

**LOAN AGREEMENT**

by and between the

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

and

**53 COLTON, L.P.,**  
a California limited partnership

relating to

\$29,520,000  
City and County of San Francisco, California  
Multifamily Housing Revenue Bonds  
(53 Colton Apartments)  
Series 2020H-1

and

[\$4,000,000]  
City and County of San Francisco, California  
Multifamily Housing Revenue Bonds  
(53 Colton Apartments)  
Taxable Series 2020H-2

Dated as of [October] 1, 2020

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CONTRACTING PROVISIONS**

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** (as supplemented and amended from time to time, the “Loan Agreement”), dated as of [October] 1, 2020, is by and between the **CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA**, a municipal corporation duly organized and existing pursuant to its charter and the laws and constitution of the State of California (the “City”), and **53 COLTON, L.P.**, a California limited partnership (the “Borrower”).

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS AND INTERPRETATION

**Section 1.1. Definitions.** Capitalized terms used in this Loan Agreement and not otherwise defined herein have the meanings given to such terms in the Indenture of Trust, dated as of [October] 1, 2020, between the City and U.S. Bank National Association, as trustee (the “Trustee”). In addition, the following capitalized terms as used in this Loan Agreement have the following meanings unless the context or use otherwise requires:

“*Act of Bankruptcy*” means the filing of a petition in bankruptcy (or other commencement of a bankruptcy or similar proceeding) by or against the Borrower, or any guarantor of the Borrower, under any applicable bankruptcy, insolvency or similar law now or hereafter in effect.

“*Adjusted Income*” has the meaning given to such term in the Regulatory Agreement.

“*Affiliated Party*” has the meaning given to such term in the Regulatory Agreement.

“*Area*” has the meaning given to such term in the Regulatory Agreement.

“*Area Median Gross Income*” has the meaning given to the term “Median Income for the Area” in the Regulatory Agreement.

“*Certificate of Continuing Program Compliance*” means the document in the form attached to the Regulatory Agreement as Exhibit D.

“*County*” means the City and County of San Francisco, California.

“*Event of Default*” means any of the events described as an event of default in Section 7.1 hereof.

“*Inducement Date*” has the meaning given to such term in the Regulatory Agreement.

“*Issuance Costs*” has the meaning given to the term in the Indenture.

“*Loan*” means the mortgage loan originated hereunder by the City to the Borrower in an original aggregate maximum principal amount up to \$[\_\_\_\_\_], for the purpose of financing the construction by the Borrower of the Project.

“*Loan Agreement*” means this Loan Agreement, as amended and supplemented from time to time in accordance with the terms of this Loan Agreement.

“*Loan Documents*” means this Loan Agreement, the Construction Disbursement Agreement, the Indenture, the Regulatory Agreement, the Notes, the Deed of Trust and any other documents that are “Loan Documents” [as such term is defined in the Construction Disbursement Agreement].

“*Low Income Tenants*” has the meaning given to such term in the Regulatory Agreement.

“*Project Costs*” has the meaning given to such term in the Regulatory Agreement.

“*Qualified Project Costs*” has the meaning given to such term in the Regulatory Agreement.

“*Qualified Project Period*” has the meaning given to such term in the Regulatory Agreement.

“*State*” means the State of California.

“*Very Low Income Tenants*” has the meaning given to such term in the Regulatory Agreement.

**Section 1.2. Interpretation.** Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Loan Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

**Section 1.3. Recitals, Titles and Headings.** The terms and phrases used in the recitals of this Loan Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all such terms and phrases for purposes of this Loan Agreement shall be determined by references to Section 1.1 hereof. The titles and headings of the articles and sections of this Loan Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Loan Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**Section 2.1. Representations and Warranties of the City.** The City represents, warrants and covenants that:

(a) The City is a municipal corporation, duly organized and validly existing under its charter and the constitution and laws of the State. Under the provisions of the Act, the City has the power to enter into the transactions on its part contemplated by this Loan Agreement, the Indenture and the Regulatory Agreement (collectively, the “City Documents”) and to carry out its obligations hereunder and thereunder. The financing of the Project constitutes and will constitute a permissible public purpose under the Act. By proper action, the City has authorized the execution, delivery and due performance of its obligations under the City Documents.

(b) Neither the execution and delivery of the Bonds and the City Documents, nor the City’s compliance with the terms, conditions or provisions on the part of the City in the Bonds and the City Documents, to the knowledge of the City without investigation, conflicts in any material respect with or results in a material breach of any of the terms, conditions or provisions of any constitution or statute of the State, or of any agreement, instrument, judgment, order or decree to which the City is now a party or by which it is bound or constitutes a material default by the City under any of the foregoing.

(c) The City has not created and will not create any debt, lien or charge upon the asset and monies explicitly pledged to the repayment of the Bonds under the Indenture, and has not made and will not make any pledge or assignment of or create any encumbrance thereon, other than the pledge and assignment thereof under the Indenture.

(d) The City has complied and will comply with all material provisions of the Act to be complied with by the City applicable to the Bonds and the transactions contemplated by this Loan Agreement and the other City Documents.

(e) The Bonds are being issued under the Indenture, and are secured by the Indenture pursuant to which the City’s interest in this Loan Agreement (other than the Reserved Rights) is pledged and assigned to the Trustee. The City covenants that it has not pledged and will not pledge or assign its interest in this Loan Agreement other than to the Trustee under the Indenture.

(f) No litigation or administrative action of any nature has been served on the City and is now pending (i) seeking to restrain or enjoin the execution and delivery of the Indenture, this Loan Agreement or the Regulatory Agreement, or in any manner questioning the proceedings or authority of the City relating thereto or otherwise affecting the validity of the Bonds, or (ii) challenging the existence or authority of the City or that of the members of the Board of Supervisors or its officers and, to the knowledge of the City, none of the foregoing are threatened.

The City makes no representation or warranty that the Project will be adequate or sufficient for the purposes of the Borrower. Nothing in this Loan Agreement shall be construed as requiring the Authority to provide any financing for the Project other than the proceeds of the Bonds.

**Section 2.2. Representations, Warranties and Covenants of the Borrower.** The Borrower represents, warrants and covenants that:

(a) The Borrower is a California limited partnership, organized and existing under the laws of the State, is in good standing in the State, and has full legal right, power and authority under the laws of the United States of America and the State (i) to enter into this Loan Agreement and the other Loan Documents to which it is a party; (ii) to perform its obligations hereunder and thereunder; and (iii) to consummate the transactions on its part contemplated by the Loan Documents.

(b) Upon the execution and delivery thereof by the parties thereto, each of the Loan Documents to which it is a party will constitute valid and binding obligations of the Borrower, enforceable upon the Borrower in accordance with its respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting creditors' rights generally and by judicial discretion in the exercise of equitable remedies.

(c) The execution and delivery of the Loan Documents to which it is a party, the performance by the Borrower of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby will not violate the Borrower's partnership agreement, or any law, regulation, rule or ordinance or any order, judgment or decree of any federal, state or local court and do not conflict with, or constitute a breach of, or a default under, any document, instrument or commitment to which the Borrower is a party or by which the Borrower or any of its property is bound.

(d) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against the Borrower which (i) affects or seeks to prohibit, restrain or enjoin the loaning of the amounts set forth herein to the Borrower or the execution and delivery of this Loan Agreement or the other Loan Documents, (ii) affects or questions the validity or enforceability of this Loan Agreement or the other Loan Documents, (iii) questions the power or authority of the Borrower to carry out the transactions on its part contemplated by, or to perform its obligations under, this Loan Agreement and the other Loan Documents to which it is a party, or the powers of the Borrower to own, construct, equip or operate the Project.

(e) The Borrower is not in default under any document, instrument or commitment to which the Borrower is a party or to which it or any of its property is subject which default would or could affect the ability of the Borrower to carry out its obligations under this Loan Agreement and the other Loan Documents.

(f) Any certificate signed by an Authorized Borrower Representative and delivered pursuant to this Loan Agreement or the other Loan Documents shall be deemed a representation and warranty by the Borrower as to the statements made therein.

(g) The Project is located wholly within the City.

(h) The Borrower will obtain all necessary certificates, approvals, permits and authorizations with respect to the construction and operation of the Project from applicable local governmental agencies and agencies of the State and the federal government.

(i) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income of the owners thereof for federal income tax purposes of the interest on the Tax-Exempt Bond (other than a “substantial user” of the Project or a “related person,” as such terms are used in Section 147(a) of the Code). The Borrower intends to utilize all of the units that comprise the Project as multifamily rental housing during the Qualified Project Period.

(j) The Borrower covenants that, from the proceeds of the Tax-Exempt Bond and investment earnings thereon, an amount not in excess of 2% of the proceeds of the Tax-Exempt Bond, will be used for costs of issuance of the Bonds, all within the meaning of Section 147(g)(1) of the Code. For this purpose, if the fees of the original purchaser of the Tax-Exempt Bond are retained as a discount on the purchase of the Tax-Exempt Bond, such retention shall be deemed to be an expenditure of Proceeds of the Tax-Exempt Bond for said fees.

(k) The construction and operation of the Project in the manner presently contemplated and as described herein, in the Construction Disbursement Agreement and in the Regulatory Agreement will not conflict with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto. The Borrower will cause the Project to be operated in all material respects in accordance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.

(l) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the Project; that it is familiar with the provisions of all of the documents and instruments relating to the financing of the Project to which it is a party; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the City for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the City in any manner except to issue the Bonds in order to provide funds to make the Loan.

(m) The Borrower intends to hold the Project for its own account, has no current plans to sell and has not entered into any agreement to sell any of the units that comprise the Project. It is hereby acknowledged, however, that the Borrower’s partnership agreement does refer to certain rights of one or more of its partners to acquire the Project, and for the possible acquisition of the Project following the 15-year tax credit compliance period as referenced in the Borrower’s partnership agreement, and those provisions shall not result in a breach of this Section 2.2(m).



(n) In the event the Loan proceeds are not sufficient to complete the construction and equipping of the Project and the payment of all Issuance Costs, the Borrower will furnish any additional moneys necessary to complete the acquisition, construction and equipping of the Project and pay all Issuance Costs.

(o) All of the proceeds from the portion of the Loan related to the Tax-Exempt Bond plus the income from the investment of the proceeds of the portion of the Loan related to the Tax-Exempt Bond will be used to pay or reimburse the Borrower for Project Costs, and at least 97% of the proceeds of the portion of the Loan related to the Tax-Exempt Bond will be used to pay or reimburse the Borrower for Qualified Project Costs and less than 25% of such amount will be used to pay or reimburse the Borrower, directly or indirectly, for the cost of acquiring land or any interest therein. The Borrower shall assure that the proceeds of the portion of the Loan related to the Tax-Exempt Bond are expended so as to satisfy the requirements of Section 142(d) of the Code relating to qualified residential rental projects.

(p) The estimated total cost of the financing of the construction of the Project is equal to or in excess of the principal amount of the Loan.

(q) The Borrower has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on the Tax-Exempt Bond to be included in the gross income of the owners thereof for purposes of federal income taxation (other than a “substantial user” of the Project or a “related person,” as such terms are used in Section 147(a) of the Code).

(r) The Borrower covenants that it shall not take, or knowingly permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Tax-Exempt Bond which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Tax-Exempt Bond would have caused the Tax-Exempt Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code.

(s) The Borrower shall take all actions necessary to assure the exclusion of interest on the Tax-Exempt Bond from the gross income of the owners of the Tax-Exempt Bond to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Tax-Exempt Bond.

(t) The Bonds upon issuance and delivery shall be considered “private activity bonds” within the meaning of the Code with respect to which the California Debt Limit Allocation Committee has transferred a portion of the State of California’s private activity bond allocation (within the meaning of Section 146 of the Code) equal to the principal amount of the Tax-Exempt Bond.

(u) The Borrower covenants that no proceeds of the Tax-Exempt Bond shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition;

provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in Section 145(d) of the Code) with respect to such building equal or exceed 15% of the portion of the cost of acquiring such building (and equipment) financed with Proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100% of the portion of the cost of acquiring such structure financed with the proceeds of the Tax-Exempt Bond.

**Section 2.3. Hazardous Waste Covenant.** In addition to and without limitation of any other representations, warranties and covenants made by the Borrower under this Loan Agreement and under the other Loan Documents, the Borrower further represents, warrants and covenants that the Borrower will not use or permit Hazardous Materials (as defined hereinafter) on, from, or affecting the Project (a) in any manner which violates federal, state or local laws, ordinances, rules, or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, or (b) in a manner that would create a material adverse effect on the Project. Without limiting the foregoing, the Borrower shall not cause or permit the Project or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Borrower cause or knowingly permit, as a result of any intentional or unintentional act or omission on the part of the Borrower or any tenant or subtenant, a release of Hazardous Materials on to the Project or on to any other property in a manner which violates federal, state, or local laws, ordinances, rules or regulations or in a manner that would create a material adverse effect on the Project. The Borrower shall comply with and require compliance by all tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, and shall obtain and comply with, and require that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Borrower shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other action required by a governmental authority under an applicable statute or regulation to clean up and remove all Hazardous Materials, on, from, or affecting the Project in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations.

The Borrower shall defend, indemnify, and hold harmless the City from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release, or threatened release of any Hazardous Materials which are on or from the Project which affect, the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on or from the Project, and/or (c) any violation of laws, orders, regulations, requirements or demands of government authorities, or written requirements of the City, which are based upon or in any way related to such Hazardous Materials including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. In the event the Project is foreclosed upon, or a deed in lieu of foreclosure is tendered, or this Loan Agreement is terminated, the Borrower shall deliver the Project in a manner and condition that shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Project.

For the purposes of this Section 2.3 and Section 2.4, “Hazardous Materials” includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 9601 et seq.), and in the regulations promulgated pursuant thereto, or any other federal, state or local environmental laws, ordinances, rules, or regulations. The provisions of this Section 2.3: (a) shall not apply to substances routinely used in the ordinary course of business, (b) shall be in addition to any and all other obligations and liabilities the Borrower may have to the City at common law, and (c) with respect to any liability or cost arising as a result of acts or omissions of the Borrower during the term of this Loan Agreement, shall survive the termination of this Loan Agreement. This Section 2.3 shall not obligate the Borrower in any way with respect to any acts or omissions of any entity that succeeds the Borrower as owner of the Project.

The indemnifications and protections set forth in this Section 2.3 (i) shall be extended, with respect to the City, to the members of its Board of Supervisors, officers, employees, agents and servants and persons under the City’s control or supervision and (ii) shall be for the full and equal benefit of the Trustee, as assignee of the City under the Indenture.

Anything to the contrary in this Loan Agreement notwithstanding, the covenants of the Borrower contained in this Section 2.3 shall remain in full force and effect after the termination of this Loan Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought, and (ii) payment in full or the satisfaction of such claim or cause of action and of all expense and charges incurred by the City relating to the enforcement of the provisions herein specified.

For the purposes of this Section 2.3, the Borrower shall not be deemed an employee, agent or servant of the City or person under City’s control or supervision.

#### **Section 2.4. Additional Environmental Matters.**

(a) The Borrower shall require in any management agreement for the Project that the management company shall operate and maintain the Project in material compliance with all applicable federal, state, regional, county or local laws, statutes, rules, regulations or ordinances, concerning the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601 et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq., and the Clean Air Act of 1970, 42 U.S.C. Section 4321, and all rules, regulations and guidance documents promulgated or published thereunder, and any state, regional, county or local statute, law, rule, regulation or ordinance relating (i) to releases, discharges, emissions or disposal of Hazardous Materials to air, water, land or ground water, (ii) to the withdrawal or use of ground water, (iii) to the use, handling or disposal or polychlorinated biphenyls

("PCBs"), asbestos or urea formaldehyde, (iv) to the treatment, storage, disposal or management of hazardous substances (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof) and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the Project or the property adjacent to or surrounding the Project, (v) to the exposure of persons to toxic, hazardous or other controlled, prohibited or regulated substances or (vi) to the transportation, storage, disposal, management or release of gaseous or liquid substances and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder.

(b) The Borrower shall keep the Project free and clear of any liens or encumbrances securing payment of the costs of any response, removal or remedial action or cleanup of Hazardous Materials (as defined in Section 2.3).

(c) The Borrower covenants and agrees that it will not knowingly conduct or allow to be conducted any business, operations or activity on the Project, or employ or use the Project to manufacture, treat, store (except with respect to storage in the ordinary operation of the Project), or dispose of any Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof), or any other substance the disposal of which is prohibited, controlled or regulated under applicable law, or which poses a threat or nuisance to safety, health or the environment, including, without limitation, any business, operation or activity which would violate the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901 et seq., or cause or knowingly allow to be caused, a release or threat of release, of a non-de minimis quantity of hazardous substances on the Project as defined by, and within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601 et seq., or any similar state, county, regional or local statute providing for financial responsibility for cleanup for the release or threatened release of substances provided for thereunder.

(d) The Borrower covenants and agrees that it shall take all appropriate response action, including any removal and remedial action, in the event of a release, emission, discharge or disposal of Hazardous Materials in, on, under or about the Project for which the Borrower is liable under state, federal or local environmental rules or regulations.

(e) The Borrower shall, as soon as practicable and in any event within 15 days of its receipt thereof, notify the City and the Bondowner of any notice, letter, citation, order, warning, complaint, claim or demand that (i) the Borrower or any tenant has violated, or is about to violate, any federal, state, regional, county or local environmental, health or safety statute, law, rule, regulation, ordinance, judgment or order; (ii) there has been a release, or there is a threat of release, of Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof) from the Project; (iii) the Borrower or any tenant may be or is liable, in whole or in part, for the costs of cleaning up, remediating, removing or responding to a release of Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof); or (iv) the

Project is subject to a lien in favor of any governmental entity for any environmental law, rule or regulation arising from or costs incurred by such governmental entity in response to a release of a Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof).

(f) During the period in which this Loan Agreement is in effect, the Borrower hereby grants the City and the Trustee, and their respective agents, attorneys, employees, consultants and contractors, an irrevocable license and authorization upon reasonable notice of not less than 24 hours to enter upon and inspect the Project and perform such tests, including, without limitation, subsurface testing, soils and ground water testing, and other tests which may physically invade the Project, as the City or the Trustee, in their respective reasonable discretion, determine are necessary to protect the lien created by the Deed of Trust. The provisions of this Section 2.4 shall be for the full and equal benefit of the City, and of the Trustee as assignee of the City under the Indenture.

### **ARTICLE III**

#### **THE LOAN**

**Section 3.1. Closing of the Loan.** The closing of the Loan shall not occur until the following conditions are met:

(a) the City shall have received an original executed counterpart of this Loan Agreement, the Notes, the Tax Certificate, the Regulatory Agreement and the Deed of Trust, together with evidence satisfactory to the City of the recordation of the Regulatory Agreement and the Deed of Trust in the official records of the County Recorder of the County, which may be by telephonic notice from a title company (or that such documents have been delivered to an authorized agent of the title company for recordation under binding recording instructions from Bondowner's counsel or such other counsel as may be acceptable to the City and Bondowner);

(b) no Event of Default nor any event which with the passage of time and/or the giving of notice would constitute an Event of Default under this Loan Agreement shall have occurred and the Borrower shall have so certified in writing;

(c) all legal matters incident to the transactions contemplated by this Loan Agreement shall be concluded to the reasonable satisfaction of counsel to the City;

(d) counsel to the Borrower shall have delivered an opinion in form satisfactory to counsel to the City, Bond Counsel and counsel to the Bondowner regarding the enforceability against the Borrower of each of the documents to which the Borrower is a party;

(e) delivery to the Trustee or into escrow with the title company (or separate escrow company, if applicable) of all amounts required to be paid in connection with the origination of the Loan and any underlying real estate transfers or transactions, as specified in written instructions delivered to the title company by counsel to the Bondowner (or such

other counsel as may be acceptable to the Bondowner) and/or as specified in a closing memorandum of the Bondowner; and

(f) the Construction Disbursement Agreement shall have been executed by the parties thereto, and all conditions to the purchase of the Bonds provided therein shall have been satisfied as evidenced by the advancement by the Bondowner of the Initial Disbursement.

**Section 3.2. Commitment to Execute the Notes.** The Borrower agrees to execute and deliver the Notes, the Construction Disbursement Agreement, the Regulatory Agreement, the Tax Certificate, the Deed of Trust and the other Loan Documents simultaneously with the execution of this Loan Agreement.

**Section 3.3. Making of the Loan.** The City hereby makes to the Borrower and agrees to fund, and the Borrower hereby accepts from the City, upon the terms and conditions set forth herein and in the Construction Disbursement Agreement, the Loan and agrees to have the proceeds of the Loan applied and disbursed in accordance with the provisions of this Loan Agreement and the Construction Disbursement Agreement.

**Section 3.4. Disbursement of Loan Proceeds.**

(a) The City hereby authorizes and directs the first funding and disbursement of the Loan on the Closing Date in an amount equal to the Initial Disbursement, subject to the conditions set forth in Section 3.1 above and the conditions set forth in the Construction Disbursement Agreement. Subject to the foregoing, the Borrower hereby authorizes the City to disburse on the date of execution and delivery of the Notes, the Initial Disbursement representing the first advance of the principal amount of Loan to be transferred to or for the benefit of the Borrower to be used to pay Qualified Project Costs.

(b) The Trustee shall make disbursements of the remaining principal amount of the Loan directly to or for the benefit of the Borrower subject to Section 3.03 of the Indenture, and on the terms and subject to the conditions set forth in the Construction Disbursement Agreement.

**ARTICLE IV**

**LIMITED LIABILITY**

**Section 4.1. Limited Liability.** Notwithstanding anything herein or in any other instrument to the contrary, the City shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Loan Agreement, the Bonds or any of the other Loan Documents, except only to the extent amounts are received for the payment thereof from the Borrower under this Loan Agreement. All obligations and any liability of the City shall be further limited as provided in Sections 5.01, 6.12, 7.10 and 11.09 of the Indenture.

## ARTICLE V

### REPAYMENT OF THE LOAN

#### Section 5.1. Loan Repayment.

(a) The obligations of the Borrower for repayment of the principal of the Loan and for payment of interest thereon and premium, if any, with respect thereto shall be evidenced by the Notes which shall be executed by the Borrower in the form required by the Construction Disbursement Agreement. The Borrower agrees to pay to the Trustee, the principal of, interest on and premium with respect to the Loan at the times, in the manner, in the amount and at the rate or rates of interest provided in the respective Note and in the other Loan Documents; provided that at all times the repayment of the Loan shall be in time and amount sufficient to make timely payments of amounts due on the Bonds.

(b) The Borrower further agrees to pay all taxes and assessments, general or special, including, without limitation, all ad valorem taxes, concerning or in any way related to the Project, or any part thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments with respect thereto; provided, however, that the Borrower reserves the right to contest in good faith the legality of any tax or governmental charge concerning or in any way related to the Project. In addition, the Borrower agrees to pay any loan fee, processing fee and all title, escrow, recording and closing costs and expenses, any appraisal costs and all other reasonable fees and costs associated with or required in connection with the Bonds, the Regulatory Agreement and Indenture; including but not limited to any such amounts described in Section 8.06 of the Indenture.

(c) The Borrower hereby acknowledges and consents to the assignment by the City to the Trustee and the Bondowner of the Issuer's rights under the Notes, the Deed of Trust, this Loan Agreement (excepting only the Reserved Rights) and the other Loan Documents, and the appointment of the Trustee as agent of the City to collect the payments on the Loan, all as set forth in the Indenture.

(d) The Borrower hereby agrees to pay the City fees and expenses described in Section 18 of the Regulatory Agreement.

(e) The Borrower agrees to pay to the City within 15 days after receipt of request for payment thereof, all expenses of the City (including salaries and wages of City employees) related to the Project and the financing thereof that are not otherwise required to be paid by the Borrower under the terms of this Loan Agreement and are not paid from disbursements of the Loan, including, without limitation, legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bonds.

(f) The Borrower agrees to pay to the Trustee, immediately upon demand for payment thereof, its fees and all reasonable out-of-pocket expenses of the Trustee in connection with its serving as Trustee under the Indenture that are not otherwise required

to be paid by the Borrower under the terms of this Loan Agreement, including, without limitation, legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bonds.

(g) The Borrower shall provide no less than 30 days' written notice to the California Debt Limit Allocation Committee ("CDLAC") and to the City prior to any payment in full of the Note related to the Tax-Exempt Bond.

**Section 5.2. Nature of the Borrower's Obligations.** The Borrower shall repay the Loan pursuant to the terms of the Notes and the Construction Disbursement Agreement irrespective of any rights of setoff, recoupment or counterclaim the Borrower might otherwise have against the City or any other person. The Borrower will not suspend, discontinue or reduce any such payment or (except as expressly provided herein) terminate this Loan Agreement for any cause, including, without limiting the generality of the foregoing, (i) any delay or interruption in the construction or operation of the Project; (ii) the failure to obtain any permit, order or action of any kind from any governmental agency relating to the Loan or the Project; (iii) any event constituting force majeure; (iv) any acts or circumstances that may constitute commercial frustration of purpose; (v) any change in the laws of the United States of America, the State or any political subdivision thereof; or (vi) any failure of the City or the Borrower to perform or observe any covenant whether expressed or implied, or to discharge any duty, liability or obligation arising out of or connected with the Notes; it being the intention of the parties that, as long as the Notes or any portion thereof remains outstanding and unpaid, the obligation of the Borrower to repay the Loan and provide such moneys shall continue in all events. This Section 5.2 shall not be construed to release the Borrower from any of its obligations hereunder, or, except as provided in this Section 5.2, to prevent or restrict the Borrower from asserting any rights which it may have against the City under the Notes or the Deed of Trust or under any provision of law or to prevent or restrict the Borrower, at its own cost and expense, from prosecuting or defending any action or proceeding by or against the City, the Bondowner or the Trustee or taking any other action to protect or secure its rights. Nothing in this Section 5.2 or any other provision of this Loan Agreement, shall limit the rights of the City as provided in Section 7.3 hereof.

**Section 5.3. No Encumbrances.** The Borrower shall not create, permit, file or record against the Project without the prior written consent of the Bondowner any deed of trust lien or other lien, inferior or superior to the lien of the Deed of Trust, other than Permitted Encumbrances (as defined in the Construction Disbursement Agreement) and any lien created under any of the Subordinate Loan Documents (as defined in the Construction Disbursement Agreement).

## ARTICLE VI

### FURTHER AGREEMENTS

**Section 6.1. Successor to the City.** The City will at all times use its best efforts to maintain the powers, functions, duties and obligations now reposed in it pursuant to law or assure the assumptions of its obligations hereunder by any public trust or political subdivision succeeding to its powers.



**Section 6.2. Borrower Not to Dispose of Assets; Conditions Under Which Exceptions Permitted.** The Borrower agrees that during the term of this Loan Agreement it will not dispose of all or substantially all of its assets nor consolidate with nor merge into any entity unless (i) the disposition is permitted under the applicable provisions of the Construction Disbursement Agreement, (ii) the City and the Bondowner shall consent to the disposition, consolidation or merger, (iii) the acquirer of its assets or the entity with which it shall consolidate or into which it shall merge shall be an individual or a corporation, partnership or other legal entity organized and existing under the laws of the United States of America or one of the states of the United States of America and shall be qualified and admitted to do business in the State; and (iv) such acquiring or remaining entity shall assume in writing all of the obligations of the Borrower under this Loan Agreement and the other Loan Documents to which the Borrower is a party.

**Section 6.3. Cooperation in Enforcement of Regulatory Agreement.** In order to maintain the exclusion from gross income of the owners of the Tax-Exempt Bond under federal tax law of interest on the Tax-Exempt Bond (other than any owner which a “substantial user” of the Project or a “related person,” as such terms are used in Section 147(a) of the Code) and to assure compliance with the laws of the State (including the Act), the Borrower hereby agrees that it shall, concurrently with or before the execution and delivery of the Bonds, execute and deliver the Regulatory Agreement and cause it to be recorded in the County Recorder’s office. The Borrower hereby covenants and agrees as follows:

- (a) to comply with all provisions of the Regulatory Agreement;
- (b) to advise the City in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of the Borrower set forth in the Regulatory Agreement;
- (c) upon written direction by the City, to cooperate fully and promptly with the City in enforcing the terms and provisions of the Regulatory Agreement; and
- (d) to file in accordance with the time limits established by the Regulatory Agreement all reports and certificates required thereunder, and the Certification to the Secretary of the Treasury required by Section 4(e) of the Regulatory Agreement.

Subject to any applicable laws, including privacy laws, the books and records of the Borrower pertaining to the incomes of Low Income Tenants and Very Low Income Tenants residing in the Project shall be open to inspection by any authorized representative of the City and the Bondowner, including any Income Certifications (as defined in the Regulatory Agreement) obtained from tenants.

The City shall not incur any liability in the event of any breach or violation of the Regulatory Agreement by the Borrower, and the Borrower agrees to indemnify the City from any claim or liability for such breach pursuant to Section 8 of the Regulatory Agreement or hereunder.

**Section 6.4. Additional Instruments.** The Borrower hereby covenants to execute and deliver such additional instruments and to perform such additional acts as may be necessary, in the opinion of the City, to carry out the intent of the Loan Documents or to perfect or give further assurances of any of the rights granted or provided for in the Loan Documents and the Notes.

**Section 6.5. Books and Records.** The Borrower hereby covenants to permit the City, the Trustee and the Bondowner or their duly authorized representatives access during normal business hours to the books and records of the Borrower pertaining to the Loan and the Project, and to make such books and records available for audit and inspection, at reasonable times and under reasonable conditions to the City, the Bondowner, the Trustee and their duly authorized representatives and at the sole expense of the Borrower.

**Section 6.6. Notice of Certain Events.** The Borrower hereby covenants to advise the City, the Trustee and the Bondowner promptly in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. In addition, the Borrower hereby covenants to advise the City, the Trustee and the Bondowner promptly in writing of the occurrence of any Act of Bankruptcy.

**Section 6.7. Indemnification of the City and Trustee.** The Borrower agrees to indemnify the City and the Trustee as provided in Section 8 of the Regulatory Agreement. The rights of any persons to indemnity thereunder and rights to payment of fees and reimbursement of expenses pursuant to Sections 5.1 and 7.4 hereof shall survive the final payment or defeasance of the Bonds and in the case of the Trustee any resignation or removal. The provisions of this Section 6.7 shall survive the termination of this Loan Agreement.

**Section 6.8. Consent to Assignment.** The City has made an assignment under the Indenture of all rights and interest of the City in and to this Loan Agreement (except its Reserved Rights), the Notes, the Deed of Trust and the other Loan Documents and the Trustee is authorized to collect the payments by the Borrower on the Loan; and the Borrower hereby consents to all such assignments and such appointment.

**Section 6.9. Compliance With Usury Laws.** Notwithstanding any other provision of this Loan Agreement, it is agreed and understood that in no event shall this Loan Agreement, with respect to the Notes or other instrument of indebtedness, be construed as requiring the Borrower or any other person to pay interest and other costs or considerations that constitute interest under any applicable law which are contracted for, charged or received pursuant to this Loan Agreement in an amount in excess of the maximum amount of interest allowed under any applicable law.

In the event of any acceleration of the payment of the principal amount of the Notes or other evidence of indebtedness, that portion of any interest payment in excess of the maximum legal rate of interest, if any, provided for in this Loan Agreement or related documents shall be cancelled automatically as of the date of such acceleration, or if theretofore paid, credited to the principal amount.

The provisions of this Section 6.9 prevail over any other provision of this Loan Agreement.

**Section 6.10. Leasehold Interest in the Project Site.** The Borrower shall concurrently with the closing of the Loan have a leasehold interest in the Project site, free and clear of any lien or encumbrance except for (i) liens for nondelinquent assessments and taxes not yet due; (ii) the Deed of Trust; (iii) the Regulatory Agreement; and (iv) any other encumbrances approved in

writing by the Bondowner. Concurrently with the closing of the Loan, the Borrower shall cause to be delivered to the Bondowner one or more title policies, naming the Bondowner as the insured, as its interests may appear, with endorsements specified in the Bondowner's escrow instructions.

**Section 6.11. Payment of Taxes.** The Borrower has filed or caused to be filed all federal, state and local tax returns or information returns which are required to be filed with respect to the Project and of which Borrower has knowledge, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due and payable.

**Section 6.12. No Untrue Statements.** Neither this Loan Agreement nor any other document, certificate or statement furnished to the City, the Trustee or the Bondowner by or on behalf of the Borrower, contains to the best of the Borrower's knowledge any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading or incomplete as of the date hereof. It is specifically understood by Borrower that all such statements, representations and warranties shall be deemed to have been relied upon by the City as an inducement to make the Loan, and by the Bondowner as an inducement to buy the Bonds, and that if any such statements, representations and warranties were materially incorrect at the time they were made, the City may consider any such misrepresentation or breach an Event of Default.

**Section 6.13. Insurance.** The Borrower shall provide policies of property damage (fire, extended coverage, vandalism and malicious mischief), loss of rent, public liability and worker's compensation insurance with respect to the Project and the operation thereof required under the Deed of Trust and the Construction Disbursement Agreement. The Federal Government shall be an additional insured under all policies of insurance to the extent such coverage is available under commercially reasonable terms.

**Section 6.14. Tax Exempt Status of the Tax-Exempt Bond.**

(a) It is the intention of the City and the Borrower that interest on the Tax-Exempt Bond shall be and remain excludable from gross income of the owners thereof for federal income taxation purposes (other than a "substantial user" of the Project or a "related person," as such terms are used in Section 147(a) of the Code), and to that end the covenants and agreements of the Borrower in this Section 6.14 are for the benefit of the Bondowner and the City.

(b) The Borrower covenants and agrees that it will not (i) use or permit the use of any of the funds provided by the City hereunder or any other funds of the Borrower, directly or indirectly, in such manner as would, or (ii) take or omit to take any other action that would, in each case cause the Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code.

(c) In the event that at any time the Borrower is of the opinion or becomes otherwise aware that for purposes of this Section 6.14 it is necessary to restrict or to limit the yield on the investment of any moneys related to the Tax-Exempt Bond held under the Indenture or under the Construction Disbursement Agreement, or otherwise by the

Bondowner, the Borrower shall determine the limitations and so instruct the Trustee or Bondowner, as applicable, in writing and cause the Trustee or the Bondowner, as applicable, to comply with those limitations under the Indenture or the Construction Disbursement Agreement, respectively.

(d) The Borrower will take such action or actions as may be reasonably necessary in the opinion of Bond Counsel, or of which it otherwise becomes aware, to fully comply with Section 148 of the Code as applicable to the Tax-Exempt Bond.

(e) The Borrower further agrees that it shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g. AFDC, SSI), physical disability, national origin or marital status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, to the extent required by applicable State or federal law.

(f) The Borrower further warrants and covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with provisions contradictory to, or in opposition to, the provisions, of this Loan Agreement and of the Regulatory Agreement, and that in any event, the requirements of this Loan Agreement and the Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.

(g) The Borrower will use due diligence to complete the acquisition and construction of all of the units comprising the Project and reasonably expects to fully expend the entire \$[\_\_\_\_\_] authorized principal amount of the Loan by [\_\_\_\_\_].

(h) The Borrower will take such action or actions as necessary to ensure compliance with Sections 2.2(j), (o), (p), (q) and (r) hereof.

(i) The Borrower will make timely payment of any rebate amount due to the federal government by reason of Section 148(f) of the Code, as applicable to the Tax-Exempt Bond.

**Section 6.15. Recordation of Amendments to Regulatory Agreement.** The Borrower agrees to cause any amendments to any Regulatory Agreement to be recorded in the appropriate official public records of the County.

**Section 6.16. Useful Life.** The Borrower hereby represents and warrants that, within the meaning of Section 147(a)(14) of the Code, the average maturity of the Tax-Exempt Bond does not exceed 120% of the average reasonably expected economic life of the facilities being financed with the proceeds of the Tax-Exempt Bond.

**Section 6.17. Federal Guarantee Prohibition.** The Borrower shall take no action, nor permit nor suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

**Section 6.18. Prohibited Facilities.** The Borrower represents and warrants that no portion of the proceeds of the Loan shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises, and no portion of the proceeds of the Notes shall be used for an office unless (i) the office is located on the premises of facilities constituting a portion of the Project and (ii) not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

**Section 6.19. Election of Applicable Income Limit.** The City hereby elects to have the Project meet the requirements of Section 142(d)(1)(B) of the Code in that 40% or more of the residential units comprising the Project (as such term is used in the Regulatory Agreement) shall be occupied by persons or families whose Adjusted Income is 60% or less of Area Median Gross Income, adjusted for household size, and who meet the statutory definition of “homeless” as set forth in 42 U.S. Code Section 11302.

**Section 6.20. City Contracting Requirements.** The Borrower covenants and agrees to comply with the provisions set forth in Exhibit A to this Loan Agreement, which is incorporated in and made a part of this Loan Agreement by this reference.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.1. Events of Default.** The occurrence of any one or more of the following events or conditions shall constitute an “Event of Default” under this Loan Agreement:

(a) Any failure by the Borrower to pay any amounts required to be paid on the Notes when due;

(b) Any failure by the Borrower to pay as and when due and payable any other sums required to be paid by the Borrower under this Loan Agreement and the continuation of such failure for a period of five days after the same are due; or

(c) Any failure of any representation or warranty made in this Loan Agreement, the Construction Disbursement Agreement or any requisition requesting disbursement of Loan proceeds to be true and correct; or

(d) Any failure by the Borrower to observe and perform any covenant or agreement on its part to be observed or performed hereunder or under any of the other Loan Documents, other than as referred to in subsection (a) or (b) of this Section 7.1, for a period of 30 days after written notice specifying such breach or failure and requesting that it be remedied, given to the Borrower by the City or the Bondowner; provided, however, that in the event such breach or failure be such that it can be corrected but cannot be corrected within said 30-day period, the same shall not constitute an Event of Default hereunder if corrective action is instituted by the Borrower or on behalf of the Borrower within said 30-day period, is diligently pursued to completion thereafter and in any event is cured within 90 days after the initial notice of such failure is given to Borrower (provided, however, that, notwithstanding the foregoing, to the extent that a lesser or greater cure

period is set forth in any Loan Document, the foregoing 30-day cure period shall not apply and such lesser or greater cure period shall govern and control with respect to defaults occurring thereunder); or

(e) Any Event of Default (as defined or otherwise set forth in the Indenture or any of the other Loan Documents) shall have occurred and shall remain uncured beyond any applicable cure period provided in the applicable document; or

(f) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Borrower occurs, or any sale, transfer or other disposition of the Project or of all or substantially all of the assets of Borrower occurs; or

(g) Any failure by the Borrower to obtain any governmental approvals as required in order to proceed with the construction of the Project so as to complete the same by the Completion Date (as defined in the Construction Disbursement Agreement), or the revocation or other invalidation of any such approvals previously obtained; or

(h) Any change in the legal or beneficial ownership of the Borrower other than as expressly permitted by Section 11 of the Regulatory Agreement, by the terms hereof or by reason of the death of the owner of such interests; or

(i) Any failure by the Borrower to pay at maturity, or within any applicable period of grace, any Indebtedness, or any failure to observe or perform any material term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing any Indebtedness, for such period of time as would permit (assuming the giving of appropriate notice if required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof; or

(j) The Borrower or its general partner (each an “Obligor” and collectively the “Obligors”) shall file a voluntary petition in bankruptcy under Title 11 of the United States Code, or an order for relief shall be issued against any such Obligor in any involuntary petition in bankruptcy under Title 11 of the United States Code, or any such Obligor shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief of debtors, or such Obligor shall seek or consent to or acquiesce in the appointment of any custodian, trustee, receiver, conservator or liquidator of such Obligor, or of all or any substantial part of its respective property, or such Obligor shall make an assignment for the benefit of creditors, or such Obligor shall give notice to any governmental authority or body of insolvency or pending insolvency or suspension of operation; or

(k) An involuntary petition in bankruptcy under Title 11 of the United States Code shall be filed against any Obligor and such petition shall not be dismissed within 90 days of the filing thereof; or

(l) A court of competent jurisdiction shall enter any order, judgment or decree approving a petition filed against any Obligor seeking any reorganization, arrangement,

composition, readjustment, liquidation or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or appointing any custodian, trustee, receiver, conservator or liquidator of all or any substantial part of its property; or

(m) Any of the events described in Section (j) or (k) occurs with respect to the Investor Limited Partner (as defined in the Borrower's partnership agreement) prior to funding by the Investor Limited Partner of all of the capital contributions required in order to permit the timely occurrence of the Maturity Date; or

(n) Any of the Loan Documents shall be canceled, terminated, revoked or rescinded otherwise than in accordance with the terms thereof or with the express prior written consent of the Bondowner (in its sole and absolute discretion), or any action at law, suit in equity or other legal proceeding to cancel, revoke or rescind any of the Loan Documents shall be commenced by or on behalf of any Obligor which is a party thereto, or any of their respective stockholders, partners or beneficiaries, or any court or any other governmental or regulatory authority or agency of competent jurisdiction shall make a determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents is illegal, invalid or unenforceable in accordance with the terms thereof.

#### **Section 7.2. Remedies on Default.**

(a) Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred, any obligation of the Bondowner to approve further disbursements of the Loan shall be terminated, and the Bondowner shall have the right (but not the obligation) to exercise any one and/or more of the following rights and remedies:

(i) by notice in writing to the Borrower, declare the entire unpaid indebtedness under the Notes and the other Loan Documents to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable; and

(ii) take whatever action at law or in equity or under any of the Loan Documents, as may appear necessary or desirable to Bondowner to collect the payments and other amounts then due and thereafter to become due hereunder or under the Notes, and/or to exercise any right or remedy or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement, the Notes or any other Loan Document.

(b) Any amounts collected pursuant to action taken under this Section 7.2 (other than amounts collected by the City pursuant to the Reserved Rights) shall, after the payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the City, the Trustee or the Bondowner and their respective counsel, be paid into the Bond Fund (unless otherwise provided in this Loan Agreement) and applied in accordance with the provisions

of the Indenture. No action taken pursuant to this Section 7.2 shall relieve the Borrower from the Borrower's obligations pursuant to Section 6.14 hereof.

**Section 7.3. No Remedy Exclusive.** No remedy conferred herein or in any other Loan Document upon or reserved to the City or Bondowner is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement and each other Loan Document, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City or the Bondowner to exercise any remedy reserved to it herein or in any other Loan Document, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

**Section 7.4. Attorneys' Fees and Expenses.** If an Event of Default occurs and if the City, the Trustee or the Bondowner should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the Borrower contained herein, the Borrower on demand will pay to the City, the Trustee and/or the Bondowner the reasonable fees of such attorneys and the reasonable expenses so incurred, including court appeals.

**Section 7.5. City Exercise of Remedies.** Notwithstanding anything to the contrary contained herein, Bondowner shall have the sole and exclusive right to exercise, and direct the exercise of, all rights and remedies available to City, the Trustee or Bondowner; provided, however, that the City may enforce its Reserved Rights under the Loan Documents and exercise the permitted remedies with respect thereto against the Borrower; provided that the City shall not commence or direct the Trustee or the Bondowner to commence any action (a) to declare the outstanding balance of the Bonds or the Loan to be due, (b) to foreclose or to take similar action under the Deed of Trust or otherwise in respect of any liens upon or security interests in the Project or other property pledged to secure the Borrower's obligations under the Loan Documents, (c) to appoint a receiver, (d) to enforce any similar remedy against the Project or other property pledged to secure the Borrower's obligations under the Loan Documents; or (e) to enforce any other remedy which would cause any liens or security interests granted under the Loan Documents to be discharged or materially impaired thereby.

**Section 7.6. No Additional Waiver Implied by One Waiver.** In the event any agreement or covenant contained in this Loan Agreement should be breached by the Borrower and thereafter waived by the City or the Bondowner, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder including any other breach of the same agreement or covenant.

**Section 7.7. Limited Partner Cure Right.** Notwithstanding anything contained in this Article VII to the contrary, the City agrees that any cure of any default made or tendered by the limited partner of the Borrower shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.



## ARTICLE VIII

### MISCELLANEOUS

**Section 8.1. Entire Agreement.** This Loan Agreement, the Construction Disbursement Agreement, the Notes, the Regulatory Agreement, the Deed of Trust and the other Loan Documents constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the City and the Borrower with respect to the subject matter hereof.

**Section 8.2. Notices.** All notices, certificates or other communications by the Borrower or the City under this Loan Agreement shall be provided at the address and as otherwise set forth in Section 11.06 of the Indenture.

**Section 8.3. Assignments.** This Loan Agreement may not be assigned by any party without the prior written consent of the other, except that the City shall assign its rights under this Loan Agreement pursuant to the Indenture, and except also that the Borrower may assign to any transferee its rights under this Loan Agreement as provided by Section 6.2.

**Section 8.4. Severability.** If any provision of this Loan Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

**Section 8.5. Execution of Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 8.6. Amendments, Changes and Modifications.** Except as otherwise provided in this Loan Agreement, subsequent to the issuance of the Notes and prior to its payment in full (or provision for payment thereof having been made in accordance with the provisions of the Indenture), this Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto and the written consent of the Bondowner.

**Section 8.7. Governing Law.** This Loan Agreement shall be governed exclusively by and construed in accordance with the laws of the State applicable to contracts made and performed in the State.

**Section 8.8. Term of Agreement.** This Loan Agreement shall be in full force and effect from the date of execution and delivery hereof by the City and the Borrower until such time as the Notes shall have been fully paid or provision made for such payment. Time is of the essence in this Loan Agreement.

**Section 8.9. Survival of Agreement.** All agreements, representations and warranties made herein shall survive the making of the Loan.

**Section 8.10. Conflicts.** If any term or condition of this Loan Agreement conflicts with any term or condition of any other Loan Document, the term or condition which imposes any

greater or stricter duties or obligations upon Borrower, or grants or affords City or Bondowner any greater rights or remedies, shall prevail.

**Section 8.11. Binding Effect; Third Party Beneficiaries.** This Loan Agreement shall inure to the benefit of and shall be binding upon the City, the Borrower and their respective successors and assigns. The Bondowner and the Trustee are intended third party beneficiaries of this Loan Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Loan Agreement, all as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO,  
CALIFORNIA

By \_\_\_\_\_  
Eric D. Shaw  
Director, Mayor's Office of Housing and  
Community Development

Approved as to form:

DENNIS J. HERRERA  
City Attorney

By \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

[Signature Page to Loan Agreement –53 Colton Apartments]

**53 COLTON, L.P.,**  
a California limited partnership

By: CHP Colton LLC,  
a California limited liability company,  
its managing general partner

By: Community Housing Partnership,  
a California nonprofit public benefit corporation,  
its sole member/manager

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

By: Strada/CHP, LLC,  
a California limited liability company,  
its administrative general partner

By: Strada Colton, LLC,  
a California limited liability company,  
its managing member

By: Strada Brady, LLC,  
a California limited liability company  
its sole member

By: \_\_\_\_\_  
Michael Cohen, Manager

By: CHP Colton LLC,  
a California limited liability company,  
a member

By: Community Housing Partnership,  
a California nonprofit public benefit  
corporation,  
its sole member/manager

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

## EXHIBIT A

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

The following provisions shall apply to this Loan Agreement as if set forth in the text hereof. Capitalized terms used but not defined in this Exhibit shall have the meanings given in this Loan Agreement. As used herein, the Borrower shall be known as the “Obligated Party.”

1. **Nondiscrimination; Penalties.**

(a) ***Nondiscrimination in Contracts.*** The Obligated Party shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. The Obligated Party shall incorporate by reference in any subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require any subcontractors to comply with such provisions. The Obligated Party is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) ***Nondiscrimination in the Provision of Employee Benefits.*** San Francisco Administrative Code 12B.2. The Obligated Party does not as of the date of this Loan Agreement, and will not during the term of this Loan Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(c) ***Condition to Contract.*** As a condition to this Loan Agreement, the Obligated Party shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

2. **MacBride Principles—Northern Ireland.** The provisions of San Francisco Administrative Code § 12F are incorporated by this reference and made part of this Loan Agreement. By entering into this Loan Agreement, the Obligated Party confirms that it has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

3. **Tropical Hardwood and Virgin Redwood Ban.** Under San Francisco Environment Code Section 804(b), the City urges the Obligated Party not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

4. **Alcohol and Drug-free Workplace.** The City reserves the right to deny access to, or require the Obligated Party to remove from, City facilities personnel of such Obligated Party who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City’s ability to maintain safe work facilities or to protect the health

and well-being of City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

5. **Compliance With Americans with Disabilities Act.** The Obligated Party shall provide the services specified in the Agreement in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

6. **Sunshine Ordinance.** The Obligated Party acknowledges that this Agreement and all records related to its formation, such Obligated Party's performance of services provided under the Agreement, and the City's payment are subject to the California Public Records Act, (California Government Code § 6250 et seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

7. **Limitations on Contributions.** By executing this Agreement, the Obligated Party acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (1) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (2) a candidate for that City elective office, or (3) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of the Obligated Party's board of directors; the Obligated Party's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the Obligated Party; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Obligated Party. The Obligated Party certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for such contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

8. **Requiring Minimum Compensation for Covered Employees.** The Obligated Party shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. The Obligated Party is subject to the enforcement and penalty provisions in Chapter 12P. By entering into this Loan Agreement, the Obligated Party certifies that it is in compliance with Chapter 12P.

9. **Requiring Health Benefits for Covered Employees.** The Obligated Party shall comply with San Francisco Administrative Code Chapter 12Q. The Obligated Party shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. The Obligated Party is subject to the enforcement and penalty provisions in Chapter 12Q.

10. **Prohibition on Political Activity with City Funds.** In performing the services provided under this Loan Agreement, the Obligated Party shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Loan Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The Obligated Party is subject to the enforcement and penalty provisions in Chapter 12G.

11. **Nondisclosure of Private, Proprietary or Confidential Information.** If this Loan Agreement requires the City to disclose “Private Information” to the Obligated Party within the meaning of San Francisco Administrative Code Chapter 12M, the Obligated Party shall use such information consistent with the restrictions stated in Chapter 12M and in this Loan Agreement and only as necessary in performing the services provided under this Loan Agreement. The Obligated Party is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of services provided under this Loan Agreement, the Obligated Party may have access to the City’s proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to the Obligated Party, such information must be held by such Obligated Party in confidence and used only in performing this Loan Agreement. The Obligated Party shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

12. **Consideration of Criminal History in Hiring and Employment Decisions.** The Obligated Party agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Loan Agreement. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of the Obligated Party’s obligations under Chapter 12T is set forth in this Section. The Obligated Party is required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Loan Agreement shall have the meanings assigned to such terms in Chapter 12T.

The requirements of Chapter 12T shall only apply to the Obligated Party’s operations to the extent those operations are in furtherance of the performance of this Loan Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Loan Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes City property. Chapter 12T shall not apply when the application in a particular context

would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. **Reserved.**

14. **Submitting False Claims; Monetary Penalties.** The full text of San Francisco Administrative Code §§ 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Under San Francisco Administrative Code § 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

15. **Conflict of Interest.** By entering into this Loan Agreement, the Obligated Party certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Loan Agreement.

16. **Assignment.** The services provided under this Loan Agreement to be performed by the Obligated Party are personal in character and neither this Loan Agreement nor any duties or obligations may be assigned or delegated by the Obligated Party unless first approved by the City by written instrument executed and approved in the same manner as this Loan Agreement. Any purported assignment made in violation of this provision shall be null and void.

17. **Food Service Waste Reduction Requirements.** The Obligated Party shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the provided remedies for noncompliance.

18. **Cooperative Drafting.** This Loan Agreement has been drafted through a cooperative effort of the City and the Obligated Party, and all parties have had an opportunity to have this Loan Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Loan Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Loan Agreement.

19. **Laws Incorporated by Reference.** The full text of the laws listed in this Exhibit, including enforcement and penalty provisions, are incorporated into this Loan Agreement by



reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Exhibit are available at [www.sfgov.org](http://www.sfgov.org) under “Open Gov.”

20. **Sugar-Sweetened Beverage Prohibition.** The Obligated Party agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Loan Agreement.

21. **First Source Hiring Program.** The Obligated Party must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Loan Agreement, and the Obligated Party is subject to the enforcement and penalty provisions in Chapter 83.

22. **Prevailing Wages.** Services to be performed by the Obligated Party under this Loan Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) of the Administrative Code or Section 21C (collectively, “Covered Services”). The provisions of Section 6.22(e) and 21C of the Administrative Code are incorporated as provisions of this Loan Agreement as if fully set forth herein and will apply to any Covered Services performed by the Obligated Party.