

File No. 130678

Committee Item No. 11

Board Item No. 43

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: 07/10/2013

Board of Supervisors Meeting

Date: July 16, 2013

Cmte Board

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Completed by: Victor Young

Date July 5, 2013

Completed by: Victor Young

Date 7/11/13

1 [Multifamily Housing Revenue Bonds - 1100 Ocean Avenue Apartments - Not to Exceed
2 \$19,500,000]

3 **Resolution authorizing the issuance and delivery of multifamily housing revenue bonds**
4 **in an aggregate principal amount not to exceed \$19,500,000 for the purpose of**
5 **providing financing for the acquisition and construction of a 71-unit multifamily rental**
6 **housing project known as 1100 Ocean Avenue Apartments; approving the form of and**
7 **authorizing the execution of a trust indenture providing the terms and conditions of the**
8 **bonds; approving the form of and authorizing the execution of a regulatory agreement**
9 **and declaration of restrictive covenants; approving the form of and authorizing the**
10 **execution of a loan agreement; authorizing the collection of certain fees; ratifying and**
11 **approving any action heretofore taken in connection with the bonds and the project;**
12 **granting general authority to City officials to take actions necessary to implement this**
13 **Resolution; and related matters.**

14
15 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the
16 "Board") desires to provide for a portion of the costs of the acquisition and construction by
17 1100 Ocean Avenue Limited Partnership, a California limited partnership (the "Borrower"), of
18 a 71-unit residential rental development located at 1100 Ocean Avenue, San Francisco,
19 California, known as "1100 Ocean Avenue Apartments" (the "Project"), to provide housing for
20 persons and families of low income through the issuance of revenue bonds; and

21 WHEREAS, The City and County of San Francisco (the "City") is authorized to issue
22 revenue bonds for such purpose pursuant to the Charter of the City, Article I of Chapter 43 of
23 the Administrative Code of the City and, to the extent applicable, Chapter 7 of Part 5 of
24 Division 31 (commencing with Section 52075) of the Health and Safety Code of the State of
25

1 California ("Health and Safety Code"), as now in effect and as it may from time to time
2 hereafter be amended or supplemented (collectively, the "Act"); and

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

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

9 WHEREAS, On December 11, 2012, this Board, in Resolution No. 475-12, approved
10 the issuance of the Bonds for the purposes of Section 147(f) of the Code; and

11 WHEREAS, There has been prepared and presented to the Board for consideration at
12 this meeting the documentation required for the issuance of the Bonds, and such
13 documentation is on file with the Clerk of the Board of Supervisors (the "Clerk of the Board");
14 and

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

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

20 WHEREAS, The City has engaged Orrick, Herington & Sutcliffe, LLP and Lofton &
21 Jennings, as co-bond counsel with respect to the Bonds ("Co-Bond Counsel"); and

22 WHEREAS, Bank of America, N.A.; a national banking association has expressed its
23 intention to purchase, or cause an affiliate to purchase, the Bonds authorized hereby; now,
24 therefore, be it

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

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

5 Section 2. Approval of Issuance of Bonds. In accordance with the Act and the
6 Indenture (hereinafter defined), the City is hereby authorized to issue and deliver revenue
7 bonds of the City, such bonds to be issued in one series, which may have two or more
8 subseries, and designated as "City and County of San Francisco, California Multifamily
9 Housing Revenue Bonds (1100 Ocean Avenue Apartments), Series 2013E," or such other
10 designation as may be necessary or appropriate to distinguish such series from every other
11 series of bonds, in an aggregate principal amount not to exceed \$19,500,000 (the "Bonds"),
12 with an interest rate not to exceed twelve percent (12%) per annum for the Bonds, and which
13 shall have a final maturity date not later than July 1, 2018. The Bonds shall be in the form set
14 forth in and otherwise in accordance with the Indenture, and shall be executed by the manual
15 or facsimile signature of the Mayor of the City (the "Mayor") and attested by the manual or
16 facsimile signature of the Clerk of the Board.

17 Section 3. Indenture. The Trust Indenture (the "Indenture"), by and between the City
18 and a trustee to be named therein (the "Trustee"), in the form presented to the Board, a copy
19 of which is on file with the Clerk of the Board, is hereby approved. The Mayor, the Housing
20 Development Director of the Mayor's Office of Housing (the "Director") or any Authorized
21 Representative of the City (as such term is defined in the Indenture) is hereby authorized to
22 execute the Indenture, approved as to form by the City Attorney of the City (the "City
23 Attorney"), in substantially said form, together with such additions thereto and changes therein
24 as the City Attorney and Bond Counsel may approve or recommend in accordance with
25 Section 7 hereof.

1 Section 4. Regulatory Agreement and Declaration of Restrictive Covenants. The
2 Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory
3 Agreement"), between the City and the Borrower, in the form presented to the Board, a copy
4 of which is on file with the Clerk of the Board, is hereby approved. The Mayor, the Director or
5 any Authorized Representative is hereby authorized to execute the Regulatory Agreement,
6 approved as to form by the City Attorney, in substantially said form, together with such
7 additions thereto and changes therein as the City Attorney and Co-Bond Counsel may
8 approve or recommend in accordance with Section 7 hereof.

9 Section 5. Loan Agreement. The Loan Agreement (the "Loan Agreement") by and
10 among the City, the Trustee and the Borrower, in the form presented to the Board, a copy of
11 which is on file with the Clerk of the Board, is hereby approved. The Mayor, the Director or
12 any Authorized Representative is hereby authorized to execute the Loan Agreement in
13 substantially said form, together with such additions thereto and changes therein as the City
14 Attorney and Co-Bond Counsel may approve or recommend in accordance with Section 7
15 hereof.

16 Section 6. Issuer Fees. The City, acting through the Mayor's Office of Housing, shall
17 charge a fee for the administrative costs associated with issuing the Bonds in an amount not
18 to exceed 0.25% of the aggregate principal amount of the Bonds. Such fee shall be payable
19 at bond closing and may be contingent on the bond sale. The City shall also charge an
20 annual fee for monitoring the restricted units in an amount not to exceed 0.125% of the
21 outstanding aggregate principal amount of the Bonds, but no less than \$2,500 annually, for
22 the term of the Regulatory Agreement. The initial monitoring fee shall be payable at bond
23 closing. The Board hereby authorizes the Mayor's Office of Housing to charge and collect the
24 fees described in this section.

1 Section 7. Modifications, Changes, Additions. Any Authorized Representative
2 executing the Indenture, the Regulatory Agreement or the Loan Agreement (collectively, the
3 "City Agreements"), in consultation with the City Attorney and Co-Bond Counsel, is hereby
4 authorized to approve and make such modifications, changes or additions to the City
5 Agreements as may be necessary or advisable, provided that such modification does not
6 authorize an aggregate principal amount of Bonds in excess of \$19,500,000, provide for a
7 final maturity on the Bonds later than July 1, 2018, or provide for the Bonds to bear interest at
8 a rate in excess of twelve percent (12%) per annum. The approval of any modification,
9 addition or change to any of the aforementioned documents shall be evidenced conclusively
10 by the execution and delivery of the document in question.

11 Section 8. Ratification. All actions heretofore taken by the officers and agents of the
12 City with respect to the sale and issuance of the Bonds are hereby approved, confirmed and
13 ratified.

14 Section 9. General Authority. The proper officers of the City are hereby authorized
15 and directed, for and in the name and on behalf of the City, to do any and all things and take
16 any and all actions and execute and deliver any and all certificates, agreements and other
17 documents, including but not limited to those documents described in the Indenture, the Loan
18 Agreement, and the Regulatory Agreement, which they, or any of them, may deem necessary
19 or advisable in order to consummate the lawful issuance and delivery of the Bonds and to
20 effectuate the purposes thereof and of the documents herein approved in accordance with this
21 Resolution.

22 ///

23 ///

24 ///

25 ///

1 Section 10. File. All documents referenced herein as being on file with the Clerk of the
2 Board are located in File No. 130678, which is hereby declared to be a part of this
3 Resolution as if set forth fully herein.

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

7
8 By: Kenneth David Roux
9 KENNETH DAVID ROUX
Deputy City Attorney

Mayor's Office of Housing and Community Development
City and County of San Francisco



Edwin M. Lee
Mayor

Olson Lee
Director

June 21, 2013

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

RE: Resolution Authorizing the execution and delivery of a Multifamily Housing Revenue Indebtedness Note for 1100 Ocean Avenue, for an amount not to exceed \$19,500,000

Dear Supervisor Yee:

The Mayor's Office of Housing and Community Development (MOHCD) requests your support in introducing and sponsoring a resolution (attached) at the Board of Supervisors on Tuesday, June 26, 2013, which would authorize the City to enter into qualified mortgage revenue indebtedness for 1100 Ocean Avenue, (the "Project"). This is the follow-up legislation to the resolution you sponsored in November 2012 that authorized MOHCD (formerly MOH) to apply to the California Debt Limit Allocation Committee ("CDLAC") for an allocation of qualified mortgage revenue indebtedness. The City, on behalf of the project sponsor, 1100 Ocean Avenue LP, received its \$19.5 million allocation in May 2013.

The proposed project will involve the new construction of a 71-unit, LEED certified, rental development comprised of 1, 2, and 3-bedroom units with a central courtyard, podium playground, social services space, bicycle storage, and ground floor commercial space. The project site is located in San Francisco's Ocean Avenue corridor. 45 of the units will be affordable to low income households making no more than 50% AMI, while 25 of the units will be for Transition Age Youth ("TAY"), those 18-24 years of age who are transitioning from public systems (like foster care) or are at risk of not making a successful transition to adulthood. The TAY units will be restricted to households making no more than 15% AMI.

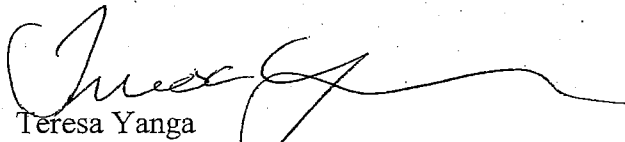
The Mayor's Office of Housing and Community Development has previously issued bonds for rental housing. These financings are conduit financings, which do not require the City to pledge City funds as repayment of the bonds. Rather, the bondholders' only recourse for payment are the project revenues themselves and any credit enhancement provided by lenders. Just as with all of the other multifamily housing mortgage revenue bonds MOHCD has issued on behalf of its

affordable housing projects and programs, this is a conduit, or pass-through, financing mechanism and it is not an obligation of the City to repay the Note from City funds.

We request that the resolution be introduced at the Board on June 26, 2013. Due to the extremely busy agenda of the Budget and Finance Committee, we are assuming it will be referred to Land Use and Economic Development Committee for July 1, 2013. We request that the resolution be approved by the Board on July 9, 2013, so that the project can avoid any delays. We anticipate that bond closing will occur in mid-August and construction will commence shortly thereafter.

The attached resolution has been reviewed by Deputy City Attorney Kenneth Roux and is in final form. If you have any questions about the resolution or the project, please contact my staff, Kevin Kitchingham at 701-5523. Thank you for your assistance.

Sincerely,



Teresa Yanga
Director of Housing Development

1100 Ocean Avenue project Description

1100 Ocean Avenue Apartments, is a 71 unit family development in the transit rich Ocean Avenue Corridor , adjacent to City College of San Francisco. Twenty-five units are affordable at 15% AMI and set aside for transition-age youth (TAY) recently emancipated from the foster care system that are homeless or at risk of homelessness. The other 45 units will be available to families earning up to 50% of local AMI, with the remaining unit reserved for the property manager. The proposed development will be five stories tall with ground floor retail and apartments located on floors 2 and above. The apartment mix is 18 studios, 18 one-bedroom, 21 two-bedroom and 14 three-bedroom units. On the ground floor, approximately 6,500 square feet of space will be devoted to neighborhood-serving retail. Community spaces include a community room for after school programs and other activities, a TAY multi-purpose room, offices for on-site services, and an exercise room for residents. There will be approximately 9,100 square feet of usable open space in the development. The development is expected to start construction in June of 2013.

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

**[TRUSTEE],
as Trustee**

And

**1100 OCEAN AVENUE LIMITED PARTNERSHIP,
A CALIFORNIA LIMITED PARTNERSHIP**

as Borrower

LOAN AGREEMENT

Dated as of July 1, 2013

Relating to

[\$19,500,000]

**City and County of San Francisco, California
Multifamily Housing Revenue Bonds
(1100 Ocean Avenue Apartments),
Series 2013E**

The interest of the City and County of San Francisco, California (the "Issuer") in this Loan Agreement has been assigned (except for certain "Reserved Rights" as defined in this Loan Agreement) pursuant to the Trust Indenture dated as of the date hereof from the Issuer to [Trustee], as trustee (the "Trustee"), and is subject to the security interest of the Trustee thereunder.

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LOAN AGREEMENT

This LOAN AGREEMENT dated as of July 1, 2013 (together with all supplements, modifications and amendments thereto, this "**Loan Agreement**"), among 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**"), [TRUSTEE], a national banking association, as trustee under the herein defined Indenture (together with any successor trustee hereunder and their respective successors and assigns, the "**Trustee**"), and 1100 OCEAN AVENUE LIMITED PARTNERSHIP, A California limited partnership (together with its successors and assigns, the "**Borrower**").

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 acquisition, construction and equipping of residential rental housing facilities to provide housing for persons of low and very low income; and

WHEREAS, by proceedings adopted pursuant to and in accordance with the provisions of the Act, the Issuer has authorized the issuance of its Multifamily Housing Revenue Bonds (1100 Ocean Avenue Apartments), Series 2013E, in the maximum aggregate principal amount of \$[Par Amount] (the "**Bonds**"), to finance a portion of the costs of the acquisition, construction and equipping of a 71-unit residential rental development on the Land legally described on *Exhibit A* hereto pursuant to the Borrower's leasehold interest therein, to be known as 1100 Ocean Avenue Apartments; and

WHEREAS, pursuant to this Loan Agreement, the Issuer has agreed to issue the Bonds and to use proceeds of the Bonds to fund a loan 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 acquisition, construction and equipping of the Project, (ii) make payments sufficient to pay the principal of, premium, if any, 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 herein; and

WHEREAS, the Borrower has delivered to the Issuer, and the Issuer has assigned to the Trustee, its promissory note dated the date of issuance of the Bonds in an aggregate original principal amount equal to the aggregate original principal amount of the Bonds in substantially the form set forth on *Exhibit B* hereto (as the same may be amended, modified or supplemented from time to time, the "**Note**") evidencing its obligation to repay the Loan; and

WHEREAS, to secure its obligations under the Loan Agreement and the Note, the Borrower has executed (i) 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**"), 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 covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. The following capitalized terms shall have the meanings specified in this Article unless the context requires otherwise. All other capitalized terms used herein which are defined in the Indenture and not defined herein shall have the respective meanings ascribed thereto in the Indenture unless otherwise expressly provided or unless the context otherwise requires. The singular shall include the plural and the masculine shall include the feminine and neuter shall include the masculine or feminine.

“**Accountant**” means [Reznick Group, P.C.], or such other independent certified public accountant or firm of independent certified public accountants, selected by the Borrower and approved by the Servicer, such approval not to be unreasonably withheld or delayed.

“**Appraisal**” means an appraisal of the market value of the Project performed by a qualified independent appraiser approved by the Servicer.

“**Approved Budget**” means the Proposed Budget approved by the Servicer.

“**Architect**” means [_____].

“**Architect’s Contract**” means the [_____], between the [Borrower and the Architect] providing for the design of the Improvements and the supervision of the construction and equipping thereof, including ongoing monthly inspection of the Improvements, certification of Requisitions and certification of Completion, among other things.

“**Bank**” means Bank of America, N.A., and its successors and assigns.

“**Capital Expenditures**” means capital expenditures determined in accordance with generally accepted accounting principles relating to the repair, renovation or replacement of the Project.

“**Change Order**” means a change made to the Plans and Specifications, as evidenced by a written change order request in accordance with the terms of the Construction Contract.

“**Completion Deadline**” means [_____], as the same may be extended in accordance with Section 5.1(a) hereof and the Construction Disbursement Agreement.

“Construction Contract” means the contract between the Borrower and the Contractor, providing for the construction and equipping of the Improvements and certification of Requisitions, among other things.

“Construction Disbursement Agreement” means the Construction Disbursement Agreement of even date with this Loan Agreement, as amended, modified or supplemented from time to time, between the Borrower and the Bank.

“Consulting Engineer” shall have the meaning ascribed to that term in the Construction Disbursement Agreement.

“Contractor” means [____], or another general contractor approved by the Majority Owner.

“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.

“Default” or “Event of Default” means, when referring to (i) the Indenture, an event or condition specified or defined as such by Article VI of the Indenture and (ii) this Loan Agreement, an event or condition specified or defined as such by Section 7.1 hereof.

“Development Budget” means the budget for total estimated Project Costs and sources of payment attached to the Construction Disbursement Agreement, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and the Construction Disbursement Agreement.

“Direct Costs” means the costs of the Improvements, the Personal Property, and all labor, materials, fixtures, machinery and equipment required to construct and equip the Improvements in accordance with the Plans and Specifications.

“Financing Statements” means Uniform Commercial Code Form 1 Financing Statement(s) from the Borrower and the General Partner in favor of the Trustee.

“General Partner” means, collectively, Mercy Housing Calwest, a California nonprofit public benefit corporation (the “Managing General Partner”), and Bernal Housing LLC, a California limited liability company (the “Co-General Partner”), together with any permitted successors and assigns as general partners of the Borrower.

“General Partner Documents” means the Partnership Assignment and the Environmental Indemnity.

“Generally Accepted Accounting Principles” means the principles that are (i) consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors, as in effect from time to time, and (ii) consistently applied with past financial statements of the Borrower adopting the same principles; *provided*, that a certified

public accountant would, insofar as the use of such accounting principles is pertinent, be in a position to deliver an unqualified opinion (other than a qualification regarding changes in Generally Accepted Accounting Principles) as to financial statements in which such principles have been properly applied.

“Governmental Authority” means the United States, the State in which the Land is located and any political subdivision, agency, department, commission, board, bureau, authority or instrumentality of either of them, including any local authorities, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of government, which has jurisdiction over the Land or the construction, equipping and operation of the Project thereon.

“Guarantors” means Mercy Housing Inc., a Nebraska not-for-profit corporation and Mercy Housing California, a California nonprofit public benefit corporation.

“Guarantors Documents” means, collectively, the Completion Guaranty and the Payment Guaranty.

“Hazardous Substances” has the meaning set forth for that term in the Environmental Indemnity.

“Imposition” shall have the meaning ascribed to that term in the Mortgage.

“Improvements” means the 71-unit multifamily rental housing project with related site improvements and amenities located on the Land and constructed, equipped and furnished in accordance with the Plans and Specifications.

“Indebtedness” means all obligations, contingent and otherwise, that in accordance with Generally Accepted Accounting Principles should be classified upon the Obligor’s balance sheet as liabilities, or to which reference should be made by footnotes thereto, including in any event and whether or not so classified: (a) all debt and similar monetary obligations, whether direct or indirect; (b) all liabilities secured by any deed to secure debt, mortgage, deed of trust, pledge, security interest, lien, charge or other encumbrance existing on property owned or acquired subject thereto, whether or not the liability secured thereby shall have been assumed; (c) all liabilities under capitalized leases; and (d) all guaranties, endorsements and other contingent obligations whether direct or indirect in respect of indebtedness of others, including the obligations to reimburse the issuer of any letter of credit for amounts drawn on such letter of credit.

“Indirect Costs” means all title insurance premiums, survey charges, engineering fees, architectural fees, real estate taxes, appraisal costs, premiums for insurance, marketing, advertising and leasing costs, brokerage commissions, legal fees, accounting fees, overhead and administrative costs, and all other expenses as shown on the Development Budget which are expenditures relating to the Project and are not Direct Costs.

“Initial Notification of Taxability” means the receipt by the Trustee or the Owner of a communication from the Internal Revenue Service or any court of competent jurisdiction to the effect that interest on the Bonds is not excluded, or will not in the future be excluded, from the gross income of the owners of the Bonds for federal income tax purposes.

“Investor Limited Partner” means Bank of America, N.A., together with its permitted successors and assigns as limited partner in Borrower.

“Issuer Annual Fee” means the annual fee of the Issuer due and payable pursuant to Section 20 of the Regulatory Agreement.

“Issuer Fee” means an issuance fee in the amount of [] Dollars (\$[]) payable on or before the Closing Date pursuant to Section 20 of the Regulatory Agreement.

“Land” means the real property described in *Exhibit A* attached hereto.

“Lien” means any interest in the Project or any part thereof or any right therein, including without limitation any rents, issues, profits, proceeds and revenues therefrom, securing an obligation owed to, or a claim by, any Person, whether such interest is based on the common law, statute or contract, and including but not limited to the lien and security interest arising from a deed to secure debt, mortgage, deed of trust, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” shall also include any and all reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project or any part thereof or any interest therein.

“Loan Fees” means loan fees payable by the Borrower to the Bank in accordance with the Construction Disbursement Agreement and in any other agreements between the Borrower and the Bank related to loan fees.

“Management Agreement” means the [Property Management Agreement between the Borrower and the Manager, and any substitute agreement relating to the management of the Project].

“Manager” means [Mercy Housing Management Group], or any successor manager of the Project approved by the Servicer and the Issuer (which approval of the Issuer shall not be unreasonably withheld and shall be deemed granted if not rejected within ten (10) days of receipt of written request therefor).

“Net Operating Income” means, for any period, (A) the lesser of (i) actual Project Revenues for such period or (ii) Project Revenues as projected in the Appraisal for such period, adjusted to reflect a five percent (5.0%) vacancy rate less Operating Expenses for such period.

“Obligor(s)” means the Borrower, the General Partner and the Guarantors.

“Operating Expenses” means, for any period, the aggregate amount of expenses incurred by the Borrower in connection with the Project pursuant to arm’s length transactions for ordinary and necessary expenses sufficient to provide the amenities and services associated with a multi-family residential facility as follows: labor costs; general maintenance; legal and accounting fees relating solely to the operation of the Project (and not partnership administration, other than audit and other expenses incurred by the Borrower relating solely to the operation of the Project); general and administrative costs of the Borrower directly attributable to the Project (and not partnership administration) and advertising and marketing costs; supplies for the

Project; non-capital repairs and replacements; leasing and brokerage commissions; management fees payable pursuant to the management agreement up to an amount equal to [3.0]% of Project Revenues; costs of licenses, permits and similar fees relating to property operations; premiums for insurance required pursuant to the Loan Agreement; charges for electricity and other utilities; real estate taxes, water and sewer rents and assessments; and all other expenses incurred in connection with the ordinary course of property operations and maintenance. The foregoing expenses and fees paid to Affiliates of the Borrower, with the Servicer's consent, shall be included as Operating Expenses in an amount equal to the actual fees and expenses paid or payable to such Affiliate, but in no event greater than an amount that customarily would be paid to an unaffiliated third party on an arm's-length basis for such services. Without limiting the generality of those items which shall be excluded from the definition of Operating Expenses, the following shall be specifically excluded from such calculation: depreciation, amortization and other non-cash items; all partnership administrative expenses (including, without limitation, legal, accounting, and other professional expenses); prepaid expenses which are not customarily prepaid in the ordinary course of business; any termination or similar fee in connection with financing for the Project; scheduled debt service and scheduled principal payments on Indebtedness related to the Project; penalties, late fees and similar charges arising from or on account of the Borrower's failure to pay any monetary obligations; any costs, expenses or fees, including interest, payable by the Borrower on advances made by the Servicer, the Issuer or the Trustee after an Event of Default, and franchise and income taxes of the Borrower.

"Organizational Documents" means for any corporation, partnership, trust, limited liability company, limited liability partnership, unincorporated association, business or other legal entity, the documents pursuant to which such entity has been established or organized, as such documents may be amended from time to time in accordance with the terms of this Loan Agreement.

"Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership of the Borrower between the General Partner, the Investor Limited Partner, and Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, as Special Limited Partner, as the same may be amended, modified or supplemented from time to time, subject to the terms hereof.

"Partnership Documents" means, collectively, the Partnership Agreement and any other documents that govern the formation, organization, management and funding of Borrower's partnership.

"Permitted Encumbrances" shall have the meaning ascribed to such term in the Mortgage.

"Personal Property" means all materials, furnishings, fixtures, furniture, machinery, equipment and all items of tangible or intangible personal property now or hereafter owned or acquired by the Borrower in which the Issuer has been or will be granted an interest to secure the obligations of the Borrower under the Loan Documents.

"Plans and Specifications" means the plans and specifications for the Project prepared by the Architect and more particularly described in the Construction Disbursement Agreement,

as the same may be amended, modified or supplemented in accordance with the terms hereof and the Construction Disbursement Agreement.

“Project Approvals” means all approvals, consents, waivers, orders, agreements, authorization, permits and licenses required under applicable Legal Requirements or under the terms of any restriction, covenant or easement affecting the Project, or otherwise necessary or desirable for the ownership, acquisition, construction, equipping, use and operation of the Project and the Improvements, whether obtained from a Governmental Authority or any other Person.

“Project Costs” means the sum of all Direct Costs and Indirect Costs that will be incurred by the Borrower in connection with (a) the acquisition of (i) a leasehold interest in the Land and (ii) the Improvements, (b) the construction and equipping of the Improvements on the Land, and (c) the marketing and leasing of leasable space in the Improvements.

“Project Revenues” means, for any period, the revenues actually collected during such period (a) generated from all tenants and others occupying or having a right to occupy or use the Project or any portion thereof (other than revenue from Section 8 vouchers to the extent such revenue causes the rent on any unit to exceed the lower of (A) maximum allowable tax credit rent designated for that unit or (B) the average rent being achieved for similar non-Section 8 subsidized units within the Project for such period), adjusted to reflect rental concessions over the term of any applicable lease, and (b) from the use and occupancy of any amenities and services of the Project, including vending machine income, net cable TV revenues, laundry service and parking income, but exclusive of (i) capital contributions, (ii) net proceeds from the sale or refinancing of the Project, (iii) net proceeds of insurance (other than proceeds of loss of rent insurance to the extent paid for apartment units occupied at the time of the loss), and net condemnation awards, (iv) security deposits and prepaid rents to the extent not permitted to be released to the Borrower pursuant to the terms of leases, and (v) interest earnings.

“Proposed Budget” means the proposed capital and operating budget for the Project, submitted to the Servicer for approval.

“Related Person” means a “related person” as defined in Section 147(a) of the Code.

“Required Equity Funds” means contributions by Investor Limited Partner to the capital of the Borrower, for application to Project Costs in accordance with the Approved Budget, to be contributed and so applied in installments at times and in amounts approved by the Servicer.

“Reserved Rights” means, the rights of the Issuer hereunder pursuant to Sections 2.3(a), 2.3(b), 2.3(c), 2.3(d), 2.3(e), 2.3(f), 2.3(l), 2.3(m), 3.2(c), 3.2(d), 3.2(f), 5.3, 5.6, 5.10, 5.13, 5.14, 5.19, 6.3(a)(ii), 7.4, 7.8, 8.1, 8.12, 8.13, 8.14, and 8.15 hereof, the right to enforce the provisions of Section 5.26 hereof, and the right to demand specific performance under the Regulatory Agreement, which are retained and not assigned to the Trustee pursuant to the Indenture.

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

“Single Purpose Entity” means an entity that (i) is formed solely for the purpose of owning and operating a single asset; (ii) does not engage in any business unrelated to such asset;

(iii) keeps its own books and records and its own accounts, separate and apart from the books, records and accounts of any other Person; and (iv) holds itself out as being a legal entity, separate and apart from any other Person.

“**Special Limited Partner**” means Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, together with its permitted successors and assigns.

“**Survey**” means an instrument survey of the Land and the Improvements prepared in accordance with the Servicer’s survey requirements, such survey to be reasonably satisfactory to the Servicer in form and substance.

“**Tax Credits**” means the federal low income housing credits available with respect to the Project.

“**Title Insurance Company**” means Old Republic Title Company.

“**Title Policy**” means an ALTA standard form title insurance policy issued by the Title Insurance Company for the benefit of the Trustee and, its successors and assigns, as their interests may appear (with such reinsurance or co-insurance as the Servicer may require, any such reinsurance to be with direct access endorsements) insuring the priority of the Mortgage and that the Borrower holds a marketable leasehold interest in the Land and fee interest in the Improvements, subject only to Permitted Encumbrances and such exceptions as the Servicer may approve, and containing such endorsements and affirmative insurance as the Servicer in its discretion may require.

Section 1.2 Construction. In this Loan Agreement, unless the context otherwise requires:

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

(b) 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 Loan Agreement.

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

(d) 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.

ARTICLE 2

REPRESENTATIONS AND COVENANTS

Section 2.1 Representations by the Issuer. The Issuer makes the following representations as of the date of the execution and delivery of this Loan Agreement as the basis for the undertakings on its part herein contained:

(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 acquisition, 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 hereof and the transactions contemplated hereby.

Section 2.2 Representations by the Borrower. The Borrower makes the following representations and warranties, and covenants and agrees as follows, as of and from the date of the execution and delivery of this Loan Agreement as the basis for the undertakings on its part herein contained:

(a) The Borrower is, and at all times will be, a limited partnership in good standing under the laws of the State, has full legal right, power and authority to enter into this Loan Agreement and the Loan Documents and to carry out and consummate all transactions contemplated hereby and by the Loan Documents, and by proper corporate action has duly authorized the execution, delivery and performance of this Loan Agreement and the Loan Documents. The Managing General Partner is, and at all time will be, a nonprofit public benefit corporation, duly organized, validly existing and in good standing under the laws of the State. The Co-General Partner is, and at all time will be, a limited liability company, duly organized, validly existing and in good standing under the laws of the State. The officers of the Borrower executing this Loan Agreement and the Loan Documents are duly and properly in office and fully authorized to execute the same. This Loan Agreement and the Loan Documents have been duly authorized, executed and delivered by the Borrower.

(b) The execution and delivery of this Loan Agreement and the Loan Documents, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the Partnership Agreement of the Borrower, or to the best knowledge of the Borrower and with respect to the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Loan Agreement or the Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

(c) This Loan Agreement and the Loan Documents will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

(d) No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the best knowledge of the Borrower and with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of this Loan Agreement or the Loan Documents, or the consummation of any transaction herein or therein contemplated, or the

fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

(e) The Borrower is, and will at all times be, a Single Purpose Entity. The address of the Borrower's chief executive office and principal place of business is [1100 Ocean Avenue Limited Partnership, c/o Mercy Housing California, 1360 Mission Street, Suite 300, San Francisco, CA 94103, Attention: Asset Management. The federal employer identification number for the Borrower is _____].

(f) On the Closing Date, the Borrower will hold a leasehold interest in the Land and fee interest in the Improvements, in each case subject only to the Permitted Encumbrances. The Borrower possesses, and will at all times possess, all franchises, patents, copyrights, trademarks, trade names, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of its business substantially as now conducted or as it is intended to be conducted with respect to the Project, without known conflict with any rights of others.

(g) The Borrower is not subject to any charter, partnership or other legal restriction, or any judgment, decree, order, rule or regulation that has or is expected in the future to have a materially adverse effect on the business assets or financial condition of the Borrower. The Borrower is not, and will not be, a party to any contract or agreement that has or is expected, in the judgment of the Borrower's general partner, to have any materially adverse effect on the business or financial condition of the Borrower.

(h) The Borrower is not and will not at any time be, in violation of any provision of its Organizational Documents or any agreement or instrument to which it may be subject or by which it or any of its properties may be bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that could result in the imposition of substantial penalties or adversely affect the financial condition, properties or business of the Borrower.

(i) The Borrower and each Obligor (i) has made or filed, and will make or file in a timely fashion, all federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid, and will pay when due, all taxes and other governmental assessments and charges shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and by appropriate proceedings, (iii) if a partnership, limited liability partnership or limited liability company, has, and will maintain, partnership tax classification under the Code, and (iv) has set aside, and will at all times set aside, on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the period to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the partners, officers, members or trustees of the Borrower know of no basis for any such claim. The Borrower has filed, and will continue to file, all of such tax returns, reports, and declarations either (x) separately from any Affiliate or (y) if part of a consolidated filing, as a separate member of any such consolidated group.

(j) The Project is located wholly within the City and County of San Francisco, California and within the jurisdiction of the Issuer.

(k) There is no Event of Default on the part of the Borrower or any Obligor under this Loan Agreement or any other Loan Document, any General Partner Document, any Guarantors Document or any Organizational Document, and no event has occurred and is continuing which after notice or passage of time or both would give rise to a default under any thereof. The Borrower has received no notices of and has no knowledge of any violations of any Legal Requirements or Project Approvals.

(l) The certifications, representations, warranties, statements, information and descriptions contained in the Loan Documents and in the Borrower's Tax Certificate, as of the date of the first authentication and delivery of the Bonds, are and will be true, correct and complete, do not and will not contain any untrue statement or misleading statement of a material fact, and do not and will not omit to state a material fact required to be stated therein or necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in light of the circumstances under which they were made, not misleading. The estimates and the assumptions contained in the Loan Documents and in the Borrower's Tax Certificate, as of the date of the first authentication and delivery of the Bonds, are reasonable and based on the best information available to the Borrower. Each of the certifications, representations, warranties, statements, information and descriptions contained in the Borrower's Tax Certificate is hereby incorporated into this Loan Agreement by reference, as if fully set forth herein.

(m) The Borrower has furnished to the Issuer, in the Tax Certificate, all information necessary for the Issuer to file an IRS Form 8038 with respect to the Bonds, and all of such information is and will be on the date of filing, true, complete and correct.

(n) The Borrower is not contemplating either the filing of a petition by it, by the General Partner under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property, and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it or any Obligor.

(o) The Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of the Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. section 2510.3-101.

(p) No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other Regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Loan Document.

(q) The Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

(r) The Borrower has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of the Borrower's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed the Borrower's total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower's assets is and will, immediately following the execution and delivery of the Loan Documents, be greater than the Borrower's probable liabilities, including maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents, will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

(s) No written information, exhibit or report furnished to the Issuer by the Borrower in connection with the negotiation of this Loan Agreement or the Loan Documents contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(t) There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower or the assets, properties or operations of the Borrower which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, this Loan Agreement or the Loan Documents, or upon the financial condition, assets, properties or operations of the Borrower, and the Borrower is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Loan Agreement or the Loan Documents, or the financial condition, assets, properties or operations of the Borrower. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating its facilities.

(u) All utility services necessary and sufficient for the construction, equipping and operation of the Project shall be, upon Completion of the Project, and thereafter will at all times be, available through dedicated public rights of way or through perpetual private easements with respect to the Borrower's interest in which the Mortgage creates a valid and enforceable first

priority mortgage lien. The Borrower has obtained, or promptly will obtain, all utility installations and connections required for the operation and servicing of the Project for its intended purposes.

(v) The rights of way for all roads necessary for the full utilization of the Project for its intended purposes have either been acquired by the appropriate Governmental Authority or have been dedicated to public use and accepted by such Governmental Authority. All such roads shall have been completed, and the right to use all such roads, or suitable substitute rights of way approved by the initial Servicer, shall be maintained at all times for the Project. All curb cuts, driveways and traffic signals shown on the Plans and Specifications are existing or have been fully approved by the appropriate Governmental Authority and after the completion thereof, shall be maintained at all times for the Project.

(w) The acquisition, construction, equipping, use and occupancy of the Project will at times comply with all Legal Requirements. The Borrower will give all notices to, and take all other actions with respect to, such Governmental Authorities as may be required under applicable Legal Requirements to construct and equip the Improvements and to use, occupy and operate the Project.

(x) Except as set forth on *Exhibit C* hereto, the Borrower has obtained all Project Approvals required for the acquisition, construction and equipping of the Project in accordance with the Plans and Specifications. All Project Approvals obtained by the Borrower have been validly issued and are in full force and effect. The Borrower has no reason to believe that any of the Project Approvals required for acquisition, construction and equipping of the Project in accordance with the Plans and Specifications and not heretofore obtained by the Borrower will not be obtained by the Borrower in the ordinary course in order to permit completion of construction and equipping of the Project in accordance with the Plans and Specifications on or before the Completion Deadline. The Borrower will timely obtain all Project Approvals not heretofore obtained by the Borrower (including those listed and described on *Exhibit C* hereto, those required for use and occupancy of the Project for its intended purpose upon Completion and any other Project Approvals which may hereafter become required, necessary or desirable) and will furnish the Servicer with evidence that the Borrower has obtained such Project Approvals promptly upon their receipt. The Borrower will duly perform and comply with all of the terms and conditions of all Project Approvals obtained at any time. No Project Approvals will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project, including any transfer pursuant to foreclosure, deed in lieu of foreclosure or exercise of power of sale under the Mortgage.

(y) The Borrower has furnished the Bank with true and complete sets of the Plans and Specifications. The Plans and Specifications so furnished to the initial Servicer comply with all Legal Requirements, all Project Approvals, and all restrictions, covenants and easements affecting the Project, and have been approved by such Governmental Authority as is required for construction and equipping of the Improvements.

(z) The Development Budget accurately reflects all Project Costs.

(aa) The Survey delivered to the Bank does not fail to reflect any material matter of survey affecting the Project or the title thereto.

(bb) No part of the Land is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazard or to the extent any part of the Land is an area identified as an area having special flood hazard, adequate flood insurance has been obtained by the Borrower.

(cc) The Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which might materially adversely affect the condition (financial or otherwise) or business of the Borrower. There has not been and shall never be committed by the Borrower or any other Person in occupancy of or involved with the operation or use of the Project any act or omission affording any Governmental Authority the right of forfeiture as against the Project or any part thereof any moneys paid in performance of the Borrower's obligations under any Loan Document.

(dd) The Construction Contract and the Architect's Contract are each in full force and effect and each of the parties thereto are in full compliance with their respective obligations thereunder. The work to be performed by the Contractor under the Construction Contract is the work called for by the Plans and Specifications, and all work required to complete the Improvements in accordance with the Plans and Specifications is provided for under the Construction Contract.

(ee) Each Requisition submitted by the Borrower shall contain an affirmation that the foregoing representations and warranties remain true and correct as of the date hereof.

(ff) The Related Persons are not (and to Borrower's knowledge after diligent inquiry), no other Person holding any legal or beneficial interest whatsoever in the Related Persons, directly or indirectly, is included in, owned by, Controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the Persons referred to or described in any list of persons, entities, and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended ("Executive Order 13224"), or any similar list issued by OFAC or any other department or agency of the United States of America (collectively, the "OFAC Lists").

Section 2.3 Covenants by the Borrower. The Borrower hereby covenants and agrees that, on and after the Closing Date, it will:

(a) Give written notice promptly, and in any event at least thirty (30) days prior to the closing thereof, of any intended refinancing of the Project to the Issuer, the Trustee and the Servicer;

(b) Comply with all Legal Requirements and promptly furnish the Issuer, the Trustee and the Servicer with reports of any official searches made by any Governmental Authority and any claims of violations thereof;

(c) Upon reasonable notice and at reasonable times, permit the Servicer, the Majority Owner, the Issuer and the Trustee (or their representatives) to enter upon the Land and inspect the Project;

(d) Indemnify the Issuer, the Trustee, the Owners and the Servicer against claims of brokers arising by reason of the execution hereof or the consummation of the transactions contemplated hereby;

(e) Deliver to the Servicer and the Issuer copies of all leases (other than leases to residential tenants in the ordinary course of business) with respect to the Project or any portion thereof, whether executed before or after the date of this Loan Agreement;

(f) Not enter into, cancel or amend any agreement for the furnishing of management or similar services to the Project, without the prior written consent of the Servicer and the Issuer, such consent not to be unreasonably withheld or delayed;

(g) Comply with all restrictions, covenants and easements affecting the Land or the Project;

(h) Take, or require to be taken, such acts as may be required under applicable law or regulation in order that the interest on the Bonds continues to be excludable from gross income for purposes of federal income taxation, and refrain from taking any action which would adversely affect the exclusion from gross income of interest on the Bonds from federal income taxation;

(i) Perform and satisfy all the duties and obligations of the Borrower set forth and specified in the Indenture as duties and obligations of the Borrower, including those duties and obligations which the Indenture requires this Loan Agreement or the other Loan Documents to impose upon the Borrower;

(j) Confirm and assure that the Project, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at reasonable times and upon reasonable notice by the Issuer, the Trustee or the Servicer or the duly authorized agent of any of them and shall keep copies of all written contracts or other instruments which affect the Project, all or any of which shall be subject to inspection and examination by the Issuer, the Trustee, the Servicer or the duly authorized agent of any of them;

(k) [Reserved];

(l) Promptly notify the Issuer, the Trustee and the Servicer in writing of any (i) default by the Borrower in the performance or observance of any covenant, agreement, representation, warranty or obligation of the Borrower set forth in this Loan Agreement or any other Loan Documents or (ii) any event or condition which with the lapse of time or the giving of notice, or both would constitute an Event of Default under this Loan Agreement or any other Loan Documents; and commence, pursue and complete construction and equipping of the Improvements as provided herein and in the Construction Disbursement Agreement;

(m) The Borrower covenants to pay all third-party fees of the financing, including but not limited to the following:

(i) All taxes and assessments of any type or character charged to the Issuer or to the Trustee affecting the amount available to the Issuer or the Trustee from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Trustee and taxes based upon or measured by the net income of the Trustee; *provided*, that the Borrower shall have the right to protest any such taxes or assessments and to require the Issuer or the Trustee, at the Borrower's expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Issuer or the Trustee;

(ii) All reasonable fees, charges and expenses of the Trustee and the Servicer for services rendered under the Indenture and/or the Loan Agreement, including, but not limited to, the Trustee Expenses, as and when the same become due and payable;

(iii) The Issuer Fee and the Issuer Annual Fee, payable to the Issuer as set forth in Section 20 of the Regulatory Agreement, and the reasonable fees and expenses of the Issuer or any agents, attorneys, accountants, consultants selected by the Issuer to act on its behalf in connection with this Loan Agreement, the Regulatory Agreement, the Bonds or the Indenture, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds or in connection with any litigation which may at any time be instituted involving this Loan Agreement, the Regulatory Agreement, other Issuer Documents, the Bonds or the Indenture or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing; and

(iv) These obligations and those in Section 5.19 shall remain valid and in effect notwithstanding repayment of the loan hereunder or termination of this Loan Agreement.

The Borrower acknowledges that, to the extent that regulations of the Comptroller of the Currency or any other applicable regulatory agency require granting the Borrower the right to receive brokerage confirmations of securities transactions as they occur, the Borrower specifically waives the right to receive such confirmations.

ARTICLE 3

LOAN AND PROVISIONS FOR REPAYMENT

Section 3.1 Issuance of Bonds and Delivery of Note and Other Loan Documents.

(a) In order to finance a portion of the costs of the acquisition, construction and equipping of the Project, the Issuer has, consistent with its duties and purpose under the Act, issued and caused the Trustee to authenticate and deliver the Bonds pursuant to the Indenture to the initial Owner. The Bonds shall bear interest and are payable as provided therein and in the Indenture. The Bonds shall mature and all Outstanding principal of, interest and Additional Interest (if any) on the Bonds shall be due and payable in full on the Maturity Date, all as provided more fully in the Bonds and the Indenture.

(b) The Issuer agrees to lend the proceeds received from the sale of the Bonds to the Borrower, by causing such amounts to be deposited directly into the Project Fund, subject to the terms and conditions of the Indenture and this Loan Agreement, including the terms and conditions thereof and hereof governing the disbursement of proceeds of the Loan.

(c) Pursuant to the Indenture, the Trustee shall make disbursements from the Project Fund created pursuant to the Indenture to pay or to reimburse the Borrower for costs of the acquisition, construction and equipping of the Project, subject to the conditions of the Indenture and this Loan Agreement. Upon receipt of a properly signed Requisition approved by the Servicer (which approval of the Servicer is expressly subject to the satisfaction of the conditions precedent set forth in the Construction Disbursement Agreement), the Trustee is authorized to act upon such Requisition without further inquiry, and, except for negligence after notice of facts to the contrary or willful misconduct of the Trustee, the Borrower shall hold the Trustee harmless against any and all losses, claims or liabilities incurred in connection with the Trustee's making disbursements from the Project Fund in accordance with such Requisition. Neither the Trustee nor the Issuer shall be responsible for the application by the Borrower of moneys properly disbursed from the Project Fund.

(d) Concurrently with the sale and delivery of the Bonds, and to evidence further the obligation to repay the Loan in accordance with the provisions of this Loan Agreement, the Borrower has executed and delivered the Note and the other Loan Documents. The Note shall be in the original aggregate principal amount of, and shall bear interest at the same rate per annum as, the Bonds.

Section 3.2 Loan Repayments and Other Amounts.

(a) The Borrower shall pay to the Trustee, for deposit into the Revenue Fund, on the first day of each month commencing September 1, 2013, an amount equal to the sum of (i) the interest due on the Bonds on said date (after taking into account funds available for such purpose, if any, in the Capitalized Interest Account of the Project Fund), plus (ii) the principal due on the Bonds on said date. Amounts so paid to the Trustee by the Borrower shall be in immediately available funds or shall be such that on the Bond Payment Date they are available funds.

(b) The Borrower understands that the interest rates applicable under the Note and with respect to the Bonds are based upon the assumption that interest income paid on the Bonds will be excludable from the gross income of the Owners under Section 103 of the Code (except to the extent that an Owner is a "substantial user" of the Project within the meaning of Section 174(a) of the Code or a Related Person to such substantial user) and applicable state law.

In the event that an Initial Notification of Taxability shall occur, then the interest rates on the Note and the Bonds, and on all obligations under this Agreement (other than those to which the Alternative Rate applies) shall, effective on the date of such Initial Notification of Taxability, be increased to a rate equal to the Taxable Rate. The Borrower shall, in addition, pay to the Trustee, for deposit into the Revenue Fund, promptly upon demand from the Trustee or the Servicer, an amount equal to the Additional Interest payable on the Bonds. The Borrower shall also indemnify, defend and hold the Owners harmless from any penalties, interest expense or other costs, including reasonable attorneys' fees (including all reasonably allocated time and charges of Owners' and Trustee's "in-house" and "outside" counsel) and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of the Bonds and any interest payable to any Owner with respect to the Bonds. The obligations of the Borrower under this Section 3.2(b) shall survive termination of this Agreement and the Note and repayment of the Loan. If, following any increase in interest rates pursuant to this Section 3.2(b), a final determination is made, to the satisfaction of the Owners, that interest paid on the Bonds is excludable from the Owners' gross income under Section 103 of the Code except to the extent that an Owner is a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code) and applicable state law, the Owners shall promptly refund to the Borrower any Additional Interest and other additional amounts paid by the Borrower pursuant to this Section 3.2(b).

(c) The Borrower agrees to pay the Trustee Fee and Trustee Expenses to the Trustee and agrees to pay the Issuer Fee and the Issuer Annual Fee to the Issuer. The Borrower also agrees to pay all fees, charges and expenses of the Trustee and the Issuer, respectively (including, without limitation, the reasonable, actually incurred fees and expenses of counsel to the Issuer, Bond Counsel and counsel to the Trustee), as and when the same become due. The Borrower also agrees to pay the printing and engraving costs of the Bonds, including any certificates required to be prepared for use in connection with any exchanges of Bonds for the cost of which Owners are not liable. The Borrower also agrees to pay the Loan Fees to the Bank on or before the Closing Date, to pay the fees of the Majority Owner and the Servicer, and to pay all reasonable costs and expenses incurred by the Majority Owner and the Servicer in connection with the administration of the Bonds, the Loan or the collateral therefor, and any amendments, modifications or "workouts" thereof, including without limitation reasonable attorneys' fees and costs (including allocated costs of in-house attorneys), fees and costs of engineers, accountants, appraisers and other consultants, title insurance premiums and recording costs upon receipt of written demand therefor.

(d) The Borrower agrees to pay all Costs of Issuance (in addition to those Costs of Issuance otherwise required to be paid by this Section 3.2).

(e) The Borrower agrees to pay, as and when the same become due, to the Issuer, the Servicer or the Trustee any extraordinary expenses, including, without limitation, any costs of litigation, which may be incurred by the Issuer, the Servicer or the Trustee in connection with this Loan Agreement, the Bonds, or the Indenture, including the reasonable, actually incurred costs and fees of any attorneys or other experts retained by the Issuer, the Servicer or the Trustee in connection therewith.

(f) The Borrower agrees to repay the Loan at the times and in the amounts necessary to enable the Trustee, on behalf of the Issuer, to pay all amounts payable with respect to the Bonds, when due, whether at maturity or upon redemption, acceleration, tender, purchase or otherwise.

Section 3.3 Payments Pledged and Assigned. It is understood and agreed that the Loan Documents and certain other documents and property and all payments required to be made by the Borrower pursuant hereto (except payments to be made to the Issuer in respect of its Reserved Rights and payments to be made to the Servicer and the Trustee pursuant to Section 3.2(b) hereof) have been assigned to the Trustee simultaneously herewith pursuant to the Indenture as and for security for the Bonds. The Borrower hereby consents to such assignment and recognizes the Trustee as the assignee of the Issuer, to the extent of the assignment, for purposes of said documents and property.

Section 3.4 Obligations of Borrower Hereunder Unconditional. The obligations of the Borrower to make any payments required by the terms of this Loan Agreement and the other Loan Documents, including, without limitation, the payments required in Section 3.2 hereof, and to perform and observe the other agreements on its part contained herein and in the other Loan Documents shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of set off, counterclaim, abatement or otherwise and, until such time as the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture. The Borrower (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for herein or in the other Loan Documents, (ii) will perform and observe all of its other agreements contained herein and the other Loan Documents and (iii) will not suspend the performance of its obligations hereunder and under the other Loan Documents for any cause including, without limiting the generality of the foregoing, failure to complete construction and equipping of the Project, any acts or circumstances that may constitute failure of consideration, failure of or a defect of title to the Project or any part thereof, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State or any political subdivision of either, or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement or the other Loan Documents. The Borrower may, at its own cost and expense and in its own name or in the name of the Issuer (if the Issuer is a necessary party and consents thereto), prosecute or defend any action or proceeding or take any other action involving third persons which the Borrower deems reasonably necessary in order to secure or protect its rights hereunder, and in such event the Issuer, subject to the provisions of the Indenture, hereby agrees to cooperate fully with the Borrower and to take all action (at the Borrower's cost and expense) necessary to effect the substitution of the Borrower for the Issuer in any such action or proceeding if the Borrower shall so request.

ARTICLE 4

ADVANCES

Section 4.1 Requisition. At such time as the Borrower shall desire to obtain an advance from the Loan Account, the Insurance and Condemnation Proceeds Account, or, the Equity Account of the Project Fund, the Borrower shall complete, execute and deliver a Requisition to the Servicer. Each Requisition shall be signed on behalf of the Borrower and shall be in the form attached as *Exhibit F* to the Construction Disbursement Agreement. The Trustee may rely conclusively on the statements and certifications contained in any Requisition. The Borrower shall not submit any Requisition directly to the Trustee. Each advance from the Loan Account, the Insurance and Condemnation Proceeds Account, or the Equity Account of the Project Fund by the Trustee shall be subject to prior approval of the Requisition by the Servicer. Upon approval, the Servicer shall forward each Requisition to the Trustee for payment.

ARTICLE 5

SPECIAL COVENANTS OF THE BORROWER

Section 5.1 Commencement and Completion of Project. The Borrower will commence construction and equipping of the Improvements within ninety (90) days after the Closing Date, will diligently pursue construction and equipping of the Improvements, will attain Completion prior to the Completion Deadline, and will pay all sums and perform all such acts as may be necessary or appropriate to complete such construction and equipping, all as more fully set forth in the Construction Disbursement Agreement.

Section 5.2 Records and Accounts. The Borrower will (a) keep true and accurate records and books of account in which full, true and correct entries will be made in accordance with Generally Accepted Accounting Principles, which records and books will not be maintained on a consolidated basis with those of any other Person, including any Affiliate of the Borrower and (b) maintain adequate accounts and reserves for all taxes (including income taxes), depreciation and amortization of its properties, contingencies, and other reserves, all of which accounts shall not be commingled with accounts of any other Person, including any Affiliate of the Borrower.

Section 5.3 Financial Statements and Information. The Borrower will deliver, or cause to be delivered, to the Issuer, the Trustee (only in the case of the information described in subsection (a) below) and the Servicer:

(a) as soon as available, but in any event not later than one hundred twenty (120) days after the end of each fiscal year of the Borrower, beginning for the year ended [December 31, 2013] [June 30, 2014], the audited balance sheet of the Borrower at the end of such year, and the related audited statement of income, statement of retained earnings, changes in capital, and statement of cash flows for such year, and a statement of all contingent liabilities of the Borrower which are not reflected in such financial statements or referred to in the notes thereto, each setting forth in comparative form the figures for the previous fiscal year and all such statements to be in reasonable detail, prepared in accordance with Generally Accepted

Accounting Principles, and accompanied by an auditor's report prepared without qualification by the Accountant; *provided*, that no such financial reports shall be required to be delivered until the fiscal year during which an Event of Default occurs under any Loan Document or the Project receives a temporary Certificate of Occupancy, whichever comes first;

(b) as soon as available, but in any event not later than one hundred twenty (120) days after the end of each fiscal year of the Guarantors, beginning for the year ended [December 31, 2013] [June 30, 2014], the audited balance sheet of the Guarantors at the end of such year, and the related audited statement of income, statement of retained earnings, changes in capital, and statement of cash flows for such year, and a statement of all contingent liabilities of the Guarantors which are not reflected in such financial statements or referred to in the notes thereto, each setting forth in comparative form the figures for the previous fiscal year and all such statements to be in reasonable detail, prepared in accordance with Generally Accepted Accounting Principles, and accompanied by an auditor's report prepared without qualification by the Accountant;

(c) as soon as available, but in any event not later than twenty-five (25) days after the end of each calendar quarter, copies of the balance sheet of the Borrower as at the end of such quarter, and the related statement of income, statement of retained earnings, changes in capital, and statement of cash flows for the portion of the Borrower's fiscal year then elapsed, all in reasonable detail and prepared in accordance with Generally Accepted Accounting Principles, together with a certification by the chief financial officer of the Borrower that the information contained in such financial statements fairly present the financial position of the Borrower on the date thereof (subject to year-end adjustments); *provided*, that no such financial reports shall be required to be delivered until the calendar quarter during which an Event of Default occurs under any Loan Document or the Project receives a temporary Certificate of Occupancy, whichever comes first;

(d) [Reserved];

(e) within fifteen (15) days after the end of each calendar month, commencing with the month in which the construction of the Project is substantially complete and continuing until the month in which the Bonds are redeemed in full, (i) a current rent roll and schedule of aging lease receivables as of the end of such month, in form and level of detail reasonably acceptable to the Servicer, detailing, with respect to each Lease, the tenant's name, the Lease date, the premises demised, the term, the rent, the security deposit and any rent paid more than one month in advance, (ii) a leasing report setting forth the Borrower's efforts to market and lease the then unleased space in the Improvements and the results of such efforts, accompanied by a certificate of the Borrower in the form attached hereto as *Exhibit E*, and (iii) an operating report for the Project for such month, in form and level of detail reasonably acceptable to the Servicer, together with a certification by the chief financial officer that the information in all of the items required pursuant to this Section 5.3(e) is true and correct;

(f) within 30 days following a request from the Bank, copies of the federal tax returns of the Borrower, the general partner of the Borrower and the Guarantors for the most recently completed fiscal year of each such entity;

(g) on or before December 1 of each year, a copy of the Proposed Budget, and on or before January 30 of each year, a copy of the Approved Budget; and

(h) from time to time such other financial data and information related to the Borrower or the Project (including, without limitation, operating budgets for the Project) as the Issuer, the Trustee or the Servicer may reasonably request.

Section 5.4 Insurance.

(a) The Borrower will obtain and maintain insurance with respect to the Project and the operations of the Borrower as required from time to time by the Servicer. The initial insurance requirements are set forth on *Exhibit D* hereto. All renewal policies, with premiums paid, shall be delivered to the Servicer at least thirty (30) days before expiration of the existing policies. If any such insurance shall expire or be canceled, or become void or voidable by reason of the breach of any condition of coverage, or if the Servicer determines that any coverage is unsatisfactory by reason of the failure or impairment of the capital of any insurance carrier, or if any insurance is unsatisfactory to the Servicer, in its sole judgment, the Borrower shall promptly place new insurance satisfactory to the Servicer.

(b) The Borrower will provide the Trustee and the Servicer with certificates evidencing such insurance upon the request of the Servicer.

(c) If the Borrower fails to provide, maintain, keep in force or deliver to the Servicer the policies of insurance and certificates required by this Loan Agreement, the Servicer may (but shall have no obligation to) procure such insurance, and the Borrower will pay all premiums thereon promptly on demand by the Servicer, and until such payment is made by the Borrower, the amount of all such premiums shall bear interest at the Alternative Rate.

Section 5.5 Liens and Other Charges. The Borrower will duly pay and discharge, cause to be paid and discharged, or provide a bond satisfactory to the Servicer to pay or discharge, before the same shall become overdue all claims for labor, materials, or supplies that if unpaid might by law become a lien or charge upon any of its property.

Section 5.6 Inspection of Project and Books, Appraisals.

(a) The Borrower shall permit the Issuer, the Trustee and the Servicer upon reasonable notice at reasonable times prior to the first occupancy of the Project by tenants and, thereafter, upon written notice of not fewer than seventy-two (72) hours, at the Borrower's cost and expense, to visit and inspect the Project and all materials to be used in the construction and equipping thereof and will cooperate with the Issuer, the Trustee and the Servicer during such inspections (including making available working drawings of the Plans and Specifications); *provided*, that this provision shall not be deemed to impose on the Issuer, the Trustee, and the Servicer any obligation to undertake such inspections.

(b) The Borrower shall permit the Issuer, the Trustee and the Servicer, upon reasonable notice at reasonable times, at the Borrower's cost and expense, to examine the books of account of the Borrower and the Project (and to make copies thereof and extracts therefrom) and to discuss the affairs, finances and accounts of the Borrower and the Project with, and to be

advised as to the same by, its officers, partners, or trustees, all at such reasonable times and intervals as the Issuer, the Trustee and the Servicer may reasonably request; *provided*, that so long as no Default or Event of Default shall have occurred and be continuing, the Borrower shall only be obligated to pay the expenses associated with one (1) such investigation during any twelve (12) month period.

(c) The Issuer, the Trustee and the Servicer shall have the right to obtain from time to time, at the Borrower's cost and expense, updated Appraisals of the Project; *provided*, that so long as no Default or Event of Default shall have occurred and be continuing, the Borrower shall only be obligated to pay for the costs and expenses associated with one (1) such Appraisal during any twelve (12) month period.

(d) The costs and expenses incurred by the Issuer, the Trustee and the Servicer in obtaining such Appraisals or performing such inspections shall be paid by the Borrower promptly upon billing or request by the Issuer, the Trustee and the Servicer for reimbursement.

Section 5.7 Compliance With Laws, Contracts, Licenses, and Permits. The Borrower will comply with (a) all Legal Requirements, (b) the provisions of its Organizational Documents, (c) all applicable decrees, orders and judgments, and (d) all licenses and permits required by applicable laws and regulations for the conduct of its business or the ownership, use or operation of its properties, including all Project Approvals.

Section 5.8 Use of Proceeds. In accordance with the Development Budget, the Borrower will use the proceeds of the Bonds solely for the purpose of paying for Qualified Costs of the Project.

Section 5.9 Borrower to Pay Excess Project Costs. The Borrower will pay when due all costs of acquisition, construction and equipping of the Project in excess of the proceeds of the Bonds, regardless of the amount. If at any time, the Servicer shall in its sole discretion determine that the remaining undisbursed portion of the Project Fund, together with the undisbursed balance of Required Equity Funds, and any other sums previously deposited or to be deposited by the Borrower in connection with the Project, is or will be insufficient to complete the construction and equipping of the Improvements in accordance with the Plans and Specifications, to operate and carry the Project after Completion, to pay all other Project Costs, to pay all interest accrued or to accrue on the Bonds from and after the date hereof, and to pay all other sums due or to become due under the Loan Documents (or any budget category or line item), regardless of how such condition may be caused, the Borrower will, within ten (10) days after written notice of such determination from the Servicer, deposit with the Trustee such sums of money in cash as the Servicer may require, in an amount sufficient to remedy the condition described in such notice, and sufficient to pay any liens for labor and materials alleged to be due and payable at the time in connection with the Improvements, and, at the Servicer's direction, no further disbursements from the Project Fund shall be made by the Trustee until the provisions of this Section have been fully complied with. The Servicer may direct the Trustee to enforce the Completion Agreement in accordance with its terms, and upon such direction, the Trustee shall proceed to enforce the Completion Agreement. All such deposited sums shall constitute additional security under the Loan Documents and, prior to the occurrence of a Default, shall be disbursed by the Trustee in the same manner as disbursements under the Indenture before any

further disbursements from the Project Fund shall be made by the Trustee. Notwithstanding the above, in the event amounts deposited hereunder are actually in excess of the amount necessary to achieve Completion, such excess amounts shall be returned to the Borrower in accordance with Section 5.03 of the Indenture.

Section 5.10 Laborers, Subcontractors and Materialmen. The Borrower will furnish to the Issuer, the Trustee or the Servicer, upon reasonable request, and from time to time, affidavits listing all laborers, subcontractors, materialmen, and any other Persons who might or could claim statutory or common law liens and are furnishing or have furnished labor or material to the Project or any part thereof, together with affidavits, or other evidence satisfactory to the Issuer, the Trustee or the Servicer, showing that such parties have been paid all amounts then due for labor and materials furnished to the Project. The Borrower will also furnish to the Issuer, the Trustee, and the Servicer, at any time and from time to time upon reasonable request by the Issuer, the Trustee, or the Servicer, lien waivers bearing a then current date and prepared on a form satisfactory to the Issuer, the Trustee or the Servicer from the Contractor and such subcontractors or materialmen as the Issuer, the Trustee or the Servicer may designate.

Section 5.11 Further Assurance of Title. If at any time the Servicer has reason to believe that any disbursement from the Project Fund is not secured or will or may not be secured by the Mortgage as a first priority mortgage lien and security interest on the Secured Property, then the Borrower shall, within ten (10) days after written notice from the Servicer, do all things and matters necessary, to assure to the satisfaction of the Servicer that any disbursement from the Project Fund previously made hereunder or to be made hereunder is secured or will be secured by the Mortgage as a first priority mortgage lien and security interest on the Secured Property, and the Servicer, at its option, may decline to approve any further Requisitions until the Servicer has received such assurance. Nothing in this Section shall limit the right of the Servicer, at the Borrower's expense, to order searches of title from time to time and to require bringdowns or endorsements extending the effective date of the Title Policy in connection with the making of advances as herein set forth.

Section 5.12 Publicity. The Borrower will permit the Servicer to obtain publicity in connection with the acquisition, construction and equipping of the Improvements through press releases and participation in such events as ground breaking and opening ceremonies and placement of signs on the Land.

Section 5.13 Further Assurances.

(a) **Regarding Construction.** The Borrower will furnish or cause to be furnished to the Issuer, the Trustee and the Servicer all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, title and other insurance, reports and agreements and each and every other document and instrument required to be furnished by the terms of this Loan Agreement or the other Loan Documents, all at the Borrower's expense.

(b) **Regarding Preservation of Collateral.** The Borrower will execute and deliver to the Issuer, the Trustee and the Servicer such further documents, instruments, assignments and other writings, and will do such other acts necessary or desirable, to preserve and protect the

collateral at any time securing or intended to secure the obligations of the Borrower under the Loan Documents, as the Issuer, the Trustee and the Servicer may require.

(c) Regarding this Loan Agreement. The Borrower will cooperate with, and will do such further acts and execute such further instruments and documents as the Issuer, the Trustee and the Servicer shall reasonably request to carry out to their satisfaction the transactions contemplated by this Loan Agreement and the other Loan Documents.

(d) Bank of Account. The Borrower will utilize Bank of America, N.A. as its principal bank of account, including all construction disbursement accounts, operating accounts, and reserve accounts.

Section 5.14 Notices. The Borrower will promptly notify the Issuer, the Trustee and the Servicer in writing of (i) the occurrence of any Default or Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute a Default or Event of Default; (ii) the Borrower's receipt of notice from any Governmental Authority of any alleged violation of environmental laws or regulations or other Legal Requirements; (iii) any labor problems with respect to the Borrower or the Project; (iv) the occurrence of any other event which would have a material adverse effect on the Project or the business or financial condition of the Borrower; or (v) the receipt by the Borrower of any notice of default or notice of termination with respect to any contract or agreement relating to the ownership, construction, equipping, operation, or use of the Project.

Section 5.15 Solvency; Adequate Capital. The Borrower will:

(a) Remain solvent and pay all of its indebtedness from its assets as the same become due; and

(b) Maintain adequate capital for the normal obligations reasonably foreseeable for a business of its size and character and in light of its contemplated business operations.

Section 5.16 Management Contract.

(a) At all times during the term of this Loan Agreement, the Project shall be managed pursuant to a management contract with the Manager, which contract shall be terminable with or without cause by the Borrower or its successors as owners of the Project and shall otherwise be in form and substance satisfactory to the Servicer. The Borrower acknowledges that the Issuer, the Trustee and the Servicer will rely on the Manager's experience in operating properties such as the Project as a means of maintaining the value of the collateral. In connection with the approval of the Manager, or any replacement management company:

(i) the Manager or holder of the stock or partnership interest therein, shall be a Person whose character, financial strength, stability and experience is acceptable to the Servicer and who shall have experience managing properties of a type and size reasonably similar to the Project; and

(ii) the Manager shall deliver all organizational documentation and other materials evidencing its experience acceptable to the Servicer.

(b) The Borrower shall, from time to time, obtain from the Manager such certificates of estoppel with respect to compliance by the Borrower with the terms of the management contract as may be requested by the Servicer, the Trustee and the Servicer.

(c) The Project will be managed by the Manager pursuant to the Management Agreement. The Borrower acknowledges and agrees that Trustee, as mortgagee under the Mortgage, is and shall be a third-party beneficiary of the Management Agreement and any replacement management agreement. Any amendment to the Management Agreement or delivery of a replacement management agreement must be approved in writing by the Servicer.

Section 5.17 Negative Covenants of the Borrower. The Borrower covenants and agrees that, so long as the Loan is outstanding:

(a) Restrictions on Easements and Covenants. Except for Permitted Encumbrances and matters permitted by Section 5.17(d), the Borrower will not create or suffer to be created or to exist any easement, right of way, restriction, covenant, condition, license or other right in favor of any Person which affects or might affect title to the Project or the use and occupancy of the Project or any part thereof without obtaining the prior written consent of the Servicer, which shall not be unreasonably withheld or delayed so long as the proposed action is necessary for the operation of the Project for the purposes contemplated hereby and the proposed action does not materially impair the validity or priority of the lien of the Mortgage.

(b) No Amendments, Terminations or Waivers. Neither the Borrower nor the General Partner shall amend, supplement terminate or otherwise modify or waive any provision of its Organizational Documents or any documents relating to the contribution of equity by the partners of the Borrower in a manner that would have a material adverse effect on the Issuer or the Owners without obtaining the prior written consent of the Servicer.

(c) Restrictions on Indebtedness. Without obtaining the prior written consent of the Servicer, the Borrower will not create, incur, assume, guarantee or be or remain liable, contingently or otherwise, with respect to any Indebtedness other than:

(i) Indebtedness arising under the Loan Documents;

(ii) Indebtedness arising in connection with the Project to the California Housing and Community Development Department, the City of San Francisco Redevelopment Agency and its successors, as permitted by the Bank in the applicable Loan Documents or elsewhere;

(iii) current liabilities of the Borrower relating to the Project, incurred in the ordinary course of business but not incurred through (A) the borrowing of money, or (B) the obtaining of credit except for credit on an open account basis customarily extended and in fact extended in connection with normal purchases of goods and services; and

(iv) Indebtedness relating to the Project, in respect of taxes, assessments, governmental charges or levies and claims for labor, materials and supplies to the extent that payment therefor shall not at the time be required to be made.

(d) Restrictions on Liens. The Borrower shall not subject the Project, or permit the Project to be subjected, to any Lien or encumbrance (i) except as permitted pursuant to Article 6 of the Mortgage and (ii) Liens arising in connection with the Project to the California Housing and Community Development Department, the City of San Francisco Redevelopment Agency and its successors, as permitted by the Bank in the applicable Loan Documents or elsewhere.

(e) [Reserved].

(f) Merger, Consolidation, Conversion and Disposition of Assets

(i) The Borrower will not become a party to any merger or consolidation, or agree to or effect any asset acquisition or stock acquisition.

(ii) The Borrower will not convert into any other type of entity.

(iii) The Borrower will not seek the dissolution or winding up, in whole or in part, of the Borrower or voluntarily file, or consent to the filing of, a petition for bankruptcy, reorganization, assignment for the benefit of creditors or similar proceedings.

(g) Sale and Leaseback. The Borrower will not enter into any arrangement, directly or indirectly, whereby the Borrower shall sell or transfer any property owned by it in order then or thereafter to lease such property or lease other property that the Borrower intends to use for substantially the same purpose as the property being sold or transferred.

(h) Preservation of Tax Exemption. The Borrower will not take any action that would adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation, nor omit or fail to take any action required to maintain the exclusion of interest on the Bonds from gross income for purposes of federal income taxation (in each case, except to the extent that an Owner is a "substantial user" of the Project within the meaning of Section 174(a) of the Code or a Related Person to such substantial user).

Section 5.18 Arbitrage and Tax Matters. The Borrower further represents, warrants and covenants as follows:

(a) Qualified Residential Rental Project Exempt Facility Bonds. The Borrower shall assure that the proceeds of the Bonds are used in a manner such that the Bonds will satisfy the requirements of section 142(d) of the Code relating to qualified residential rental projects.

(b) Federal Guarantee Prohibition. The Borrower shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

(c) Rebate Requirement. The Borrower shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Bonds.

(d) No Arbitrage. The Borrower shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Bonds would have caused the Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

(e) Maintenance of Tax-Exemption. The Borrower shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds 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 Bonds.

(f) Private Activity Volume Cap. 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 Bonds.

(g) Limitation on Issuance Costs. The Borrower covenants that, from the proceeds of the Bonds and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Bonds, 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 Bonds are retained as a discount on the purchase of the Bonds, such retention shall be deemed to be an expenditure of proceeds of the Bonds for said fees.

(h) Limitation of Expenditure of Proceeds. The Borrower covenants that not less than 95 percent of the net proceeds of the Bonds (within the meaning of section 150(a)(3) of the Code) will be paid for Qualified Project Costs.

(i) Limitation on Land. The Borrower covenants that less than twenty-five percent (25%) of the proceeds of the Bonds shall be used, directly or indirectly, for the acquisition of land.

(j) Existing Facilities Limit. The Borrower covenants that no proceeds of the Bonds 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 percent 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 percent of the portion of the cost of acquiring such structure financed with the proceeds of the Bonds.

(k) Certain Uses Prohibited. The Borrower covenants that no proceeds of the Bonds shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility 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

Bonds shall be used for an office unless (i) the office is located on the premises of the facilities constituting 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.

(l) Regulatory Agreement. The Borrower agrees to comply with the Regulatory Agreement.

Section 5.19 Indemnification

(a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Issuer, the Servicer, the Trustee, each Owner and each of their respective past, present and future officers, governing members, directors, officials, employees, attorneys and agents (each an "**Indemnified Party**"), against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) (the "**Liabilities**") to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to:

(i) The Bonds, Loan Documents and the Indenture or the execution or amendment thereof or in connection with transactions contemplated thereby, including the issuance, sale, transfer or resale of the Bonds, including any Securitization thereof;

(ii) Any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Project or any part thereof;

(iii) Any lien (other than a permitted encumbrance) or charge upon payments by the Borrower to the Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project;

(iv) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof;

(v) The enforcement of, or any action taken by the Trustee or the Servicer related to remedies under this Loan Agreement, the Indenture and the other Loan Documents relating to the default by the Borrower;

(vi) The defeasance and/or redemption, in whole or in part, of the Bonds;

(vii) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any offering statement or document for the Bonds, the Indenture or any of the Loan Documents to which the Borrower is a party, or any omission or alleged omission from

any offering statement or document for the bonds of any material fact necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading, including without limitation any offering statement or disclosure document in connection with any Securitization or other secondary market transaction with respect to the Bonds;

(viii) Any declaration of taxability of interest on the Bonds or allegations (or regulatory inquiry) that interest on the Bonds, is taxable for federal income tax purposes; or

(ix) The Trustee's acceptance or administration of the trust of the Indenture, or the Trustee's exercise or performance of or failure to exercise or perform any of its powers or duties thereunder or under any of the Loan Documents to which it is a party;

(x) except in the case of the foregoing indemnification of the Servicer or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party or any breach by such party of its obligations under the Indenture or any of the Loan Documents or any untrue statement or misleading statement of a material fact by such Indemnified Party contained in any offering statement or document for the Bonds or any of the Loan Documents or any omission or alleged omission from any such offering statement or document of any material fact necessary to be stated therein in order to make the statements made therein by such Indemnified Party not misleading. In the case of the foregoing indemnification of the Issuer, or any related Indemnified Party, they shall not be indemnified by the Borrower with respect to liabilities arising from their own willful misconduct. In the case of the foregoing indemnification of the Trustee, or any related Indemnified Party, they shall not be indemnified by the Borrower with respect to liabilities arising from their own negligence or willful misconduct. Notwithstanding anything herein to the contrary, the Borrower's indemnification obligations to the Servicer specified in Section 5.21 with respect to any Securitization described in Section 5.21 shall be limited to the indemnity set forth in Section 5.21.

(b) In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party (which notice shall be timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; *provided*, that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not be unreasonably withheld. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof; *provided*, that the Issuer has the absolute right to employ separate counsel at the expense of the Borrower. The Borrower shall pay the reasonable fees and expenses of such separate counsel; *provided*, that such Indemnified Party other than the Issuer may only employ separate counsel at the expense of the Borrower if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of

common representation except that the Borrower shall always pay the reasonable fees and expenses of the Issuer's separate counsel.

(c) Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Loan Agreement or the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 5.19 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Issuer, the Trustee and the Servicer have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

(d) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses hereunder 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 shall survive the termination of this Loan Agreement.

(e) Nothing in this Section 5.19 shall in any way limit (i) the Borrower's indemnification and other payment obligations set forth in the Regulatory Agreement, or (ii) the Guarantors' payment obligations under the Payment Guaranty.

Section 5.20 Agreements Between Borrower and Its Affiliates. Borrower shall not enter into any agreement, written or otherwise, directly or indirectly relating to the Project with an Affiliate of the Borrower without the prior written consent of the Servicer. Servicer consents to the Management Contract with Mercy Housing Management Group and the Development Services Agreement with Mercy Housing California and Bernal Heights Housing Corporation.

Section 5.21 [Reserved].

Section 5.22 [Reserved].

Section 5.23 Covenants Regarding Tax Credits. The Borrower hereby agrees to comply with all of the following covenants (each, a "**Tax Credit Covenant**"):

(a) To observe and perform all obligations imposed on the Borrower in connection with the Tax Credits, including the obligation to have the Project "placed in service" (within the meaning given in Section 42 of the Code) in a timely manner; and to operate the residential units of the Project, and to use the Borrower's best efforts to cause all appropriate parties to operate the same, in accordance with all requirements, statutes, and regulations governing the Tax Credits;

(b) To preserve at all times the allocation and availability of the Tax Credits;

(c) Not to release, forego, alter, amend, or modify its rights to the Tax Credits without the Servicer's prior written consent, which the Servicer may give or withhold in the Servicer's reasonable discretion;

(d) Not to execute any residential lease of all or any portion of the Project which does not comply fully with all requirements, statutes, and regulations governing the Tax Credits,

without the Servicer's prior written consent, which the Servicer may give or withhold in the Servicer's sole and absolute discretion;

(e) To cause to be kept all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income level of tenants, set-asides for low-income tenants, and any other matters now or hereafter required to qualify for and maintain the Tax Credits in connection with the low-income occupancy of the Project;

(f) To comply with the appropriate minimum low-income set-aside requirements under the Code or applicable federal regulations (the "Federal Laws") and all laws and regulations of the State (the "State Laws") applicable to the creation, maintenance and continued availability of the Tax Credits;

(g) To certify compliance with the set-aside requirements and report the dollar amount of qualified basis and maximum applicable percentage, date of placement in service and any other information required for the Tax Credits at such time periods as required by Federal Laws or State Laws for such Tax Credits;

(h) To set aside the appropriate number of units for households with incomes meeting the required standards of the median income of the county in which the Project is located to qualify for the Tax Credits (as determined pursuant to Section 42 of the Code and/or State Laws), adjusted for family size, and to operate and maintain all such units as "low-income units" qualifying for the Tax Credits under Section 42(i)(3) of the Code and/or State Laws (reserving one unit for a manager's unit);

(i) To exercise good faith in all activities relating to the operation and maintenance of the Project in accordance with the requirement of Federal Laws and State Laws; and

(j) To promptly deliver to the Servicer true and correct copies of all notices or other documents or communications received or given by the Borrower with regard to or relating in any way to the Borrower's partnership interests and/or the Tax Credits. Immediately upon receipt thereof, the Borrower shall deliver to the Servicer a copy of (i) the fully-executed allocation of Tax Credits for the Project; (ii) the basis audit (as required by Section 42 of the Code) for the Project (including a certificate of the Borrower's accountant or attorneys if requested by the Servicer); (iii) the first annual income certification for all tenants of the Project showing that the tenants are qualified for purposes of the Borrower's obtaining Tax Credits, and (iv) the fully-completed Form 8609 (required by the Code) issued for the Project. The Borrower shall deliver promptly to the Servicer such other certificates, income certificates, reports and information as the Servicer may request.

The Borrower understands and acknowledges that the Bank is purchasing the Bonds based, in part, upon the value of the Tax Credits, and the Tax Credits, directly or indirectly, constitute part of Trustee's security on behalf of the Owners of the Bonds, for the obligations of the Borrower in connection with the Loan. The Borrower agrees to indemnify, defend, and hold the Servicer and the Owners harmless for, from, and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations, and costs or expenses, including litigation

costs and reasonable attorneys' fees, arising from or in any way connected with the Borrower's failure to comply with one or more Tax Credit Covenants, excepting those arising out of, or resulting, solely from the gross negligence or willful misconduct of the Servicer.

Section 5.24 Leasing.

(a) The Servicer (and all other parties whose approval is required) must approve the Borrower's standard form of residential lease or rental agreement prior to its use by the Borrower. The Borrower may not materially modify the approved standard form of residential lease without the Servicer's prior written consent in each instance (which consent shall not be unreasonably withheld), together with the approval of all other parties whose consent is required. Each lease, other than leases on the Borrower's standard form of residential lease, of any part of the Project is subject to the Servicer's written approval as to form and substance prior to execution and delivery. Despite the foregoing, the Borrower may enter into residential leases (and amendments) in the ordinary course of business with bona fide third party tenants without the Servicer's prior written consent if the Borrower uses the approved standard form of residential lease and:

(i) Within fifteen (15) days after the Servicer's written request therefor, the Servicer receives a copy of the executed lease (accompanied by all financial information and certificates obtained by the Borrower pertaining to the tenant);

(ii) The Borrower, acting in good faith and exercising due diligence, has determined that the tenant qualifies as a low-income family for purposes of meeting the requirements for obtaining Tax Credits;

(iii) The lease meets the standards required by Section 42 of the Code;

(iv) The lease meets the requirements of the Servicer, the Issuer, and the Investor Limited Partner;

(v) The lease reflects an arm's-length transaction and, so long as the Construction Disbursement Agreement is in effect, conforms to the projections of the Pro Forma Schedule attached thereto;

(vi) The lease does not affect more than one (1) residential unit within the Improvements and is for a minimum term of six (6) months and a maximum term of twelve (12) months, unless otherwise agreed in writing by the Servicer; and

(vii) So long as the Construction Disbursement Agreement is in effect, the lease, together with all leases previously executed, does not cause the Loan to become "out of balance" as that term is defined in Section 1.2(a) of the Construction Disbursement Agreement. The Borrower acknowledges that the Loan may become "out of balance" if the landlord's aggregate economic obligations under the leases exceed, or the Net Operating Income from the Project fails to meet, the Borrower's projections for such obligations, thereby increasing the cost or decreasing the value of the Project.

(b) The Servicer in the exercise of its sole discretion may consider any executed lease it receives to be unsatisfactory if the lease fails to meet any of the requirements of this Agreement. If this happens, or if the Borrower at any time fails to submit any executed lease (and accompanying information) at the time required by this Section, or if any Event of Default has occurred and is continuing, the Servicer may make written demand on the Borrower to submit all future leases for the Servicer's approval prior to execution. The Borrower must comply with any such demand by the Servicer.

(c) The Servicer's approval of any lease is for the sole purpose of protecting the Servicer's security and preserving the Servicer's rights under the Loan Documents. No approval by the Servicer will result in a waiver of any default of the Borrower. In no event will the Servicer's approval of any lease be a representation of any kind with regard to the lease, its enforceability or the financial capacity of any tenant or Guarantors.

(d) The Borrower must perform all obligations required to be performed by it as landlord under any lease affecting any part of its leasehold interest in the Land or any space within the Improvements.

Section 5.25 Compliance With Anti-Terrorism Regulations.

(a) None of the Related Persons will be included in, owned by, controlled by, act for or on behalf of, provide assistance, support, sponsorship, or services of any kind to, or otherwise associate with any of the Persons referred to or described in any list of persons, entities, and governments issued by OFAC pursuant to Executive Order 13224 or any other OFAC List.

(b) Borrower will comply at all times with the requirements of Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56 (the "**PATRIOT Act**"); the Iraqi Sanctions Act, Pub. L. 101-513, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa 9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597; the Bank Secrecy Act, Pub. L. 91-508, 84 Stat. 1114, 1118; the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et seq.; the laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957 and any similar laws or regulations currently in force or hereafter enacted (collectively, the "**Anti-Terrorism Regulations**").

(c) If Borrower becomes aware or receives any notice that any of the Related Persons are named on any of the OFAC Lists (such occurrence, an "**OFAC Violation**"), Borrower will immediately (i) give notice to the Issuer, the Trustee and the Servicer of such OFAC Violation, and (ii) comply with all laws applicable to such OFAC Violation (regardless of whether the party included on any of the OFAC Lists is located within the jurisdiction of the United States of America), including, without limitation, the Anti-Terrorism Regulations, and Borrower hereby authorizes and consents to Issuer's, Trustee's and Servicer's taking any and all steps Issuer,

Trustee and Servicer deem necessary, in the sole discretion of each of Issuer, Trustee and Servicer, to comply with all laws applicable to any such OFAC Violation, including, without limitation, the requirements of the Anti-Terrorism Regulations (including the "freezing" and/or "blocking" of assets).

(d) Upon Issuer, Trustee's or Servicer's request from time to time during the term of the Loan, Borrower agrees deliver a certification confirming that the representations and warranties set forth in this Agreement remain true and correct as of the date of such certificate and confirming Borrower's compliance with this Section. Borrower also agrees to cooperate with each of Issuer, Trustee and Servicer, and to cause each Related Person to cooperate with Issuer, Trustee and Servicer, in providing such additional information and documentation on Borrower's and such Related Person's legal or beneficial ownership, policies, procedures and sources of funds as Issuer, Trustee and Servicer deem necessary or prudent to enable each of them to comply with the Anti-Terrorism Regulations as now in existence or hereafter amended. From time to time upon the written request of Issuer, Trustee or Servicer, Borrower shall deliver to the requesting party a schedule of the name, legal domicile, address and jurisdiction of organization, if applicable, for each Related Party and each holder of a legal interest in any Borrower.

Section 5.26 Compliance With City Contracting Requirements. The Borrower covenants and agrees to comply with the provisions set forth in *Exhibit G* to this Loan Agreement.

ARTICLE 6

OPTION AND OBLIGATIONS OF BORROWER TO PREPAY

Section 6.1 Optional Prepayment.

(a) The Note and amounts due under Section 3.2(a) hereof are subject to prepayment in order to effect the redemption of the Bonds under Section 4.03 of the Indenture at the option of the Borrower, as set forth in Section 4.03 of the Indenture. The Note is not otherwise subject to optional prepayment by the Borrower.

(b) To effect prepayment of the Note and redemption of the Bonds as contemplated in subparagraph (a) above, the Borrower shall deliver to the Trustee and the Servicer, not less than ninety (90) days (or such lesser number of days acceptable to the Servicer and the Trustee) prior to the date on which Bonds are subject to redemption under said Section, a written certificate of the Borrower stating that the Borrower is prepaying the Note pursuant to this Section 6.1. The certificate from the Borrower shall certify the following: (i) the principal amount of the Note to be prepaid, (ii) that the amount to be prepaid on the Note shall be credited to redemption of the Bonds pursuant to Section 4.03 of the Indenture, (iii) the date for redemption of the Bonds, (iv) any conditions to such prepayment.

(c) The options granted to the Borrower in this Section 6.1 shall be exercisable only (i) in the event and to the extent the Bonds are subject to redemption in accordance with the Indenture and (ii) if no Event of Default under any of the Loan Documents shall have occurred

and be then continuing or if all costs associated with any existing Event of Default (including, without limitation, late fees, penalties, costs of enforcement, protective advances and interest on such amounts) which are then due and owing under the Loan Documents are paid in full in connection with such prepayment.

(d) Notwithstanding anything to the contrary contained in this Loan Agreement, optional prepayment of the Loan and the Bonds shall only be permitted at the times and upon the terms and requirements set forth in the Notes.

Section 6.2 Mandatory Prepayment. The Loan and amounts due under Section 3.2(a) hereof shall be prepaid in whole or in part in order to effect the mandatory redemption of the Bonds at the times and in the amounts specified in Section 4.01 of the Indenture.

Section 6.3 Amounts Required for Prepayment.

(a) The amount payable by the Borrower hereunder upon either (i) the exercise of the option granted to the Borrower in Section 6.1 hereof, or (ii) the mandatory prepayment of the Note by the Borrower in Section 6.2 hereof shall be, to the extent applicable and except as otherwise provided, the sum of the following:

(i) the amount of money necessary to pay the redemption price of the Bonds to be redeemed specified in Section 4.03 of the Indenture, in the case of optional redemption, and Section 4.02 of the Indenture in the case of mandatory redemption, together with all interest specified therein payable up to and including said redemption date, and all expenses of the redemption; plus

(ii) in the event of a redemption in whole, an amount of money equal to the Trustee Fee, Trustee's Expenses and Issuer Annual Fee and expenses under the Indenture accrued and to accrue until the final payment and redemption of the Bonds; plus

(iii) in the event of any prepayment during the existence and continuance of an Event of Default, the amounts described in Section 6.1(c)(ii) hereof.

(b) Any prepayment made pursuant to Section 6.1 or 6.2 hereof shall be deposited into the Revenue Fund. No prepayment or investment of the proceeds thereof shall be made which shall cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

Section 6.4 Cancellation at Expiration of Term. At the acceleration, termination or expiration of the term of this Loan Agreement and following full payment of the Bonds or provision for payment thereof in accordance with Article XI of the Indenture and of all other fees and charges of all parties having been made in accordance with the provisions of this Loan Agreement and the Indenture, the Issuer shall deliver to the Borrower any documents and take or cause the Trustee to take such actions as may be necessary to effectuate the cancellation and evidence the termination of this Loan Agreement and the Loan Documents (other than the Regulatory Agreement, which shall not terminate except in accordance with the terms thereof).

ARTICLE 7

EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default. The following shall be “Events of Default” under this Loan Agreement, and the term “Event of Default” shall mean, whenever it is used in this Loan Agreement, any one or more of the following events:

(a) Failure by the Borrower to pay any amounts required to be paid on the Note or under Section 3.2 (a) or (b) hereof when due;

(b) Any failure by the Borrower to pay as and when due and payable any other sums to be paid by the Borrower under this Loan Agreement and the continuation of such failure for a period of five (5) 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 to be true and correct when made or renewed; 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 thereunder, other than as referred to in subsections (a) or (b) of this Section 7.1, for a period of thirty (30) days after written notice specifying such breach or failure and requesting that it be remedied, given to the Borrower by the Issuer, the Trustee or the Servicer; *provided*, 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 and is diligently pursued to completion thereafter (unless, in the opinion of Bond Counsel delivered to the Servicer, failure to correct such breach or failure within the cure period herein provided (or such shorter time as shall be established as a limitation on the period of time during which correction may be pursued) will adversely affect the exclusion from gross income of interest on the Bonds for federal income taxation purposes or violate State law, in which case the extension of cure period herein provided will not be available); or

(e) Any Event of Default (as defined or otherwise set forth in the Indenture or any of the Loan Documents, the General Partner Documents or the Guarantors Document) 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 any Obligor or the General Partner of Borrower, or any sale, transfer or other disposition of the Project or of all or substantially all of the assets of Borrower; or

(g) Any failure by the Borrower to obtain any Project Approvals as required in order to proceed with the construction of the Project so as to complete the same by the Completion Deadline, or the revocation or other invalidation of any Project Approvals previously obtained; or

(h) Any change in the legal or beneficial ownership of the Borrower or the General Partner other than as expressly permitted by the terms hereof or by reason of the death of the owner of such interests; or

(i) The General Partner ceases for any reason to act in that capacity unless replaced by a transferee permitted pursuant to Section 5.17(e); or

(j) 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

(k) Any Obligor 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

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

(m) 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

(n) Any uninsured final judgment in excess of \$25,000 shall be rendered against the Borrower and shall remain in force, undischarged, unsatisfied and unstayed, for more than thirty (30) days, whether or not consecutive; or

(o) Any of the Loan Documents, the General Partner Documents or the Guarantors 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 Servicer, or any action at law, suit in equity or other legal proceeding to cancel, revoke or rescind any of the Loan Documents, the General Partner Documents or the Guarantors 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, the General Partner Documents or the Guarantors Documents is illegal, invalid or unenforceable in accordance with the terms thereof; or

(p) Any refusal by the Title Insurance Company to insure that any advance is secured by the Mortgage as a valid lien and security interest on the Project and the continuation of such refusal for a period of twenty (20) days after notice thereof by Servicer to the Borrower; or

(q) Completion shall not have been attained by the Completion Deadline; or

(r) Any cessation at any time in construction or equipping of the Improvements for more than twenty (20) consecutive days except for strikes, acts of God, fire or other casualty, or other causes entirely beyond the Borrower's control, or any cessation at any time in construction or equipping of the Improvements for more than sixty (60) consecutive days, regardless of the cause thereof; *provided*, that such cessation may continue for a period of longer than sixty (60) consecutive days with the consent of the Servicer if the Borrower shall have requested and received an extension of the Completion Deadline in accordance with the provisions of the Construction Disbursement Agreement, in which case it shall not be an Event of Default hereunder unless and until the period of cessation extends beyond the number of days for which the extension was granted; or

(s) Any of the Indenture, this Agreement, the Regulatory Agreement or the Tax Certificate shall be amended in a material manner (including without limitation any "automatic" amendments of the Regulatory Agreement) without the prior written consent of the Servicer.

Section 7.2 Remedies on Default.

(a) Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing, any obligation of the Servicer to approve Requisitions shall be terminated, and the Trustee (but only if directed to do so by Servicer and, subject to the provisions of the Indenture) shall:

(i) by notice in writing to the Borrower declare the unpaid indebtedness under the 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, the General Partner Documents or the Guarantors Documents, as may appear necessary or desirable to collect the payments and other amounts then due and thereafter to become due hereunder or thereunder or under the Note, 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 Note or any other Loan Document (including without limitation foreclosure of the Mortgage), any General Partner Document or any Guarantors Document (including actions to enforce the Completion Agreement); and

(iii) cause the Project to be completed, constructed and equipped in accordance with the Plans and Specifications, with such changes therein as the Servicer may, from time to time, and in its sole discretion, deem appropriate.

(b) Any amounts collected pursuant to action taken under this Section (other than amounts collected by the Issuer 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 Issuer, the Trustee or the Servicer and their respective Counsel, be paid into the Revenue 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 3.2 hereof.

Section 7.3 No Remedy Exclusive. No remedy conferred herein or in any other Loan Document upon or reserved to the Trustee or the Servicer 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 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 Trustee or the Servicer 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 Agreement to Pay Fees and Expenses of Counsel. If an Event of Default shall occur under this Loan Agreement or under any of the other Loan Documents, and the Issuer, the Trustee, the Servicer should employ counsel or incur other expenses for the collection of the indebtedness or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower herein or therein contained, the Borrower agrees that it will on demand therefor pay to any such party, or, if so directed by any such party, to its counsel, the reasonable actually incurred fees of such Counsel and all other out-of-pocket expenses incurred by or on behalf of the Issuer, the Trustee, the Servicer.

Section 7.5 No Additional Waiver Implied by One Waiver; Consents to Waivers. In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be effective unless in writing and signed by the party making the waiver.

Section 7.6 Remedies Subject to Applicable Law. All rights, remedies, and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the Borrower's leasehold interest in the Land and to be limited to the extent necessary so that they will not render this Loan Agreement invalid, unenforceable, or not entitled to be recorded, registered, or filed under the provisions of any applicable law.

Section 7.7 Cure by Special Limited Partner. The Issuer, the Trustee and the Servicer hereby agree that cure of any Event of Default made or tendered by the Investor Limited Partner 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.

Section 7.8 Issuer Exercise of Remedies. Notwithstanding anything to the contrary contained herein, the Issuer may enforce its Reserved Rights under the Loan Documents and exercise the permitted remedies with respect thereto against the Borrower; *provided*, that the Issuer shall not commence or direct the Trustee to commence any action to declare the outstanding balance of the Bonds or the Loan to be due and neither the Issuer nor the Trustee shall take any action in respect of Reserved Rights (i) to foreclose to take similar action under the Mortgage 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, (ii) to appoint a receiver, (iii) to enforce any similar remedy against the Project or other property pledged to secure the Borrower's obligations under the Loan Documents; or (iv) 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.

ARTICLE 8

MISCELLANEOUS

Section 8.1 General Provisions. The following provisions shall be applicable at all times throughout the term of this Loan Agreement:

(a) The Issuer, the Trustee and the Servicer shall, at all times, be free to establish independently to their respective satisfaction and in their respective absolute discretion the existence or nonexistence of any fact or facts the existence of which is a condition of this Loan Agreement or any other Loan Document.

(b) The Bonds and the obligations and undertakings of the Issuer hereunder do not constitute a general obligation of the Issuer or the State or any political subdivision thereof, and recourse on the Bonds and on the instruments and documents executed and delivered by or on behalf of the Issuer in connection with the transactions contemplated hereby may be had only against certain moneys due and to become due under the Loan Documents (and not against any moneys due or to become due to the Issuer pursuant to the Reserved Rights). No recourse shall be had for the payment of the principal of or interest on the Bonds, or for any claim based thereon or on this Loan Agreement or any other Loan Document, any Issuer Document or any instrument or document executed and delivered by or on behalf of the Issuer in connection with the transactions contemplated hereby, against the Issuer or any member, officer, employee or other elected or appointed official, past, present or future, of the Issuer or any successor body, as such, either directly or through the Issuer or any such successor body, under any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or by any legal or equitable proceeding or otherwise and all such liability of the Issuer or any such incorporation, member, officer, director, employee, any other elected or appointed official or trustee as such is hereby expressly waived and released as a condition of and consideration for the adoption of the resolution authorizing the execution of the Issuer Documents and issuance of

the Bonds and the delivery of other documents in connection herewith. No member, officer, employee or other elected or appointed official past, present or future, of the Issuer or any successor body shall be personally liable on the Issuer Documents, the Bonds or any other documents in connection herewith, nor shall the issuance of the Bonds be considered as misfeasance or malfeasance in office. The Bonds and the undertakings of the Issuer under the Issuer Documents do not constitute a pledge of the general credit or taxing power of the Issuer, the State, or any political subdivision thereof, do not evidence and shall never constitute a debt of the State or any political subdivision thereof (other than the Issuer), and shall never constitute nor give rise to a pecuniary liability of the State or any political subdivision thereof, other than the Issuer.

Section 8.2 Authorized Borrower Representative. Pursuant to written direction provided on the Closing Date, the Borrower has appointed one or more Authorized Representative for the purpose of taking all actions and making all certificates required to be taken and made by the Authorized Representative under the provisions of the Loan Documents. Whenever under the provisions of any Loan Document the approval of the Borrower is required or any party is required to take some action at the request of the Borrower, such approval or such request shall be made by the Authorized Borrower Representative, unless otherwise specified in this Loan Agreement, and the Issuer, the Trustee and the Servicer shall be authorized to act on any such approval or request and the Borrower shall have no complaint against any such party as a result of any such action taken in conformity with such approval or request by the Authorized Borrower Representative.

Section 8.3 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Trustee and the Borrower and their respective successors and permitted assigns. The Borrower acknowledges and agrees that the Issuer has assigned or is assigning its rights under this Loan Agreement to the Trustee, and that, pursuant to the Indenture, Trustee will follow directions from the Servicer in implementing certain of the rights and remedies under this Loan Agreement. The Owners of the Bonds and the Servicer shall be express third party beneficiaries of this Loan Agreement, and shall have the right to enforce directly against Borrower or other persons the rights and implement the rights and remedies provided to each of them hereunder, but not including the Reserved Rights; *provided*, that the rights of the Owners to bring actions and implement rights and remedies hereunder shall be subject to the same restrictions as are imposed with respect to actions, rights and remedies of the Owners under the Indenture.

Section 8.4 Execution in 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; *provided*, that for purposes of perfecting a lien or security interest in this Loan Agreement by the Trustee, whether under Article 9 of the Uniform Commercial Code of the State or otherwise, only the counterpart delivered to, and received by, the Trustee shall be deemed the original.

Section 8.5 Amendments, Changes and Modifications. Subsequent to the issuance of the Bonds and prior to payment or provision for the payment of the Bonds in full (including interest thereon) in accordance with the provisions of the Indenture and except as otherwise provided herein, the Loan Documents may not be amended, changed, modified, altered or

terminated by the Issuer, the Trustee or the Borrower except in compliance with Article IX of the Indenture.

Section 8.6 Severability. In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof and such invalid or unenforceable provision shall be deemed no longer to be contained in this Loan Agreement.

Section 8.7 Notices. All notices, demands, requests, consents, approvals, certificates or other communications hereunder shall be effective if given in the manner required in Section 10.08 of the Indenture.

Section 8.8 Applicable Law; Venue. This Loan Agreement shall be governed exclusively by and construed in accordance with the laws of the State, and any action arising out of this Loan Agreement 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 8.9 Debtor Creditor Relationship. It is expressly understood and agreed that the relationship between the Issuer and the Borrower established by the transaction contemplated by this Loan Agreement and by all of the other Loan Documents is exclusively that of creditor or lender, on the part of the Issuer, and debtor or borrower, on the part of the Borrower and is in no way to be construed as a partnership or joint venture of any kind. It is further understood that all payments by the Borrower under the Loan Documents shall be exclusively on account of the said debtor/creditor relationship.

Section 8.10 Usury; Total Interest. This Loan Agreement is subject to the express condition, and it is agreed, that at no time shall payments hereunder, under the Note or under the other Loan Documents that are or are construed to be payments of interest on the unpaid principal amount of the Loan reflect interest that is borne at a rate in excess of the maximum permitted by law. The Borrower shall not be obligated or required to pay, nor shall the Issuer be permitted to charge or collect, interest borne at a rate in excess of such maximum rate. If by the terms of this Loan Agreement or the other Loan Documents the Borrower is required to make such payments reflecting interest borne at a rate in excess of such maximum rate, such payments shall be deemed to be reduced immediately and automatically to reflect such maximum rate. It is further agreed that the total of amounts paid hereunder as interest on the Loan which is to pay interest on the Bonds, cumulative from the date of the Note, shall not exceed the sum of 5% per month, simple and non-compounded for each month from such date to the date of calculation (calculated on the basis of a 360-day year of twelve thirty-day months). Any such excess payment previously made in either case shall be immediately and automatically applied to the unpaid balance of the principal sum of the Loan and not to the payment of interest thereon. This Loan Agreement is also subject to the condition that amounts paid hereunder representing late payment or penalty charges or the like shall only be payable to the extent permitted by law.

Section 8.11 Term of This Loan Agreement. This Loan Agreement shall be in full force and effect from its date to and including such date as all of the Bonds issued under the Indenture shall have been fully paid or retired in accordance with their terms and the terms of the Indenture (or provision for such payment shall have been made as provided in the Indenture),

except, however, that the covenants and provisions relating to the Reserved Rights of the Issuer and the covenants relating to the preservation of exclusion from gross income of interest on the Bonds for purposes of federal income taxation shall survive the termination hereof.

Section 8.12 Limitation on Liability of the Issuer; Issuer May Rely.

(a) Notwithstanding anything herein or in any other instrument to the contrary, the Issuer shall not be obligated to pay the principal (or redemption price) of or interest on the Bonds, except from moneys and assets received by the Trustee on behalf of the Issuer pursuant to this Loan Agreement. Neither the faith and credit nor the taxing power of the State, or any political subdivision thereof, nor the faith and credit of the Issuer is pledged to the payment of the principal (or redemption price) of or interest on the Bonds. The Issuer 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 the Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under this Loan Agreement.

The Borrower hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the payments made by the Borrower pursuant to this Loan Agreement, together with investment income on certain funds and accounts held by the Trustee under the Indenture, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or redemption price) of and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or redemption price) of or interest on the Bonds, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrower, the Issuer or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor.

(b) It is expressly understood and agreed by the parties to this Loan Agreement 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, any Owner or the Borrower as to the existence of a fact or state of affairs required under this Loan Agreement to be noticed by the Issuer;

(ii) the Issuer shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Borrower; and

(iii) none of the provisions of this Loan Agreement shall require the Issuer to expend or risk its own funds (apart from the proceeds of Bonds issued under the Indenture) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Loan Agreement unless it first shall have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

(c) No provision, representation, covenant or agreement contained in this Loan Agreement or in the Indenture, the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability (except to the extent of any Loan repayments, revenues and receipts derived by the Issuer pursuant to this Loan Agreement and other moneys held pursuant to the Indenture, other than in the Rebate Fund). Notwithstanding anything herein or in any other instrument to the contrary, no provision hereof shall be construed to impose a charge against the general credit of the Issuer, the State or any other political subdivision of the State, the taxing powers of the foregoing, within the meaning of any Constitutional provision or statutory limitation, or any personal or pecuniary liability upon any official, director, officer, employee, agent or attorney of the Issuer.

(d) All covenants, obligations and agreements of the Issuer contained in this Loan Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future official, director, officer, employee, agent or attorney of the Issuer in other than his official capacity, and no official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Issuer contained in this Loan Agreement or in the Indenture. No provision, covenant or agreement contained in this Loan Agreement, the Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge. No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Loan Agreement or in any Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Bonds, against any member of the governing board of the Issuer, its officers, counsel, financial advisor, employees or agents, as such, in his or her individual capacity, past, present, or future, or of any successor thereto, whether by virtue of any Constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any member of the governing board, officers, counsel, financial advisors, employees or agents, as such, in his or her individual capacity, past, present, or future, of the Issuer or of any successor thereto, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Issuer and the Trustee or the Borrower to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, officer, counsel, financial advisor, employee or agent, is, by the execution of the Bonds, this Loan Agreement, and the Indenture, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Loan Agreement, and the Indenture, expressly waived and released.

Section 8.13 Waiver of Personal Liability. No member of the governing board, officer, agent or employee of the Issuer or any director, officer, agent or employee of the Issuer shall be individually or personally liable for the payment of any principal (or redemption price) of or interest on the Bonds or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Loan Agreement; but nothing

herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Loan Agreement.

Section 8.14 PATRIOT Act Notice. Issuer hereby notifies Borrower and Guarantors that, pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies Borrower and Guarantors, which information includes the names and addresses of Borrower and Guarantors and other information that will allow Issuer to identify Borrower and Guarantors in accordance with the PATRIOT Act.

IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have caused this Loan Agreement to be executed in their respective names, all as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO

By:

Teresa Yanga,
Housing Development Director,
Mayor's Office of Housing

Approved as to form:
DENNIS J. HERRERA
City Attorney

By: _____
Kenneth David Roux,
Deputy City Attorney

[TRUSTEE],
as Trustee

By: _____
Authorized Signatory

1100 OCEAN AVENUE LIMITED
PARTNERSHIP,
a California limited partnership

By: Mercy Housing Calwest, a
California nonprofit corporation, its
managing general partner

By: _____
Its: _____

By: Bernal Housing LLC, a California
limited liability company, its general
partner

By: Bernal Heights Housing
Corporation, a California nonprofit
public benefit corporation, its
managing member

By: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

EXHIBIT B

FORM OF PROMISSORY NOTE

PROMISSORY NOTE

Series 2013E

[\$[Par Amount]

[Closing Date]

FOR VALUE RECEIVED, 1100 OCEAN AVENUE LIMITED PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP (together with its permitted successors and assigns, "**Borrower**"), having an address of c/o Mercy Housing California, 1360 Mission Street, Suite 300, San Francisco, California 94103, promises to pay to the order of the CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA or its successors or assigns (the "**Holder**"), at its office at 1 Dr. Carlton B. Goodlett Place, Room 316, San Francisco, California 94102 or at such other place as may be designated in writing by the Holder, in legal tender of the United States, the principal sum of [] Dollars (\$[]) or such lesser amount as may be advanced and outstanding, as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Trust Indenture (as the same may be modified, amended or supplemented from time to time, the "**Indenture**") dated as of July 1, 2013 between the City and County of San Francisco, California (the "**Issuer**"), and [Trustee] (the "**Trustee**") or the Loan Agreement dated as of July 1, 2013 among the Issuer, the Trustee and Borrower (as the same may be modified, amended or supplemented from time to time, the "**Loan Agreement**").

This Note shall bear interest at the rate from time to time borne by the Bonds, and Additional Interest shall be payable on this Note as provided in Section 3.2 of the Loan Agreement.

Borrower shall pay to the Trustee for deposit into the Revenue Fund, on the first day of each month for the period commencing September 1, 2013 (i) an amount equal to the sum of the principal and interest next coming due on the Bonds (after taking into account funds available for such purpose, if any, in the Capitalized Interest Account of the Project Fund) to pay the principal of and interest on the Bonds due and payable on each Bond Payment Date. Amounts so paid to the Trustee by the Borrower shall be in immediately available funds or shall be such that on the Bond Payment Date they are available funds.

All payments under this Note shall be applied as provided in the Indenture.

The obligations of Borrower under this Note are secured by a Construction Leasehold Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing dated as of July 1, 2013 (as the same may be modified, amended or supplemented from time to time, the "**Mortgage**") made by Borrower to the Holder covering property, with improvements thereon, as more fully described therein (the "**Property**") and certain other security as more fully set forth in the Loan Agreement.

At no time shall interest be payable on this Note or under the Mortgage or the Loan Agreement at a rate in excess of the Maximum Rate (as defined in the Indenture). Borrower shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such Maximum Rate. If by the terms of this Note or of the Mortgage or Loan Agreement, Borrower is required to pay interest at a rate in excess of such Maximum Rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such Maximum Rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

Amounts payable hereunder representing late payments, penalty payments or the like shall be payable to the extent allowed by law.

This Note is subject to all of the terms, conditions, and provisions of the Loan Agreement, including Section 8.12 thereof and the provisions of the Loan Agreement respecting prepayment and the acceleration of maturity and is further subject to all of the terms, conditions and provisions of the Indenture. The outstanding principal hereof is subject to acceleration at the same time or times and under the same terms and conditions, and with the same notice, if any, as provided under the Indenture for the acceleration of payment of the Bonds.

If there is an Event of Default under the Loan Documents, then in any such event and subject to the requirements set forth in the Loan Agreement, the Holder may, upon the direction of the Servicer, declare the entire unpaid principal balance of this Note and accrued interest, if any, due and payable at once. All of the covenants, conditions and agreements contained in the Loan Documents are hereby made part of this Note.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Note or the Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Holder under this Note and the Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

Borrower shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements actually incurred, which costs may be added to the indebtedness hereunder, together with interest thereon at the Alternative Rate to the extent allowed by law.

This Note may not be changed orally. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Holder of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Holder of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due, and Borrower's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Holder to any action of Borrower which is subject to consent or approval of the Holder

hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

[Rest of Page Intentionally Blank]

Borrower agrees that this Note shall be construed in accordance with and governed by the laws of the State of California.

BORROWER:

1100 OCEAN AVENUE LIMITED
PARTNERSHIP,
a California limited partnership

By: Mercy Housing Calwest, a California
nonprofit corporation, its managing
general partner

By: _____
Its: _____

By: Bernal Housing LLC, a California
limited liability company, its general
partner

By: Bernal Heights Housing
Corporation, a California nonprofit public
benefit corporation, its managing member

By: _____
Its: _____

Address:

1100 Ocean Avenue Limited Partnership, a
California Limited Partnership
c/o Mercy Housing California
1360 Mission Street, Suite 300
San Francisco, California 94103
Attention: Asset Management

EXHIBIT C

PROJECT APPROVALS TO BE OBTAINED

None

EXHIBIT D

INSURANCE REQUIREMENTS

1. General Requirements

In order to close, the following insurance specifications must be met and approved in writing by the Bank's insurance consultant. Copies of policies together with an original ACORD 28 (Evidence of Property Insurance) and an ACORD 25 (Certificate of Insurance) or an approved equivalent listing all coverage will be accepted for pre-closing contingent on complete "true and certified" copies of the policies with all endorsements attached being received within 90 days after closing. Each certificate must correctly identify the property by address and the insured by borrowing entity name.

Policy premiums cannot be financed or paid in installments to an insurance carrier, but must be paid in full as evidenced by a paid receipt presented prior to or at pre-closing. All policies and renewals thereof are to be written for not less than one year. An escrow account, as described further in the loan application, will be established to pay the premium at renewal.

All of the liability policies must be written and provide for claims to be paid on an "Occurrence" basis.

Borrower will notify Mortgagee, its successors and/or assigns, in writing at least 30 days in advance of any policy reduction or cancellation for any reason except for non-payment of premium (for which not less than 10 days written notice shall be provided).

The insurer under each policy shall be a domestic primary insurance company duly qualified as such under the laws of the states in which the Property is located and duly authorized and licensed in such states to transact the applicable insurance business and to write the insurance provided and must have and maintain a rating of AA or higher by Standard & Poor's or A.M. Best rating of A-IX or higher for any Mortgage Loan \$20,000,000 or above. For any Mortgage Loan below \$20,000,000, the insurance carrier must have and maintain a rating of "A" or higher by Standard & Poor's and/or an A.M. Best rating of A-VI or higher.

The insurance policies may be part of a blanket policy, provided that the insured acknowledges that failure to pay any portion of the premium which is not allocable to the mortgaged property or any other action not relating to the mortgaged property which would otherwise permit the issuer to cancel the coverage, would require the mortgaged property to be insured by a separate, single-property policy. The blanket policy must properly identify and fully protect the mortgaged property as if a separate policy were issued for 100% of Replacement Cost (insurable value) at the time of loss, allocate a portion of the premium to the mortgaged property, and otherwise meet all applicable insurance requirements of the Bank.

During the life of the loan, should any condition change or occur which affects the levels of risk anticipated, Borrower will be required to obtain appropriate coverage to mitigate the associated risk.

If any required type of coverage is not available for the mortgaged property, Mortgagee shall have no obligation to close the loan.

2. Mortgagee Clause

All policies must include EXACTLY the following standard, non-contributory, mortgagee clause:

[TRUSTEE]

[TRUSTEE ADDRESS]

Mortgagee must be named as a first Mortgagee with respect to buildings, Loss Payee with respect to loss of rents/business interruption, and Additional Insured with respect to general liability.

3. Waiver of Subrogation

Not Required.

4. Required Insurance Coverage

Borrower is required to maintain the following policies of insurance during the term of the Loan:

- **Property Insurance.** Property insurance during the course of construction and following completion, insuring against the risk of direct physical loss, as insured under the Insurance Services Office Cause of Loss-Special Form (CP 1030) or equivalent. Such insurance shall be in an amount equal to the then full replacement cost of the Improvements, Equipment and personal property, without deduction for physical depreciation, no co-insurance is permitted, and maximum acceptable deductible is \$25,000. If the property is "non-conforming" with respect to zoning requirements, Borrower will be required to maintain "demolition" insurance (in an amount equal to 10% of the building value) and "increased cost of construction" insurance (in an amount equal to 25% of the building value). The burden to prove conforming use is the borrowers.

- **Terrorism Insurance.** [Not Applicable]

- **Flood Insurance.** If any portion of the Improvements are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards (i.e. Zone A and V) and in which flood insurance is made available under the National Flood Insurance Program, then flood insurance must be maintained at least equal to the lesser of (A) the full replacement cost, together with business interruption coverage or (B) the maximum limit of coverage available for the Property under the National Flood Insurance Act of 1968, The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994, as each may be amended, or \$250,000 per residential building and \$500,000 per commercial building.

- Earthquake Insurance. Earthquake insurance will not be required.
- Boiler and Machinery Insurance. If the Property contains HVAC equipment, or there are boilers or other pressure-fired vessels that are required to be regulated by the state in which the property is located, then Broad Form Boiler and Machinery Insurance (without exclusion for explosion and including “system breakdown coverage) must be maintained on the Property and Improvements in an amount at least equal to or greater than the repair and full replacement cost of such equipment and insurance against loss of occupancy or use arising from any breakdown of such equipment in such amounts as are generally required by institutional lenders for properties comparable to the Property.
- Business Interruption/Loss of Rental Income Insurance. Business Interruption and/or loss of rental income insurance must be maintained in an amount sufficient to provide proceeds that will cover the “actual loss” sustained during the restoration. No co-insurance is permitted. The “actual loss” coverage amount may be capped based on projected gross revenues (less non-recurring expenses) for a twelve (12) month period. The policy can provide an “Extended Period of Indemnity” endorsement for at least an additional 90 days for loans of \$20 million or more. The perils covered by this insurance shall be the same as those required to be covered on the real property including flood, terrorism and earthquake, as necessary.
- Builders Risk Insurance. Borrower is required to maintain, at all times during which structural construction repairs or alterations are being made with respect to the improvements (A) owner’s contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in Paragraph 1 hereof written in a so-called builder’s risk completed value form (1) on a non-reporting basis, (2) against the risks of direct physical loss, as insured under the Insurance Services Office Causes of Loss-Special Form (CP 1030) or equivalent, (3) including 30-day permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions.
- Commercial General Liability Insurance. Borrower must maintain Commercial General Liability Insurance on an “occurrence” form including broad form property damage, contractual damages and personal injuries (including death resulting therefrom) and a liquor liability endorsement if Borrower sells liquor on the Property. In addition, excess and/or umbrella liability insurance must be maintained against all claims typically covered by an umbrella liability policy including all legal liability imposed upon Borrower and all court costs and attorneys’ fees connected with the ownership, operation, and maintenance of the Property and Equipment, including products/completed operations, if applicable. The per occurrence limits including umbrella liability insurance, if applicable, must be maintained in the minimum amounts as outlined below:
 - \$1,000,000 total coverage for 1 to 3 story buildings
 - \$5,000,000 total coverage for 4 to 10 story buildings
 - \$10,000,000 total coverage for 11 to 20 story buildings
 - \$25,000,000 total coverage for buildings with greater than 20 stories

If Borrower has a multi-location policy or loan, the aggregates referred to above must be maintained on a per location basis.

- Wind Insurance. If the All Risk or Special Cause of Loss coverage excludes wind, the Borrower must present evidence of separate wind coverage. Maximum acceptable deductible for this peril is 5% of total insured value.

- Sinkhole and Mine Subsidence Insurance. Sinkhole and mine subsidence insurance must be maintained if, in the opinion of a professional engineer, whose resume shows evidence of his/her experience in this professional area, that there is a foreseeable risk of loss due to this hazard. If necessary, as determined by the engineer, Borrower shall maintain coverage in the full principal amount of the Loan.

- Statutory Workers Compensation Insurance. If Borrower has employees on site, statutory workers compensation insurance as required by law and including employer's liability must be maintained in an amount that is at least customary for employers insuring similar risks.

- Hired and Non-Owned Auto Insurance. If Borrower has employees on site, Hired and Non-Owned Auto Insurance must be maintained in an amount equal to \$1 Million combined single limit.

- Employee Dishonesty. If Borrower has employees on site, in an amount not less than three (3) months of gross revenue from the property and with a deductible not greater than Twenty-Five Thousand and no/100 Dollars (\$25,000). This coverage is required only on Cooperative Corporations.

- Other Insurance Coverage. Such other insurance with respect to the Property or on any replacements or substitutions or additions or increased coverage limits as may from time to time be required by the holder of the Loan against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated, including, without limitation, sinkhole, mold, mine subsidence, earthquake and environmental insurance, due regard being given the height and typed of buildings, their construction, location, use and occupancy.

EXHIBIT E

FORM OF MONTHLY LEASE UP REPORT

MOVE IN DATABASE

Building #	Apt. #	# of BR's	# of BA's	Set-Aside	Security Deposit	Lease Rent	Certified or Move in Date	Lease Expiration	Total Value of Concessions	Description of Concession	Concession Given at Move In (Y/N)

MOVE OUT DATABASE

Building #	Apt. #	# of BR's	# of BA's	Set-Aside	Total Security Deposit	Security Deposit to Tenant	Lease Rent	Move Out Date	Certified or Move in Date	Lease (enter an 'x')		
										Skip	Evicted	Expired Other

EXHIBIT F

[RESERVED]

EXHIBIT G

CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

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

Section 1. Nondiscrimination; Penalties.

(i) *Nondiscrimination.* In the performance of this Loan Agreement, the Borrower agrees not to discriminate against any employee, City employee working with the Borrower, applicant for employment with the Borrower, 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 Borrower 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 Borrower's failure to comply with the obligations in this subsection shall constitute a material breach of this Loan Agreement.

(iii) *Nondiscrimination in Benefits.* The Borrower does not as of the date of this Loan Agreement and will not during the term of this Loan Agreement, in any of its operations in San Francisco, on real property owned by 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 Loan Agreement, the Borrower shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(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 Loan Agreement as though fully set forth herein. The Borrower shall comply fully with and be bound by all of the provisions that apply to

this Loan Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Borrower 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 Loan Agreement may be assessed against the Borrower and/or deducted from any payments due the Borrower.

Section 2. Local Business Enterprise Utilization; Liquidated Damages.

(i) *The LBE Ordinance.* As a condition to this Loan Agreement, the Borrower 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 that such amendments do not materially increase Borrower's obligations or liabilities, or materially diminish Borrower's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Borrower's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Borrower's obligations under this Agreement and shall entitle Issuer, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Borrower shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(ii) *Compliance and Enforcement.* If Borrower 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 Agreement pertaining to LBE participation, Borrower shall be liable for liquidated damages in an amount equal to Borrower's net profit on this Agreement, or 10% of the total amount of this Agreement, 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 Borrower authorized in the LBE Ordinance, including declaring the Borrower to be irresponsible and ineligible to contract with the Issuer for a period of up to five years or revocation of the Borrower'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 Agreement, Borrower acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to Issuer upon demand. Borrower further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Borrower on any contract with Issuer.

Borrower 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 Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

Section 3. *Prevailing Wages.* Every contract for the rehabilitation or construction of housing must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing, and contracts involving their employment will be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332). The prevailing wage requirements of this Section apply to all laborers and mechanics employed in the development of the Project, including portions other than the assisted Units.

Section 4. *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 Loan Agreement, the person executing this Loan Agreement on behalf of the Borrower acknowledges and agrees that he or she has read and understood this Section.

Section 5. *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 6. *Drug-Free Workplace Policy.* The Borrower 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 Borrower agrees that any violation of this prohibition by the Borrower, its employees, agents or assigns will be deemed a material breach of this Loan Agreement.

Section 7. *Compliance with Americans with Disabilities Act.* The Borrower 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 Borrower shall provide the services specified in this Loan Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Borrower agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Loan Agreement and further agrees that any violation of this prohibition on the part of the Borrower, its employees, agents or assigns will constitute a material breach of this Loan Agreement.

Section 8. *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 9. *Limitations on Contributions.* Through execution of this Loan Agreement, the Borrower acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Borrower 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 Borrower further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Borrower's board of directors; the Borrower's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Borrower; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Borrower. Additionally, the Borrower acknowledges that the Borrower must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. The Borrower further agrees to provide to the City the names of each person, entity or committee described above.

Section 10. *Requiring Minimum Compensation for Covered Employees.* The Borrower 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 Loan Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of the Borrower's obligations under the MCO is set forth in this Section. The Borrower 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 Borrower to pay the Borrower'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 Borrower is obligated to keep informed of the then-current requirements. Any subcontract entered into by the Borrower 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 Borrower's obligation to ensure that any subcontractors of any tier under this Loan Agreement comply with the requirements of the MCO. If any subcontractor under this Loan Agreement fails to comply, the City may pursue any of the remedies set forth in this Section against the Borrower.

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

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

(v) The Borrower's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Loan Agreement. 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 Borrower fails to comply with these requirements. The Borrower 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 Borrower'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 Borrower 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 Loan Agreement for violating the MCO, the Borrower fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Borrower 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 Borrower 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 Borrower is exempt from the MCO when this Loan Agreement is executed because the cumulative amount of agreements with the City for the fiscal year is less than \$25,000, but the Borrower later enters into an agreement or agreements that cause the Borrower to exceed that amount in a fiscal year, the Borrower shall thereafter be required to comply with the MCO under this Loan Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Borrower and the City to exceed \$25,000 in the fiscal year.

Section 11. *Requiring Health Benefits for Covered Employees.* The Borrower 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 Loan Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Loan Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(i) For each Covered Employee, the Borrower shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Borrower 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 Borrower 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 Borrower's failure to comply with the HCAO shall constitute a material breach of this Loan Agreement. The City shall notify the Borrower if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Loan Agreement for violating the HCAO, the Borrower fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Borrower 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 Borrower 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 Borrower 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 Borrower 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 Borrower based on the Subcontractor's failure to comply, provided that the City has first provided the Borrower with notice and an opportunity to obtain a cure of the violation.

(v) The Borrower shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City or the City with regard to the Borrower'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 Borrower 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 Borrower 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 Loan Agreement.

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

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

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

(xiii) If the Borrower is exempt from the HCAO when this Loan Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Borrower later enters into an agreement or agreements that cause the Borrower'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 Borrower and the City to be equal to or greater than \$75,000 in the fiscal year.

Section 12. *Prohibition on Political Activity with City Funds.* In accordance with San Francisco Administrative Code Chapter 12.G, the Borrower 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 Loan Agreement. The Borrower 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 Borrower violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Loan Agreement, and (ii) prohibit the Borrower from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider the Borrower's use of profit as a violation of this Section.

Section 13. *Protection of Private Information.* The Borrower 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 Borrower agrees that any failure of the Borrower to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of this Loan Agreement. In such an event, in

addition to any other remedies available to it under equity or law, the City may terminate this Loan Agreement, bring a false claim action against the Borrower pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Borrower.

Section 14. *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 Borrower shall remove all graffiti from any real property owned or leased by the Borrower in the City and County of San Francisco within forty eight (48) hours of the earlier of the Borrower'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 Borrower 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 Borrower to comply with this section of this Loan Agreement shall constitute a material breach of this Loan Agreement.

Section 15. *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 16. *Conflict of Interest.* Through its execution of this Loan Agreement, the Borrower 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 Loan Agreement.

Section 17. *Food Service Waste Reduction Requirements.* The Borrower 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 Loan Agreement as though fully set forth. This provision is a material term of this Loan Agreement. By entering into this Loan Agreement, the Borrower agrees that if it breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Borrower 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 Loan Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the City because of the Borrower's failure to comply with this provision.

Section 18. *Proprietary or Confidential Information of City.* The Borrower understands and agrees that, in the performance of the work or services under this Loan Agreement or in contemplation thereof, the Borrower 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 Borrower agrees that all information disclosed by City to the Borrower shall be held in confidence and used only in the performance of the Loan Agreement. The Borrower shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

Section 19. *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 Borrower shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Loan Agreement becomes effective (unless the Borrower 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 Borrower; and (iii) annually between January 1 and January 31 of each calendar

year during the term of this Loan Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Borrower of the terms of this Loan Agreement. If, within thirty days after the Borrower receives written notice of such a breach, the Borrower fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, the Borrower 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 Loan Agreement or under applicable law. Any Subcontract entered into by the Borrower 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 Loan Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA,

as Issuer

and

[TRUSTEE],

as Trustee

TRUST INDENTURE

Dated as of July 1, 2013

Relating to

**[\$Par Amount]
City and County of San Francisco, California
Multifamily Housing Revenue Bonds
(1100 Ocean Avenue Apartments),
Series 2013E**

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TRUST INDENTURE

This TRUST INDENTURE dated as of July 1, 2013 (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, 1100 Ocean Avenue Limited Partnership, 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 71-unit multifamily rental housing project in the City and County of San Francisco, California, currently known as 1100 Ocean Avenue Apartments (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 (1100 Ocean Avenue Apartments), Series 2013E, in the aggregate principal amount of \$[Par Amount] (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**"), 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 the lower of (i) 4% in excess of the rate of interest otherwise payable on the Bonds or (ii) 12% per annum; *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, 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; (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 Bank of America, N.A.

“BBA LIBOR Daily Floating Rate” means a variable rate of interest per annum equal to the British Bankers Association LIBOR Rate (**“BBA LIBOR”**), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by the Servicer from time to time) as determined for each Business Day at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a one month term, as adjusted from time to time in the Servicer’s sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available in such time for any reason, then the rate will be determined by such alternate method as reasonably selected by the Servicer. A **“London Banking Day”** is a day on which banks in London are open for business and dealing in offshore dollars. Interest shall be computed for the actual number of days which have elapsed, on the basis of a 360-day year.

“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.

“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.

“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.

“Completion Deadline” means [_____, 20__], as the same may be extended in accordance with Section 5.1(a) of the Loan Agreement and the Construction Disbursement Agreement.

“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.

“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.

“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 Mercy Housing Inc., a Nebraska not-for-profit corporation, and Mercy Housing California, a California nonprofit public benefit corporation.

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

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

“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 depository, 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 Bank of America, N.A.

"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.

“**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 and, upon delivery thereof, the Servicing Agreement, 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.

“**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 [Maturity Date].

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

“**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 Mercy Housing California, 1360 Mission Street, Suite 300, San Francisco, California 94103, Attention: Asset Management, with a copy to Bank of America, Inc., 1 Federal Street, 4th Floor, Boston, MA 02110, Attention: Tax Credit Investments Asset Management; with respect to the Trustee, [] Attention: []; with respect to the initial Servicer and Majority Owner: Bank of America, N.A., CA4-703-01-29, 1755 Grant Street, 1st Floor, Concord, CA 94520 Attention: Loan Administration Manager; 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.

“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.

“Prime Rate” means, on any day, the rate of interest per annum then most recently established by Bank of America, N.A. as its “prime rate.” Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by Bank of America, N.A. to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that Bank of America, N.A. may make various business or other loans at rates of interest having no relationship to such rate. Each time the Prime Rate changes, the per annum rate of interest on the Bonds shall change immediately and contemporaneously with such change in the Prime Rate. If Bank of America, N.A. ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (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 “Good Costs” as defined in the Tax Certificate..

“**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 among the Issuer, the Trustee 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 [July __, 2013] 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 appointed pursuant to Section 7.11 hereof. During any period in which 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.

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

“**Taxable Rate**” means a rate of interest equal to the lesser of twelve percent (12.0%) per annum or 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 equal to []% of the outstanding principal amount of the Bonds, but not less than \$[] annually, plus a one-time acceptance fee of \$[] due on the Closing Date. The on-going Trustee’s Fee is payable semi-annually in arrears on each January 1 and July 1, commencing January 1, 2014, 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.

“**Variable Rate**” means a variable rate per annum equal to the sum of (a) BBA LIBOR Daily Floating Rate, plus (b) [] ([0.____%]).

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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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, California Multifamily Housing Revenue Bonds (1100 Ocean Avenue Apartments), Series 2013E" in the original aggregate principal amount of \$[Par Amount]. 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 the 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).

(c) Anything herein to the contrary notwithstanding, to the extent that the full authorized amount of the Bonds has not been purchased by December 1, 2016, the remaining authorized principal amount of the Bonds shall be purchased by the Owners by December 31,

2016 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 December 31, 2016 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. Payment of the principal 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 a Variable Rate or at the Alternative Rate based on a Variable Rate, interest on the Bonds shall be computed on the basis of a 360-day year for the number of days actually elapsed. 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) Variable Rate. Except as provided in subsections (c) and (d) of this Section, the Series 2013E Bonds shall bear interest at the Variable Rate. The Servicer shall determine a Variable Rate for each day. The Servicer shall give telephonic (with following written confirmation) or facsimile notice on, or promptly following, each Interest Payment Date to the Trustee and the Borrower of the interest payable on such Interest Payment Date. Absent manifest error, the determination of the Variable Rate by the Servicer shall be conclusive and binding upon the Owners of Bonds bearing interest at the Variable Rate, the Issuer, the Borrower and the Trustee.

(c) 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.

(d) 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.

(e) 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.

(f) 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 Maturity 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; and (ii) the entire unpaid principal balance of the Bonds and all accrued and unpaid 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. 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); or

(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).

Any transfer of Bonds described in clauses (ii) or (iii) 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, there shall be not more than one (1) Owner 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 of such series 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 Deadline 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, 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 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 upon the terms specified in the Note.

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. 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. 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), the mandatory sinking fund payments, if any, 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 Revenue Fund; and
- (iii) 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) \$[_____], 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 amounts specified in Section 5.01(c)(i) shall be deposited in the Loan Account and the Capitalized Interest 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 Deadline, the Trustee shall transfer funds from the Capitalized Interest Account to the Revenue Fund to pay interest on the Bonds accruing up to and including the Completion Deadline without submission of any Requisition. After the Completion Deadline, 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. 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 Deadline, but only to the extent permitted by the Tax Certificate) held in the Loan Account shall be transferred immediately after the Completion Deadline 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 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.

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. [Reserved].

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, or any Additional Interest due with respect to, the Bonds;

(iii) 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;

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

(v) 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 Deadline shall only be applied to the payment of interest on the Bonds pursuant to Section 5.06(b) above and, after the Completion Deadline, to the redemption of Bonds pursuant to Section 4.01(a).

(c) Amounts paid as interest under clauses (i) and (ii) of 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 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 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 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 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 bearing interest at the Variable Rate payable hereunder within five (5) calendar days after the Borrower’s receipt of notice of the amount due and payable;

(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;

(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. 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(c), 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, 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

(c) 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 in subsection (b) (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) or (b) 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.

(p) The Trustee shall remit to the Issuer promptly any amounts it receives from the Borrower pursuant to clause (ii) of the first sentence of the second paragraph of Section 20 of the Regulatory Agreement.

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.

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 relating to the holding or investing by the Trustee of moneys hereunder or thereunder 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.

(b) 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.

(c) 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.

(d) 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 charge 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:

Teresa Yanga,
Housing Development Director,
Mayor's Office of Housing

Approved as to form:

DENNIS J. HERRERA
City Attorney

By: _____
Kenneth David Roux,
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, CALIFORNIA
MULTIFAMILY HOUSING REVENUE BONDS
(1100 OCEAN AVENUE APARTMENTS),
SERIES 2013E**

No. R-_____ \$ _____

<u>Dated Date</u>	<u>CUSIP</u>	<u>Maturity Date</u>	<u>Interest Rate</u>
[Closing Date]	None	[Maturity Date]	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 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, California Multifamily Housing Revenue Bonds (1100 Ocean Avenue Apartments), Series 2013E, and issued in the aggregate principal amount of \$[Par Amount] (the "Bonds"). The Bonds are issued for the purpose of funding a loan to 1100 Ocean Avenue Limited Partnership, a California limited partnership (the "Borrower"), in order to finance a portion of the costs of the construction and equipping of a 71-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 PURCHASE 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 July 1, 2013 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 \$[Par Amount] 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, dated as of July 1, 2013 (the "Loan Agreement"), and the Promissory Note (the "Note") dated the [Closing Date], 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 BY THE BORROWER, 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.

SCHEDULE A

**[\$Par Amount]
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA
MULTIFAMILY HOUSING REVENUE BONDS
(1100 OCEAN AVENUE APARTMENTS)
SERIES 2013E**

SCHEDULE OF DRAWINGS

Date	Draw Amount	Outstanding Principal Amount	Signature of Trustee
[Closing Date]	\$ _____	\$ _____	

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], as trustee

Attention: _____

Re: City and County of San Francisco, California Multifamily Housing Revenue Bonds (1100 Ocean Avenue Apartments), Series 2013E

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 71-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 July 1, 2013 (the "Loan Agreement"), by and among the City and County of San Francisco, California (the "Issuer"), 1100 Ocean Avenue Limited Partnership, 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 July 1, 2013 (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).

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 Trust 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 Trust 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 Trust 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 Trust 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 Trust 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 Trust 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 Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement 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 Agreement and shall entitle Issuer, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement 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 Agreement pertaining to LBE participation, Trustee shall be liable for liquidated damages in an amount equal to Trustee's net profit on this Agreement, or 10% of the total amount of this Agreement, 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 Agreement, 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 Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

Section 3. Prevailing Wages. Every contract for the rehabilitation or construction of housing must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing, and contracts involving their employment will be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332). The prevailing wage requirements of this Section apply to all laborers and mechanics employed in the development of the Project, including portions other than the assisted Units.

Section 4. 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 Trust 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 5. 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 6. 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 Trust Indenture.

Section 7. 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 Trust 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 Trust 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 Trust Indenture.

Section 8. 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 9. Limitations on Contributions. Through execution of this Trust 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 10. 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 Trust Indenture as though fully set forth. The text of the MCO is available on the web at 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 Trust Indenture comply with the requirements of the MCO. If any subcontractor under this Trust 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 Trust 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 Trust 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 Trust 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 11. 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. Capitalized terms used in this Section and not defined in this Trust 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 Trust 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 Trust 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 Trust 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 Trust 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 12. 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 Trust 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 Trust 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 13. 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 Trust Indenture. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Trust 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 14. 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 Trust Indenture shall constitute a material breach of this Trust Indenture.

Section 15. 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 16. Conflict of Interest. Through its execution of this Trust 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 Trust Indenture.

Section 17. 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 Trust Indenture as though fully set forth. This provision is a material term of this Trust Indenture. By entering into this Trust 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 Trust 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 18. Proprietary or Confidential Information of City. The Trustee understands and agrees that, in the performance of the work or services under this Trust 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 Trust 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 19. 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 Trust 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 Trust 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 Trust 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 Trust 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 Trust Indenture shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

Exhibit D

Form of Project Fund Requisition

Relating to

\$(Par Amount]
City and County of San Francisco, California
Multifamily Housing Revenue Bonds
(1100 Ocean Avenue Apartments),
Series 2013E

BORROWER: _____
PROJECT: _____
REQUISITION NUMBER: _____
In the Amount of \$ _____

TO: [Trustee] (the "Trustee")

Bank of America, N.A. (the "Majority Owner")
CA4-70202-29
2001 Clayton Road, 2nd Floor
Concord, CA 94520
Attention: Loan Administration Manager

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:

Amount

Source

Payable to:

[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":

1100 OCEAN AVENUE LIMITED PARTNERSHIP,
a California limited partnership

By: Mercy Housing Calwest, a California nonprofit corporation, its managing general partner

By: _____
Its: _____

By: Bernal Housing LLC, a California limited liability company, its general partner

By: Bernal Heights Housing Corporation, a California nonprofit public benefit corporation, its managing member

By: _____
Its: _____

The foregoing Requisition is approved by the Majority Owner.

"Majority Owner":

BANK OF AMERICA, N.A.

By: _____
Name: _____
Title: _____

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Lofton & Jennings
425 Market Street, 22nd Floor
San Francisco, CA 94105
Attention: William M. Lofton

**REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

**1100 OCEAN AVENUE LIMITED PARTNERSHIP
a California limited partnership**

Dated as of July 1, 2013

Relating to:

**City and County of San Francisco
Multifamily Housing Revenue Bonds
(1100 Ocean Avenue Apartments),
Series 2013E**

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REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Regulatory Agreement") is made and entered into as of July 1, 2013, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, and chartered city and county organized and existing under the Constitution and laws of the State of California (together with any successor to its rights, duties and obligations, the "City"), and 1100 OCEAN AVENUE LIMITED PARTNERSHIP, a California limited partnership (the "Owner"), owner of a leasehold interest in the land described in Exhibit A attached hereto.

RECITALS

A. WHEREAS, pursuant to the Charter of the City, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code (collectively, the "Act"), the City is authorized to issue revenue bonds and to issue revenue bonds to finance the acquisition, construction and development of multifamily rental housing; and

B. WHEREAS, the Board of Supervisors of the City has authorized the issuance of multifamily mortgage revenue bonds under the Act in connection with the acquisition and construction of a multifamily residential rental housing project located on the site described in Exhibit A hereto and to be known as 1100 Ocean Avenue Apartments (the "Project"), which Project shall be subject to the terms and provisions hereof; and

C. WHEREAS, in furtherance of the purposes of the Act and as a part of the City's plan of financing affordable housing, the City is executing and delivering its revenue bonds designated "City and County of San Francisco Multifamily Housing Revenue Bonds (1100 Ocean Avenue Apartments), Series 2013E" (the "Bonds") pursuant to the terms of a Trust Indenture of even date herewith (the "Indenture"), among the City and _____, as trustee (the "Trustee"), the proceeds of which Bonds are to be loaned to the Owner (the "Loan") pursuant to a Loan Agreement, of even date herewith (the "Loan Agreement"), among the City, the Trustee and the Owner; and

D. WHEREAS, the City hereby certifies that all things necessary to make the Bonds, when issued as provided in the Indenture, the valid, binding and limited obligations of the City have been done and performed, and the execution and delivery of the Indenture and the issuance of the Bonds, subject to the terms thereof, in all respects have been duly authorized; and

E. WHEREAS, the Code and the regulations and rulings promulgated with respect thereto and the Act prescribe that the use and operation of the Project be restricted in certain respects and in order to ensure that the Project will be acquired, constructed, equipped, used and operated in accordance with the Code and the Act, the City and the Owner have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, construction and operation of the Project.

AGREEMENT

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

1. Definitions and Interpretation. Capitalized terms used herein have the meanings assigned to them in this Section 1, unless the context in which they are used clearly requires otherwise:

“Act” - The Charter of the City, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California, as now in effect and as it may from time to time hereafter be amended or supplemented.

“Adjusted Income” - The adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) as calculated in the manner prescribed pursuant to Section 8 of the Housing Act, or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act.

“Affiliated Party” - (a) a Person whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code, (b) a Person who together with the Owner are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein), (c) a partnership and each of its partners (and their spouses and minor children) whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code, and (d) an S corporation and each of its shareholders (and their spouses and minor children) whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code.

“Area” - The HUD Metro Fair Rent Market Area (HMFA), or successor area determined by HUD in which the Project is located.

“Authorized Owner Representative” - Any person who at the time and from time to time may be designated as such, by written certificate furnished to the City and the Trustee containing the specimen signature of such person and signed on behalf of the Owner by the general partner(s) of the Owner, which certificate may designate an alternate or alternates.

“Available Units” - Residential units in the Project (except for not more than one three-bedroom unit set aside for a resident manager) that are actually occupied and residential units in the Project that are vacant and have been occupied at least once after becoming available for occupancy, provided that (a) a residential unit that is vacant on the later of (i) the date the Project is acquired or (ii) the date of issuance of the Bonds is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after completion of the construction of the Project.

“Bonds” - City and County of San Francisco Multifamily Housing Revenue Bonds (1100 Ocean Avenue Apartments), Series 2013E, issued pursuant to the Indenture.

“CDLAC” - The California Debt Limit Allocation Committee.

“CDLAC Requirements” - The requirements described in Section 7 of this Regulatory Agreement.

“CDLAC Resolution” - The Resolution described in Section 7 of this Regulatory Agreement.

“Certificate of Continuing Program Compliance” - The Certificate with respect to the Project to be filed by the Owner with the City and the Program Administrator, which shall be substantially in the form attached to this Regulatory Agreement as Exhibit D, or such other form as is provided by the City.

“Certificate of Preference” - A residential Certificate of Preference issued by the City pursuant to the City’s Certificate of Preference Program.

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

“City Median Income” means the “Maximum Income by Household Size” derived by the Mayor’s Office of Housing and published annually, based on the unadjusted area median income for the Area, as determined annually by HUD in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act and Section 3009a of the Housing and Economic Recovery Act of 2008 or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination, and being unadjusted for high housing costs.

“Closing Date” - The date of the issuance of the Bonds, being July [], 2013.

“Code” - The Internal Revenue Code of 1986, as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bonds, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Completion Certificate” - The certificate of completion of the construction of the Project required to be delivered to the City and the Lender by the Owner pursuant to Section 2 of this Regulatory Agreement, which shall be substantially in the form attached to this Regulatory Agreement as Exhibit C.

“Completion Date” - The date of completion of the construction of the Project, as that date shall be certified as provided in Section 2 of this Regulatory Agreement.

“CTCAC” means the California Tax Credit Allocation Committee.

“Facilities” - The multifamily buildings, structures and other improvements on the Site to be acquired, constructed, improved, and equipped, and all fixtures and other property owned by

the Owner and located on the Site, or used in connection with, such buildings, structures and other improvements.

“General Partner” – collectively (i) Mercy Housing Calwest, a California nonprofit public benefit corporation, (ii) Bernal Housing LLC, A California limited liability company, and/or (iii) any other Person that the partners of Owner, with the prior written approval of Lender (to the extent required pursuant to the Loan Documents), have selected to be a general partner of Owner, and any successor general partner of the Owner, in each case to the extent permitted under the Loan Documents and hereunder.

“Housing Act” - The United States Housing Act of 1937, as amended.

“Housing Law” means Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended.

“HUD” - The United States Department of Housing and Urban Development, its successors and assigns.

“Income Certification Form” – Fully completed and executed Income Certification Form substantially in the form attached to this Regulatory Agreement as Exhibit B, or such other form as may be provided by the City.

“Indenture” - The Trust Indenture, of even date herewith, between the City and the Trustee.

“Inducement Date” – December 11, 2012, the date of adoption of the Inducement Resolution.

“Inducement Resolution” - The resolution adopted by the City on the Inducement Date, indicating its intention to issue tax-exempt obligations to finance a portion of the Project.

“Investor Limited Partner” – Bank of America, N.A., and any successor investor limited partner of the Owner.

“Lender” – Bank of America, N.A., and its successor and assigns.

“Loan” - The loan of the proceeds of the Bonds made to the Owner pursuant to the Loan Agreement to provide financing for the acquisition and construction of the Project.

“Loan Agreement” - The Loan Agreement, of even date herewith, among the City, the Trustee and the Owner, pursuant to which the Loan was made.

“Median Income for the Area” means the median gross income for the Area, as determined in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act and Section 3009a of the Housing and Economic Recovery Act of 2008 or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act, including adjustments for household size.

“Mortgage” – The [Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (California), dated as of the date hereof], executed by the Owner and granting a first lien on the Project for the benefit of the City and assigned to the Lender, including any amendments and supplements thereto as permitted by the Indenture.

“Owner” – 1100 Ocean Avenue Limited Partnership, a California limited partnership, and its permitted successors and assigns.

“Partnership Agreement” - The Amended and Restated Agreement of Limited Partnership of Owner, by and among the General Partner, the Investor Limited Partner and _____, as the same may be amended, modified or supplemented from time to time, subject to the terms hereof.

“Program Administrator” - A governmental agency, a financial institution, a certified public accountant, an apartment management firm, a mortgage insurance company or other business entity performing similar duties or otherwise experienced in the administration of restrictions on bond financed multifamily housing projects, which shall be the City initially and, at the City’s election, any other person or entity appointed by the City who shall enter into an administration agreement in a form acceptable to the City.

“Project” - The Facilities and the Site.

“Project Costs” - To the extent authorized by the Code, the Regulations and the Act, any and all costs incurred by the Owner with respect to the construction of the residential component of the Project, whether paid or incurred prior to or after the Inducement Date, including, without limitation, costs for site preparation, the planning of housing and related facilities and improvements, the acquisition of property, the removal or demolition of existing structures, the construction of housing and related facilities and improvements, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractor’s and Owner’s overhead and supervisors’ fees and costs directly allocable to the Project, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, county or entity for expenditures made for the Project), and interest accrued during construction and prior to the Completion Date.

“Qualified Project Costs” - The Project Costs incurred after the date which is sixty days prior to the Inducement Date and that are chargeable to a capital account with respect to the Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Owner or but for the proper election by the Owner to deduct those amounts, within the meaning of Treasury Regulations Section 1.103-8(a)(1); provided, however, that only such portion of the interest accrued during construction of the Project shall constitute a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs, and provided further that such interest shall cease to be a Qualified Project Cost on the Completion Date, and provided still further that if any portion of the Project is being constructed by an Affiliated Party (whether as a general contractor or a subcontractor), “Qualified Project Costs” shall include only (a) the actual out-of-pocket costs

incurred by such Affiliated Party in constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Affiliated Party, and (c) any overhead expenses incurred by the Affiliated Party which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such Affiliated Party due to early completion of the Project (or any portion thereof). Qualified Project Costs do not include Costs of Issuance.

“Qualified Project Period” - The period beginning on the later of the Closing Date or the first day on which at least 10% of the units in the Project are first occupied, and ending on the later of the following:

(a) the date that is thirty (30) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied;

(b) the first date on which no Tax-Exempt private activity bonds with respect to the Project are Outstanding; or

(c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

“Regulations” - The income tax regulations promulgated by the United States Department of the Treasury pursuant to the Code from time to time.

“Regulatory Agreement” - This Regulatory Agreement and Declaration of Restrictive Covenants, together with any amendments hereto or supplements hereof.

“Restricted Unit” - A Very Low Income Unit.

“Servicer” - Shall have the meaning assigned to such term in the Indenture.

“Site” - The parcel or parcels of real property described in Exhibit A, which is attached hereto, and all rights and appurtenances thereto, and in which the Owner has a leasehold interest.

“State” - The State of California.

“Tax Certificate” - The Tax Certificate and Agreement between the City and the Owner, dated the date of issuance of the Bonds, as amended or supplemented from time to time.

“Tax Counsel” - Orrick, Herrington & Sutcliffe, LLP and Lofton & Jennings, or any other attorney or a firm of attorneys of nationally recognized standing in matters pertaining to the tax status of interest on bonds issued by states and their political subdivisions, who is selected by the City and duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Tenant” - At any time of determination thereof, all persons who together occupy a single residential unit in the Project, and upon the occupancy of a unit by any individual in addition to the previous Tenant of such unit, such unit shall be deemed to be occupied by a new Tenant.

“Trustee” – Shall have the meaning assigned to such term in the Indenture.

“Very Low Income Tenant” means any Tenant whose Adjusted Income does not exceed fifty percent (50%) of the lower of City Median Income or Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not qualify as Very Low Income Tenants. The determination of a Tenant’s status as a Very Low Income Tenant shall initially be made by the Owner on the basis of an Income Certification Form (a form of which is attached hereto as Exhibit B) executed by the Tenant upon such Tenant’s occupancy of a unit in the Project and upon annual recertification thereafter.

“Very Low Income Units” means the dwelling units in the Project required to be rented to, or designated for occupancy by, Very Low Income Tenants pursuant to Section 4 of this Regulatory Agreement.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender used in this Regulatory Agreement shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms shall be determined by reference to this Section 1 notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

2. Acquisition and Construction of the Project. The Owner hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Owner has incurred, or will incur within six months after the Closing Date, a substantial binding obligation to commence the construction of the Project, pursuant to which the Owner is or will be obligated to expend at least the lesser of (i) 2-1/2 percent of the aggregate principal amount of the Bonds or (ii) \$100,000.

(b) The Owner’s reasonable expectations respecting the total cost of construction of the Project and the disbursement of Bond proceeds are accurately set forth in the Tax Certificate, which has been delivered to the City on the Closing Date.

(c) The Owner will proceed with due diligence to complete the acquisition and construction of the Project and expects to expend the maximum authorized amount of the Loan for Project Costs within three (3) years of the Closing Date.

(d) [reserved]

(e) On the Completion Date the Owner will submit to the City and the Lender a duly executed and completed Completion Certificate.

(f) On the date on which fifty percent (50%) of the units in the Project are first rented, the Owner will submit to the City and the Lender a duly executed and completed Certificate as to Commencement of Qualified Project Period, in the form of Exhibit E hereto.

(g) Money on deposit in any fund or account in connection with the Bonds, whether or not such money was derived from other sources, shall not be used by or under the direction of the Owner in a manner which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and the Owner specifically agrees that the investment of money in any such fund shall be restricted as may be necessary to prevent the Bonds from being "arbitrage bonds" under the Code.

(h) The Owner (and any person related to it within the meaning of Section 147(a)(2) of the Code) will not take or omit to take any action if such action or omission would in any way cause the proceeds from the sale of the Bonds to be applied in a manner contrary to the requirements of the Indenture, the Loan Agreement or this Regulatory Agreement.

(i) On or concurrently with the final draw by the Owner of amounts representing proceeds of the Bonds, the expenditure of such draw, when added to all previous disbursements representing proceeds of the Bonds, will result in not less than 97 percent (97%) of all disbursements of Bond proceeds having been used to pay or reimburse the Owner for Qualified Project Costs and less than 25 percent (25%) of all disbursements having been used to pay for the acquisition of land or any interest therein.

(j) The statements made in the various certificates delivered by the Owner to the City on the Closing Date are true and correct:

(k) All of the amounts received by the Owner from the proceeds of the Bonds and earnings from the investment of such proceeds will be used to pay Project Costs; and no more than two percent (2%) of the proceeds of the Bonds shall be used to pay issuance costs of the Bonds, within the meaning of Section 147(g) of the Code.

(l) The Owner will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the exclusion from gross income for federal income tax purposes of the Holder of the Bonds (other than with respect to interest on any portion of thereof for a period during which such portion is held by a "substantial user" of any facility financed with the proceeds of the Bonds or a "related person," as such terms are used in Section 147(a) of the Code), and, if it should take or permit, or omit to

take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

(m) The Owner will take such action or actions as may be necessary, in the written opinion of Tax Counsel to the City, to comply fully with the Act, the Code and all applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service to the extent necessary to maintain the exclusion from gross income for federal income tax purposes of the Holder of the Bonds (other than with respect to interest on any portion of thereof for a period during which such portion is held by a "substantial user" of any facility financed with the proceeds of the Bonds or a "related person," as such terms are used in Section 147(a) of the Code).

3. Qualified Residential Rental Property. The Owner hereby acknowledges and agrees that the Project will be owned, managed and operated as a "qualified residential rental project" (within the meaning of Section 142(d) of the Code). The City hereby elects to have the Project meet the requirements of Section 142(d)(1)(A) of the Code and the Owner hereby elects to comply with Section 142(d)(1)(A) of the Code. To that end, and for the term of this Regulatory Agreement, the Owner hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Project is being acquired and constructed for the purpose of providing multifamily residential rental property, and the Owner shall own, manage and operate the Project as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with applicable provisions of Section 142(d) of the Code and Section 1.103-8(b) of the Regulations, and the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the residential dwelling units in the Project will be similarly constructed units, and, to the extent required by the Code and the Regulations, each residential dwelling unit in the Project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range (which may be a countertop cooking range), refrigerator and sink.

(c) None of the residential dwelling units in the Project will at any time be used on a transient basis (e.g., subject to leases that are less than 30 days duration) (including use as a corporate suite), or be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home, retirement house or trailer court or park.

(d) No part of the Project will at any time be owned as a condominium or by a cooperative housing corporation, nor shall the Owner take any steps in connection with a conversion to such ownership or uses. Other than obtaining a final subdivision map on the Project and a Final Subdivision Public Report from the California Department of Real Estate

and, the Owner shall not take any steps in connection with a conversion of the Project to a condominium ownership except with the prior written opinion of Tax Counsel that the interest on the Bonds will not become taxable thereby under Section 103 of the Code.

(e) All of the residential dwelling units in the Project will be available for rental on a continuous basis to members of the general public and the Owner will not give preference to any particular class or group in renting the residential dwelling units in the Project, except to the extent required hereunder or by any regulatory or restrictive use agreement to which the Project is subject pursuant to Section 42 of the Code. [add restriction for transition age youth (18-24)]

(f) The Site consists of a parcel or parcels that are contiguous and all of the Facilities will comprise a single geographically and functionally integrated project for residential rental property, as evidenced by the ownership, management, accounting and operation of the Project.

(g) No residential dwelling unit in the Project shall be occupied by the Owner. Notwithstanding the foregoing, if the Project contains five or more residential dwelling units, this subsection shall not be construed to prohibit occupancy of residential dwelling units by one or more resident managers or maintenance personnel any of whom may be the Owner; provided that the number of such managers or maintenance personnel is not unreasonable given industry standards in the area for the number of residential dwelling units in the Project.

(h) The Owner shall not discriminate on the basis of race, creed, religion, color, sex, source of income (*e.g.*, AFDC, Section 8 or SSI), physical disability (including HIV/AIDS), age, national origin, ancestry, marital or domestic partner status, sexual preference or gender identity in the rental, lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the construction, operation and management of the Project, except to the extent required hereby.

(i) Should involuntary noncompliance with the provisions of Section 1.103-8(b) of the Regulations be caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the Closing Date which prevents the City from enforcing the requirements of the Regulations, or condemnation or similar event, the Owner covenants that, within a "reasonable period" determined in accordance with the Regulations, it will either prepay the Bonds or, if permitted under the provisions of the Mortgage and the Indenture, apply any proceeds received as a result of any of the preceding events to reconstruct the Project to meet the requirements of Section 42(d) of the Code and the Regulations.

(j) The Owner agrees to maintain the Project, or cause the Project to be maintained, during the term of this Regulatory Agreement (i) in a reasonably safe condition and (ii) in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof such that the Project shall be substantially the same condition at all times as the condition it is in at the time of the completion of the construction of the Project with the proceeds of the Bonds. Notwithstanding the foregoing, the Owner's obligation to repair or rebuild the Project in the

event of casualty or condemnation shall be subject to the terms of the Loan Agreement and the Mortgage.

(k) The Project will have 71 residential dwelling units, one of which will be a manager's unit.

(l) The Owner will not sell dwelling units within the Project.

4. Restricted Units. The Owner hereby represents, as of the date hereof, and warrants, covenants and agrees as follows:

(a) Income and Rent Restrictions.

(i) Low Income Units. [Reserved].

(ii) Very Low Income Units. All of the 71 units in the Project (excluding a 3 BR manager's unit) shall be rented to and continuously occupied by Very Low-Income Households as specified below:

Unit Type	Number of Units	Maximum Percentage of Median Income for the Area (AMI)
Studio	18	50%
1 BR	18	50%
2 BR	21	50%
3 BR	13	50%
4 BR		50%
Total Units		

The monthly rent charged for all the Very Low Income Units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 50% of the Median Income for the Area.

(iii) Income Restrictions Pursuant to the Code. Pursuant to the requirements of Section 142(d) of the Code, for the Qualified Project Period, not less than twenty percent (20%) of the total number of completed units in the Project (excluding the manager's unit), or fifteen (15) units, shall be designated as Very Low Income Units and shall be rented to and continuously occupied by Very Low Income Tenants during the Qualified Project Period. The Owner shall satisfy the requirements of this Section 4(a)(iii) by complying with the requirements of Section 4(a)(ii), to the extent such compliance meets the requirements of Section 142(d)(1)(A) of the Code.

(iv) Income and Rent Restrictions Pursuant to the Act. Pursuant to the requirements of Section 52080(a)(1)(A) of the Housing Law, for the Qualified Project Period, not less than twenty percent (20%) of the total number of completed units in the Project (excluding the manager's unit), or fifteen (15) units, shall be designated as Very Low Income Units and shall be rented to and continuously occupied by Very Low Income Tenants during the Qualified Project Period. Pursuant to the requirements of the Section 52080(a)(1)(A) of the

Housing Law, the monthly rent charged for such Very Low Income Units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 50% of the Median Income for the Area. The Owner shall satisfy the requirements of this Section 4(a)(iv) by complying with the requirements of Section 4(a)(i), to the extent such compliance meets the requirements of Section 52080(a)(1)(A) of the Housing Law.

(b) Over-Income Tenants. Notwithstanding the foregoing provisions of Section (a), no Tenant qualifying as a Very Low Income Tenant upon initial occupancy shall be denied continued occupancy of a Restricted Unit in the Project because, after admission, the aggregate Adjusted Income of all Tenants in the Restricted Unit increases to exceed the qualifying limit for such Restricted Unit. However, should the aggregate Adjusted Income of Tenants in a Restricted Unit, as of the most recent determination thereof, exceed one hundred forty percent (140%) of the applicable income limit for such Restricted Unit occupied by the same number of Tenants, the next available unit of comparable or smaller size must be rented to (or held vacant and available for immediate occupancy by) a Very Low Income Tenant. The unit occupied by such Tenants whose aggregate Adjusted Income exceeds such applicable income limit shall continue to be treated as a Very Low Income Unit, for purposes of the requirements of Section 4(a) hereof unless and until an Available Unit of comparable or smaller size is rented to persons other than Very Low Income Tenants. Moreover, a unit previously occupied by a Very Low Income Tenant and then vacated shall be considered occupied by a Very Low Income Tenant until reoccupied, other than a reoccupation for a temporary period, at which time the character of the unit shall be re-determined. In no event shall such temporary period exceed thirty-one (31) days.

(c) Income Certifications. The Owner will obtain, complete and maintain on file Income Certifications for each Tenant (i) immediately prior to the initial occupancy of a Restricted Unit by such Tenant, and (ii) thereafter, annually, in each case in the form attached hereto as Exhibit B, together with such information, documentation and certifications as are required therein or by the City, in its discretion, to substantiate the Tenant's Income Certification. In addition, the Owner will provide such further information as may be required in the future by the State of California, the City (on a reasonable basis), the Program Administrator and by the Act, Section 142(d) of the Code or the Treasury Regulations, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code.

(d) Certificate of Continuing Program Compliance. Upon the commencement of the Qualified Project Period, and on each February 1st thereafter (or such other date as shall be requested in writing by the City or the Program Administrator) during the term of this Regulatory Agreement, the Owner shall advise the Program Administrator of the status of the occupancy of the Project by delivering to the Program Administrator (with a copy to the Trustee) a Certificate of Continuing Program Compliance (a form of which is attached hereto as Exhibit D). The Owner shall also timely provide to the City such information as is requested by the City to comply with any reporting requirements applicable to it with respect to the Bonds or the Project under any federal or State law or regulation, including without limitation, CDLAC regulations.

(e) Recordkeeping. The Owner will maintain complete and accurate records pertaining to the Restricted Units, and will permit any duly authorized representative of the City, the Program Administrator (if other than the City), the Trustee, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Owner pertaining to the Project upon reasonable notice during normal business hours, including those records pertaining to the occupancy of the Restricted Units, but specifically excluding any material which may be legally privileged.

(f) Annual Certification to Secretary of Treasury. The Owner shall submit to the Secretary of the Treasury annually on or before March 31 of each year, or such other date as is required by the Secretary of the Treasury, a completed Internal Revenue Service Form 8703, and shall provide a copy of each such form to the Program Administrator and the Trustee. Failure to comply with the provisions of this paragraph will subject the Owner to penalty, as provided in Section 6652(j) of the Code.

(g) Lease Provisions Regarding Income Certification Reliance. All leases pertaining to Restricted Units do and shall contain clauses, among others, wherein each Tenant who occupies a Restricted Unit: (1) certifies the accuracy of the statements made in the Income Certification, (2) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such Tenant, that such Tenant will comply promptly with all requests for information with respect thereto from the Owner or the Program Administrator on behalf of the City, and that the failure to provide accurate information in the Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the tenancy of such Tenant; (3) acknowledges that the Owner has relied on the Income Certification and supporting information supplied by the Tenant in determining qualification for occupancy of the Restricted Unit, and that any material misstatement in such certification (whether intentional) will be cause for immediate termination of such lease or rental agreement; and (4) agrees that the Tenant's income is subject to annual certification in accordance with Subsection 4(c) hereof and that failure to cooperate with the annual recertification process reasonably instituted by the Owner pursuant to Subsection 4(d) above may provide grounds for termination of the lease.

(h) Maintenance of Tenant Lists and Applications. All tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business which is unrelated to the Project and shall be maintained, as required from time to time by the Program Administrator on behalf of the City, in a reasonable condition for proper audit and subject to examination during normal business hours by representatives of the Project, the City or the Trustee. Failure to keep such lists and applications or to make them available to the City or the Trustee shall be a default hereunder.

(i) Tenant Lease Subordination. All tenant leases or rental agreements shall be subordinate to this Regulatory Agreement.

(j) No Encumbrance, Demolition or Non-Rental Residential Use. The Owner shall not take any of the following actions:

(i) encumber any portion of the Project or grant commercial leases of any part thereof, or permit the conveyance, transfer or encumbrance of any part of the Project (except for apartment leases), except (i) pursuant to the provisions of this Regulatory Agreement and on a basis subordinate to the provisions of this Regulatory Agreement, to the extent applicable, (ii) upon receipt by the Owner, the Trustee and the City of an opinion of Bond Counsel that such action will not adversely affect the Tax-Exempt status of interest on the Bonds, or (iii) upon a sale, transfer or other disposition of the Project in accordance with the terms of this Regulatory Agreement;

(ii) demolish any part of the Project or substantially subtract from any real or personal property of the Project (other than in the ordinary course of business); or

(iii) permit the use of the dwelling accommodations of the Project for any purpose except rental residences.

(k) Compliance with Regulatory Agreement. The Owner shall exercise reasonable diligence to comply with the requirements of this Regulatory Agreement and shall notify the City within fifteen (15) days and correct any noncompliance within sixty (60) days after such noncompliance is first discovered or would have been discovered by the exercise of reasonable diligence, unless such noncompliance is not reasonably susceptible to correction within sixty (60) days, in which event the Owner shall have such additional time as may be reasonably necessary to effect such correction provided the Owner has commenced such correction after discovery and is diligently prosecuting such correction.

5. Additional Requirements of the City.

(a) Minimum Lease Term. The term of the lease for any Restricted Unit shall be not less than one (1) year.

(b) Limitation on Rent Increases. Annual rent increases on a Restricted Unit shall be limited to the percentage of the annual increase in the applicable Median Income for the Area for that Unit. Rent increases which are permitted but not made in a given year may not be carried forward and made in any subsequent year.

(c) Appointment of Program Administrator. The Owner acknowledges that the City may appoint a Program Administrator (other than the City), at the sole cost and expense of the City, to administer this Regulatory Agreement and to monitor performance by the Owner of the terms, provisions and requirements hereof. In such event, the Owner shall comply with any reasonable request by the City to deliver to any such Program Administrator, in addition to or instead of the City, any reports, notices or other documents required to be delivered pursuant hereto, and to make the Project and the books and records with respect thereto available for inspection during normal business hours with reasonable notice by the Program Administrator as an agent of the City. The Owner shall have the right to rely on any consent or direction given by the Program Administrator on the same basis as if given by the City.

(d) Management Agent. The Owner shall not enter into any agreement providing for the management or operation of the Project with any party other than Mercy

Housing Management Group without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

(e) Certificate of Preference Program. To the fullest extent permitted by law, the Owner shall comply with the City's Certificate of Preference Program pursuant to S.F. Admin. Code Section 24.8, to the extent such compliance is not in conflict with any other requirements imposed on the Project pursuant to Section 142(d) of the Code, the Act, the CDLAC Resolution, or CTCAC.

(f) Nondiscrimination Based on Section 8, Household Size, or Source of Income. The Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act, or any successor program or similar State or local governmental assistance program. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants and the Owner shall not refuse to rent to any tenant on the basis of household size as long as such household size does not exceed two (2) persons for a studio unit; three (3) persons for a one-bedroom unit; five (5) persons for a two-bedroom unit and seven (7) persons for a three-bedroom unit. The Owner shall not collect any additional fees or payments from such a tenant except security deposits or other deposits required of all tenants. The Owner shall not collect security deposits or other deposits from Section 8 certificate or voucher holders in excess of that allowed under the Section 8 program. The Owner shall not discriminate against tenant applicants on the basis of legal source of income (e.g., TANF, Section 8 or SSI), and the Owner shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (i.e., ability to pay shall be demonstrated if such a tenant can show that the same percentage or more of the tenant's income has been consistently paid on time for rent in the past as will be required to be paid for the rent applicable to the unit to be occupied, provided that such tenant's expenses have not increased materially).

(g) Over-Income Provisions after Expiration of Qualified Project Period. From and after the expiration of the Qualified Project Period, in the event that Owner's certification of the Very Low Income Tenant's income, pursuant to Section 4(c), indicates that the Very Low Income Tenant's income exceeds one hundred twenty percent (120%) of the Median Income for the Area, the Owner shall terminate such lease upon one hundred twenty (120) days prior written notice to the Tenant, and the lease for each Restricted Unit shall contain a statement to the foregoing effect. Notwithstanding the foregoing, the Owner shall not be required to terminate the Very Low Income Tenant's lease if any regulation or statute governing the Project or the financing thereof prohibits the termination of the Tenant's lease in this manner.

(h) Consideration for Restrictions. It is hereby acknowledged and agreed that any restrictions imposed on the operation of the Project herein and which are in addition to those imposed pursuant to Section 142(d) of the Code or the Act are at the request of the Owner, and that the Owner has voluntarily agreed to such additional restrictions in order to obtain financial assistance from the City and an allocation of private activity bond volume cap from CDLAC.

(i) Amendment or Waiver by City; Conflicting Provisions. The requirements of Section 4(a)(ii) and of Section 5 hereof may be amended, modified or waived (but not increased or made more onerous), at the City's sole discretion, by written amendment signed by the City and the Owner, or expressly waived by the City in writing, but no such waiver by the City shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement except to the extent the City and the Trustee have received an opinion of Bond Counsel to the effect that any such provision is not required by the Code or the Act and may be waived without adversely affecting the Tax Exempt status of interest on the Bonds. Any requirement of Section 4(a)(ii) or Section 5 shall be void and of no force and effect if the City, the Trustee and the Owner receive a written opinion of Bond Counsel to the effect that compliance with such requirement would be in conflict with the Act or any other applicable state or federal law.

(j) Extension of the Qualified Project Period – Notwithstanding any other provision herein, the Qualified Project shall not expire earlier than , and the requirements of this Section 5 shall be in effect until, the date that is fifty years (55) years after the closing.

(k) Marketing Plan. Owner will Market the Restricted Units in accordance with the marketing plan approved by the City.

6. Additional Requirements of State Law. In addition to the requirements set forth above, pursuant to Section 52080 of the Housing Law, the Owner hereby agrees that it shall also comply with each of the following requirements, in each case, for the term of this Agreement set forth in Section 12 hereof:

(a) Tenants Under Section 8 of the Housing Act. The Owner shall accept as tenants, on the same basis as all other prospective tenants, low-income persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act, and shall not permit any selection criteria to be applied to Section 8 certificate or voucher holders that is more burdensome than the criteria applied to all other prospective tenants.

(b) Availability on Priority Basis. The units reserved for occupancy as required by Section 4(a)(iv) shall remain available on a priority basis for occupancy at all times.

(c) Binding Covenants and Conditions. The covenants and conditions of this Regulatory Agreement shall be binding upon successors in interest of the Owner.

(d) Recordation of Regulatory Agreement. This Regulatory Agreement shall be recorded in the office of the county recorder of the City and County of San Francisco, California, and shall be recorded in the grantor-grantee index under the names of the Owner as grantor and to the name of the City as grantee.

(e) Restricted Income Units of Comparable Quality. The Restricted Units shall be of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants and shall be distributed throughout the Project.

(f) Availability Following Expiration of Qualified Project Period. Following the expiration or termination of the Qualified Project Period, except in the event of foreclosure and redemption of the Bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units reserved for occupancy as required by Subsection 4(a)(iv) shall remain available to any eligible Tenant occupying a reserved unit at the date of such expiration or termination, at the rent determined by Subsection 4(a)(iv), until the earliest of (1) the household's income exceeds 140% of the maximum eligible income specified therein, (2) the household voluntarily moves or is evicted for good cause, as deemed in the Housing Law, (3) 55 years after the date of the commencement of the Qualified Project Period, and (4) the Owner pays the relocation assistance and benefits to households as provided in Section 7264(b) of the California Government Code.

(g) Availability Preceding Expiration of Qualified Project Period. During the three (3) years prior to the later of (i) the expiration of the Qualified Project Period or (ii) the date that is 55 years after the date of commencement of the Qualified Project Period, the Owner shall continue to make available to eligible households reserved units that have been vacated to the same extent that non-reserved units, if any, are made available to non-eligible households.

(h) Notice and Other Requirements. The Owner shall comply with all applicable requirements of Section 65863.10 of the California Government Code, including the requirements for providing notices in Sections (b), (c), (d) and (e) thereof, and shall comply with all applicable requirements of Section 65863.11 of the California Government Code.

(i) Syndication of the Project. As provided in Section 52080(e) of the Housing Law, the City hereby approves the syndication of tax credits with respect to the Project, pursuant to Section 42 of the Code, to the Investor Limited Partner, or any affiliate thereof or successor thereto, pursuant to the terms of the Owner's partnership agreement. Any subsequent syndication of the Project shall be subject to the prior written approval of the Board of Supervisors of the City, which approval shall be granted only after the City determines that the terms and conditions of such syndication (1) shall not reduce or limit any of the requirements of the Act or regulations adopted or documents executed pursuant to the Act, (2) shall not cause any of the requirements of the City set forth in this Section 6 hereof to be subordinated to the syndication agreement, and (3) shall not result in the provision of fewer assisted units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

7. CDLAC Requirements. (a) The Owner hereby agrees that the construction, equipping and operation of the Project and the financing thereof is and shall be in compliance with the conditions set forth in Exhibit A to CDLAC Resolution No. 13-31 adopted on May 15, 2013 and revised by the CDLAC letter dated [___, 2013], attached hereto as Exhibit G (collectively, the "CDLAC Resolution"), which conditions (the "CDLAC Requirements") are incorporated herein by reference and are made a part hereof. The Owner shall prepare and submit to the City a Certificate of Compliance in substantially the form attached hereto as Exhibit G, executed by an authorized representative of the Owner.

(b) CDLAC shall have contractual rights in this Regulatory Agreement and shall be entitled (but not obligated) to enforce, in accordance with Section 16 hereof, the terms

hereof and the terms of the CDLAC Resolution. In addition, CDLAC is intended to be and shall be a third party beneficiary of this Regulatory Agreement. Notwithstanding the above, CDLAC shall be entitled solely to enforce the terms of the CDLAC Resolution, and any enforcement of the terms and provisions of the CDLAC Resolution by CDLAC shall not adversely affect the interests of the Lender, and shall otherwise be subject to the terms, conditions and limitations otherwise applicable to the enforcement of remedies under this Regulatory Agreement. Pursuant to Section 52080(k) of the Housing Law, the provisions of Section 6 hereof may be enforced either in law or in equity by any resident, local agency, entity, or by any other person adversely affected by the Owner's failure to comply with that Section.

8. Indemnification. The Owner hereby releases the City, the Lender and their respective officers, members, directors, officials and employees from, and covenants and agrees to indemnify, hold harmless and defend the City and the Lender and the officers, members, directors, officials, agents and employees of each of them (collectively, the "Indemnified Parties," and each an "Indemnified Party") from and against any and all claims, losses, costs, damages, demands, expenses, taxes, suits, judgments, actions and liabilities of whatever nature, joint and several (including, without limitation, costs of investigation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments), directly or indirectly (a) by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated hereby or otherwise in connection with the Project, the Bonds, or the execution or amendment of any document relating thereto; (b) arising from any cause whatsoever in connection with the approval of financing for the Project or the making of the Loan or otherwise, including without limitation, any advances of the Loan, or any failure by the Lender, as defined in the Indenture, to make any advance thereunder; (c) arising from any act or omission of the Owner or any of its agents, servants, employees or licensees, in connection with the Loan or the Project; (d) arising in connection with the issuance and sale, resale or reissuance of any bonds or any certifications or representations made by any person other than the City or the party seeking indemnification in connection therewith and the carrying out by the Owner of any of the transactions contemplated by the Indenture, the Loan Agreement and this Regulatory Agreement; (e) arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, or construction of, the Project or any part thereof; and (f) arising out of or in connection with the exercise by the Lender or the Trustee of their powers or duties under the Indenture, the Loan Agreement, this Regulatory Agreement or any other agreements in connection therewith to which either of them is a party; provided, however, that this provision shall not require the Owner to indemnify (i) the Lender from any claims, costs, fees, expenses or liabilities arising from the negligence or willful misconduct of the Lender, or (ii) the City for any claims, costs, fees, expenses or liabilities arising solely from the willful misconduct of the City. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party; and the Owner shall assume the payment of all reasonable fees and expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Notwithstanding the foregoing, no indemnification obligation shall give rise to an obligation to

pay principal and interest on the Loan, which is not otherwise set forth in the Indenture, the Loan Agreement, the Bonds or any other agreement relating to the Bonds.

The Owner also shall pay and discharge and shall indemnify and hold harmless the City and the Lender from (i) any lien or charge upon payments by the Owner to the City and the Lender hereunder and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the City or the Lender shall give prompt notice to the Owner, and the Owner shall have the sole right and duty to assume, and will assume, the defense thereof, including the employment of counsel approved by the Indemnified Party in such party's reasonable discretion, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. If a potential conflict exists between Owner's defense and the interests of an Indemnified Party, then such Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Owner shall pay the reasonable fees and expenses of such separate counsel.

Notwithstanding any transfer of the Project to another Owner in accordance with the provisions of Section 11 of this Regulatory Agreement, the Owner shall remain obligated to indemnify the City pursuant to this Section 8 if such subsequent Owner fails to so indemnify the City, unless at the time of transfer the City has consented to the transfer to the extent such consent is required hereunder.

The provisions of this Section 8 shall survive the term of the Bonds and this Regulatory Agreement.

The obligations of the Owner under this Section are independent of any other contractual obligation of the Owner to provide indemnity to the Indemnified Parties or otherwise, and the obligation of the Owner to provide indemnity hereunder shall not be interpreted, construed or limited in light of any other separate indemnification obligation of the Owner. The Indemnified Parties shall be entitled simultaneously to seek indemnity under this Section and any other provision under which it is entitled to indemnity.

In addition thereto, the Owner will pay upon demand all of the fees and expenses paid or incurred by the Indemnified Parties in enforcing the provisions hereof.

9. Consideration. The City has issued the Bonds and made the Loan to provide funds for the purpose of financing the Project, all for the purpose, among others, of inducing the Owner to acquire, construct, equip and operate the Project. In consideration of the making of the Loan by the City, the Owner has entered into this Regulatory Agreement and has agreed to restrict the use of the Project on the terms and conditions set forth herein.

10. Reliance. The City and the Owner hereby recognize and agree that the representations, warranties, covenants and agreements set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds, and in the exclusion from gross

income for federal income tax purposes of the interest on the Bonds. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner and Very Low Income Tenants, and upon audits of the books and records of the Owner pertaining to the Project. In addition, the City may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the City hereunder in good faith and in conformity with such opinion.

11. Sale or Transfer of the Project. The Owner intends to hold the Project for its own account, has no current plans to sell, transfer or otherwise dispose of the Project, and hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof (other than for individual tenant use as contemplated hereunder) or interest therein, including any interest in the Owner, without obtaining the prior written consent of the City, which consent shall not be unreasonably withheld, and receipt by the City of (i) evidence satisfactory to the City that the Owner's purchaser or transferee has assumed in writing and in full, the Owner's duties and obligations under this Regulatory Agreement, (ii) an opinion of counsel of the transferee that the transferee has duly assumed the obligations of the Owner under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee, (iii) evidence acceptable to the City that either (A) the purchaser or assignee has experience in the ownership, operation and management of rental housing projects in the City such as the Project without any record of material violations of discrimination restrictions or other state or federal laws or regulations applicable to such projects, or (B) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subparagraph (A) above or (C) if the purchaser or assignee does not have management experience, the City may cause the Program Administrator to provide on-site training in program compliance if the City determines such training is necessary, (iv) evidence satisfactory to the City that no event of default exists under this Regulatory Agreement, the Loan Agreement or any document related to the Loan, and payment of all fees and expenses of the City and the Trustee due under any of such documents is current, and (v) an opinion of Tax Counsel to the effect that such transfer will not, in itself, cause interest on the Bonds to become includable in the gross income of the recipients thereof for federal income tax purposes. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 11 shall be null, void and without effect, shall cause a reversion of title to the Owner, and shall be ineffective to relieve the Owner of its obligations under this Regulatory Agreement. Nothing in this Section 11 shall affect any provision of any other document or instrument between the Owner and any other party which requires the Owner to obtain the prior written consent of such other party in order to sell, transfer or otherwise dispose of the Project. Not less than 60 days prior to consummating any sale, transfer or disposition of any interest in the Project, the Owner shall deliver to the City a notice in writing explaining the nature of the proposed transfer. Notwithstanding the foregoing, the provisions of this Section 11 shall not apply, and the consent of the City shall not be required, to the transfer of all or any portion of (a) the limited partner interest of the Investor Limited Partner, or (b) the general partnership interest of either General Partner an affiliate of such General Partner.

12. Term. Subject to the following paragraph of this Section 12, Section 8 hereof and to any other provision expressly agreed herein to survive the termination of this Regulatory Agreement, this Regulatory Agreement and all of the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for the longer of (a) the

Qualified Project Period or (b) fifty-five (55) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied.

The terms of this Regulatory Agreement notwithstanding, the requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of (i) involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency after the Closing Date, which prevents the City from enforcing such provisions, or (ii) foreclosure, exercise of power of sale, transfer of title by deed in lieu of foreclosure, or condemnation or a similar event, but only if, in case of the events described in either clause (i) or (ii) above, within a reasonable period, either the Bonds are paid in full or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, exercise of power of sale, or the delivery of a deed in lieu of foreclosure or a similar event, the Owner or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Owner hereby agrees that, following any foreclosure, exercise of power of sale, transfer of title by deed in lieu of foreclosure or similar event, neither the Owner nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes. Notwithstanding any other provisions of this Regulatory Agreement to the contrary, this entire Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the City and the Owner subject to compliance with any of the provisions contained in this Regulatory Agreement only if there shall have been received an opinion of Tax Counsel that such termination will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds or the exemption from State personal income taxation of the interest on the Bonds. The Owner shall provide written notice of any termination of this Regulatory Agreement to the City.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

13. Covenants to Run With the Land. The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Project; provided, however, that on the termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. No breach of any of the provisions of this Regulatory Agreement shall defeat or render invalid the lien of a mortgage made in good faith and for value encumbering the Site.

14. Burden and Benefit. The City and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Owner's legal interest in the Project is rendered less valuable thereby. The City and the Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Very Low Income Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Bonds were issued.

15. Uniformity: Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Site.

16. Enforcement. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after written notice thereof shall have been given by the City to the Owner (provided, however, that the City may at its sole option extend such period if the default is of the nature which would reasonably require more than 60 days to cure and if the Owner provides the City, if requested by the City, with an opinion of Tax Counsel to the effect that such extension will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds), then the City may declare an "event of default" to have occurred hereunder, and, subject to the provisions of the Indenture, may take any one or more of the following steps:

(a) by mandamus or other suit, action or proceeding at law or in equity, require the Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the City hereunder; or

(b) have access to and inspect, examine and make copies of all of the books and records of the Owner pertaining to the Project; or

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder.

Notwithstanding anything contained in this Regulatory Agreement to the contrary, the occurrence of an event of default under this Regulatory Agreement shall not be deemed, under any circumstances whatsoever, to be a default under the Mortgage except as may be otherwise specified in the Mortgage.

Notwithstanding anything contained in this Regulatory Agreement to the contrary, the City agrees that any cure of any default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Owner and shall be accepted or rejected on the same basis as if made or tendered by the Owner.

17. Recording and Filing. The Owner shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the City and County of San Francisco and in such other places as the City may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording.

18. Payment of Fees. Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Indenture and/or the Loan Agreement, the Owner shall continue to pay the City's annual administrative fee as calculated and described below. Upon the occurrence of an event of default hereunder, the Owner shall continue to pay to the City compensation for any services rendered hereunder and reimbursement for all expenses incurred by it in connection therewith.

The Owner shall pay to the City (i) an initial issuance fee of \$_____ (which is equal to one quarter of one percent (0.25%) of the par amount of the Bonds) and (ii) an annual administrative fee not to exceed one eighth of one percent (0.125%) of the principal amount of the Bonds then outstanding, but no less than \$2,500, commencing on the Closing Date and thereafter on each anniversary date of the Closing Date thereafter during the term of this Agreement.

In case any action at law or in equity, including an action for declaratory relief, is brought against the Owner to enforce the provisions of this Regulatory Agreement, the Owner agrees to pay reasonable attorney's fees and other reasonable expenses incurred by the City, the Lender, and/or the Program Administrator in connection with such action.

19. Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California.

20. Amendments. To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Tax Counsel filed with the City, the Trustee and the Owner, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement which must be complied with in order to maintain the Tax-Exempt status of interest on the Bonds, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements. Otherwise, this Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the City and County of San Francisco, provided that any amendment to the CDLAC Requirements shall also be subject to the consent of CDLAC.

21. City Contracting Provisions. The Owner covenants and agrees to comply with the provisions set forth in Exhibit H to this Regulatory Agreement, which is incorporated in and made a part of this Regulatory Agreement by this reference.

22. Notice. All notices, certificates or other communications shall be sufficiently given and shall be deemed given on the date personally delivered or on the second day following the date on which the same have been mailed by first class mail, postage prepaid, addressed _____ as _____ follows:

If to the City:

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

With copies to:

City and County of San Francisco
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 140
San Francisco, California 94102
Attention: City Treasurer

City and County of San Francisco
Mayor's Office of Housing
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attention: Director

Office of the City Attorney
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, California 94102
Attention: Finance Team

If to the Owner:

1100 Ocean Avenue Limited Partnership
c/o Mercy Housing California
1360 Mission Street, Suite 300
San Francisco, CA 94103
Attention: _____

With a copy to:

Gubb & Barshay LLP
50 California Street, Suite 3155
San Francisco, CA 94111
Attention: Natalie Gubb, Esq.

If to the Investor Limited
Partner:

Bank of America, N.A.
800 5th Avenue, 37th Floor
Seattle, WA 98104
Attention:

If to the Lender:

Bank of America, N.A.
555 California Street, 6th Floor
San Francisco, CA 94104
Attention:
Loan # _____

If to the Trustee:

Attn:
Loan # _____

Any of the foregoing parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, documents or other communications shall be sent.

23. Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

24. Multiple Counterparts. This Regulatory Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

25. Third-Party Beneficiaries. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are entered into for the benefit of various parties, including CDLAC (as provided by, and subject to the limitations set forth in, Section 7). The parties hereto acknowledge that the Lender is a third party beneficiary of this Regulatory Agreement.

[Signatures appear on next page]

IN WITNESS WHEREOF, the City and the Owner have executed this Regulatory Agreement by their duly authorized representatives, all as of the date first written hereinabove.

CITY AND COUNTY OF SAN FRANCISCO

By: _____

Teresa Yanga
Housing Development Director
Mayor's Office of Housing

Approved as to Form:

DENNIS J. HERRERA
City Attorney

By _____

Kenneth David Roux
Deputy City Attorney

[Signatures continue on following page.]

[REGULATORY AGREEMENT SIGNATURE PAGE]

OWNER:

1100 OCEAN AVENUE LIMITED PARTNERSHIP,
a California limited partnership

By: Mercy Housing Calwest, a California nonprofit
public benefit corporation, its managing general partner

By: _____
Its: _____

By: Bernal Housing LLC, a California limited liability
company, its general partner

By: Bernal Heights Housing Corporation, a California
nonprofit public benefit corporation, its managing member

By: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

All that certain real property situated in the City and County of San Francisco, State of California, more particularly described as follows:

EXHIBIT B

INCOME CERTIFICATION FORM

[Insert current TCAC Income Certification Form and Instructions (March 2012)]

EXHIBIT C

COMPLETION CERTIFICATE

CITY AND COUNTY OF SAN FRANCISCO

Mayor's Office of Housing

1 South Van Ness Avenue, 5th Floor

San Francisco, California 94103

The undersigned (the "Owner") hereby certifies that all aspects of the construction of the Project (as that term is used in the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of July 1, 2013, by and between the City and County of San Francisco and the Owner (the "Regulatory Agreement")) were substantially completed and available for occupancy by tenants in the Project as of _____.

1. The undersigned hereby certifies that:

(a) the aggregate amount disbursed on the Loan (as that term is used in the Regulatory Agreement) to date is \$ _____;

(b) all amounts disbursed on the Loan have been applied to pay or reimburse the undersigned for the payment of Project Costs (as that term is used in the Regulatory Agreement) and none of the amounts disbursed on the Loan has been applied to pay or reimburse any party for the payment of costs or expenses other than Project Costs; and

(c) as shown on the attached sheet (showing the breakdown of expenditures for the Project and the source of the funds which were used to pay such costs), at least 97 percent of the amounts disbursed on the Loan (as that term is used in the Regulatory Agreement) have been applied to pay or reimburse the Owner for the payment of Qualified Project Costs (as that term is used in the Regulatory Agreement) and less than 25 percent of the amounts disbursed on the Loan, exclusive of amounts applied to pay the costs of issuing the Bonds, have been applied to pay or reimburse the Owner for the cost of acquiring land.

[Signatures appear on next page]

OWNER:

1100 OCEAN AVENUE LIMITED PARTNERSHIP,
a California limited partnership

By: Mercy Housing Calwest, a California nonprofit
public benefit corporation, its managing general partner

By: _____
Its: _____

By: Bernal Housing LLC, a California limited liability
company, its general partner

By: Bernal Heights Housing Corporation, a California
nonprofit public benefit corporation, its managing member

By: _____
Its: _____

EXHIBIT D

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Project Name:

CDLAC Application Number(s):

CDLAC Resolution Number(s):

Property Address:

Project Completion Date (if completed, otherwise mark NA):

Name of Obligation: City and County of San Francisco Multifamily Housing Revenue Bonds (1100 Ocean Avenue Apartments), Series 2013E

The undersigned, being the authorized representatives of 1100 Ocean Avenue Apartments Limited Partnership, a California limited partnership (the "Owner"), hereby certifies that he/she has read and is thoroughly familiar with the provisions of the various documents associated with the Owner's participation in the City and County of San Francisco (the "City") Multifamily Housing Program, such documents including:

1. the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of July 1, 2013 (the "Regulatory Agreement"), between the Owner and the City; and
2. the Loan Agreement, dated as of July 1, 2013, between the City and the Owner.

The undersigned further certifies that:

A. There have been no changes to the ownership entity, principals or property management of the Project since the Bonds were issued, or since the last certification was provided (as applicable), except as described below:

(If so please attach a request to revise the CDLAC Resolution, noting all pertinent information regarding the change, otherwise state "NONE")

If Project has not yet been placed in service, mark N/A for the balance of the items below:

B. During the preceding twelve-months (i) such Project was continually in compliance with the Regulatory Agreement executed in connection with such loan from the City and (ii) and ___% of the units in the Project were occupied by Very Low Income Tenants (minimum of 20%).

C. As of the date of this Certificate, the following percentages of completed residential units in the Project (as defined in the Regulatory Agreement) (i) are occupied by Very Low Income Tenants (as such term is defined in the Regulatory Agreement), or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the date a Very Low Income Tenant vacated such unit, as indicated below:

Occupied by Very Low Income Tenants:

1 bedroom units: _____ Unit Nos. _____
2 bedroom units: _____ Unit Nos. _____
3 bedroom units: _____ Unit Nos. _____
4 bedroom units: _____ Unit Nos. _____

Total percentage occupied by Very Low Income Tenants: _____

Held vacant for occupancy continuously since last occupied by Very Low Income Tenant:

_____%; Unit Nos. _____

Vacant Units:

_____%; Unit Nos. _____

It hereby is confirmed that each tenant currently residing in a unit in the Project has completed an Income Certification Form in the form approved by the City and that since commencement of the Qualified Project Period (as such term is defined in the Regulatory Agreement), not less than 20% of the occupied units in the Project have been rented to (or are vacant and last occupied by) Very Low Income Tenants. The undersigned hereby certifies that the Owner is not in default under any of the terms and provisions of the above documents.

D. The units occupied by Very Low Income Tenants are of similar size and quality to other units and are dispersed throughout the Project.

E. Select appropriate certification: [No unremedied default has occurred under this Regulatory Agreement, the Bonds, the Loan Agreement or the Mortgage.] [A default has occurred under the _____. The nature of the default and the measures being taken to remedy such default are as follows: _____.]

F. There has been no change of use for the Project, except as follows: (please describe if any, or otherwise indicate "NONE")

G. Select appropriate certification: The undersigned hereby certifies that the Project [has satisfied all] [except as described below, has satisfied all] of the requirements memorialized in the Exhibit A of the CDLAC Resolution, a copy of which is attached hereto (i.e. qualifying project completion, qualifying depreciable asset purchase, qualifying loan originations, the use of public funds, manager units, income rent restrictions, sustainable building methods, etc., as applicable), and thus has achieved all public benefit requirements (excluding service amenities) as presented to CDLAC.

[Describe any requirements not satisfied: _____]

H. As captured in Exhibit A of the Resolution, the Project has committed to and is currently providing the following service amenities for a minimum of ten years, on a regular and ongoing basis, which are provided free of charge (with the exception of day care services):

Please check the services that apply or write N/A where appropriate:

- After-school Programs
- Educational, health and wellness, or skill building classes
- Health and Wellness services and programs (not group classes)
- Licensed Childcare provided for a minimum of 20 hours per week (Monday-Friday)
- Bona-Fide Service Coordinator/ Social Worker

1) For this reporting period, attached is evidence (i.e. MOUs, contracts, schedules, calendars, flyers, sign-up sheets, etc.) confirming that the above listed services are being provided and have met the requirements of Exhibit A of the Resolution.

2) If any of the above services requirements were not met, what corrective action is being taken to comply?

(Please also attach the completed project sponsor certification form as provided in the CDLAC Resolution)

(Please also attach the completed Occupancy and Rent Information form attached hereto)

I. The representations set forth herein are true and correct to the best of the undersigned's knowledge and belief, and the undersigned acknowledges and agrees that the City will be relying solely on the foregoing certifications and accompanying documentation, if any, in making its certification to CDLAC pursuant to Section 5144 of the CDLAC Regulations, and agrees to provide to the City such documentation or evidence, in support of the foregoing certifications, as the City or CDLAC may request.

Date: _____

OWNER:

1100 OCEAN AVENUE LIMITED PARTNERSHIP,
a California limited partnership

By: Mercy Housing Calwest, a California nonprofit
public benefit corporation, its managing general partner

By: _____
Its: _____

By: Bernal Housing LLC, a California limited liability
company, its general partner

By: Bernal Heights Housing Corporation, a California
nonprofit public benefit corporation, its managing member

By: _____
Its: _____

EXHIBIT E

CERTIFICATE AS TO COMMENCEMENT OF QUALIFIED PROJECT PERIOD

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City and County of San Francisco
Mayor's Office of Housing
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attention: Executive Director

§ _____
City and County of San Francisco
Multifamily Housing Revenue Bonds
(100 Ocean Avenue Apartments), Series 2013__

The undersigned, being the authorized representative(s) of 1100 Ocean Avenue Limited Partnership, a California Limited Partnership, hereby certifies that: (complete blank information):

Ten percent (10%) of the dwelling units in the Project financed in part from the proceeds of the captioned Bonds were first occupied on _____;

Fifty percent (50%) of the dwelling units in the Project financed in part from the proceeds of the captioned Bonds were first occupied on _____.

DATED:

OWNER:

1100 OCEAN AVENUE LIMITED PARTNERSHIP,
a California limited partnership

By: Mercy Housing Calwest, a California nonprofit
public benefit corporation, its managing general partner

By: _____
Its: _____

By: Bernal Housing LLC, a California limited liability
company, its general partner

By: Bernal Heights Housing Corporation, a California
nonprofit public benefit corporation, its managing member

By: _____
Its: _____

Acknowledged:

CITY AND COUNTY OF SAN
FRANCISCO

By: _____
Name, Title

EXHIBIT F
CDLAC RESOLUTION

EXHIBIT G

CERTIFICATE OF COMPLIANCE (CDLAC RESOLUTION)

Project Name: 1100 Ocean Avenue Apartments

CDLAC Application No.: 13-31

Pursuant to Section 13 of Resolution No. 13-31 (the "Resolution"), adopted by the California Debt Limit Allocation Committee (the "Committee") on May 15, 2013, I, _____, an Officer of the Project Sponsor, hereby certify under penalty of perjury that, as of the date of this Certification, the above-mentioned Project is in compliance with all of the terms and conditions set forth in the Resolution.

I further certify that I have read and understand Section 3 of the Resolution, which specifies that once the Bonds are issued, the terms and conditions set forth in the Resolution shall be enforceable by the Committee through an action for specific performance or any other available remedy (as further explained in Section 12 of the Resolution).

Signature of Officer

Date

Printed Name of Officer

Title of Officer

EXHIBIT H

CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

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

1. Nondiscrimination; Penalties.

(i) Nondiscrimination. In the performance of this Regulatory Agreement, the Owner agrees not to discriminate against any employee, City employee working with the Owner, applicant for employment with the Owner, 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 Owner 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 Owner's failure to comply with the obligations in this subsection shall constitute a material breach of this Regulatory Agreement.

(iii) Nondiscrimination in Benefits. The Owner does not as of the date of this Regulatory Agreement and will not during the term of this Regulatory Agreement, 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 Regulatory Agreement, the Owner 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 Regulatory Agreement as though fully set forth herein. The Owner shall comply fully with and be bound by all of the provisions that

apply to this Regulatory Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Owner 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 Regulatory Agreement may be assessed against the Owner and/or deducted from any payments due the Owner.

2. Local Business Enterprise Utilization; Liquidated Damages.

(i) The LBE Ordinance. As a condition to this Regulatory Agreement, the Owner 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 Owner's obligations or liabilities, or materially diminish Owner's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Owner's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Owner's obligations under this Agreement and shall entitle Issuer, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Owner shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(ii) Compliance and Enforcement. If Owner 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 Agreement pertaining to LBE participation, Owner shall be liable for liquidated damages in an amount equal to Owner's net profit on this Agreement, or 10% of the total amount of this Agreement, 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 Owner authorized in the LBE Ordinance, including declaring the Owner to be irresponsible and ineligible to contract with the Issuer for a period of up to five years or revocation of the Owner'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 Agreement, Owner acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to Issuer upon demand. Owner further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Owner on any contract with Issuer.

Owner 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 Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

3. Prevailing Wages. Owner understands and agrees that all provisions of section 1770, *et seq.*, of the California Labor Code are required to be incorporated into every contract for any public work or improvement and are hereby incorporated into this contract. Owner also understands and agrees that all provisions of sections 6.22E and 6.22F of the San Francisco Administrative Code are hereby incorporated into this contract.

4. 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 Regulatory Agreement, the person executing this Regulatory Agreement on behalf of the Owner acknowledges and agrees that he or she has read and understood this Section.

5. 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.

6. Drug-Free Workplace Policy. The Owner 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 Owner agrees that any violation of this prohibition by the Owner, its employees, agents or assigns will be deemed a material breach of this Regulatory Agreement.

7. Compliance with Americans with Disabilities Act. The Owner 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 Owner shall provide the services specified in this Regulatory Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Owner agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Regulatory Agreement and further agrees that any violation of this prohibition on the part of the Owner, its employees, agents or assigns will constitute a material breach of this Regulatory Agreement.

8. 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.

9. Limitations on Contributions. Through execution of this Regulatory Agreement, the Owner 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 Owner 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 Owner further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Owner's board of directors; the Owner'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 Owner; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Owner. Additionally, the Owner acknowledges that the Owner must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. The Owner further agrees to provide to the City the names of each person, entity or committee described above.

10. Requiring Minimum Compensation for Covered Employees. The Owner 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 Regulatory Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of the Owner's obligations under the MCO is set forth in this Section. The Owner 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 Owner to pay the Owner'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 Owner is obligated to keep informed of the then-current requirements. Any subcontract entered into by the Owner 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 Owner's obligation to ensure that any subcontractors of any tier under this Regulatory Agreement comply with the requirements of the MCO. If any subcontractor under this Regulatory Agreement fails to comply, the City may pursue any of the remedies set forth in this Section against the Owner.

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

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

(v) The Owner's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Regulatory Agreement. 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 Owner fails to comply with these requirements. The Owner 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 Owner'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 Owner 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 Regulatory Agreement for violating the MCO, the Owner fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Owner 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 Owner 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 Owner is exempt from the MCO when this Regulatory Agreement is executed because the cumulative amount of agreements with the City for the fiscal year is less than \$25,000, but the Owner later enters into an agreement or agreements that cause the Owner to exceed that amount in a fiscal year, the Owner shall thereafter be required to comply with the MCO under this Regulatory Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Owner and the City to exceed \$25,000 in the fiscal year.

11. Requiring Health Benefits for Covered Employees. The Owner 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 Regulatory Agreement as though fully set forth herein. The text of the

HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Regulatory Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(i) For each Covered Employee, the Owner shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Owner 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 Owner is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

(iii) The Owner's failure to comply with the HCAO shall constitute a material breach of this Regulatory Agreement. The City shall notify the Owner if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Regulatory Agreement for violating the HCAO, the Owner fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Owner 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 Owner 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 Owner 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 Owner 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 Owner based on the Subcontractor's failure to comply, provided that the City has first provided the Owner with notice and an opportunity to obtain a cure of the violation.

(v) The Owner shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City or the City with regard to the Owner'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 Owner 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 Owner 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 Regulatory Agreement.

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

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

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

(xiii) If the Owner is exempt from the HCAO when this Regulatory Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Owner later enters into an agreement or agreements that cause the Owner'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 Owner and the City to be equal to or greater than \$75,000 in the fiscal year.

12. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, the Owner 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 Regulatory Agreement. The Owner 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 Owner violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Regulatory Agreement, and (ii) prohibit the Owner from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider the Owner's use of profit as a violation of this Section.

13. Protection of Private Information. The Owner 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 Owner agrees that any failure of the Owner to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of this Regulatory Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Regulatory Agreement, bring a false claim action against the Owner pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Owner.

14. 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 Owner shall remove all graffiti from any real property owned or leased by the Owner in the City and County of San Francisco within forty eight (48) hours of the earlier of the Owner'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 Owner 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 Owner to comply with this section of this Regulatory Agreement shall constitute a material breach of this Regulatory Agreement.

15. 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.

16. Conflict of Interest. Through its execution of this Regulatory Agreement, the Owner 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 Regulatory Agreement.

17. Food Service Waste Reduction Requirements. The Owner 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 Regulatory Agreement as though fully set forth. This provision is a material term of this Regulatory Agreement. By entering into this Regulatory Agreement, the Owner agrees that if it breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Owner 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 Regulatory Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the City because of the Owner's failure to comply with this provision.

18. Proprietary or Confidential Information of City. The Owner understands and agrees that, in the performance of the work or services under this Regulatory Agreement or in contemplation thereof, the Owner 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 Owner agrees that all information disclosed by City to the Owner shall be held in confidence and used only in the performance of the Regulatory Agreement. The Owner shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

19. 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 Owner shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Regulatory Agreement becomes effective (unless the Owner 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 Owner; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Regulatory Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Owner of the terms of this Regulatory Agreement. If, within thirty days after the Owner receives written notice of such a breach, the Owner fails to cure such breach or, if such breach cannot reasonably

be cured within such period of thirty days, the Owner 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 Regulatory Agreement or under applicable law. Any Subcontract entered into by the Owner 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 Regulatory Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

