(f) as otherwise provided in the Note, the Conversion Agreement or the Deed of Trust.

Such prepayment shall be due and payable by no later than 12:00 p.m., Trustee local time, on the date fixed by the Trustee for redemption of the Bonds pursuant to Section 4.01(c) or 4.01(h) of the Indenture, which date shall be communicated by the Trustee in writing to the City, the Bondholder Representative, the Bondholders and the Borrowers in accordance with the Indenture. To the extent that the Borrowers or the Trustee receive any insurance proceeds or condemnation awards that are to be applied to the prepayment of the Note, such amounts shall be applied to the prepayment of the Note and the corresponding redemption of the Bonds.

Section 5.4. Nature of the Borrowers' Obligations. The Borrowers shall repay the Loan subject to and in accordance with the terms of the Note and the Construction Funding Agreement irrespective of any rights of set-off, recoupment or counterclaim the Borrowers might otherwise have against the City or any other person. The Borrowers will not suspend, discontinue or reduce any such payment or (except as expressly provided herein) terminate this Loan Agreement for any cause, including, without limiting the generality of the foregoing, (i) any delay or interruption in the construction or operation of the Project; (ii) the failure to obtain any permit, order or action of any kind from any governmental agency relating to the Loan or the Project; (iii) any event constituting force majeure; (iv) any acts or circumstances that may constitute commercial frustration of purpose; (v) any change in the laws of the United States of America, the State or any political subdivision thereof; or (vi) any failure of the City or the Borrowers to perform or observe any covenant whether expressed or implied, or to discharge any duty, liability or obligation arising out of or connected with the Note; it being the intention of the parties that, as long as the Note or any portion thereof remains outstanding and unpaid, the obligation of the Borrowers to repay the Loan and provide such moneys shall continue in all events. This Section 5.4 shall not be construed to release the Borrowers from any of its obligations hereunder, or, except as provided in this Section 5.4, to prevent or restrict the Borrowers from asserting any rights which it may have against the City under the Note or the Deed of Trust or under any provision of law or to prevent or restrict the Borrowers, at their own cost and expense, from prosecuting or defending any action or proceeding by or against the City, the Bondholder Representative, the Servicer or the Trustee or taking any other action to protect or secure its rights.

Notwithstanding the foregoing but subject to the provisions of the Construction Funding Agreement and Section 5.6 below, if the Conversion Date occurs, then at all times following the Conversion Date neither the Borrowers nor any partner, member, manager, shareholder or employee of the Borrowers nor the partners, members, managers, officers, directors, or shareholders of the Borrowers, shall be personally liable for the amounts owing under the Note or the Deed of Trust; and the City's remedies in the event of a default under the Loan following the Conversion Date shall be limited to those remedies set forth in Section 7.2 hereof and the commencement of foreclosure under the Deed of Trust and the exercise of the power of sale or other rights granted thereunder. Notwithstanding the Indenture, no assignment by the City of its rights hereunder shall preclude the City from proceeding directly against the Borrowers in connection with the obligation of the Borrowers to indemnify the City under Section 6.15 hereof or Section 8 of the Regulatory Agreement, or to make any payment to the City required to be paid by the Borrowers pursuant to the provisions of Sections 2.3, 2.4, 5.1(d), 5.1(e), 5.1(h), 5.1(i) or 7.4 hereof.

Section 5.5. Security for the Bonds.

(a) As security for the Bonds, the City has pledged and assigned the Trust Estate to the Trustee under and pursuant to the Indenture. The Trust Estate shall immediately be subject to the lien of such pledge without any physical delivery thereof or any further act, except in the case of the Note, which shall be delivered to the Trustee. The Borrowers hereby acknowledge and consent to such assignment to the Trustee.

(b) With respect to the Reserved Rights, subject to the limitations set forth in this Section, the City may:

(i) Tax Covenants. Seek specific performance of, and enforce, the tax covenants of the Indenture, the Regulatory Agreement, the Tax Certificate and this Loan Agreement, injunctive relief against acts which may be in violation of any of the tax covenants, and enforce the Borrowers' obligation to pay amounts for credit to the Rebate Fund;

(ii) Regulatory Agreement. Seek specific performance of the obligations of the Borrowers or any other owner of the Project under the Regulatory Agreement and injunctive relief against acts which may be in violation of the Regulatory Agreement or otherwise in accordance with the provisions of the Regulatory Agreement; provided, however, that the City may enforce any right it may have under the Regulatory Agreement for monetary damages only against Excess Revenues, (as defined in Section 5.5(d) below) if any, of the Borrowers, unless Bondholder Representative otherwise specifically consents in writing to the use of other funds; and

(iii) Reserved Rights. Take whatever action at law or in equity which appears necessary or desirable to enforce the other Reserved Rights, provided, however, that the City or any person under its control may only enforce any right it may have for monetary damages against Excess Revenues, if any, of the Borrowers and after the Release Date only against the Excess Revenues of the Market Borrower, unless Bondholder Representative otherwise specifically consents in writing to the enforcement against other funds of the Borrowers.

(c) In no event shall the City:

(i) prosecute its action to a lien on the Project; or

(ii) take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrowers to timely pay the principal of, interest on, or other amounts due under, the Loan or of causing a Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the respective Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(iii) interfere with the exercise by the Trustee, the Bondholder Representative or the Servicer of any of their rights under the Loan Documents upon the occurrence of an event of default by the Borrowers under the Bond Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Loan or the Bonds.

(d) The City shall provide written notice to the Bondholder Representative, the Trustee and the Servicer immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Bond Documents.

(e) As used in this Section, the term "Excess Revenues" means, for the period before Conversion, the Net Cash Flow of the Borrowers and for the period after Conversion, the Net Cash Flow of the Market Borrower. For purposes of this Section, the term "Net Cash Flow" means cash available for distribution to the respective shareholders, members or partners (as the case may be) of the applicable Borrower for such period, after the payment of all interest



expense, the amortization of all principal of all indebtedness coming due during such period (whether by maturity, mandatory sinking fund payment, acceleration or otherwise) including indebtedness payable to any shareholder, member, or partner, or their affiliates, of the Borrowers, the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Loan or the Bonds, the payment of all operating, overhead, ownership and other expenditures of the Borrowers or the Market Borrower, as applicable, directly or indirectly in connection with the Project or the Market Project, as applicable (whether any such expenditures are current, capital or extraordinary expenditures and including, without limitation, all asset management and other fees payable to such Borrower's limited partners and their affiliates pursuant to the respective Borrower's organization documents), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Borrowers or the Market Borrower, as applicable, required to set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

Section 5.6. Exceptions to Non-Recourse Liability. Notwithstanding Section 5.4 or any other provision of this Agreement, the City (and the Trustee, as assignee of the City) shall have the right to recover from either of the Borrowers and any general partner or authorized signatory of a Borrower (each individually, or on a joint and several basis if more than one), the following:

(a) any loss, damage or cost (including but not limited to attorneys' fees) resulting from fraud or intentional misrepresentation by the respective Borrower, the respective Borrower's agents or employees or any general partner of the respective Borrower in connection with obtaining the Loan evidenced by this Agreement, the Note, or in complying with any of Borrower's obligations under the Bond Documents;

(b) insurance proceeds, condemnation awards, security deposits from tenants or other sums or payments received by or on behalf of Borrowers in their capacity as owners of the Project and not applied in accordance with the provisions of the Deed of Trust and the Construction Funding Agreement;

(c) all rents not applied, first, to the payment of the reasonable operating expenses as such operating expenses become due and payable, and then, to the payment of principal and interest then due and payable under this Loan Agreement, the Note and any other sums due under the Deed of Trust and all other Bond Documents (including but not limited to deposits or reserves payable under any Bond Documents);

(d) transfer fees and charges due under the Deed of Trust;

(e) all rents and profits, and security deposits received by the Borrowers after an Event of Default under this Loan Agreement or the Construction Funding Agreement;

(f) any loss, damage or cost (including but not limited to attorneys' fees) resulting from the commission of material waste by the Borrowers (or any partner, officer, director or agent of a Borrower or any guarantor or owner of any collateral) or failure by the Borrowers to perform their obligations to maintain the Project; provided however, for purposes of this Section 5.6(f) only, it shall not be waste if the Borrowers do not repair or restore the Project following any damage, destruction, or partial condemnation notwithstanding the availability of insurance or condemnation proceeds;

(g) any loss, damage or cost (including but not limited to attorneys' fees) resulting from the presence or release of any "Hazardous Materials" (as defined in Section 2.3) on, in or under the Project;

(h) all sums owing by the Borrowers under all indemnities contained in this Loan Agreement, the Regulatory Agreement and the Construction Funding Agreement; and

(i) subject to the Borrowers' rights of contest under Section 6.2, any loss, damage or cost (including but not limited to attorneys' fees) resulting from failure by the Borrowers to pay taxes and charges that may become a lien on the Project, to maintain and pay premiums for insurance required pursuant to this Loan Agreement, the Construction Funding Agreement or the Deed of Trust, or to repay any sums advanced by the City or Trustee for any such purpose.

The exceptions to non-recourse liability contained in this Section 5.6 shall not limit the rights of the City (or the Trustee, as assignee of the City) to:

(i) name either or both of the Borrowers or any general partner of a Borrower as a party defendant in any action, proceeding or arbitration, subject to the limitations of this Section 5.6 as to personal liability; or

(ii) assert any unpaid amounts on the Loan as a defense or offset to or against any claim or cause of action made or alleged against the City or Trustee by the Borrowers or any of their partners or authorized signatories, or any guarantor or indemnitor with respect to the Loan; or

(iii) exercise self-help remedies such as set-off or non-judicial foreclosure against, or sale of, any real or personal property collateral security; or

(iv) enforce the Borrowers' obligations to complete construction of the Project as required by this Loan Agreement and the Construction Funding Agreement, including obligations to repay any sums advanced by the City or Trustee for such purpose.

The limitation of liability set forth in this Section 5.6 will be deemed void and have no force or effect with respect to a Borrower if such Borrower or any partner or authorized signatories, of such Borrower attempts to materially delay any foreclosure of the Deed of Trust or any other collateral security for the Loan, or if such Borrower or any partner or authorized signatories, of such Borrower claims that this Loan Agreement, the Construction Funding Agreement or any of the other instruments or documents executed in connection with the Loan are invalid or unenforceable to any extent that would preclude foreclosure.

No provision of this Section 5.6 shall (i) affect any guaranty or similar agreement executed in connection with the debt evidenced by the Note or this Loan Agreement, (ii) release or reduce the debt evidenced by the Note or this Agreement, (iii) impair the right of the Bondholder Representative or the Trustee to enforce any provisions of the Deed of Trust or any other collateral security for the repayment of the Loan, (iv) impair the lien of the Deed of Trust or any other collateral security for the repayment of the Loan, or (v) impair the right of the Bondholder Representative or the Trustee to enforce the provisions of any Loan Document. Nothing herein shall directly or indirectly limit the right of the Bondholder Representative or Trustee to collect or recover any collateral from the Borrowers or any person holding or receiving the same, including any partner, shareholder, affiliate or authorized signatory who receives the rents and profits assigned to the City, the Trustee or the Bondowners after the same become payable by the Borrowers or under circumstances where the same are recoverable by

the City or the Trustee under applicable law or by contract. Furthermore, nothing in any other provision of the Note, this Loan Agreement or the other Bond Documents shall be deemed to limit the rights of the City, the Trustee or the Bondholder Representative to enforce collection from Borrowers (or any other person liable therefor) of all reasonable attorneys' fees, costs, expenses, indemnity liabilities and other amounts payable by the Borrowers apart from principal or interest owing under the Note.

Nothing in this Section 5.6 shall be interpreted to subordinate any obligation or liability of the Borrowers to the City, the Trustee or the Bondholder Representative to any operating expenses.

Notwithstanding anything herein to the contrary, no limited partner or member of a Borrower (to the extent it continues to act solely in the capacity of a limited partner of a Borrower) shall have any personal liability regarding the Note or the Deed of Trust.

Section 5.7. Calculation of Interest Payments and Deposits to Real Estate Related Reserve Funds. The City and the Borrowers acknowledge as follows: (a) calculation of all interest payments shall be made by the Trustee; (b) deposits with respect to the Taxes and Other Charges shall be calculated by the Servicer or if there is no Servicer, the Bondholder Representative in accordance with the Deed of Trust; and (c) deposits with respect to any replacement reserve funds required by the Bondholder Representative shall be calculated by the Servicer in accordance with the Replacement Reserve Agreement. In the event and to the extent that the Servicer or the Bondholder Representative, pursuant to the terms hereof, shall determine at any time that there exists a deficiency in amounts previously owed but not paid with respect to deposits to such replacement reserve fund, such deficiency shall be immediately due and payable hereunder following written notice to the Borrowers.

Section 5.8. Cap Fee Escrow. At any time when the Bonds are in the Daily Interest Rate Mode, the Weekly Interest Rate Mode, the MMD Index Rate Mode or the SIFMA Index Rate Mode, unless such requirement is waived by the Bondholder Representative, the Borrowers agree to purchase 15 days prior to the expiration or early termination of any Swap Agreement and maintain at all times thereafter, an interest rate cap agreement fulfilling the Cap Agreement Requirements as determined by the Bondholder Representative in its sole discretion; provided however that the Borrowers may, if consented to in writing by the Bondholder Representative, enter into a Swap Agreement prior to the expiration of the Swap Agreement or interest rate cap then in effect in lieu of purchasing an interest rate cap. On each Loan Payment Date commencing five years before the stated termination date of the Swap Agreement, the Borrowers shall pay to the Servicer or its designee for deposit to a Cap Fee Escrow, an amount that will result in the accumulation by the expiration or early termination of the Swap Agreement or then existing interest rate cap agreement, as applicable, without regard to earnings in the Cap Fee Escrow, of funds estimated by the Bondholder Representative to be sufficient to provide for the purchase of the interest rate cap agreement fulfilling the Cap Agreement Requirements for an additional five (5) years or for a period beginning on the termination date of the then existing Swap Agreement or interest rate cap agreement, as applicable, and ending on the Maturity Date, whichever is shorter. During the first twelve (12) months after the first payment for each future Cap Agreement, the monthly deposit shall be equal to a fraction, the numerator of which is 125% of the aggregate periodic payments required to be made pursuant to the interest rate cap agreement required hereunder and the denominator of which is the number of months remaining until the termination of the then existing Swap Agreement or interest rate cap agreement, as applicable. Thereafter, the amount of the monthly deposit shall be recomputed by the Indexing Agent annually based upon the Indexing Agent's estimation of the aggregate periodic payments required to be made pursuant to such subsequent interest rate cap agreement (or extension or renewal thereof) times 125%

minus amounts already on deposit in the Cap Fee Escrow, divided by the number of months remaining until the expiration of the then existing interest rate cap agreement. The Borrowers shall pay the Indexing Agent's expenses related to the estimation and analysis of the cost of any renewal or replacement interest rate cap agreement. Amounts on deposit in the Cap Fee Escrow shall be invested and reinvested by the Servicer or its designee in its discretion. In the event the Borrowers or either of them enters into a subsequent Swap Agreement in lieu of purchasing an interest rate cap as set forth above, upon receipt of Written Direction from the Bondholder Representative, amounts on deposit in the Cap Fee Escrow held by the Servicer shall be remitted to the respective Borrower or the Borrowers that are party to the Swap Agreement.

Section 5.9. Grant of Security Interest; Application of Funds. To the extent not inconsistent with the Deed of Trust and as security for payment of the Borrower Payment Obligations and the performance by the Borrowers of all other terms, conditions and provisions of the Bond Documents, the Borrowers hereby pledge and assign to the Trustee, as assignee of the City, and grant to the Trustee a security interest in, all the Borrowers' right, title and interest in and to all Rents and all payments to or moneys held in the funds and accounts created and held by the Trustee or the Servicer for the Project. The Borrowers also grant to the Trustee a continuing security interest in, and agrees to hold for the benefit of the Trustee, all Rents in its possession prior to the payment of Rents or any portion thereof to the Trustee or the Servicer (to the extent that the Borrowers are required to pay such Rents to the Trustee or the Servicer). The Borrowers shall not, without obtaining the prior Written Consent of the Bondholder Representative, further pledge, assign or grant any security interest in the Rents, or permit any Lien to attach thereto, or any levy to be made thereon, or any UCC 1 Financing Statements, except those naming the Trustee as the secured party, to be filed with respect thereto, and except for Permitted Encumbrances. This Loan Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of a Loan Agreement Default hereunder, the Trustee and the Servicer shall apply or cause to be applied any sums held by the Trustee and the Servicer with respect to the Project in accordance with Section 7.04 of the Indenture.

## ARTICLE VI

### FURTHER AGREEMENTS

Section 6.1. Existence. Each Borrower shall (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its respective existence and its material rights, and franchises, (b) continue to engage in the business presently conducted by it, (c) obtain and maintain all material Licenses applicable to it, and (d) qualify to do business and remain in good standing under the laws of the State.

Section 6.2. Taxes and Other Charges. The Borrowers shall pay all Taxes and Other Charges as the same become due and payable in accordance with the Deed of Trust, except to the extent the Borrowers obtain a valid extension for the payment thereof and except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Deed of Trust.

The Borrowers covenant to pay all taxes and other charges of any type or character charged to the City or to the Trustee affecting the amount available to the City or the Trustee from payments to be received hereunder, under the Note or in any way arising due to the transactions contemplated hereby (including taxes and other charges assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes and other taxes based upon the capital and/or income of the Trustee or the City and taxes based upon or measured by the net income of the

Trustee or the City; provided, however, that the Borrowers shall have the right to protest any such taxes or other charges and to require the City or the Trustee, at the Borrowers' expense, to protest and contest any such taxes or other charges levied upon them and that the Borrowers shall have the right to withhold payment of any such taxes or other charges pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the City or the Trustee. This obligation shall remain valid and in effect notwithstanding repayment of the loan hereunder or termination of this Loan Agreement or the Indenture.

Section 6.3. Repairs; Maintenance and Compliance; Physical Condition. The Borrowers shall cause the Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear and casualty and condemnation excepted) as set forth in the Deed of Trust and shall not remove, demolish or materially alter the Improvements or Equipment (except for removal of aging or obsolete equipment or furnishings in the normal course of business), except as provided in the Deed of Trust:

Section 6.4. Litigation. The Borrowers shall give prompt Written Notice to the City, the Servicer, the Trustee and the Bondholder Representative of any litigation, governmental proceedings or claims or investigations regarding an alleged actual violation of a Legal Requirement served upon the Borrowers (or either of them) or, to the Borrowers' knowledge, overtly threatened against the Borrowers or either of them which might materially adversely affect a Borrower's condition (financial or otherwise) or business or its interests in the Project.

Section 6.5. Performance of Other Agreements. The Borrowers shall observe and perform in all material respects each and every term to be observed or performed by them pursuant to the terms of any material agreement or instrument affecting or pertaining to the Project.

Section 6.6. Notices. The Borrowers shall promptly provide written notice to the City, the Servicer, the Bondholder Representative and the Trustee of (a) any material adverse change in a Borrower's financial condition, assets, properties or operations other than general changes in the real estate market, (b) any fact or circumstance affecting a Borrower or the Project that materially and adversely affects the respective Borrower's ability to meet its obligations hereunder or under any of the other Bond Document to which it is a party in a timely manner, (c) the occurrence of any Default or Loan Agreement Default of which a Borrower has actual knowledge or (d) the receipt of written notice from the Swap Counterparty under a Swap Agreement or an affiliate or the provider of any cap that the unsecured, unsubordinated long term obligations of the Swap Counterparty under a Swap Agreement or an affiliate or the provider of any cap, as applicable, are at any time rated below "AA-" by S&P or below "Aa3" by Moody's. If a Borrower becomes subject to federal or state securities law filing requirements, such Borrower shall cause to be delivered to the Servicer, the Trustee and the Bondholder Representative any Securities and Exchange Commission or other public filings, if any, of such Borrower within two (2) Business Days of such filing.

Section 6.7. Cooperate in Legal Proceedings. The Borrowers shall cooperate fully with the Servicer, the Trustee and the Bondholder Representative with respect to, and permit the Servicer, the Trustee and the Bondholder Representative, at their option, to participate in, any proceedings before any Governmental Authority that may in any way affect the rights of Bondholders under any Bond Document.

Section 6.8. Further Assurances. The Borrowers shall, at their sole cost and expense (except as provided in Article IX), (a) furnish to the Servicer and the Bondholder Representative

all instruments, documents, boundary surveys, footing or foundation surveys (to the extent that Borrower's construction or renovation of the Project alters any existing building foundations or footprints), certificates, plans and specifications, appraisals, title and other insurance reports and agreements, reasonably requested by the Servicer or the Bondholder Representative for the better and more efficient carrying out of the intents and purposes of the Bond Documents; (b) execute and deliver to the Servicer and the Bondholder Representative such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Bonds, as the Servicer and the Bondholder Representative may reasonably require from time to time; (c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of the Bond Documents, as the Servicer or the Bondholder Representative shall reasonably require from time to time; provided, however, with respect to clauses (a)-(c) above, the Borrowers shall not be required to do anything that has the effect of (i) changing the essential economic terms of the Loan or (ii) imposing upon the Borrowers greater personal liability under the Loan Documents; and (d) upon the Servicer's or the Bondholder Representative's request therefor given from time to time after the occurrence of any Default or Loan Agreement Default for so long as such Default or Loan Agreement Default, as applicable, is continuing pay for (i) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to the Borrowers or either of them, and (ii) searches of title to the Project, each such search to be conducted by search firms reasonably designated by the Servicer or the Bondholder Representative in each of the locations reasonably designated by the Servicer or the Bondholder Representative.

Section 6.9. Delivery of Financial Information. After written notice to the Borrowers of a Secondary Market Disclosure Document, the Borrowers shall, concurrently with any delivery to the Servicer, deliver copies of all financial information required under Article IX.

Section 6.10. Title to the Project. The Borrowers will warrant and defend the title to the Project, and the validity and priority of the Lien of the Deed of Trust, subject only to Permitted Encumbrances, against the claims of all Persons.

Section 6.11. City's Annual Fees. The Borrowers covenant to pay the annual fee of the City, payable as set forth in Section 18 of the Regulatory Agreement, and the reasonable fees and expenses of the City or any agents, attorneys, accountants, consultants selected by the City to act on its behalf in connection with this Loan Agreement, the Regulatory Agreement and the other Bond Documents, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds or in connection with any litigation which may at any time be instituted involving the Bonds, this Loan Agreement, the other Bond Documents or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrowers, their properties, assets or operations or otherwise in connection with the administration of the foregoing. This obligation shall remain valid and in effect notwithstanding repayment of the loan hereunder or termination of this Loan Agreement or the Indenture.

Section 6.12. Estoppel Statement. The Borrowers shall furnish to the Servicer or the Bondholder Representative for the benefit of the City, the Trustee, the Bondholder Representative and the Servicer within ten (10) Business Days after request by the Servicer, with a statement, duly acknowledged and certified, setting forth (a) the unpaid principal of the Note, (b) the applicable Bond Coupon Rate, (c) the date installments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Borrower Payment Obligations, and (e) that the Bond Documents to which the Borrowers are parties are valid, legal and binding obligations of the Borrowers and have not been modified or, if modified, giving particulars of

such modification, and no Event of Default exists thereunder or specify any Event of Default that does exist thereunder. The Borrowers shall use commercially reasonable efforts to furnish to the Servicer or the Bondholder Representative, within 30 days of a request by the Servicer, tenant estoppel certificates from each commercial tenant at the Project in form and substance reasonably satisfactory to the Servicer and the Bondholder Representative; provided that the Servicer and the Bondholder Representative shall not make requests for the estoppel certificates required under this Section 6.12 more frequently than twice in any year.

Section 6.13. Defense of Actions. The Borrowers shall appear in and defend any action or proceeding purporting to affect the security for this Loan Agreement hereunder or under the Bond Documents, and shall pay, upon written demand of the Bondholder Representative, all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which a Bondholder or the Bondholder Representative may appear. If the Borrowers fail to perform any of the covenants or agreements contained in this Loan Agreement or any other Bond Document, or if any action or proceeding is commenced that is not diligently defended by the Borrowers which affects the Bondholders' or the Bondholder Representative's interest in the Project or any part thereof, including eminent domain, code enforcement or proceedings of any nature whatsoever under any Federal or state law, whether now existing or hereafter enacted or amended, then the Bondholders or the Bondholder Representative may make such appearances, disburse such sums and take such action as the Bondholders or the Bondholder Representative deems necessary or appropriate to protect their interests. Such actions include disbursement of attorneys' fees, entry upon the Project to make repairs or take other action to protect the security of the Project, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of Bondholders or the Bondholder Representative appears to be prior or superior to the Bond Documents. Neither a Bondholder or the Bondholder Representative shall have any obligation to do any of the above. The Bondholders or the Bondholder Representative may take any such action without notice to or demand upon the Borrowers. No such action shall release a Borrower from any obligation under this Loan Agreement or any of the other Bond Documents. In the event (a) that the Deed of Trust is foreclosed in whole or in part or that any Bond Document is put into the hands of an attorney for collection, suit, action or foreclosure, or (b) of the foreclosure of any mortgage, deed of trust or deed to secure debt prior to or subsequent to the Deed of Trust or any Bond Document in which proceeding the Bondholders or the Bondholder Representative is made a party or (c) of the bankruptcy of a Borrower or an assignment by a Borrower for the benefit of its creditors, the applicable Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including actual attorneys' fees in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes.

Section 6.14. Expenses. The Borrowers shall pay all reasonable expenses incurred by the City, the Trustee, the Bond Purchaser, the Servicer, the Placement Agent and the Bondholder Representative (except as provided in Article IX) in connection with the Bonds, including reasonable fees and expenses of the City's, the Trustee's, the Servicer's, the Bond Purchasers', the Placement Agent's and the Bondholder Representative's attorneys, environmental, engineering and other consultants, the Review Fee, and fees, charges or taxes for the recording or filing of Bond Documents. The Borrowers shall pay or cause to be paid all reasonable expenses of the City, the Trustee, the Rebate Analyst, the Servicer, the Placement Agent and the Bondholder Representative (except as provided in Article IX) in connection with the issuance or administration of the Bonds, including audit costs, inspection fees, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto. The Borrowers shall, upon request, promptly reimburse the City, the Trustee, the Servicer, the Placement Agent and the Bondholder Representative for all reasonable amounts expended, advanced or incurred by the City, the Trustee, the Servicer, the Placement Agent and the

Bondholder Representative to collect the Note, or to enforce the rights of the City, the Bond Purchasers, the Trustee, the Servicer, the Placement Agent and the Bondholder Representative under this Loan Agreement or any other Loan Document, or to defend or assert the rights and claims of the City, the Bond Purchasers, the Trustee, the Servicer, the Placement Agent and the Bondholder Representative under the Bond Documents arising out of a Loan Agreement Default or with respect to the Project (by litigation or other proceedings) arising out of a Loan Agreement Default, which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be reasonably incurred by the City, the Trustee, the Servicer, the Placement Agent and the Bondholder Representative in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the date of disbursement until the date of reimbursement to the City, the Trustee, the Servicer, the Placement Agent and the Bondholder Representative, all of which shall constitute part of the Loan and shall be secured by the Bond Documents. The obligations and liabilities of the Borrowers under this Section 6.14 shall survive the Term of this Loan Agreement and the exercise by the City, the Servicer, the Bondholder Representative, the Placement Agent or the Trustee, as the case may be, of any of its rights or remedies under the Bond Documents, including the acquisition of the Project by foreclosure or a conveyance in lieu of foreclosure: Notwithstanding the foregoing, the Borrowers shall not be obligated to pay amounts incurred as a result of the negligence of the Trustee, the gross negligence or willful misconduct of the City or the gross negligence or willful misconduct of any other party, and any obligations of the Borrowers to pay for environmental inspections or audits will be governed by Section 18(i) of the Deed of Trust.

The Borrowers shall not be responsible for any costs associated with any securitization of the Bonds.

Section 6.15. Indemnity. To the fullest extent permitted by law, the Borrowers agree to indemnify, hold harmless and defend the City, the Bondholder Representative, the Servicer and the Trustee and each of their respective officers, governing members, directors, officials, employees, attorneys and agents (each an "Indemnified Party"), against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrowers have consented to such settlement) and amounts paid to discharge judgments) (hereinafter, the "Liabilities") to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to:

(a) The Bond Documents and the Swap Agreement or the execution or amendment thereof or in connection with transactions contemplated thereby, including the issuance, sale, transfer or resale of the Bonds, except with respect to any Secondary Market Disclosure Document (other than any Borrowers' obligations under Article IX);

(b) Any act or omission of a Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or rehabilitation of, the Project or any part thereof;

(c) Any lien (other than a permitted encumbrance) or charge upon payments by the Borrowers to the City and the Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the City or the Trustee in respect of any portion of the Project;



(d) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof during the period in which the Borrowers are in possession or control of the Project;

(e) The enforcement of, or any action taken by the City, the Trustee or the Bondholder Representative related to remedies under, this Loan Agreement, the Indenture and the other Bond Documents;

(f) The defeasance and/or redemption, in whole or in part, of the Bonds;

(g) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by a Borrower contained in any offering statement or document for the Bonds or any of the Bond Documents to which the Borrowers are parties, or any omission or alleged omission by a Borrower from any offering statement or document for the bonds of any material fact necessary to be stated therein in order to make the statements made therein by the Borrowers, in the light of the circumstances under which they were made, not misleading;

(h) Any Determination of Taxability; and

(i) The Trustee's acceptance or administration of the trust of the Indenture, or the Trustee's exercise or performance of or failure to exercise or perform any of its powers or duties thereunder or under any of the Bond Documents to which it is a party;

except (i) in the case of the foregoing indemnification of (A) the Bondholder Representative or the Servicer or any related Indemnified Party, to the extent such damages are caused by the negligence or willful misconduct of such Indemnified Party, or (B) in the case of the Trustee or any related Indemnified Party, the negligence or willful misconduct of the Trustee, or any breach by such party of its obligations under any of the Bond Documents or any untrue statement or misleading statement of a material fact by such Indemnified Party contained in any offering statement or document for the Bonds or any of the Bond Documents or any omission or alleged omission from any such offering statement or document of any material fact necessary to be stated therein in order to make the statements made therein by such Indemnified Party not misleading; or (ii) in the case of the foregoing indemnification of the City or any related Indemnified Party, they shall not be indemnified by the Borrowers with respect to liabilities arising from their own gross negligence, bad faith, fraud or willful misconduct. Notwithstanding anything herein to the contrary, the Borrowers' indemnification obligations to the parties specified in Section 9.1.5 with respect to any securitization or Secondary Market Transaction described in Article IX hereof shall be limited to the indemnity set forth in Section 9.1.5 hereof. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrowers, upon written notice from the Indemnified Party (which notice shall be timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in their discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not be unreasonably withheld, conditioned or delayed. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof; provided however the City have the absolute right to employ separate counsel at the expense of the Borrowers. The Borrowers shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party other

than the City may only employ separate counsel at the expense of the Borrowers if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation, except that the Borrowers shall always pay the reasonable fees and expenses of the City's separate counsel.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Agreement or the Regulatory Agreement, the Borrowers shall remain obligated to indemnify each Indemnified Party pursuant to this Section if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the City, the Trustee and the Bondholder Representative have consented to such transfer and to the assignment of the rights and obligations of the Borrowers hereunder, or the City, Trustee and Bondholder Representative, in such case, shall have executed a full and unconditional release of Borrowers.

The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to Section 4.1 shall survive the final payment or defeasance of the Bonds and in the case of the Trustee, Servicer or Bondholder Representative, as applicable, any resignation or removal. The provisions of this Section shall survive the termination of this Loan Agreement. Nothing within this Section shall limit the rights of any Indemnified Party to indemnity under the Regulatory Agreement.

Nothing in this Section 6.15 shall in any way limit the Borrowers' indemnification and other payment set forth in the Regulatory Agreement.

Nothing set forth in this Section 6.15 shall be deemed to limit, negate, modify, nullify, or change any non-recourse provisions of this Agreement, the Note, or any other agreement, document, instrument, certificate or covenant executed by the Borrowers.

Section 6.16. Notices of Certain Events. The Borrowers hereby covenant to advise the City and the Bondholder Representative promptly in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. In addition, the Borrowers hereby covenant to advise the City and the Bondholder Representative promptly in writing of the occurrence of any Act of Bankruptcy with respect to either of them.

Section 6.17. Tax Exempt Status of the Bonds.

(a) It is the intention of the City and the Borrowers that interest on the Bonds shall be and remain excludable from gross income of the owners thereof for federal income taxation purposes (other than with respect to a Bondowner which is a "substantial user" of the Project or a "related person," as such terms are used in Section 147(a) of the Code), and to that end the covenants and agreements of the Borrowers in this Section 6.17 are for the benefit of the Bondowners and the City.

(b) The Borrowers covenant and agree that they will not (i) use or permit the use of any of the funds provided by the City hereunder or any other funds of the Borrowers, directly or indirectly, in such manner as would, or (ii) take or omit to take any other action that would, in each case cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

(c) In the event that at any time a Borrower is of the opinion or becomes otherwise aware that for purposes of this Section 6.17 it is necessary to restrict or to limit

the yield on the investment of any moneys held under the Indenture or under the Construction Funding Agreement, or otherwise by the Bondholder Representative, the Borrowers shall determine the limitations and so instruct the Trustee or Bondholder Representative, as applicable, in writing and cause the Trustee or the Bondholder Representative, as applicable, to comply with those limitations under the Indenture or the Construction Funding Agreement, respectively.

(d) The Borrowers will take such action or actions as may be reasonably necessary in the opinion of Bond Counsel, or of which a Borrower otherwise becomes aware, to fully comply with Section 148 of the Code as applicable to the Bonds.

(e) The Borrowers further agree that they shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g. AFDC, SSI), physical disability, national origin or marital status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, to the extent required by applicable State or federal law.

(f) The Borrowers further warrant and covenant that they have not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with provisions contradictory to, or in opposition to, the provisions, of this Loan Agreement and of the Regulatory Agreement, and that in any event, the requirements of this Loan Agreement and the Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.

(g) The Borrowers will use due diligence to complete the construction of all of the units comprising the Project and reasonably expect to fully expend the entire \$132,000,000 authorized principal amount of the Loan by \_\_\_\_\_ 1, \_\_\_\_\_.

(h) The Borrowers will take such action or actions as necessary to ensure compliance with Sections 2.2(a)(viii) and (a)(ix), and Sections 2.2(b)(v), (b)(viii) and (b)(ix) hereof.

(i) The Borrowers will make timely payment to the Trustee of any rebate amount due to the federal government by reason of Section 148(f) of the Code, as applicable to the Bonds, to be disposed of as provided in Section 5.06 of the Indenture.

Section 6.18. Recordation of Amendments to Regulatory Agreement. The Borrowers agree to cause any amendments to the Regulatory Agreement to be recorded in the appropriate official public records of the City.

Section 6.19. Useful Life. The Borrowers hereby represent and warrant that, within the meaning of Section 147(a)(14) of the Code, the average maturity of the Bonds does not exceed one hundred and twenty percent (120%) of the average reasonably expected economic life of the facilities being financed with the proceeds of the Bonds.

Section 6.20. Federal Guarantee Prohibition. The Borrowers shall take no action, nor permit nor suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

Section 6.21. Prohibited Facilities. The Borrowers represent and warrant that no portion of the proceeds of the Loan shall be used to provide any airplane, skybox or other private

luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises, and no portion of the proceeds of the Loan shall be used for an office unless (a) the office is located on the premises of facilities constituting a portion of the Project, and (b) not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

Section 6.22. Covenants Under Indenture. The Borrowers will fully and faithfully perform all the duties and obligations which the City has covenanted and agreed in the Indenture to cause the Borrowers to perform and any duties and obligations which the Borrowers are required in the Indenture to perform. The foregoing will not apply to any duty or undertaking of the City which by its nature cannot be delegated or assigned.

Section 6.23. [intentionally omitted].

Section 6.24. Covenant with Bondholders. The City and the Borrowers agree that this Loan Agreement is executed and delivered in part to induce the purchase by others of the Bonds and, accordingly, all covenants and agreements of the City and the Borrowers contained in this Loan Agreement are hereby declared to be for the benefit of the Trustee, the Bondholder Representative and the Holders of the Bonds from time to time. Notwithstanding the foregoing, the Bondholders' rights to enforce this provision of this Loan Agreement are governed by the terms of the Indenture.

Section 6.25. Continuing Disclosure Agreement. To the extent applicable, the Borrowers and the Dissemination Agent (as defined in the Continuing Disclosure Agreement) shall enter into the Continuing Disclosure Agreement to provide for the continuing disclosure of information about the Bonds, the Borrowers and other matters as specifically provided for in such agreement. For the purposes of the Continuing Disclosure Agreement only, the Dissemination Agent shall act as the agent of the Borrowers and not as the agent of the City. The duties and obligations of the Dissemination Agent under the Continuing Disclosure Agreement shall be as set forth in the Continuing Disclosure Agreement, and the Dissemination Agent shall be responsible only for its express duties and obligations set forth in the Continuing Disclosure Agreement. A default under any Continuing Disclosure Agreement shall not be a default under the Indenture, this Loan Agreement or any of the other Bond Documents.

Section 6.26. Management Agreement. The Bondholder Representative expressly approves the Management Agreement. The Borrowers shall not, without the Bondholder Representative's prior Written Consent (which consent shall not be unreasonably withheld, conditioned, or delayed) and subject to the Regulatory Agreement: (a) surrender, terminate or cancel the Management Agreement or otherwise replace the Manager or enter into any other management agreement; (b) reduce or consent to the reduction of the term of the Management Agreement; (c) increase or consent to the increase of the amount of any charges under the Management Agreement; (d) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect any of their rights and remedies under, the Management Agreement; or (e) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the Manager to terminate the Management Agreement (or such successor management agreement).

Section 6.27. Liens. Without the Bondholder Representative's prior Written Consent, the Borrowers shall not create, incur, assume, permit or suffer to exist any mechanic's, materialmen's or other Lien on any portion of the Project, except Permitted Encumbrances, unless such Lien is bonded around, insured over or discharged within 30 days after the

Borrowers first receive notice of such Lien or unless the Borrowers are contesting such Lien in accordance with the Deed of Trust.

Section 6.28. Dissolution. Each Borrower shall not dissolve or liquidate, in whole or in part, merge with or consolidate into another Person.

Section 6.29. Change in Business or Operation of Property. Each Borrower shall not enter into any line of business other than the ownership and operation of the Project, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business and activities incidental or related thereto or otherwise cease to operate the Project as a multi-family property or terminate such business for any reason whatsoever (other than temporary cessation in connection with rehabilitation, casualty or condemnation of the Project).

Section 6.30. Debt Cancellation. Each Borrower shall not cancel or otherwise forgive or release any claim or debt owed to it by a Person, except for adequate consideration or in the ordinary course of its business in its reasonable judgment.

Section 6.31. Assets. Each Borrower shall not purchase or own any real property or personal property incidental thereto other than its interests in the Project.

Section 6.32. Transfers. Each Borrower shall not make, suffer or permit the occurrence of any Transfer other than a transfer permitted under the Deed of Trust, nor transfer any material License required for the operation of the Project.

Section 6.33. Debt. Other than as expressly approved in writing by the Bondholder Representative, or accepted on the Closing Date, the Borrowers shall not create, incur or assume any indebtedness for borrowed money (including subordinate debt) whether unsecured or secured by all or any portion of the Project or their respective interests therein or in a Borrower or any partner thereof (including subordinate debt) other than (a) the Borrower Payment Obligations, (b) secured indebtedness incurred pursuant to or permitted by the Bond Documents, and (c) trade payables incurred in the ordinary course of business and partner loans to one or both of the Borrowers, to the extent permitted under the Loan Documents.

Section 6.34. Assignment of Rights. Without the Bondholder Representative's prior Written Consent, neither Borrower shall attempt to (a) assign such Borrower's rights or interest under any Bond Document in contravention of any Bond Document or (b) surrender such Borrower's interests in the Project.

Section 6.35. Principal Place of Business. The Borrowers shall not change their respective principal place of business without providing 30 days' prior Written Notice of the change to the Trustee, the Servicer and the Bondholder Representative.

Section 6.36. Organizational Documents. Except as otherwise permitted in the Loan Documents, or without the Bondholder Representative's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), the Borrowers shall not surrender, terminate, cancel, modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect, any of their respective rights or remedies under their respective organizational documents.

Section 6.37. ERISA. Each Borrower shall not maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of it to, maintain, sponsor,

contribute to or become obligated to contribute to, any Plan, or permit the assets of it to become "plan assets," whether by operation of law or under regulations promulgated under ERISA.

Section 6.38. No Hedging Arrangements. Except for hedging arrangements approved by the Bondholder Representative on the Closing Date written notice of which is given to the City, without the prior written consent of the Bondholder Representative (with written notice to the City), the Borrowers will not enter into or guarantee, provide security for or otherwise undertake any form of contractual obligation with respect to any interest rate swap, interest rate cap or other arrangement that has the effect of an interest rate swap or interest rate cap or that otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

Section 6.39. Insurance. The Borrowers, at their sole cost, for the mutual benefit of the Borrowers and the Trustee, as representative of the Bondholders, shall obtain and maintain during the Term the policies of insurance required by Section 19 of the Deed of Trust. All policies of insurance required pursuant to this Section shall conform to the requirements set forth in the Deed of Trust. The Borrowers shall deliver to the Servicer a certified copy of each policy within 30 days after its effective date.

Section 6.40. Casualty. If the Project is damaged or destroyed, in whole or in any material respect, by fire or other casualty (a "Casualty"), the Borrowers shall give prompt written notice thereof to the Servicer, the Bondholder Representative, the Trustee and the City.

Section 6.41. Condemnation. The Borrowers shall promptly give the Servicer, the City, the Bondholder Representative and the Trustee written notice of Borrowers' receipt of written notice of the actual or threatened commencement of any Condemnation proceeding affecting the Project and shall deliver to the Servicer, the City, the Bondholder Representative and the Trustee copies of any and all papers served in connection with such Condemnation.

Section 6.42. No Warranty of Condition or Suitability by the City. The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Borrowers' purposes or needs.

Section 6.43. Right of Access to the Project. The Borrowers agree that the City, the Trustee, the Servicer and the Bondholder Representative, and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but no obligation at all reasonable times during business hours and upon reasonable notice, to enter onto the Project (a) to examine, test and inspect the Project without material interference or prejudice to the Borrower's operations, and (b) to perform such work in and about the Project made necessary by reason of the Borrowers' default under any of the provisions of this Loan Agreement. The City, the Trustee, the Servicer, the Bondholder Representative, and their duly authorized agents, attorneys, accountants and representatives shall also be permitted, without any obligation to do so, at all reasonable times and upon reasonable notice during business hours, to examine the books and records of each of the Borrowers with respect to the Project. Such entry, inspection, and testing shall be conducted in a manner which does not interfere with any tenant's right of occupancy or disturb any tenant's right of peaceable and quiet enjoyment. The Servicer, the Bondholder Representative and the Trustee shall defend, indemnify and hold harmless the Borrowers from any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to the entry, inspection, and testing conducted pursuant to the Section 6.43.

Section 6.44. Election of Applicable Income Limit. The City hereby elects to have the Project meet the requirements of Section 142(d)(1)(B) of the Code in that forty percent (40%) or more of the residential units comprising the Initial Project shall be occupied by persons or families whose Adjusted Income does not exceed sixty percent (60%) of the Median Income for the Area (as such term is defined in the Regulatory Agreement).

Section 6.45. City Contracting Requirements. Each Borrower covenants and agrees to comply with the provisions set forth in Exhibit A to this Loan Agreement, which is incorporated in and made a part of this Loan Agreement by this reference.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default. The occurrence of any one or more of the following events or conditions shall constitute a "Loan Agreement Default":

(a) failure by the Borrowers to pay any Loan Payment or Additional Payment on the date such payment is due;

(b) failure by the Borrowers to prepay the Note on the date such payment is due as required by Section 5.3;

(c) failure by or on behalf of the Borrowers to pay when due any amount (other than as provided in subsections (a) or (b) above) required to be paid by the Borrowers or either of them under this Loan Agreement, the Note, the Deed of Trust or any of the other Bond Documents, including a failure to repay any amounts that have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings, which default remains uncured for a period of five (5) days after Written Notice thereof shall have been given to the Borrowers;

(d) a Transfer other than a transfer permitted under the Deed of Trust occurs;

(e) any representation or warranty made by a Borrower in any Bond Document to which it is a party, or in any report, certificate, financial statement or other instrument, agreement or document furnished by a Borrower in connection with any Bond Document, shall be false or misleading in any material respect as of the Closing Date;

(f) a Borrower shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

(g) an event of default of the Borrowers as defined or provided for in any other Bond Document to which the Borrowers are parties occurs and any applicable notice and or cure period has expired;

(h) the Borrowers shall continue to be in Default under any of the other terms, covenants or conditions of this Loan Agreement (other than paragraphs (a)-(g) above) for 30 days after notice from the Trustee, the Bondholder Representative or the Servicer in the case of such other Default; provided, however, that if such other Default under this paragraph (h) is susceptible of cure but cannot reasonably be cured within such

thirty (30) day period, and the Borrowers shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrowers in the exercise of due diligence to cure such Default, such additional period not to exceed 60 days;

(i) a Borrower Controlling Entity shall make a general assignment for the benefit of creditors, shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to a Borrower Controlling Entity shall occur, unless in all cases the respective Borrower Controlling Entity is replaced with a substitute Borrower Controlling Entity that satisfies the requirements of Section 21(c) of the Deed of Trust; which, in the case of a non-profit Borrower Controlling Entity, may be replaced within sixty (60) days of such event with another non-profit Borrower Controlling Entity acceptable to the Bondholder Representative in accordance with the Deed of Trust, in which case no Loan Agreement Default shall be deemed to have occurred; and

(j) an event of default or termination event pertaining to the Borrowers as defined in and pursuant to any Swap Agreement occurs and any applicable notice and or cure period has expired.

#### Section 7.2. Remedies on Default.

(a) Upon the occurrence of an Loan Agreement Default (other than a Loan Agreement Default described in paragraph (f) and (i) of Section 7.1) and at any time and from time to time thereafter, as long as such Loan Agreement Default continues to exist, in addition to any other rights or remedies available to the Trustee pursuant to the Bond Documents or at law or in equity, the Trustee shall, at the Written Direction of the Bondholder Representative, take such action, without notice or demand, as the Bondholder Representative deems advisable to protect and enforce its rights against the Borrowers and in and to the Project, including declaring the Borrower Payment Obligations to be immediately due and payable (including, without limitation, the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Note to be immediately due and payable), without notice or demand, and apply such payment of the Borrower Payment Obligations to the redemption of the Bonds pursuant to Section 4.01(d) of the Indenture; and upon any Loan Agreement Default described in paragraph (f) or (i) of Section 7.1, the Borrower Payment Obligations shall become immediately due and payable without notice or demand, and the Borrowers hereby expressly waive any such notice or demand, anything contained in any Bond Document to the contrary notwithstanding. Notwithstanding anything herein to the contrary, enforcement of remedies hereunder and under the Indenture shall be controlled by the Bondholder Representative.

(b) Any amounts collected pursuant to action taken under this Section 7.2 (other than amounts collected by the City pursuant to the Reserved Rights) shall, after the payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the City, the Trustee, the Bondholder Representative or the Bondowners and their respective counsel, be paid to the Trustee (unless otherwise provided in this Loan Agreement) and applied in accordance with the provisions of the Indenture. No action taken pursuant to this Section 7.2 shall relieve the Borrowers from the Borrowers' obligations pursuant to Section 6.17 hereof.

Section 7.3. No Remedy Exclusive; Delay. Upon the occurrence of a Loan Agreement Default, all or any one or more of the rights, powers, privileges and other remedies available to the Trustee against the Borrowers under the Bond Documents or at law or in equity may be exercised by the Trustee, at the Written Direction of the Bondholder Representative, at any time



and from time to time, whether or not all or any of the Borrower Payment Obligations shall be declared due and payable, and whether or not the Trustee or the Bondholder Representative shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Bond Documents. Any such actions taken by the Trustee or the Bondholder Representative shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as the Bondholder Representative may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of the Trustee or the Bondholder Representative permitted by law, equity or contract or as set forth in the Bond Documents. Without limiting the generality of the foregoing, the Borrowers agree that if a Loan Agreement Default is continuing, all Liens and other rights, remedies or privileges provided to the Trustee and Bondholder Representative shall remain in full force and effect until they have exhausted all of its remedies, the Deed of Trust has been foreclosed, the Project has been sold and/or otherwise realized upon satisfaction of the Borrower Payment Obligations or the Borrower Payment Obligations has been paid in full. To the extent permitted by applicable law, nothing contained in any Bond Document shall be construed as requiring the Trustee or Bondholder Representative to resort to any portion of the Project for the satisfaction of any of the Borrower Payment Obligations in preference or priority to any other portion, and the Trustee or Bondholder Representative may seek satisfaction out of the entire Project or any part thereof, in its absolute discretion.

Notwithstanding any provision herein to the contrary, the City, the Trustee and the Bondholder Representative agree that any cure of any default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrowers and shall be accepted or rejected on the same basis as if made or tendered by the Borrowers;

No delay or omission to exercise any remedy, right, power accruing upon a Loan Agreement Default, or the granting of any indulgence or compromise by the Trustee or the Bondholder Representative shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Loan Agreement Default shall not be construed to be a waiver of any subsequent Default or Loan Agreement Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Loan Agreement, the Trustee and the Bondholder Representative reserve the right to seek a deficiency judgment or preserve a deficiency claim, in connection with the foreclosure of the Deed of Trust to the extent necessary to foreclose on other part of the Project, the Rents, the funds or any other collateral.

Section 7.4. Attorneys' Fees and Expenses. If an Event of Default occurs and if the City, the Trustee or the Bondholder Representative should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the Borrowers or either of them contained herein, the Borrowers on demand will pay to the City, the Trustee and/or the Bondholder Representative the reasonable fees of such attorneys and the reasonable expenses so incurred, including court appeals.

Section 7.5. Bondholder Representative's Right to Perform the Obligations. If the Borrowers shall fail, refuse or neglect to make any payment or perform any act required by the Bond Documents, then while any Loan Agreement Default exists, and without notice to or demand upon the Borrowers and without waiving or releasing any other right, remedy or recourse the Trustee or the Bondholder Representative may have because of such Loan Agreement Default, the Bondholder Representative may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of the Borrowers, and shall have the right to enter upon the Project for such purpose and to take all such action

thereon and with respect to the Project as it may deem necessary or appropriate. If the Bondholder Representative shall elect to pay any sum due with reference to the Project, the Bondholder Representative may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Bond Documents, the Bondholder Representative shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. All sums paid by the Bondholder Representative pursuant to this Section 7.5, and all other sums expended by the Bondholder Representative to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to all amounts payable with respect to the Bonds, shall be secured by the Bond Documents and shall be paid by the Borrowers to the Bondholder Representative upon demand.

Section 7.6. Trustee's Exercise of the City's Remedies. Whenever any Loan Agreement Default shall have occurred and be continuing, the Trustee may at the Written Direction of the Bondholder Representative, but shall not be obligated to, exercise any or all of the rights of the City under this Article, upon notice as required of the City unless the City has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture. Notwithstanding anything herein to the contrary, the City may not exercise any remedies available to the City against the Borrowers under the Bond Documents or at law or in equity in order to enforce the Reserved Rights, other than as provided in Section 5.5(b).

Section 7.7. Assumption of Obligations. In the event that the Trustee, the Bondholder Representative or the Bondholders or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall have the right, to be exercised in its sole discretion, to succeed to the rights and the obligations of the Borrowers under this Loan Agreement, the Note, the Regulatory Agreement, and any other Bond Documents to which the Borrowers are parties. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrowers.

It is the intention of the parties hereto that upon the occurrence and continuance of a Loan Agreement Default, rights and remedies may be pursued pursuant to the terms of the Bond Documents. The parties hereto acknowledge that, among the possible outcomes to the pursuit of such remedies, is the situation where the Trustee, the Bondholder Representative or the Bondholders or their respective assignees or designees becomes the owner of the Project and exercises its right, in its sole discretion, to assume the obligations identified above, and the Note, the Bonds and the other Bond Documents remain outstanding.

Section 7.8. Right to Directly Enforce. Notwithstanding any other provision hereof to the contrary, the Bondholder Representative shall have the right to directly enforce all rights and remedies hereunder with or without involvement of the Trustee, provided that only the City may enforce the Reserved Rights subject to Section 7.6 and Section 5.5(b). In the event that any of the provisions set forth in this Section 7.8 are inconsistent with the covenants, terms and conditions of the Deed of Trust, the covenants, terms and conditions of the Deed of Trust shall prevail.

ARTICLE VIII  
MISCELLANEOUS

Section 8.1. Entire Agreement. This Loan Agreement, the Construction Funding Agreement, the Note, the Regulatory Agreement, the Deed of Trust and the other Bond Documents constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the City and the Borrowers with respect to the subject matter hereof.

Section 8.2. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any Bond Document shall be given in the manner and under the conditions set forth in Section 12.06 of the Indenture, addressed to the appropriate party at the address set forth in Section 12.06 of the Indenture.

Section 8.3. Assignments. To the extent allowable under the Indenture, the Bonds, the Deed of Trust, the Bond Documents and all of the Bondholder Representative's rights, title, obligations and interests therein may be assigned by the Bondholder Representative at any time in its sole discretion, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise, with prior written notice to the City, the Trustee and the Borrowers. Upon such assignment, all references to Bondholder Representative in this Loan Agreement and in any Bond Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the Bondholder Representative. The Borrowers may not assign their rights, interests or obligations under this Loan Agreement or under any of the Bond Documents, except only as may be expressly permitted hereby and thereby.

Section 8.4. Severability. Wherever possible, each provision of this Loan Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Loan Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Loan Agreement. If any provision of this Loan Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

Section 8.5. Execution of Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.6. Amendments, Changes and Modifications. No modification, amendment, extension, discharge, termination or waiver of any provision of this Loan Agreement or of any other Bond Document, nor consent to any departure by the Borrowers or either of them therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on the Borrowers shall entitle the Borrowers to any other or future notice or demand in the same, similar or other circumstances.

Section 8.7. Governing Law. This Loan Agreement shall be governed exclusively by and construed in accordance with the laws of the State applicable to contracts made and performed in the State.

Section 8.8. Term of Agreement. This Loan Agreement shall be in full force and effect until no Bonds are Outstanding under the Indenture and all Bond Obligations and other payment obligations of the Borrowers hereunder have been paid in full or the payment thereof has been provided for; except that on and after payment in full of the Note, this Loan Agreement shall be terminated, without further action by the parties hereto; provided, however, that the obligations of the Borrowers under Sections 6.14, 6.15, 6.17, 8.12, 8.26 and Article IX hereof, and as may be expressly provided with respect to other provisions hereof, shall survive the termination of this Loan Agreement.

Section 8.9. Survival of Agreement. This Loan Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by the City of the Loan and the execution and delivery to the Trustee of the Note, and shall continue in full force and effect so long as all or any of the Borrower Payment Obligations is unpaid. All the Borrowers' covenants and agreements in this Loan Agreement shall inure to the benefit of the respective legal representatives, successors and assigns of the City, the Servicer, the Bondholder Representative or the Trustee on behalf of the Bondholders.

Section 8.10. Conflicts. If any term or condition of this Loan Agreement conflicts with any term or condition of any other Loan Document, the term or condition which imposes any greater or stricter duties or obligations upon Borrowers, or grants or affords City, the Trustee, the Bondholder Representative or Bondowners any greater rights or remedies, shall prevail.

Section 8.11. Binding Effect; Third Party Beneficiaries. This Loan Agreement shall inure to the benefit of and shall be binding upon the City, the Borrowers and their respective successors and assigns. The Bondowners, the Bondholder Representative, the Servicer and the Trustee are intended third party beneficiaries of this Loan Agreement.

Section 8.12. Brokers and Financial Advisors. The Borrowers hereby represent that they have not dealt with any financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Loan, other than those disclosed to the Bondholder Representative and whose fees shall be paid by the Borrowers pursuant to separate agreements. The Borrowers and the Bondholder Representative shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions contemplated herein. The provisions of this Section 8.12 shall survive the expiration and termination of this Loan Agreement and the repayment of the Borrower Payment Obligations.

Section 8.13. Delay Not a Waiver. Neither any failure nor any delay on the part of the Servicer, the Trustee or the Bondholder Representative in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under any other Bond Document, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under any Bond Document, the Trustee, the Servicer and the Bondholder Representative shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under the Bond Documents, or to declare an Event of Default or a Loan Agreement Default for failure to effect prompt payment of any such other amount.

Section 8.14. Trial by Jury. To the extent permitted by law, the Borrowers hereby agree not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by

jury fully to the extent that any such right shall now or hereafter exist with regard to the Bond Documents, or any claim, counterclaim or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and voluntarily by the Borrowers, and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. The Servicer, the Trustee or Bondholder Representative is hereby authorized to file a copy of this paragraph in any proceeding as conclusive evidence of this waiver by the Borrowers.

Section 8.15. Preferences. The Trustee shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by the Borrowers to any portion of the Borrower Payment Obligations. To the extent the Borrowers make a payment to the Servicer or the Trustee, or the Servicer or the Trustee receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Borrower Payment Obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Servicer or the Trustee.

Section 8.16. Waiver of Notice. The Borrowers shall not be entitled to any notices of any nature whatsoever from the City, the Servicer, the Bondholder Representative or the Trustee except with respect to matters for which this Loan Agreement or any other Bond Document specifically and expressly provides for the giving of notice by the City, the Servicer, the Bondholder Representative or the Trustee, as the case may be, to the Borrowers and except with respect to matters for which the Borrowers are not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. The Borrowers hereby expressly waive the right to receive any notice from the City, the Servicer, the Bondholder Representative or the Trustee as the case may be with respect to any matter for which no Bond Document specifically and expressly provides for the giving of notice by the City, the Servicer, the Bondholder Representative or the Trustee to the Borrowers.

Section 8.17. Offsets, Counterclaims and Defenses. The Borrowers hereby waive the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by the Trustee, the Bondholder Representative or the Servicer with respect to a Loan Payment. Any assignee of Bondholders' interests in and to the Bond Documents shall take the same free and clear of all offsets, counterclaims or defenses that are unrelated to the Bond Documents which the Borrowers may otherwise have against any assignor of such documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by the Borrowers in any action or proceeding brought by any such assignee upon such documents, and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrowers.

Section 8.18. Publicity. The Servicer and the Bondholder Representative (and any Affiliates of either party) shall have the right to issue press releases, advertisements and other promotional materials describing the Servicer or Bondholder Representative's participation in the purchasing of the Bonds or the Bond's inclusion in any Secondary Market Transaction effectuated by the Servicer or Bondholder Representative or one of its Affiliates. Except as required by applicable law or regulatory requirements, all news releases, publicity or advertising by the Borrowers or their Affiliates through any media intended to reach the general public, which refers to the Bond Documents, the Loan, the Bondholder Representative, the Servicer or the Trustee in a Secondary Market Transaction, shall be subject to the prior Written Consent of the Servicer or the Bondholder Representative, as applicable, except as may

otherwise be required of the Borrowers in order to satisfy its obligations as a publicly traded company under federal and state securities laws.

Section 8.19. No Usury. The Borrowers, the City, the Trustee and the Servicer intend at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits a party to contract for, charge, take, reserve or receive a greater amount of interest than under state law) and that this Section 8.19 shall control every other agreement in the Bond Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or any other Bond Document, or contracted for, charged, taken, reserved or received with respect to the Borrower Payment Obligations, or if the Trustee's acceleration of the maturity of the Loan or any prepayment by the Borrowers or any premium or Late Charge results in the Borrowers having paid any interest in excess of that permitted by applicable law, then it is the parties' express intent that all excess amounts theretofore collected by the Servicer or the Trustee shall be credited against the unpaid Principal and all other elements of the Borrower Payment Obligations (or, if the Borrowers Payment Obligations has been or would thereby be paid in full, refunded to the Borrowers), and the provisions of the Bond Documents immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for thereunder. All sums paid or agreed to be paid to the Servicer or the Trustee for the use, forbearance or detention of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding. Notwithstanding anything to the contrary contained in any Bond Document, it is not the intention of the Trustee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

Section 8.20. Construction of Documents. The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Bond Documents and that the Bond Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

Section 8.21. Consents. Wherever in this Loan Agreement it is provided that the City, the Servicer, the Bondholder Representative or the Trustee shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City, the Servicer, the Bondholder Representative or the Trustee may not unreasonably or arbitrarily withhold, condition, delay or refuse such approvals or consents, unless otherwise provided herein or in any of the other Bond Documents.

Section 8.22. City, Trustee, Servicer, Bondholder Representative and Bond Purchaser Not in Control; No Partnership. None of the covenants or other provisions contained in this Loan Agreement shall, or shall be deemed to, give the City, the Trustee, the Servicer, the Bondholder Representative or the Bond Purchasers the right or power to exercise control over the affairs or management of either of the Borrowers, the power of the City, the Trustee, the Servicer, the Bondholder Representative and the Bond Purchasers being limited to the rights to exercise the remedies referred to in the Bond Documents. The relationship between the Borrowers and the City, the Trustee, the Servicer, the Bondholder Representative, the Bond Purchasers and the Bondholders is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Bond Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrowers or either of them and the City, the Trustee, the Servicer, the Bondholder

Representative, the Bond Purchasers or any Bondholder or to create an equity in the Project in the City, the Trustee, the Servicer, the Bondholder Representative, the Bond Purchasers or any Bondholder. None of the City, the Trustee, the Servicer, the Bondholder Representative, the Bond Purchasers nor any Bondholder undertakes or assumes any responsibility or duty to the Borrowers or to any other person with respect to the Project or the Loan, except as expressly provided in the Bond Documents; and notwithstanding any other provision of the Bond Documents: (a) the City, the Trustee, the Servicer, the Bondholder Representative, the Bond Purchasers and the Bondholders are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrowers or either of them, or their respective stockholders, members, or partners and the City, the Trustee, the Servicer, the Bondholder Representative, the Bond Purchaser and the Bondholders do not intend to ever assume such status; (b) the City, the Trustee, the Servicer, the Bondholder Representative, the Bond Purchaser and the Bondholders shall in no event be liable for any the Borrower Payment Obligations, expenses or losses incurred or sustained by the Borrowers or either of them; and (c) the City, the Trustee, the Servicer, the Bondholder Representative, the Bond Purchaser and the Bondholders shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Borrowers or either of them, the Borrower Controlling Entities or their respective stockholders, members, or partners. The City, the Trustee, the Servicer, the Bondholder Representative, the Bond Purchaser, the Bondholders and the Borrowers disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the City, the Trustee, the Servicer, the Bondholder Representative, the Bond Purchaser, the Bondholders and the Borrowers or either of them, or to create an equity in the Project in the City, the Trustee, the Servicer, the Bondholder Representative, the Bond Purchasers or the Bondholders, or any sharing of liabilities, losses, costs or expenses.

Section 8.23. Time of the Essence. Time is of the essence with respect to this Loan Agreement.

Section 8.24. References to Bondholder Representative. The provisions of Section 12.16 of the Indenture pertaining to the Bondholder Representative are incorporated by reference herein.

Section 8.25. Release. Each Borrower hereby acknowledges that it is executing this Loan Agreement and each of the Bond Documents to which it is a party as its own voluntary act free from duress and undue influence.

Section 8.26. Reimbursement of Expenses. If, upon or after the occurrence of any Loan Agreement Default or Default, the City, the Trustee, the Bondholder Representative or the Servicer shall employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Borrowers contained herein, the Borrowers will on demand therefor reimburse the City, the Trustee, the Bondholder Representative and the Servicer for fees of such attorneys and such other expenses so incurred.

The Borrower's obligation to pay the amounts required to be paid hereunder and under Sections 5.1(e) and 6.14 shall be subordinate to its obligations to make payments under the Note, and the Borrower's obligations to pay the amounts under this Section.

ARTICLE IX  
SPECIAL PROVISIONS

Section 9.1. Sale of Note and Secondary Market Transaction.

Section 9.1.1. Cooperation. At the Servicer or Bondholder Representative's request (to the extent not already required to be provided by the Borrowers under this Loan Agreement), the Borrowers shall use reasonable efforts to satisfy the market standards to which the Servicer or Bondholder Representative customarily adheres or which may be reasonably required in the marketplace or by the Servicer or Bondholder Representative in connection with one or more sales or assignments of all or a portion of the Bonds or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Bonds (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that (a) neither the Borrowers nor the City shall incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs including, without limitation, any costs associated with receiving a rating on the Bonds, shall be paid by the Servicer or Bondholder Representative, and shall not modify Borrowers' rights or obligations.

Without limiting the generality of the foregoing, the Borrowers shall, so long as the Loan is still Outstanding:

(a) (i) provide such financial and other information with respect to the Project, the Bonds, the Borrowers, the Manager, the contractor of the Project or any Borrower Controlling Entity, (ii) provide financial statements, audited, if available, relating to the Project with customary disclaimers for any forward looking statements or lack of audit, and (iii), at the expense of the Servicer or Bondholder Representative, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports and other due diligence investigations of the Project, as may be reasonably requested from time to time by the Servicer or Bondholder Representative or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Servicer or Bondholder Representative pursuant to this paragraph (a) being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Servicer or Bondholder Representative and the Rating Agencies;

(b) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project, the Borrowers and the Bond Documents reasonably acceptable to the Servicer or Bondholder Representative, consistent with the facts covered by such representations and warranties as they exist on the date thereof and which are in the knowledge of the Borrowers; and

(c) execute such amendments to the Bond Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the economic terms of the Bond Documents and is not adverse to such party in its reasonable discretion.

Section 9.1.2. Use of Information. The Borrowers understand that certain of the Provided Information and the required records may be included in disclosure documents in



connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a "Secondary Market Disclosure Document"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrowers shall cooperate, subject to Section 9.1.1(c), with the Servicer and Bondholder Representative in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrowers and the Project necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrowers hereby consent to any and all such disclosures of such information.

Section 9.1.3. Borrower Obligations Regarding Secondary Market Disclosure Documents.

In connection with a Secondary Market Disclosure Document, the Borrowers shall provide, or in the case of a Borrowers-engaged third party such as the Manager, cause it to provide, (a) information reasonably requested by the Bondholder Representative pertaining to the Borrowers, the Project or such third party (and portions of any other sections reasonably requested by the Bondholder Representative pertaining to the Borrowers, the Project or the third party); and (b) any documents used in connection therewith that in any way mention the City and the Bonds shall indicate that the City's liability is limited as provided in Section 5.01(d) of the Indenture; and that the City has not approved the Secondary Market Transaction. The Borrowers shall, if requested by the Servicer and Bondholder Representative, certify in writing that the Borrowers has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrowers, the Project or the Manager, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrowers, the Project or the Manager), to the best of Borrowers' knowledge, do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrowers shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such parties. Furthermore, the Borrowers hereby indemnify the Bondholder Representative, the Servicer, the Bond Purchaser, the Trustee and the City for any Liabilities to which any such parties may become subject to the extent such Liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

Section 9.1.4. Borrower Indemnity Regarding Filings. In connection with filings under the Exchange Act or the Securities Act, the Borrowers shall (i) indemnify Bondholder Representative, the Servicer, the Bond Purchaser, the Trustee, the City, its members, and the underwriter group for any securities (the "Underwriter Group") for any Liabilities to which Bondholder Representative, the Servicer, the Bond Purchaser, the Trustee, the City or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading and (ii) reimburse the Servicer, the Bondholder Representative, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Servicer, the Bondholder Representative or the Underwriter Group in connection with defending or investigating such Liabilities; provided that the Borrowers shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties; and provided further, the Borrowers shall have no liability if any member of the Underwriter Group fails to disclose any

or all of the Provided Information or modifies or changes any of the Provided Information without the prior written consent of the Borrowers.

Section 9.1.5. Indemnification Procedure. Promptly after receipt by an indemnified party under Sections 9.1.3 and 9.1.4 of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrowers, such indemnified party shall notify the Borrowers in writing of such commencement, but the omission to so notify the Borrowers will not relieve the Borrowers from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrowers. In the event that any action is brought against any indemnified party, and it notifies the Borrowers of the commencement thereof, the Borrowers will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrowers and reasonably satisfactory to such indemnified party. After notice from the Borrowers to such indemnified party under this Section 9.1.5, the Borrowers shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrowers may be liable hereunder without the prior Written Consent of the Borrowers.

Section 9.1.6. Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.1.4 is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.1.4, the Borrowers shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrowers' relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

IN WITNESS WHEREOF, the parties hereto have executed this Loan Agreement, all as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO,  
CALIFORNIA

By: \_\_\_\_\_  
Olson Lee,  
*Director, Mayor's Office of Housing and  
Community Development*

Approved as to form:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Heidi J. Gewertz,  
*Deputy City Attorney*

500 FOLSOM, L.P.,  
a California limited partnership

By: Essex 500 Folsom, LLC,  
a Delaware limited liability company,  
its Administrative General Partner

By: Essex Portfolio, L.P.,  
a California limited partnership  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation  
its General Partner

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

By: BRIDGE 500 Folsom LLC,  
a California limited liability company,  
its Managing General Partner

By: MCB Family Housing, Inc.,  
a California nonprofit public benefit corporation,  
its sole member

By: \_\_\_\_\_  
Ann Silverberg, Vice President

BLOCK 9 MRU RESIDENTIAL, LLC,  
a Delaware limited liability company

By: Essex Portfolio, L.P.,  
a California limited partnership,  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its General Partner

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

Name: \_\_\_\_\_

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

[Signature Page to Loan Agreement – Lower 500 Folsom Residential]

## EXHIBIT A

### CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

The following provisions shall apply to the Loan Agreement as if set forth in the text thereof. Capitalized terms used but not defined in this Appendix shall have the meanings given in the Loan Agreement.

1. Nondiscrimination; Penalties.

(a) *Non Discrimination in Contracts.* The Borrower shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. The Borrower shall incorporate by reference in any subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require any subcontractors to comply with such provisions. The Borrower is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) *Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2.* The Borrower does not as of the date of this Loan Agreement, and will not during the term of this Loan Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(c) *Condition to Contract.* As a condition to the Loan Agreement, the Borrower shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Loan Agreement. By entering into this Loan Agreement, the Borrower confirms that it has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

3. Tropical Hardwood and Virgin Redwood Ban. Under San Francisco Environment Code Section 804(b), the City urges the Borrower not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

4. Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require the Borrower to remove from, City facilities personnel of such Borrower who the Commission has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The Commission shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled

substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

5. Compliance with Americans with Disabilities Act. The Borrower shall provide the services specified in the Loan Agreement in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

6. Sunshine Ordinance. The Borrower acknowledges that this Loan Agreement and all records related to its formation, such Borrower's performance of services provided under the Loan Agreement, and the City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

7. Limitations on Contributions. By executing this Loan Agreement, The Borrower acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of the Borrower's board of directors; the Borrower's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in such Borrower; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by such Borrower. The Borrower must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

8. Requiring Minimum Compensation for Covered Employees. The Borrower shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. The Borrower is subject to the enforcement and penalty provisions in Chapter 12P. By entering into this Loan Agreement, the Borrower certifies that it is in compliance with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. The Borrower shall comply with San Francisco Administrative Code Chapter 12Q. The Borrower shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. The Borrower is subject to the enforcement and penalty provisions in Chapter 12Q.

10. Prohibition on Political Activity with City Funds. In performing the services provided under the Loan Agreement, the Borrower shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Loan Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The Borrower is subject to the enforcement and penalty provisions in Chapter 12G.

11. Nondisclosure of Private, Proprietary or Confidential Information. If this Loan Agreement requires the City to disclose "Private Information" to a Borrower within the meaning of San Francisco Administrative Code Chapter 12M, the Borrower shall use such information consistent with the restrictions stated in Chapter 12M and in this Loan Agreement and only as necessary in performing the services provided under the Loan Agreement. The Borrower is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of services provided under the Loan Agreement, the Borrower may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to a Borrower, such information must be held by such Borrower in confidence and used only in performing the Loan Agreement. The Borrower shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

12. Consideration of Criminal History in Hiring and Employment Decisions. The Borrower agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Loan Agreement. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of the Borrowers' obligations under Chapter 12T is set forth in this Section. The Borrower is required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Loan Agreement shall have the meanings assigned to such terms in Chapter 12T.

The requirements of Chapter 12T shall only apply to an Borrower's operations to the extent those operations are in furtherance of the performance of this Loan Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Loan Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code §§ 21.35, including the enforcement and penalty provisions, is incorporated into this Loan Agreement. Under San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

14. Conflict of Interest. By entering into the Loan Agreement, the Borrower certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Loan Agreement.

15. Assignment. The services provided under the Loan Agreement to be performed by the Borrower are personal in character and neither this Loan Agreement nor any duties or obligations may be assigned or delegated by a Borrower unless first approved by the City by written instrument executed and approved in the same manner as this Loan Agreement. Any purported assignment made in violation of this provision shall be null and void.

16. Food Service Waste Reduction Requirements. The Borrower shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the provided remedies for noncompliance.

17. Cooperative Drafting. This Loan Agreement has been drafted through a cooperative effort of the City and the Borrower, and all parties have had an opportunity to have the Loan Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Loan Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Loan Agreement.

18. Laws Incorporated by Reference. The full text of the laws listed in this Appendix \_\_, including enforcement and penalty provisions, are incorporated into this Loan Agreement by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Appendix A are available at [www.sfgov.org](http://www.sfgov.org) under "Open Gov."

19. Sugar-Sweetened Beverage Prohibition. The Borrower agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Loan Agreement.



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BOND PURCHASE AGREEMENT

by and among

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA,

500 FOLSOM, L.P.,

BLOCK 9 MRU RESIDENTIAL, LLC,

CITIBANK, N.A.,

DEUTSCHE BANK AG, NEW YORK BRANCH,

and

HILLTOP SECURITIES INC.

Dated December \_\_, 2016

Relating to:

\$132,000,000

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2016E  
(LOWER 500 FOLSOM RESIDENTIAL)

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## BOND PURCHASE AGREEMENT

**HILLTOP SECURITIES INC.**, a corporation duly organized and validly existing under the laws of the State of Delaware (together with its successors, assigns or designees hereunder, the "Placement Agent"), hereby offers to enter into the following agreement with the **CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA**, a municipal corporation duly organized and existing pursuant to its charter and the laws and constitution of the State of California (together with its successors and assigns, the "Issuer"), **500 FOLSOM, L.P.**, a California limited partnership (together with its permitted successors and assigns, the "Affordable Borrower"), **BLOCK 9 MRU RESIDENTIAL, LLC**, a Delaware limited liability company (together with its permitted successors and assigns, the "Market Borrower" and together with the Affordable Borrower, the "Borrowers"), **CITIBANK, N.A.**, a national banking association (together with its successors and assigns, "Citibank" or "Bondholder Representative") and **DEUTSCHE BANK AG, NEW YORK BRANCH** (together with its successors and assigns, "DB" and together with Citibank, the "Purchasers"), for the sale by the Issuer, the placement by the Placement Agent and the purchase by the Purchasers or their designees of the Bonds described below, which are being issued by the Issuer for the benefit of the Borrowers. Upon your acceptance of this offer and your execution and delivery of this Bond Purchase Agreement (this "Agreement"), this Agreement will be binding upon each of you and the Placement Agent. This offer is made subject to your acceptance, evidenced by your execution and delivery of this Agreement to the Placement Agent, at or prior to \_\_\_:00 A.M. New York, New York time on December \_\_, 2016 and will expire if not so accepted at or prior to such time (or such later time as the Placement Agent and the Purchasers may agree in writing).

Section 1. Definitions. The capitalized terms used in this Agreement have the meanings assigned to them in the Glossary of Terms attached as Exhibit A hereto.

Section 2. Placement, Purchase and Sale.

2.1 Subject to the terms and conditions set forth in this Agreement, the Placement Agent hereby agrees to place the Bonds with the Purchasers, the Purchasers hereby agree to purchase, or to cause their designees to purchase, all (but not less than all) of the Bonds from the Issuer and the Issuer hereby agrees to sell to the Purchasers or to their designees, when, as and if issued, all (but not less than all) of the Bonds identified in Item 1 in Exhibit B attached hereto for a total purchase price equal to the purchase price set forth as Item 2 on Exhibit B attached hereto. Pursuant to the Indenture, the Bonds will be issued and purchased by the Purchasers in installments as draw-down Bonds in the amounts and on the dates set forth in Schedule I hereto except as otherwise agreed by the Purchasers and the Borrowers.

2.2 The Bonds will (i) be issued in accordance with the Issuer's enabling legislation and all applicable procedural and substantive requirements and the Indenture and (ii) have the payment related terms (that is, the dated date, maturity date, interest rates, interest payment dates and redemption provisions) set forth in Item 3 of Exhibit B attached hereto. As a condition to the sale of the Bonds, each of the Purchasers will execute and deliver an Investor Letter to the Trustee and the Issuer on the Closing Date.

Section 3. Closing. The Closing will take place at the time and on the date set forth in Item 4 of Exhibit B attached hereto or at such other time or on such other date as may be mutually agreed upon by the parties hereto. At or prior to the Closing, the Issuer will direct the Trustee to deliver the Bonds to or upon the order of the Placement Agent, pursuant to the DTC FAST System, in definitive form, duly executed and authenticated by the Trustee. Subject to the terms and conditions hereof, the Issuer will deliver or cause to be delivered at the Place of Closing as set forth in Item 4 of Exhibit B attached hereto, the other documents and instruments to be delivered pursuant to this Agreement (the "Closing

Documents”) and the Purchasers will accept delivery of the Bonds and Closing Documents and pay the purchase price for the Bonds as set forth in Section 2.1 above by wire transfer, to the Trustee, in immediately available federal funds, for the account of the Issuer or as the Issuer directs. The Bonds will be made available to the Purchaser at least one business day before the Closing for purposes of inspection. The Bonds will be prepared and delivered as fully registered Bonds without coupons in the denominations set forth in the Indenture. The Bonds will be registered by the Trustee in the name of Cede & Co., as nominee for DTCC.

Section 4. Representations and Warranties of Issuer.

4.1 The Issuer hereby makes the following representations and warranties to the Placement Agent, the Purchasers and the Borrowers:

(a) The Issuer is *duly organized and validly existing*, with full legal right, power and authority to issue, sell and deliver the Bonds to the Purchaser pursuant to the Indenture, and execute, deliver and perform its obligations, as the case may be, under this Agreement, the Indenture, the Bonds, the Loan Agreement, the Tax Certificate, the Regulatory Agreement, and any other agreements to which the Issuer is a party (collectively, the “Issuer Documents”) and to perform and consummate all of its obligations and transactions required or described in each of the Issuer Documents;

(b) The Resolution approving and authorizing the execution and delivery by the Issuer of the Issuer Documents was duly adopted at a meeting of the Board of Supervisors of the Issuer called and held pursuant to law and with the public notice required by law and at which a quorum was present and acting throughout, was duly approved by the Mayor, and is in full force and effect and has not been amended or repealed;

(c) By official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has authorized and approved the execution and delivery of the Issuer Documents and the consummation by the Issuer of the transactions on its part contemplated thereby;

(d) The Bonds, when duly issued and authenticated in accordance with the Indenture and delivered to the Purchasers as provided herein, will be validly issued and outstanding limited obligations of the Issuer, entitled to the benefits of the Indenture and payable from the sources specified therein;

(e) The Issuer has executed and delivered, or will execute and deliver on or before the Closing Date, each of the Issuer Documents. Each of the Issuer Documents constitutes, or will, as of the Closing Date, constitute, a legal, valid and binding obligation of the Issuer enforceable in accordance with its terms, subject to any applicable bankruptcy, insolvency or other laws affecting creditors’ rights or remedies heretofore or hereafter enacted. To the best knowledge of the Issuer, each of the Issuer Documents has been executed and delivered, or will be executed and delivered on or before the Closing Date, by each required signatory and are currently in full force and effect or, as of the Closing Date, will be in full force and effect;

(f) The Issuer is not in any respect in breach of or default under any constitutional provision, law or administrative regulation of the State or of the United States or any agency or instrumentality of either, or of any other governmental agency, or any Material Judgment or Agreement (as defined below), and no event has occurred, which constitutes a default or event of default under any Material Judgment or Agreement; and the adoption of the Resolution, the issuance, delivery and sale of the Bonds and the execution and delivery of the Issuer Documents and compliance with and performance of the Issuer’s obligations therein and herein will not in any material respect conflict with, violate or result in a breach of or constitute a default under, any such constitutional provision, law,

administrative regulation or any Material Judgment or Agreement, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Issuer or under the terms of any such law, administrative regulation or Material Judgment or Agreement. As used herein, the term "Material Judgment or Agreement" means any judgment or decree or any loan agreement, indenture, bond, note or resolution or any material agreement or other instrument to which the Issuer is a party or to which the Issuer or any of its property or assets is otherwise subject (including, without limitation, the Act, the Resolution and the Issuer Documents);

(g) All approvals, consents, orders, authorizations, filings or registrations of or with any governmental authority, board, agency, council, commission or other body having jurisdiction which would constitute a condition precedent to the execution and delivery by the Issuer of the Issuer Documents or issuance of the Bonds, or the performance by the Issuer of its obligations hereunder and under the Issuer Documents have been obtained, or will be obtained on the Closing Date; provided, that the Issuer makes no representations as to any approvals, consents or other actions which may be necessary to qualify the Bonds for offer and sale under Blue Sky or other state securities laws or regulations;

(h) No litigation, proceeding or official investigation of any governmental or judicial body is pending against the Issuer or against any other party [with respect to] which the Issuer, [in each case, has been served with process,] or, to the knowledge of the Issuer, threatened against the Issuer, (i) seeking to restrain or enjoin the issuance, sale or delivery of any of the Bonds, or in any way contesting or affecting any proceedings of the Issuer taken concerning the sale thereof, or the payment or collection of any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, (ii) in any way contesting or affecting any authority for the issuance of the Bonds or the validity or binding effect of any of the Issuer Documents, (iii) which is in any way contesting the creation, existence, powers or jurisdiction of the Issuer or the entitlement of any officers of the Issuer to their respective offices or the validity or effect of the Indenture or the Act or any provision thereof or the application of the proceeds of the Bonds or (iv) which, if adversely determined, could materially adversely affect (A) the financial position or operating condition of the Issuer, (B) the transactions described in the Issuer Documents, (C) the validity or enforceability of the Bonds, the Resolution or the Issuer Documents, (D) the exclusion from gross income for federal income tax purposes of the interest on the Bonds or (E) the use of the proceeds of the Bonds to make the Loan.

4.2 Any certificate signed by any official of the Issuer and delivered to the Borrowers or the Purchaser in connection with the delivery of the Bonds will be deemed to be a representation and warranty by the Issuer to the Borrowers, the Placement Agent or the Purchasers, as appropriate, as to the statements made therein.

Section 5. Representations, Covenants and Agreements of the Bond Placement Agent and the Purchasers

The Bond Placement Agent and the Purchasers represent to and covenant and agree with the Issuer, each as to itself only, that:

(a) The Bond Placement Agent and each Purchaser has been duly authorized to enter into this Agreement.

(b) The Bond Placement Agent each Purchaser shall comply with the San Francisco Business Tax Ordinance and shall, if not otherwise exempt from such ordinance, provide to the Commission a Business Tax Registration Certificate on or prior to the date hereof.

(c) The Bond Placement Agent and each Purchaser shall comply with Chapter 12B of the San Francisco Administrative Code, entitled "Nondiscrimination in Contracts," which is incorporated herein by this reference.

(d) The Bond Placement Agent and each Purchaser is not in material violation of, or in material breach of or in material default under, any applicable law, regulation, order or agreement to which it is a party or by which it is bound, which violation or breach would have a material adverse effect on its ability to execute, deliver and perform this Agreement.

(e) This Agreement, assuming due and legal execution and delivery thereof by, and validity against, the Issuer, when executed by the Bond Placement Agent and the Purchasers, will be a legal, valid and binding obligation of the Bond Placement Agent and each Purchaser enforceable in accordance with its terms, subject to valid bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally.

(f) The Bond Placement Agent represents and warrants to the Issuer that it has been duly authorized to enter into this Agreement and to act hereunder by and on behalf of the Borrowers.

Section 6. Representations and Warranties of Borrowers.

6.1 Each of the Affordable Borrower and the Market Borrower with respect to itself and not with respect to the other Borrower make the following representations and warranties to the Issuer, the Placement Agent and the Purchasers as of the date hereof, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Affordable Borrower is, and at all times will be, a limited partnership, duly organized, validly existing and in good standing under the laws of the State and duly qualified, authorized and licensed under the laws of the State to transact business as a limited partnership for the purpose of owning and operating a multifamily housing facility in the State. The Market Borrower is, and at all times will be, a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware and duly qualified, authorized and licensed under the laws of the State to transact business as a limited liability company for the purpose of owning and operating a multifamily housing facility in the State. All partners, members and other entities that comprise each of the Borrowers and are included on the Borrowers' signature pages hereto (collectively, the "Partners"), are, and at all times will be organized, existing and in good standing under the laws of the State in which they are formed and are in good standing and duly qualified, authorized and licensed under the laws of the State, to the extent required by applicable law. There are no general partners of the Borrowers other than those reflected in the Borrowers' signature blocks.

(b) The Borrowers have, and on the Closing Date will have, full legal right, power and authority (i) to execute and deliver the Loan Documents and (ii) to consummate the transactions contemplated by this Agreement and the Loan Documents. The Partners have, and on the Closing Date will have, full legal right, power and authority to execute and deliver this Agreement and the other Loan Documents on behalf of the Borrowers.

(c) Prior to the acceptance hereof, the Borrowers have duly authorized the execution and delivery of this Agreement and the performance by the Borrowers of the obligations contained herein and prior to the Closing Date the Borrowers will have duly authorized the (i) execution and delivery of the Loan Documents, (ii) performance by the Borrowers of the obligations contained in

the Loan Documents, and (iii) consummation by the Borrowers of all transactions contemplated by the Loan Documents.

(d) All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Borrowers or for the execution and delivery by the Borrowers of this Agreement and the other Loan Documents or the consummation by the Borrowers of the transactions contemplated hereby or thereby have been obtained or will be obtained prior to the Closing Date.

(e) The Borrowers have not taken or omitted to take on or prior to the date hereof any action that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(f) No legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) has been served upon either Borrower and none is threatened against or affecting either Borrower or any of the Partners or, to the knowledge of the Borrowers, any basis therefor (i) in any way affecting the organization and existence of the Borrowers, (ii) contesting or materially affecting the validity or enforceability of this Agreement or the other Loan Documents, (iii) contesting the powers of the Borrowers or their authority with respect to the Loan Documents, (iv) contesting the authority of the Partners to act on behalf of the Borrowers, as applicable, (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on (A) the operations or the financial position or condition of the Borrowers, (B) the due performance by the Borrowers of the Loan Documents as of the Closing Date, (C) the validity or enforceability of any of the Loan Documents, or (D) the transactions contemplated hereby or by any Loan Document or (vi) in any way contesting the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(g) This Agreement is, and, when executed and delivered by the Borrowers and the other parties thereto, the Loan Documents will be, the legal, valid and binding obligations of the Borrowers, enforceable against the Borrowers in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(h) The execution and delivery by the Borrowers of this Agreement and the Loan Documents and the consummation by the Borrowers of the transactions contemplated hereby and thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under (i) the partnership agreement or operating agreement of the Borrowers, as applicable, (ii) to the best of the Borrowers' knowledge, any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which the Borrowers are subject, or (iii) any contract, indenture, agreement, mortgage, lease, note, commitment or other obligation or instrument to which one or both of the Borrowers are a party or by which the Borrowers or their properties is bound.

6.2 Each of the representations and warranties set forth in this Section will survive until the Maturity Date of the Bonds.

6.3 Any certificate signed by the Borrowers or the Partners and delivered to the Placement Agent, Bondholder Representative, Purchasers and/or the Issuer shall be deemed a representation and warranty by the Borrowers to the Placement Agent, Bondholder Representative, Purchasers and/or the Issuer as to the statements made therein.

Section 7. Covenants.

7.1 The Issuer hereby makes the following covenants with the Placement Agent and the Purchasers:

(a) Prior to the Closing, the Issuer will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Resolution or the Issuer Documents without prior written notice to the Placement Agent and the Purchasers.

(b) Prior to the Closing, the Issuer will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture and the other Issuer Documents.

(c) The Issuer will cause the Bonds to be delivered as specified by the Placement Agent in conjunction with the Closing.

(d) The Issuer will not take or omit to take any action which will in any way cause the proceeds of the Bonds to be applied in a manner other than as provided in the Indenture or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(e) Prior to the Closing, the Issuer will obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency that would constitute a condition precedent to the performance by it of obligations under the Resolution, this Agreement, the other Issuer Documents and the Bonds.

7.2 Each of the Affordable Borrower and the Market Borrower with respect to itself and not with respect to the other Borrower, hereby make the following covenants with the Issuer, the Placement Agent and the Purchasers:

(a) Neither Borrower will take or omit to take any action which will in any way cause the proceeds of the Bonds to be applied in a manner other than as provided in the Indenture or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(b) Prior to the Closing, each Borrower will obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency that would constitute a condition precedent to the performance by it of its obligations under the Loan Documents. After the Closing, each Borrower will use commercially reasonable efforts to obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency that would constitute a condition precedent to the performance by it of its obligations under the Loan Documents.

(c) Neither Borrowers shall violate or breach any other covenants contained in the Loan Documents.



Section 8. Conditions of Closing.

8.1 The Purchasers have entered into this Agreement in reliance upon representations, covenants and agreements of the Issuer and each of the Borrowers contained herein, in reliance upon the representations, covenants and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer and each of the Borrowers of their obligations hereunder, both as of the date hereof and as of the Closing Date. Accordingly, the Purchasers' obligations under this Agreement to purchase, to accept delivery of and to pay for the Bonds will be subject to the performance by the Issuer and the Borrowers of their respective obligations to be performed by them hereunder at or prior to the Closing, and to the accuracy in all material respects of the representations, covenants and agreements of the Issuer and of the Borrowers contained herein as of the date hereof and as of the Closing as if made on the Closing Date, and will also be subject to the following additional conditions:

(a) The Purchasers shall not have discovered any material error, misstatement or omission in the representations and warranties made by either the Issuer or either of the Borrowers in this Agreement, which representations and warranties will be deemed to have been made again at and as of the time of the Closing and will then be true in all material respects.

(b) Each of the Borrowers and the Issuer shall have each performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by them at or prior to Closing.

(c) This Agreement, the other Issuer Documents and the Loan Documents each shall have been executed and delivered by each of the parties thereto, shall be in full force and effect on and as of the Closing Date and shall be in form and substance satisfactory to the Purchasers and no event of default shall exist under any such documents.

8.2 In addition to the conditions set forth in Section 7.1, the obligations of the Purchasers to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Purchasers of the following items:

(a) An opinion of Bond Counsel, dated the Closing Date and addressed to each of the Purchasers, substantially in the form set forth in Exhibit C;

(b) An opinion of counsel to the Issuer (addressed to each of the Purchasers and the Trustee) or certificate of the Issuer, satisfactory in form and substance to the Purchasers, dated the Closing Date and covering the points identified in Exhibit D;

(c) An opinion or opinions of counsel to the Borrowers, the Partners and the Guarantor, addressed to the Issuer and each of the Purchasers dated the Closing Date and substantially in the form set forth in Exhibit E;

(d) A certificate or certificates of the Borrowers, dated the Closing Date and signed by the Partners or Members, as applicable, in form and substance satisfactory to the Purchasers and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion;

(e) An opinion of counsel to the Trustee or Trustee's certificate addressed to each of the Purchasers, covering the points identified in Exhibit F;

- (f) A properly completed and executed IRS Form 8038;
- (g) A certified copy of the Resolution and an executed original of each of the Issuer Documents and the Loan Documents; and
- (h) Such additional financing statements, legal opinions, certificates and other documents as the Placement Agent, the Purchasers or Bond Counsel may reasonably deem necessary to evidence the truth and accuracy as of the Closing Date of the respective representations and warranties herein contained and to evidence compliance by the Issuer and the Borrowers with this Agreement and all applicable legal requirements, and the due performance and satisfaction by either of you at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by you.

8.3 If any of the conditions set forth in Sections 7.1 or 7.2 have not been met on the Closing Date, the Purchasers may, at their sole option, terminate this Agreement or proceed to Closing upon waiving any rights under this Agreement with respect to any such condition. If this Agreement is terminated pursuant to this Section, no party will have any rights or obligations to any other party, except as provided in Section 10.

Section 9. Actions and Events at the Closing. The following events will take place at the Closing:

(a) The Issuer will deliver the Bonds to the Trustee for closing through DTCC's book-entry only system. The Bonds so delivered will be in the form required by the Indenture, duly executed on behalf of the Issuer and authenticated by the Trustee, and will be fully registered in the name of Cede & Co., as nominee for DTCC.

(b) Each Borrower will deliver or cause to be delivered to the Purchasers at the place set forth in Item 4 in Exhibit B, or at such other place or places as the parties hereto may mutually agree upon, the materials described in Section 7.2.

(c) The Purchasers or their designees will deliver to the Trustee, for the account of the Issuer or as the Issuer directs, an amount equal to the purchase price of the initial installments of the Bonds as set forth in Item 2 of Exhibit B by wire transfer to the Trustee, in immediately available federal funds.

Section 10. Termination of Agreement. The Bondholder Representative may terminate this Agreement, without liability therefor, by notifying you at any time prior to the Closing if:

(a) Any legislation is introduced in, or enacted by, the United States Congress, or shall have been reported out of committee or be pending in committee, or any decision is rendered by any court of competent jurisdiction, or any ruling or regulation, temporary regulation, release or announcement shall have been issued or proposed by the Treasury Department of the United States, the Internal Revenue Service, or any other agency of the government of the United States that, in the reasonable judgment of the Bondholder Representative, has the purpose or effect of subjecting interest on the Bonds to inclusion in gross income for purposes of federal income taxation; or

(b) Any legislation is introduced in, or enacted by the United States Congress or any action is taken by, or notice issued by or on behalf of, the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, that, in the opinion of counsel to the Bondholder Representative has the effect (A) of requiring (i) the contemplated

purchase of the Bonds, or the Indenture or the Loan Agreement to be registered under the 1933 Act or the Indenture to be qualified under the 1939 Act, or (ii) any governmental consents, approvals, orders or authorizations for the consummation of the transactions contemplated by this Agreement, the Issuer Documents or the Loan Documents which cannot, without undue expense, be obtained prior to the Closing Date, or (B) that the issuance, offering, or sale of obligations of the general character of the Bonds, including any or all underlying arrangements, as contemplated hereby or otherwise, is or would be in violation of the federal securities laws as amended and then in effect.

(c) In the judgment of the Bondholder Representative it becomes impracticable to market, purchase or sell the Bonds or to enforce commitments for the purchase of Bonds because (A) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange; (B) a general banking moratorium shall have been established by federal, New York or California authorities or a major financial crisis or a material disruption in commercial banking or securities settlement or clearances services shall have occurred such as to make it impractical or inadvisable to proceed with the purchase of the Bonds as contemplated hereby; or (C) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national or international emergency or war or other calamity or crisis the effect of which is to materially affect the ability of the Purchasers to purchase or sell the Bonds; or

(d) Any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance or sale of the Bonds or in any way contesting any authority or security for or the validity of the Bonds, or the existence or powers of the Issuer; or

(e) Legislation shall have been introduced in or enacted by the legislature of the State that would, in the reasonable judgment of the Bondholder Representative, adversely affect the security for the Bonds; or

(f) There shall have occurred any change that, in the reasonable judgment of the Bondholder Representative, makes unreasonable or unreliable any of the assumptions upon which (i) yield on the Bonds for purposes of compliance with the Code, (ii) payment of debt service on the Bonds, or (iii) the basis for the exclusion from gross income for federal income tax purposes of interest on the Bonds, is predicated; or

(g) There shall have occurred any outbreak or material escalation of hostilities or other calamity or crisis, the effect of which on the financial markets of the United States is such as to make it, in the reasonable opinion of the Bondholder Representative, impractical to enforce commitments for the purchase of the Bonds; or

(h) The Issuer shall fail to execute and deliver or to obtain one or more filings, consents, approvals, authorizations, registrations or other action requested by the Bondholder Representative to be obtained or taken by the Issuer and such failure is based upon the Issuer's conclusion that such action is unduly burdensome and the Bondholder Representative shall reasonably conclude that, as a result of the Issuer's failure to so execute and deliver or to obtain what has been requested by the Bondholder Representative, the purchase of the Bonds will be materially adversely affected.

Section 11. Fees and Expenses; Costs of Issuance. All costs, fees and expenses incident to the performance of the Issuer's, Placement Agent's, Purchasers' and Borrowers' obligations in connection with the issuance and purchase of the Bonds, including the reasonable expenses of counsel, as well as expenses relating to the meals, transportation, lodging, and entertainment incidental to implementing this

Agreement, shall be paid by the Borrowers to the Trustee by wire transfer of immediately available funds on the Closing Date.

Section 12. Indemnification by Borrower.

(a) The Borrowers agree to pay, defend, protect, indemnify, save and hold harmless the Issuer, the Placement Agent, each Purchaser and each affiliate, member, officer, director, official, employee and agent of the Issuer, the Placement Agent, each Purchaser and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended (referred to herein as an "Indemnified Party" and collectively as the "Indemnified Parties"), against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the "Liabilities") caused by or directly or indirectly arising from or in any way relating to the Bonds, the Project, the loan of the proceeds of the Bonds, the Loan Agreement, the Indenture, this Agreement or any document related to the Bonds, the Project, the loan of the proceeds of the Bonds (the "Transaction Documents") or any transaction or agreement, written or oral, pertaining to the foregoing; provided, however, that the Borrowers shall not be required to indemnify, save or hold harmless (a) the Issuer from any claims, costs, fees, expenses or liabilities arising solely from the willful misconduct of the Issuer and (b) any other Indemnified Party for losses caused by the gross negligence or the willful misconduct of the Indemnified Party.

(b) The Borrowers also agree to pay, defend, protect, indemnify, save and hold harmless the Placement Agent and each Purchaser and each affiliate, member, officer, director, official, employee and agent of the Placement Agent and each Purchaser from and against the Liabilities directly or indirectly arising from or relating to (i) any errors or omissions of any nature whatsoever contained in any legal proceedings or other official representation or inducement made by the Issuer pertaining to the Bonds, the Borrowers or the Project and (ii) any fraud or misrepresentations or omissions contained in the proceedings of the Issuer pertaining to the financial condition of the Borrowers.

(c) The Indemnified Party shall, in the event of any claim, suit, action or proceeding against it with respect to which indemnity may be sought on account of any indemnity agreement by the Borrowers contained herein, promptly give written notice thereof to the Borrowers. When such notice is given, the Borrowers shall be entitled to participate, at their own expense, in the defense of, or if it so elects, to assume the defense of, such claim, suit, action or proceeding, in which event such defense shall be conducted by counsel chosen by the Borrowers, provided that each Indemnified Party shall have the right to review and approve or disapprove any compromise or settlement which approval shall not be unreasonably withheld, conditioned or delayed. If the Borrowers shall elect not to assume such defense, it shall assume the payment of all expenses related thereto. Notwithstanding the above, each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, provided that the Borrowers shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the Borrowers to represent the Indemnified Party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the Indemnified Party and the Borrowers and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to the Borrowers, (iii) the Borrowers shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, or (iv) the Borrowers shall authorize the Indemnified Party to employ separate counsel at the expense of the Borrowers. Each and every Indemnified Party shall have the right to

compromise, settle or conclude any claim, action or proceeding against it with the written consent of the Borrowers, which consent shall not be unreasonably withheld. The foregoing notwithstanding, in the event that the Borrowers shall assume such defense and any Indemnified Party or Parties shall be advised by independent legal counsel that counsel selected by the Borrowers is not fully and adequately protecting such party or parties and representing the interests of such party or parties and the Borrowers have been given written notice thereof and a reasonable opportunity to cure or find other counsel acceptable to the Indemnified Parties, any such Indemnified Party or Parties shall have the right to conduct its own defense against any such claim, suit, action or proceeding in addition to or in lieu of any defense conducted by the Borrowers, and the Indemnifying Party shall indemnify and hold harmless such Indemnified Party or Parties against and from any and all suits, claims, damages, liabilities or expenses whatsoever, including reasonable fees and expenses of counsel selected by such Indemnified Party or Parties incurred by and arising out of or in connection with any such claim, suit, action or proceeding.

(d) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph (a) or (b) of this Section 11 is for any reason held to be unavailable, the Borrowers and the Indemnified Party shall contribute proportionately to the aggregate Liabilities to which the Borrowers and the Indemnified Party may be subject, so that the Indemnified Party is responsible for that portion represented by the percentage that the fees paid by the Borrowers to the Indemnified Party in connection with the issuance and administration of the Bonds bear to the aggregate offering price of the Bonds, with the Borrowers responsible for the balance; provided, however, that in no case shall the Indemnified Party be responsible for any amount in excess of the fees paid by the Borrowers to the Indemnified Party in connection with the issuance and administration of the Bonds.

(e) The Indemnified Parties, other than the Issuer and the Purchasers, shall be considered to be third party beneficiaries of this Agreement for purposes of this Section 11. The provisions of this Section 11 will be in addition to all liability which the Borrowers may otherwise have and shall survive any termination of this Agreement, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds. No person guilty of fraudulent misrepresentation (within the meaning of Section 10(b) of the Securities Exchange Act of 1934) shall be entitled to contribution from any person who was not guilty of such misrepresentation.

The indemnification hereunder shall be in addition to, and shall not limit, any indemnity granted by the Borrowers pursuant to the Loan Agreement or any other document.

Section 13. Miscellaneous.

13.1 All notices, demands and formal actions hereunder will be writing and mailed, telecopied or delivered to the following address or such other address as any of the parties shall specify:

If to the Placement Agent:

Hilltop Securities Inc.  
1201 Elm Street, Suite 3500  
Dallas, TX 75270  
Facsimile: (214) 859-9475  
Attention: Mark A. McGruder

If to Citibank:

Citibank, N.A.  
390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Transaction Management Group  
Deal ID# 23410  
Facsimile: (212) 723-8209

And to:

Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Deal ID# 23410  
Facsimile: (805) 557-0924

And to:

390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Account Specialist  
Deal ID# 23410  
Facsimile: (212) 723-8209

Following the Conversion  
Date, with a copy to:

Citibank, N.A.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Deal ID # 23410  
Facsimile: (215) 328-0305

And a copy of any notices of  
default sent to:

Citibank, N.A.  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Deal ID # 23410  
Facsimile: (646) 291-5754

If to DB:

Deutsche Bank AG, New York Branch  
60 Wall Street, 3rd floor  
Attention: Municipal Capital Markets  
New York, New York 10005  
Facsimile: (917) 338-4032

If to the Issuer:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place, Rm. 316  
San Francisco, California 94102  
Attention: City Controller

With copies to:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place, Rm. 140  
San Francisco, California 94102  
Attention: City Treasurer

And

City and County of San Francisco  
Mayor's Office of Housing and Community  
Development  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, California 94103  
Attention: Director

And

Office of the City Attorney  
City Hall, 1 Dr. Carlton B. Goodlett Place, Rm. 234  
San Francisco, California 94102  
Attention: Finance Team

If to the Borrowers:

to each of the Affordable Borrower and the  
Market Borrower prior to the Release Date, and  
thereafter only to the Market Borrower, unless the  
notice is otherwise intended to be to or include the  
Affordable Borrower, and then to (or also to) the  
Affordable Borrower

If to the Affordable Borrower:

500 Folsom, L.P.  
c/o Essex 500 Folsom, LLC  
1100 Park Place  
Suite 200  
San Mateo, California 94403  
Attention: Legal Department (Jordan Ritter and Anika  
Fischer)  
Fax: (650) 655-7811

And to:

500 Folsom, L.P.  
c/o Essex 500 Folsom, LLC  
1100 Park Place  
Suite 200  
San Mateo, California 94403  
Attention: Mark Mikl  
Fax: (650) 655-7810

And to:

BRIDGE 500 Folsom LLC  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, California 94108  
Attn: Ann Silverberg, Executive Vice President  
Fax: (415) 495-4898

And to:

BRIDGE 500 Folsom LLC  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, California 94108  
Attn: Rebecca V. Hlebasko, General Counsel  
Fax: (415) 495-4898

and with a copy to (which shall  
not constitute notice to the  
Borrowers):

Chernove & Associates, Inc.  
16027 Ventura Boulevard., Suite 660  
Encino, California 91436  
Attention: Sheldon B. Chernove, Esq.  
Fax: (818) 377-8102

If to the Market Borrower:

Block 9 MRU Residential, LLC  
1100 Park Place, Suite 200  
San Mateo, California 94403  
Attention: Legal Department (Jordan Ritter and  
Anika Fischer)  
Fax: (650) 655-7811

and to:

Block 9 MRU Residential, LLC  
1100 Park Place, Suite 200  
San Mateo, California 94403  
Attention: Mark Mikl  
Fax: (650) 655-7810

and with copy to (which shall not  
constitute notice to Borrower):

Chernove & Associates, Inc.  
16027 Ventura Blvd., Suite 600  
Encino, California 91436  
Attention: Sheldon B. Chernove, Esq.  
Fax: (818) 377-8102

and prior to the Release Date  
with a copy (which shall not  
constitute notice to the  
Borrowers) to:

the Investor Limited Partner

If to the Investor Limited Partner:

Wells Fargo Affordable Housing Community  
Development Corporation  
MAC D1053-170  
301 S. College Street  
Charlotte, North Carolina 28288  
Attention: Director of Tax Credit Asset Management

with a copy to:

Sidley Austin LLP  
555 West Fifth Street, Suite 4000  
Los Angeles, California 90013  
Attention: Cynthia Christian, Esq.



13.2 This Agreement will inure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns and will not confer any rights upon any other person.

13.3 This Agreement may not be assigned by the Issuer or the Borrowers without the prior written consent of the Placement Agent and the Purchasers, which consent shall not be unreasonably withheld or delayed; provided, however, the Purchasers shall be given at least 30 days prior written notice of any such proposed assignment. This Agreement may be assigned by either of the Purchasers upon written notice of such assignment from the Purchaser to the Issuer and the Borrowers.

13.4 This Agreement may not be amended without the prior written consent of the Issuer, the Placement Agent, the Borrowers and the Purchasers.

13.5 The representations, covenants and agreements of the Issuer and the Borrowers will not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of (a) any investigations made by or on behalf of the Purchasers (or statements as to the results of such investigations) concerning such representations, covenants and agreements and (b) delivery of and payment for the Bonds.

13.6 This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute but one and the same instrument.

13.7 This Agreement will become effective and binding upon the respective parties hereto upon the execution and delivery hereof by the parties hereto and will be valid and enforceable as of the time of such execution and delivery.

13.8 If any provision of this Agreement is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any constitution, statute, rule of public policy, or any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

13.9 This Agreement will be governed by and construed in accordance with the laws of the State applicable to agreements to be performed wholly therein without regard to choice of law principles.

13.10 Except as provided in Section 11, the obligations of the Purchasers and Borrowers hereunder shall be without recourse to any partner, shareholder, member, trustee, officer, employee, agent or manager of the Purchasers or Borrowers and no shareholder, member, partner, trustee, officer, employee, agent or manager of the Purchasers or Borrowers shall be personally liable for the payment of any obligation of the Purchasers or Borrowers, as applicable, hereunder. In the event any legal actions or proceedings are brought in respect of such obligations, any judgment against the Purchasers or Borrowers shall be enforced only against the assets of the Purchasers or Borrowers, as applicable, and not against any property of any trustee, partner, shareholder, member, officer, employee or manager of the Purchasers or Borrowers.

13.11 The Issuer and the Borrowers each acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Agreement is an arm's-length commercial transaction among the Issuer, the Placement Agent, the Borrowers, and the Purchasers, (ii) in connection therewith and with the

discussions, undertaking and procedures leading up to the consummation of such transaction, the Placement Agent and the Purchasers are and have been acting solely as principals and is not acting as the agent, advisor, or fiduciary of the Issuer or the Borrowers, (iii) none of the Placement Agent or the Purchasers has assumed an advisory or fiduciary responsibility in favor of the Issuer or the Borrowers with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Placement Agent or either of the Purchasers has provided other services or is currently providing other services to the Issuer or the Borrowers on other matters) and none of the Placement Agent or the Purchasers has an obligation to the Issuer or the Borrowers with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement and (iv) the Issuer and the Borrowers have consulted their own legal, financial and other advisors to the extent they deem appropriate.

13.12 The provisions set forth in Exhibit G attached hereto are incorporated herein by reference.

[Signature pages start on next page]

[Counterpart Signature Page to the Lower 500 Folsom Residential Bond Purchase Agreement]

If the foregoing accurately sets forth our mutual understanding concerning the subject matter hereof, kindly indicate your acceptance by executing this Agreement.

**HILLTOP SECURITIES INC.**

By: \_\_\_\_\_  
Mark A. McGruder, Managing Director

[Signatures continue on next page]

[Counterpart Signature Page to the Lower 500 Folsom Residential Bond Purchase Agreement]

**CITY AND COUNTY OF SAN FRANCISCO,  
CALIFORNIA, as Issuer**

By: \_\_\_\_\_  
Authorized Signatory

Approved as to Form:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

[Signatures continue on next page]

[Counterpart Signature Page to the Lower 500 Folsom Residential Bond Purchase Agreement]

**CITIBANK, N.A.,**  
a national banking association

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

[Signatures continue on next page]

[Counterpart Signature Page to the Lower 500 Folsom Residential Bond Purchase Agreement]

**DEUTSCHE BANK AG, NEW YORK  
BRANCH**

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

[Signatures continue on next page]

[Counterpart Signature Page to the Lower 500 Folsom Residential Bond Purchase Agreement]

**500 FOLSOM, L.P.**,  
a California limited partnership,

By: Essex 500 Folsom, LLC,  
a Delaware limited liability company,  
its Administrative General Partner

By: Essex Portfolio, L.P.,  
a California limited partnership  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation  
its General Partner

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

By: BRIDGE 500 Folsom LLC,  
a California limited liability company,  
its Managing General Partner

By: MCB Family Housing, Inc.,  
a California nonprofit public benefit corporation  
its sole member

By: \_\_\_\_\_  
Ann Silverberg, Vice President

[Signatures continue on next page]

[Counterpart Signature Page to the Lower 500 Folsom Residential Bond Purchase Agreement]

**BLOCK 9 MRU RESIDENTIAL, LLC**  
a Delaware limited liability company

By: Essex Portfolio, L.P.,  
a California limited partnership,  
its Authorized Signatory

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its General Partner

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



SCHEDULE I

BOND DRAW-DOWN DATES AND AMOUNTS

<u>Drawdown Date</u>	<u>Notional Drawdown Citibank</u>	<u>Notional Drawdown DB</u>	<u>Notional Outstanding Citibank</u>	<u>Notional Outstanding DB</u>	<u>Aggregate Notional Outstanding</u>
	\$				\$

## EXHIBIT A – GLOSSARY OF TERMS

“Act” means, collectively, the provisions of Section 9.107 of the Charter of the City, Article I of Chapter 43 of the San Francisco Administrative Code of the City and, to the extent applicable, Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code.

“Affordable Borrower” means 500 Folsom, L.P., a California limited partnership, and its permitted successors and assigns under the Bond Documents to which it is a party.

“Affordable Project” means 109 rental housing units (including one manager’s unit), 108 of which will be affordable to low and moderate income tenants.

“Agreement” means this Bond Purchase Agreement, as amended from time to time.

“Bond Counsel” means Quint & Thimmig LLP.

“Bonds” means the Issuer’s Multifamily Housing Revenue Bonds, Series 2016E (Lower 500 Folsom Residential) issued and delivered in the original principal amount of \$132,000,000.

“Borrowers” means, collectively, the Affordable Borrower and the Market Borrower; provided, however, that from and after the Release Date, the term “Borrowers” shall mean only the Market Borrower.

“Closing” means the proceeding on the Closing Date at which the Bonds are delivered to the Purchasers.

“Closing Date” means December \_\_, 2016, the date on which the Closing takes place.

“Closing Documents” has the meaning ascribed to such term in Section 3 hereof.

“Code” means the Internal Revenue Code of 1986, as amended, together with all corresponding and applicable final or temporary regulations and revenue rulings issued or promulgated thereunder.

“Constitution” means the Constitution of the State.

“Guarantor” means the party or parties making the Exceptions to Non-Recourse Guaranty dated December 1, 2016 and the [Completion Guaranty] dated [Dated Date] in connection with the issuance of the Bonds;

“Indenture” means that certain Indenture of Trust dated as of December 1, 2016 between the Issuer and the Trustee.

“Indemnified Parties” means the Issuer, the Placement Agent, each Purchaser and each affiliate, member, officer, director, official, employee and agent of the Issuer, the Placement Agent, each Purchaser and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended.

“Initial Project” means the multifamily rental housing project identified as “Lower 500 Folsom Residential,” consisting of 311 housing units (including three manager’s units), in the first 21 floors of a 42 floor multifamily housing development located at 500 Folsom Street in the City.

“Issuer” means the City and County of San Francisco, California, a municipal corporation duly organized and existing pursuant to its charter and the laws and constitution of the State of California.

“Issuer Documents” means, collectively, the Indenture, the Loan Agreement, this Agreement, the Assignment of Deed of Trust and Loan Documents dated as of December 1, 2016 executed by the Issuer and all other agreements, documents and certificates as may be required to be executed and delivered by the Issuer to carry out, give effect to, and consummate the transactions contemplated by this Agreement or by the other Issuer Documents.

“Loan Agreement” means that certain Loan Agreement dated as of December 1, 2016 between the Issuer and the Borrowers.

“Loan Documents” shall have the meaning ascribed to such term in the Indenture.

“Market Borrower” means Block 9 MRU Residential, LLC, a Delaware limited liability company, and its permitted successors and assigns under the Bond Documents to which it is a party.

“Market Project” means 202 rental housing units (including two manager’s units), 200 of which will be rented at market rates.

“Mortgage” means that certain Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by the Borrowers and granting a first lien on the Project for the benefit of the Trustee (by assignment from the Issuer), including any amendments and supplements thereto.

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

“1934 Act” means the Securities Exchange Act of 1934, as amended.

“1939 Act” means the Trust Indenture Act of 1939, as amended.

“Note” means that certain multifamily note from the Borrowers relating to the Bonds and secured by the Mortgage.

“Partners” means all partners, members and other entities that comprise the Borrower and are included on the Borrower’s signature page to this Agreement.

“Placement Agent” means Hilltop Securities Inc., a corporation duly organized and validly existing under the laws of the State of Delaware, together with its successors, assigns or designees.

“Project” means, prior to the Release Date, the Initial Project, and from and after the Release Date, the Market Project.

“Purchasers” means Citibank, N.A., a national banking association, or its designee or nominee, and Deutsche Bank AG, New York Branch or its designee or nominee, together with their respective permitted successors and assigns hereunder.

“Regulatory Agreement” means that certain Regulatory Agreement and Declaration of Restrictive Covenants by and among the Issuer, the Trustee and the Borrowers.

“Release Date” means the date on which the Affordable Project is released from the lien of the Deed of Trust, the Affordable Borrower is released as an obligor under the Loan Documents and all of the Release Conditions have been satisfied in accordance with the Loan Agreement.

“Resolution” means the resolution or resolutions of the Issuer, authorizing, among other things, the execution and delivery by the Issuer of the Issuer Documents and the Bonds and the performance of its obligations thereunder.

“State” means the State of California.

“Trustee” means U.S. Bank National Association or its successors or any other corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at any time serving as successor trustee under the Indenture.

EXHIBIT B – TERMS OF BONDS

1. Title of Bonds: \$132,000,000 City and County of San Francisco, California Multifamily Housing Revenue Bonds, Series 2016E (Lower 500 Folsom Residential)
  
2. Purchase Price: 100% of Aggregate Principal Amount.
  
3. Payment Related Terms:
  - (a) *Date of the Bonds:* December \_\_, 2016.
  - (b) *Interest Payment Dates:* \_\_\_\_\_, 2016 and the first day of each month thereafter, or as set forth in the Indenture.
  - (c) *Aggregate Principal Amount:* \$132,000,000.
  - (d) *Maturity Date:* \_\_\_\_\_ 1, 2051
  - (e) *Interest Rates:* \_\_\_\_%
  - (f) *Redemption Provisions:*
    - (i) Mandatory Redemption: as set forth in the Indenture.
    - (ii) Optional Redemption: as set forth in the Indenture.
  
4. Logistics of Closing:
  - (a) *Time of Closing:* 12:00 noon, Place of Closing local time.
  - (b) *Date of Closing:* December \_\_, 2016.
  - (c) *Place of Closing:* \_\_\_\_\_, San Francisco, California.
  - (d) *Delivery of Bonds:* as directed by Placement Agent, subject to the provisions of Section 3 hereof.

EXHIBIT C – FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL

[Letterhead of Bond Counsel]

December \_\_, 2016

Citibank, N.A.,  
a National banking association  
New York, New York

\$132,000,000  
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA MULTIFAMILY HOUSING REVENUE  
BONDS, SERIES 2016E  
(LOWER 500 FOLSOM RESIDENTIAL)

[After appropriate introductory language, the opinion shall state substantially as follows:]

- (1) The Bond Purchase Agreement dated December \_\_, 2016 has been duly executed and delivered by, and constitutes the valid and binding agreement of, the Issuer.
- (2) The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended.

EXHIBIT D – POINTS TO BE COVERED IN OPINION OF COUNSEL TO THE  
ISSUER/CERTIFICATE OF ISSUER

[After appropriate introductory language, the opinion or certificate shall state substantially as follows:]

(1) The Issuer is a municipal corporation duly organized and existing pursuant to its charter and the laws and constitution of the State of California.

(2) The Resolution was duly adopted at a meeting of the Board of Supervisors of the Issuer called and held pursuant to law and with the public notice required by law and at which a quorum was present and acting throughout, was duly approved by the Mayor, and is in full force and effect and has not been amended or repealed.

(3) The Issuer Documents have been duly executed and delivered by the Issuer and (assuming due authorization, execution and delivery by and validity against the other parties thereto) are valid and binding agreements of the Issuer.

(4) To the best of my knowledge, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body has been served upon the Issuer and is pending or is otherwise known to be threatened in any way affecting the existence of the Issuer, or the titles of the Issuer's officials to their respective offices, or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds or the application of the proceeds thereof in accordance with the Indenture, or the collection or application of the Pledged Revenues (as defined in the Indenture) to pay the principal of and interest on the Bonds, or in any way contesting or affecting the validity or enforceability of the Issuer Documents or any action of the Issuer contemplated by any of said documents, or in any way contesting the powers of the Issuer or its authority with respect to the Issuer Documents or any action on the part of the Issuer contemplated by any of said documents, nor to my knowledge is there any basis therefor.

EXHIBIT E – FORM OF BORROWER’S COUNSEL OPINION



EXHIBIT F – POINTS TO BE COVERED IN THE OPINION OF TRUSTEE’S  
COUNSEL/TRUSTEE’S CERTIFICATE

[After appropriate introductory language, the opinion/certificate shall state substantially as follows:]

(1) The Trustee is a national banking association duly organized, validly existing and in good standing under the laws of the United States of America with trust powers.

(2) The Trustee has all requisite corporate and trust power, authority and legal right and has taken all necessary corporate action to: (i) execute and deliver the Indenture and to accept the trusts created under the Indenture and to perform its obligations thereunder, (ii) execute and deliver in its capacity as Trustee the Loan Agreement, the [Assignment], the [Intercreditor Agreement], the Continuing Disclosure Agreement and the Regulatory Agreement, as such documents are defined in the Indenture, (such documents, collectively, with the Indenture, the “Trustee Documents”) and perform the duties and obligations of the Trustee thereunder.

(3) The Trustee has duly authorized, executed and delivered the Trustee Documents. Assuming the due authorization, execution and delivery thereof by the other parties thereto, the Trustee Documents are the legal, valid and binding agreements of the Trustee, enforceable in accordance with their terms against the Trustee.

(4) No authorization, approval, consent, or other order of any governmental agency or regulatory authority having jurisdiction over the Trustee that has not been obtained is required for the authorization, execution and delivery by the Trustee of the Trustee Documents.

(5) There is no litigation pending or, to our knowledge, threatened against the Trustee to restrain the Trustee’s participation in, or in any way contesting or affecting the creation, organization or existence of the Trustee or the power of the Trustee with respect to the transactions contemplated by the Trustee Documents.

(6) The execution and delivery of the Trustee Documents by the Trustee, and compliance with the provisions thereof will not contravene the Articles of Association or Bylaws of the Trustee or any law or regulation governing the banking and trust powers of the Trustee or, to our knowledge, any indenture, mortgage, deed of trust, resolution, note agreement or other agreement or instrument to which the Trustee is a party or by which the Trustee is bound.

EXHIBIT G – CITY AND COUNTY OF SAN FRANCISCO  
MANDATORY CONTRACTING PROVISIONS

The following provisions shall apply to the Purchase Contract as if set forth in the text thereof. Capitalized terms used but not defined in this Appendix shall have the meanings given in the Purchase Contract.

1. Nondiscrimination; Penalties.

(a) *Non Discrimination in Contracts.* The Bond Placement Agent shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. The Bond Placement Agent shall incorporate by reference in any subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require any subcontractors to comply with such provisions. The Bond Placement Agent is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) *Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2.* The Bond Placement Agent does not as of the date of this Purchase Contract, and will not during the term of this Purchase Contract, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(c) *Condition to Contract.* As a condition to the Purchase Contract, the Bond Placement Agent shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Purchase Contract. By entering into this Purchase Contract, the Bond Placement Agent confirms that it has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

3. Tropical Hardwood and Virgin Redwood Ban. Under San Francisco Environment Code Section 804(b), the City urges the Bond Placement Agent not to import, purchase, obtain, or use for any purpose, any tropical hardwood; tropical hardwood wood product, virgin redwood or virgin redwood wood product.

4. Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require the Bond Placement Agent to remove from, City facilities personnel of such Bond Placement Agent who the Commission has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The Commission shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a

valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

5. Compliance with Americans with Disabilities Act. The Bond Placement Agent shall provide the services specified in the Purchase Contract in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

6. Sunshine Ordinance. The Bond Placement Agent acknowledges that this Purchase Contract and all records related to its formation, such Bond Placement Agent's performance of services provided under the Purchase Contract, and the City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

7. Limitations on Contributions. By executing this Purchase Contract, The Bond Placement Agent acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of the Bond Placement Agent's board of directors; the Bond Placement Agent's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in such Bond Placement Agent; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by such Bond Placement Agent. The Bond Placement Agent must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

8. Requiring Minimum Compensation for Covered Employees. The Bond Placement Agent shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. The Bond Placement Agent is subject to the enforcement and penalty provisions in Chapter 12P. By entering into this Purchase Contract, the Bond Placement Agent certifies that it is in compliance with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. The Bond Placement Agent shall comply with San Francisco Administrative Code Chapter 12Q. The Bond Placement Agent shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. The Bond Placement Agent is subject to the enforcement and penalty provisions in Chapter 12Q.

10. Prohibition on Political Activity with City Funds. In performing the services provided under the Purchase Contract, the Bond Placement Agent shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Purchase Contract from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The Bond Placement Agent is subject to the enforcement and penalty provisions in Chapter 12G.

11. Nondisclosure of Private, Proprietary or Confidential Information. If this Purchase Contract requires the City to disclose "Private Information" to a Bond Placement Agent within the meaning of San Francisco Administrative Code Chapter 12M, the Bond Placement Agent shall use such information consistent with the restrictions stated in Chapter 12M and in this Purchase Contract and only as necessary in performing the services provided under the Purchase Contract. The Bond Placement Agent is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of services provided under the Purchase Contract, the Bond Placement Agent may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to a Bond Placement Agent, such information must be held by such Bond Placement Agent in confidence and used only in performing the Purchase Contract. The Bond Placement Agent shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

12. Consideration of Criminal History in Hiring and Employment Decisions. The Bond Placement Agent agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Purchase Contract. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of the Bond Placement Agents' obligations under Chapter 12T is set forth in this Section. The Bond Placement Agent is required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Purchase Contract shall have the meanings assigned to such terms in Chapter 12T.

The requirements of Chapter 12T shall only apply to an Bond Placement Agent's operations to the extent those operations are in furtherance of the performance of this Purchase Contract, shall apply only to applicants and employees who would be or are performing work in furtherance of this Purchase Contract, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code §§ 21.35, including the enforcement and penalty provisions, is incorporated into this Purchase Contract. Under San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

14. Conflict of Interest. By entering into the Purchase Contract, the Bond Placement Agent certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's

Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Purchase Contract.

15. Assignment. The services provided under the Purchase Contract to be performed by the Bond Placement Agent are personal in character and neither this Purchase Contract nor any duties or obligations may be assigned or delegated by a Bond Placement Agent unless first approved by the City by written instrument executed and approved in the same manner as this Purchase Contract. Any purported assignment made in violation of this provision shall be null and void.

16. Food Service Waste Reduction Requirements. The Bond Placement Agent shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the provided remedies for noncompliance.

17. Cooperative Drafting. This Purchase Contract has been drafted through a cooperative effort of the City and the Bond Placement Agent, and all parties have had an opportunity to have the Purchase Contract reviewed and revised by legal counsel. No party shall be considered the drafter of this Purchase Contract, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Purchase Contract.

18. Laws Incorporated by Reference. The full text of the laws listed in this Appendix \_\_\_, including enforcement and penalty provisions, are incorporated into this Purchase Contract by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Appendix A are available at [www.sfgov.org](http://www.sfgov.org) under "Open Gov."

19. Sugar-Sweetened Beverage Prohibition. The Bond Placement Agent agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Purchase Contract.

1 [Multifamily Housing Revenue Bonds - 510 Folsom Street (also known as Transbay Block 9) -  
2 Not to Exceed \$175,000,000]

3 **Resolution declaring the intent of the City and County of San Francisco (the "City") to**  
4 **reimburse certain expenditures from proceeds of future bonded indebtedness;**  
5 **authorizing the Director of the Mayor's Office of Housing and Community Development**  
6 **(the "Director") to submit an application and related documents to the California Debt**  
7 **Limit Allocation Committee ("CDLAC") to permit the issuance of tax exempt residential**  
8 **rental housing bonds in an aggregate principal amount not to exceed \$175,000,000 to**  
9 **finance costs of the construction of 311 rental housing units to be located on the first**  
10 **21 floors of a 42 story mixed use building to be constructed at 510 Folsom Street (also**  
11 **known as Transbay Block 9), and related parking and other improvements (the**  
12 **"Project"); authorizing and directing the Director to direct the Controller's Office to**  
13 **hold in trust an amount not to exceed \$100,000 in accordance with CDLAC procedures;**  
14 **authorizing the Director to certify to CDLAC that the City has on deposit the required**  
15 **amount; authorizing the Director to pay an amount equal to such deposit to the State of**  
16 **California if the City fails to issue the tax exempt residential rental housing bonds;**  
17 **approving, for purposes of the Internal Revenue Code of 1986, as amended, the**  
18 **issuance and sale of tax exempt residential rental housing bonds by the City in an**  
19 **aggregate principal amount not to exceed \$175,000,000; authorizing and directing the**  
20 **execution of any documents necessary to implement this Resolution, as defined**  
21 **herein; and ratifying and approving any action heretofore taken in connection with the**  
22 **Project, as defined herein, and the Application, as defined herein.**

23  
24 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
25 "Board of Supervisors"), after careful study and consideration, has determined that there is a

1 shortage of safe and sanitary housing within the City and County of San Francisco (the "City"),  
2 particularly for low and moderate income persons, and that it is in the best interest of the  
3 residents of the City and in furtherance of the health, safety, and welfare of the public for the  
4 City to assist in the financing of multi-family rental housing units; and

5 WHEREAS, Acting under and pursuant to the powers reserved to the City under  
6 Sections 3, 5, and 7 of Article XI of the Constitution of the State of California and Sections  
7 1.101 and 9.107 of the Charter, the City has enacted the City and County of San Francisco  
8 Residential Mortgage Revenue Bond Law (the "City Law"), constituting Article I of Chapter 43  
9 of the San Francisco Administrative Code, in order to establish a procedure for the  
10 authorization, issuance and sale of residential mortgage revenue bonds by the City for the  
11 purpose of providing funds to encourage the availability of adequate housing and home  
12 finance for persons and families of low or moderate income, and to develop viable  
13 communities by providing decent housing, enhanced living environments, and increased  
14 economic opportunities for persons and families of low or moderate income; and

15 WHEREAS, In addition, pursuant to Division 31 of the Health and Safety Code of the  
16 State of California, and particularly Chapter 7 of Part 5 thereof (the "State Law"), the City is  
17 empowered to issue and sell bonds for the purpose of making mortgage loans or otherwise  
18 providing funds to finance the development of multi-family rental housing including units for  
19 lower income households and very low income households; and

20 WHEREAS, An entity to be established by Essex Portfolio, L.P. or a related entity (the  
21 "Market Rate Unit Developer"), and an entity to be established by BRIDGE Housing  
22 Corporation or a related entity (the "Affordable Unit Developer", and together with the Market  
23 Rate Unit Developer, the "Developers"), desire to construct approximately 311 rental housing  
24 units and related parking and other improvements (referred to above and otherwise in this  
25 Resolution as the "Project") to constitute the first 21 floors of a 42 story mixed use building to

1 be constructed at 510 Folsom Street (also known as Transbay Block 9), San Francisco,  
2 California 94107, which building will also include ground floor retail facilities along Folsom  
3 Street; and

4 WHEREAS, The Market Rate Unit Developer will own approximately 202 of the rental  
5 housing units in the Project and improvements incident thereto, and the Affordable Unit  
6 Developer will own approximately 109 of the rental housing units in the Project and  
7 improvements incident thereto, with the units to be owned by the Affordable Unit Developer to  
8 be rented to low and very low income tenants, and with the Project to be initially operated by  
9 an entity established by Essex Portfolio, L.P. or a related entity, or another entity selected by  
10 the Developers; and

11 WHEREAS, The Developers have requested that the City assist in the financing of the  
12 Project through the issuance of one or more series of tax-exempt residential rental housing  
13 bonds (the "Bonds"); and

14 WHEREAS, The City expects that proceeds of the Bonds will be used to pay certain  
15 costs incurred in connection with the Project prior to the date of issuance of the Bonds; and

16 WHEREAS, The City intends to issue the Bonds in an amount not to exceed  
17 \$95,000,000 and to use proceeds of the Bonds to make one or more loans (the "Loans") to  
18 the Developers to finance costs of the Project; and

19 WHEREAS, The Board of Supervisors has determined that the moneys advanced and  
20 to be advanced to pay certain expenditures of the Project are or will be available only for a  
21 temporary period and it is necessary to reimburse such expenditures with respect to the  
22 Project from the proceeds of the Bonds; and

23 WHEREAS, Section 1.150-2 of the United States Treasury Regulations requires that  
24 the Board of Supervisors declare its reasonable official intent to reimburse prior expenditures  
25 for the Project with proceeds of the Bonds; and



1           WHEREAS, The interest on the Bonds may qualify for tax exemption under section 103  
2 of the Internal Revenue Code of 1986, as amended (the "Code"), only if the Bonds are  
3 approved in accordance with section 147(f) of the Code; and

4           WHEREAS, The City now wishes to approve the issuance of the Bonds in order to  
5 satisfy the public approval requirements of section 147(f) of the Code; and

6           WHEREAS, The Project is located wholly within the City; and

7           WHEREAS, On March 3, 2016, and on March 10, 2016, the City caused a notice  
8 stating that a public hearing with respect to the issuance of the Bonds would be held by the  
9 Mayor's Office of Housing and Community Development on March 18, 2016, to appear in The  
10 San Francisco Chronicle, which is a newspaper of general circulation in the City; and

11           WHEREAS, The Mayor's Office of Housing and Community Development held the  
12 public hearing described above on March 18, 2016, and an opportunity was provided for  
13 persons to comment on the issuance of the Bonds and the Project; and the minutes of such  
14 hearing were provided to this Board of Supervisors prior to this meeting; and

15           WHEREAS, This Board of Supervisors is the elected legislative body of the City and is  
16 the applicable elected representative authorized to approve the issuance of the Bonds within  
17 the meaning of section 147(f) of the Code; and

18           WHEREAS, Section 146 of the Code limits the amount of tax-exempt private activity  
19 bonds, which include residential rental housing bonds, that may be issued in any calendar  
20 year by entities within a state and authorizes the legislature of each state to provide the  
21 method of allocating authority to issue tax-exempt private activity bonds within the respective  
22 state; and

23           WHEREAS, Chapter 11.8 of Division 1 of Title 2 of the Government Code of the State  
24 of California governs the allocation in the State of California of the state ceiling established by  
25 section 146 of the Code for tax-exempt private activity bonds among governmental units in the

1 State having the authority to issue tax-exempt private activity bonds; and

2 WHEREAS, Section 8869.85(b) of the Government Code requires that a local agency  
3 file an application for a portion of the state ceiling with the California Debt Limit Allocation  
4 Committee ("CDLAC") prior to the issuance of tax-exempt private activity bonds, including  
5 residential rental housing bonds; and

6 WHEREAS, CDLAC procedures require an applicant for a portion of the state ceiling  
7 for tax-exempt private activity bonds to certify to CDLAC that applicant has on deposit an  
8 amount equal to one-half of one percent (1/2%) of the amount of allocation requested not to  
9 exceed \$100,000.00; now, therefore, be it

10 RESOLVED, By the Board of Supervisors of the City and County of San Francisco, as  
11 follows:

12 Section 1. The Board of Supervisors finds and determines that the foregoing recitals  
13 are true and correct.

14 Section 2. The Board of Supervisors adopts this Resolution for purposes of  
15 establishing compliance with the requirements of Section 1.150-2 of the United States  
16 Treasury Regulations. This Resolution does not bind the Board of Supervisors to issue the  
17 Bonds, to approve the Loans or to make any expenditure, incur any indebtedness or proceed  
18 with the Project.

19 Section 3. The Board of Supervisors hereby declares its official intent under United  
20 States Treasury Regulations Section 1.150-2 to use proceeds of the Bonds to reimburse  
21 expenditures incurred in connection with the Project. The Board of Supervisors hereby further  
22 declares its intent to use such proceeds to reimburse the Developers for actual expenditures  
23 made by the Developers on the Project.

24 Section 4. On the date of the expenditure to be reimbursed, all reimbursable costs of  
25 the Project will be of a type properly chargeable to a capital account under general federal

1 income tax principles.

2 Section 5. The maximum principal amount of debt expected to be issued for the Project  
3 is \$175,000,000.

4 Section 6. This Board of Supervisors, as the applicable elected representative of the  
5 governmental unit having jurisdiction over the area in which the Project is located, hereby  
6 approves the issuance of the Bonds for purposes of Section 147(f) of the Code.

7 Section 7. This approval of the issuance of the Bonds by the City is neither an approval  
8 of the underlying credit issues of the proposed Project nor an approval of the financial  
9 structure of the Bonds.

10 Section 8. The Board of Supervisors hereby authorizes the Director of the Mayor's  
11 Office of Housing and Community Development, or his designee (the "Director"), on behalf of  
12 the City, to submit an application (the "Application"), and such other documents as may be  
13 required, to CDLAC pursuant to Government Code Section 8869.85 for an allocation for the  
14 Project of a portion of the state ceiling for private activity bonds in a principal amount not to  
15 exceed \$175,000,000.

16 Section 9. An amount equal to \$100,000 ("Deposit") is hereby authorized to be held on  
17 deposit in connection with the Application and the applicable CDLAC procedures, and the  
18 Director is authorized to certify to CDLAC that such funds are available; which Deposit shall  
19 be provided to the City by the Market Rate Unit Developer.

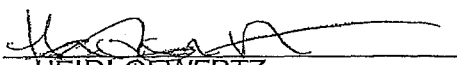
20 Section 10. If the City receives a CDLAC allocation for the Project and the Bonds are  
21 not issued, the Mayor's Office of Housing and Community Development is hereby authorized  
22 to cause an amount equal to the Deposit to be paid to the State of California, if and to the  
23 extent required by CDLAC.

24 Section 11. The officers and employees of the City and the Director are hereby  
25 authorized and directed, jointly and severally, to do any and all things necessary or advisable

1 to consummate the receipt of an allocation of tax-exempt private activity bond authority for the  
2 Project from CDLAC and otherwise effectuate the purposes of this Resolution, consistent with  
3 the documents and laws cited herein and this Resolution, and all actions previously taken by  
4 such officers and employees with respect to the Project, consistent with the documents cited  
5 herein and this Resolution, including but not limited to the submission of the application to  
6 CDLAC, are hereby ratified and approved.

7 Section 12. This Resolution shall take effect from and after its adoption by the Board  
8 and approval by the Mayor.

9  
10 DENNIS J. HERRERA  
11 City Attorney

12  
13 By:   
14 HEIDI GEWERTZ  
15 Deputy City Attorney  
16 n:\spec\as2016\1600120\01094197.docx



City and County of San Francisco

Tails  
Resolution

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 160325

Date Passed: April 26, 2016

Resolution declaring the intent of the City and County of San Francisco (the "City") to reimburse certain expenditures from proceeds of future bonded indebtedness; authorizing the Director of the Mayor's Office of Housing and Community Development (the "Director") to submit an application and related documents to the California Debt Limit Allocation Committee ("CDLAC") to permit the issuance of tax exempt residential rental housing bonds in an aggregate principal amount not to exceed \$175,000,000 to finance costs of the construction of 311 rental housing units to be located on the first 21 floors of a 42 story mixed use building to be constructed at 510 Folsom Street (also known as Transbay Block 9), and related parking and other improvements (the "Project"); authorizing and directing the Director to direct the Controller's Office to hold in trust an amount not to exceed \$100,000 in accordance with CDLAC procedures; authorizing the Director to certify to CDLAC that the City has on deposit the required amount; authorizing the Director to pay an amount equal to such deposit to the State of California if the City fails to issue the tax exempt residential rental housing bonds; approving, for purposes of the Internal Revenue Code of 1986, as amended, the issuance and sale of tax exempt residential rental housing bonds by the City in an aggregate principal amount not to exceed \$175,000,000; authorizing and directing the execution of any documents necessary to implement this Resolution, as defined herein; and ratifying and approving any action heretofore taken in connection with the Project, as defined herein, and the Application, as defined herein.


April 20, 2016 Budget and Finance Sub-Committee - RECOMMENDED

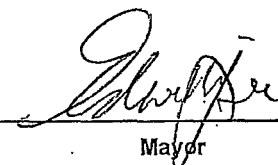
April 26, 2016 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

File No. 160325

I hereby certify that the foregoing Resolution was ADOPTED on 4/26/2016 by the Board of Supervisors of the City and County of San Francisco.

  
Angela Calvillo  
Clerk of the Board

  
Mayor

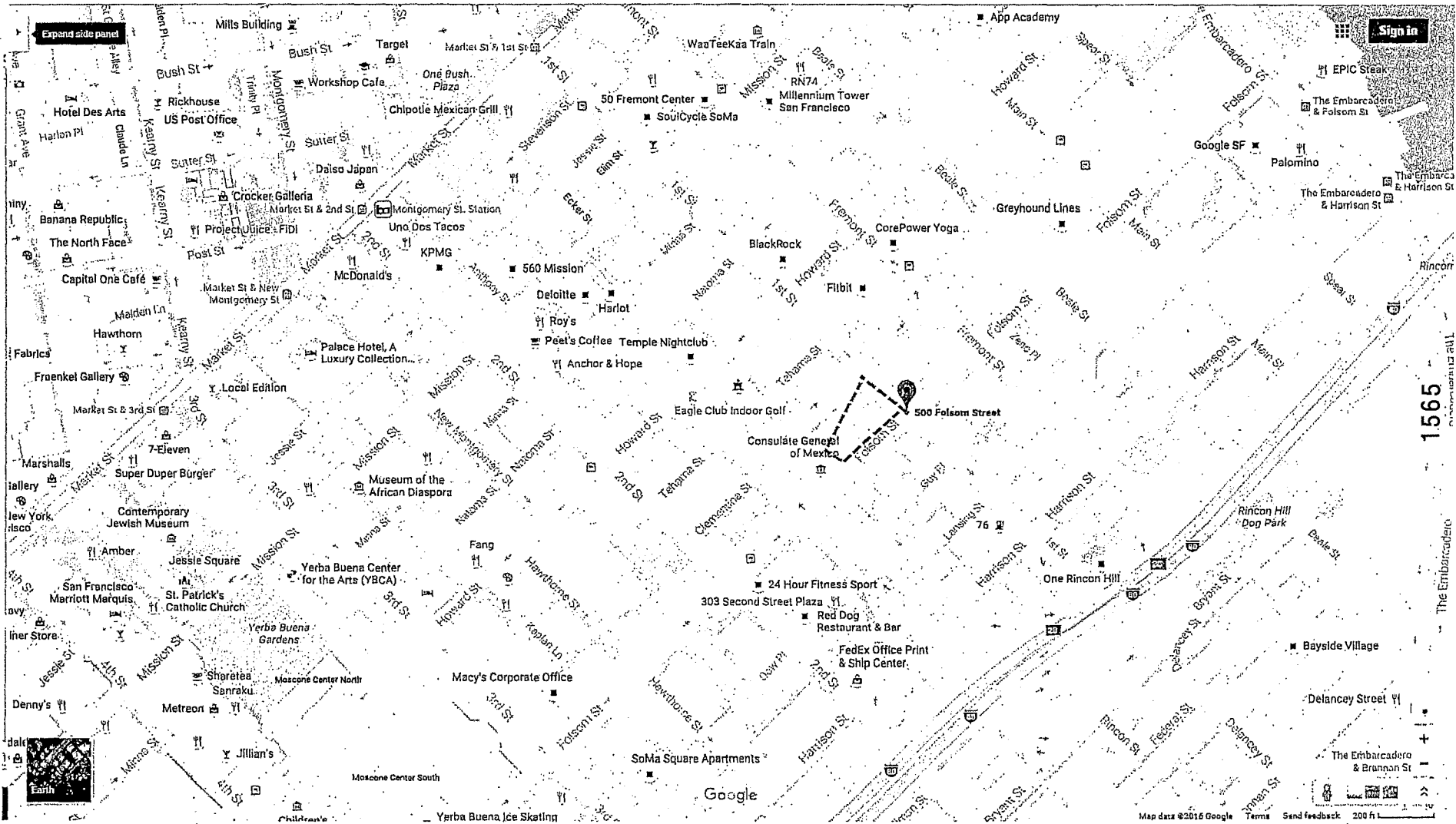
5/6/2016  
Date Approved

**500 Folsom Street (Transbay Block 9)  
Board of Supervisors Introduction Package**

Enclosed (plus 3 copies):

1	Introduction to Issue Letter	✓
2	Issuance Resolution	✓
3	SFEC-126 (Mayor): 500 Folsom, L.P./Block 9 MRU Residential, LLC	✓
4	SFEC-126 BOS: 500 Folsom, L.P. / Block 9 MRU Residential, LLC	✓
5	Inducement Resolution #156-16	✓
6	CDLAC Resolution	✓
7	Indenture of Trust	✓
8	Regulatory Agreement and Declaration of Restrictive Covenants	✓
9	Loan Agreement	✓
10	Bond Purchase Agreement	✓

Site Location for 11/16/16 Budget and Finance Committee Meeting Agenda Item 8 File #161201 Multifamily Housing Revenue Bond - 500-510 Folsom ("Transbay Block 9") - Not to Exceed \$132,000,000



Print Form

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2015 NOV -1

PM 4:16  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.**

**Sponsor(s):**

Supervisor Kim

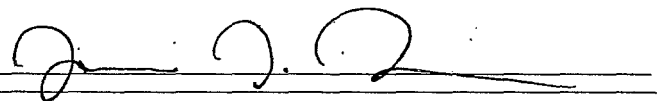
**Subject:**

Multifamily Housing Revenue Bond - 500 Folsom ("Transbay Block 9") - Not to Exceed \$132,000,000

**The text is listed below or attached:**

See attached.

Signature of Sponsoring Supervisor:



For Clerk's Use Only:



**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: 500 Folsom, L.P.	
<p><i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i></p> <p>500 Folsom, L.P. will have the following members: Bridge 500 Folsom, LLC (Managing GP; 0.005%); Essex 500 Folsom, LLC (Administrative GP; 0.005%); Block 9 Residential, LLC (Limited Partner; 0.005%); and Wells Fargo Affordable Housing Community Development Corporation (Tax Credit Investor; 99.985%).</p> <p>Essex 500 Folsom, LLC, the Administrative GP, has a sole member called Block 9 Residential, LLC, whose Managing Member and 50% owner is Block 9 Transbay, LLC. Essex Portfolio, L.P. is the Managing Member and 99.956% owner of Block 9 Transbay, LLC.</p> <p>Essex Property Trust, Inc., is the General Partner and Majority Partner (96.7%) of Essex Portfolio, L.P.</p> <p>The following individuals comprise Essex's board of directors and executive team:</p> <p><u>Board of Directors:</u> George M. Marcus, Keith R. Guericke, Irving F. Lyons III, Gary P. Martin, Issie N. Rabinovitch, Thomas E. Robinson, Michael J. Schall, Byron A. Scordelis, Janice L. Sears</p> <p><u>Executive Officers:</u> Michael J. Schall, Angela L. Kleiman, John D. Eudy, Craig K. Zimmerman, John F. Burkart</p>	
Contractor address: 1100 Park Place, Suite 200, San Mateo CA 94403	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: \$132,000,000
Describe the nature of the contract that was approved: Multifamily Housing Revenue Bonds-500 Folsom	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors

Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

**Filer Information** *(Please print clearly.)*

**1567**

Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

\_\_\_\_\_  
Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
Date Signed