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

**and**

**[TRUSTEE],  
as Trustee**

**TRUST INDENTURE**

**Dated as of January 1, 2015**

**Relating to**

**§  
City and County of San Francisco  
Multifamily Housing Revenue Bonds  
(Alice Griffith Phase 2 Apartments Project),  
Series 2015B**

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## TRUST INDENTURE

This TRUST INDENTURE dated as of January 1, 2015 (this "Indenture"), by and between CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, a municipal corporation and chartered city and county duly organized and validly existing under the City Charter and the Constitution and the laws of the State of California (together with its successors and assigns, the "Issuer") and [TRUSTEE], a national banking association organized and existing under and by virtue of the laws of the United States of America and being duly qualified to accept and administer the trusts created by this Indenture, as trustee (the "Trustee"),

### WITNESSETH:

WHEREAS, pursuant to Section 9.107 of the Charter of the Issuer, and Article 1 of Chapter 43 of the San Francisco Administrative Code and, to the extent applicable, Section 52097.5 of the California Health and Safety Code (collectively, the "Act"), the Issuer is authorized to issue one or more series of its revenue bonds and to loan the proceeds thereof to finance the construction and equipping of residential rental housing facilities to provide housing for persons of low and very low income; and

WHEREAS, Alice Griffith Phase 2, L.P., a California limited partnership (the "Borrower"), has applied to the Issuer for financial assistance for the purpose of providing all or part of the funds with which to pay the cost of the construction and equipping of a 91-unit multifamily rental housing project in the City and County of San Francisco, California currently known as Alice Griffith Phase 2 Apartments Project (the "Project"); and

WHEREAS, the provision of the Loan (as hereinafter defined), is authorized by the Act and will accomplish a valid public purpose of the Issuer, and the Issuer has determined that it is in the public interest to issue its Multifamily Housing Revenue Bonds (Alice Griffith Phase 2 Apartments Project), Series 2015B, in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds") for the purpose of providing funding necessary for the construction and equipping of the Project; and

WHEREAS, pursuant to a Loan Agreement dated as of even date herewith (the "Loan Agreement") among the Issuer, the Trustee and the Borrower, the Issuer has agreed to issue the Bonds and lend the proceeds thereof to the Borrower (the "Loan") and the Borrower has agreed to (i) apply the proceeds of the Loan to pay a portion of the costs of constructing and equipping of the Project, (ii) make payments sufficient to pay the principal of and interest on the Bonds when due (whether at maturity, by redemption, acceleration or otherwise), and (iii) observe the other covenants and agreements and make the other payments set forth therein; and

WHEREAS, the Borrower has delivered to the Trustee, on behalf of the Issuer, its promissory note dated the date of issuance of the Bonds in an original principal amount equal to the aggregate original principal amount of the Bonds (as amended, modified or supplemented from time to time, the "Note") evidencing its obligation to repay the Loan, and the Issuer has made the Loan to the Borrower, subject to the terms and conditions of the Loan Agreement and this Indenture; and

WHEREAS, to secure its obligations under the Loan Agreement and the Note, the Borrower has executed a Construction Leasehold Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing (as amended, modified or supplemented from time to time, the "Mortgage"), [in

favor of the Issuer,] and (ii) an Assignment of Contracts, Plans and Specifications (as amended, modified or supplemented from time to time, the "Assignment of Project Documents") and (iii) an Assignment of Partnership Interests and Capital Contributions (as amended, modified or supplemented from time to time, the "Security Agreement"), each dated as of even date with this Indenture, for the benefit of the Trustee, as secured party;

NOW, THEREFORE, in consideration of the premises and the mutual promises, representations and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereto agree as follows:

### GRANTING CLAUSES

The Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts created by this Indenture; the purchase and acceptance of the Bonds by the Owners thereof, and of other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does transfer, pledge and assign, without recourse, to the Trustee and its successors and assigns in trust forever, and does grant a security interest unto the Trustee and its successors in trust and its assigns, in and to all and singular the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the "Trust Estate"), to wit:

(a) All right, title and interest of the Issuer in and to the Note, the Mortgage, and the other Loan Documents (as that term is defined below), and all moneys from time to time paid by the Borrower pursuant to the terms of the Loan Documents and all right, title and interest of the Issuer (including, but not limited to, the right to enforce any of the terms thereof) under and pursuant to and subject to the provisions of the Loan Agreement (but excluding the Reserved Rights as defined in the Loan Agreement); and

(b) All other moneys and securities from time to time held by the Trustee under the terms of this Indenture, excluding amounts required to be rebated to the United States Treasury under Section 148(f) of the Code, whether or not held in the Rebate Fund; and

(c) Any and all property (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder to the Trustee, which the Trustee is authorized to receive at any and all times and to hold and apply the same subject to the terms of this Indenture.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges transferred, pledged, assigned and/or granted or agreed or intended so to be, by this Indenture, to the Trustee and its successors and assigns in trust forever;

IN TRUST NEVERTHELESS, upon the terms and conditions herein set forth for the equal and proportionate benefit, security and protection of all present and future Owners of the Bonds Outstanding, without preference, priority or distinction as to participation in the lien, benefit and protection of this Indenture of one Bond over or from the others, except as herein otherwise expressly provided;

PROVIDED, NEVERTHELESS, and these presents are upon the express condition, that if the Issuer or its successors or assigns shall well and truly pay or cause to be paid the principal of such Bonds with interest, according to the provisions set forth in the Bonds, or shall provide for the payment or redemption of such Bonds by depositing or causing to be deposited with the Trustee the entire amount of funds or securities requisite for payment or redemption thereof when and as authorized by the provisions of Article IX (it being understood that any payment with respect to the principal of or interest on Bonds made by the Borrower shall not be deemed payment or provision for the payment of the principal of or interest on Bonds, except Bonds purchased and canceled by the Trustee, all such uncanceled Bonds to remain Outstanding and the principal of and interest thereon payable to the Owners thereof), and shall also pay or cause to be paid all other sums payable hereunder by the Issuer, then these presents and the estate and rights granted by this Indenture shall cease, terminate and become void, and thereupon the Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the Issuer and upon the payment by the Issuer of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the Issuer such instruments of satisfaction or release as may be necessary or proper to discharge this Indenture of record, and if necessary shall grant, reassign and deliver to the Issuer all and singular the property, rights, privileges and interests by it granted, conveyed and assigned by this Indenture, and all substitutes therefor, or any part thereof, not previously disposed of or released as herein provided; otherwise this Indenture shall be and remain in full force;

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer agrees and covenants with the Trustee, for the benefit of the respective Owners from time to time of the Bonds as follows:

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

**Section 1.01 Definitions.** The following capitalized terms, as used in this Indenture, shall have the meanings specified below unless the context otherwise shall require. All other capitalized terms which are defined in the Loan Agreement and not defined herein shall have the respective meanings ascribed to them in the Loan Agreement.

“Accounts” means the accounts established pursuant to Section 5.01 hereof.

“Accredited Investor” means an “accredited investor” as that term is defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended.

“Act” has the meaning set forth for that term in the Recitals above.

“Additional Interest” means an amount equal to the excess of (i) the amount of interest an Owner (other than an Owner who is a “substantial user” of the Project or a “related person” to a “substantial user,” as defined in Section 147(a) of the Code) would have received during the period of time commencing on the date that the interest on the Bonds becomes subject to federal income taxation to the earlier of the date of the payment of the Bonds or the date of a Determination of

Taxability (excluding from such period any time in which the tax on such interest is uncollectible) at a per annum rate equal to the Taxable Rate, over (ii) the aggregate amount of interest received by an Owner for said period.

“Affiliates” or “Affiliate” means, if with respect to an entity, (i) any manager, member, officer or director thereof and any Person who or which is, directly or indirectly, the beneficial owner of more than 10% of any class of shares or other equity security, or (ii) any Person which, directly or indirectly, controls or is controlled by or is under common control with such entity. Control (including the correlative meanings of “controlled by” and “under common control with”) means effective power, directly or indirectly, to direct or cause the direction of the management and policies of such Person. With respect to a partnership or venture, “Affiliate” shall include, without limitation, any (i) general partner, (ii) general partner of a general partner, or (iii) partnership with a common general partner, and if any general partner is a corporation, any Person which is an “Affiliate” (as defined above) of such corporation. With respect to a limited liability company, “Affiliate” shall include, without limitation, any member.

“Alternative Rate” means (a) prior to the Conversion Date, the lower of (i) 4% in excess of the rate of interest otherwise payable on the Bonds or (ii) 12% per annum, and (b) after the Conversion Date, the Alternative Rate set forth in the Permanent Period Note Addendum; provided that such rate may not exceed the maximum rate allowed by law.

“Assignment of Project Documents” has the meaning set forth for that term in the Recitals above.

“Authorized Denomination” means the entire Outstanding principal amount of the Bonds, provided, that for purposes of redeeming the Bonds (other than as expressly required in this Indenture), the term “Authorized Denomination” means any integral multiple of \$1.00.

“Authorized Representative” means, (i) with respect to the Issuer, the Mayor of the City or the Director or the Housing Development Director of the Mayor’s Office of Housing and Community Development, or any person or persons designated to act on behalf of the Issuer by a certificate filed with the Borrower, the Trustee and the Servicer containing the specimen signatures of such person or persons and signed on behalf of the Issuer by the Mayor of the City or the Director or the Housing Development Director of the Mayor’s Office of Housing and Community Development; (ii) with respect to the Borrower, any person or persons designated to act on behalf of the Borrower by a certificate filed with the Issuer, the Trustee and the Servicer containing the specimen signatures of such person or persons and signed by the general partner of the Borrower and (iii) with respect to the Servicer, any person or persons designated to act on behalf of the Servicer by a certificate filed with the Borrower, the Issuer and the Trustee, containing the specimen signatures of such person or persons and signed on behalf of the Servicer by its President, Vice President or Secretary. Each such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties and exercise all powers of an Authorized Representative.

“Bank” means JPMorgan Chase Bank, N.A., and its successors and assigns.

“Bond” or “Bonds” has the meaning set forth for that term in the Recitals above.

“Bond Counsel” means any attorney or firm of attorneys of nationally recognized standing in the field of municipal finance law whose opinions are generally accepted by purchasers of tax-exempt obligations and who is acceptable to the Issuer and the Servicer.

“Bond Payment Date” means each date on which principal or redemption price or interest shall be payable on any of the Bonds according to their respective terms.

“Bond Purchase Agreement” means the Bond Purchase Agreement, dated as of January 1, 2015, among the Borrower, JPMorgan Chase Bank, N.A. and CCRC, pursuant to which and subject to the terms and conditions of which, CCRC has agreed to purchase up to \$ \_\_\_\_\_ in original principal amount of the Bonds upon Conversion.

“Business Day” means a day of the year which is not a Saturday or Sunday or any other day on which banks located in the city of New York, New York and banks located in the city in which the Principal Office of the Trustee is located are required or authorized by law to remain closed and on which The New York Stock Exchange is not closed.

“Calculation Period” means the period commencing upon the first day of each month and ending on (and including) the last day of such month.

“Capitalized Interest Account” means the account of that name established in the Project Fund pursuant to Section 5.01 of this Indenture.

“CCRC” means the California Community Reinvestment Corporation, a California nonprofit public benefit corporation, and its successors and assigns.

“Closing Date” means the date of issuance of the Bonds.

“Code” means 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 proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Completion” shall have the meaning ascribed to such term in the Construction Disbursement Agreement.

“Completion Agreement” means that certain Completion Agreement executed by the Guarantors and dated as of even date with this Indenture.

“Condemnation Award” means the total condemnation proceeds actually paid by the condemnor as a result of the condemnation of all or any part of the property subject to the Mortgage less the actual costs incurred, including attorneys’ fees, in obtaining such award.

“Construction Disbursement Agreement” means the Construction Disbursement Agreement of even date with this Indenture between the Borrower and the Bank, as the same may be supplemented, amended or modified.

“Control,” “Controlled” and “Controlling” means, with respect to any Person, either (i) ownership directly or indirectly 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.

“Conversion” means as provided in the Bond Purchase Agreement.

“Conversion Date” means the date on which the “Conversion Conditions” set forth in the Bond Purchase Agreement have been satisfied and CCRC purchases the Outstanding Bonds, or to the extent that CCRC has exercised the Loan Purchase Option, the date on which CCRC purchases the Loan.

“Construction Period Rate” means \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum.

“Costs of Issuance” means “issuance costs” with respect to the Bonds within the meaning of Section 147(g) of the Code.

“Costs of Issuance Account” means the account of that name established within the Project Fund pursuant to Section 5.01 of this Indenture.

“Counsel” means an attorney or firm of attorneys acceptable to the Issuer, the Trustee and the Servicer, and may, but need not, be Bond Counsel, counsel to the Issuer, the Servicer or the Borrower.

“Determination of Taxability” means (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, (iii) a determination by any court of competent jurisdiction, or (iv) receipt by the Trustee, at the request of the Servicer, of an opinion of Bond Counsel to the effect that the interest on the Bonds is includable in gross income for federal income tax purposes of the Owners thereof or any former Owner thereof, other than an Owner who is a “substantial user” (within the meaning of Section 147(a) of the Code) of the Project or a “related person” (as defined in Section 147(a) of the Code) to such substantial user; provided that no such Determination of Taxability under clause (i), (ii) or (iii) shall be deemed to have occurred if (a) the Borrower and the Servicer have been afforded the opportunity to contest such determination, and (b) if the Borrower or the Servicer 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, or (B) abandonment of such appeal by the Borrower or the Servicer.

“Environmental Indemnity” means the Indemnity Agreement dated as of even date with this Indenture, from the Borrower and the Guarantors for the benefit of the Issuer and the Trustee, as the same may be modified, supplemented or amended from time to time.

“Equity Account” means the account of that name established within the Project Fund pursuant to Section 5.01 of this Indenture.

“Event of Default” means any of those events defined as Events of Default by Section 6.01 of this Indenture.

“Fair Market Value” shall mean 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 Security—State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the Issuer and related parties do not own more than a 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment. To the extent required by the Regulations, the term “investment” will include a hedge.

“Funds” means the funds established pursuant to Section 5.01 hereof.

“Government Obligations” means direct obligations of, or obligations guaranteed by, the United States of America.

“Guarantors” means [Alice Griffith Phase 1 MBS GP, Inc., a Missouri corporation, and SFHDC Alice Griffith I, a California \_\_\_\_\_].

“Guaranty” means, collectively, the Completion Agreement and the Payment Guaranty.

“Indenture” has the meaning set forth for that term in the Recitals above.

“Initial Interest Rate Period” means the period commencing on the Closing Date and ending on (and including) the day before the Conversion Date.

“Initial Notification of Taxability” means the receipt by Trustee or any Owner of a communication from the Internal Revenue Service or any court of competent jurisdiction to the effect that the exclusion of interest on the Bonds from the gross income of the Owners (except for any Owner that is a “substantial user” or a “related person” within the meaning of Section 147(a) of the Code), for federal income tax purposes, will not continue in effect.

“Insurance and Condemnation Proceeds Account” means the account of that name established within the Project Fund pursuant to Section 5.01 of this Indenture.

“Insurance Proceeds” means the total proceeds of insurance actually paid or payable by an insurance company in respect of the required insurance on the Project, less the actual costs incurred, including attorneys’ fees, in the collection of such proceeds.

“Interest Payment Date” means the first day of each month commencing with the second month following the month in which the Closing Date occurs.

“Investment Securities” means any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein:

(a) Bonds or other obligations of the State or bonds or other obligations, the principal of and interest on which are guaranteed by the full faith and credit of the State;

(b) Bonds or other obligations of the United States or of subsidiary corporations of the United States Government which are fully guaranteed by such government;

(c) Obligations of agencies of the United States Government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Central Bank for Cooperatives;

(d) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(e) Certificates of deposit of national or state banks which have deposits insured by the Federal Deposit Insurance Corporation and certificates of deposit of federal savings and loan associations and state building and loan associations which have deposits insured by the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depositary, custodian, or trustee for any such bond proceeds. The portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation, if any, shall be secured by deposit, with the Federal Reserve Bank of San Francisco, California, or with any national or state bank or federal savings and loan association or state building and loan or savings and loan association, of one or more the following securities in an aggregate principal amount equal at least to the amount of such excess: direct and general obligations of the State or of any county or municipal corporation in the State, obligations of the United States or subsidiary corporations included in paragraph (ii) hereof, obligations of the agencies of the United States Government included in paragraph (iii) hereof, or bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in paragraph (iv) hereof;

(f) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956 and whose unsecured or uncollateralized long-term debt obligations of which are rated in the one of the two highest letter rating categories of S&P or Moody's or whose unsecured and uncollateralized short-term debt obligations are rated in one of the two highest letter rating categories of S&P or Moody's at the time of purchase, provided that each such interest-bearing deposit, repurchase agreement, reverse repurchase agreement, guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys;

(g) Any and all other obligations of investment grade and having a nationally recognized market, including, but not limited to, rate guarantee agreements, guaranteed investment contracts, or other similar arrangements offered by any firm, agency, business, governmental unit,

bank, insurance company or other entity; provided, that each such obligation shall permit moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys;

(h) Shares of a money market mutual fund or other collective investment fund registered under the Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, having assets of at least \$100,000,000 and rated in the one of the two highest letter rating categories of S&P or Moody's; and

(i) Any other investment approved in writing by the Servicer.

"Investor Limited Partner" means \_\_\_\_\_.

"Issuer" has the meaning set forth for that term in the Recitals above.

"Issuer Documents" means, collectively, this Indenture, the Loan Agreement, the Regulatory Agreement and the Tax Certificate.

"Legal Requirements" means any legal requirements, including any local, state or federal statute, law, ordinance, code, rule or regulation, now or hereinafter in effect (including environmental laws) or order, judgment, decree, injunction, permit, license, authorization, certificate, franchise, approval, notice, demand, direction or determination, of any Governmental Authority and all legal requirements imposed upon the Land, or upon the owner(s) of the Land from time to time, pursuant to any applicable covenants, conditions, easements, servitudes and restrictions and any applicable ground lease.

"Loan" has the meaning set forth for that term in the Recitals above.

"Loan Account" means the account of that name established within the Project Fund pursuant to Section 5.01 of this Indenture.

"Loan Agreement" means the Loan Agreement dated as of even date herewith, among the Issuer, the Trustee and the Borrower, as the same may be supplemented, amended or modified including, without limitation, by the Permanent Period Supplemental Agreement upon the Conversion Date.

"Loan Documents" means, collectively, the Loan Agreement, the Note, the Regulatory Agreement, the Construction Disbursement Agreement, the Mortgage, the Assignment of Project Documents, the Security Agreement, the Environmental Indemnity, the Guaranty, the Tax Certificate, the Permanent Period Supplemental Agreement (on and after the Conversion Date) and, upon delivery thereof, the Servicing Agreement, if any, together with all other documents or instruments executed by the Borrower which evidence or secure the Borrower's indebtedness under such documents and all other documents and instruments delivered simultaneously herewith or required under the Loan Documents to be delivered during the term of the Loan.

"Loan Purchase Option" shall have the meaning given such term in the Bond Purchase Agreement.

"Majority Owner" means the Person who owns at least fifty-one percent (51%) in aggregate principal amount of Outstanding Bonds, or, if no single person owns at least fifty-one percent (51%)

in aggregate principal amount of Outstanding Bonds, the person who is designated in writing to exercise the powers of "Servicer" and "Majority Owner" hereunder by persons who collectively own at least fifty-one percent (51%) in aggregate principal amount of Outstanding Bonds.

"Maturity Date" means \_\_\_\_\_ 1, 20\_\_.

"Moody's" means Moody's Investors Service, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer, with the consent of the Borrower and the Servicer.

"Mortgage" has the meaning set forth for that term in the Recitals above.

"Note" means that certain Promissory Note evidencing the Loan, dated as of [January \_\_, 2015,] made by Borrower to the order of the Issuer, as assigned by the Issuer to the Trustee.

"Notice Address" means, with respect to the Issuer, City and County of San Francisco, California, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 316, San Francisco, California 94102, Attention: City Controller; with respect to the Borrower, c/o \_\_\_\_\_, \_\_\_\_\_, Attention: \_\_\_\_\_; with respect to the Trustee, \_\_\_\_\_, \_\_\_\_\_, Attention: \_\_\_\_\_; with respect to the initial Servicer and Majority Owner: \_\_\_\_\_, \_\_\_\_\_, Attention: \_\_\_\_\_, with a copy to \_\_\_\_\_, \_\_\_\_\_, Attention: \_\_\_\_\_; with respect to any future Servicer or Majority Owner, such address as may be shown in the records of the Trustee.

"Outstanding" means, when used with respect to Bonds, as of any date, all Bonds theretofore authenticated and delivered under this Indenture except:

- (a) any Bond canceled or delivered to the registrar for cancellation on or before such date;
- (b) any Bond specified as not Outstanding in paragraph (b) of Section 4.05 hereof;
- (c) any Bond in lieu of or in exchange for which another Bond shall have been authenticated and delivered pursuant to Article II of this Indenture;
- (d) any Bond deemed to have been paid as provided in Article IX of this Indenture;
- (e) any Bond owned or held by or for the account of the Issuer or the Borrower, as provided in Section 10.11 of this Indenture, for the purpose of consent or other action or any calculation of outstanding Bonds provided for in this Indenture, and
- (f) any undelivered Bond (except for purposes of receiving the purchase price thereof upon surrender in accordance with this Indenture).

"Owner" or "Owners" means the registered owner, or owners, of the Bonds.

“Payment Guaranty” means that certain Payment Guaranty executed by the Guarantors and dated of even date with this Indenture.

“Permanent Period Note Addendum” means the Permanent Period Addendum to Promissory Note, dated as of January 1, 2015, executed by the Borrower and attached to the Note, which shall automatically become effective on the Conversion Date and shall supplement, amend and modify the terms of the Note on and after that date.

“Permanent Period Rate” means \_\_\_\_\_ percent (\_\_\_\_%) per annum.

“Permanent Period Supplemental Agreement” means the Supplemental Agreement, dated as of January 1, 2015, between the Borrower and CCRC, which shall automatically become effective on the Conversion Date and shall supplement, amend and modify the terms of the Loan Agreement on and after that date.

“Person” means any natural individual, corporation, partnership, trust, unincorporated association, business or other legal entity, and any government or governmental agency or political subdivision thereof.

“Prepayment Equalization Payment” means, prior to the Conversion Date, the greater of (i) 1% of the outstanding principal balance of the Bonds being redeemed or purchased; or (ii) the product obtained by multiplying (A) the amount of principal of the Bonds being redeemed or purchased by (B) the difference between (1) the interest rate on such Bonds and (2) the yield rate (the “Yield Rate”) on the U.S. Treasury Security due nearest to, but not later than, the Maturity Date (the “Specified U.S. Treasury Security”) (or the average yield rate for all U.S. Treasury Securities due nearest to, but not later than the Maturity Date if more than one U.S. Treasury Security qualifies as the Specified U.S. Treasury Security), as such yield rate is reported in *The Wall Street Journal* (or, if the publication of such yield rate is not available in *The Wall Street Journal*, as such yield rate is reported in the *Financial Times*, or, if the publication of such yield rate is not available in *The Wall Street Journal* or the *Financial Times*, as such yield rate is reported in *The New York Times*) on the twenty-fifth (25th) Business Day preceding (x) the date of the prepayment of such Bonds or (y) the date the Trustee accelerates such Bonds, by (C) the Present Value Factor (as defined below). For purposes of the preceding sentence, the “Present Value Factor” is equal to:

$$\frac{1 - (1 + r)^{-n}}{r}$$

where “r” is equal to the Yield Rate and “n” is equal to the number of 365-day years (or 366-day years, if applicable), and any fraction thereof, remaining between the date of redemption and the Maturity Date. In the event that the Yield Rate is not available in *The Wall Street Journal*, the *Financial Times* or *The New York Times*, the Trustee may retain a certified public accountant or other valuation expert to provide the Yield Rate and the Borrower shall pay such expense or the Trustee shall pay for such valuation from the Trust Estate as Trustee Expenses. The Trustee may conclusively rely on such valuation without liability provided that the Trustee used reasonable care in the selection of such valuation expert.

On and after the Conversion Date, the term “Prepayment Equalization Payment” means as provided in the Permanent Period Note Addendum.

“Prime Rate” means, on any day, the rate of interest per annum then most recently published in The Wall Street Journal as the “prime rate.” If such publication ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the Prime Rate shall be instead the prime rate reported in a publication selected by the Servicer in its sole reasonable discretion (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported.

“Principal Office” means, with respect to any party, the office designated as such in, or as designated by the respective party in writing pursuant to, this Indenture.

“Project” has the meaning set forth for that term in the Recitals above.

“Project Fund” means the fund of that name established pursuant to Section 5.01 of this Indenture.

“Qualified Costs of the Project” means the actual costs incurred to acquire, construct and equip the Project which (i) are incurred not more than sixty (60) days prior to June 17, 2014, being the date on which the Issuer first declared its “official intent” (within the meaning of Treasury Regulations Section 1.150-2) with respect to the Project (other than preliminary expenditures with respect to the Project in an amount not exceeding twenty percent (20%) of the aggregate principal amount of the Bonds), (ii) are (A) chargeable to the Project’s capital account or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs, within the meaning of Treasury Regulation Section 1.103-8(a)(1), and if charged or chargeable to the Project’s capital account are or would have been deducted only through an allowance for depreciation or (B) made for the acquisition of land, to the extent allowed in Section 147(c) of the Code and (iii) are made exclusively with respect to a “qualified residential rental project” within the meaning of Section 142(d) of the Code; provided, however, that (i) Costs of Issuance shall not be deemed to be Qualified Costs of the Project; (ii) fees, charges or profits payable to the Borrower or a “related person” (within the meaning of Section 147 of the Code) shall not be deemed to be Qualified Costs of the Project; (iii) interest during the construction of the Project shall be allocated between Qualified Costs of the Project and other costs and expenses of the Project; (iv) interest following the construction of the Project shall not constitute Qualified Costs of the Project; (v) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk shall be allocated between Qualified Costs of the Project and other costs and expenses to be paid from the proceeds of the Bonds; and (vi) letter of credit fees and municipal bond insurance premiums which do not represent a transfer of credit risk (including, without limitation, letter of credit fees payable to a “related person” to the Borrower) shall not constitute Qualified Costs of the Project. As used herein, the term “preliminary expenditures” includes architectural, engineering, surveying, soil testing and similar costs that were incurred prior to commencement of construction of the Project, but does not include land acquisition, site preparation or similar costs incident to commencement of construction of the Project.

“Rebate Analyst” means any Person, chosen by the Borrower and acceptable to the Issuer; and at the expense of the Borrower, qualified and experienced in the calculation of rebate payments under Section 148 of the Code and compliance with the arbitrage rebate regulations promulgated under the Code, which is engaged for the purpose of determining the amount of required deposits to the Rebate Fund, if any, pursuant to the Tax Certificate.

“Rebate Fund” means the fund of that name established pursuant to Section 5.01 of this Indenture.

“Record Date” means, with respect to each Bond Payment Date, the close of business on the day preceding such Bond Payment Date, whether or not such day is a Business Day.

“Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of even date herewith, by and between the Issuer and the Borrower, as the same may be amended, modified or supplemented from time to time.

“Required Equity Funds” means the amounts required to be deposited in the Equity Account of the Project Fund pursuant to Section 1.2 of the Construction Disbursement Agreement and Section 5.9 of the Loan Agreement.

“Requisition” means a requisition in the form of Exhibit D, together with all invoices, bills of sale, schedules and other submissions required for the making of an advance from the Loan Account or the Equity Account of the Project Fund.

“Resolution” means the resolution of the Issuer adopted on December 16, 2014 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.

“Revenue Fund” means the fund of that name established pursuant to Section 5.01 of this Indenture.

“S&P” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer, with the consent of the Borrower and the Servicer.

“Secured Property” has the meaning ascribed to such term in the Mortgage.

“Security Agreement” has the meaning set forth for that term in the Recitals above.

“Servicer” means the servicer of the Loan, if any, appointed pursuant to Section 7.11 hereof. Prior to the Conversion Date and during any other times as no servicer has been appointed pursuant to Section 7.11 hereof, all references herein and in the Loan Documents to the Servicer shall be deemed to refer to the Majority Owner.

“Servicing Agreement” means any servicing agreement entered into among the Majority Owner, the Trustee and the Servicer, as the same may be amended, modified or supplemented from time to time.

“Stabilization” has the meaning set forth for that term in the Construction Disbursement Agreement.

“State” means the State of California.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Issuer and the Trustee in accordance with Article VIII hereof, amending, modifying or supplementing this Indenture.

“Tax and Insurance Fund” means the fund of that name established pursuant to Section 5.01 of this Indenture.

“Tax Certificate” means the Tax Certificate, dated the Closing Date, and executed by the Borrower, the Issuer and the Trustee.

“Taxable Rate” means a rate of interest equal to the lesser of (i) twelve percent (12.0%) per annum, (ii) the maximum interest rate on the Bonds permitted by law, or (iii) a rate per annum that is two percent (2%) in excess of the Prime Rate, with changes in the Taxable Rate effective concurrently with each announced change in the Prime Rate.

“Trust Estate” means the trust estate pledged by the Issuer and described in the Granting Clauses of this Indenture.

“Trustee” has the meaning set forth for that term in the Recitals above, and includes any successor trustee appointed pursuant to Section 7.08.

“Trustee Fee” means the annual fee of the Trustee in the amount of \$[\_\_\_], the first such payment due on the Closing Date. Thereafter, the Trustee’s Fee is payable annually in arrears on each January 1, commencing January 1, 2016, so long as any of the Bonds are Outstanding.

“Trustee Expenses” means the fees and expenses of the Trustee set forth in Section 7.04 of this Indenture.

**Section 1.02 Construction.** In this Indenture, unless the context otherwise requires:

(a) Articles and Sections referred to by number shall mean the corresponding Articles and Sections of this Indenture.

(i) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms refer to this Indenture, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of adoption of this Indenture.

(ii) Words of the masculine gender shall mean and include correlative words of the female and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

(iii) Words importing the redemption of a Bond or the calling of a Bond for redemption do not include or connote the payment of such Bond at its stated maturity or the purchase of such Bond.

(iv) References in this Indenture to particular sections of the Code, the Act or any other legislation shall be deemed to refer also to any successor sections thereto or other redesignation for codification purposes.

(v) The terms “receipt,” “received,” “recovery,” “recovered” and any similar terms, when used in this Indenture with respect to moneys or payments due the Issuer, shall be deemed to refer to the passage of physical possession and control of such moneys and payments to the Issuer, the Owners of the Bonds or the Trustee on its behalf.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS OF THE ISSUER

**Section 2.01 Representations by the Issuer.** The Issuer represents and warrants to the Trustee and the Owners of the Bonds that:

(a) The Issuer is a municipal corporation and chartered city and county duly organized and validly existing under the City Charter and the Constitution and the laws of the State of California.

(b) The Issuer has power and lawful authority to adopt the Resolution, to execute and deliver the Issuer Documents; to issue the Bonds and receive the proceeds of the Bonds; to apply or cause to be applied the proceeds of the Bonds to make the Loan; to assign the revenues derived and to be derived by the Issuer from the Loan to the Trustee; and to perform and observe the provisions of the Issuer Documents and the Bonds on its part to be performed and observed.

(c) The Issuer has duly authorized the execution and delivery of the Issuer Documents and the issuance, execution, sale and delivery of the Bonds, and the performance of the obligations of the Issuer thereunder.

(d) To the best knowledge of the Issuer, there is no litigation pending or, to the knowledge of the Issuer, threatened, in any court, either state or federal, calling into question (i) the creation, organization or existence of the Issuer, (ii) the validity of the Issuer Documents or the Bonds, (iii) the authority of the Issuer to adopt, make or perform, as the case may be, the Issuer Documents or to issue, execute and deliver the Bonds or (iv) the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

(e) All actions on the part of the Issuer necessary for the execution and delivery of the Issuer Documents, the issuance, execution, sale and delivery of the Bonds and the performance by the Issuer of its obligations thereunder have been duly and effectively taken. To the best knowledge of the Issuer, no consent, authorization or approval of, or filing or registration with, any governmental or regulatory body is required on the part of the Issuer for the execution and delivery of the Issuer Documents, the issuance, execution, sale and delivery of the Bonds, or the performance by the Issuer of its obligations under the Issuer Documents or the Bonds, except the aforesaid action on the part of the Issuer which has been duly and effectively taken.

(f) The Issuer makes no representation or warranty, express or implied, that the proceeds of the Bonds will be sufficient to finance the construction and equipping of the Project or that the Project will be adequate or sufficient for the Borrower’s intended purposes.

(g) The Issuer has used no broker in connection with the execution of and the transactions contemplated by this Indenture.

**Section 2.02 Covenants of the Issuer.** The Issuer agrees with the Owners from time to time of the Bonds that, so long as the Bonds remain unpaid:

(a) The Issuer will pay or cause to be paid the principal of and the interest on the Bonds as the same become due, but solely to the extent provided in Section 10.02 hereof.

(b) The Issuer will do, execute, acknowledge, when appropriate, and deliver from time to time at the request of the Owners of the Bonds or the Trustee, and at the expense of the Borrower, such further acts, instruments, financing statements and other documents as are necessary or desirable to better assure, transfer, pledge or assign to the Trustee, and grant a security interest unto the Trustee in and to the Trust Estate and the other properties and revenues herein described and otherwise to carry out the intent and purpose of the Issuer Documents and the Bonds.

(c) The Issuer will not use or knowingly permit the use of any proceeds of the Bonds or other funds of the Issuer, directly or indirectly, in any manner, and will not take or knowingly permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 142(a)(7) of the Code by reason of such Bond not meeting the requirements of Section 142(d) of the Code.

(d) The Issuer will at all times do and perform all acts and things permitted by law and this Indenture which are necessary or desirable in order to assure, and will not knowingly take any action which will adversely affect, the excludability of interest on the Bonds from gross income for federal income tax purposes (other than Bonds held by a "substantial user" of the Project or a "related person" to a "substantial user," each as defined in Section 147(a) of the Code).

In making the covenants set forth in Section 2.02(c) and (d) above, the Issuer is relying exclusively on the covenants and representations of the Borrower in the Loan Agreement and the Tax Certificate, and any default by the Borrower thereunder shall not constitute a default by the Issuer hereunder with respect to the covenants in Section 2.02 (c) and (d) above.

### ARTICLE III

#### AUTHORIZATION AND ISSUANCE OF BONDS

##### Section 3.01 Authorization of Bonds.

(a) There is authorized, established and created by this Indenture an issue of Bonds of the Issuer to be known and designated as the "City and County of San Francisco Multifamily Housing Revenue Bonds (Alice Griffith Phase 2 Apartments Project), Series 2015B" in the original aggregate principal amount of \$ \_\_\_\_\_. No additional bonds shall be authorized or issued under this Indenture. The Bonds shall be issued for the purpose of making the Loan by depositing such amounts in the various accounts of the Project Fund established hereunder.

(b) The Bonds are authorized to be issued as drawdown Bonds. The Owners of the Bonds shall fund the purchase price of the Bonds in installments. The initial installment for the purchase of the Bonds shall be funded from the purchase price of the Bonds in the amount of [\$55,000.00] to be advanced by the Owners of such Bonds and received by the Trustee on the Closing Date, which purchase price shall be deposited in the Project Fund for application as provided in Section 5.02 hereof. Provided that the conditions to advance contained in the Construction

Disbursement Agreement are either satisfied or waived by the Servicer, the balance of the purchase price of the Bonds shall be advanced in subsequent installments by the Owners (if more than one Owner, pro rata based on the respective maximum face principal amounts of such Bonds). The purchase price of the Bonds so advanced shall be allocated to the payment, or reimbursement for the payment, of Qualified Costs of the Project. Upon receipt of a Funding Notice described below, the Trustee shall provide the Owners with written directions to fund a portion of the purchase price of the Bonds not less than three (3) Business Days prior to the date when such funds are required from the Owners, which such notice shall describe the amount of the purchase price to be funded and the purposes to which the proceeds of the Bonds so purchased will be applied. Upon the payment of any portion of the purchase price of the Bonds by the Owners in accordance with the terms of this Section 3.01(b), such payment shall be deposited by the Trustee in the Project Fund as designated in the corresponding funding notice received by the Trustee from the Servicer (each, a "Funding Notice") and thereafter immediately applied in accordance with the corresponding Requisition pursuant to Section 5.02 hereof. The Trustee shall maintain in its books a log (which may be maintained through the bond record-keeping system utilized by the Trustee) which shall reflect from time to time the payment of the purchase price of Bonds by the Owners in accordance with the provisions of this Section 3.01(b). If presented to the Trustee by any Owner, amounts funded by the Owners in accordance with the provisions of this Section 3.01(b) shall be noted on Schedule A attached to the applicable Bond so presented to the Trustee. Notwithstanding any provision in Section 3.06 hereof to the contrary, the Bonds shall bear interest as provided in Section 3.06 hereof upon the deposit with Trustee by the Owners of the amount of purchase price of the Bonds so paid in accordance with the provisions of this Section 3.01(b).

Anything herein to the contrary notwithstanding, to the extent that all the full authorized amount of the Bonds have not been purchased by [January 1, 2018], the remaining authorized principal amount of the Bonds shall be purchased by the Owners prior to [January 31, 2018] by advancing the purchase price for the remaining principal amount of the Bonds to the Trustee for deposit in the Project Fund, unless the Borrower delivers to the Trustee and the Issuer an opinion of Bond Counsel to the effect that a failure to purchase the remaining principal amount of Bonds prior to [January 31, 2018] will not, in and of itself, adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

**Section 3.02 Conditions Precedent to Authentication and Delivery of Bonds.** Prior to the initial authentication and delivery of the Bonds, the Trustee shall have received each of the following:

- (a) the original executed Note, and executed original counterparts of this Indenture, the other Issuer Documents and the Loan Documents;
- (b) confirmation from the Servicer or its counsel that the conditions to the initial purchase of Bonds contained in the Construction Disbursement Agreement have been satisfied or waived by Servicer;
- (c) a certified copy of the Resolution;
- (d) evidence of the payment of the initial installment of the purchase price of the Bonds and deposit of the Borrower funds required pursuant to Section 5.01(c) of this Indenture;

(e) an opinion of Bond Counsel substantially to the effect that the Bonds constitute legal, valid and binding obligations of the Issuer and that under existing statutes, regulations, rulings and court decisions, the interest on the Bonds is not includable in gross income of the Owners (other than an Owner who is a "substantial user" of the Project or a "related person" to a "substantial user," as defined in Section 147(a) of the Code) for federal income tax purposes;

(f) an opinion of Counsel to the Borrower addressed to the Issuer and the Trustee, in form and substance satisfactory to the Issuer; and

(g) an original investor letter executed by the initial purchaser(s) of the Bonds, in substantially the form set forth in Exhibit B hereto.

**Section 3.03 Registered Bonds.** The Bonds shall be in fully registered form and shall be payable in accordance with the provisions hereof and of the Bonds to the Owner thereof as shown on the records maintained by the Trustee.

**Section 3.04 Loss, Theft, Destruction or Mutilation of Bonds.** In the event a Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond bearing a notation indicating the principal amount outstanding, in exchange for the mutilated Bond, or in substitution for a Bond so destroyed, lost or stolen. In every case of exchange or substitution, the applicant shall furnish to the Issuer and the Trustee (i) such security or indemnity as may be required by them to save them harmless from all risks, however remote, and (ii) evidence to their satisfaction of the mutilation, destruction, loss or theft of a Bond and of the ownership thereof. Upon the issuance of a Bond upon such exchange or substitution, the Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees, of the Issuer and the Trustee. In case a Bond shall become mutilated or be destroyed, lost or stolen, the Trustee may, instead of authenticating a Bond in exchange or substitution therefor, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Bond) if the applicant for such payment shall furnish to the Issuer and the Trustee such security or indemnity as they may require to save them harmless and evidence satisfactory to them of the mutilation, destruction, loss or theft of the Bond and of the ownership thereof.

**Section 3.05 Terms of Bonds Generally.**

(a) Registration; Denomination. The Bonds shall be issuable initially in Authorized Denominations as specified by the initial Owner. 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 substantially in the form of Exhibit A hereto, with such amendments and changes as the officer executing the same shall deem appropriate.

(b) Date and Maturity. All Bonds shall be dated the Closing Date. The Bonds shall bear interest until paid in full, payable for the periods, in the amounts, at the rates, and as provided in Section 3.06 hereof. The Bonds shall mature on the Maturity Date, unless sooner redeemed or accelerated.

(c) Payment. The principal of and interest on the Bonds shall be payable in lawful money of the United States of America by check or draft of the Trustee. Payments of interest and of principal upon redemption pursuant to Section 4.01(f) hereof shall be mailed by first-class

mail to the Owners of the Bonds at their addresses appearing on the records of the Trustee; provided, however, that the payment to the Servicer shall, upon written request of the Servicer, be transmitted by the Trustee by wire transfer or other means requested in writing by the Servicer. Payment of the principal (other than upon redemption pursuant to Section 4.01(f) hereof) of a Bond shall only be made upon surrender of the Bond at the Principal Office of the Trustee. Notwithstanding anything in this Indenture to the contrary, all payments of principal and interest with respect to Bonds owned by the Majority Owner shall, at the written request of the Majority Owner, be made by wire transfer to the Majority Owner without the requirement of surrender of such Bonds under any circumstances, except upon the final maturity or payment or redemption in full of the Bonds.

(d) Notice of Payment of Principal. Within five Business Days of each payment by the Trustee of principal on the Bonds the Trustee will notify the Issuer via mutually acceptable electronic means, with receipt confirmed by the Trustee of the aggregate principal amount of Bonds that remain Outstanding or that no Bonds remain Outstanding.

### **Section 3.06 Interest on the Bonds.**

(a) General. The cumulative principal amount of the Bonds for which installment purchase payments have been received by the Trustee shall bear interest at the applicable rate provided below. On each Interest Payment Date, interest accrued for the previous Calculation Period shall be payable. While the Bonds bear interest at the Construction Period Rate or the Permanent Period Rate, or at an Alternative Rate based the Construction Period Rate or the Permanent Period Rate, interest on the Bonds shall be computed on the basis of a 360-day year of twelve equal months of 30 days each. While the Bonds bear interest at the Taxable Rate, interest on the Bonds shall be computed on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed.

(b) Construction Period Rate. During the Initial Interest Rate Period, except as provided in subsections (d) or (e) of this Section, the Outstanding Bonds shall bear interest at the Construction Period Rate.

(c) Permanent Period Rate. From and after the Conversion Date, except as provided in subsections (d) or (e) of this Section, the Outstanding Bonds shall bear interest at the Permanent Period Rate. Not less than thirty (30) days prior to the Conversion Date, the Trustee shall provide notice by first-class mail, postage prepaid, to all Owners (with a copy to the Issuer and the Borrower) at their addresses shown on the bond register providing that the interest rate on Bonds remaining Outstanding after the Conversion Date will be converted to the Permanent Period Rate effective on the Conversion Date. Failure to mail any such notice or any defect in the mailing thereof in respect of any Bond shall not affect the validity of the conversion of the interest rate with respect to any Bond.

(d) Alternative Rate. Following the occurrence of an Event of Default under the Loan Agreement or an Event of Default under this Indenture, the Bonds shall bear interest at the Alternative Rate.

(e) Taxable Rate. If an Initial Notification of Taxability shall occur, the Bonds shall bear interest from the date of such Initial Notification of Taxability at the Taxable Rate. If such Initial Notification of Taxability is reversed by the Internal Revenue Service or a court of competent jurisdiction and a Determination of Taxability has not occurred, then the Bonds shall bear interest

from the date of such reversal at the rate applicable to the Bonds prior to the Initial Notification of Taxability and the Bank shall refund to the Borrower on or prior to the next succeeding Bond Payment Date, the excess interest previously paid. This provision shall survive the discharge of this Indenture.

(f) Additional Interest. The Owners of the Bonds shall also be entitled to Additional Interest, which amount, if any, shall be deposited in the Revenue Fund pursuant to the provisions of Section 3.2(b) of the Loan Agreement.

(g) Usury. Notwithstanding any provision of this Indenture to the contrary, in no event shall the interest contracted for, charged or received in connection with the Bonds (including any other costs or considerations that constitute interest under the laws of the State which are contracted for, charged or received pursuant to this Indenture) exceed the maximum rate of nonusurious interest allowed under the laws of the State as presently in effect and to the extent of any increase allowable by such laws. To the extent permitted by law, interest contracted for, charged or received on the Bonds shall be allocated over the entire term of the Bonds, to the end that interest paid on the Bonds does not exceed the maximum amount permitted to be paid thereon by law. Excess interest, if any, provided for in this Indenture, or otherwise, shall be canceled automatically as of the date of such acceleration or, if theretofore paid, shall be credited as principal paid on the Bonds.

**Section 3.07 Payment of Principal of and Interest on the Bonds.** Principal of and interest on the Bonds shall be payable in the following manner: (i) commencing the first day of the second month after the month in which the Closing Date occurs and continuing on each Interest Payment Date thereafter until the Conversion Date, interest on the Outstanding principal balance of the Bonds (which amount shall reflect so much of the purchase price as shall have been paid pursuant to Section 3.01(b)) at the applicable interest rate for the Bonds shall be due and payable in arrears; (ii) on the Conversion Date, a single payment of interest due in advance for the period beginning on the Conversion Date to the first day of the month following the Conversion Date at the Permanent Period Rate shall be due and payable; (iii) commencing on the first day of the month following the first full month after the Conversion Date and continuing on each Interest Payment Date thereafter until the Maturity Date, payments of principal and interest in arrears on the Bonds shall be due and payable in accordance with the terms of the Note; and (iv) the entire unpaid principal balance of the Bonds, the Prepayment Equalization Payment (if any) and all accrued and unpaid interest (including any Additional Interest) shall be due and payable in full on the Maturity Date, if not paid earlier. To the extent more than one Bond is issued and Outstanding at any one time under the terms of this Indenture, payments of principal, interest and premium (if any) on the Bonds shall be made in a pro rata manner based on the Outstanding principal amount of the Bonds.

**Section 3.08 Execution and Authentication of Bonds.**

(a) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Mayor of the Issuer and attested by the manual or facsimile signature of the Clerk of the Issuer or the Clerk's duly authorized representative.

(b) In case any officer of the Issuer whose signature or facsimile signature shall appear on any of the Bonds shall cease to be such officer before the Bonds so signed and sealed shall have been actually delivered, such Bonds may, nevertheless, be delivered as herein provided, and may be issued as if the persons who signed or sealed such Bonds had not ceased to hold such offices

or be so employed. Any Bond may be signed and sealed on behalf of the Issuer by such persons as, at the actual time of the execution of such Bond, shall be duly authorized or hold the proper office in or employment by the Issuer, although at the date of the Bonds such persons may not have been so authorized nor have held such office or employment.

(c) No Bond shall be valid or obligatory for any purpose or shall be entitled to any right or benefit under this Indenture unless there shall be endorsed on such Bond a certificate of authentication in the form set forth in such Bond duly executed by the Trustee, by the manual signature of an authorized signatory thereof, and such certificate of the Trustee upon any Bond executed on behalf of the Issuer shall be conclusive evidence that the Bond so authenticated has been duly issued under this Indenture and that the Owner thereof is entitled to the benefits of this Indenture.

### **Section 3.09 Negotiability, Transfer and Registry of Bonds.**

(a) All the Bonds issued under this Indenture shall be negotiable, subject to the provisions for registration and transfer contained in this Indenture and in the Bonds. So long as this Indenture remains in force, the Trustee, as registrar, shall maintain and keep books for the recordation of the taxpayer identification number of each of the Owners of the Bonds and the registration, transfer and exchange of Bonds. Each Bond shall be transferable only upon the books of registration. The Trustee is appointed registrar, to act as agent of the Issuer for the registration and transfer of Bonds and the maintenance of the books of registration. The Issuer may appoint a successor registrar upon notice by mail to the Trustee and the Owners of the Bonds.

(b) Upon a partial redemption of the Bonds, the Issuer shall execute and the Trustee shall authenticate and deliver new certificates representing the unredeemed portion of the Bonds to be so redeemed in part, in exchange for the certificates representing the Bonds to be so redeemed in part. Surrender of Bonds for execution, authentication and delivery of new certificates shall not be a precondition to the redemption of Bonds pursuant to Section 4.01(f) hereof. If a Bond shall be transferred in part, such Bond shall be delivered to the registrar, and the Trustee shall, on behalf of the Issuer, deliver two Bonds in replacement therefor, having the same maturity and interest provisions and in the same aggregate principal amount as the Bond so delivered.

(c) Upon surrender of the Bonds at the Principal Office of the Trustee with a written instrument of transfer satisfactory to the Trustee, duly executed by the Owner or his attorney duly authorized in writing, such Bonds may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of Bonds in Authorized Denominations.

(d) The Borrower shall bear all costs in connection with any transfer or exchange of Bonds, including the reasonable fees and expenses of the Issuer, Bond Counsel and the Trustee and of any required indemnity for the Issuer and the Trustee; provided that the costs of any tax or other governmental charge imposed upon such transfer or exchange shall be borne by the Owner of the Bond.

(e) Bonds shall be transferred upon presentation and surrender thereof at the Principal Office of the Trustee by the Owner thereof or his attorney duly authorized in writing with due endorsement for transfer or accompanied by a written instrument of transfer in form satisfactory to the Trustee. All Bonds surrendered in any exchanges or transfers shall forthwith be canceled. For every such exchange or transfer of Bonds, there shall be made a charge sufficient to pay any tax or

other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the Owner requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The Trustee shall not be obligated to (i) authenticate, exchange or transfer any Bond during a period beginning at the opening of business on any Record Date and ending at the close of business on the next succeeding Interest Payment Date, (ii) authenticate, exchange or transfer any Bond during a period beginning at the opening of business 15 days next preceding any selection of Bonds to be redeemed and ending at the close of business on the date of the first giving of notice of such redemption, or (iii) transfer or exchange any Bonds called or being called for redemption in whole or in part.

(f) The Bonds may be transferred in whole by their Owner only as follows:

(i) to the Borrower, any subsidiary of the initial Owner, any Affiliate of the Owner, any entity arising out of any merger or consolidation of the Owner, or a trustee in bankruptcy of the Owner;

(ii) to any Accredited Investor, or any entity in which all of the equity owners are Accredited Investors, or any "qualified institutional buyer" (as defined in Rule 144A promulgated under the Securities Act of 1933, as amended);

(iii) to any bank, savings institution or insurance company (whether acting in a trustee or custodial capacity for any "accredited investor" as defined in clause (2), above, "qualified institutional buyer" or on its own behalf); or

(iv) to CCRC including, without limitation, on the Conversion Date.

Any transfer of Bonds described in clauses (ii), (iii) or (iv) of this Section 3.09(f) shall be conditioned upon delivery by the proposed transferee to the Trustee of an investor letter in substantially the form set forth in Exhibit B hereto. Except for such transfers as are permitted under Section 3.09(g) below, prior to the Conversion Date there shall be not more than two (2) Owners of the Bonds at any one time without the prior written consent of the Issuer.

(g) In addition to any transfer permitted by Section 3.09(f), the Bonds may be transferred, in whole or in part to one or more Owners upon receipt by the Issuer, each Owner making such transfer, and the Trustee of (i) any disclosure document which is prepared in connection with such transfer, (ii) evidence that the Bonds are rated "A" or better by one of S&P or Moody's, and (iii) an opinion of Counsel to the effect that (A) the exemption of the Bonds or any securities evidenced thereby from the registration requirements of the Securities Act of 1933, as amended, and the exemption of this Indenture from qualification under the Trust Indenture Act of 1939, as amended, will not be impaired as a result of such transfer, and (B) such transfer will not adversely affect the exclusion of interest accrued on the Bonds from gross income of the Owners thereof (other than an Owner who is a "substantial user" of the Project or a "related person" to a "substantial user," as defined in Section 147(a) of the Code) for federal income tax purposes,

**Section 3.10 Ownership of Bonds.** The Issuer, the Trustee and any other Person may treat the registered owner of any Bond as the absolute owner thereof, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal or redemption price of and interest on such Bond and for all other purposes whatsoever, and payment of the principal or redemption price, if any, of and interest on any such Bond shall be made only to, or upon the order

of, such registered owner. All such payments to such registered owner shall be valid and effectual to satisfy and discharge the liability of the Issuer upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor any Trustee shall be affected by any notice to the contrary.

**Section 3.11 Payments on Bonds Due on Non-Business Days.** In any case where any Bond Payment Date shall be a day other than a Business Day, then payment of the Bonds 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 made on the Bond Payment Date, and no interest shall accrue for the period from and after such date.

**Section 3.12 Registration of Bonds in the Book-Entry Only System.**

(a) Notwithstanding any provision herein to the contrary, the provisions of this Section 3.12 and the Representation Letter (as defined below) (i) shall not apply unless the Bonds are rated "A" or better by one of S&P or Moody's, and (ii) shall apply with respect to any Bond registered to Cede & Co. or any other nominee of The Depository Trust Company ("DTC") while the Book-Entry Only System (meaning the system of registration described in paragraph (b) of this Section 3.12) is in effect. The Book-Entry Only System shall become effective thirty (30) days after the Owners of all the Bonds provide notice in writing to the Trustee, the Borrower, and the Issuer that they are requesting that the Bonds be held in a Book-Entry Only System, subject to the provisions below concerning termination of the Book-Entry Only System. Until all of the Owners of the Bonds provide such notice, the Book-Entry Only System shall not be in effect. In addition, the Bonds shall not be held in a Book-Entry Only System unless the Issuer and the Trustee shall have received written evidence that the Bonds are rated "A" or better by one of S&P or Moody's.

(b) Upon the effectiveness of the Book-Entry Only System, the Issuer shall execute and deliver, and the Trustee shall transfer and exchange Bond certificates for a separate single authenticated fully registered Bond for each stated maturity in substantially the form provided for in Exhibit A hereto. Any legend required to be on the Bonds by DTC may be added by the Trustee. On the date of delivery thereof, the Bonds shall be registered in the registry books of the Trustee in the name of Cede & Co., as nominee of DTC as agent for the Issuer in maintaining the Book-Entry Only System. With respect to Bonds registered in the registry books kept by the Trustee in the name of Cede & Co., as nominee of DTC, the Issuer, the Borrower, and the Trustee shall have no responsibility or obligation to any Participant (which means securities brokers and dealers, banks, trust companies, clearing corporations and various other entities, some of whom or their representatives own DTC) or to any Beneficial Owner (which means, when used with reference to the Book-Entry Only System, the Person who is considered the Beneficial Owner of the Bonds pursuant to the arrangements for book entry determination of ownership applicable to DTC) with respect to the following: (i) the accuracy of the records of DTC, Cede & Co. or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to or from any Participant, any Beneficial Owner (as defined pursuant to the Book-Entry Only System or any other Person, other than DTC; of any notice with respect to the Bonds, including any notice of redemption or tender (whether mandatory or optional), or (iii) the payment to any Participant, any Beneficial Owner or any other Person, other than DTC, of any amount with respect to the principal or premium, if any, or interest on the Bonds. The Trustee shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of DTC, and all such payments shall be valid and effective fully to satisfy and discharge the Issuer's obligations with respect to the principal of any premium, if any, and interest on Bonds to the extent of the sum or sums so paid. No Person other than DTC or its agent shall be entitled to receive an authenticated Bond evidencing the obligation of the Issuer to

make payments of principal and premium, if any, and interest pursuant to this Indenture. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the words "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

(c) Upon receipt by the Trustee of written notice from DTC to the effect that DTC is unable or unwilling to discharge its responsibilities, the Issuer shall issue and the Trustee shall transfer and exchange Bonds as requested by DTC in appropriate amounts and in authorized denominations, and whenever DTC requests the Issuer and the Trustee to do so, the Trustee and the Issuer will, at the expense of the Borrower, cooperate with DTC in taking appropriate action after reasonable notice (i) to arrange for a substitute bond depository willing and able upon reasonable and customary terms to maintain custody of the Bonds or (ii) to make available for transfer and exchange Bonds registered in whatever name or names and in whatever authorized denominations as DTC shall designate.

(d) In the event the Beneficial Owners subsequently determine that the Beneficial Owners should be able to obtain Bond certificates, the Beneficial Owners may so notify DTC and the Trustee, whereupon DTC will notify the Participants of the availability through DTC of Bond certificates. In such event, the Issuer shall issue and the Trustee shall, at the expense of the Beneficial Owners, transfer and exchange Bond certificates as requested by DTC in appropriate amounts and in authorized denominations. Whenever DTC requests the Trustee to do so, the Trustee will, at the expense of the Beneficial Owners, cooperate with DTC in taking appropriate action after reasonable notice to make available for transfer and exchange Bonds registered in whatever name or names and in whatever authorized denominations as DTC shall designate.

(e) Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to the principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided in the Letter of Representation to be delivered by the Borrower and the Trustee to DTC.

(f) Notwithstanding any provision herein to the contrary, so long as the Bonds outstanding are held in the Book-Entry Only System, if less than all of such Bonds of a maturity are to be redeemed upon any redemption of Bonds hereunder, the particular Bonds or portions of Bonds to be redeemed shall be selected by DTC in such manner as DTC may determine.

(g) So long as the Book-Entry Only System is in effect, a Beneficial Owner who elects to have its Bonds purchased pursuant to this Indenture shall effect delivery by causing a Participant to transfer the Beneficial Owner's interest in the Bonds pursuant to the Book-Entry Only System. The requirement for physical delivery of Bonds in connection with a demand for purchase or a mandatory purchase will be deemed satisfied when the ownership rights in the Bonds are transferred in accordance with the Book-Entry Only System.

## ARTICLE IV

### REDEMPTION OF BONDS

**Section 4.01 Mandatory Redemption.** The Bonds shall be subject to mandatory redemption, and shall be redeemed prior to maturity, as follows:

(a) in whole or in part on the first Interest Payment Date for which notice can be given in accordance with this Indenture after the Completion Date to the extent of excess funds on deposit on such date in the Loan Account of the Project Fund, determined as provided in Section 5.03 of this Indenture; or

(b) in whole or in part on the first Interest Payment Date for which adequate notice can be given in accordance with this Indenture after and to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project are deposited in the Insurance and Condemnation Account of the Project Fund and are not to be used to repair or restore the Project (which unused Condemnation Award or Insurance Proceeds shall be applied to the redemption of Bonds, unless all of the Owners shall have approved a proposed alternative application of such funds and the Trustee and the Servicer shall have received an opinion of Bond Counsel to the effect that such proposed alternative application of such funds will not adversely affect the exclusion from gross income of Owners (other than an Owner who is a "substantial user" of the Project or a "related person" to a "substantial user," as defined in Section 147(a) of the Code)); or

(c) in whole on the first Interest Payment Date for which notice can be given to the Owners in accordance with this Indenture following receipt by the Trustee of notice from the Servicer demanding such redemption, following a Determination of Taxability; or

(d) in whole, or in part, on any day on or after the Conversion Date, from the proceeds of a prepayment by the Borrower of the Loan derived from any source of funds including without limitation, proceeds of any refunding or refinancing received by the Borrower, if so directed by the Borrower in a writing delivered to the Trustee at least 12 Business Days prior to the Conversion Date, subject to the terms of the Note as modified by the Permanent Period Note Addendum; or

(e) on the Conversion Date, in an amount sufficient to reduce the aggregate principal amount of Outstanding Bonds to the lesser of \$\_\_\_\_\_ or the amount necessary to achieve compliance with the Conversion Conditions set forth in the Bond Purchase Agreement; or

(f) on and after the Conversion Date, in part in amounts corresponding to the principal payments of the Loan made pursuant to the terms of the Note as modified by the Permanent Period Note Addendum; or

(g) in whole, following receipt by the Trustee of notice from the Servicer stating that an Event of Default has occurred under the Loan Agreement or the Construction Disbursement Agreement and demanding redemption of the Bonds, on any date selected by the Servicer, specified in a notice in writing delivered to the Borrower at least ten (10) days prior to such date.

**Section 4.02 Redemption Price of Bonds Redeemed Pursuant to Mandatory Redemption.** Any Bonds being redeemed before maturity in accordance with Section 4.01 of this

Indenture shall be redeemed at a redemption price equal to the principal amount of the Bonds being redeemed, together with accrued interest to the date of redemption, plus (a) the Prepayment Equalization Payment, if redemption is under Section 4.01(a), (b), (c) or (h), and (b) Additional Interest, if redemption is under Section 4.01(c).

**Section 4.03 Optional Redemption.** The Bonds shall be subject to redemption from the proceeds of an optional prepayment of the Loan by the Borrower (a) in whole or in part, on any Interest Payment Date during the Initial Interest Rate Period, and (b) on and after the Conversion Date, to the extent of permitted prepayments under the terms of the Note as modified by the Permanent Period Note Addendum.

**Section 4.04 Purchase in Lieu of Redemption.** At the election of the Borrower upon a redemption in whole of the Bonds, by written notice to the Trustee and the Servicer given not less than five (5) Business Days in advance of such redemption date, the Bonds will be deemed tendered for purchase in lieu of the redemption on such date. The purchase price of Bonds so purchased in lieu of redemption shall be the principal amount thereof together with all accrued and unpaid interest to the date of redemption and shall be payable on the date of redemption thereof. Bonds so purchased in lieu of redemption shall remain Outstanding and shall be registered to or upon the direction of the Borrower.

**Section 4.05 Notice of Redemption.**

(a) Notice of redemption shall be given by the Trustee to the Owners and the Borrower by facsimile transmission or other similar electronic means of communication, promptly confirmed in writing, not less than ten (10) Business Days prior to the date fixed for redemption; provided, that no notice of redemption shall be required to be given to Owners for a redemption pursuant to Sections 4.01(e), (f) or (g) of this Indenture. Receipt of such notice of redemption shall not be a condition precedent to such redemption, and failure to so notify any of such registered Owners shall not affect the validity of the proceedings for the redemption of the Bonds.

(b) Notice of redemption having been given as provided in subsection (a) of this Section 4.05 and all conditions precedent, if any, specified in such notice having been satisfied, the Bonds or portions thereof so to be redeemed shall become due and payable on the date fixed for redemption at the redemption price specified therein plus any accrued interest to the redemption date, and upon presentation and surrender thereof at the place specified in such notice, such Bonds or portions thereof shall be paid at the redemption price, plus any accrued interest to the redemption date. On and after the redemption date (unless funds for the payment of the redemption price and accrued interest shall not have been provided to the Trustee), (i) such Bonds shall cease to bear interest and (ii) such Bonds shall no longer be considered as Outstanding under this Indenture.

**Section 4.06 Selection of Bonds To Be Redeemed.**

(a) Except as otherwise expressly set forth herein, if less than all the Bonds are to be redeemed, the particular Bonds or portions of Bonds to be redeemed shall be selected by the Trustee, in such manner as the Trustee in its sole discretion may deem fair and appropriate so that Bonds are redeemed, as nearly as practicable, from each Owner, if there is more than one Owner, on a pro rata basis according to the principal amount of Bonds represented by each Bond Outstanding.

(b) In making such selection, the Trustee may treat each Bond to be redeemed as representing that number of Bonds of the lowest Authorized Denomination as is obtained by dividing the principal amount of such Bond by such Authorized Denomination.

**Section 4.07 Partial Redemption of Registered Bonds.**

(a) In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the Principal Office of the Trustee of such Bond by the Owner thereof or his attorney duly authorized in writing (with due endorsement for transfer or accompanied by a written instrument of transfer in form satisfactory to the Trustee), the Issuer shall execute and the Trustee shall authenticate and deliver to or upon the order of such Owner, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Owner, of any Authorized Denomination of like tenor; provided, however, that such surrender of Bonds shall not be required for payment of the redemption price pursuant to Sections 4.01(g) or 4.01(h) hereof. Bonds so presented and surrendered shall be canceled in accordance with this Indenture.

(b) In the event of a partial redemption of Bonds or any failure of all of the Bonds authorized hereunder to be purchased through the "drawdown" mechanism pursuant to Section 3.01(b) through the Conversion Date, the mandatory sinking fund payments shall be adjusted to provide for approximately equal monthly payments of principal and interest at the applicable rate hereunder (taking into account minimum denominations of the Bonds) on the respective Bonds remaining Outstanding after taking into account such partial redemption. If requested by the Trustee, the Servicer shall provide the Trustee with a mandatory sinking fund schedule reflecting such adjustment.

**ARTICLE V**

**ESTABLISHMENT OF CERTAIN FUNDS AND ACCOUNTS,  
APPLICATION THEREOF AND SECURITY THEREFOR**

**Section 5.01 Establishment of Funds and Accounts; Application of Proceeds of the Bonds; and Other Amounts.**

(a) The following Funds and Accounts are created and established as special trust funds:

- (i) the Project Fund, consisting of:
  - (A) the Loan Account;
  - (B) the Insurance and Condemnation Proceeds Account;
  - (C) the Equity Account; and
  - (D) the Capitalized Interest Account
- (ii) the Tax and Insurance Fund;
- (iii) the Revenue Fund; and

(iv) the Rebate Fund.

(b) All the Funds and Accounts created by subsection (a) of this Section 5.01 shall be held by the Trustee in trust for application only in accordance with the provisions of this Indenture.

(c) The initial installment for the sale of the Bonds ([\$55,000.00]), shall be applied as follows:

(i) [\$55,000.00], representing the proceeds of the sale of the Bonds, shall be deposited in the Loan Account of the Project Fund.

#### **Section 5.02 Project Fund.**

(a) Deposit of Moneys. The amount specified in Section 5.01(c) shall be deposited in the [Loan Account, the Capitalized Interest Account, and the Costs of Issuance Account] of the Project Fund. The Loan Account of the Project Fund shall be funded from time to time as and when installments of the purchase price of the Bonds are paid by the Owners pursuant to Section 3.01(b) hereof. Any amounts received by the Trustee from the Guarantors, and any amounts received by the Trustee from the Borrower in response to demands by the Trustee or the Servicer for deposits of Borrower's funds shall be deposited in the Equity Account of the Project Fund. All Condemnation Awards and Insurance Proceeds shall be deposited in the Insurance and Condemnation Proceeds Account of the Project Fund. Any other funds directed by the Issuer, the Servicer or the Borrower to be deposited in the Project Fund which are not required to be otherwise deposited or disbursed shall be so deposited by the Trustee upon receipt of funds and such direction.

(b) Use of Moneys.

(i) Loan Account and Equity Account. The Trustee shall make payments from the Loan Account for the purpose of paying the Qualified Costs of the Project. The Trustee shall make payments from the Equity Account to pay (A) all costs of construction and equipping of the Project other than Qualified Costs of the Project and (B) to the extent amounts on deposit in the Loan Account are insufficient for such purposes, all Qualified Costs of the Project. Disbursements from the Loan Account and the Equity Account shall be made by the Trustee upon receipt of a Requisition, executed by an Authorized Representative of the Borrower and approved by an Authorized Representative of the Servicer.

(ii) Capitalized Interest. On or prior to the last Business Day immediately preceding each Interest Payment Date up to and including the Completion Date, the Trustee shall transfer any funds on deposit in the Capitalized Interest Account to the Revenue Fund to pay interest on the Bonds accruing up to and including the Completion Date without submission of any Requisition. After the Completion Date, amounts held in the Capitalized Interest Account shall be applied to pay Qualified Costs of the Project or, to the extent such moneys represent proceeds of the Bonds, transferred to the Revenue Fund for application to the redemption of Bonds pursuant Section 4.01(a), and otherwise, as provided in Section 5.03 hereof, released to the Borrower, in each case, upon the written direction of the Servicer to the Trustee (a copy of which shall be provided to the Borrower by the Servicer).

(iii) [intentionally omitted]

(iv) [intentionally omitted]

(v) Insurance and Condemnation Proceeds Account. The Trustee shall make all disbursements from the Insurance and Condemnation Proceeds Account only upon the receipt by the Trustee of the written request of the Borrower accompanied by the written approval of the Servicer and in accordance with the provisions of Section 5.04 hereof.

(vi) Acceleration. Upon the occurrence and continuation of an Event of Default hereunder and an acceleration of the Bonds pursuant thereto, all moneys and investments in the Project Fund shall be transferred to the Revenue Fund and applied to the payment of the Bonds.

(c) Requisitions. The Trustee may rely fully on the representations of the Borrower contained in any Requisition, and upon the written approval of the Servicer set forth on any Requisition, delivered pursuant to the Loan Agreement, this Indenture and the Construction Disbursement Agreement, and shall not be required to make any investigation or inspection of the Project in connection therewith.

**Section 5.03 Use of Moneys Following Completion and Stabilization.** Moneys (including investment proceeds but net of amounts to be retained to pay Qualified Costs of the Project (i) incurred but not then due and payable or (ii) allocated to construction contingency, marketing or operating expenses after the Completion Date, but only to the extent permitted by the Tax Certificate) held in the Loan Account shall be transferred immediately after the Completion Date to the Revenue Fund for application to the redemption of Bonds pursuant to Section 4.01(a) of this Indenture. Moneys held in the Equity Account shall be released to or upon the order of the Borrower, when the Servicer has notified the Trustee that all of the following conditions have been satisfied or waived by the Servicer: (i) the Borrower has obtained, and applied to costs of the Project in accordance with the requirements of the Construction Disbursement Agreement, all funds required to be paid by the Borrower pursuant to the Construction Disbursement Agreement; and (ii) Stabilization has occurred.

**Section 5.04 Condemnation Awards and Insurance Proceeds.**

(a) Moneys representing a Condemnation Award or Insurance Proceeds shall be deposited into the Insurance and Condemnation Proceeds Account of the Project Fund, and notice of such deposit thereof shall be given by the Trustee to the Servicer.

(b) To the extent there has been a determination pursuant to the Loan Documents to restore the Project, such Condemnation Award or Insurance Proceeds as have been approved for disbursement by the Servicer shall be disbursed by the Trustee to or for the account of the Borrower, in accordance with terms, conditions and procedures specified by the Servicer to the Trustee, for application by the Borrower for such purposes in accordance with the provisions of the Loan Documents.

(c) In the event there is a determination pursuant to the Loan Documents not to restore the Project, such Condemnation Award or Insurance Proceeds shall be either (i) transferred to the Revenue Fund and applied to the redemption of Bonds in accordance with Section 4.01(c) hereof, or (ii) released to the Borrower if the Borrower obtains, and delivers to the Trustee, the Issuer and the Servicer an opinion of Bond Counsel that such release will not affect the excludability of the interest on the Bonds from gross income of Owners (other than an Owner who is a "substantial user" of the

Project or a "related person" to a "substantial user," as defined in Section 147(a) of the Code) for federal income tax purposes, all in accordance with written direction of the Servicer to the Trustee and subject to the provisions of the Loan Documents.

**Section 5.05 Tax and Insurance Fund.** There shall be deposited in the Tax and Insurance Fund all moneys received for such purpose by the Issuer or the Trustee from the Borrower pursuant to Section 5.22(i) of the Loan Agreement or transferred pursuant to Section 5.06 of this Indenture. Moneys in the Tax and Insurance Fund shall be disbursed by the Trustee with the consent of the Servicer, as provided in Section 5.22(i) of the Loan Agreement.

**Section 5.06 Revenue Fund.**

(a) There shall be deposited in the Revenue Fund all amounts transferred from the Project Fund or received from the Borrower pursuant to Section 3.2 of the Loan Agreement with respect to the Loan Documents or from the Guarantors under the Guaranty, including payments of interest and principal and voluntary and involuntary prepayments of the Loan and investment earnings on investments held in the Funds and Accounts created by this Indenture (except as otherwise provided in Section 5.07 and Section 5.09).

(b) Amounts in the Revenue Fund shall be applied to the following items in the following order of priority:

(i) on each Interest Payment Date, to the payment of interest on the Bonds;

(ii) on each Bond Payment Date, to the payment of the principal of or redemption price (or purchase price in the event of an election by Borrower under Section 4.04) of, interest on, and any Prepayment Equalization Payment or Additional Interest due with respect to, the Bonds;

(iii) on the first day of each month, to the payment of any required deposit in the Tax and Insurance Fund;

(iv) on the first day of each month, to the payment of the fees of the Issuer, the Trustee, the Majority Owner and the Servicer, if any (including any extension fee due and owing under Section 3.2(b) of the Loan Agreement), due and owing under the Loan Documents and this Indenture;

(v) on the first day of each month, to the payment of any other amounts then due and owing under the Loan Documents; and

(vi) on the first day of each month, to the Borrower or such other party as may be legally entitled thereto;

provided, that amounts transferred from the Loan Account shall only be applied to the redemption of Bonds pursuant to Section 4.01(a) and amounts transferred from the Loan Account prior to the Completion Date shall only be applied to the payment of interest on the Bonds pursuant to Section 5.06(b) above and, after the Completion Date, to the redemption of Bonds pursuant to Section 4.01(a).

(c) Amounts paid as interest under clauses (i) and (ii) of this subsection (b) shall be paid ratably to the Owners of Outstanding Bonds entitled to receive such payments according to the amounts due to such Owners, without preference or priority or distinction among Outstanding Bonds. Amounts paid as Additional Interest or as a Prepayment Equalization Payment shall be paid to the Owners of Bonds entitled to receive such payments.

(d) Upon the payment in full of the Bonds and the fees and expenses of the Issuer and the Trustee and the payment of amounts payable to the United States pursuant to Section 5.07 hereof, any amounts remaining in the Revenue Fund (except amounts held for future payment to the United States pursuant to Section 5.07 hereof) shall be paid to the Borrower as soon as practicable.

#### **Section 5.07 Rebate Fund.**

(a) The Rebate Fund shall be held and applied as provided in this Section 5.07. All money at any time deposited in the Rebate Fund shall be held by the Trustee in trust for payment, to the extent required under the Code and as calculated by the Rebate Analyst, for payment to the United States Government. None of the Issuer, the Borrower or the Owners shall have any rights in or claim to such moneys. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and by the Tax Certificate.

(b) The Trustee shall make information regarding the Bonds and the investments hereunder available to the Borrower promptly upon written request, shall make deposits to and disbursements from the Rebate Fund in accordance with the directions received from the Authorized Representative of the Borrower, shall invest moneys in the Rebate Fund pursuant to said directions and shall deposit income from such investments pursuant to said directions, and shall make payments to the United States of America in accordance with written directions received from the Borrower.

(c) Notwithstanding any provision of this Indenture to the contrary, the Trustee shall not be liable or responsible for any calculation or determination which may be required in connection with or for the purpose of complying with Section 148 of the Code or any applicable Treasury regulation (the "Arbitrage Rules"), including, without limitation, the calculation of amounts required to be paid to the United States under the provisions of the Arbitrage Rules and the fair market value of any investment made hereunder, it being understood and agreed that the sole obligation of the Trustee with respect to investments of funds hereunder shall be to invest the moneys received by the Trustee pursuant to the written instructions of the Authorized Representative of the Borrower given in accordance with Section 5.08 hereof. The Trustee shall have no responsibility for determining whether or not the investments made pursuant to the direction of the Borrower or any of the instructions received by the Trustee under this Section comply with the requirements of the Arbitrage Rules and shall have no responsibility for monitoring the obligations of the Borrower or the Issuer for compliance with the provisions of the Indenture with respect to the Arbitrage Rules.

(d) Notwithstanding any provision of this Indenture to the contrary, the obligation to remit payment of the rebate amount to the United States and to comply with all other requirements of this Section 5.07 shall survive the defeasance or payment in full of the Bonds.

(e) Any funds remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Trustee, shall be withdrawn and remitted to the Borrower.

(f) The Trustee shall obtain and keep such records of the computations made pursuant to this Section 5.07 as are required under Section 148(f) of the Code. The Trustee shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Bonds and the investments of earnings from those investments as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

(g) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 5.07 need not be made if there shall have been delivered to the Trustee, the Issuer and the Servicer an opinion of Bond Counsel to the effect that such withdrawal and payment are not necessary in order to establish or maintain the exclusion from gross income of Owners (other than an Owner who is a "substantial user" of the Project or a "related person" to a "substantial user," as defined in Section 147(a) of the Code) of interest on the Bonds. In the event Bond Counsel so opines, the moneys on deposit in the Rebate Fund shall be applied to such purpose as the Borrower shall direct, provided that the Borrower shall deliver to the Issuer, the Trustee and the Servicer an opinion of Bond Counsel to the effect that such application will not adversely affect the exclusion from gross income of Owners (other than an Owner who is a "substantial user" of the Project or a "related person" to a "substantial user," as defined in Section 147(a) of the Code) of interest on the Bonds for purposes of federal income taxation.

#### **Section 5.08 Moneys Held in Trust; Investment of Moneys.**

(a) All moneys from time to time received by the Trustee and held in the Funds and Accounts (other than the Rebate Fund) shall be held in trust as security for the benefit of the Owners of the Bonds. All such moneys, including the moneys held in the Rebate Fund, shall be invested as provided in this Indenture.

(b) 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 Borrower, and reasonably consented to in writing by the Majority Owner, in Investment Securities (the Trustee may rely upon the written direction of the Borrower that such investments are Investment Securities). 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 written notice of an Event of Default (as defined in the Loan Agreement), the Trustee shall invest and reinvest the money it holds as part of the funds and accounts at the written direction of the Majority Owner. 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 shall invest all money under its control in investments described in clause (h) of the definition of Investment Securities.

(c) 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.

(d) 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 except for any loss that is the result of gross negligence or willful misconduct of the Trustee.

(e) Unless otherwise confirmed in writing, an account statement delivered by the Trustee to the Borrower or the Majority Owner, as the case may be, 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.

(f) The Issuer and the Borrower (by their execution of the Loan Agreement) each acknowledge that to the extent regulations of the Office of the Comptroller of the Currency or other applicable regulatory entity grant the Issuer or the Borrower the right to receive brokerage confirmations of security transactions as they occur, the Issuer and the Borrower specifically waive receipt of such confirmations to the extent permitted by law. The Trustee will furnish to the Issuer, the Majority Owner and the Borrower periodic cash transaction statements that shall include detail for all investment transactions made by the Trustee hereunder.

(g) Except as otherwise provided in subsection (h) of this Section, the Issuer and the Borrower (by their execution of the Loan Agreement) each 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.

(h) The Issuer and the Borrower (by their execution of the Loan Agreement) each covenant 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).

**Section 5.09 Investment Earnings.** Earnings on investments held in the Capitalized Interest Account, the Loan Account, the Equity Account, and the Insurance and Condemnation Proceeds Account shall be retained in the Capitalized Interest Account, the Loan Account, the Equity Account, and the Insurance and Condemnation Proceeds Account, respectively, for application pursuant to Sections 5.02, 5.03, 5.04 and 5.05 hereof. Earnings on all investments held in the Revenue Fund shall be retained in the Revenue Fund for application pursuant to Section 5.06 hereof. Earnings on investments held in the Tax and Insurance Fund and in the Rebate Fund shall be retained therein and applied in the manner prescribed by Sections 5.05 and 5.07 hereof, respectively.

**Section 5.10 Covenants Respecting Arbitrage and Rebate.** The Trustee shall keep and make available to the Borrower such records concerning the investment of the gross proceeds of the Bonds and the investments of earnings from those investments as may be requested by the Borrower in order to enable the Borrower to fulfill the requirements of Section 148(f) of the Code.

**Section 5.11 Records.** 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 and interest paid on the Bonds, subject to the inspection of the Borrower, the Issuer, the Trustee and the Owners of the Bonds and their representatives at all reasonable times and upon reasonable prior notice.

**Section 5.12 Reports From the Trustee.** The Trustee shall, on or before the tenth (10th) day of each month and annually on or before December 1, file with the Servicer, the Borrower and the Issuer a statement setting forth in respect to the preceding calendar month or year:

(a) the amount withdrawn or transferred by it and the amount deposited within or on account of each Fund and Account held by it under the provisions of this Indenture, including the amount of investment income on each Fund and Account;

(b) the amount on deposit with it at the end of such month to the credit of each Fund and Account;

(c) a brief description of all obligations held by it as an investment of moneys in each such Fund and Account;

(d) the amount applied to the purchase or redemption of Bonds and a description of the Bonds or portions of Bonds so purchased or redeemed; and

(e) any other information which the Borrower, the Servicer or the Issuer may reasonably request and to which the Trustee has access in the ordinary course of its operations.

Upon the written request of any Owner or Owners of twenty-five percent (25%) or more in aggregate principal amount of Bonds then Outstanding, the Trustee, at the cost of the Borrower, shall provide a copy of such statement to the Owners of the Bonds. All records and files pertaining to the Trust Estate shall be open at all reasonable times to the inspection of the Servicer and its agents and representatives upon reasonable prior notice.

## ARTICLE VI

### DEFAULT PROVISIONS; REMEDIES

**Section 6.01 Events of Default.** Each of the following events is declared an "Event of Default" under this Indenture:

(a) The failure to pay any installment of principal or the redemption price of any Bond or any Prepayment Equalization Payment when and as the same shall become due and payable, whether at maturity or by call for redemption or otherwise;

(b) The failure to pay any installment of interest on any Bond when the same shall become due and payable; or

(c) The failure by the Issuer to perform or observe any other covenant, agreement or condition on its part contained in this Indenture or in the Bonds, and such failure shall continue for a period of sixty (60) days after written notice thereof to the Issuer and the Borrower by the Trustee or by the Owners of not less than twenty-five percent (25%) in principal amount of the Bonds Outstanding; or

(d) Default in the timely payment of any installment of the fees payable to the Issuer pursuant to the Regulatory Agreement, and the continuance thereof for a period of thirty (30) days after written notice to the Trustee, the Borrower and the Servicer has been given by the Issuer, which default shall not be subject to waiver by the Servicer or the Trustee; or

(e) The Trustee shall have received written notice from the Issuer that a default under the Regulatory Agreement has occurred and is continuing past any applicable notice and cure periods.

#### **Section 6.02 Remedies.**

(a) Except as otherwise provided in this Article, the Trustee shall take only such actions in respect of an Event of Default as it shall be directed in writing to take by the Servicer (or in the case of an Event of Default arising under Section 6.01(d) or (e), the Issuer). Such actions may include the following:

(i) Declaration of all Outstanding Bonds to be immediately due and payable, whereupon such Bonds shall become and be immediately due and payable, anything in the Bonds or in this Indenture to the contrary notwithstanding. In such event, there shall be due and payable on the Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon and which will accrue thereon to the date of payment and all unpaid interest on the Bonds on the date of payment.

(ii) Implementation of actions for the recovery of the amounts due on the Note, the Loan Agreement and the other Loan Documents;

(iii) Foreclosure or realization upon the collateral held by the Borrower for the obligations of the Borrower under the Loan Documents; and

(iv) Implementation of such other rights and remedies as may be available under the Loan Documents, the Guaranty or applicable law.

(b) At any time after the principal of the Bonds shall have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Indenture, the Trustee, if so directed by the Servicer (or in the case of an Event of Default arising under Section 6.01(d) or (e), the Issuer), shall annul such declaration and its consequences with respect to any Bonds not then due by their terms. In such event, the Issuer, the Borrower, the Trustee and all of the Owners shall be restored to the same position as before the occurrence of the Event of Default. No such annulment shall extend to or affect any subsequent Event of Default or impair any right consequent thereon.

**Section 6.03 Additional Remedies and Enforcement of Remedies.** Upon the occurrence and continuation of any Event of Default, the Trustee, if and to the extent directed by the Servicer (or in the case of an Event of Default arising under Section 6.01(d) or (e), the Issuer), may proceed forthwith to protect and enforce its rights and the rights of the Owners under the Act, the Bonds and this Indenture by such suits, actions or proceedings as the Servicer, in its sole discretion, shall deem expedient.

**Section 6.04 Application of Revenues and Other Moneys After Default.**

(a) If an Event of Default shall occur and shall not have been remedied, the Trustee shall transfer to the Revenue Fund (i) forthwith, all moneys and securities then held in any other Fund or Account under this Indenture other than amounts held in the Rebate Fund and (ii) as promptly as practicable after receipt thereof, all revenues and other payments or receipts pledged under this Indenture and all proceeds realized as a result of remedial action under the Loan Documents and the Guaranty.

(b) During the continuation of an Event of Default, the Trustee shall apply such moneys, securities, revenues, payments and receipts and the income therefrom as follows and in the following order:

(i) To the payment of Trustee Expenses;

(ii) To the payment of the amounts required to reimburse the Owners of the Bonds and the Issuer for any reasonable legal or other out of pocket costs incurred by them in connection with such remedial action and the reasonable fees and expenses of the Issuer in carrying out this Indenture or the Loan Documents;

(iii) To the payment of the interest and principal installments or redemption price then due and payable on the Bonds, as follows:

(A) Unless the principal of all of the Bonds shall have become or have been declared due and payable;

First: To the payment to the Persons entitled thereto of all installments of interest then due and payable in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the Persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the Persons entitled thereto of the unpaid principal installments or redemption price of any Bonds which shall have become due and payable, whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Bonds due and payable on any date, then to the payment thereof ratably, according to the amounts of principal installments or redemption price due on such date, to the Persons entitled thereto, without any discrimination or preference.

(B) If the principal of all of the Bonds shall have become or have been declared due and payable, to the payment of the principal and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference (except as to any difference as to the respective rates of interest specified in the Bonds); and

(iv) To the payment of fees then due and owing to the Issuer; and

(v) Notwithstanding anything contained herein to the contrary, the Servicer may by written notice to the Trustee direct the application of funds other than in the manner set forth above (except that the priority of payment of Trustee Expenses shall not be altered), including, without limitation, the application of funds between the principal of or interest on the Bonds. Any such determination by the Servicer shall be deemed conclusive, and the Issuer and the Trustee shall have no liability for the tax consequences of said determination.

**Section 6.05 Remedies Not Exclusive.** No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or the Owners of the Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Indenture or existing at law or in equity or by statute (including the Act) on or after the date of adoption of this Indenture.

**Section 6.06 Remedies Vested in Trustee and Servicer.** All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee and the Servicer without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Servicer to direct proceedings hereunder, any such suit or proceeding instituted by the Trustee shall be brought in its name under the authority herein granted without the necessity of joining as plaintiffs or defendants any Owners of the Bonds. Any recovery of judgment shall be for the equal benefit of the Owners of the Outstanding Bonds.

**Section 6.07 Individual Bond Owners Action Restricted.**

(a) No Owner of any Bond other than the Servicer (if it is the Owner of any Bond) or the Majority Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust under this Indenture or for any remedy under this Indenture.

(b) Nothing contained in this Indenture shall affect or impair, or be construed to affect or impair, the right of the Owner of any Bond (i) to receive payment of the principal of or interest on such Bond on or after the due date thereof or (ii) to institute suit for the enforcement of any such payment on or after such due date; provided, however, no Owner of any Bond may institute or prosecute any such suit or enter judgment therein, if, and to the extent that, the institution or prosecution of such suit or the entry of judgment therein, under applicable law, would result in the surrender, impairment, waiver or loss of the lien of this Indenture on the moneys, funds and properties pledged under this Indenture for the equal and ratable benefit of all Owners of the Bonds appertaining thereto.

**Section 6.08 Termination of Proceedings.** In case any proceeding taken by the Servicer or by the Trustee at the direction of the Servicer on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Owners of the Bonds, the Issuer, the Trustee, the Borrower and the Owners of the Bonds shall be restored to their former positions and rights under this Indenture, and all rights, remedies and powers of the such parties shall continue as if no such proceeding had been taken.

**Section 6.09 Waiver and Non-Waiver of Event of Default.**

(a) No delay or omission of the Trustee, the Servicer or the Owners of the Bonds to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given by this Article VII to any party may be exercised from time to time and as often as may be deemed expedient.

(b) In case of any waiver by the Trustee, acting upon the direction of the Servicer, of an Event of Default under this Indenture, the Issuer, the Trustee and the Owners of the Bonds shall be restored to their former positions and rights under this Indenture, respectively, but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

**Section 6.10 Servicer Controls Proceedings.** If an Event of Default shall have occurred and be continuing, notwithstanding anything in this Indenture to the contrary, the Servicer shall have the right, at any time, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting any proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings under this Indenture and subject to Section 7.02 of this Indenture; provided, however, that such direction is in accordance with law and the provisions of this Indenture; provided that nothing in this Section 6.10 shall impair the right of the Trustee in its discretion to take any other action under this Indenture which it may deem proper and which is not inconsistent with such direction by the Servicer, nor shall it impair the Issuer's right to direct the Trustee to the extent permitted by Section 6.02.

**ARTICLE VII**

**CONCERNING THE TRUSTEE**

**Section 7.01 Trustee; Appointment and Acceptance of Duties.**

(a) The Issuer appoints [TRUSTEE] as trustee hereunder. The Trustee shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing this Indenture.

(b) Unless otherwise provided, the corporate trust offices of the Trustee are designated as the respective offices or agencies of the Trustee for the authentication and delivery of Bonds.

**Section 7.02 Responsibilities of Trustee.**

(a) The recitals of fact herein and in the Bonds contained (other than the certificate of authentication) shall be taken as the statements of the Issuer and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of any Bonds issued hereunder or as to the security afforded by this Indenture, and the Trustee shall incur no liability in respect thereof. The Trustee shall be under no responsibility or duty with respect to the application of any moneys properly paid to it except as provided herein or as otherwise expressly agreed by the Trustee. Except for a declaration of acceleration under Section 6.02 hereof or the payment of principal and interest on the

Bonds from moneys on deposit with the Trustee, the Trustee shall be under no obligation or duty to perform any act that would involve it in expense or liability or to institute or defend any suit in respect of this Indenture or to advance any of its own moneys, unless indemnified to its reasonable satisfaction. Subject to the provisions of subsection (b) of this Section 7.02, the Trustee shall not be liable in connection with the performance of its duties under this Indenture except for its own negligence or willful misconduct.

(b) The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (and has not been cured within any applicable grace period or waived) and subject to the rights of the Servicer with respect to control of remedies following an Event of Default hereunder, the Trustee shall 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 a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Any provisions of this Indenture relating to action taken or to be taken by the Trustee or to evidence upon which the Trustee may rely shall be subject to the provisions of this Section 7.02.

(c) The Trustee shall cooperate fully with the Servicer in the enforcement and protection of the rights of the Owners of the Bonds to the fullest extent possible under this Indenture, the Loan Documents and applicable law. Toward this end, the Trustee shall take such action as directed by the Servicer, including foreclosure of the Secured Property under the Mortgage, suit for specific performance of the Loan Documents or for damages for nonperformance thereof and assignment of the Loan Documents to the Owners of the Bonds for purposes of enforcing the rights of the Owners of the Bonds; provided, that without the prior written consent of the Issuer, the Servicer shall give the Trustee no direction as to the enforcement of the Reserved Rights, which shall, except with the prior written consent of the Issuer, be enforceable only by the Issuer.

(d) The Trustee shall not take any discretionary action under the Loan Documents (although approval or disapproval of disbursement of Loan proceeds and investment earnings thereon under the Loan Agreement shall be made in accordance with the terms of Article V hereof) without the written approval of the Servicer and shall, subject to the proviso of paragraph (c) of this section, take such discretionary action permitted or required under the Loan Documents, as may be directed in writing by the Servicer.

(e) The Trustee shall notify the Servicer of any notification received by the Trustee under or pursuant to the Loan Documents promptly after receipt of said notice.

(f) If any Event of Default occurs and is continuing hereunder and if the Trustee has received written notice thereof or is deemed to have notice pursuant to this Indenture, the Trustee shall give to all Owners, the Issuer and the Borrower written notice of such default or Event of Default within thirty (30) days after receipt of such information. For the purpose of this Section 7.02 only, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default under Section 6.01 hereof.

(g) Promptly upon receipt of notice of the occurrence of a Determination of Taxability, the Trustee shall give immediate telephonic notice, promptly confirmed in writing, to the Borrower, the Issuer, the Owners and former Owners (provided that the Trustee shall not be

obligated to maintain records of such former Owners or to retain records relating to such former Owners for more than six years).

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder or under the Loan Agreement except for a default or Event of Default referred to in Section 6.01(a), (b) or (c) hereof, unless the Trustee shall have received written notice of such Event of Default by the Issuer, the Borrower, the Servicer or by the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding.

(i) The Trustee shall have no responsibility for, and makes no representations with respect to, any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(j) The Trustee is authorized and directed to execute in its capacity as Trustee the Regulatory Agreement, the Loan Agreement, the Tax Certificate and the Subordination Agreement and, in acting pursuant to such agreements, shall be entitled to the limitations from liability and protections afforded to the Trustee under this Indenture.

(k) Anything to the contrary notwithstanding, the Trustee shall not be required to enter, take possession of, or take any other action whatsoever with respect to the Project and the Land, and shall not be required to initiate foreclosure proceedings with respect to the Project and the Land and the Mortgage unless the Trustee is satisfied that the Trustee will not be subject to any liability under any local, state or federal environmental laws or regulations of any kind whatsoever or from any circumstances present at the Project and the Land relating to the presence, use, management, disposal of, or contamination by any environmentally hazardous materials or substances of any kind whatsoever.

(l) No provision of this Indenture, the Loan Agreement or any other document related hereto shall require the Trustee to risk or advance its own funds or otherwise incur any financial liability in the performance of its duties or the exercise of its rights hereunder.

(m) The immunities extended to the Trustee also extend to its directors, officers, employees and agents.

(n) The Trustee shall not be liable for any action taken or not taken by it in accordance with the direction of the Servicer relating to the exercise of any right, power or remedy available to the Trustee.

(o) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty.

### **Section 7.03 Evidence on Which Trustee May Act.**

(a) The Trustee, upon receipt of any notice, resolution, request, consent, order, certificate, report, opinion, bond, or other paper or document furnished to it pursuant to any provision of this Indenture, shall examine such instrument to determine whether it conforms to the requirements of this Indenture and shall be protected in acting upon any such instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel selected by it in respect of any action taken or suffered by the Trustee under this

Indenture and shall be protected in acting or not acting in good faith reliance on the opinion or advice of such counsel.

(b) Except as otherwise expressly provided in this Indenture, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision of this Indenture by the Issuer to any Trustee shall be sufficiently executed if executed in the name of the Issuer by an Authorized Representative of the Issuer.

**Section 7.04 Compensation.** The Borrower shall pay to the Trustee, as provided in the Loan Agreement, from time to time reasonable compensation for all services rendered under this Indenture and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this Indenture.

**Section 7.05 Certain Permitted Acts.** The Trustee may become the owner or pledgee of any Bonds with the same rights it would have if it were not the Trustee. To the extent permitted by law, the Trustee may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of the Bonds or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not any such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

**Section 7.06 Resignation of Trustee.** The Trustee may resign at any time and be discharged of the duties and obligations created by this Indenture by giving not less than sixty (60) days' written notice to the Issuer, the Borrower and the Owners of the Bonds, provided that no resignation shall become effective until the acceptance of appointment by a successor Trustee as provided in Section 7.08 of this Indenture. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 60 days after the giving of such notice of resignation, the retiring Trustee may petition, at the expense of the Borrower, any court of competent jurisdiction for the appointment of a successor Trustee.

**Section 7.07 Removal of Trustee.** The Trustee may be removed at any time by an instrument or concurrent instruments in writing, signed by the Issuer or by the Servicer (subject to the prior written consent of the Issuer, which consent shall not be unreasonably withheld or delayed, if such removal is not for cause) and filed with the Trustee and the Borrower; provided that no removal shall become effective until the acceptance of appointment by a successor Trustee as provided in Section 7.08 of this Indenture.

**Section 7.08 Appointment of Successor Trustee; Temporary Trustee.** In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, the Issuer shall appoint a successor Trustee.

**Section 7.09 Transfer of Rights and Property to Successor Trustee.** Any successor Trustee appointed under this Indenture shall execute, acknowledge and deliver to its predecessor, and also to the Issuer, the Servicer and to any Owner which shall request the same, an instrument accepting such appointment and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and

obligations of such predecessor Trustee, with like effect as if originally named; but the Trustee ceasing to act nevertheless, shall execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as reasonably may be required for more fully and certainly vesting and confirming in such successor all the right, title and interest of the predecessor Trustee in and to any property held by it under this Indenture, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions set forth in or pursuant to this Indenture. Should any deed, conveyance or instrument in writing from the Issuer be required by such successor Trustee for more fully and certainly vesting in and confirming any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing, on request and so far as may be authorized by law, shall be executed, acknowledged and delivered by the Issuer.

**Section 7.10 Merger or Consolidation of Trustee.** Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it may be party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a bank or trust company organized under the laws of any state of the United States or a national banking association, and shall be authorized by law to perform all the duties imposed upon it by this Indenture, shall be the successor to the Trustee without the execution or filing of any paper or the performance of any further act.

**Section 7.11 Servicer.** The Majority Owner may (but shall not be obligated to) appoint (with prompt notice thereof to the Issuer and the Borrower) a mortgage servicer to service the Loan for all or a portion of the term of the Loan. The Servicer shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing the Servicing Agreement. Any Servicer appointed hereunder may be removed at any time, with or without cause, by the Majority Owner, by written notice to the Issuer, the Trustee, the Borrower and the Servicer. At any time when a Servicer has not been appointed or when a Servicer has been removed without appointment of a successor Servicer, pursuant to this Section 7.11, all references in this Indenture and in the Loan Documents to the Servicer shall be deemed to refer to the Majority Owner. The Servicer may, with the prior written consent of the Majority Owner, appoint an agent as subservicer to perform the duties of the Servicer under the Servicing Agreement. Notwithstanding the foregoing, in the event that CCRC purchases the Bonds on the Conversion Date and becomes the Majority Owner, CCRC shall be the Servicer effective as of the Conversion Date without requirement for any further action.

**Section 7.12 City Contracting Provisions.** The Trustee covenants and agrees to comply with the provisions set forth in Exhibit C to this Indenture.

## ARTICLE VIII

### AMENDMENTS AND SUPPLEMENTAL INDENTURES; AMENDMENTS OF ISSUER DOCUMENTS

**Section 8.01 Supplemental Indentures Not Requiring Consent of Owners of Bonds.** The Issuer and the Trustee may, without the consent of, or notice to, the Owners of any Bonds (but only with the prior written consent of the Servicer, if any one person or entity owns at least fifty-one percent (51%) in aggregate principal amount of the Outstanding Bonds, and with notice to the Servicer and the Borrower), enter into one or more Supplemental Indentures for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Indenture;
- (b) to grant to or confer any additional benefits, rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Owners of the Bonds or the Trustee, or to make any change which, in the judgment of the Servicer, is not to the prejudice of the Owners of the Bonds;
- (c) to subject to the pledge and lien of this Indenture additional revenues, properties and collateral;
- (d) to evidence the appointment of a separate Trustee or co-Trustee or the succession of a new Trustee; or
- (e) to modify, amend or supplement the provisions of this Indenture or any Supplemental Indenture in such manner as the Issuer may deem necessary or desirable to maintain the exclusion from gross income of Owners (other than an Owner who is a "substantial user" of the Project or a "related person" to a "substantial user," as defined in Section 147(a) of the Code) for purposes of federal income taxation of interest on the Bonds.

#### **Section 8.02 Supplemental Indentures Requiring Consent of Owners of Bonds.**

(a) Exclusive of Supplemental Indentures covered by Section 8.01 of this Indenture and subject to the terms and provisions contained in this Section 8.02, and not otherwise, neither the Issuer nor the Trustee shall enter into any amendment, change or modification of this Indenture without the prior written consent of the Owners of not less than two thirds in aggregate principal amount of the Bonds then Outstanding; provided, however, that nothing in this Section 8.02 contained shall permit, or be construed as permitting, without the consent of the Owners of all of the Bonds, (i) an extension of the maturity date of the principal of or the interest on any Bond, (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, (iii) change in a privilege or priority of any Bond or Bonds over any other Bond or Bonds, (iv) a reduction in the percentages of the Owners of the Outstanding Bonds required for consent to such Supplemental Indenture, (v) the creation of any lien other than a lien ratably securing all of the Bonds at any time Outstanding or (vi) any reduction of the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of the Trustee.

(b) If at any time the Issuer and the Trustee shall desire to execute and deliver a Supplemental Indenture for any of the purposes of this Section 8.02, the Trustee shall, upon being provided with reasonably satisfactory arrangements for payment of its fees and expenses, cause notice of the proposed execution of such Supplemental Indenture to be mailed by registered or certified mail to each Owner of the Bonds. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the Principal Office of the Trustee for inspection by all Owners of the Bonds. If within 60 days or such longer period as shall be prescribed by the Issuer following the giving of such notice, the Owners of not less than two-thirds in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right 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 Issuer from adopting the same or from taking any action pursuant to the provisions thereof. Subject to Section 8.04 hereof, upon the execution of any

such Supplemental Indenture as in this Section 8.02 permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

**Section 8.03 Reliance on Opinion of Counsel.** The Trustee and the Issuer shall be entitled to rely upon an opinion of Counsel stating that a Supplemental Indenture is authorized or permitted by this Indenture, and prior to the execution and delivery of any Supplemental Indenture, the Trustee, the Issuer, the Servicer shall be furnished with an opinion of Bond Counsel stating that the provisions of such Supplemental Indenture will not cause the interest on the Bonds to be includable in gross income of Owners (other than an Owner who is a "substantial user" of the Project or a "related person" to a "substantial user," as defined in Section 147(a) of the Code) for purposes of federal income taxation.

**Section 8.04 Consents Required.** Anything herein to the contrary notwithstanding, a Supplemental Indenture described in Section 8.02 hereof which adversely affects any rights of the Borrower, the Servicer or the Trustee shall not become effective unless and until the affected party shall have consented in writing to the execution and delivery of such Supplemental Indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture together with a copy of the proposed Supplemental Indenture to be mailed as provided in Section 4.05 with respect to the redemption of Bonds to the Borrower and the Servicer at least ten (10) days before the date of its proposed execution and delivery.

**Section 8.05 Amendments of Loan Documents Not Requiring Consent of Owners of Bonds.** The Issuer, the Trustee and the Borrower may, without the consent of or notice to any of the Owners of Bonds (but only with the consent of the Servicer) enter into any amendment, change or modification of any of the Loan Documents as may be required (a) by the provisions of the Loan Agreement or this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission therein, (c) so as to add additional rights and remedies for the benefit of Owners of the Bonds, or (d) in connection with any other change therein which, in the judgment of the Trustee, is not to the prejudice of the Trustee or, in the judgment of the Servicer, the Owners of the Bonds.

**Section 8.06 Amendments of Loan Documents Requiring Consent of Owners of Bonds.** Except for the amendments, changes or modifications as provided in Section 8.05 hereof, none of the Issuer, the Trustee or the Borrower shall enter into any other amendment, change or modification of the Loan Documents without the mailing of notice and the written approval or consent of the Owners of not less than 66 2/3% in aggregate principal amount of the Outstanding Bonds; provided, however, that nothing in this Section or Section 8.05 hereof shall permit or be construed as permitting without the consent of the Owners of all of the Bonds (a) an extension of the time of the payment of any amounts payable under the Loan Documents, or (b) a reduction in the amount of any payment or in the total amount due under the Loan Documents. If at any time the Issuer, the Trustee or the Borrower shall desire the consent to any such proposed amendment, change or modification, the Trustee shall, upon being satisfactorily indemnified with respect to fees and expenses, cause notice of such proposed amendment, change or modification to be mailed in the same manner as provided herein with respect to redemption of Bonds. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Trustee for inspection by all Owners of Bonds. If, within sixty (60) days, or such longer period as shall be prescribed by the Trustee as the case may be, following the mailing of such notice, the Owners of 66 2/3% in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such amendment, change or modification shall have consented to and approved the execution thereof as hereto

provided, no Owner of any Bond shall have any right 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 Borrower or the Issuer or the Trustee, as the case may be, from executing the same or from taking any action pursuant to the provisions thereof. The Issuer, or the Trustee as the case may be, shall have the right to extend from time to time the period within which such consent and approval may be obtained from Owners of the Bonds. Upon the execution of any such amendment, change or modification as in this Section permitted and provided, the Issuer Documents shall be and be deemed to be modified, changed and amended in accordance therewith.

## ARTICLE IX

### DISCHARGE

**Section 9.01 Discharge of Indenture.** If the Issuer shall pay, or there shall otherwise be paid, to the Owners of all Bonds the principal or redemption price, if applicable, and interest due thereon, at the times and in the manner stipulated therein and in this Indenture and if all Trustee Expenses and all amounts payable to the Issuer for its own account (including expenses and indemnification) shall be paid in full, then the pledge of revenues, other moneys and securities under this Indenture, and all covenants, agreements and other obligations of the Issuer to the Owners of Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall cause an accounting for such period or periods as shall be requested by the Issuer to be prepared and filed with the Issuer and, upon the request of the Issuer, shall execute and deliver to the Issuer and the Borrower all such instruments as may be requested by the Borrower to evidence such discharge and satisfaction, and the Trustee shall pay over or deliver as provided in Article V hereof all moneys or securities held by them pursuant to this Indenture (except as otherwise specified in Section 5.07) after the payment of principal or redemption price, if applicable, of or interest on Bonds. Notwithstanding the foregoing, upon such discharge the provisions of this Indenture relating to the Rebate Fund and Section 5.18(d) of the Loan Agreement shall continue in effect.

**Section 9.02 Discharge by Delivery.** The obligation to pay the principal of and interest on all or any portion of the Bonds (the "Bond Obligations") may be discharged by the delivery of the Bonds to the Trustee accompanied by written direction from the Owner(s) thereof to cancel such Bonds without payment (except as provided hereafter in this Section 9.02), and upon such delivery, such Bond Obligations shall be canceled and deemed paid. In the event only a portion of the Bond Obligations shall be canceled and deemed paid pursuant to the terms of this Section 9.02, those Bond Obligations which are not so canceled and deemed paid shall remain Outstanding for all purposes of this Indenture; provided that if all Outstanding Bonds shall be delivered to the Trustee in accordance with the terms of this Section 9.02 and all of the requirements for the discharge of this Indenture (other than the payment of Bond Obligations) shall be paid and satisfied in full, then the Trustee shall discharge and release the lien of this Indenture, assign to the Owner(s) of the Bonds all right, title and interest of the Trustee in and to the Note, the Loan Agreement and the other Loan Documents, deliver to the Owner(s) of the Bonds all moneys and securities held by the Trustee pursuant to this Indenture (except as otherwise specified in Section 5.07) up to an amount necessary to pay in full all of the principal of and interest on the Bonds through such cancellation and any other amounts due under the Loan Documents, and execute and deliver such releases or other instruments requisite to release the lien hereof.

**Section 9.03 Discharge by Deposit.** The obligation to pay the principal of and interest on all or a portion of the Bonds may be discharged if the Issuer or the Borrower has deposited or caused to be deposited, as trust funds, with the Trustee cash and/or Government Obligations which do not permit the redemption thereof at the option of the issuer thereof, the principal of and interest on which when due (or upon the redemption thereof at the option of the Owner), will, without reinvestment, provide cash which together with the cash, if any, on deposit with the Trustee at the same time, shall be sufficient, to pay and discharge the entire indebtedness on Bonds not theretofore canceled by the Trustee or delivered to the Trustee for cancellation by the payment of interest on and principal of the Bonds which have become due and payable or which shall become due at their stated maturity or redemption date, as the case may be (the "Defeasance Collateral"), and which are to be discharged under the provisions hereof, and has made arrangements satisfactory to the Trustee for the giving of notice of redemption, if any, by the Trustee in the name, and at the expense, of the Borrower. If the period over which payments will be made from the Defeasance Collateral is greater than ninety (90) days, the Borrower must also deliver to the Trustee a verification report prepared by a certified public accountant, with respect to the sufficiency of the Defeasance Collateral to make such payments. In addition, to discharge the obligation to pay the principal and interest on the Bonds pursuant to this Section 9.03, the Issuer or the Borrower must (i) obtain an opinion of Bond Counsel addressed to the Issuer and the Trustee to the effect that all actions have been taken to cause the defeasance of this Indenture and such actions will not adversely affect the excludability of interest on the Bonds for federal income tax purposes under existing law, and (ii) provide written notice to the Servicer of such discharge at least thirty (30) days in advance.

## ARTICLE X

### MISCELLANEOUS

#### **Section 10.01 Evidence of Signatures of Bond Owners and Ownership of Bonds.**

(a) Any request, consent, revocation of consent or other instrument that this Indenture may require or permit to be signed and executed by the Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their attorneys appointed in writing. The fact and date of the execution by any Owner of the Bonds or his attorney of such instruments may be proved by a guaranty of the signature thereon by a bank, trust company or national banking association or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such signature guaranty, certificate or affidavit also shall constitute sufficient proof of his authority.

(b) The ownership of Bonds and the amount, numbers and other identification, and date of holding the same, shall be proved by the registry books maintained by the Trustee.

(c) Any request or consent by the Owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done by the Issuer or any Trustee in accordance therewith.

#### **Section 10.02 Bonds Not an Obligation of the State or Any Political Subdivision.**

(a) Notwithstanding anything herein or in any other instrument to the contrary, the Bonds are limited obligations of the Issuer, payable solely from the Trust Estate and other funds and moneys pledged and assigned hereunder. None of the Issuer, the State, any political subdivision thereof (except the Issuer, to the limited extent set forth herein) or any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the bonds or for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and none of the Bonds or any of the Issuer's agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit, or taxing power of, or a loan of the credit of, or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever.

No agreements or provisions contained in this Indenture nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project, or the issuance, sale and delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against the general credit of the Issuer, or shall obligate the Issuer financially in any way except as may be payable from the repayments by the Borrower under the Loan Agreement and the proceeds of the Bonds and other amounts pledged hereunder as part of the Trust Estate. No failure of the Issuer to comply with any term, condition, covenant or agreement herein or in any document executed by the Issuer in connection with the issuance and sale of the Bonds shall subject the Issuer to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the repayments by the Borrower under the Loan Agreement or proceeds of the Bonds and other amounts pledged hereunder as part of the Trust Estate. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement herein, provided that no costs, expenses or other monetary relief shall be recoverable from the Issuer except as may be payable from the repayments by the Borrower or the proceeds of the Bonds and other amounts pledged hereunder as part of the Trust Estate.

(b) No recourse may be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein, in any other Issuer Document, in the Loan Documents or in the Bonds or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any officer, agent, attorney or employee, as such, in his individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty otherwise. No personal liability whatsoever will attach to, or be incurred by, any officer, agent, attorney or employee as such, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into in the Bonds or between the Issuer and the Trustee, whether contained herein or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such director, member, officer, agent, attorney and employee is, by the execution of this Indenture and as a condition of, and as part of the consideration for, the execution of this Indenture, expressly waived and released.

(c) Anything in this Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that (i) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer; (ii) the Issuer shall not be under any obligation hereunder to perform any record keeping

or to provide any legal services; and (iii) none of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified to its satisfaction against the cost, expenses, and liability which may be incurred thereby.

**Section 10.03 Preservation and Inspection of Documents.** All documents received by any Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times and upon reasonable prior notice to the inspection of the Issuer, any other Trustee, and any Owner of the Bonds and their agents and their representatives, any of whom may make copies thereof.

**Section 10.04 Parties Interested Herein.** Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any Person, other than the Issuer, the Trustee, the Servicer, the Borrower and the Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation of this Indenture; and all the covenants, stipulations, promises and agreements in this Indenture shall be for the sole and exclusive benefit of the Issuer, the Trustee, the Servicer, the Borrower and the Owners of the Bonds.

**Section 10.05 No Recourse on the Bonds.** No recourse shall be had for the payment of the principal or redemption price or purchase price of or interest on the Bonds or for any claim based thereon or on this Indenture or any other Issuer Document or the Loan Documents against any member, officer, employee or agent of the Issuer or any person executing the Bonds.

**Section 10.06 Severability of Invalid Provisions.** If any one or more of the covenants or agreements provided in this Indenture on the part of the Issuer or any Trustee to be performed should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and in no way shall affect the validity of the other provisions of this Indenture.

**Section 10.07 Successors.** Whenever in this Indenture the Issuer is named or referred to, it shall be deemed to include any entity that may succeed to the principal functions and powers of the Issuer under the Act, and all the covenants and agreements contained in this Indenture by or on behalf of the Issuer shall bind and inure to the benefit of said successor whether so expressed or not.

**Section 10.08 Notices, Demands and Requests.** Except as otherwise provided in Section 4.05, all notices, demands and requests to be given or made under this Indenture to or by the Issuer or the Trustee shall be in writing and shall be sufficiently given and shall be deemed given (a) three days after mailing by certified mail, first-class, postage prepaid; (b) the Business Day after sending by expedited overnight delivery service; (c) the date of receipt if delivered by personal delivery; (d) if sent by facsimile transmission, the date of transmission, if receipt of such transmission is telephonically confirmed on such day and addressed to the Notice Address of the respective addressee. Either the Issuer or the Trustee may change the Notice Address listed for it at any time upon written notice of such change sent by United States mail, postage prepaid, to the other party, which change shall be effective upon receipt.

**Section 10.09 Applicable Law; Venue.** This Indenture shall be governed exclusively by the applicable laws of the State, and any action arising out of this Indenture or the Bonds shall be

filed and maintained in the City and County of San Francisco, California, unless the Issuer waives this requirement in writing.

**Section 10.10 Table of Contents and Section Headings Not Controlling.** The Table of Contents and the headings of the several Articles and Sections of this Indenture have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Indenture.

**Section 10.11 Exclusion of Bonds.** Bonds owned or held by or for the account of the Issuer or the Borrower shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Indenture, and the Issuer and the Borrower shall not be entitled with respect to such Bonds to give any consent or take any other action provided for herein, unless all of the Outstanding Bonds are then owned by such Person.

**Section 10.12 Exempt from Individual Liability.** No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of any present or future officer, director, employee or agent of the Issuer or the Trustee in his individual capacity, and neither the officers, directors, employees or agents of the Issuer or the Trustee executing the Bonds or this Indenture shall be liable personally on the Bonds or under this Indenture or be subject to any personal liability or accountability by reason of the issuance of the Bonds or the execution of this Indenture.

**Section 10.13 Effective Date.** This Indenture shall take effect immediately upon the execution and delivery by all of the parties hereto.

IN WITNESS WHEREOF, the Issuer has caused these presents to be executed in its name by its duly authorized official; and to evidence its acceptance of the trusts created by this Indenture, the Trustee has caused these presents to be executed in its corporate name, as of the date 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 Gewertz,  
Deputy City Attorney

[TRUSTEE], as Trustee

By: \_\_\_\_\_  
Authorized Signatory

**EXHIBIT A**  
**FORM OF BOND**

**SUBJECT TO THE EXCEPTIONS SET FORTH IN THE INDENTURE (HEREINAFTER DEFINED), THE PURCHASER OF THIS BOND MUST BE AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(a)(1), (2), (3), (7) or (8) OF REGULATION D UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT OF 1933 AND WILL BE REQUIRED TO EXECUTE AND DELIVER AN INVESTMENT LETTER AGREEMENT THAT WILL, AMONG OTHER THINGS, RESTRICT TRANSFER OF THIS BOND.**

**CITY AND COUNTY OF SAN FRANCISCO  
MULTIFAMILY HOUSING REVENUE BONDS  
(ALICE GRIFFITH PHASE 2 APARTMENTS PROJECT),  
SERIES 2015B-[ ]**

No. R-1 \$[ ]

<i>Dated Date</i>	<i>CUSIP</i>	<i>Maturity Date</i>	<i>Interest Rate</i>
January [ ], 2015	None	_____ 1, 20__	As stated below

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

The CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA (hereinafter called the "Issuer"), a municipal corporation and chartered city and county duly organized and validly existing under the City Charter and the Constitution and the laws of the State of California (the "State"), for value received promises to pay (but only from the sources and as hereinafter provided) to the Registered Owner specified above, or registered assigns, the principal amount of \_\_\_\_\_ Dollars (\$[ ]), or so much of such maximum authorized principal amount as may have been purchased by the Owner of this Bond from time to time in accordance with the terms of this Bond and the Indenture (described below) on the Maturity Date specified above, upon presentation and surrender of this Bond at the principal office of [TRUSTEE] or its successor as trustee (the "Trustee"), under the Indenture, and to pay (but only from the sources and as hereinafter provided) interest on said principal amount at the applicable interest rate set forth above, from and including the dated date hereof until the principal amount shall have been paid in accordance with the terms of this Bond and the Indenture, as and when set forth below, but only from the sources and as hereinafter provided, by wire transfer if there be one Owner of all of the Bonds or otherwise by check or draft mailed to the record Owners of Bonds as the same appear upon the books of registry to be maintained by the Trustee, as registrar.

This Bond is one of an authorized issue of Bonds of the Issuer designated City and County of San Francisco Multifamily Housing Revenue Bonds (Alice Griffith Phase 2 Apartments Project), Series 2015B, and issued in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"). The Bonds are issued for the purpose of funding a loan to Alice Griffith Phase 2, L.P., a California

limited partnership (the "Borrower"), in order to finance a portion of the costs of the construction and equipping of a 91-unit multifamily residential housing project in the City and County of San Francisco, California (the "Project").

THIS BOND IS BEING ISSUED AS A DRAW-DOWN BOND, IN THAT THE HOLDERS OF THE BONDS WILL PURCHASE THE PRINCIPAL AMOUNT OF THE BONDS IN INSTALLMENTS, AT PAR, IN ACCORDANCE WITH THE TERMS OF AND AS REQUIRED BY THE INDENTURE. ACCORDINGLY, THE PRINCIPAL AMOUNT OF THE BONDS WHICH HAVE BEEN PURCHASED BY THE HOLDERS AND ARE OUTSTANDING AT ANY GIVEN TIME MAY BE LESS THAN THE MAXIMUM PRINCIPAL AMOUNT OF THE BONDS AS SET FORTH ON THE FACE OF THIS BOND. UPON EACH PURCHASE OF A PORTION OF THE PRINCIPAL AMOUNT OF THE BONDS IN ACCORDANCE WITH THE TERMS OF THE INDENTURE, THE TRUSTEE WILL NOTE ON A LOG MAINTAINED BY THE TRUSTEE FOR SUCH PURPOSE THE PRINCIPAL AMOUNT OF THE BONDS SO PURCHASED, THE DATE OF SUCH PURPOSE AND THE IDENTITY OF SUCH PURCHASER. THE RECORDS MAINTAINED BY THE TRUSTEE IN SUCH REGARD WILL BE CONCLUSIVE EVIDENCE OF THE PRINCIPAL AMOUNT OF THE BONDS WHICH HAVE BEEN PURCHASED AND ARE OUTSTANDING. IF PRESENTED TO THE TRUSTEE BY THE HOLDER OF THIS BOND, THE PRINCIPAL AMOUNT OF THE BONDS PURCHASED BY THE OWNER OF THIS BOND WILL BE NOTED BY THE TRUSTEE ON SCHEDULE 1 ATTACHED TO THIS BOND.

PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS BOND IS REQUIRED TO BE MADE DIRECTLY TO THE REGISTERED OWNER HEREOF WITHOUT NOTATION HEREON. IT CANNOT BE DETERMINED FROM THE FACE OF THIS BOND WHETHER ALL OR ANY PART OF THE PRINCIPAL OF OR INTEREST ON THIS BOND HAS BEEN PAID.

This Bond is issued under and pursuant to the Trust Indenture dated as of January 1, 2015 between the Issuer and the Trustee (as amended and supplemented from time to time, the "Indenture"), and the Act (as that term is defined in the Indenture). Reference is made to the Indenture and the Act for a full statement of their respective terms. Capitalized terms used herein and not otherwise defined herein have the respective meanings accorded such terms in the Indenture, which is incorporated herein by reference. The Bonds issued under the Indenture are expressly limited to \$\_\_\_\_\_ in aggregate principal amount at any time Outstanding and are all of like tenor, except as to interest rates, numbers and denominations. Pursuant to a Loan Agreement (the "Loan Agreement") and the Promissory Note (the "Note") dated as of January 1, 2015, the Borrower has agreed to make payments to the Trustee in amounts equal to amounts of principal of and interest on the Bonds.

THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE TRUST ESTATE AND OTHER FUNDS AND MONEYS PLEDGED AND ASSIGNED UNDER THE INDENTURE. NEITHER THE ISSUER, THE STATE OF CALIFORNIA (THE "STATE"), NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) NOR ANY PUBLIC AGENCY SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER EXCEPT AS SET FORTH IN THE INDENTURE, AND NONE OF THE BONDS

OR ANY OF THE ISSUER'S AGREEMENTS OR OBLIGATIONS SHALL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT, OR TAXING POWER OF, OR A LOAN OF THE CREDIT OF, OR A MORAL OBLIGATION OF ANY OF THE FOREGOING WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER.

THE OBLIGATIONS OF THE ISSUER ON THIS BOND ARE EXPRESSLY LIMITED TO AND ARE PAYABLE SOLELY FROM (I) THE PAYMENTS MADE PURSUANT TO THE LOAN AGREEMENT AND THE NOTE, AND THE SECURITY THEREFOR PROVIDED BY THE MORTGAGE AND THE SECURITY AGREEMENT (AS THOSE TERMS ARE DEFINED IN THE INDENTURE) AND ANY OTHER COLLATERAL SECURITY FROM TIME TO TIME HELD BY THE TRUSTEE, AND (II) ANY ADDITIONAL SECURITY PROVIDED IN THE INDENTURE.

Interest Rates. This Bond shall bear interest at the applicable rate for any applicable period set forth in the Indenture.

Usury. Notwithstanding any provision of this Bond to the contrary, in no event shall the interest contracted for, charged or received in connection with this Bond (including any other costs or considerations that constitute interest under the laws of the State which are contracted for, charged or received pursuant to this Bond) exceed the maximum rate of nonusurious interest allowed under the laws of the State as presently in effect and to the extent of any increase allowable by such laws. To the extent permitted by law, interest contracted for, charged or received on this Bond shall be allocated over the entire term of this Bond, to the end that interest paid on this Bond does not exceed the maximum amount permitted to be paid thereon by law. Excess interest, if any, provided for in this Bond, or otherwise, shall be canceled automatically as of the date of such acceleration or, if theretofore paid, shall be credited as principal paid on this Bond.

Registration and Transfer. THIS BOND IS SUBJECT TO THE TRANSFER RESTRICTIONS SET FORTH IN THE INDENTURE. This Bond is transferable by the registered owner hereof in person or by his attorney duly authorized in writing at the office of the Trustee as registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond or Bonds, of any authorized denomination or denominations, of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Bonds are issuable as fully registered Bonds in Authorized Denominations as provided in the Indenture. The Issuer, the Trustee, and any other person may treat the person in whose name this Bond is registered on the books of registry as the Owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Bond be overdue, and no person shall be affected by notice to the contrary.

Redemption of Bonds. This Bond is subject to optional and mandatory redemption (and purchase in lieu of redemption by the Borrower) prior to maturity as a whole or in part at such time or times, under such circumstances, at such redemption prices and in such manner as is set forth in the Indenture.

Enforcement. Only the Servicer shall have the right to direct the Trustee to enforce the provisions of this Bond or the Indenture or to institute any action to enforce the covenants herein or therein, or to take any action with respect to any Event of Default under the Indenture, or to institute,

appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. If an Event of Default occurs and is continuing, the principal of all Bonds then outstanding may be declared due and payable by the Servicer upon the conditions and in the manner and with the effect provided in the Indenture. As provided in the Indenture, and to the extent permitted by law, interest and a penalty rate of interest shall be payable on unpaid amounts due hereon.

Discharge. The Indenture prescribes the manner in which it may be discharged and after which the Bonds shall be deemed to be paid and no longer be secured by or entitled to the benefits of the Indenture, except for the purposes of registration and exchange of Bonds and of such payment.

Modifications. Modifications or alterations of the Indenture, or of any supplements thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond shall not be valid or obligatory for any purpose until it shall have been signed on behalf of the Issuer and such signature attested, by the officer, and in the manner, provided in the Indenture, and authenticated by a duly authorized officer of the Trustee, as Authenticating Agent.

It is certified and recited that all conditions, acts and things required by the statutes of the State or by the Act or the Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this Bond exist, have happened and have been performed and that the issue of the Bonds, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by said statutes and said Act.

In the event of any inconsistency between the provisions of this Bond and the provisions of the Indenture, the provisions of the Indenture shall control.

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

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

[SEAL]

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: \_\_\_\_\_

[TRUSTEE], as Trustee

By: \_\_\_\_\_  
Authorized Signatory

FORM OF ASSIGNMENT

For value received the undersigned sells, assigns and transfers unto

\_\_\_\_\_  
\_\_\_\_\_

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within-registered Bond and irrevocably constitute(s) and appoints(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 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.



**EXHIBIT B**  
**FORM OF INVESTOR LETTER**

\_\_\_\_\_, 200\_\_

City and County of San Francisco, California  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 316  
San Francisco, California 94102  
Attention: City Controller

[TRUSTEE]

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Re: City and County of San Francisco Multifamily Housing Revenue Bonds (Alice Griffith Phase 2 Apartments Project), Series 2015B

Ladies and Gentlemen:

The undersigned (the "Investor") acknowledges receipt of \$ \_\_\_\_\_ in aggregate principal amount of the above-referenced bonds (the "Bonds").

The undersigned acknowledges that the Bonds were issued for the purpose of making a mortgage loan to assist in the financing of the construction and equipping of a certain 91-unit multifamily residential rental housing project located in the City and County of San Francisco, California (the "Project"), as more particularly described in that certain Loan Agreement dated as of January 1, 2015 (the "Loan Agreement"), by and among the City and County of San Francisco, California (the "Issuer"), Alice Griffith Phase 2, L.P., a California limited partnership (the "Borrower"), and the Trustee (hereinafter defined). The undersigned further acknowledges that the Bonds are secured by a Trust Indenture dated as of January 1, 2015 (the "Indenture"), between the Issuer and [TRUSTEE], as trustee (the "Trustee"), which creates a security interest in the trust estate described therein (the "Trust Estate") for the benefit of the Owners of the Bonds.

In connection with the purchase of the Bonds by the Investor, the Investor makes the following representations upon which you may rely:

1. The Investor has authority to purchase the Bonds and to execute this letter and any other instruments and documents required to be executed by the Investor in connection with the purchase of the Bonds.

2. The Investor is (i) an "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended) or an entity in which all of the equity owners are "accredited investors" as so defined (the foregoing collectively, "Accredited Investors") or a "qualified institutional buyer" (as defined in Rule 144A promulgated under the Securities Act of 1933, as amended); or (ii) a bank, savings institution or insurance company (whether acting in a trustee or custodial capacity for any Accredited Investor or "qualified

institutional buyer," each as defined in clause (i) above, or on its own behalf); or (iii) the California Community Reinvestment Corp.

3. The Bonds are being acquired by the Investor for investment and not with a view to, or for resale in connection with, any distribution of the Bonds, and the Investor intends to hold the Bonds for its own account and for an indefinite period of time. The Investor understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible.

4. The Investor understands that the Bonds are not registered under the Securities Act of 1933 and that such registration is not legally required as of the date hereof; and further understands that the Bonds (a) are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which is not be readily marketable.

5. The Investor understands that (a) the Bonds are not secured by any pledge of any moneys received or to be received from taxation by the Issuer, the State of California or any political subdivision thereof, (b) the Bonds do not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the State of California or any political subdivision thereof; and (c) the liability of the Issuer with respect to the Bonds is limited to the Trust Estate as set forth in the Indenture.

6. The Investor has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Investor has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower, the Project and the Bonds. The Investor has not relied upon the Issuer for any information in connection with its purchase of the Bonds.

7. The Investor acknowledges that neither the Issuer nor the Borrower has prepared an offering document with respect to the Bonds.

8. The Investor has made its own inquiry and analysis with respect to the Bonds and the security therefor, and other material factors affecting the security and payment of the Bonds. The Investor is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Bonds.

9. Subject to the exceptions set forth in Section 3.09 of the Indenture, the Investor acknowledges that it has the right to sell and transfer the Bonds, in accordance with the terms of the Indenture, subject to the delivery to the Trustee of an investor's letter from the transferee in substantially the form attached to the Indenture as Exhibit B, with no revisions except as may be approved in writing by the Issuer.

10. The Investor agrees to indemnify and hold harmless the Issuer with respect to any claim asserted against the Issuer that is based upon the sale, transfer or disposition of the Bonds by the Investor other than as permitted by the Indenture.

Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Indenture.

Very truly yours,

[INVESTOR]

By: \_\_\_\_\_  
Signature

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

## EXHIBIT C

### CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

The following provisions shall apply to this Trust Indenture as if set forth in the body thereof. Capitalized terms used but not defined in this Exhibit shall have the meanings given in this Trust Indenture.

#### Section 1. Nondiscrimination; Penalties.

(i) Nondiscrimination. In the performance of this Trust Indenture, the Trustee agrees not to discriminate against any employee, City employee working with the Trustee, applicant for employment with the Trustee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(ii) Subcontracts. The Trustee shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the City) and shall require all subcontractors to comply with such provisions. The Trustee's failure to comply with the obligations in this subsection shall constitute a material breach of this Indenture.

(iii) Nondiscrimination in Benefits. The Trustee does not as of the date of this Trust Indenture and will not during the term of this Trust Indenture, in any of its operations in San Francisco, on real property owned by the City, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

(iv) Condition to Contract. As a condition to this 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.

(v) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Indenture as though fully set forth herein. The Trustee shall comply fully with and be bound by all of the provisions that apply to this Indenture under such Chapters, including but not limited to the remedies provided in such Chapters. Without

limiting the foregoing, the Trustee understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Indenture may be assessed against the Trustee and/or deducted from any payments due the Trustee.

Section 2. Local Business Enterprise Utilization; Liquidated Damages.

The LBE Ordinance. As a condition to this Indenture, the Trustee shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”), provided such amendments do not materially increase Trustee’s obligations or liabilities, or materially diminish Trustee’s rights, under this Indenture. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Indenture as though fully set forth in this section. Trustee’s willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Trustee’s obligations under this Indenture and shall entitle Issuer, subject to any applicable notice and cure provisions set forth in this Indenture, to exercise any of the remedies provided for under this Indenture, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Indenture expressly provides that any remedy is exclusive. In addition, Trustee shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

Compliance and Enforcement. If Trustee willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Indenture pertaining to LBE participation, Trustee shall be liable for liquidated damages in an amount equal to Trustee’s net profit on this Indenture, or 10% of the total amount of this Indenture, or \$1,000, whichever is greatest. The Director of the Issuer’s Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the “Director of HRC”) may also impose other sanctions against Trustee authorized in the LBE Ordinance, including declaring the Trustee to be irresponsible and ineligible to contract with the Issuer for a period of up to five years or revocation of the Trustee’s LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Indenture, Trustee acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to Issuer upon demand. Trustee further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Trustee on any contract with Issuer.

Trustee agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Indenture, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

Section 3. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by

the MacBride Principles. By signing this Indenture, the person executing this Trust Indenture on behalf of the Trustee acknowledges and agrees that he or she has read and understood this Section.

Section 4. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Section 5. Drug-Free Workplace Policy. The Trustee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. The Trustee agrees that any violation of this prohibition by the Trustee, its employees, agents or assigns will be deemed a material breach of this Indenture.

Section 6. Compliance with Americans with Disabilities Act. The Trustee acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Trustee shall provide the services specified in this Indenture in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Trustee agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Indenture and further agrees that any violation of this prohibition on the part of the Trustee, its employees, agents or assigns will constitute a material breach of this Indenture.

Section 7. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

Section 8. Limitations on Contributions. Through execution of 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 Trustee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Trustee further acknowledges that 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 the Trustee; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Trustee. Additionally, the Trustee acknowledges that the Trustee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. The Trustee further agrees to provide to the City the names of each person, entity or committee described above.

Section 9. Requiring Minimum Compensation for Covered Employees. The Trustee agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Indenture as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of the Trustee's obligations under the MCO is set forth in this Section. The Trustee is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(i) The MCO requires the Trustee to pay the Trustee's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and the Trustee is obligated to keep informed of the then-current requirements. Any subcontract entered into by the Trustee shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is the Trustee's obligation to ensure that any subcontractors of any tier under this Indenture comply with the requirements of the MCO. If any subcontractor under this Indenture fails to comply, the City may pursue any of the remedies set forth in this Section against the Trustee.

(ii) The Trustee shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(iii) The Trustee shall maintain employee and payroll records as required by the MCO. If the Trustee fails to do so, it shall be presumed that the Trustee paid no more than the minimum wage required under State law.

(iv) The City, upon reasonable notice to the Trustee, is authorized to inspect the Trustee's job sites during normal business hours, conduct interviews with employees and conduct audits of the Trustee.

(v) The Trustee's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Indenture. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Trustee fails to comply with these requirements. The Trustee agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for the Trustee's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(vi) The Trustee understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Indenture for violating the MCO, the Trustee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Trustee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(vii) The Trustee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(viii) If the Trustee is exempt from the MCO when this Indenture is executed because the cumulative amount of agreements with the City for the fiscal year is less than \$25,000, but the Trustee later enters into an agreement or agreements that cause the Trustee to exceed that amount in a fiscal year, the Trustee shall thereafter be required to comply with the MCO under this Trust Indenture. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Trustee and the City to exceed \$25,000 in the fiscal year.

Section 10. Requiring Health Benefits for Covered Employees. The Trustee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Trust Indenture as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Indenture shall have the meanings assigned to such terms in Chapter 12Q.

(i) For each Covered Employee, the Trustee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Trustee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(ii) Notwithstanding the above, if the Trustee is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (i) above.

(iii) The Trustee's failure to comply with the HCAO shall constitute a material breach of this Indenture. The City shall notify the Trustee if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Indenture for violating the HCAO, the Trustee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Trustee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(iv) Any Subcontract entered into by the Trustee shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Trustee shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. The Trustee shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against the Trustee based on the Subcontractor's failure to comply, provided that the City has first provided the Trustee with notice and an opportunity to obtain a cure of the violation.

(v) The Trustee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City or the City with regard to the Trustee's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(vi) The Trustee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(vii) The Trustee shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the Indenture.

(viii) The Trustee shall keep itself informed of the current requirements of the HCAO.

(ix) The Trustee shall provide reports to the City in accordance with any reporting standards promulgated by the City or the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(x) The Trustee shall provide the City with access to records pertaining to compliance with HCAO after receiving a written request from the City to do so and being provided at least ten business days to respond.

(xi) The Trustee shall allow the City to inspect the Trustee's job sites and have access to the Trustee's employees in order to monitor and determine compliance with HCAO.

(xii) The City may conduct random audits of the Trustee to ascertain its compliance with HCAO. The Trustee agrees to cooperate with the City when it conducts such audits.

(xiii) If the Trustee is exempt from the HCAO when this Indenture is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Trustee later enters into an agreement or agreements that cause the Trustee's aggregate amount of all agreements with the City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Trustee and the City to be equal to or greater than \$75,000 in the fiscal year.

Section 11. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, the Trustee may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Indenture. The Trustee agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event the Trustee violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Indenture, and (ii) prohibit the Trustee from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider the Trustee's use of profit as a violation of this Section.

Section 12. Protection of Private Information. The Trustee has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. The Trustee agrees that any failure of the Trustee to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of this Indenture. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Indenture, bring a false claim action against the Trustee pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Trustee.

Section 13. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

The Trustee shall remove all graffiti from any real property owned or leased by the Trustee in the City and County of San Francisco within forty eight (48) hours of the earlier of the Trustee's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This Section is not intended to require the Trustee to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 *et seq.*).

Any failure by the Trustee to comply with this section of this Indenture shall constitute a material breach of this Indenture.

Section 14. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for penalties set forth in that Section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. 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.

Section 15. Conflict of Interest. Through its execution of this Indenture, the Trustee acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Indenture.

Section 16. Food Service Waste Reduction Requirements. The Trustee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Indenture as though fully set forth. This provision is a material term of this Indenture. By entering into this Indenture, the Trustee agrees that if it breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Trustee agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that the City will incur based on the violation, established in light of the circumstances existing at the time this Indenture was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the City because of the Trustee's failure to comply with this provision.

Section 17. Proprietary or Confidential Information of City. The Trustee understands and agrees that, in the performance of the work or services under this Indenture or in contemplation thereof, the Trustee may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. The Trustee agrees that all information disclosed by City to the Trustee shall be held in confidence and used only in the performance of 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 data.

Section 18. Earned Income Credit (EIC) Forms. Administrative Code Section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. The Trustee shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Indenture becomes effective (unless the Trustee has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by the Trustee; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Indenture. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Trustee of the terms of this Indenture. If, within thirty days after the Trustee receives written notice of such a breach, the Trustee fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, the Trustee fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Indenture or under applicable law. Any Subcontract entered into by the Trustee shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section. Capitalized terms used in this Section and not defined in this Indenture shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

**EXHIBIT D**

**FORM OF PROJECT FUND REQUISITION**

**BORROWER:** \_\_\_\_\_  
**PROJECT:** \_\_\_\_\_  
**REQUISITION NO.:** \_\_\_\_\_  
**In the Amount of** \$ \_\_\_\_\_

TO: [TRUSTEE] (the "Trustee")  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

JPMorgan Chase Bank, N.A. (the "Majority Owner")  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

The Borrower requests payments in the following amounts, from the following sources and to be made to the following parties, all as set forth on the Borrower's Request for Payment attached to this Requisition:

<i>Amount</i>	<i>Source</i>	<i>Payable to:</i>
	[identify name of Account & Fund in Indenture or Capital Contributions]	[Borrower's account #] [third party payment/wire instructions must be attached]

**Requisition - Contents and Attachments**

- Borrower's Request for Payment
- Contractor's Application and Certification for Payment (AIA Form G-702) including change orders if applicable
- Paid Invoices Supporting Application-(AIA Form G-702), as appropriate
- Paid Invoices Supporting Borrower's Request for Payment, as appropriate
- Lien Waivers
- Architect's Certificate (If required by Majority Owner)
- Borrower's Representations and Warranties

The Borrower requisitions the funds described above, and makes the representations and warranties attached hereto to the Issuer and the Trustee.

**“Borrower”:**

**ALICE GRIFFITH PHASE 2, L.P.,**  
a California limited partnership

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

The foregoing Requisition is approved by the Majority Owner.

**“Majority Owner”:**

**JPMORGAN CHASE BANK, N.A.**

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