

File No. 140924

Committee Item No. 1

Board Item No. 18

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date September 17 2014

Board of Supervisors Meeting

Date 9/23/14

#### Cmte Board

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Completed by: Linda Wong Date September 12, 2014

Completed by: JW Date 9/18/14

1 [Multifamily Housing Revenue Note (Bill Sorro Community) - Not to Exceed \$25,000,000]

2  
3 **Resolution authorizing the execution, sale, and delivery of a multifamily housing**  
4 **revenue note in an aggregate principal amount not to exceed \$25,000,000 for the**  
5 **purpose of providing financing for the construction of a 67-unit affordable rental**  
6 **housing development known as Bill Sorro Community; approving the form of**  
7 **and authorizing the execution of a funding loan agreement and a borrower loan**  
8 **agreement; providing the terms and conditions of the note and authorizing the**  
9 **execution and delivery thereof; approving the form of and authorizing the**  
10 **execution of a regulatory agreement and declaration of restrictive covenants;**  
11 **authorizing the collection of certain fees; approving modifications, changes, and**  
12 **additions to the documents; granting general authority to City officials to take**  
13 **actions necessary to implement this Resolution; and ratifying and approving any**  
14 **action heretofore taken in connection with the note and the project, as defined**  
15 **herein.**

16  
17 WHEREAS, The Board of Supervisors of the City and County of San Francisco  
18 (the "Board") desires to provide for a portion of the costs of the construction by Mercy  
19 Housing California 51, a California Limited Partnership (the "Borrower"), of a 67-unit  
20 affordable multifamily and special needs rental housing development located at 1009  
21 Howard Street, San Francisco, California, 94103, known as "Bill Sorro Community"  
22 (the "Project"), to provide housing for persons and families of very low income and  
23 special needs through the execution of a multifamily mortgage revenue note; and

24 WHEREAS, The City and County of San Francisco (the "City") is authorized to  
25 issue revenue obligations to provide financing for multifamily rental housing pursuant to

1 the Charter of the City, Article I of Chapter 43 of the Administrative Code of the City  
2 and, to the extent applicable, Chapter 7 of Part 5 of Division 31 (commencing with  
3 Section 52075) of the Health and Safety Code of the State of California ("Health and  
4 Safety Code"), as now in effect and as it may from time to time hereafter be amended  
5 or supplemented (collectively, the "Act"); and

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

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

13 WHEREAS, The Mayor's Office of Housing and Community Development held a  
14 duly noticed public hearing on March 24, 2014, at which hearing an opportunity was  
15 provided for persons to comment on the issuance of the Note and the Project; and

16 WHEREAS, On March 25, 2014, this Board, in Resolution 102-14, approved the  
17 issuance of the Note in the amount not to exceed \$35,000,000 for the purposes of  
18 Section 147(f) of the Code and authorized the Director of the Mayor's Office of Housing  
19 and Community Development, or his designee, on behalf of the City, to submit an  
20 application to the California Debt Limit Allocation Committee ("CDLAC") along with a  
21 deposit in an amount not to exceed \$100,000 in connection with the application; and

22 WHEREAS, On July 16, 2014, CDLAC in its resolution number 14-80 allocated an  
23 amount equal to \$25,000,000 in qualified private activity bonds to the Project; and

24 WHEREAS, There has been prepared and presented to the Board for  
25 consideration at this meeting the documentation required for the execution and delivery

1 of the Note, and such documentation is on file with the Clerk of the Board of  
2 Supervisors (the "Clerk of the Board"); and

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

6 WHEREAS, The Board finds that the public interest and necessity require that the  
7 City at this time make arrangements for the execution and delivery of the Note; and

8 WHEREAS, The Note is a limited obligation of the City, the sole source of  
9 repayment of which shall be payments made by the Borrower under the Borrower Loan  
10 Agreement (hereinafter defined), together with investment income of certain funds and  
11 accounts held under the Funding Loan Agreement (as herein defined); and

12 WHEREAS, The City has engaged Squire Patton Boggs (US) LLP and Curis  
13 Bartling P.C., as co-note counsel with respect to the Note ("Co-Note Counsel"); and

14 WHEREAS, MUFG Union Bank, N.A., has expressed its intention to purchase, or  
15 cause an affiliate to purchase, the Note authorized hereby; now, therefore be it

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

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

20 Section 2. Approval of Execution and Delivery of Note. In accordance with the  
21 Act and the Funding Loan Agreement, the City is hereby authorized to execute and  
22 deliver a revenue note of the City, which note comprises a Governmental Lender Note  
23 under the Funding Loan Agreement, such note to be designated as "City and County of  
24 San Francisco Multifamily Housing Revenue Note, 2014 Series C (Bill Sorro  
25 Community)," or such other designation as may be necessary or appropriate to



1 distinguish such note from any other bonds or notes of the City, in an aggregate  
2 principal amount not to exceed Twenty-Five Million Dollars (\$25,000,000) (the "Note"),  
3 with an interest rate not to exceed twelve percent (12%) per annum for the Note, and  
4 which shall have a final maturity date not later than December 1, 2044. The Note shall  
5 be in the form set forth in and otherwise in accordance with the Funding Loan  
6 Agreement (herein defined), and shall be executed by the manual or facsimile  
7 signature of the Mayor of the City (the "Mayor") and as further provided in the Funding  
8 Loan Agreement.

9 Section 3. Approval of Funding Loan Agreement. The Funding Loan Agreement  
10 ("Funding Loan Agreement"), by and among the City, MUFG Union Bank, N.A., as  
11 funding lender (the "Funding Lender") and U.S. Bank N.A., as fiscal agent, in the form  
12 presented to the Board, a copy of which is on file with the Clerk of the Board, is hereby  
13 approved. Each of the Mayor, the Director of the Mayor's Office of Housing and  
14 Community Development, the Housing Development Director of the Mayor's Office of  
15 Housing and Community Development or any Authorized Governmental Lender  
16 Representative (as such term is defined in the Funding Loan Agreement) (collectively,  
17 "Authorized Representatives" and each, an "Authorized Representative") is hereby  
18 authorized to execute the Funding Loan Agreement, approved as to form by the City  
19 Attorney, in substantially said form, together with such additions thereto and changes  
20 therein as the City Attorney and Co-Note Counsel may approve or recommend in  
21 accordance with Section 8 hereof.

22 Section 4. Approval of Borrower Loan Agreement. The Borrower Loan  
23 Agreement ("Borrower Loan Agreement"), by and among the City, the Funding Lender  
24 and the Borrower, in the form presented to the Board, a copy of which is on file with the  
25 Clerk of the Board, is hereby approved. Each Authorized Representative is hereby

1 authorized to execute the Borrower Loan Agreement, approved as to form by the City  
2 Attorney, in substantially said form, together with such additions thereto and changes  
3 therein as the City Attorney and Co-Note Counsel may approve or recommend in  
4 accordance with Section 8 hereof.

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

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

24 Section 7. Approval of Note Following a Public Hearing. This Board hereby  
25 approves the execution and delivery of the Note in an amount set forth in Section 2

1 above. It is the purpose and intent of this Board that this Resolution constitute  
2 approval of the execution and delivery of the Note by the applicable elected  
3 representative of the governmental unit having jurisdiction over the area in which the  
4 Project is located for the purposes of, and in accordance with, Section 147(f) of the  
5 Code.

6 Section 8. Modifications, Changes, Additions. Any Authorized Representative  
7 executing the Funding Loan Agreement, the Borrower Loan Agreement or the  
8 Regulatory Agreement (collectively, the "City Agreements"), in consultation with the  
9 City Attorney and Co-Note Counsel, is hereby authorized to approve and make such  
10 modifications, changes or additions to the City Agreements as may be necessary or  
11 advisable, provided that such modification does not authorize an aggregate principal  
12 amount of the Note in excess of \$25,000,000, provide for a final maturity on the Note  
13 later than December 1, 2044, or provide for the Note to bear interest at a rate in excess  
14 of twelve percent (12%) per annum. The approval of any modification, addition or  
15 change to any of the aforementioned documents shall be evidenced conclusively by  
16 the execution and delivery of the document in question.

17 Section 9. General Authority. The proper officers of the City are hereby  
18 authorized and directed, for and in the name and on behalf of the City, to do any and

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all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents, including but not limited to those documents described in the City Agreements, which they, or any of them, may deem necessary or advisable in order to consummate the lawful execution and delivery of the Note and to effectuate the purposes thereof and of the documents herein approved in accordance with this Resolution, in consultation with the City Attorney, including, without limitation, any such modification and subordination agreement as may be required with respect to the Regulatory Agreement in connection with permanent financing for the Project to be provided by the United States Department of Housing and Urban Development.

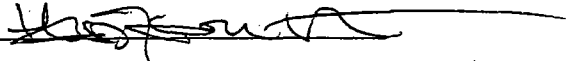
Section 10. Ratification of Prior Actions. All actions heretofore taken by the officers and agents of the City with respect to the issuance and delivery of the Note are hereby approved, confirmed and ratified.

Section 11. File. All documents referenced herein as being on file with the Clerk of the Board are located in File No. [ 140924 ], which is hereby declared to be a part of this Resolution as if set forth fully herein.

APPROVED AS TO FORM:

DENNIS J. HERRERA

City Attorney

By: 

Heidi J. Gewertz

Deputy City Attorney

Supervisor Kim

BOARD OF SUPERVISORS

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



Edwin M. Lee  
Mayor

Olson Lee  
Director

August 14, 2014

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

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2014 SEP -2 PM 1:50

RE: Resolution Authorizing the execution and delivery of a Multifamily Housing Revenue Indebtedness Note for 1009 Howard Street aka Bill Sorro Community, for an amount not to exceed \$25,000,000

Dear Supervisor Kim:

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, September 2, 2014, which would authorize the City to enter into qualified mortgage revenue indebtedness for 1009 Howard Street aka Bill Sorro Community, (the "Project") the site of the former Hugo Hotel. This is the follow-up legislation to the resolution you sponsored in March 2014 that authorized MOHCD 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, Mercy Housing California 51, received its \$25 million allocation in July 2014.

The proposed project will involve the new construction of a 9 story, 67-unit, multifamily rental development comprised of studio, 1, 2, and 3-bedroom units with a ground floor courtyard, rooftop terrace, social services space, and ground floor commercial space. The project site is located in San Francisco's Sixth Street corridor at the corner of Howard and Sixth Street. 52 of the units will be affordable to low income households making no more than 50% AMI, while 14 of the units will be for Developmentally Disabled Adults under HUD's section 811 program. The HUD 811 units will be targeted to households making no more than 30% AMI. There will be one unit reserved for on-site property management.

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 September 2, 2013 along with the resolution authorizing the Ground Lease and Property Conveyance. Assuming they are both referred to Budget & Finance Committee for September 17, 2014, we request that both resolutions be approved by the Board on September 23, 2014 so that the project can meet its funding deadlines. We anticipate that bond closing will occur in mid-October and demolition 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,

A handwritten signature in cursive script, appearing to read "Teresa Yanga", with a long horizontal flourish extending to the right.

Teresa Yanga  
Director of Housing Development

**FUNDING LOAN AGREEMENT**

**by and among**

**U.S. BANK NATIONAL ASSOCIATION as Fiscal Agent,**

**MUFG UNION BANK, N.A. as Funding Lender,**

**and**

**CITY AND COUNTY OF SAN FRANCISCO, as Governmental Lender**

**dated as of October 1, 2014**

**relating to:**

**\$24,611,942**

**City and County of San Francisco  
Multifamily Housing Revenue Note  
2014 Series C  
(Bill Sorro Community)**

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## FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT, dated as of October 1, 2014 (the "**Funding Loan Agreement**"), is by and among MUFG UNION BANK, N.A., in its capacity as the funding lender hereunder (together with any successor to its rights, duties and obligations hereunder, the "**Funding Lender**"), the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation organized and existing under the laws of the State of California (together with any successor to its rights, duties and obligations hereunder, the "**Governmental Lender**") and U.S. BANK NATIONAL ASSOCIATION, in its capacity as the fiscal agent hereunder (together with any successor to its rights, duties and obligations hereunder, the "**Fiscal Agent**").

### RECITALS

WHEREAS, the Governmental Lender is authorized to provide financing for multifamily rental housing pursuant to and in accordance with the Charter of the City and County of San Francisco, 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 may be amended or supplemented (collectively, the "**Act**"); and

WHEREAS, the Governmental Lender is authorized: (a) to make loans to any person to provide financing for rental residential developments located within the City and County of San Francisco (the "**City**") and intended to be occupied in part by persons of low and moderate income; (b) to incur indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish any required reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) to pledge all or any part of the revenues, receipts or resources of the Governmental Lender, including the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Governmental Lender in order to secure the payment of the principal of, prepayment premium, if any, on and interest on such indebtedness of the Governmental Lender; and

WHEREAS, Mercy Housing California 51, a California Limited Partnership (the "**Borrower**"), has requested the Governmental Lender to enter into this Funding Loan Agreement under which the Funding Lender (i) will advance funds (the "**Funding Loan**") to or for the account of the Governmental Lender, and (ii) Governmental Lender will apply the proceeds of the Funding Loan to make a loan (the "**Borrower Loan**") to the Borrower to finance the construction of an affordable multifamily and special needs rental housing development located in the City, known as Bill Sorro Community (the "**Project**"); and

WHEREAS, simultaneously with the delivery of this Funding Loan Agreement, the Governmental Lender, the Funding Lender and the Borrower will enter into a Borrower Loan Agreement, dated as of October 1, 2014 (as it may be supplemented or amended, the "**Borrower Loan Agreement**"), whereby the Borrower agrees to make loan payments to the Governmental Lender in an amount which, when added to other funds available under this Funding Loan

Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

WHEREAS, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Promissory Note (Multifamily Back to Back Loan Program), dated the Closing Date (the "**Borrower Note**"), and the obligations of the Borrower under the Borrower Note will be secured by a lien on and security interest in the Project pursuant to a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing Construction Trust Deed (Multifamily Housing Back to Back Loan Program) dated as of October [ ], 2014 (the "**Deed of Trust**"), made by the Borrower in favor of the Governmental Lender, as assigned to the Funding Lender to secure the performance by the Governmental Lender of its obligations under the Funding Loan; and

WHEREAS, the Governmental Lender has executed and delivered to the Funding Lender its Multifamily Housing Revenue Note, 2014 Series C (Bill Sorro Community), dated as of the Closing Date (the "**Governmental Lender Note**"), evidencing its obligation to make the payments due to the Funding Lender under the Funding Loan as provided in this Funding Loan Agreement, all things necessary to make the Funding Loan Agreement, the valid, binding and legal limited obligations of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Lender Note, subject to the terms hereof, have in all respects been duly authorized; and

WHEREAS, the Governmental Lender is entering into this Funding Loan Agreement and the Borrower Loan Agreement solely as a "**conduit issuer**" and the Funding Loan and the Governmental Lender Note will be limited obligations of the Governmental Lender as described in Article V hereof;

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions.** The following words and terms as used in this Agreement shall have the following meanings unless the context or use otherwise requires:

"**Act**" means the Charter of the City and County of San Francisco, 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 to apply to obligations incurred as of the Closing Date.

"**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

**“Assignment of Deed of Trust”** means that certain Assignment of Deed of Trust and Related Documents, dated [\_\_\_\_], 2014, executed by Governmental Lender in favor of Funding Lender.

**“Authorized Amount”** shall mean \$[PAR], the maximum principal amount of the Funding Loan under this Funding Loan Agreement.

**“Authorized Denomination”** shall mean \$250,000 principal amount and any multiple of \$5,000 in excess thereof.

**“Authorized Governmental Lender Representative”** shall mean the Mayor, the Director of the Mayor’s Office of Housing and Community Development and the Director of Housing Development of the Mayor’s Office of Housing and Community Development, or such other person at the time designated to act on behalf of the Governmental Lender as evidenced by a written certificate furnished to the Funding Lender and the Borrower containing the specimen signature of such person and signed on behalf of the Governmental Lender by an Authorized Governmental Lender Representative. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Governmental Lender Representative.

**“Borrower”** means Mercy Housing California 51, a California Limited Partnership, and its successors and assigns.

**“Borrower Loan”** means the mortgage loan originated by the Governmental Lender to the Borrower in the principal amount of \$[PAR] pursuant to the terms of the Borrower Loan Agreement.

**“Borrower Loan Agreement”** means that certain Borrower Loan Agreement, dated as of October 1, 2014, by and among the Borrower, the Governmental Lender and Funding Lender, as amended and supplemented from time to time, pursuant to which the Borrower Loan is being made.

**“Borrower Loan Documents”** shall have the meaning ascribed in it in the Borrower Loan Agreement.

**“Borrower Loan Payments”** shall mean the loan payments payable pursuant to the Borrower Note.

**“Borrower Note”** means that certain Promissory Note (Multifamily Back to Back Loan Program) evidencing the Borrower Loan, executed by the Borrower in favor of Governmental Lender.

**“Borrower Representative”** means the Executive Director, Deputy Director, or Director of Housing Development of the sole member of the general partner of the Borrower, or any other officer of the sole member of the general partner of the Borrower designated by the Executive Director, Deputy Director, or the Director of Housing Development of the sole member of the general partner of the Borrower to be a Borrower Representative for purposes of the Borrower Loan Documents.

**“Business Day”** means a day other than a Saturday or Sunday on which the Funding Lender is open for business for the funding of corporate loans.

**“CDLAC”** means the California Debt Limit Allocation Committee or any successor thereto.

**“Closing Date”** means October [\_\_\_\_], 2014, being the date of execution and delivery of the Governmental Lender Note for purposes of the Code.

**“Code”** means the Internal Revenue Code of 1986 as in effect on the date of execution and delivery of the Governmental Lender Note and (except as otherwise referenced herein) as it may be amended, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

**“Control”** shall mean, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

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

**“Deed of Trust”** means the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Construction Trust Deed) (Multifamily Housing Back to Back Loan Program), executed by the Borrower and granting a security interest in the Project to the deed of trust trustee identified therein for the benefit of the Governmental Lender and Funding Lender to secure the Borrower’s obligations under the Borrower Note to repay the Borrower Loan, and all obligations related thereto under the Borrower Loan Agreement.

**“Event of Default”** means any of the events described as an event of default in Section 11.1 hereof.

**“Fiscal Agent”** means U.S. Bank National Association, and its successors and assigns in its capacity as the fiscal agent hereunder.

**“Fiscal Agent’s Fees”** means

(a) the annual administration fees of the Fiscal Agent, for the ordinary services of the Fiscal Agent rendered under this Funding Loan Agreement during each twelve month period, in advance, which fee is equal to \$[\_\_\_\_\_] initially due and payable on the Closing Date and \$[\_\_\_\_\_] annually thereafter, together with transactional charges set forth in its fee agreement with the Borrower; and

(b) the reasonable fees and charges of the Fiscal Agent for necessary extraordinary services rendered by it and/or reimbursement for extraordinary expenses incurred by it under this Funding Loan Agreement as and when the same become due, including reasonable fees and expenses of legal counsel and internal default administrators (including fees prior to litigation, at trial or for appellate proceedings); provided, however, that the Fiscal Agent

shall not be required to undertake any such extraordinary services unless provision for payment of extraordinary expenses satisfactory to the Fiscal Agent shall have been made.

“**Funding Lender**” means MUFG Union Bank, N.A., and its successors and assigns in its capacity as the funding lender hereunder.

“**Funding Loan**” means the loan originated hereunder by the Funding Lender to the Governmental Lender in an aggregate principal amount of up to \$[PAR], evidenced by the Governmental Lender Note, for the purpose of enabling the Governmental Lender to make the Borrower Loan to the Borrower pursuant to the terms of the Borrower Loan Agreement.

“**Funding Loan Agreement**” means this Funding Loan Agreement, as amended and supplemented from time to time.

“**Funding Loan Documents**” means this Funding Loan Agreement, the Governmental Lender Note, the Borrower Loan Agreement, the Regulatory Agreement, the Tax Certificate and the Assignment of Deed of Trust.

“**Governmental Lender**” means the City and County of San Francisco and its successors and assigns.

“**Governmental Lender Note**” means the promissory note evidencing the Funding Loan, executed by the Governmental Lender in favor of the Funding Lender, in the form attached hereto as Exhibit A.

“**Investor Letter**” shall mean a letter in substantially the form attached to this Funding Loan Agreement as Exhibit B, duly executed by the holder of the Governmental Lender Note and delivered to the Governmental Lender.

“**Maturity Date**” means October [1], 2018.

“**Ongoing Governmental Lender Fee**” shall mean the annual fee of the Governmental Lender, payable as provided in Section 19 of the Regulatory Agreement.

“**Person**” shall mean an individual, a corporation, a partnership, a limited liability company, a limited liability partnership, a limited partnership, a trust, an unincorporated organization or a government or any agency or political subdivision thereof.

“**Pledged Revenues**” shall mean the amounts pledged under this Funding Loan Agreement to the payment of the principal of, prepayment premium, if any, and interest on the Funding Loan and the Governmental Lender Note, consisting of the following: (i) all income, revenues, proceeds and other amounts to which the Governmental Lender is entitled (other than amounts received by the Governmental Lender with respect to the Reserved Rights) derived from or in connection with the Project and the Funding Loan Documents, including all Borrower Loan Payments due under the Borrower Loan Agreement and the Borrower Note, payments with respect to the Borrower Loan Payments and all amounts obtained through the exercise of the remedies provided in the Funding Loan Documents and all receipts credited under the provisions of this Funding Loan Agreement against said amounts payable, and (ii) moneys held in the funds

and accounts established under this Funding Loan Agreement, together with investment earnings thereon.

**“Project”** means the construction of the residential rental property consisting of 67 units of affordable rental housing located at 1009 Howard Street, in the City and County of San Francisco, California, on the site described in the Deed of Trust and Exhibit A to the Regulatory Agreement.

**“Qualified Project Costs”** means “Qualified Project Costs” as such term is defined in the Tax Certificate.

**“Rebate Analyst”** shall mean the rebate analyst selected by the Borrower prior to the Closing Date and acceptable to the Governmental Lender and the Funding Lender.

**“Regulations”** means the tax regulations promulgated by the United States Department of the Treasury from time to time pursuant to the Code.

**“Regulatory Agreement”** means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of October 1, 2014, between the Governmental Lender and the Borrower, as amended and supplemented from time to time in accordance with its terms.

**“Reserved Rights”** means the Governmental Lender’s rights to enforce and receive payments of money directly and for its own purposes under Exhibit C to the Borrower Loan Agreement, and Sections 7.24, 7.27, 7.29 and 11.4 (solely as such Sections relate to the Governmental Lender) of the Borrower Loan Agreement, the Governmental Lender’s rights to inspect and audit the books, records and premises of the Borrower and of the Project, its right to collect attorneys’ fees and related expenses, its right to enforce the Borrower’s covenants to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the Governmental Lender), its right to receive notices and to grant or withhold consents or waivers under this Funding Loan Agreement, its rights to indemnification by the Borrower under Section 7.24 of the Borrower Loan Agreement, the Governmental Lender’s rights, including but not limited to, rights to reimbursement and payment of its fees, costs and expenses, under the Regulatory Agreement and its rights to amend this Funding Loan Agreement and the Regulatory Agreement in accordance with the provisions hereof and thereof.

**“Requisition”** shall have the meaning ascribed to it in Section 9.6(c).

**“Security”** shall have the meaning ascribed to it in Section 7.1.

**“State”** means the State of California.

**“Tax Certificate”** means the Tax Certificate and Agreement of the Borrower and the Governmental Lender dated the Closing Date.

**“Tax Counsel”** means (a) Squire Patton Boggs (US) LLP or (b) any attorney at law or other firm of attorneys selected by the Borrower and acceptable to the Governmental Lender and Funding Lender of nationally recognized standing in matters pertaining to the federal tax status



of interest on tax exempt obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America, but shall not include counsel for the Borrower.

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

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

## **ARTICLE II**

### **TERMS; GOVERNMENTAL LENDER NOTE**

#### 2.1 Terms.

(a) Principal Amount. The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount.

(b) Draw-Down Funding. The Funding Loan is originated on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Funding Lender directly to the Fiscal Agent as and when needed to make each advance in accordance with the disbursement provisions of the Borrower Loan Agreement. Upon each advance of principal under the Borrower Loan Agreement, a like amount of the Funding Loan shall be deemed concurrently and simultaneously advanced under this Funding Loan Agreement, including the initial advance of \$[Initial Draw]. Subject to the terms and conditions of the Borrower Loan Agreement, the Funding Lender agrees to advance to the Fiscal Agent an amount equal to \$[Initial Draw] on the Closing Date, and the Funding Lender agrees to correspondingly and simultaneously advance this amount for the account of the Governmental Lender under this Funding Loan Agreement as an advance on the Funding Loan.

(c) Origination Date; Maturity. The Funding Loan shall be originated on the Closing Date and shall mature on the Maturity Date at which time the entire principal amount of the Funding Loan, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

(d) Principal. The outstanding principal amount of the Governmental Lender Note and of the Funding Loan as of any given date shall be the total amount advanced by the

Funding Lender to or for the account of the Governmental Lender to fund corresponding advances under the Borrower Loan Agreement as proceeds of the Borrower Loan, less any payments of principal of the Governmental Lender Note previously received from payments of corresponding principal amounts under the Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of the Governmental Lender Note and interest thereon shall be payable on the basis specified in this paragraph (d) and in paragraphs (e) and (f) of this Section 2.1.

The Funding Lender shall keep a record of all principal advances and principal repayments made under the Governmental Lender Note and shall upon written request provide the Governmental Lender with a statement of the outstanding principal balance of the Governmental Lender Note and the Funding Loan.

(e) Interest. Interest shall be paid on the outstanding principal amount of the Governmental Lender Note at the rate or rates set forth in the Borrower Note and otherwise as set forth in the Borrower Loan Agreement.

(f) Corresponding Payments. The payment or prepayment of principal, interest and premium, if any, due on the Funding Loan and the Governmental Lender Note shall be identical with and shall be made on the same dates, terms and conditions, as the principal, interest, premiums, late payment fees and other amounts due on the Borrower Note. Any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on the Borrower Note shall be deemed to be like payments or prepayments of principal, interest and premium, if any, due on the Funding Loan and the Governmental Lender Note.

2.2 Form of Governmental Lender Note. As evidence of its obligation to repay the Funding Loan, simultaneously with the delivery of this Funding Loan Agreement to the Funding Lender, the Governmental Lender hereby agrees to execute and deliver the Governmental Lender Note. The Governmental Lender Note shall be substantially in the form set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement.

2.3 Execution and Delivery of Governmental Lender Note. The Governmental Lender Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of the Mayor of the City [and approved as to form by the City Attorney of the City and County of San Francisco]. The signatures of individuals who were the proper officers of the Governmental Lender at the time of execution shall bind the Governmental Lender, notwithstanding that such individuals or any of them shall have ceased to hold such offices prior to the delivery of the Governmental Lender Note or shall not have held such offices at the date of the Governmental Lender Note.

2.4 Investor Letter; Participations; Sale and Assignment.

(a) The Funding Lender shall deliver to the Governmental Lender a signed Investor Letter in substantially the form attached hereto as Exhibit B on the Closing Date.

(b) The Funding Lender may not sell or assign the Governmental Lender Note and the Funding Loan except in whole to a transferee who agrees to become the "Funding

**Lender**” under the Funding Loan Documents and assume all of the obligations and perform all of the duties of the Funding Lender thereunder, but the Funding Lender shall have the right to sell participation interests in the Governmental Lender Note and the Funding Loan in Authorized Denominations, provided that the Governmental Lender Note and the Funding Loan or such interests shall be sold only to purchasers that execute and deliver to the Funding Lender, with a copy to the Governmental Lender, an Investor Letter. Notwithstanding the preceding sentence, no Investor Letter shall be required for the Funding Lender to (i) assign the Governmental Lender Note and the Funding Loan or participation interests in the Governmental Lender Note and the Funding Loan to any Affiliate of the Funding Lender or (ii) sell or assign the Governmental Lender Note and the Funding Loan or participation interests in the Governmental Lender Note and the Funding Loan to a Qualified Institutional Buyer as defined in Rule 144A of the Securities Act (a “**QIB**”) or to a special purpose entity, a trust or custodial arrangement interests in which may be sold (with appropriate disclosure and acknowledgement of transfer restrictions) or transferred only in Authorized Denominations to (A) QIBs or (B) “accredited investors” as defined in Section 501(a) of Regulation D promulgated under the Securities Act who deliver to the Funding Lender, with a copy to the Governmental Lender, an Investor Letter or (iii) sell or assign the Governmental Lender Note and the Funding Loan (or a participation therein) if the Governmental Lender Note is then rated “A” or better by at least one Rating Agency.

(c) No service charge shall be made for any sale or assignment of any portion of the Governmental Lender Note, but the Governmental Lender may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any such sale or assignment. Such sums shall be paid in every instance by the purchaser or assignee of the Funding Loan or portion thereof.

(d) The Governmental Lender may require the payment by the entity requesting any such transfer of any tax, fee or other governmental charge required to be paid with respect to such transfer. The cost of printing any new Governmental Lender Note and any services rendered or any out-of-pocket expenses incurred by the Governmental Lender in connection therewith shall be paid by the transferor of the Governmental Lender Note.

(e) The Funding Lender shall indemnify and defend the Governmental Lender against any claim brought by any transferor or transferee of the Governmental Lender Note in respect of the Borrower Loan Documents in the event that the Funding Lender permits a transfer of the Governmental Lender Note in violation of the restrictions in this Section.

2.5 Note Registrar. The Governmental Lender Note shall be in fully registered form. The Funding Lender shall maintain records (the “**Note Register**”) as to the owner of the Governmental Lender Note. Any transfer by the Funding Lender of its ownership of the Governmental Lender Note (or by any subsequent transferee of the Governmental Lender Note) shall be recorded by the Funding Lender in the Note Register.

**ARTICLE III**  
**REPRESENTATIONS AND WARRANTIES**

3.1 Representations and Warranties of the Governmental Lender. The Governmental Lender makes the following representations and warranties:

(a) The Governmental Lender is a municipal corporation, duly organized and existing under the laws of the State.

(b) Under the provisions of the Act, the Governmental Lender has the power, and has taken all official actions necessary (i) to enter into the Funding Loan Documents to which it is a party, or (ii) to perform its obligations hereunder and thereunder, and (iii) to consummate all other transactions on its part contemplated by this Funding Loan Agreement.

(c) The Funding Loan Documents to which the Governmental Lender is a party have been duly executed and delivered by the Governmental Lender and the Governmental Lender has taken such actions as are necessary to cause the Funding Loan Documents to which it is a party, when executed by the other respective parties thereto, to be valid and binding limited obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally.

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

(e) The Governmental Lender has not been served with any action, suit, proceeding, inquiry or investigation or, to the knowledge of the Governmental Lender, no action, suit, proceeding, inquiry or investigation is threatened against the Governmental Lender by or before any court, governmental agency or public board or body which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any members of the governing board of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party, or the loaning of the Funding Loan as herein set forth; (iii) affects or questions the validity or enforceability of the Funding Loan Documents; or (iv) questions the power or authority of the Governmental Lender to carry out the transactions on its part contemplated by the Funding Loan Documents.

(f) The revenues and receipts to be derived from the Borrower Loan Agreement and the Borrower Note have not been pledged by the Governmental Lender to secure any of its notes or bonds other than the Funding Loan evidenced by the Governmental Lender Note.

(g) The Governmental Lender will not create, authorize or approve any mortgage, pledge, lien, charge or encumbrance of any kind on the Security or any part thereof prior to or on parity with the lien of this Funding Loan Agreement, except as expressly permitted or contemplated by the Funding Loan Documents.

(h) CDLAC has provided an allocation of the State's 2014 private activity bond volume cap under Section 146 of the Code to the Governmental Lender for the Governmental Lender Note and the Governmental Lender will timely make any required carry forward election with respect to such allocation. The Governmental Lender hereby elects to apply the alternative option under clause (2) of the first paragraph of Section 3.01 of IRS Notice 2011-63 with respect to the issue date of the Governmental Lender Note; and, in connection therewith, has directed Tax Counsel to include the information on Form 8038 filed for the Governmental Lender Note that is required by section 3.03 of said Notice.

Nothing in this Funding Loan Agreement shall be construed as requiring the Governmental Lender to provide any financing for the Project other than the proceeds of the Funding Loan, or to provide sufficient moneys for all of the costs of the Project.

3.2 Representations, Warranties and Covenants of the Funding Lender. The Funding Lender as of the date hereof, represents, warrants and covenants that:

(a) The Funding Lender is a national banking association, organized and existing under the laws of the United States and has full legal right, power and authority under the laws of the United States (i) to enter into this Funding Loan Agreement, the Borrower Loan Agreement and the Assignment of Deed of Trust, (ii) to perform its obligations hereunder, and (iii) to consummate the transactions on its part contemplated by this Funding Loan Agreement and the Borrower Loan Agreement.

(b) This Funding Loan Agreement, the Borrower Loan Agreement and the Assignment of Deed of Trust have been duly executed and delivered by the Funding Lender and, when executed by the Governmental Lender and Borrower, as applicable, will constitute valid and binding obligations of the Funding Lender, enforceable against the Funding Lender in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting the rights of creditors generally.

(c) The execution and delivery of this Funding Loan Agreement, the Borrower Loan Agreement and the Assignment of Deed of Trust, the performance by the Funding Lender of its obligations hereunder and thereunder and the consummation of the transactions on its part contemplated hereby and thereby will not violate any law, regulation, rule or ordinance or any order, judgment or decree of any federal, state or local court and do not conflict with, or constitute a breach of, or a default under, any document, instrument or commitment to which the Funding Lender is a party or by which the Funding Lender or any of its property is bound.

(d) The Funding Lender has not been served with and, to the knowledge of the Funding Lender, there is no action, suit, proceeding, inquiry or investigation by or before any

court, governmental agency or public board or body pending or threatened against the Funding Lender which (i) affects or seeks to prohibit, restrain or enjoin the loaning of the amounts set forth herein to the Governmental Lender or the execution and delivery of this Funding Loan Agreement, the Borrower Loan Agreement or the Assignment of Deed of Trust, (ii) affects or questions the validity or enforceability of this Funding Loan Agreement or the Borrower Loan Agreement, or (iii) questions the power or authority of the Funding Lender to carry out the transactions on its part contemplated by, or to perform its obligations under, this Funding Loan Agreement and the Borrower Loan Agreement.

(e) Any certificate for the benefit of Governmental Lender signed by a representative of the Funding Lender and delivered pursuant to this Funding Loan Agreement, the other Funding Loan Documents or the Borrower Loan Agreement shall be deemed a representation and warranty by the Funding Lender as to the statements made therein.

#### **ARTICLE IV** **THE FUNDING LOAN**

4.1 Closing of the Funding Loan. The closing of the Funding Loan shall not occur until the following conditions are met:

(a) the Funding Lender shall have received the original Governmental Lender Note, the original Borrower Note endorsed by the Governmental Lender to the Funding Lender and an original executed counterpart of this Funding Loan Agreement, the Assignment of Deed of Trust, the Regulatory Agreement, the Deed of Trust, and all of the Borrower Loan Documents;

(b) no Event of Default nor any event which with the passage of time and/or the giving of notice would constitute an Event of Default under this Funding Loan Agreement shall have occurred as evidenced by a certificate received from the Governmental Lender;

(c) the conditions to the closing of the Borrower Loan and the initial disbursement of the Borrower Loan as set forth in Sections 4.1 and 5.1.1 of the Borrower Loan Agreement, shall have been satisfied in full;

(d) the conditions precedent to the issuance of the Funding Loan Note as set forth in Section 4.2 of the Borrower Loan Agreement shall have been satisfied in full;

(e) counsel to the Borrower shall have delivered an opinion in form satisfactory to counsel to the Governmental Lender and counsel to the Funding Lender regarding the enforceability against the Borrower of the Borrower Loan Documents to which the Borrower is a party;

(f) the initial owners of the Governmental Lender Note shall have executed and delivered a letter in the form of Exhibit B hereto; and

(g) all legal matters incident to the transactions contemplated by this Funding Loan Agreement shall be concluded to the reasonable satisfaction of Tax Counsel, counsel to the Governmental Lender, counsel to the Funding Lender and counsel to the Fiscal Agent.

4.2 Commitment to Execute the Governmental Lender Note. The Governmental Lender agrees to execute and deliver the Governmental Lender Note simultaneously with the execution of this Funding Loan Agreement, the Borrower Loan Agreement, the Borrower Note, the Tax Certificate and the Regulatory Agreement.

4.3 Amount and Source of Funding Loan. The Funding Lender hereby makes to the Governmental Lender and agrees to fund, and the Governmental Lender hereby accepts from the Funding Lender, upon the terms and conditions set forth herein, the Funding Loan in an aggregate principal amount of up to \$[\_\_\_\_\_], and agrees to have the proceeds of the Funding Loan applied and disbursed in accordance with the provisions of this Funding Loan Agreement.

4.4 Disbursement of Funding Loan Proceeds.

(a) The Funding Lender and the Governmental Lender hereby authorize and direct the funding and disbursement by the Funding Lender of the initial principal amount of the Funding Loan in the amount of \$[Initial Draw] on the Closing Date, subject to the satisfaction of all the conditions specified in Section 4.1 above. On the date of execution and delivery of the Funding Loan Note, and the date of execution and delivery of the Borrower Note, such initial proceeds of the Funding Loan shall be disbursed by the Funding Lender, on behalf of the Governmental Lender, directly to the Fiscal Agent for the closing of the Borrower Loan to fund the Borrower Loan under and as provided in Section 5.1.2 of the Borrower Loan Agreement.

(b) The Funding Lender and the Governmental Lender hereby authorize and direct the funding and disbursement of the remaining principal amount of the Funding Loan (not referenced in Section 4.4(a) above or 4.4(c) below) by the Funding Lender, on behalf of the Governmental Lender, directly to the Fiscal Agent to fund the remaining principal of the Borrower Loan under and as provided in, and subject to the provisions of, Section 5 of the Borrower Loan Agreement (other than Section 5.1.1).

(c) [TO BE DISCUSSED: Funding Lender shall disburse directly to Funding Lender on the first Business Day of each month, the accrued interest under the Funding Loan and Funding Lender will provide Fiscal Agent with written notice of the amount disbursed pursuant to this Section 4.4(c).]

(d) None of the Funding Lender, the Governmental Lender, or the Fiscal Agent shall be responsible for the application by the Borrower of monies disbursed to the Borrower in accordance with this Section 4.4.

(e) From and after December 31, 2017 no further advances of the Funding Loan shall occur, except to the extent any further advances on the Borrower Loan are permitted pursuant to Section 5.6 of the Borrower Loan Agreement.

**ARTICLE V**  
**LIMITED LIABILITY**

5.1 Source of Payment of Funding Loan and Other Obligations.

(a) The Funding Loan and the Governmental Lender Note are limited obligations of the Governmental Lender, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned hereunder. None of the Governmental Lender, the State or any political subdivision thereof (except the Governmental Lender, to the limited extent authorized by the Act and set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the Funding Loan or the Governmental Lender Note or for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and, notwithstanding anything herein or in any other instrument to the contrary, none of the Funding Loan or the Governmental Lender Note or any of the Governmental Lender's agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit 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) The Funding Loan and the Governmental Lender Note, together with the interest and premium, if any, thereon and the purchase price thereof, shall not be deemed to constitute a debt or liability of the Governmental Lender, the State or of any political subdivision or public agency thereof or a pledge of the faith and credit of the Governmental Lender, the State or any political subdivision or public agency thereof, but, notwithstanding anything herein or in any other instrument to the contrary, shall be payable solely from the funds provided therefor pursuant to this Funding Loan Agreement. The Funding Loan and the Governmental Lender Note are only limited obligations of the Governmental Lender as provided by the Act, and, notwithstanding anything herein or in any other instrument to the contrary, neither the Governmental Lender nor any public agency shall under any circumstances be obligated to pay the Funding Loan or the Governmental Lender Note except from the Security.

(c) Neither the faith and credit nor the taxing power of the State, the Governmental Lender, any public agency or any political subdivision of the State is pledged to the payment of the principal of, premium, if any, purchase price of or interest on the Funding Loan or the Governmental Lender Note, nor is the State, the Governmental Lender, any public agency or any political subdivision of the State, in any manner obligated to make any appropriation for such payment.

(d) Notwithstanding anything herein or in any other instrument to the contrary, no recourse shall be had for the payment of the principal of, premium, if any, or interest on the Funding Loan or the Governmental Lender Note or for any claim based thereon or upon any obligation, covenant or agreement in this Funding Loan Agreement contained (except from the Security), against the Governmental Lender, any past, present or future member of its governing body, its officers, attorneys, accountants, financial advisors, agents or staff, or the officers, attorneys, accountants, financial advisors, agents or staff of any successor public entity, as such, either directly or through the Governmental Lender or any successor public entity, under any rule of law or penalty or otherwise, and all such liability of the Governmental Lender, any



member of its governing body and its officers, attorneys, accountants, financial advisors, agents and staff is hereby expressly waived and released as a condition of, and in consideration for, the execution of this Funding Loan Agreement.

5.2 Exemption 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 commissioner, officer, director, employee or agent of the Governmental Lender in his individual capacity, and neither the commissioners, the officers, directors, employees or agents of the Governmental Lender executing the Governmental Lender Note or this Funding Loan Agreement shall be liable personally on the Governmental Lender Note or under this Funding Loan Agreement or be subject to any personal liability or accountability by reason of the issuance of the Governmental Lender Note or the execution of this Funding Loan Agreement.

## **ARTICLE VI**

### **FURTHER AGREEMENTS**

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

6.2 Additional Instruments. The Governmental Lender hereby covenants to execute and deliver, or cause to be executed and delivered, at the expense of the Borrower, such additional instruments and to perform such additional acts, or cause the performance of such additional acts, as may be necessary, in the written opinion of the Funding Lender, acting in good faith, to carry out the intent of this Funding Loan Agreement and the Governmental Lender Note or to perfect or give further assurances of any of the rights granted, or provided for in this Funding Loan Agreement, the Assignment of Deed of Trust or the other Funding Loan Documents.

6.3 Books and Records. The Governmental Lender shall, solely by the execution of the Borrower Loan Agreement and the assignment thereof to the Funding Lender, and subject to the provisions of Sections 5.1, 5.2 and 6.13 hereof, cause the Borrower to permit the Funding Lender or its duly authorized representatives access during normal business hours to the books and records of the Borrower pertaining to the Borrower Loan and the Project, and to make such books and records available for audit and inspection, at reasonable times and under reasonable conditions to the Governmental Lender, the Funding Lender and their duly authorized representatives, and at the sole expense of the Borrower.

6.4 Notice of Certain Events. The Governmental Lender hereby covenants to advise the Funding Lender promptly in writing of the occurrence of any Event of Default under and as defined in the Borrower Loan Agreement, Regulatory Agreement or the other Funding Loan Documents of which it has received written notice, or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default thereunder of which it has received written notice, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. In Section 7.23 of the Borrower Loan Agreement, the Borrower has agreed to advise the Governmental Lender and the Funding

Lender promptly in writing of the occurrence of any Event of Default (as defined in the Borrower Loan Agreement).

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

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

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

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

No document, certificate or written statement furnished to the Governmental Lender by the Funding Lender contains to the best of its knowledge any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein not misleading or incomplete as of the date hereof.

6.7 Tax Covenants. (a) The Governmental Lender covenants to and for the benefit of the owner of the Governmental Lender Note that it will:

(i) neither knowingly make or use nor cause to be made or used any investment or other use of the proceeds of the Governmental Lender Note or the money and investments held in the funds and accounts in any manner which would cause the Governmental Lender Note to be arbitrage bonds under Section 148 of the Code and the Regulations issued under Section 148 of the Code (the "**Regulations**") or which would otherwise cause the interest payable on the Governmental Lender Note to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all obligations of the Borrower under the Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not knowingly take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Governmental Lender Note to be includable in gross income for federal income tax purposes;

(iv) whenever and so often as requested by Funding Lender (at the sole cost and expense of the Borrower), do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the Governmental Lender Note will be excluded from the gross income for federal income tax purposes, of the Bondholders pursuant to the Code, except in the event where any such owner of Governmental Lender Note is a "substantial user" of the facilities financed with the Governmental Lender Note or a "related person" within the meaning of the Code; and

(v) not knowingly take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Lender Note to be "federally guaranteed" within the meaning of Section 149(b) of the Code and the Regulations.

In furtherance of the covenants in this Section, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it. In the event of a conflict between the terms of this Funding Loan Agreement and the Tax Certificate, the terms of the Tax Certificate shall control. In making the representations and agreements set forth in Section 6.7(a)(i), (iii), (iv) and (v), the Governmental Lender is relying solely on the representations and warranties of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate.

#### 6.8 Immunities and Limitations of Responsibility of Governmental Lender.

(a) The Governmental Lender shall be entitled to the advice of counsel, and the Governmental Lender shall be wholly protected as to action taken or omitted in reliance on such advice. The Governmental Lender may rely conclusively on any communication or other document furnished to it hereunder or under the Borrower Loan Agreement and reasonably believed by it to be genuine. The Governmental Lender shall in no event be liable for the application or misapplication of funds or for other acts or defaults by any person, except its own officers and employees. When any payment or consent or other action by it is called for hereby, it may defer such action pending receipt of such evidence (if any) as it may require in support

thereof. The Governmental Lender shall not be required to take any remedial action (other than the giving of notice) hereunder or under any of the other Funding Loan Documents unless indemnity in a form acceptable to the Governmental Lender is furnished for any expense or liability to be incurred in connection with such remedial action. The Governmental Lender shall be entitled to reimbursement from the Borrower for its expenses reasonably incurred or advances reasonably made, with interest at the maximum rate of interest permitted under applicable law, in the exercise of its rights or the performance of its obligations hereunder, to the extent that it acts without previously obtaining indemnity. No permissive right or power to act which the Governmental Lender may have shall be construed as a requirement to act; and no delay in the exercise of a right or power shall affect its subsequent exercise of the right or power.

(b) A default by the Borrower in any of its covenants, representations and agreements in the Borrower Loan Agreement, Regulatory Agreement or Tax Certificate on which the Governmental Lender is relying in the various sections of this Article VI shall not be considered a default hereunder by the Governmental Lender.

(c) The Borrower has indemnified the Governmental Lender against certain acts and events as set forth in Section 7.24 of the Borrower Loan Agreement and Section 9 of the Regulatory Agreement. Such indemnities shall survive payment of the Funding Loan and discharge of this Funding Loan Agreement.

## **ARTICLE VII** **SECURITY**

7.1 Security for the Funding Loan. To secure the payment of the Funding Loan and the Governmental Lender Note, the Governmental Lender hereby grants, bargains, sells, conveys, assigns, transfers, hypothecates, pledges and sets over to the Funding Lender (excepting only the Reserved Rights) a lien on and security interest in the following described property (collectively, the "Security"):

(a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement and the Borrower Note, including, without limitation, all rents, revenues and receipts derived by the Governmental Lender from the Borrower relating to the Project and, including, without limitation, all Pledged Revenues, income, revenues, proceeds and other amounts to which Governmental Lender is entitled to derive from or in connection with the Project and the Borrower Loan Documents, including all amounts due under the Borrower Loan Agreement (except to the extent made on account of the Reserved Rights), the Borrower Note or the other Borrower Loan Documents and all amounts obtained after the exercise of the remedies provided in the Borrower Loan Documents and all receipts credited under the provisions of the Borrower Loan Agreement against said amounts payable;

(b) All right, title and interest of the Governmental Lender in, to and under the other Borrower Loan Documents, together with all rights, remedies, privileges and options pertaining to the Borrower Loan Documents, and all other payments, revenues and receipts derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Documents, except for its Reserved Rights and its rights to enforce the provisions of the Tax Certificate.

(c) All right, title and interest of the Governmental Lender in and to (i) the right to collect and receive net proceeds of any policy of insurance maintained pursuant to the Borrower Loan Documents; (ii) any award or payment becoming payable to Governmental Lender under the Borrower Loan Documents by reason of any condemnation of the Project, any improvements located thereon or any conveyance in lieu of condemnation; and (iii) any bankruptcy, insolvency, reorganization or condemnation proceeding involving the Borrower or any Loan Party (as defined in the Borrower Loan Agreement) with respect to the Borrower Loan Documents;

(d) Any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subject to the lien of this Funding Loan Agreement as additional security by Governmental Lender or anyone on its part or with its consent or which pursuant to any of the provisions hereof or the Borrower Loan Documents may come into the possession or control of the Funding Lender; and

(e) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held under this Funding Loan Agreement, subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein.

The pledge and assignment of the security interest granted in the Security pursuant to this Section 7.1 for the payment of principal of, premium, if any, and interest on the Governmental Lender Note, in accordance with its terms and provisions and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Lender Note by the Governmental Lender. The Security so pledged and/or thereafter received by Governmental Lender or the Funding Lender shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind whether in tort, contract or otherwise against Governmental Lender irrespective of whether such parties have notice thereof.

7.2 Delivery of Security. In connection with such pledge, assignment, transfer and conveyance of the Security pursuant to Section 7.1, Governmental Lender shall deliver to Funding Lender the following documents or instruments to which it is a party promptly following the execution and, to the extent applicable, their recordation or filing:

(a) The Borrower Note endorsed without recourse to the Funding Lender by the Governmental Lender;

(b) The Borrower Loan Agreement, Regulatory Agreement, Deed of Trust and the other Borrower Loan Documents existing on the Closing Date and the Assignment of Deed of Trust assigning for security purposes and without recourse the Deed of Trust and Borrower Loan Documents from the Governmental Lender to the Funding Lender;

(c) Uniform Commercial Code financing statements or other chattel security documents giving notice of Funding Lender's status as an assignee of the Governmental Lender's security interest in any personal property forming a part of the Project; and

(d) Uniform Commercial Code financing statements giving notice of the pledge by the Governmental Lender of the Security pledged under this Funding Loan Agreement, in forms provided by the Funding Lender.

The Governmental Lender shall deliver and deposit with the Funding Lender such additional documents, financing statements and instruments as the Funding Lender may reasonably request in writing from time to time for the purpose of better perfecting and assuring to the Funding Lender its lien and security interest in and to the Security, in each case in forms provided by the Funding Lender and at the expense of the Borrower.

## ARTICLE VIII AGENCY

8.1 Appointment of Funding Lender as Agent. The Governmental Lender hereby irrevocably appoints the Funding Lender as its agent with full authority and power to act on its behalf for the purposes set forth herein and to do all other acts necessary or incidental to the performance and execution thereof, except for the Reserved Rights.

8.2 Authority of the Funding Lender. The Funding Lender is authorized and agrees to advance monies on behalf of the Governmental Lender to fund the Borrower Loan upon satisfaction of the conditions set forth in the Borrower Loan Agreement and otherwise to act on behalf of the Governmental Lender under the Borrower Loan Documents, except for the Reserved Rights. Except for the Reserved Rights, the Funding Lender is hereby authorized, directed and empowered to exercise all the rights, powers or remedies of the Governmental Lender under the Borrower Loan Agreement and the other Borrower Loan Documents, and to make all determinations and exercise all options and elections thereunder, without the necessity of further advice or consultation with, or consent or authorization by, the Governmental Lender, and all actions taken by the Funding Lender under the Borrower Loan Agreement or any of the other Borrower Loan Documents shall be valid and shall have the same force and effect, as if taken by the Governmental Lender. The Funding Lender shall have the right to exercise any rights, remedies, conferred on the Governmental Lender pursuant to the Borrower Loan Documents (except for the Reserved Rights) as may be necessary or convenient to (i) enforce the payment of any amounts owing by Borrower under the Borrower Loan Documents and prepayments thereof, or (ii) otherwise to protect the interest of the Governmental Lender or Funding Lender upon a default by Borrower under the Borrower Loan Documents. The Funding Lender agrees to provide the Governmental Lender any notices given by it or delivered to it pursuant to the Borrower Loan Agreement regarding the occurrence of an Event of Default (as defined in the Borrower Loan Agreement), the acceleration of the Borrower Loan or the foreclosure of the Deed of Trust and shall provide written notice to Governmental Lender of any amendment to the Borrower Note or the Borrower Loan Agreement. The Funding Lender shall have the right to collect all payments and other amounts received by the Governmental Lender from or on behalf of the Borrower pursuant to the Borrower Loan Agreement or the other

Borrower Loan Documents, including prepayments thereof, except for payments of fees owing by the Borrower to the Governmental Lender in respect of the Reserved Rights.

8.3 Successor Agent. Anything herein to the contrary notwithstanding, any corporation or association into which the Funding Lender may be converted or merged or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any conversion, sale, merger, consolidation or transfer to which it is a party will, ipso facto, be and become the Funding Lender hereunder and vested with all of the title to the whole property and all the powers, discretion, immunities, privileges, obligations and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of the parties hereto.

8.4 Consent to Assignment. The Governmental Lender agrees that Funding Lender shall have the right to assign all of its rights under this Agreement, and under all instruments and documents executed by it as agent of the Governmental Lender pursuant to this Agreement, to an Affiliate of Funding Lender, or to a subsequent owner of all of the Governmental Lender Note and the Funding Loan as permitted under Section 2.4 or an Affiliate thereof. The Funding Lender will advise the Governmental Lender in writing of any such assignment and the Governmental Lender will execute and deliver to Funding Lender any documents (at the expense of the Funding Lender) necessary to effectuate such assignment in forms provided by the Funding Lender, and will not take any action to impair Funding Lender's right to assign such rights pursuant to this Section.

8.5 Power of Attorney. The Governmental Lender hereby irrevocably makes, constitutes and appoints the Funding Lender (and any of the Funding Lender's officers, employees or agents, as appropriate and as designated by the Funding Lender) as the Governmental Lender's true and lawful attorney-in-fact with full power of substitution, subject to the Reserved Rights, to (a) sign in the name of the Governmental Lender any assignments, notices of default, notices of election to sell, assignments and substitutions of trustee or similar documents necessary or appropriate to enforce the remedies of the Governmental Lender under the Borrower Loan Agreement, the Borrower Note, the Deed of Trust or any of the other Borrower Loan Documents, including complaints, motions and any other pleadings necessary to secure the appointment of a receiver under the Deed of Trust, (b) to appear in any bankruptcy, insolvency, reorganization, condemnation or other action or proceeding, and (c) to prepare applications for, negotiate and settle claims, and collect any distribution, award or other amount becoming payable through or as the result of (i) any such proceedings, (ii) any insured or uninsured casualty loss, or (iii) any condemnation, taking or conveyance in lieu of condemnation of any of the assets that are the subject of the Borrower Loan Agreement, the Borrower Note, the Deed of Trust or the other Borrower Loan Documents. The power of attorney granted by the Governmental Lender to the Funding Lender hereunder, being coupled with the Funding Lender's interest in the Funding Loan, is irrevocable until all of the obligations of Governmental Lender under the Governmental Lender Note have been satisfied and discharged in full.

8.6 Acceptance. The Funding Lender hereby accepts the assignments and pledge made herein for the purpose of securing the payments due pursuant to the Funding Loan Agreement.

8.7 Conditions. This Article VIII shall confer no obligations or impose no duties upon the Funding Lender beyond those expressly provided in this Funding Loan Agreement and the Borrower Loan Agreement. This Article VIII shall confer no obligations or impose no duties upon the Governmental Lender beyond those expressly provided in this Funding Loan Agreement.

## **ARTICLE IX FUNDS AND ACCOUNTS**

9.1 Authorization to Create Funds and Accounts. Except as provided in Section 9.3 hereof, no funds or accounts shall be established in connection with the Funding Loan at the time of closing and origination of the Funding Loan. The Funding Lender and Fiscal Agent are authorized to establish and create from time to time such other funds and accounts or subaccounts as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Funding Lender or the Fiscal Agent, pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.

9.2 Investment of Funds. Amounts held in any funds or accounts created under this Funding Loan Agreement shall be invested in accordance with written instructions of the Borrower in any of the following: (a) an interest bearing deposit account with Fiscal Agent; (b) money market mutual funds registered under the Investment Company Act of 1940 including any fund for which Fiscal Agent or an affiliate provides investment advice or other services; or (c) direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof, provided such obligations are backed by the full faith and credit of the United States, subject in all cases to the restrictions of Section 6.7 hereof and of the Tax Certificate. In the absence of any such instructions, the Fiscal Agent shall hold funds uninvested. The Fiscal Agent shall furnish the Borrower and Funding Lender with periodic cash transaction statements which include detail for all investment transactions effected by the Fiscal Agent or brokers selected by the Borrower. Upon the Borrower or Funding Lender's election, such statements for that party will be delivered via the Fiscal Agent's online service and upon electing such service, paper statements will be provided only upon request. The Borrower and Funding Lender each waive the right to receive brokerage confirmations of security transactions effected by the Fiscal Agent as they occur, to the extent permitted by law. The Borrower and Funding Lender further understand that trade confirmations for securities transactions effected by the Fiscal Agent will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

9.3 Establishment of Funds. There are established with the Fiscal Agent the following funds and accounts:

- (a) The Note Payment Fund;
- (b) The Project Fund;
- (c) The Expense Fund; and



(d) The Rebate Fund.

All money required to be deposited with or paid to the Fiscal Agent for the account of any of the funds or accounts created by this Funding Loan Agreement shall be held by the Fiscal Agent for the benefit of the Funding Lender, and, except for money held in the Expense Fund or the Rebate Fund, shall, while held by the Fiscal Agent, constitute part of the Pledged Revenues, and be subject to the lien hereof.

9.4 Note Payment Fund.

(a) The Governmental Lender and the Borrower shall have no interest in the Note Payment Fund or the moneys therein, which shall always be maintained by the Fiscal Agent completely separate and segregated from all other moneys held hereunder and from any other moneys of the Governmental Lender and the Borrower.

(b) The Fiscal Agent shall deposit into the Note Payment Fund any amounts received from the Borrower as payments of principal of or premium or interest on the Borrower Loan and any other amounts received by the Fiscal Agent that are subject to the lien and pledge of this Funding Loan Agreement, including any Pledged Revenues not required to be deposited to the Expense Fund or not otherwise specifically directed in writing to be deposited into other funds created by this Funding Loan Agreement.

(c) The Fiscal Agent shall apply all amounts on deposit in the Note Payment Fund in the following order of priority:

*First*, to pay or provide for the payment of the interest then due on the Funding Loan;

*Second*, to pay or provide for the payment or the prepayment of principal on the Funding Loan, provided moneys have been transferred or deposited into the Note Payment Fund for such purpose; and

*Third*, to pay or provide for the payment of the Funding Loan on the Maturity Date.

9.5 Expense Fund.

(a) The Fiscal Agent shall deposit in the Expense Fund the amounts required by the Regulatory Agreement or the Borrower Loan Agreement to be paid by the Borrower to the Governmental Lender or the Fiscal Agent. Amounts on deposit in the Expense Fund shall be used to pay the fees and expenses of the Governmental Lender and the Fiscal Agent, as and when the same become due. In that regard, moneys in the Expense Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent to pay (i) the Governmental Lender's Ongoing Governmental Lender Fee pursuant to Section 19 of the Regulatory Agreement to the Government Lender as and when due, (ii) the Fiscal Agent amounts due pursuant to the definition of Fiscal Agent's Fees herein, (iii) upon receipt, to the Fiscal Agent, any amounts due to the Fiscal Agent which have not been paid, other than amounts paid in accordance with clause (ii) hereof, and (iv) upon receipt, to, or at the direction of, the Governmental Lender, any

amounts owing the Governmental Lender by the Borrower and then due and unpaid, other than amounts paid in accordance with clause (i) hereof. The Funding Lender shall notify the Fiscal Agent in writing on each [October 1], commencing [October] 1, 2015, of the Outstanding principal amount of the Governmental Lender Note so that the Fiscal Agent can calculate the annual administrative fee owed from the Borrower to the Governmental Lender under the Regulatory Agreement. The Governmental Lender shall notify the Fiscal Agent in writing when the annual administrative fee is amended under the Regulatory Agreement.

(b) In the event that the amounts on deposit in the Expense Fund are not equal to the amounts payable from the Expense Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower of such deficiency and of the amount of such deficiency and request payment within two Business Days to the Fiscal Agent of the amount of such deficiency.

(c) Written notice of any insufficiency, which results in the Governmental Lender not receiving the Ongoing Governmental Lender Fee on the applicable due date, shall be provided by the Fiscal Agent to the Governmental Lender (with a copy to the Borrower and the Funding Lender) within 10 days of the respective due date. Upon payment by the Borrower of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent to the Governmental Lender.

(d) Notwithstanding anything herein to the contrary, the Fiscal Agent, on behalf of the Governmental Lender, shall prepare and submit a written invoice to the Borrower for payment of the Ongoing Governmental Lender Fee not later than 30 days prior to the due date for payment of such Ongoing Governmental Lender Fee, and shall remit moneys received by the Borrower to the Governmental Lender for payment of such fee.

#### 9.6 Project Fund.

(a) All proceeds of the Funding Loan provided by the Funding Lender shall be deposited to the Project Fund and disbursed as herein provided. The Fiscal Agent shall use moneys in the Project Fund for the acquisition, construction and equipping of the Project, to pay other Qualified Project Costs and to pay other costs related to the Project as provided herein.

(b) Not less than 97% of the moneys deposited in and credited to the Project Fund, representing the proceeds of the Funding Loan, including any income earned thereon, will be expended for Qualified Project Costs (the “**97% Requirement**”). The amounts on deposit in the Project Fund shall not be applied to the payment of costs of execution and delivery of the Governmental Lender Note.

(c) Before any payment representing Governmental Lender Note proceeds shall be made from the Project Fund, the Regulatory Agreement and the Deed of Trust shall have been executed and recorded in the official records of the City and County of San Francisco and there shall be filed with the Fiscal Agent a written requisition of the Borrower substantially in the form attached hereto as Exhibit C (the “**Requisition**”) and approved by the Funding Lender pursuant to the terms, conditions and provisions of the Borrower Loan Agreement, with a copy

to the Governmental Lender. The Fiscal Agent shall be entitled to conclusively rely upon any Requisition in determining whether to disburse amounts from the Project Fund.

(d) In connection with a Requisition, except for a written request for amounts representing accrued interest due and payable on the Governmental Lender Note:

(1) Only the signature of the Funding Lender shall be required on a Requisition during any period in which an Event of Default by the Borrower has occurred and is then continuing under the Borrower Loan Agreement (notice of which default has been given in writing by the Funding Lender to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

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

(3) The Fiscal Agent may conclusively rely on all Requisitions, the execution of the Requisitions by the Borrower and the approval of all Requisitions by the Funding Lender, as required by this Section, as conditions of payment from the Project Fund, which Written Requisitions constitute, as to the Fiscal Agent, irrevocable determinations that all conditions to payment of the specified amounts from the Project Fund have been satisfied. These documents shall be retained by the Fiscal Agent, subject at all reasonable times to examination by the Borrower, the Governmental Lender, the Funding Lender and the agents and representatives thereof upon reasonable notice to the Fiscal Agent. The Fiscal Agent is not required to inspect the Project or the work of improvement or to make any independent investigation with respect to the matters set forth in any Requisition or other statements, orders, certifications and approvals received by the Fiscal Agent. The Fiscal Agent is not required to obtain completion bonds, lien releases or otherwise supervise the acquisition, rehabilitation, renovation, equipping, improvement and installation of the Project.

(e) Upon receipt of each Requisition submitted by the Borrower and approved in writing by the Funding Lender, the Fiscal Agent shall promptly, but in any case within three Business Days, make payment from the Project Fund in accordance with such Requisition. The Fiscal Agent shall have no duty to determine whether any requested disbursement from the Project Fund complies with the terms, conditions and provisions of the Funding Loan Documents, constitutes payment of Qualified Project Costs or complies with the 97% Requirement. The approval in writing of a Requisition by the Funding Lender shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, shall

constitute conclusive evidence that all of the terms, conditions and requirements of the Funding Loan Documents applicable to such disbursement have been fully satisfied or waived and the Requisition from the Borrower shall, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence that the costs described in the Requisition constitute Qualified Project Costs or other permitted Project costs.

(f) The Fiscal Agent shall immediately provide written notice to the Borrower, the Funding Lender and the Governmental Lender if there are not sufficient funds available to or on deposit with the Fiscal Agent to make the transfers as and when required by Section 9.6(e). Except as provided in the next sentence, all such payments shall be made by check or draft payable, or by wire transfer, either (i) directly to the person, firm or corporation to be paid, (ii) to the Borrower and such person, firm or corporation, or (iii) upon receipt by the Funding Lender and the Governmental Lender of evidence that the Borrower has previously paid such amount and written direction to the Fiscal Agent as to such as evidenced by the Funding Lender's approval of the Requisition, to the Borrower. Upon the occurrence of an Event of Default of the Borrower of which the Fiscal Agent has knowledge as provided herein, which is continuing under the Funding Loan Documents, with the written consent of the Funding Lender, the Fiscal Agent may apply amounts on deposit in the Project Fund to the payment of principal of and interest on the Funding Loan. If a Requisition signed by the Borrower Representative and countersigned by the Funding Lender is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Fund, the Fiscal Agent shall close the Project Fund.

(g) Immediately prior to any mandatory prepayment of the Funding Loan pursuant hereto, any amounts then remaining in the Project Fund shall, at the written direction of the Funding Lender, be applied to the prepayment of the Funding Loan pursuant hereto.

(h) Investment income earned on amounts on deposit in the Project Fund shall be retained in and credited to and become a part of the amounts on deposit in that account of the Project Fund.

(i) [TO BE DISCUSSED: the Funding Lender shall disburse the Funding Loan directly to the Funding Lender to pay accrued interest due and payable on the Governmental Lender Note and will provide written notice of the amount of such disbursement to the Fiscal Agent within three (3) Business Days of the disbursement].

9.7 Rebate Fund. The Fiscal Agent shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Fiscal Agent by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.

(a) Within 15 days after each receipt or transfer of funds to the Rebate Fund, the Fiscal Agent shall withdraw from the Rebate Fund and pay to the United States of America the entire balance of the Rebate Fund.

(b) All payments to the United States of America pursuant to this Section shall be made by the Fiscal Agent for the account and in the name of the Governmental Lender

and shall be paid through the United States mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such forms to be provided to the Fiscal Agent by the Borrower or the Rebate Analyst).

(c) The Fiscal Agent shall preserve all statements, forms and explanations received from the Borrower and delivered to the Fiscal Agent and all records of transactions in the Rebate Fund until six years after the retirement of the Governmental Lender Note.

(d) The Fiscal Agent may conclusively rely on the instructions of the Borrower (based upon the report of the Rebate Analyst) with regard to any actions to be taken by it pursuant to this Section 9.7 and shall have no liability for any consequences of any failure of the Borrower or the Rebate Analyst to perform its duties or obligations or to supply accurate or sufficient instructions. Except as specifically provided in Subsection (b) above, the Fiscal Agent shall have no duty or responsibility with respect to the Rebate Fund or the Borrower's duties and responsibilities with respect thereto except to follow the Borrower's specific written instruction related thereto.

(e) If at any time during the term of this Funding Loan Agreement the Governmental Lender, the Fiscal Agent or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section, such person shall be permitted to take such action if it shall first obtain and provide to the other persons named herein, an opinion of Tax Counsel that such action shall be in compliance with the laws of the State and the terms of this Funding Loan Agreement and will not impair the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation.

(f) Moneys and securities held by the Fiscal Agent in the Rebate Fund shall not be deemed funds of the Governmental Lender and are not pledged or otherwise subject to any security interest in favor of the owners to secure the Governmental Lender Note or any other obligations.

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

(h) Notwithstanding anything to the contrary in this Funding Loan Agreement, no payment shall be made by the Fiscal Agent to the United States if the Borrower shall furnish to the Governmental Lender and the Fiscal Agent, an opinion of Tax Counsel to the effect that such payment is not required under Section 148(d) and (f) of the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Governmental Lender Note. In such event the Borrower shall be entitled to withdraw funds from the Rebate Fund to the extent the Borrower shall provide an opinion of Tax Counsel that such action will not impair the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation to the Governmental Lender and the Fiscal Agent with respect to such withdrawal.

(i) The Fiscal Agent shall keep and make available to the Governmental Lender and the Borrower records concerning the investments of all funds held by the Fiscal Agent pursuant to the Funding Loan Agreement including date bought and sold, price and commission paid, and bids taken, if any, and shall keep all such records until six years after the date on which no Governmental Lender Note is repaid in full in order to enable the Borrower to make the computations required under Section 148(f) of the Code.

(j) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 9.7 need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Tax Counsel that such action will not impair the excluding of interest on the Governmental Lender Note from gross income for purposes of federal income taxation, a copy of which shall be provided to the Fiscal Agent.

## **ARTICLE X**

### **THE FISCAL AGENT**

10.1 Appointment of Fiscal Agent; Acceptance. The Governmental Lender hereby appoints U.S. Bank National Association as Fiscal Agent hereunder. The Fiscal Agent shall signify its acceptance of the duties and obligations imposed upon it by this Funding Loan Agreement by executing this Funding Loan Agreement.

#### 10.2 Certain Duties and Responsibilities of Fiscal Agent.

(a) The Fiscal Agent undertakes to perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement, and no implied covenants or obligations shall be read into this Funding Loan Agreement against the Fiscal Agent.

(b) [Reserved].

(c) No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, in each case, as finally adjudicated by a court of law, except that:

(1) This subsection shall not be construed to limit the effect of Section 10.2(a);

(2) The Fiscal Agent shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts;

(3) The Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Funding Lender relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement; and

(4) No provision of this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(d) Whether or not therein expressly so provided, every provision of this Funding Loan Agreement and the other Funding Loan Documents relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section 10.2.

(e) The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Fiscal Agent and conforming to the requirements of this Funding Loan Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Funding Loan Agreement.

(f) The permissive rights of the Fiscal Agent to do things enumerated in this Funding Loan Agreement shall not be construed as a duty.

10.3 Notice of Defaults. Upon the occurrence of any default hereunder or under any Borrower Loan Document, and provided that the Fiscal Agent has actual knowledge of or has received written notice of the existence of such default, promptly, and in any event within 15 days, the Fiscal Agent shall transmit to the Governmental Lender, the Borrower, and the Funding Lender, in the manner and at the addresses for notices set forth in Section 12.2 hereof, notice of such default hereunder known to the Fiscal Agent pursuant to Section 10.4(g) hereof, unless such default shall have been cured or waived.

10.4 Certain Rights of Fiscal Agent. Except as otherwise provided in Section 10.1 hereof:

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

(b) Any request or direction of the Governmental Lender mentioned herein shall be sufficiently evidenced by a certificate or order executed by an authorized representative of the Governmental Lender;

(c) Whenever in the administration of this Funding Loan Agreement the Fiscal Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Fiscal Agent (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a written certificate of the Funding Lender or the Borrower, as appropriate;

(d) The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Funding Loan Agreement at the request or direction of the Funding

Lender, pursuant to this Funding Loan Agreement, unless the Funding Lender shall have offered to the Fiscal Agent in writing security or indemnity reasonably satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, except costs, expenses and liabilities which are adjudicated to have resulted from its own negligence or willful misconduct;

(e) The Fiscal Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, debenture, coupon or other paper or document but the Fiscal Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Fiscal Agent shall determine to make such further inquiry or investigation, it shall be entitled to examine the books and records of the Governmental Lender, if any, and of the Borrower, in either case personally or by agent or attorney after reasonable notice and during normal business hours;

(f) The Fiscal Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and pay reasonable compensation thereto and the Fiscal Agent shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder. The Fiscal Agent may act upon the advice of counsel of its choice concerning all matters hereof and the Fiscal Agent shall not be responsible for any loss or damage resulting from any action or inaction taken in good faith reliance upon said advice; and

(g) The Fiscal Agent shall not be required to take notice or be deemed to have notice of any default hereunder or under any Borrower Loan Document except for failure by the Borrower to make payments of principal, interest, premium, if any, or fee owing to the Governmental Lender pursuant to the Regulatory Agreement when due, unless the Fiscal Agent shall be specifically notified by a written notice of such default by the Governmental Lender or the Funding Lender, and all notices or other instruments required by this Funding Loan Agreement or under any Borrower Loan Document to be delivered to the Fiscal Agent, must, in order to be effective, be delivered in writing to the Fiscal Agent, and in the absence of such written notice so delivered the Fiscal Agent may conclusively assume there is no default as aforesaid.

#### 10.5 Not Responsible for Recitals.

(a) The recitals contained herein and in the Governmental Lender Note shall be taken as the statements of the Governmental Lender, and the Fiscal Agent assumes no responsibility for their correctness. The Fiscal Agent makes no representations as to the value or condition of the Pledged Revenues, the Security or any part thereof, or as to the title of the Governmental Lender thereto or as to the security afforded thereby or hereby, or as to the validity or sufficiency of this Funding Loan Agreement or of the Funding Loan.

(b) The Fiscal Agent shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the funding of the Funding Loan.



(c) The Fiscal Agent shall not be required to monitor the financial condition of the Borrower or the physical condition of the Project. The Fiscal Agent shall be under no obligation to analyze, review or make any credit decisions with respect to any financial statements, reports, notices, certificates or documents received hereunder but shall hold such financial statements reports, notices, certificates and documents solely for the benefit of, and review by, the Funding Lender and such other parties to whom the Fiscal Agent may provide such information pursuant to this Funding Loan Agreement.

(d) The Fiscal Agent makes no representations as to and shall have no responsibility for the sufficiency of the insurance required under any of the Borrower Loan Documents.

10.6 May Hold Funding Loan. The Fiscal Agent in its individual or any other capacity may become the owner or pledgee of the Funding Loan and may otherwise deal with the Governmental Lender, the Funding Lender and the Borrower with the same rights it would have if it were not Fiscal Agent.

10.7 Moneys Held by Fiscal Agent. Moneys held by the Fiscal Agent hereunder need not be segregated from other funds except to the extent required by law. The Fiscal Agent shall be under no liability for interest on any moneys received by it hereunder except as otherwise provided herein.

10.8 Compensation and Reimbursement.

(a) Under the Borrower Loan Agreement, the Borrower has agreed to, except as otherwise expressly provided herein, reimburse the Fiscal Agent as provided in this Funding Loan Agreement or the Borrower Loan Agreement, upon its request for all reasonable expenses, disbursements and advances incurred or made by the Fiscal Agent in accordance with any provision of this Funding Loan Agreement (including the reasonable fees, expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Fiscal Agent's negligence or willful misconduct, both as finally adjudicated by a court of law.

(b) When the Fiscal Agent incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally.

(c) The Governmental Lender has no obligation to pay the Fiscal Agent for services rendered.

(d) As security for the performance of the obligations of the Borrower under this Section 10.8 and for the payment of such compensation, expenses, reimbursements and indemnity, the Fiscal Agent shall have the right to use and apply any moneys held by it as Pledged Revenues.

(e) The Fiscal Agent's rights to compensation and reimbursement shall survive its resignation or removal, the payment of the Funding Loan or the Borrower Loan or the release of this Funding Loan Agreement.

10.9 Fiscal Agent Required; Eligibility. Any successor Fiscal Agent shall at all times be a trust company, a state banking entity or a national banking association with the authority to accept trusts in the State of California approved in writing by the Governmental Lender and either (a) have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, (b) be a wholly owned subsidiary of a bank holding company, or a wholly owned subsidiary of a company that is a wholly owned subsidiary of a bank holding company, having a combined capital surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, have at least \$500,000,000 of trust assets under management and have a combined capital surplus of at least \$2,000,000 as set forth in its most recent published annual report of condition, or (c) be otherwise acceptable to the Funding Lender in its sole and absolute discretion.

10.10 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Fiscal Agent hereunder and no appointment of a successor Fiscal Agent pursuant to this Article X shall become effective until the written acceptance by the successor Fiscal Agent of such appointment.

(b) The Fiscal Agent may resign at any time by giving 60 days' written notice thereof to the Governmental Lender, the Borrower, and the Funding Lender. If an instrument of acceptance by a successor Fiscal Agent shall not have been delivered to the Fiscal Agent within 30 days after the giving of such notice of resignation, the resigning Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

(c) The Fiscal Agent may be removed at any time with 30 days' notice by (i) the Governmental Lender, with the written consent of the Funding Lender (which consent of the Funding Lender shall not be unreasonably withheld), (ii) the Borrower (unless the Borrower is in default under any of the Borrower Loan Documents), subject to applicable notice and cure periods, with the written consent of the Funding Lender and the Governmental Lender in their sole and absolute discretion, or (iii) the Funding Lender with the written consent of the Governmental Lender and written notice delivered to the Fiscal Agent and the Borrower.

(d) If the Fiscal Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Fiscal Agent for any cause, the Governmental Lender shall promptly appoint a successor Fiscal Agent, with the consent of the Funding Lender. In case all or substantially all of the Pledged Revenues and Security shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee may similarly appoint a successor to fill such vacancy until a new Fiscal Agent shall be so appointed by the Governmental Lender. If, within 60 days after such resignation, removal or incapability or the occurrence of such vacancy, the Governmental Lender has failed to so appoint a successor Fiscal Agent, then a successor Fiscal Agent shall be appointed by the Funding Lender (from any of the institutions approved by the Governmental Lender to serve as a fiscal agent or trustee) with written notice thereof delivered to the Governmental Lender, the Borrower, and the retiring

Fiscal Agent, and the successor Fiscal Agent so appointed shall, forthwith upon its acceptance of such appointment, become the successor Fiscal Agent and supersede the successor Fiscal Agent appointed by such receiver or Fiscal Agent. If no successor Fiscal Agent shall have been appointed by the Governmental Lender or the Funding Lender and accepted appointment in the manner hereinafter provided, the Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

(e) The retiring Fiscal Agent shall cause written notice of each resignation and each removal of the Fiscal Agent and each appointment of a successor Fiscal Agent to be provided to the Funding Lender. Each notice shall include the name of the successor Fiscal Agent and the address of the office of the successor Fiscal Agent.

#### 10.11 Acceptance of Appointment by Successor.

(a) Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to the Governmental Lender and to the retiring Fiscal Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Fiscal Agent shall become effective and such successor Fiscal Agent, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts and duties of the retiring Fiscal Agent; notwithstanding the foregoing, on request of the Governmental Lender or the successor Fiscal Agent, such retiring Fiscal Agent shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to such successor Fiscal Agent upon the trusts herein expressed all the estates, properties, rights, powers and trusts of the retiring Fiscal Agent, and shall duly assign, transfer and deliver to such successor Fiscal Agent all property and money held by such retiring Fiscal Agent hereunder. Upon request of any such successor Fiscal Agent, the Governmental Lender shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Fiscal Agent all such estates, properties, rights, powers and trusts.

(b) No successor Fiscal Agent shall accept its appointment unless at the time of such acceptance such successor Fiscal Agent shall be qualified and eligible under this Article X, to the extent operative.

10.12 Merger, Conversion, Consolidation or Succession to Business. Any entity into which the Fiscal Agent may be merged or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Fiscal Agent shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Fiscal Agent, shall be the successor of the Fiscal Agent hereunder, provided such entity shall be otherwise qualified and eligible under this Article X, to the extent operative, without the execution or filing of any paper or any further act on the part of any of the parties hereto. Notwithstanding the foregoing, any such successor Fiscal Agent shall cause written notice of such succession to be delivered to the Funding Lender within 30 days of such succession.

10.13 Appointment of Co-Fiscal Agent. It is recognized that in case of litigation under this Funding Loan Agreement, the Borrower Loan Agreement, any other Borrower Loan Document or the Regulatory Agreement, and in particular in case of the enforcement of any of them on default, or in case the Fiscal Agent deems that by reason of any present or future law of

any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Fiscal Agent or hold title to the properties, as herein provided, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent appoint an additional individual or institution as a separate or co-fiscal agent. The following provisions of this Section are adopted to these ends.

The Fiscal Agent is hereby authorized to appoint an additional individual or institution as a separate or co-fiscal agent hereunder, upon written notice to the Governmental Lender, the Funding Lender and the Borrower, and with the consent of the Governmental Lender and the Funding Lender, but without the necessity of further authorization or consent, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement, any Borrower Loan Document, the Regulatory Agreement or the Borrower Loan Agreement to be exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be exercisable by and vest in such separate or co-fiscal agent but only to the extent necessary to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-fiscal agent shall run to and be enforceable by either of them.

Should any instrument in writing from the Governmental Lender be required by the separate fiscal agent or co-fiscal agent appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request of the Fiscal Agent, be executed, acknowledged and delivered by the Governmental Lender. In case any separate fiscal agent or co-fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate fiscal agent or co-fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a successor to such separate fiscal agent or co-fiscal agent.

10.14 No Recourse Against Officers or Employees of Fiscal Agent. No recourse with respect to any claim related to any obligation, duty or agreement contained in this Funding Loan Agreement or any other Funding Loan Document shall be had against any officer or employee, as such, of the Fiscal Agent, it being expressly understood that the obligations, duties and agreements of the Fiscal Agent contained in this Funding Loan Agreement and the other Funding Loan Documents are solely corporate in nature.

## **ARTICLE XI**

### **EVENTS OF DEFAULT AND REMEDIES**

11.1 Events of Default. Each of the following shall be an “Event of Default”:

(a) The Governmental Lender shall fail to perform or observe any of its covenants or agreements contained in this Funding Loan Agreement or the Governmental Lender Note including the failure to pay any installment of interest or principal under the Governmental Lender Note, and such failure shall continue during and after the period specified in Section 11.2; or

(b) Any representation or warranty of the Governmental Lender hereunder shall be determined by the Funding Lender to have been false in any material respect when made; or

(c) The Borrower shall fail to pay to the Governmental Lender when due the amounts required to be paid under the Borrower Loan Agreement or the Borrower Note, including a failure to repay any amounts which have been previously paid but are recovered, attached or enjoined pursuant to any insolvency receivership, liquidation or similar proceedings after the expiration of any curative provision contained therein; or

(d) the occurrence of any other Event of Default under and as defined in the Borrower Loan Agreement.

11.2 Notice of Default; Opportunity to Cure. No default under Section 11.1(a) hereof shall constitute an Event of Default until:

(a) The Governmental Lender by registered or certified mail, shall have received notice of such default specifying the same and stating that such notice is a "**Notice of Default**"; and

(b) The Governmental Lender shall have had 30 days after receipt of such notice to correct the default and shall not have corrected it; provided, however, that if the default stated in the notice is of such a nature that it cannot be corrected within 30 days, such default shall not constitute an Event of Default hereunder so long as (i) the Governmental Lender or the Borrower institutes corrective action within said 30 days, and diligently pursues such action until the default is corrected, but in no event later than 60 days after the occurrence of such Event of Default, and (ii) in the opinion of the Tax Counsel to the Governmental Lender, the failure to cure said default within 30 days will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Lender Note. The Governmental Lender may, but shall not in any way be required to, correct a default on behalf of the Borrower under the Borrower Loan Agreement or a Borrower Note.

11.3 Remedies. Whenever any Event of Default under Section 11.1 hereof shall have happened and be continuing, the Funding Lender may take whatever remedial steps as may be allowed under the law, this Funding Loan Agreement and the other Funding Loan Documents. Upon the occurrence of an Event of Default, the Funding Lender may (i) by notice in writing to the Governmental Lender, declare the principal of all the Governmental Lender Note then outstanding, and the interest accrued and premium thereon, to be due and payable immediately, upon any such declaration the same shall become and shall be immediately due and payable, anything in this Funding Loan Agreement or in the Governmental Lender Note contained to be contrary notwithstanding, and/or (ii) pursue such other remedies as are permitted under applicable law, subject in any event to the provisions of Sections 4.1, 5.2 and 6.13 hereof. Upon the occurrence and during the continuance of an Event of Default, Funding Lender shall have all rights, powers and remedies with respect to the Security as are available under the Uniform Commercial Code applicable thereto or as available under any other applicable law at the time in effect and, without limiting the generality of the foregoing, the Funding Lender may proceed at law or in equity or otherwise, to the extent permitted by applicable law: (a) to take possession of

the Security or any part thereof, with or without legal process, and to hold, service and administer and enforce any rights thereunder or thereto, and otherwise exercise all rights of ownership thereof, including (but not limited to) the sale of all or any part of the Security; (b) to become mortgagee of record for the Borrower Loan; (c) to take such actions necessary to enforce the Borrower Loan Documents and the Funding Loan Documents on its own behalf, to take such alternate courses of action, as it may deem appropriate; or (d) to take such steps to protect and enforce its rights whether by action, suit or proceeding and equity or at law for the specific performance of any term, condition or agreement in this Funding Loan Agreement, the Governmental Lender Note or the other Funding Loan Documents or in and on the execution of any power herein granted, or for the foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Funding Lender may elect, subject in any event to the Reserved Rights.

11.4 Attorneys' Fees and Expenses. If an Event of Default occurs and if the Governmental Lender or the Funding Lender should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the Governmental Lender contained herein, the Governmental Lender shall cause the Borrower (solely by its execution and assignment of the Borrower Loan Agreement) on demand to pay to the Governmental Lender or the Funding Lender the reasonable fees of such attorneys and the reasonable expenses so incurred, including court appeals.

11.5 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Funding Lender 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 Funding 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 Funding Lender to exercise any remedy reserved to it in this Article XI, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

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

11.7 Actions Under Borrower Loan Documents. Whether or not an Event of Default has occurred, the Funding Lender, in its sole discretion, shall have the sole right to waive or forebear any term, condition, covenant or agreement in the Borrower Loan Documents applicable to the Borrower or any breach thereof, other than the covenant that would adversely impact the tax-exempt status of the interest on the Governmental Lender Note and provided that the Funding Lender shall have no right to waive and the Governmental Lender may seek specific performance by Borrower to enforce the Reserved Rights.

11.8 Application on Money Collected. Any money collected by Funding Lender pursuant to this Article and any other sums held by Funding Lender as part of the Security, shall be applied in the following order, at the date or dates fixed by the Funding Lender:

(a) First, to the payment of any and all amounts due under the Funding Loan Documents other than with respect to principal and interest accrued on the Funding Loan, including, without limitation, any amounts due to Governmental Lender or Funding Lender;

(b) Second, to the payment of the whole amount of the Funding Loan, as evidenced by the Governmental Lender Note, then due and unpaid and respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected or sum sufficient therefor has been so collected at the rates prescribed therefore in the Governmental Lender Note) on overdue principal of and any premium on the Funding Loan so called provided, however, that partial payments of any portion of the Funding Loan shall be applied by Funding Lender in such order priority as Funding Lender may determine in its sole and absolute discretion; and

(c) Third, the remainder, if any to the person legally entitled thereto.

11.9 Suits to Protect the Security. The Funding Lender shall have the power to institute and maintain such proceedings as Funding Lender may deem expedient to prevent any impairment of the Security by any acts that may be unlawful or in violation of this Funding Loan Agreement and to protect the interest in the Security and in the rent, issues, profits, revenues and other income arising therefrom.

11.10 Limited Liability of Governmental Lender. Notwithstanding anything herein or in any other instrument to the contrary, the liability of the Governmental Lender for the payment of the principal of and interest on the Funding Loan, whether upon maturity or acceleration of maturity, or for the payment of any other amounts due with respect thereto shall be strictly limited as provided in Article V hereof. Without limiting the generality of the foregoing, the obligations of the Governmental Lender to make any payments on the Governmental Lender Note shall be solely from the Pledged Revenues and other moneys and Security and from no other source. Furthermore, upon written notice by the Governmental Lender to the Funding Lender, the Funding Lender shall assume all responsibilities for enforcement of remedies under the Borrower Loan Documents, and the sole responsibility of the Governmental Lender shall be to reasonably cooperate with the Funding Lender in the Funding Lender's enforcement efforts, but at no material cost or risk to the Governmental Lender.

## ARTICLE XII MISCELLANEOUS

12.1 Entire Agreement. This Funding Loan Agreement, the Governmental Lender Note and the other Funding Loan Documents constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the Governmental Lender and the Funding Lender with respect to the subject matter hereof.

12.2 Notices. All notices, certificates or other communications shall be in writing and shall be sufficiently given and shall be deemed given on the second day following the date on

which the same have been personally delivered or mailed by first class mail postage prepaid, addressed as follows:

If to the Governmental Lender: Mayor's Office of Housing  
1 South Van Ness Avenue, 5th Floor,  
San Francisco, CA 94103  
Attention: Director

If to the Borrower: Mercy Housing California 51, a California  
Limited Partnership  
c/o Mercy Housing California  
1360 Mission Street, Suite 300  
San Francisco, CA 94103  
Attention: President

With a copy to: Gubb & Barshay LLP  
505 14<sup>th</sup> Street, Suite 1050  
Oakland, CA 94612

If to the Funding Lender: MUFG Union Bank, N.A.,  
Commercial Real Estate Loan Administration  
145 S. State College Boulevard, Suite 600  
Brea, California 92821  
Attention: Manager

With a copy to: MUFG Union Bank, N.A.,  
Community Development Finance Department  
200 Pringle Avenue, Suite 355  
Walnut Creek, California  
Attention: Rebecca Koch

If to the Fiscal Agent: U.S. Bank National Association  
One California Street, Suite 1000  
Mail Code: SF-CA-SFCT  
San Francisco, California 94111  
Attention: Andrew Fung

12.3 Assignments. Except as provided in Section 2.4, neither this Funding Loan Agreement nor the Borrower Loan Agreement may be assigned by any party hereto or thereto in



whole or in part without the prior written consent of the other, which consent shall not be unreasonably withheld; and, in the case of the Governmental Lender, to the extent such assignment is not in contravention of its policies for tax-exempt debt.

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

12.5 Execution of Counterparts. This Funding 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.

12.6 Amendments, Changes and Modifications. Except as otherwise provided in this Funding Loan Agreement, this Funding Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto. The Funding Lender may require, as a condition to any amendment, change or modification of this Funding Loan Agreement or the other Funding Loan Documents that the Funding Lender shall have received, at the expense of the Borrower, an opinion of Tax Counsel that such amendment shall not adversely affect the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income tax.

12.7 Governing Law; Venue. This Funding Loan Agreement shall be governed by and shall be enforceable in accordance with the laws of the State.

12.8 Term of Agreement. This Funding Loan Agreement shall be in full force and effect from the date hereof until such time as the Funding Loan shall have been fully paid or provision made for such payment. Time is of the essence in this Funding Loan Agreement.

12.9 Survival of Agreement. All agreements, representations and warranties made herein shall survive the making of the Funding Loan.

12.10 City Contracting Provisions. The Funding Lender and the Fiscal Agent each covenant and agree to comply with the provisions set forth in Exhibit D to this Funding Loan Agreement, which is incorporated in and made a part of this Funding Loan Agreement by this reference.

[Remainder of Page Intentionally Left Blank]

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

MUFG UNION BANK, N.A., as Funding  
Lender

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

[Signature page - Funding Loan Agreement – Bill Sorro Community]

U.S. BANK NATIONAL ASSOCIATION, as  
Fiscal Agent

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

[Signature page - Funding Loan Agreement – Bill Sorro Community]

CITY AND COUNTY OF SAN FRANCISCO

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

Olson Lee, Director  
Mayor's Office of Housing and  
Community Development

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

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

Deputy City Attorney

[Signature page - Funding Loan Agreement – Bill Sorro Community]

**EXHIBIT A**

**FORM OF GOVERNMENTAL LENDER NOTE**

**[\$[PAR]]**

**City and County of San Francisco  
Multifamily Housing Revenue Note,  
2014 Series C  
(Bill Sorro Community)**

**Dated October [ ], 2014**

FOR VALUE RECEIVED, THE CITY AND COUNTY OF SAN FRANCISCO (the “**Governmental Lender**”), acknowledges itself indebted hereby promises to pay to the order of MUFG UNION BANK, N.A. (the “**Funding Lender**”), or its successors and assigns, the sum of [PAR DOLLARS] (\$[PAR]), together with interest on the advanced and unpaid principal amount of this Governmental Lender Note at the same interest rate as the applicable interest rate specified in the Borrower Loan Agreement with respect to the Borrower Loan, until the Governmental Lender’s obligation to pay the Outstanding Balance (as hereinafter defined) shall be discharged. The Outstanding Balance shall mean the principal balance of the Funding Loan that has not been repaid by the Governmental Lender to the Funding Lender as of the date of calculation of the Outstanding Balance. This Governmental Lender Note shall be governed by and be payable in accordance with the terms and conditions of the Funding Loan Agreement dated as of October 1, 2014 (the “**Funding Loan Agreement**”), among the Funding Lender, the Governmental Lender and U.S. BANK NATIONAL ASSOCIATION, in its capacity as fiscal agent (“**Fiscal Agent**”) pursuant to which the Funding Lender has made the Funding Loan to the Governmental Lender.

This Governmental Lender Note is issued to evidence the Funding Loan by the Funding Lender to the Governmental Lender and the obligation of the Governmental Lender to repay the same, but only from amounts received by or on behalf of the Governmental Lender from Mercy Housing California 51, a California Limited Partnership (the “**Borrower**”), pursuant to a Borrower Loan Agreement dated as of October 1, 2014, by and among the Governmental Lender, the Funding Lender and the Borrower (the “**Borrower Loan Agreement**”) and the other Borrower Loan Documents (as defined in the Borrower Loan Agreement).

Monthly payments of principal and interest shall be payable under this Governmental Lender Note to the same extent as payments of principal and interest are due and payable on the Borrower Note, as provided in the Borrower Loan Agreement. The Outstanding Balance of this Governmental Lender Note shall be due and payable in its entirety on October [1], 2018.

The Funding Loan and this Governmental Lender Note are pass-through obligations relating to the Borrower Loan made by Governmental Lender from the proceeds of the Funding Loan to the Borrower under the Borrower Loan Agreement. Reference is made to the Borrower Loan Agreement and to the Borrower Note for complete payment and prepayment terms of the Borrower Note.

In the event the Governmental Lender fails to make the timely payment of any monthly payment, and such payment remains unpaid for a period of ten (10) days subsequent to the established payment date, the Governmental Lender shall pay (solely from amounts received from the Borrower as late charges under the Borrower Loan Agreement) to the Funding Lender a late charge in the amount specified in Section 3.6 of the Borrower Loan Agreement. If the principal balance of this Governmental Lender Note is accelerated following an Event of Default (as defined in the Funding Loan Agreement), the Funding Lender may increase the interest rate on this Funding Loan to the Default Rate (as defined in the Borrower Loan Agreement) to the same extent that the interest rate on the Borrower Loan has been so increased.

The Governmental Lender may, at any time, prepay the principal amount of this Governmental Lender Note to the same extent and subject to the terms and conditions set forth in the Borrower Loan Agreement for the prepayment of the Borrower Loan.

All sums due hereunder shall be paid in lawful money of the United States of America. Interest on the Governmental Lender Note shall be computed as provided for the Borrower Loan in the Borrower Loan Agreement. All payments made hereunder shall be credited and applied as provided in the Funding Loan Agreement.

**THIS GOVERNMENTAL LENDER NOTE IS A LIMITED OBLIGATION OF THE OBLIGOR, PAYABLE SOLELY FROM THE PLEDGED REVENUES AND OTHER FUNDS AND MONEYS AND SECURITY PLEDGED AND ASSIGNED UNDER THE FUNDING LOAN AGREEMENT. NONE OF THE GOVERNMENTAL LENDER, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE GOVERNMENTAL LENDER, TO THE LIMITED EXTENT SET FORTH HEREIN) NOR ANY PUBLIC AGENCY SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE GOVERNMENTAL LENDER NOTE OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER EXCEPT AS SET FORTH HEREIN, AND NEITHER THIS GOVERNMENTAL LENDER NOTE OR ANY OF THE GOVERNMENTAL LENDER'S AGREEMENTS OR OBLIGATIONS SHALL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF OR A MORAL OBLIGATION OF ANY OF THE FOREGOING WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER.**

No delay or omission on the part of Funding Lender in exercising any remedy, right or option under this Governmental Lender Note or the Funding Loan Document 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 Funding Lender under this Governmental Lender Note and the Funding Loan Documents are and shall be cumulative and are in addition to all the rights, remedies and options of the Funding Lender at law or in equity or under any other agreement.

Presentment for payment, notice of dishonor, protest or notice of protest are hereby waived. The acceptance by Funding Lender 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 owner hereof any sum and amount less than the amount then due shall be deemed an acceptance on account only and upon condition of the acceptance shall not constitute a waiver of the obligation of Governmental Lender to pay the entire sum then due, and Governmental Lender's failure to pay such amount then due shall be and continue to be at default notwithstanding such acceptance of such amount on account thereof. Consent by the Funding Lender to any action of Governmental Lender which is subject to approval of the Funding Lender hereunder shall not be deemed a waiver of the right to require such consent or approval to future successive actions, waives the right to assert the defense of any statute of limitations to any debt or obligation hereunder and consents to renewals and extensions of time for payment of any amounts due under this Governmental Lender Note.

This Governmental Lender Note may only be transferred in accordance with the requirements of the Funding Loan Agreement, and any such transfer shall be recorded in the Note Register maintained by the Funding Lender.

Capitalized terms used herein which are not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement.

[balance of page left blank intentionally]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Governmental Lender Note as of the date first set forth above.

OBLIGOR:

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Edwin M. Lee  
Mayor

[APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney]



## EXHIBIT B

### FORM OF INVESTOR'S LETTER

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

Re: Loan in the Maximum Amount of \$[PAR] from MUFG UNION BANK, N.A. (the "**Funding Lender**") to the CITY AND COUNTY OF SAN FRANCISCO (the "**Governmental Lender**") under a Funding Loan Agreement dated as of October 1, 2014 (the "**Funding Loan Agreement**") between the Funding Lender, U.S. Bank National Association (the "**Fiscal Agent**") and the Governmental Lender

Ladies and Gentlemen:

The undersigned, as holder (the "**Holder**") of the above-referenced funding loan (the "**Funding Loan**") originated under the Funding Loan Agreement, or a participation therein and permitted under the Funding Loan Agreement, hereby represents that:

1. The Holder has sufficient knowledge and experience in financial and business matters with respect to the evaluation of residential real estate developments such as the Project to be able to evaluate the risk and merits of the investment represented by the Funding Loan and is able to bear the economic risks of such investment.

2. The Holder acknowledges that it 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 Holder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, the Project, the use of proceeds of the Funding Loan and the Funding Loan and the security therefor so that, as a reasonable investor, the Holder has been able to make its decision to extend the Funding Loan. The Holder acknowledges that it has not relied upon the addressee hereof for any information in connection with the Holder's purchase of the Funding Loan.

3. The Holder is a "qualified institutional buyer" (a "QIB") (as defined in Rule 144A promulgated under the Securities Act of 1933, as amended) or an "accredited investor" as defined in Section 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (an "Accredited Investor"), or the custodian/trustee under a custody agreement/trust agreement, which provides that each beneficial owner of an interest in the Funding Loan must be (A) a QIB or (B) an Accredited Investor who will sign an investor letter to substantially the same effect as this Investor Letter.

4. The Holder acknowledges that it is purchasing the Funding Loan or a participation therein for investment for its own account and not with a present view toward resale or the distribution thereof, in that it does not now intend to resell or otherwise dispose of all or

Exhibit B-1

any part of its interests in the Funding Loan; provided, however, that the Holder may sell or assign the Funding Loan or participations in the Funding Loan as provided in and subject to the limitations in the Funding Loan Agreement.

5. The Holder understands that the Funding Loan is a limited obligation of the Governmental Lender, payable solely from funds and moneys pledged and assigned under the Funding Loan Agreement, and that the liabilities and obligations of the Governmental Lender with respect to the Funding Loan are expressly limited as set forth in the Funding Loan Agreement and related documents.

6. [FOR PURCHASE OF THE FUNDING LOAN: The Holder hereby agrees to become the “**Funding Lender**” under the Funding Loan Documents and assumes all of the obligations and agrees to perform all of the duties of the Funding Lender thereunder.]

Capitalized terms used herein and not otherwise defined herein have the meanings given such terms in the Funding Loan Agreement.

[\_\_\_\_\_], as Holder

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

## EXHIBIT C

### FORM OF WRITTEN REQUISITION OF THE BORROWER

To: U.S. Bank National Association as fiscal agent (the "Fiscal Agent") under that certain Funding Loan Agreement, dated as of October 1, 2014, among MUFG Union Bank, N.A., in its capacity as the funding lender, the City and County of San Francisco, as Governmental Lender, and the Fiscal Agent (the "Funding Loan Agreement").

1. You are requested to disburse funds from the Project Fund pursuant to Section 9.6 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference. An invoice or other appropriate evidence of the obligations described on Schedule I is attached hereto.

2. The undersigned certifies that:

(i) there has been received no notice (A) of any lien, right to lien or attachment upon, or claim affecting the right of the payee to receive payment of, any of the moneys payable under such requisition to any of the persons, firms or corporations named therein, and (B) that any materials, supplies or equipment covered by such requisition are subject to any lien or security interest, or if any notice of any such lien, attachment, claim or security interest has been received, such lien, attachment, claim or security interest has been released, discharged, insured or bonded over or will be released, discharged, insured or bonded over upon payment of the requisition;

(ii) such requisition contains no items representing payment on account of any percentage entitled to be retained at the date of the certificate;

(iii) the obligation stated on the requisition has been incurred in or about the construction or equipping of the Project, each item is a proper charge against the Project Fund, and the obligation has not been the basis for a prior requisition that has been paid;

(iv) such requisition contains no items representing any costs of issuance or any other amount constituting an issuance cost under Section 147(g) of the Code;

(v) not less than 97% of the sum of: (A) the amounts requisitioned by this Requisition to be funded with the proceeds of the Governmental Lender Note plus (B) all amounts allocated to the Governmental Lender Note previously disbursed from the Project Fund, have been or will be applied by the Borrower to pay Qualified Project Costs;

(vi) as of the date hereof no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under the Funding Loan Agreement;

(vii) attached as Schedule I to this Requisition is an exhibit that allocates the amount requested hereby among the sources for payment; and

(viii) all payments shall be made by check or wire transfer in accordance with the payment instructions set forth in Schedule I and the Fiscal Agent may rely on such payment instructions though given by the Borrower with no duty to investigate or inquire as to the authenticity of the invoice or the payment instructions contained therein.

Dated: \_\_\_\_\_, 20\_\_

**BORROWER:**

Mercy Housing California 51, a California  
Limited Partnership

By: Mercy Housing California Family Properties,  
a California nonprofit public benefit corporation, its general partner

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

**APPROVED:**

MUFG UNION BANK, N.A.,  
in its capacity as funding lender

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

## EXHIBIT D

### CITY AND COUNTY OF SAN FRANCISCO

#### MANDATORY CONTRACTING PROVISIONS

The following provisions shall apply to this Funding Loan Agreement as if set forth in the body thereof. Capitalized terms used but not defined in this Exhibit D shall have the meanings given in this Funding Loan Agreement. For purposes of this Exhibit, "Contractor" shall mean each of Funding Lender and Fiscal Agent.

**1. 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 and County of San Francisco ("City") for the statutory 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.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1). 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.

**2. Payment Does Not Imply Acceptance of Work.** The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

**3. Qualified Personnel.** Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

**4. Independent Contractor; Payment of Taxes and Other Expenses**

**a. Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement.

Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

**b. Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

**5. Conflict of Interest.** Through its execution of this Agreement, Contractor 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 Agreement.

**6. Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor 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. Contractor agrees that all

information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

**7. Ownership of Results.** Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**8. Works for Hire.** If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

**9. Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

**10. Earned Income Credit (EIC) Forms.** Administrative Code section 12O 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. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor 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 Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor 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 Agreement or under applicable law. Any Subcontract entered into by Contractor 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 Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

#### **11. Local Business Enterprise Utilization; Liquidated Damages**

a. **The LBE Ordinance.** Contractor, 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 Contractor's obligations or liabilities, or materially diminish Contractor'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. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, 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, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

#### **b. Compliance and Enforcement**

1) If Contractor 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, Contractor shall be liable for liquidated damages in an amount equal to Contractor'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 City's Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of CMD") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of CMD 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, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor 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 CMD or the Controller upon request.

#### **12. Nondiscrimination; Penalties**

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working



with such Contractor or subcontractor, applicant for employment with such contractor or subcontractor, 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.

**b. Subcontracts.** Contractor 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 Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of 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.

**d. Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (formerly 'Human Rights Commission').

**e. 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 Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor 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 Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**13. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco 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 and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**14. Tropical Hardwood and Virgin Redwood Ban.** Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco 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.

**15. Drug-Free Workplace Policy.** Contractor 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. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

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

**17. 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 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.

**18. Limitations on Contributions.** Through execution of this Agreement, Contractor 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. Contractor 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. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform

each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

**19. Requiring Minimum Compensation for Covered Employees**

a. Contractor 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 Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor'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 Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor 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 Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor 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.

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

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this 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 Contractor fails to comply with these requirements. Contractor 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 Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor 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 Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably

be cured within such period of 30 days, Contractor 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.

**h.** Contractor 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.

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

## **20. Requiring Health Benefits for Covered Employees**

Contractor 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 Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

**b.** Notwithstanding the above, if the Contractor 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.

**c.** Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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 City.

**d.** Any Subcontract entered into by Contractor 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. Contractor 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. Each

Contractor 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 Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor'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.

f. Contractor 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.

g. Contractor 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 City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

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

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

**22. Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

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

**24. Food Service Waste Reduction Requirements.** Effective June 1, 2007, Contractor 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 Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor 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 City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

**BORROWER LOAN AGREEMENT**

**by and among**

**CITY AND COUNTY OF SAN FRANCISCO**

**as Governmental Lender,**

**MUFG UNION BANK, N.A.,**

**as Funding Lender**

**and**

**MERCY HOUSING CALIFORNIA 51,**

**a California Limited Partnership,**

**as Borrower**

**Dated: October 1, 2014**

**relating to:**

**\$24,611,942**

**City and County of San Francisco**

**Multifamily Housing Revenue Note**

**(Bill Sorro Community)**

**2014 Series C**

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## **BORROWER LOAN AGREEMENT**

THIS BORROWER LOAN AGREEMENT (this "Borrower Loan Agreement" or this "Agreement") is entered into as of October 1, 2014 among the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation organized and existing under the laws of the State of California (together with its successors and assigns, the "Governmental Lender"), MERCY HOUSING CALIFORNIA 51, a California Limited Partnership (together with its successors and assigns, the "Borrower"), and MUFG UNION BANK, N.A., in its capacity as the funding lender hereunder (together with any successor to its rights, duties and obligations hereunder, the "Funding Lender").

### **RECITALS**

WHEREAS, Borrower has requested that Governmental Lender provide a construction loan to Borrower to finance the construction of the Improvements on the Leasehold Estate; and

WHEREAS, Borrower owns or will own, concurrently with the first loan disbursement under this Agreement, the Leasehold Estate; and

WHEREAS, Borrower intends to construct an affordable housing apartment project on the Leasehold Estate; and

WHEREAS, Governmental Lender, Funding Lender, in its capacity as funding lender, and MUFG Union Bank, N.A., in its capacity as fiscal agent, have entered into the Funding Loan Agreement, dated as of October 1, 2014 (the "Funding Loan Agreement") whereby Funding Lender has agreed to make the Funding Loan to Governmental Lender for the sole purpose of making funds available to the Governmental Lender to make the Borrower Loan to Borrower pursuant to this Agreement in the manner and on the terms set forth in the Funding Loan Agreement, which terms include, without limitation, the obligation of the Governmental Lender to make loan payments to the Funding Lender for amounts received by Governmental Lender from Borrower pursuant to this Agreement and the Borrower Note in repayment of the amounts loaned to Governmental Lender under the Funding Loan Agreement as evidenced by the Governmental Lender Note. Governmental Lender has irrevocably pledged and assigned to Funding Lender, as security for Governmental Lender's obligations to repay amounts due under the Governmental Lender Note and its obligations under the Funding Loan Agreement, all right, title and interest to the Borrower Loan Documents (other than the Reserved Rights, as defined in the Funding Loan Agreement), including all rights to payments with respect to the Borrower Note. Upon the execution of the Governmental Lender Note, all right, title and interest of Governmental Lender under and in the Borrower Loan (other than the Reserved Rights, as defined in the Funding Loan Agreement) will be assigned by Governmental Lender to Funding Lender pursuant to the Funding Loan Agreement and the Assignment of Deed of Trust; and

WHEREAS, All of the rights, powers, elections, determinations, remedies, duties and functions of Governmental Lender hereunder (other than the Reserved Rights, as defined in the Funding Loan Agreement) may be exercised and performed on behalf of Governmental Lender by Funding Lender unless and until the assignment to Funding Lender is terminated, modified,

assigned, in whole or in part, or otherwise amended in accordance with the provisions of the Funding Loan Agreement; and

WHEREAS, Subject to the execution of the Funding Loan Agreement and the terms and conditions of this Agreement, Governmental Lender is willing to make the Borrower Loan to Borrower; and

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

## **ARTICLE I** **DEFINITIONS**

1.1 Specific Definitions. For all purposes of this Borrower Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

1.1.1 Unless specifically defined herein, all capitalized terms shall have the meanings ascribed to thereto in the Funding Loan Agreement.

1.1.2 All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

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

1.1.4 Unless otherwise specified, (i) all references to sections and schedules are to those in this Borrower Loan Agreement, (ii) the words "hereof," "herein" and "hereunder" and words of similar import refer to this Borrower Loan Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined and (iv) the word "including" means "including but not limited to."

1.1.5 References to the Funding Loan or the Governmental Lender Note as "tax exempt" to the "tax exempt status" of the Funding Loan or the Governmental Lender Note, are in each case a reference to the exclusion of interest on the Funding Loan or Governmental Lender Note from gross income for federal income tax purposes pursuant to Section 103(a) of the Code (other than any portion of the Funding Loan or Governmental Lender Note owned by a "substantial user" of the Project or a "related person" within the meaning of Section 147 of the Code), and any references to the treatment of interest on the Funding Loan or the Governmental Lender Note for federal income tax purposes does not include interest on any portion owned by a "substantial user" of the Project or a "related person" within the meaning of Section 147 of the Code).

**"Acceptable Unit Lease"** means a residential lease agreement on a lease form approved by Funding Lender which is entered into by and between Borrower and the lessee of a Unit and the terms (including the amount of rent payments) of which comply with the provisions

of all Regulatory Agreements, the Subordinate Lender Documents, the Ground Lease and the PRAC Contract (to the extent applicable).

“**Act**” shall mean the Charter of the City and County of San Francisco, Article I of Chapter 43 of the Administrative Code of the City of County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended.

“**Advance**” means each disbursement of proceeds of the Borrower Loan made pursuant to this Agreement.

“**Aggregate Change Order Limit**” means \$250,000, or such lesser amount as may be required by the HUD Commitment.

“**Agreement**” or “**Borrower Loan Agreement**” means this Borrower Loan Agreement, dated as of October 1, 2014, among the Borrower, the Governmental Lender, and the Funding Lender.

“**Agreement to Furnish Insurance**” means the Agreement to Furnish Insurance dated as of the Contract Date executed by Borrower in favor of Governmental Lender and Funding Lender, as the same may from time to time be amended, modified or supplemented.

“**AHP Deed of Trust**” means the deed of trust executed by Borrower for the benefit of the Funding Lender, encumbering the Property and securing repayment of amounts owing under the AHP Note, the lien of which shall be subject and subordinate to the lien of the Deed of Trust.

“**AHP Lender**” means MUFG Union Bank, N.A.

“**AHP Loan**” means the \$1,000,000 loan that may be made by Funding Lender to Borrower pursuant to the terms of the AHP Documents to cover, among other things, construction costs of the Project.

“**AHP Loan Documents**” means the AHP Note, the AHP Deed of Trust, the AHP Subordination Agreement and all other documents and instruments evidencing, securing or pertaining to the AHP Loan.

“**AHP Note**” means the promissory note made by Borrower to the order of Funding Lender, evidencing all amounts disbursed and to be disbursed under the AHP Loan.

“**AHP Subordination Agreement**” means a Subordination Agreement in form and substance satisfactory to Funding Lender, executed by Funding Lender and AHP Lender, and joined by Borrower, pursuant to which AHP Lender shall unconditionally subordinate the lien and effect of the AHP Deed of Trust to the lien and effect of the Deed of Trust.

“**Allocation Committee**” means the California Tax Credit Allocation Committee and any successor governmental agency appointed to carry out the obligations of the Allocation Committee.

**“Appraisal”** means an appraisal or reappraisal of the Property (complying with Funding Lender’s appraisal policy) performed or to be performed by a certified real estate appraiser engaged by Funding Lender.

**“Appraised Value”** means the market value of the Property as determined by Funding Lender in its business judgment, reasonably exercised, based upon an Appraisal.

**“APRAC Contract”** means the Agreement to Enter Into Project Rental Assistance Contract between Borrower and HUD effective on or about the Contract Date.

**“Architect”** means Kennerly Architecture & Planning, Inc., a California corporation, or such other architect as may be approved by Funding Lender.

**“Architect’s Agreement”** means the agreement between Borrower and Architect relating to the design and construction of the Improvements.

**“Assignment of Construction Contract”** means the Assignment of Construction Contract dated as of the Contract Date executed by Borrower in favor of Governmental Lender and Funding Lender, as the same may from time to time be amended, modified or supplemented.

**“Assignment of Partnership Interest (GP)”** means an Assignment of Partnership Interest dated as of the Contract Date executed by each General Partner in favor of Governmental Lender and Funding Lender as additional collateral security for the performance of the Borrower’s obligations under the Borrower Loan Documents, assigning to Governmental Lender and Funding Lender all of each such General Partner’s rights as a general partner in Borrower.

**“Assignment of Plans and Specifications”** means the Assignment of Architect’s Agreement, Plans and Specifications dated as of the Contract Date executed by Borrower, in favor of Governmental Lender and Funding Lender, as the same may from time to time be amended, modified or supplemented.

**“Assignment of Tax Credits and Partnership Interests”** means an Assignment of Rights to Tax Credits and Partnership Interest dated as of the Contract Date executed by Borrower in favor of Governmental Lender and Funding Lender as additional collateral security for the performance of Borrower’s obligations under the Borrower Loan Documents, assigning to Governmental Lender and Funding Lender all of Borrower’s rights under the Tax Credit Allocation Documents including, without limitation, the right to receive the Tax Credits set forth under the Tax Credit Allocation Documents.

**“Bonded Work”** means offsite, common area, or other improvements required by a Governmental Authority or for which bonds may be required in connection with the development of the Real Property.

**“Borrower”** means Mercy Housing California 51, a California Limited Partnership, and its successors and assigns.

**“Borrower’s Equity”** means as of any date of determination, Borrower’s funds expended on Project costs in accordance with this Agreement as of such date, including Borrower’s Funds and capital contributions made by the Tax Credit Investor, but excluding proceeds of the Borrower Loan, as determined by Funding Lender in its sole discretion.

**“Borrower’s Funds”** means all funds of Borrower deposited into Borrower’s Funds Account pursuant to the terms of this Agreement, to be disbursed in payment of Construction Costs as more particularly set forth in this Agreement.

**“Borrower’s Funds Account”** means an account with Funding Lender into which Borrower’s Funds shall be deposited as provided for in Section 7.2 or any other provision of this Agreement.

**“Borrower Loan”** means the loan in the maximum principal amount of \$24,611,942 made by the Governmental Lender to Borrower pursuant to this Agreement.

**“Borrower Loan Documents”** means this Agreement, the Note, the Tax-Exempt Regulatory Agreement, the Deed of Trust, the Guaranty, the ECA, the Security Documents, the Financing Statements, the Ground Lease Estoppel Certificate, the Agreement to Furnish Insurance and all other agreements, instruments and documents (together with amendments, supplements and replacements thereto) now or hereafter executed and delivered to Governmental Lender or Funding Lender in connection with the Borrower Loan.

**“Borrower Note”** means the Promissory Note (Multifamily Housing Back to Back Loan Program) dated as of the Contract Date from Borrower, as maker, in favor of Governmental Lender in the original principal amount of the Borrower Loan.

**“Business Day”** means (i) except as otherwise provided in clause (ii) below, a day which is not a Saturday or Sunday on which banks in the State of California are open for business for the funding of corporate loans, or (ii) for use only in connection with the definition of LIBOR Rate, a day which is both a New York Banking Day and a London Banking Day.

**“Certification of Plans and Specifications”** means the Certification of Plans and Specifications dated as of the Contract Date from Borrower to Governmental Lender and Funding Lender, as the same may from time to time be amended, modified or supplemented.

**“Change Order”** means any change or supplement to the Plans, Construction Contract or subcontract as permitted by this Agreement.

**“Closing Date”** shall mean the date on which the Deed of Trust is recorded and the Initial Advance is made.

**“Code”** means the Internal Revenue Code of 1986, as amended; including (a) any successor internal revenue law and (b) the applicable regulations promulgated thereunder whether final, temporary or proposed under the Code or such successor law.

**“Commercial Master Lease Agreement”** means the Commercial Master Lease by and between Borrower, as landlord, and Commercial Tenant, as tenant, covering the portion



of the Project to be used as commercial retail space, together with that certain Commercial Master Lease Guaranty from Mercy Housing, Inc., a Nebraska not-for-profit corporation, in favor of Borrower, as landlord, each in form and content acceptable to Funding Lender.

**“Commercial Master Lease Subordination Agreement”** means the Subordination Agreement executed by Borrower and Commercial Tenant in favor of Funding Lender and Governmental Lender pursuant to which the Commercial Master Lease Agreement is subordinated to the lien and effect of the Deed of Trust.

**“Commercial Tenant”** means Mercy Commercial California, a California nonprofit public benefit corporation.

**“Completion Date”** means the date of Project Completion, which date shall not be later than December 31, 2016.

**“Consent to Assignment (LP)”** means a Consent to Assignment of Partnership Interest of even date of the Agreement executed by the Tax Credit Investor, consenting to the General Partner(s) assignment to Governmental Lender and Funding Lender of its general partnership interest in the Borrower as additional collateral security for the performance of the Borrower’s obligations under the Borrower Loan Documents.

**“Construction Contract”** means the agreement between Borrower and Contractor relating to the construction of the Improvements.

**“Construction Costs”** means all costs approved by Funding Lender relating to the construction of the Improvements or otherwise pertaining to the Property, as set forth in the Detailed Cost Breakdown.

**“Contract Date”** means October 1, 2014.

**“Contractor”** means James E. Roberts-Obayashi Corporation, or such other contractor as may be approved by Funding Lender, or Borrower acting in the capacity of general contractor.

**“Deed of Trust”** means the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Construction Trust Deed) (Multifamily Housing Back to Back Loan Program) dated as of the Contract Date encumbering the Property, from Borrower, as trustor, for the benefit of Governmental Lender and Funding Lender, as beneficiary, as the same may from time to time be amended, modified or supplemented.

**“Deed of Trust Assignment”** means the Assignment of Deed of Trust and Related Documents dated as of the Contract Date by Governmental Lender in favor of Funding Lender.

**“Default Rate”** means a rate equal to 5% more than the Variable Rate.

**“Detailed Cost Breakdown”** means an itemized schedule on a component, unit and trade breakdown basis showing all costs and expenses required for construction of the

Improvements in accordance with the Plans, which has been submitted to and approved by Funding Lender.

“**Disbursement Schedule**” means the schedule or schedules for disbursement of the Advances and of Borrower’s Funds, if any, set forth on Exhibit B, which may be amended from time to time by reallocations made in accordance with Section 5.5.

“**Draw Request**” means the certified invoice to be delivered by Borrower to Funding Lender as a condition to Governmental Lender making an Advance, in such form and certified by such parties as required by Funding Lender, together with such schedules, affidavits, releases, waivers, statements, invoices, bills, and other documents, certificates and information as may be required by Funding Lender.

“**ECA**” means the Environmental Compliance Agreement, dated as of the Contract Date by Borrower in favor of Governmental Lender and Funding Lender, as the same may from time to time be amended, modified or supplemented.

“**Event of Default**” is defined in Section 8.

“**Extended Use Agreement**” means an “extended low-income housing commitment” as defined in Section 42(h)(6)(B) of the Code.

“**Fee Owner**” means the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through the Mayor’s Office of Housing and Community Development.

“**Financial Statements**” means balance sheets, income statements, statements of retained earnings with supporting schedules and such other financial reports as Funding Lender may require, in form and content acceptable to Funding Lender.

“**Financing Statements**” means all UCC financing statements required in connection with the Borrower Loan.

“**First Payment Date**” means November 1, 2014.

“**Fiscal Agent**” means the Fiscal Agent from time to time under the Funding Loan Agreement. Initially, the Fiscal Agent shall be MUFG Union Bank, N.A.

“**Force Majeure**” means strikes, lockouts, acts of God, severe shortages of labor or materials, acts of the public enemy, riot, war, fire or other delays beyond the reasonable control of Borrower.

“**Funding Date**” means the date on which the Initial Disbursement is made.

“**Funding Lender**” means MUFG Union Bank, N.A. (i) acting in its capacity as owner of the Governmental Lender Note and as assignee of and agent under this Agreement for the Governmental Lender pursuant to the Funding Loan Agreement, and (ii) its successors and assigns.

**“Funding Loan Agreement”** means the Funding Loan Agreement dated as of October 1, 2014 among the Governmental Lender, the Funding Lender and Fiscal Agent in connection with the issuance of the Governmental Lender Note.

**“Funding Loan Documents”** is defined in the Funding Loan Agreement.

**“Governmental Lender Note”** is defined in the Funding Loan Agreement.

**“General Partner(s)”** means Mercy Housing California Family Properties, a California nonprofit public benefit corporation.

**“Governmental Authority”** means any federal, state or local governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, court, administrative tribunal or public or private utility having authority over the Property or its utilization.

**“Governmental Lender”** means the City and County of San Francisco.

**“Governmental Requirement”** means any law, statute, order, ordinance, rule, regulation, permit or act of a Governmental Authority.

**“Gross Operating Income”** means the sum of any and all payments, fees, rentals, additional rentals (but specifically excluding any amounts received from tenant-based vouchers or other rent subsidies in excess of then maximum rents permitted under the Regulatory Agreements), expense reimbursements (including, without limitation, all reimbursements by tenants, subtenants, licensees and other users of the Property and amounts payable under the PRAC Contract), income, interest, and other monies received directly or indirectly by or on behalf of Borrower from any Person with respect to Borrower’s ownership, use, development or operation of the Property, including, without limitation, any leasing or licensing of the Property. Gross Operating Income shall be computed on a cash basis and shall include for each monthly statement all amounts actually received in such month whether or not such amounts are attributable to a charge arising in such month.

**“Ground Lease”** means the Ground Lease to be executed by and between Fee Owner and Borrower as of the Contract Date.

**“Ground Lease Estoppel Certificate”** means an estoppel certificate, on Funding Lender’s form, to be executed by Fee Owner as of the Contract Date, providing such certifications as Funding Lender may require with respect to the Ground Lease and the Leasehold Estate.

**“Guarantor”** means any Person who executes a Guaranty in connection with the Borrower Loan.

**“Guaranty”** means Funding Lender’s standard form Loan and Completion Guaranty, Loan Guaranty, Completion Guaranty or Interest and Maintenance Guaranty, as the case may be entered into in connection with the Borrower Loan.

**"HUD"** means the Secretary of Housing and Urban Development.

**"HUD Closing"** means the satisfaction of the Note and Deed of Trust, in full, in connection with the consummation of a grant to the General Partner, to be loaned to Borrower, or others contemplated by the HUD Commitment, including the execution and delivery of a new note or notes and a trust deed or trust deeds satisfactory to HUD, with Funding Lender to receive, in immediately available federal funds, all or that portion of the principal amount of the note to be received pursuant to the HUD Commitment.

**"HUD Commitment"** means that certain Firm Commitment for Capital Advance Financing Upon Project Completion (Section 811) of HUD dated July 7, 2014, as amended by that certain \_\_\_\_\_, to provide a \$2,377,000 capital advance to General Partner, for the benefit of Borrower, or others upon completion of construction of the Improvements, on such terms and conditions as are acceptable to Funding Lender, which financing constitutes a material source of repayment of the Borrower Loan.

**"Improvements"** shall mean the 67-unit multifamily residential project to be constructed, equipped and improved upon the Leasehold Estate and known or to be known as Bill Sorro Community, and all other buildings, structures, fixtures, wiring, systems, equipment and other improvements and personal property to be constructed and/or installed at or on the Property in accordance with the Detailed Cost Breakdown and the Plans.

**"Indemnified Parties"** shall have the meaning ascribed to it in Section 7.24 below.

**"Initial Disbursement"** means the initial Advance made by Governmental Lender to Borrower pursuant to this Agreement.

**"Interest Change Date"** means the First Payment Date and the first day of each calendar month thereafter.

**"Interest Period"** means the period of time from one Interest Change Date to (but excluding) the next Interest Change Date or the Maturity Date, as the case may be.

**"Interest Reserve"** means the portion of the Project Budget allocated for the payment of interest due under this Agreement.

**"Late Charge"** means an amount equal to 5% of any delinquent payment of amounts due from Borrower under the Borrower Loan Documents.

**"Leasehold Estate"** means the leasehold estate created under the Ground Lease.

**"Leases"** means all leases of any portion of the Property and all amendments, guaranties and subleases relating thereto.

**"LIBOR Rate"** means as of any given date, a per annum rate of interest equal to the rate for U.S. Dollar deposits for a period of one month or, for the Stub Period, for a period equal to the number of days in the Stub Period which appears on the Reuters Screen LIBOR01

Page as of 11:00 a.m., London time, on the day that is two Business Days preceding such date. Should the LIBOR Rate cease to be available for any reason, then said rate shall be replaced by a rate which, in the sole discretion of Funding Lender, most closely approximates the unavailable LIBOR Rate.

**“Liquid Assets”** means immediately available cash, bank deposits, accounts and mutual funds; obligations of or guaranteed by the U.S. government or an agency thereof; and stocks, bonds and other debt instruments regularly traded on the New York, American or NASDAQ stock exchange which can be readily converted into cash.

**“Loan Fee”** means \$143,059.71.

**“Loan Party”** means any general partner, managing member, joint venturer, trustee or trustor of Borrower, as applicable and any Guarantor.

**“London Banking Day”** means a day in which dealings in U.S. Dollar deposits in London, England may be carried on by Funding Lender.

**“Margin”** means 1.70%.

**“Maturity Date”** means October 1, 2017.

**“Maximum Lawful Rate”** 12%.

**“MOHCD”** means the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through the Mayor’s Office of Housing and Community Development.

**“MOHCD Deed of Trust”** means the deed of trust executed by Borrower for the benefit of MOHCD, encumbering the Project and securing repayment of amounts owing under the MOHCD Note, the lien of which is to be subject and subordinate to the lien of the Deed of Trust.

**“MOHCD Documents”** means the MOHCD Note, the MOHCD Deed of Trust, the MOHCD Subordination Agreement, the MOHCD Loan Agreement, the MOHCD Restrictions and all other documents and instruments evidencing, securing or pertaining to the MOHCD Loan.

**“MOHCD Loan”** means the \$15,867,200 loan made by MOHCD to Borrower pursuant to the terms of the MOHCD Loan Agreement to cover, among other things, certain costs for the Project.

**“MOHCD Loan Agreement”** means the Loan Agreement entered into by and between Borrower and MOHCD pursuant to the terms of which MOHCD shall make to Borrower the MOHCD Loan.

**“MOHCD Note”** means the \$15,867,200 Secured Promissory Note, made by Borrower to the order of MOHCD, evidencing all amounts disbursed under the MOHCD Loan.

**“MOHCD Restrictions”** That certain Declaration of Restrictions dated October 1, 2014, executed by Borrower for the benefit of the City and County of San Francisco in connection with MOHCD’s making the MOHCD Loan.

**“MOHCD Subordination Agreement”** means a Subordination Agreement in form and substance satisfactory to Funding Lender, executed by MOHCD and Funding Lender, and joined by Borrower, pursuant to which MOHCD shall unconditionally subordinate the lien and effect of the MOHCD Deed of Trust and the MOHCD Restrictions to the lien and effect of the Deed of Trust.

**“Net Operating Income”** means Gross Operating Income less Operating Expenses.

**“New York Banking Day”** means a day which is not a Saturday or Sunday on which banks in New York City, New York are open for business for the funding of corporate loans.

**“Offsite Materials”** means materials to be incorporated into the Improvements or used in connection with the construction of the Improvements that are stored at a location other than the Real Property.

**“Onsite Materials”** means materials to be incorporated into the Improvements or used in connection with the construction of the Improvements that are stored on the Real Property.

**“Operating Expenses”** means the following expenses to the extent that such expenses are reasonable in amount and customary for properties of a type similar to the Property, as determined by Funding Lender in its sole discretion: (A) real property taxes and assessments imposed upon the Property, (B) premiums for insurance of the Property, including casualty and liability insurance, (C) reserves for capital expenditures, leasing commissions and tenant improvements, as determined by Funding Lender in its business judgment, reasonably exercised, (D) the greater of (i) operating expenses actually incurred by Borrower in connection with the management, operation, cleaning, leasing, maintenance and repair of the Property or any part thereof, and (ii) the operating expenses set forth in the Appraisal, (E) required rent paid by Borrower under the Ground Lease, (F) Ongoing Governmental Lender and Fiscal Agent’s Fees (both as defined in the Funding Loan Agreement), and (G) servicing fees in connection with the loan made by TOD Lender pursuant to the TOD Commitment. Operating Expenses shall be calculated on an accrual basis and shall not include any interest or principal payments due in respect of the Borrower Loan or any allowance for depreciation and similar noncash charges.

**“Operating Statement”** means a monthly, quarterly or annual statement that shows in detail the amounts and sources of Gross Operating Income, the amounts and nature of Operating Expenses, and Net Operating Income, in each case for the preceding calendar month, quarter or year. The Operating Statement shall be prepared in accordance with accounting practices and principles acceptable to Funding Lender and consistently applied and in a form satisfactory to Funding Lender.

**“Partnership Agreement”** means Borrower’s agreement of limited partnership, as the same may be amended from time to time.

**“Permitted Liens”** means any easements and restrictions listed in a schedule of exceptions to coverage in the Title Policy as required by the Borrower Loan Documents.

**“Person”** means any natural person or entity, including any corporation, partnership, joint venture, limited liability company, trust, trustee, unincorporated organization or Governmental Authority.

**“Personal Property”** means any tangible or intangible personal property described in the Deed of Trust or Security Documents that is security for the Borrower Loan.

**“Plans”** means the final plans and specifications for construction of the Improvements (including any applicable general conditions), prepared by Architect and approved by Funding Lender as required herein, and all amendments and modifications thereof made pursuant to Change Orders.

**“PRAC Contract”** means the Project Rental Assistance Contract to be entered into between Borrower and HUD in the form attached to the APRAC Contract and consistent with the terms of the final proposal attached to the APRAC Contract.

**“Preliminary Reservation”** means that certain Tax Exempt Reservation Letter dated July 16, 2014, issued by the Allocation Committee.

**“Project Budget”** means the cost itemization (set forth in Exhibit B-1 hereto) of the total amount needed by Borrower to construct the Improvements and to perform Borrower’s other obligations under the Borrower Loan Documents, which itemization may be amended from time to time in accordance with this Agreement.

**“Project Completion”** means the date of completion of construction of the Project and issuance of all licenses and permits necessary for the occupancy and use of the Units, including the Permission to Occupy Project Mortgages (HUD-92485) issued by HUD, such that the Project shall be considered “placed in service” for purposes of the provisions of Section 42 of the Code, which date of completion shall not be later than the Completion Date.

**“Property”** or **“Project”** means the Leasehold Estate, the Improvements and the Personal Property.

**“Qualified Allocation Plan”** means the Qualified Allocation Plan adopted by the Allocation Committee from time to time in accordance with the provisions of Section 42(m) of the Code.

**“R&T Code”** means the California Revenue and Taxation Code, as amended from time to time thereto. Any reference to a particular provision of the R&T Code shall include any amendment of such provision.

**“Real Property”** means that certain real property described in Exhibit A hereto.

**“Recorded Documents”** means the Regulatory Agreements, the Deed of Trust, the Deed of Trust Assignment, and the Subordination Agreements.

**“Regulatory Agreements”** means all regulatory agreements and restrictions (including, without limitation, the Tax-Exempt Regulatory Agreement, the Extended Use Agreement, the AHP Deed of Trust and the MOHCD Restrictions) now or hereafter encumbering the Property setting forth restrictions with respect to the leasing, maintenance and use of the Units.

**“Rent Restrictions”** The occupancy and rent restrictions contained in the Regulatory Agreements.

**“Security Documents”** means any agreements granting a security interest in collateral securing the Borrower Loan other than the Deed of Trust, including without limitation, assignments and consents to assignments of the Architect’s Agreement, Construction Contract, if any, Plans, any property management agreement or asset management agreement, the Assignment of Tax Credits and Partnership Interests and the Assignment of Partnership Interest (GP).

**“Set Aside Letter”** means any letter or letters to any Governmental Authority or Surety whereby Funding Lender agrees to allocate proceeds of the Borrower Loan for construction of Bonded Work.

**“Single Change Order Limit”** means \$100,000, or such lesser amount as may be required by the HUD Commitment.

**“Stub Period”** means the period from the Funding Date through (but excluding) the first day of the calendar month following such date.

**“Subordination Agreement(s)”** means, collectively, the MOHCD Subordination Agreement and AHP Subordination Agreement.

**“Subordinate Lender”** means, collectively, MOHCD and AHP Lender.

**“Subordinate Lender Document(s)”** means, collectively, the MOHCD Documents and AHP Documents.

**“Subordinate Lender Loan”** means, collectively, the MOHCD Loan and the AHP Loan.

**“Surety”** means the bonding company that issues the bonds covering the Bonded Work.

**“Tax Certificate”** means the Tax Certificate and Agreement, dated the Closing Date, between the Borrower and the Governmental Lender.

**“Tax Counsel”** means (a) Squire Patton Boggs (US) LLP, or (b) any attorney at law or other firm of attorneys selected by the Borrower and acceptable to the Governmental



Lender and Funding Lender of nationally recognized standing in matters pertaining to the federal tax status of interest on tax exempt obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America, but shall not include counsel for the Borrower.

**"Tax Credit Allocation Documents"** means the Tax Credit Application, the Preliminary Reservation, IRS Form 8609 to be hereafter executed by the Allocation Committee and all other documents heretofore and hereafter submitted to, and received by the Borrower from, the Allocation Committee, and all amendments, extensions and modifications thereto.

**"Tax Credit Application"** means the 2014 Tax-Exempt Bond Application submitted to the Allocation Committee to apply for Tax Credits with respect to the Project.

**"Tax Credit Investor"** means MUFG Union Bank, N.A.

**"Tax Credits"** means low income housing tax credits to be allocated under Section 42 of the Code pursuant to the terms of the Tax Credit Documents.

**"Tax-Exempt Regulatory Agreement"** means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of October 1, 2014, by and between the Governmental Lender and the Borrower, as amended and supplemented from time to time in accordance with its terms.

**"Title Insurer"** means Old Republic Title Company.

**"Title Policy"** means an ALTA LP-10 Policy of Title Insurance or its equivalent acceptable to Funding Lender, naming Governmental Lender and Funding Lender as insured, with a liability limit of not less than the amount of the Borrower Loan, issued by Title Insurer, insuring that the Deed of Trust constitutes a valid first lien on the Real Property and Improvements, with only such exceptions from its coverage as shall have been approved in writing by Funding Lender, with such reinsurance or coinsurance agreements or endorsements to such policy as Funding Lender may require.

**"TOD Lender"** means the State of California Housing and Community Development Department.

**"TOD Closing"** means the satisfaction of the Note and Deed of Trust, in full, in connection with the consummation of a loan or loans to the Borrower or others contemplated by the TOD Commitment, including the execution and delivery of a new note or notes and a trust deed or trust deeds satisfactory to TOD Lender, with Funding Lender to receive, in immediately available federal funds, all or that portion of the principal amount of the note to be received pursuant to the TOD Commitment.

**"TOD Commitment"** means, collectively, that certain Loan Commitment of TOD Lender dated \_\_\_\_\_, and that certain Standard Agreement dated \_\_\_\_\_, pursuant to the terms of which TOD Lender has agreed to provide a \$1,644,625 permanent loan to Borrower or others upon completion of construction of the Improvements, on such terms and

conditions as are acceptable to Funding Lender, which financing constitutes a material source of repayment of the Borrower Loan.

“**Transfer**” means any sale, lease or other transfer of any interest to any other Person.

“**Unit(s)**” means the 67 apartment units constituting the Improvements.

“**Variable Rate**” means a rate of Interest which bears interest with reference to a LIBOR Rate, pursuant to Section 3.1.2.

“**Variable Rate Principal**” means the outstanding principal balance of the Borrower Loan that is bearing interest at a Variable Rate.

## **ARTICLE II** **LOAN**

2.1 Purpose. The purpose of the Borrower Loan is to finance the construction of the Improvements and other costs related thereto.

2.2 Loan Terms and Conditions. Subject to the terms and conditions contained in this Agreement, as may be modified by the provisions of Exhibit C and Section 4.1 of the Funding Loan Agreement, Governmental Lender agrees to make, but solely from the proceeds of the Funding Loan, the Borrower Loan to Borrower. The repayment of all amounts due in connection with the Borrower Loan shall be secured by, among other things, the Deed of Trust, the Security Documents and such other collateral as may be required by Funding Lender. Interest shall accrue and principal and interest shall be payable in accordance with the terms of this Agreement.

2.3 Loan Fee. Borrower shall pay the Loan Fee to Funding Lender in immediately available funds on or before the Closing Date. The Loan Fee shall be nonrefundable.

2.4 Full Payment and Reconveyance. Upon Governmental Lender’s and Funding Lender’s receipt, as applicable, of all sums owing and outstanding under the Borrower Loan Documents and under any other note or notes or any other obligation secured by the Deed of Trust, Funding Lender shall issue a full reconveyance of the Property and Improvements from the lien of the Deed of Trust; provided, however, that all of the following conditions shall be satisfied at the time of, and with respect to, such reconveyance: (a) Funding Lender shall have received all escrow, closing and recording costs, the costs of preparing and delivering such reconveyance and any sums then due and payable under the Borrower Loan Documents and the Funding Loan Documents; and (b) Funding Lender shall have received a written release satisfactory to Funding Lender of any Set Aside Letter, letter of credit or other form of undertaking that Funding Lender has issued to any Surety, Governmental Authority or any other party in connection with the Borrower Loan and/or the Property. As of the earlier of the last day of disbursement of the Funding Loan under Section 3.4(d) of the Funding Loan Agreement, or date of repayment in full of the Borrower Loan, Governmental Lender’s obligation to make further disbursements under the Borrower Loan shall terminate as to any portion of the Borrower

Loan undisbursed, and any commitment of Governmental Lender to lend any undisbursed portion of the Borrower Loan shall be cancelled.

2.5 Assignment of Borrower Loan Documents to Funding Lender. Borrower acknowledges that the Governmental Lender has made an assignment to the Funding Lender of all right, title and interest of the Governmental Lender in this Borrower Loan Agreement, the Borrower Note, the Deed of Trust and the other Borrower Loan Documents (except for the Reserved Rights, as defined in the Funding Loan Agreement), and has appointed the Funding Lender as its agent to collect payments from the Borrower with respect to the Borrower Loan and to take all actions on behalf of Governmental Lender with respect to the Borrower Loan and the Borrower Loan Documents, except with respect to the Reserved Rights. Borrower hereby consents to all such assignments and the appointment of Funding Lender as agent for the Governmental Lender, except with respect to the Reserved Rights.

### **ARTICLE III** **PAYMENTS**

#### 3.1 Payments.

3.1.1 **General Obligation.** To induce Governmental Lender to issue the Governmental Lender Note, Borrower shall pay to Funding Lender all amounts, including principal, interest and premium (if any) that become due and payable on the Governmental Lender Note, as and when such amounts become due and payable under the Governmental Lender Note. Without limitation on the foregoing, Borrower shall also pay to Funding Lender when due all other amounts described in this Agreement, as and when due and payable under this Agreement. Each such payment shall be made to the Fiscal Agent by deposit to such account as the Fiscal Agent shall designate by written notice to the Borrower.

#### 3.1.2 **Interest.**

(a) At all times from and after the Funding Date, the outstanding principal balance of the Borrower Loan shall accrue interest at a rate which is the LIBOR Rate plus the Margin for the then current Interest Period. The Variable Rate for the next Interest Period shall change on each Interest Change Date based on changes in the LIBOR Rate. There is no limit on the amount the Variable Rate may increase or decrease during the term of the Borrower Loan; provided however that the Variable Rate shall not be in excess of the Maximum Lawful Rate.

(b) Intentionally Omitted.

(c) At all times after the occurrence and during the continuance of an Event of Default, all principal outstanding under the Borrower Note shall accrue interest at the Default Rate;

3.1.3 **Monthly Payments.** Commencing on the First Payment Date and continuing on the 1st day of each calendar month thereafter through and including the Maturity Date, payments in respect of the Borrower Loan shall be interest only, in arrears,

on the outstanding principal of the Borrower Note at the Variable Rate. Interest shall be calculated on the basis of a year of 360 days, for actual days elapsed.

3.2 Intentionally Omitted.

3.3 Maturity Date. All unpaid principal and interest on the Borrower Loan and other amounts due under the Borrower Loan Documents and the Funding Loan Documents shall be due and payable in full on the Maturity Date, as such date may be extended or accelerated.

3.4 Application of Payments. All payments and prepayments received by Governmental Lender or Funding Lender with respect to the Borrower Note shall be applied in the following manner: first, to the payment of any Late Charge then due; second to the payment of all expenses, charges, costs and fees (including, but not limited to, any prepayment fee in accordance with Section 3.7 below) incurred by or payable to Governmental Lender or Funding Lender by Borrower pursuant to the terms of the Borrower Loan Documents (in such order and manner as Funding Lender, in its sole discretion, may elect); third to the payment of all interest accrued to the date of such payment; and fourth, to the payment of principal. Notwithstanding anything to the contrary contained herein, after the occurrence and during the continuation of an Event of Default, all amounts received by Governmental Lender and Funding Lender from any party shall be applied in such order as Funding Lender in its sole discretion, may elect.

3.5 Acceleration. If any of the payments required by the terms hereof shall not be paid when due and such failure shall continue beyond any applicable notice and cure periods, or if the payment due on the Maturity Date is not paid when due, whether by acceleration or otherwise, or if an Event of Default occurs, then, or at any time thereafter, the whole of the unpaid principal and interest owing on the Borrower Loan shall, at the option of Funding Lender and without notice, become immediately due and payable. This acceleration option may be exercised at any time after any such event and the acceptance of one or more installments or other payments from any Person thereafter shall not constitute a waiver of Funding Lender's acceleration option. Funding Lender's failure to exercise such acceleration option in connection with any particular event or series of events shall not be construed as a waiver of the provisions hereof as regards such events or any subsequent events. The other Borrower Loan Documents may contain provisions that provide for the automatic acceleration of amounts owing in connection with the Borrower Loan upon the occurrence of certain specified events. Funding Lender shall have, and be entitled to exercise, upon the occurrence of any Event of Default or other event described above, all rights and remedies available to Funding Lender hereunder, under the other Borrower Loan Documents or Funding Loan Documents or at law or in equity. All such rights and remedies shall be cumulative.

3.6 Late Charge; Default Interest. Borrower recognizes that any default by Borrower in making the payments required under the Borrower Loan Documents when due will result in Governmental Lender and Funding Lender incurring additional expense in servicing the Borrower Loan, in loss of the use of the money due and in frustration of meeting commitments under the Funding Loan Documents. Borrower agrees that, if for any reason Borrower fails to pay when due any payment due under this Agreement or under any of the other Borrower Loan Documents, any amount advanced under the Deed of Trust or the amount due on the Maturity Date, or the accelerated Maturity Date, whichever shall first occur, Funding Lender shall be

entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower therefore agrees that a reasonable estimate of such damages to Funding Lender is as follows:

3.6.1 In the event Borrower fails to pay any installment of principal and interest (other than payment on the Maturity Date) within ten days after the same is due, then Borrower shall pay to Funding Lender a Late Charge.

3.6.2 In the event Borrower fails to reimburse Funding Lender for any amount advanced under the Deed of Trust within ten days after written notice of such advance is made by Funding Lender to Borrower, then such unreimbursed amount shall thereafter bear interest at the Default Rate until paid, such interest to be compounded annually.

3.6.3 In the event the payment of principal and accrued but unpaid interest due on the Maturity Date, or the accelerated Maturity Date, as applicable, is not made in full when due, then such amounts shall thereafter bear interest at the Default Rate, until paid, such interest to be compounded annually.

3.7 Prepayment. Pursuant to the terms of this Section 3.7, the Borrower Loan may be prepaid by Borrower, provided that Borrower shall in no event voluntarily or involuntarily prepay the Borrower Loan in whole or in part unless Borrower pays to Funding Lender, concurrently with such prepayment, a prepayment fee as calculated below.

**3.7.1 Variable Rate Principal.** Any Variable Rate Principal may be prepaid prior to the scheduled payment date, whether voluntary or involuntary, in whole or in part, provided Borrower has given Funding Lender not less than five (5) business days prior written notice of Borrower's intention to make such prepayment and pays to Funding Lender the prepayment fee due as a result. The prepayment fee shall be an amount equal to the present value of the product of: (i) the difference (but not less than zero) between (a) the Variable Rate applicable to the principal amount which is being prepaid, and (b) the return which Funding Lender could obtain if it used the amount of such prepayment of principal to purchase a bid price regularly quoted securities issued by the United States having a Maturity Date most closely coinciding with the last day of the relevant Interest Period and such securities were held by Funding Lender until the last day of the relevant Interest Period ("Yield Rate"); (ii) a fraction, the numerator of which is the number of days in the period between the date of prepayment and the relevant Interest Period, and the denominator of which is 360, and (iii) the amount of principal so prepaid. The present value shall be determined by discounting the above product to present value using the Yield Rate as the annual discount factor. Funding Lender shall provide Borrower a statement of the amount payable on account of prepayment. Borrower acknowledges that (i) Funding Lender establishes a Variable Rate upon the understanding that it apply to the Variable Rate Principal for the entire Interest Period, and (ii) Governmental Lender would not lend to Borrower at a Variable Rate without Borrower's express agreement to pay the prepayment fee described above.

3.7.2 **No Prepayment Fee Due.** Notwithstanding Section 3.7.1 above, no prepayment fee shall be payable in connection with the prepayment of Variable Rate Principal during the ninety (90) day period immediately preceding the Maturity Date.

3.7.3 **No Refund.** In no event shall Funding Lender be obligated to make any payment or refund to Borrower, nor shall Borrower be entitled to any setoff or other claim against Funding Lender, should the return which Funding Lender could obtain under the prepayment formula exceed the interest that Governmental Lender would have received if no prepayment had occurred.

3.7.4 **Payment of Accrued Interest.** All prepayments shall include payment of accrued interest on the principal amount so prepaid, shall be applied to payment of interest before application to principal, and shall be applied to the most remote principal installment or installments then unpaid (i.e., the principal balance due on the Maturity Date and then against installments due closest to the Maturity Date).

3.7.5 **Involuntary Prepayment.** Such prepayment fee shall also be payable if prepayment occurs as the result of any involuntary prepayment (e.g., proceeds of insurance or condemnation) or the acceleration of the principal hereof by Funding Lender because of any default by Borrower (including any transfer or conveyance of any right, title or interest in the real property encumbered by the Deed of Trust) that gives Funding Lender the right to accelerate the maturity of the Borrower Loan pursuant to the terms of the Deed of Trust. If, following any such acceleration, all or any portion of the unpaid principal is satisfied, whether through sale of the property encumbered by the Deed of Trust or other agreement securing the Borrower Loan at a foreclosure held thereunder or through the tender of payment at any time following such acceleration, but prior to such a foreclosure sale, then such satisfaction of principal shall be deemed an evasion of the prepayment provisions hereof, and Funding Lender shall, automatically and without notice or demand, be entitled to receive, concurrently with such satisfaction of principal the prepayment fee set forth above, and the obligation to pay such prepayment fee shall be added to the principal hereof.

**BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT GOVERNMENTAL LENDER WOULD NOT LEND TO BORROWER THE BORROWER LOAN EVIDENCED BY THE BORROWER NOTE WITHOUT BORROWER'S AGREEMENT TO PAY A PREPAYMENT FEE AS SET FORTH ABOVE. BORROWER EXPRESSLY WAIVES ANY RIGHT UNDER CALIFORNIA CIVIL CODE SECTION 2954.10 OR OTHERWISE TO PREPAY THE BORROWER LOAN WITHOUT A PREPAYMENT FEE AS HEREINABOVE SET FORTH. BORROWER ACKNOWLEDGES THAT PREPAYMENT OF THE BORROWER LOAN MAY RESULT IN GOVERNMENTAL LENDER AND FUNDING LENDER INCURRING ADDITIONAL COSTS, EXPENSES OR LIABILITIES. BORROWER THEREFORE AGREES THAT THE PREPAYMENT FEE HEREIN PROVIDED FOR REPRESENTS A REASONABLE ESTIMATE OF THE PREPAYMENT COSTS, EXPENSES OR LIABILITIES GOVERNMENTAL LENDER AND FUNDING LENDER MAY INCUR ON A PREPAYMENT. BORROWER AGREES THAT GOVERNMENTAL LENDER'S WILLINGNESS TO OFFER THE VARIABLE**

**INTEREST RATE DESCRIBED ABOVE TO BORROWER IS SUFFICIENT AND INDEPENDENT CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY GOVERNMENTAL LENDER AND FUNDING LENDER FOR THIS WAIVER. BORROWER UNDERSTANDS THAT GOVERNMENTAL LENDER WOULD NOT OFFER SUCH AN INTEREST RATE TO BORROWER ABSENT THIS WAIVER. BORROWER HAS CAUSED THOSE PERSONS SIGNING THIS AGREEMENT ON ITS BEHALF TO SEPARATELY INITIAL THIS PARAGRAPH BY PLACING THEIR INITIALS BELOW:**

**BORROWER INITIALS HERE:** \_\_\_\_\_

**3.7.6 Certification.** A certificate as to the amount of any prepayment fee payable under this Section, setting forth the basis for such fee, prepared by Funding Lender and submitted to Borrower shall be conclusive as to the matters set forth therein, and the Borrower Loan shall not be deemed to have been fully paid or satisfied until such fee shall have been paid.

**ARTICLE IV**  
**CONDITIONS PRECEDENT**

**4.1 Conditions to Closing of the Borrower Loan.** Prior to the Closing Date, Funding Lender shall have received all of the following documents, instruments and other items (each of which, in the case of documents or instruments, shall be fully and properly executed and, where required by Funding Lender, acknowledged by all parties thereto), each in form and content acceptable to Funding Lender:

**4.1.1** The original Borrower Loan Documents.

**4.1.2** Copies of organizational documents of Borrower and all Loan Parties, duly filed and/or recorded in the appropriate jurisdiction and certified as required by Funding Lender, including without limitation, and as applicable, (a) articles of organization and operating agreements, (b) certificates of limited partnership, statements of partnership and partnership agreements, (c) statements of joint venture and joint venture agreements, (d) articles of incorporation, (e) trust agreements, and (f) any amendments to any of the foregoing.

**4.1.3** Evidence that the insurance required by the Agreement to Furnish Insurance is in full force and effect.

**4.1.4** All Borrower's Funds required under this Agreement.

**4.1.5** Copies of the Detailed Cost Breakdown, the Project Budget, the Plans, the Construction Contract (if any), the Architect's Agreement, project license agreements and any other agreements that Funding Lender determines are material to construction of the Improvements, all certified as required by Funding Lender.

4.1.6 Copies of the building permits and any other authorizations required from any Governmental Authority in connection with construction of the Improvements.

4.1.7 If required by Funding Lender, a current ALTA survey of the Real Property, including dimensions and delineation and location of all easements thereon, certified to and satisfactory to Funding Lender and Title Insurer.

4.1.8 If required by Funding Lender, letters from local utility companies and any Governmental Authority stating that electric, gas, sewer, water, cable and telephone facilities are or will be available to the Real Property upon completion of the Improvements.

4.1.9 Written results of such due diligence investigations with respect to Borrower, any Loan Party and the Property as Funding Lender deems necessary, including without limitation, environmental reviews, engineering inspections, seismic studies and financial analysis.

4.1.10 An opinion of Borrower's counsel as to (a) the proper formation, valid existence and good standing of Borrower and all Loan Parties, (b) the due authorization and execution of all Borrower Loan Documents by Borrower and all Loan Parties, (c) whether all necessary consents have been obtained with respect to the Borrower Loan, (d) the absence of any threatened or pending actions, suits or proceedings against or affecting the Property, Borrower or any Loan Party, (e) the violation of any agreements to which Borrower or any Loan Party is bound, and (f) such other matters as Funding Lender may determine to be necessary or appropriate.

4.1.11 A performance bond naming Governmental Lender and Funding Lender as co-obligee and a labor and material payment bond, in an amount equal to the amount of the Construction Contract, or if there is no Construction Contract, then in such amounts as Funding Lender may require, issued by a surety acceptable to Funding Lender and otherwise in form and content acceptable to Funding Lender. The performance and the labor and material bonds shall have been recorded in the official records of the county in which the Real Property is located prior to the commencement of work on the Improvements.

4.1.12 A copy of the HUD Commitment.

4.1.13 Evidence satisfactory to Funding Lender that all conditions precedent to the construction of the Improvements contained in the HUD Commitment have been satisfied.

4.1.14 A copy of the TOD Commitment, certified by TOD Lender to be in full force and effect, and an estoppel agreement executed by TOD Lender in form and substance satisfactory to Funding Lender, with a copy of the TOD Commitment attached.

4.1.15 Copies of the Subordinate Lender Documents in a form acceptable to Funding Lender, duly executed by the Borrower and applicable Subordinate Lenders.



4.1.16 Such other documentation, certifications, opinions and information as may be reasonably required by Governmental Lender or Funding Lender.

4.1.17 A copy of the executed Ground Lease in a form acceptable to Funding Lender.

4.1.18 A copy of the executed Ground Lease Estoppel Certificate in a form acceptable to Funding Lender.

4.1.19 Borrower shall have entered into the APRAC Contract on terms and conditions acceptable to Funding lender.

4.1.20 All costs, charges and expenses incurred in connection with the Borrower Loan or payable in connection with this Agreement as of the Closing Date, including, without limitation, the Loan Fee, service charges, title charges, tax and lien service charges, recording fees, escrow fees, appraisal fees, legal fees, insurance premiums, any amounts required to pay existing encumbrances then due affecting the Property and any amounts required to complete the closing of the acquisition of the Leasehold Estate, shall have been paid by Borrower.

4.1.21 A copy of the Commercial Master Lease Agreement, in form and substance reasonably acceptable to Funding Lender, duly executed by all parties thereto, and Commercial Master Lease Subordination Agreement duly executed by Borrower and Commercial Tenant.

4.1.22 Any special conditions set forth in the Special Conditions attached hereto as Exhibit C shall have been satisfied.

4.2 Conditions to Issuance of the Governmental Lender Note. Governmental Lender's obligation to execute the Governmental Lender Note, and Governmental Lender's and Funding Lender's obligation to enter into this Agreement, the other Borrower Loan Documents and the Funding Loan Documents, and to make the Initial Disbursement, are subject to the satisfaction, or waiver by Governmental Lender or Funding Lender, as applicable, each of the conditions in Section 4.1 and of all of the following conditions precedent:

4.2.1 Governmental Lender and Funding Lender shall have received fully executed originals of each of the Borrower Loan Documents and the Funding Loan Documents.

4.2.2 The Tax-Exempt Regulatory Agreement shall have been duly executed, acknowledged and delivered by Borrower to Governmental Lender and Funding Lender.

4.2.3 Each of the Recorded Documents shall have been recorded in the Official Records of the county in which the Real Property is located.

4.2.4 The Financing Statements have been filed with the Secretary of State of California, and Funding Lender shall have received a certificate of the Secretary of State

showing such Financing Statements to be subject to no prior filings (other than filings perfecting Permitted Liens) except as otherwise agreed to by Funding Lender.

4.2.5 Title Insurer shall have committed to deliver to Funding Lender the Title Policy.

4.2.6 Funding Lender and Governmental Lender shall have received and approved an executed original of each of the following opinions or reliance letters, in each case addressed to each of Governmental Lender and Funding Lender and in each case in form and substance approved by Governmental Lender and Funding Lender: (a) the opinion of counsel to Borrower and the other Loan Parties, opining as to the due formation, qualification and good standing of Borrower and the other Loan Parties, the due authorization by Borrower and the Loan Parties of the execution, delivery and performance of the Borrower Loan Documents, and the enforceability of the Borrower Loan Documents, and covering such other matters as Funding Lender may require; and (b) an opinion of Tax Counsel and/or the City Attorney of the Governmental Lender, opining as to the due organization and valid existence of the Governmental Lender, due execution and delivery by the Governmental Lender of the Funding Loan Agreement, and this Agreement, the enforceability of the Funding Loan Agreement and this Agreement, and the exclusion of interest on the Governmental Lender Note from gross income for federal income tax purposes.

4.2.7 Funding Lender shall have received and approved such Financial Statements and other financial information as it may require regarding the financial condition of Borrower, the Loan Parties and/or the Property.

4.2.8 Funding Lender shall have received and approved a detailed sources and uses statement showing (i) all costs and expenses of issuance of the Governmental Lender Note, and (ii) all sources for payment of such costs and expenses.

4.2.9 To the extent not funded from the Initial Disbursement, Borrower shall have paid to Governmental Lender and Funding Lender, as applicable, in immediately available good funds (a) all costs and expenses incurred by Governmental Lender and Funding Lender in connection with the Funding Loan, the making of the Borrower Loan and the negotiation, preparation and closing of the Borrower Loan Documents and Funding Loan Documents, (b) the Tax Counsel fees and expenses due and payable; (c) all of fees to Governmental Lender then due and payable; and (d) the initial Fiscal Agent's Fees (as defined in the Funding Loan Agreement).

4.2.10 Borrower shall have delivered to Funding Lender, and Funding Lender shall have approved such information, and/or documentation as Funding Lender may require to evidence that paragraph (1) of Section 42(h) of the Code does not apply to the Tax Credits by virtue of the provisions set forth in subparagraph (4)(B) of Section 42(h) of the Code.

4.2.11 Any special conditions set forth in the Special Conditions attached hereto as Exhibit C shall have been satisfied.

**ARTICLE V  
DISBURSEMENTS**

5.1 Initial Disbursement.

5.1.1 Prior to the Initial Disbursement, the following conditions shall have been satisfied in addition to the conditions set forth in Sections 4.1 and 4.2, as determined by Funding Lender:

(a) Borrower and all Loan Parties shall have performed to Funding Lender's satisfaction all covenants required to be performed under this Agreement, the other Borrower Loan Documents and the Funding Loan Documents on or before the Funding Date.

(b) No change shall have occurred that could have a material adverse effect on Borrower, any Loan Party, the Property or Funding Lender's right or ability to receive payment in full of the Borrower Loan, as determined by Funding Lender in its sole discretion.

(c) No Event of Default shall exist.

(d) The representations and warranties of Borrower in this Agreement and the other Borrower Loan Documents shall be true and correct on and as of the date of the disbursement with the same effect as if made on such date.

(e) Funding Lender shall have approved in its sole discretion, the Detailed Cost Breakdown, the Project Budget, the Plans, the Construction Contract (if any), the Architect's Agreement, project license agreements and any other agreements that Funding Lender determines are material to the construction of the Improvements.

(f) Funding Lender shall have received satisfactory evidence that there are no liens on Personal Property, except as otherwise agreed to by Funding Lender.

(g) If required by Funding Lender, Funding Lender shall have received a list of the names and addresses of all suppliers, laborers and subcontractors with whom agreements have been made with Contractor and/or Borrower to deliver materials and/or perform work on the Improvements.

(h) Such evidence as Funding Lender may require evidencing expenditure of Borrower's Equity on Project costs in accordance with this Agreement is at least \$412,260.

(i) AHP -Funding

(j) Any special conditions set forth in the Special Conditions attached hereto as Exhibit C shall have been satisfied.

5.1.2 Upon satisfaction of the conditions contained in Sections 4.1, 4.2 and 5.1.1, Funding Lender, on behalf of Governmental Lender, shall make an Advance in accordance with the Project Budget and the Disbursement Schedule.

## 5.2 Subsequent Disbursements.

5.2.1 Prior to making any Advances after the Initial Disbursement, except for the final Advance, the following additional conditions shall have been satisfied, as determined by Funding Lender:

(a) All specific requirements for the disbursement set forth in the Disbursement Schedule shall have been satisfied.

(b) No Event of Default shall exist.

(c) The representations and warranties of Borrower in this Agreement and the other Borrower Loan Documents shall be true and correct on and as of the date of the disbursement with the same effect as if made on such date.

(d) The Improvements shall not have been damaged by fire or other casualty unless Funding Lender has determined that Funding Lender will receive proceeds sufficient in Funding Lender's judgment to effect the satisfactory restoration of the Improvements and permit Project Completion prior to the Completion Date.

(e) If required by Funding Lender, Funding Lender shall have received confirmation to its satisfaction that (A) to date, the Improvements have been constructed in accordance with the Plans and the Construction Contract (if any), and (B) the present state of construction of the Improvements will, barring the unforeseen and unknown delays, permit Project Completion on or before the Completion Date.

(f) If Funding Lender has determined that the undisbursed proceeds of the Borrower Loan are insufficient to pay all costs to complete construction of the Improvements (and all other costs included within the Project Budget), Borrower shall have deposited into the Borrower's Funds Account cash in the amount of such shortfall as provided in Section 7.2.

(g) If required by Funding Lender, (A) Title Insurer shall have issued its continuation endorsement to the Title Policy indicating that since the last preceding disbursement, there: (1) has been no change in the condition of title to the Real Property; and (2) are no intervening liens that may now or hereafter take priority over the disbursement to be made, and (B) upon completion of the foundation, Title Insurer shall have issued its foundation endorsement to the Title Policy insuring Funding Lender that the foundation is constructed wholly within the boundaries of the Real Property and does not encroach on any easements or violate any covenants, conditions or restrictions or any Governmental Requirement.

(h) Funding Lender shall have received satisfactory evidence that there are no liens on Personal Property, except as otherwise agreed to by Funding Lender.

(i) Intentionally omitted.

(j) Except for disbursements of the Borrower Loan to fund interest during construction, all amounts deposited into the Borrower's Funds Account shall have been withdrawn by Borrower to cover Project costs in accordance with the terms and conditions of

this Agreement, and the entire amount of the Subordinate Lender Loan shall have been fully disbursed (except for the \$5,000,000 of the MOHCD Loan to be disbursed after Project Completion, the ten percent (10%) hard cost retention under the MOHCD Loan, and \$121,148 of the MOHCD Loan representing the reimbursement amount under the PRAC Contract) by Subordinate Lender to or for the account of Borrower and applied towards Project costs.

(k) If requested by Funding Lender, (a) Tax Credit Investor shall have executed and delivered to Funding Lender an estoppel certificate, which shall contain such certifications as Funding Lender shall reasonably require with respect to Tax Credit Investor's obligations under the Partnership Agreement, and (b) Subordinate Lender shall have executed and delivered to Funding Lender an estoppel certificate in a form and substance which shall contain such certifications as Funding Lender shall reasonably require with respect to the Subordinate Lender Documents.

(l) At 75% completion of the Improvements, such evidence as Funding Lender may require evidencing expenditure of Borrower's Equity on Project costs in accordance with this Agreement is at least \$1,344,819.

(m) Any special conditions set forth in the Special Conditions attached hereto as Exhibit C shall have been satisfied.

5.2.2 Upon satisfaction of the conditions contained in Sections 5.2.1 and 5.4 (as applicable), on or about the first day of each calendar month following commencement of construction of the Improvements, Contractor shall submit to Borrower a Draw Request showing the estimated cost of labor performed on and materials incorporated into the Improvements, a pro-rata portion of Contractor's profit and that pro-rata portion of overhead of Contractor attributable to the construction of the Improvements. The original of such Draw Request, certified true and correct by Contractor and approved by Borrower, shall be submitted to Funding Lender for payment. Upon verification of the accuracy of the Draw Request by inspection of the Real Property and Improvements (if required by Funding Lender), Governmental Lender shall disburse the amount of the respective approved Draw Request in accordance with the Disbursement Schedule (i) directly to Borrower or, upon the occurrence and during the continuance of an Event of Default, directly to Contractor or to such Persons as have actually supplied labor, materials or services in connection with the construction of the Improvements (at Funding Lender's option as to whom and in what amounts payments are to be made), or (ii) if specifically required by Funding Lender, through a fund control service acceptable to Funding Lender under a fund control agreement in form and content acceptable to Funding Lender.

### 5.3 Final Disbursement.

5.3.1 Prior to making the final Advance, the conditions set forth in Sections 5.1, 5.2 and 5.4 (as applicable) and the following conditions shall have been satisfied, as determined by Funding Lender:

(a) Funding Lender shall have received confirmation to its satisfaction that the Improvements have been completed in accordance with the Plans and the Construction Contract (if any).

(b) If required by Funding Lender, Funding Lender shall have received a copy of the final certificate of occupancy (or its equivalent as determined by Funding Lender) issued by the appropriate Governmental Authority or a temporary certificate of occupancy subject only to conditions as may be acceptable to Funding Lender (including confirmation that all conditions to issuance of a final certificate of occupancy may be satisfied within ninety (90) days) by the appropriate Governmental Authority.

(c) Funding Lender shall have received evidence that Borrower has recorded a notice of completion (or its equivalent as determined by Funding Lender) with respect to the Improvements.

(d) Funding Lender shall have received (A) such endorsements to the Title Policy as Funding Lender may require which shall insure that the Improvements have been completed free of all mechanic's and materialmen's liens or claims thereof, or (B) such additional title policies with endorsements as Funding Lender may require, with a liability limit of not less than the principal amount of the Borrower Loan, issued by Title Insurer, with coverage and in form satisfactory to Funding Lender, insuring Governmental Lender's and Funding Lender's interest under the Deed of Trust as a first lien on the Real Property, excepting only such items as shall have been approved in writing by Funding Lender.

(e) Funding Lender shall have received evidence satisfactory to Funding Lender that HUD and TOD Lender have approved the completed Improvements.

(f) If requested by Funding Lender, (a) Tax Credit Investor shall have executed and delivered to Funding Lender an estoppel certificate, which shall contain such certifications as Funding Lender shall reasonably require with respect to Tax Credit Investor's obligations under the Partnership Agreement, and (b) Subordinate Lender shall have executed and delivered to Funding Lender an estoppel certificate in a form and substance which shall contain such certifications as Funding Lender shall reasonably require with respect to the Subordinate Lender Documents.

(g) The HUD Commitment and TOD Commitment are unmodified, are in full force and effect, and all conditions to the effectiveness or continuing effectiveness of each of the HUD Commitment and TOD Commitment required to be satisfied by the date hereof have been satisfied.

(h) The ten percent (10%) hard cost retention under the MOHCD Loan has been released by MOHCD to Borrower.

5.3.2 The final disbursement shall consist of the payment of any monies retained from progress payments or disbursements as set forth in this Agreement. Subject to the provisions of this Agreement, the final disbursement shall be made only after Borrower has satisfied the conditions of Sections 5.3.1 and 5.4 (as applicable). Notwithstanding the foregoing, if a temporary certificate of occupancy has been issued, Funding Lender may

withhold from the final disbursement 150% of the cost estimated by Funding Lender to complete all conditions to issuance of a final certificate of occupancy, and upon the issuance of a final certificate of occupancy the balance of the final disbursement will be disbursed to Borrower.

5.4 Additional Conditions to Advances. Funding Lender shall have the right to condition any Advance upon Funding Lender's receipt and approval of the following, each in form and content acceptable to Funding Lender:

5.4.1 The Draw Request.

5.4.2 Bills, invoices, documents of title, vouchers, statements, receipts and any other documents evidencing the total amount expended, incurred or due for any requested line item shown in the Project Budget.

5.4.3 Evidence of Borrower's use of a lien release, joint check or voucher system acceptable to Funding Lender for payments or disbursements to Contractor or to such Persons as have actually supplied labor, materials or services in connection with the construction of the Improvements.

5.4.4 Architect's, inspector's and/or engineer's periodic certifications of the percentage and/or stage of construction that has been completed and its conformance to the Plans and any Governmental Requirement based upon such architect's, inspector's and/or engineer's periodic physical inspections of the Real Property and Improvements.

5.4.5 Waivers and releases of any mechanic's lien, stop notice claim, equitable lien claim or other lien claim rights.

5.4.6 Any other documents, requirements, evidence or information that Funding Lender may request under any provision of the Borrower Loan Documents.

5.4.7 Evidence that any goods, materials, supplies, fixtures or other work in progress for which disbursement is requested have been incorporated into the Improvements.

5.4.8 In the event any Draw Request includes the cost of Offsite Materials, such Draw Request shall include each of the following: (a) evidence that the Offsite Materials have been purchased by Borrower, have been segregated from other materials in the facility where they are stored and have been appropriately marked to indicate Borrower's ownership thereof and Funding Lender's security interest therein; (b) evidence that the Offsite Materials are insured as required by this Agreement; and (c) at Funding Lender's request, a security agreement, financing statement, acknowledgment, and/or subordination agreement in form and content satisfactory to Funding Lender executed by the supplier of the Offsite Materials, and/or such other Persons as Funding Lender determines may have an interest in or claim to the Offsite Materials, together with such other additional documentation and evidence as Funding Lender may reasonably require to assure itself that it has a perfected first priority lien on the Offsite Materials.

5.4.9 In the event any Draw Request includes the cost of Onsite Materials, such Draw Request shall include each of the following: (a) evidence that the Onsite Materials have been purchased by Borrower; (b) evidence that the Onsite Materials are insured as required hereunder; and (c) evidence that the Onsite Materials are stored in an area on the Real Property for which adequate security is provided against theft and vandalism.

## 5.5 Disbursement Limits.

5.5.1 Borrower hereby represents to Funding Lender that, as of the date of this Agreement, the Project Budget represents the total amount needed by Borrower to construct the Improvements and to perform Borrower's obligations under the Borrower Loan Documents and Funding Loan Documents. Funding Lender shall not be required to make any Advance for any Construction Costs or any other purpose that is not set forth in the Project Budget nor shall Funding Lender be required to make any Advance for any line item in the Project Budget in an amount that when added to the sum of all prior Advances for that line item would exceed the sum allocated in the Project Budget for that line item.

5.5.2 Funding Lender reserves and shall have the right to make Advances that are allocated to any line items in the Project Budget for such other purposes or in such different proportions as Funding Lender may, in its sole discretion, deem necessary or advisable. Borrower shall have no right whatsoever to reallocate Advances from one line item in the Project Budget to another or otherwise amend the Project Budget without the prior consent of Funding Lender.

5.5.3 All Advances shall be made in accordance with the applicable provisions of the Project Budget and the Disbursement Schedule. All funds disbursed to Borrower shall be received by Borrower in trust and Borrower agrees that such funds shall be used only for the payment of those items contemplated by the particular Advance.

5.5.4 Funding Lender shall not be required to disburse an aggregate amount of the proceeds of the Borrower Loan for labor furnished to and materials incorporated into the Improvements during any stage of construction that exceeds the lesser of (a) the value of such labor and materials, and (b) the amount allocated to that stage of construction in the Project Budget. In any event, Funding Lender shall not be required to disburse any amount that, in Funding Lender's opinion, will reduce that portion of the undisbursed proceeds of the Borrower Loan designated for completion of the Improvements below the amount needed to pay for the labor and materials necessary to complete the Improvements.

5.5.5 Notwithstanding anything to the contrary contained herein, disbursements of the Borrower Loan shall be made from the Project Fund held by the Fiscal Agent pursuant to the Funding Loan Agreement ("Project Fund").

5.6 Disbursement Into Borrower's Funds Account. If the Borrower Loan has not been fully disbursed by December 1, 2017, the Funding Lender may, in its discretion, disburse all or any portion of the undisbursed portion of the Borrower Loan into the Note Proceeds Account of the Project Fund, at which time the Borrower Loan proceeds so advanced shall



constitute Borrower Loan proceeds, if Funding Lender obtains an opinion of Tax Counsel to the effect that the draw of Borrower Loan proceeds after December 1, 2017, will adversely affect the exclusion of interest on the Governmental Lender Note from gross income for federal income tax purposes. The portion of the Borrower Loan disbursed into the Project Fund shall be deemed outstanding as of the date advanced into the Project Fund and will immediately commence to accrue interest as provided in Section 3.1.2. All Borrower Loan funds disbursed into the Note Proceeds Account of the Project Fund shall continue to be disbursed by Funding Lender pursuant to the provisions of this Section 5 and the Disbursement Schedule.

## **ARTICLE VI**

### **REPRESENTATIONS AND WARRANTIES OF BORROWER**

Borrower makes the following representations and warranties for the benefit of Governmental Lender and Funding Lender, each of which is material and is relied upon by Governmental Lender in making the Borrower Loan and Governmental Lender and Funding Lender in executing this Agreement. Each of the following representations and warranties shall be true and accurate as of the Contract Date, the Closing Date and upon disbursement of the Initial Disbursement and each Advance. Borrower agrees that such representations and warranties shall survive and continue until full and final payment of all sums owed under the Borrower Loan Documents.

6.1 Formation/Authority. Borrower has complied with all laws and regulations concerning Borrower's organization, existence and the transaction of Borrower's business, and is in good standing in each state in which Borrower conducts business. Borrower is authorized to execute, deliver and perform Borrower's obligations under each of the Borrower Loan Documents and the Funding Loan Documents to which Borrower is a party, and Borrower is authorized to construct the Improvements and to own and operate the Property.

6.2 No Defaults Under Existing Agreements. The transactions contemplated hereby and the performance by Borrower of Borrower's obligations under the Borrower Loan Documents and the Funding Loan Documents will not result in any breach of or default under any deed of trust, mortgage, lease, loan, security agreement or any other agreement to which Borrower is a party or may be bound or affected.

6.3 No Actions. There are no actions, suits or proceedings pending or, to the best knowledge of Borrower, threatened against or affecting Borrower or the Property or involving the validity, priority or enforceability of the Deed of Trust or any other Loan Document or Funding Loan Documents or affecting Funding Lender's right to receive payment in full of all amounts outstanding under this Agreement, the other Borrower Loan Documents or the Funding Loan Documents. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority. There (a) is no completed, pending or threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Property, the Borrower, or any Loan Party, and (b) has been no assertion or exercise of jurisdiction over the Property, the Borrower or any Loan Party by any court empowered to exercise bankruptcy powers. Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any Governmental Authority that would have the effect of preventing or hindering performance of its

duties under this Agreement, any other Borrower Loan Documents or any Funding Loan Documents, nor are there any proceedings presently in progress or to its knowledge contemplated that would, if successful, lead to the issuance of any such order.

6.4 Other Liens. Borrower has made no contract or arrangement of any kind, the performance of which by the other party thereto would give rise to a lien on the Property, except for its arrangements with the Architect, the Contractor or the subcontractors if there is no Contractor.

6.5 Leases. All Leases are in full force and effect, there are no defaults under any of the provisions thereof by any party thereto, and all conditions to the effectiveness or continuing effectiveness of the Leases required to be satisfied as of the date hereof have been satisfied.

6.6 Financial Statements. The Financial Statements delivered to Funding Lender by Borrower and any Loan Party are true and correct in all material respects, have been prepared in accordance with accounting practices and principles acceptable to Funding Lender and consistently applied, and fairly present the financial condition(s) of the Person(s) referred to therein as of the respective dates; no materially adverse change has occurred in the financial condition reflected in any such financial statement since the date shown thereon, and no additional material liabilities have been incurred by any such Person since the date thereof other than the borrowing contemplated hereby or other borrowing disclosed in writing to and approved by Funding Lender.

6.7 Compliance With Laws. The Property and the actual use thereof by Borrower complies in all material respects with all Governmental Requirements. Borrower has received no notices of violations of any Governmental Requirement.

6.8 Permits, Approvals, Licenses. Borrower has obtained all licenses, permits and approvals necessary for the ownership, construction, operation (not including a certificate of occupancy) and management of the Property, including all approvals essential to the transactions contemplated by this Agreement, the Funding Loan Documents, the Borrower Loan Documents and any other documents contemplated hereby or thereby

6.9 Leasehold Interest in Real Property. Borrower has, or as of the Closing Date will have, and will continue to have a leasehold interest in the Real Property and a fee interest in the Improvements, subject only to the Permitted Liens. The Borrower is the sole borrower under the Borrower Loan. Borrower shall make no changes to the Property, when it is built, or to the operation thereof that would affect the qualification of the Property under the Act. The Borrower intends to utilize the Property as multifamily rental housing during the Qualified Project Period (as defined in the Tax-Exempt Regulatory Agreement).

6.10 Ownership of Personal Property. Borrower owns directly all of the Personal Property free and clear of all liens, encumbrances and adverse claims and the security interest of Funding Lender in the Personal Property shall be a first lien thereon.

6.11 Other Financing. Except for the loans made pursuant to the Subordinate Lender Documents, and as otherwise disclosed in writing to Funding Lender and approved by Funding

Lender in writing prior to the Closing Date, Borrower has not received other financing for either the acquisition of the Property or the construction and installation of the Improvements.

6.12 Plans, Defects. The Plans are satisfactory to Borrower, and to the extent required by any Governmental Requirement or any effective restrictive covenant, have been approved by all applicable Governmental Authorities and the beneficiaries of any such covenant respectively; the Plans so approved have been approved by Borrower and Contractor as set forth in the Certification of Plans and Specifications delivered to Funding Lender by Borrower.

6.13 Utilities. All utility services necessary for the construction of the Improvements and the operation thereof for their intended purpose are either available at the boundaries of the Real Property or all necessary steps have been taken by Borrower and applicable Governmental Authorities to assure the complete construction and installation thereof, including water supply, storm drain and sanitary sewer facilities, and gas, electric, cable and telephone facilities.

6.14 Roads. All roads necessary for the full use of the Improvements for their intended purposes have been completed or the necessary rights-of-way therefore have either been acquired by the applicable Governmental Authority or dedicated to public use and accepted by such Governmental Authority. All necessary steps have been taken by Borrower and such Governmental Authority to assure the complete construction thereof.

6.15 CC&Rs, Zoning. Borrower has examined, is familiar with, and the Improvements will in all respects conform to and comply with, all covenants, conditions, restrictions, reservations and zoning ordinances affecting the Property.

6.16 Finder's Fees. Borrower has not dealt with any Person who is or may be entitled to any finder's fee, brokerage commission, loan commission or other sum in connection with the execution of this Agreement, consummation of the transactions contemplated hereby, or the making of the Borrower Loan to Borrower.

6.17 Draw Request. Each Draw Request shall be true, complete and accurate and the submission of same shall constitute a reaffirmation of the representations, warranties and covenants contained herein.

6.18 Other Information. No information, statement or report furnished in writing to Governmental Lender or Funding Lender by Borrower, any Loan Party or any of their respective representatives in connection with this Agreement, the Funding Loan Documents or the other Borrower Loan Documents or the consummation of the transactions contemplated hereby and thereby (including, without limitation, any information furnished by Borrower in connection with the preparation of any materials related to the issuance, delivery or offering of the Governmental Lender Note) contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading; and the representations and warranties of Borrower and the statements, information and descriptions contained in Borrower's closing certificates, as of the Closing Date, are true, correct and complete, do not contain any untrue statement or misleading statement of a material fact, and do 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 the light of the circumstances under which they were made, not misleading; and the estimates and the assumptions contained herein and in any certificate of Borrower delivered as of the Closing Date are reasonable and based on the best information available to Borrower.

6.19 No Default. No event has occurred and no condition exists with respect to Borrower, any Loan Party or the Property that would constitute an Event of Default or with the giving of notice or passage of time, or both, if not cured would become an Event of Default.

6.20 Tax Certificate. Borrower has complied with all terms and conditions of the Tax Certificate, including the terms and conditions of the exhibits thereto, and the representations set forth in the Tax Certificate pertaining to Borrower and the Property are true and accurate.

6.21 Regulatory Agreement. Borrower is not in default under the Regulatory Agreements. The Property is, as of the Closing Date, in compliance with all requirements of the Regulatory Agreements, including all applicable requirements of the Act and the Code. Borrower intends to cause the residential units at the Property to be rented or available for rental on a basis that satisfies the requirements of the Regulatory Agreements, including all applicable requirements of the Act and the Code. All Leases will comply with all Governmental Requirements and the Regulatory Agreements. The Property meets the requirements of this Agreement, the Regulatory Agreements, the Act and the Code with respect to multifamily rental housing.

6.22 No Governmental Lender Relationships. To the best knowledge of Borrower, no member, officer, agent or employee of Governmental Lender has been or is in any manner interested, directly or indirectly, in that Person's own, name or in the name of any other Person, in the Governmental Lender Note, the Funding Loan Documents, the Borrower Loan Documents, Borrower, any Loan Party or the Property, in any contract for property or materials to be furnished or used in connection with the Property, or in any aspect of the transactions contemplated by the Funding Loan Documents or the Borrower Loan Documents.

6.23 Authorizations and Consents. No authorization, consent, approval, order, registration declaration or withholding of objection on the part of or filing of or with any Governmental Authority not already obtained or made (or to the extent not yet obtained or made Borrower has no reason to believe that such authorizations, consents, approvals, orders, registrations or declarations will not be obtained or made in a timely fashion) is required for the execution and delivery or approval, as the case may be, of this Agreement, the Funding Loan Documents, the Borrower Loan Documents or any other documents contemplated by this Agreement, the Funding Loan Documents or the Borrower Loan Documents, or the performance of the terms and provisions hereof or thereof by the Borrower.

6.24 No Reliance. Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Property; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or Governmental Lender is a party or of which it is a beneficiary including, without limitation, the Funding Loan Agreement; that it understands the risks inherent in such transactions, including, without limitation, the risk of loss of the Property; and that it has not

relied on the Governmental Lender or Funding Lender for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement, the Funding Loan Agreement or otherwise relied on by Governmental Lender, Funding Lender or Funding Lender in any manner.

6.25 Environmental Matters. Borrower has not received any notice that it or the Property is not in compliance with all provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"); the Resource Conservation and Recovery Act; the Superfund Amendments and Reauthorization Act of 1986; the Toxic Substances Control Act and all environmental laws of the State (collectively "Environmental Laws"), or with any rules, regulations and administrative orders of any Governmental Authority, or with any judgments, decrees or orders of any court of competent jurisdiction with respect thereto; and Borrower has not received any assessment, notice (primary or secondary) of liability or financial responsibility, and no notice of any action, claim or proceeding to determine such liability or responsibility, or the amount thereof, or to impose civil penalties with respect to a site listed on any federal or state listing of sites containing or believed to contain "hazardous materials" (as defined in the Environmental Laws), nor has Borrower received notification that any hazardous substances (as defined under CERCLA) that it has disposed of have been found in any site at which any governmental agency is conducting an investigation or other proceeding under any Environmental Law.

6.26 ERISA. Borrower has not received any notice that it is not in full compliance with the Employment Retirement Income Security Act of 1974, as amended, and the Department of Labor regulations thereunder, with the Code and with terms of such plan or plans with respect to each pension or welfare benefit plan to which Borrower is a party or makes any employer contributions with respect to its employees, for the current or prior plan years of such plans.

6.27 HUD and TOD Commitment. The HUD Commitment and TOD Commitment are unmodified, are in full force and effect, and all conditions to the effectiveness or continuing effectiveness of each of the HUD Commitment and TOD Commitment required to be satisfied by the date hereof have been satisfied.

6.28 Tax Credit Allocation Documents Effective. The Tax Credit Allocation Documents are in full force and effect and have not been revoked, amended or modified in any way. Borrower knows of no reason why Project Completion could not occur on or before the Completion Date.

6.29 Satisfaction of Conditions Under Tax Credit Allocation Documents, Ground Lease and Subordinate Lender Documents. Each and every covenant, condition and obligation contained in the Tax Credit Allocation Documents, the Ground Lease and the Subordinate Lender Documents required to be performed or satisfied as of the date hereof, and each and every matter required to be approved thereunder as of the date hereof, has been satisfied or approved, as applicable.

6.30 Satisfaction of Conditions under APRAC Contract and PRAC Contract. Each and every covenant, condition and obligation contained in the APRAC Contract and PRAC Contract (after the PRAC Contract has been fully executed) required to be performed or satisfied as of the

date hereof and each and every matter required to be approved thereunder as of the date hereof, has been satisfied, waived or approved, as applicable.

6.31 Ground Lease. As of the Closing Date, the Ground Lease shall be unmodified from the final form approved by Funding Lender, except as otherwise agreed to in writing by Funding Lender, and in full force and effect, and all conditions to the effectiveness or continuing effectiveness thereof required to be satisfied by the Closing Date shall have been satisfied.

6.32 Tax Credits Not Subject to State Ceiling. Fifty Percent (50%) or more of the aggregate basis of the Improvements and Borrower's interest in the Property will be financed with proceeds from the Governmental Lender Note and, therefore, paragraph (1) of Section 42(h) of the Code will not apply to the Tax Credits by virtue of the provisions set forth in subparagraph (4)(B) of Section 42(h) of the Code.

## ARTICLE VII BORROWER'S COVENANTS

Borrower covenants and agrees with Governmental Lender and Funding Lender that until the full and final payment of all sums owed under the Borrower Loan Documents and the Funding Loan Documents, unless Funding Lender waives compliance in writing:

7.1 Application of Advances. Borrower shall receive the Advances made hereunder in trust, strictly for the purpose of paying the costs identified in the request for such Advance.

7.2 Borrower's Funds. At the time and in amounts required by Funding Lender, Borrower shall deposit Borrower's Funds into the Borrower's Funds Account. Should it appear at any time in Funding Lender's judgment that the sum of undisbursed proceeds of the Borrower Loan and the then balance of the Borrower's Funds Account are insufficient to provide the financing for completion of the Improvements, Borrower shall pay to Funding Lender, within ten days following receipt of written demand by Funding Lender, an amount equal to such deficiency for deposit into the Borrower's Funds Account.

7.3 Lien Priority. At Borrower's sole cost and expense, Borrower shall maintain the Deed of Trust as a first lien on the Property.

7.4 Construction Start and Completion.

7.4.1 Borrower shall not commence construction of the Improvements, including, but not limited to, grading and site clearance, and shall not undertake any other act on the Real Property prior to recordation of the Deed of Trust, the result of which would cause any mechanics' or materialmen's lien thereafter filed to take priority over the lien of the Deed of Trust, unless prior arrangements satisfactory to both Funding Lender and Title Insurer have been made.

7.4.2 Borrower shall cause construction of the Improvements to be commenced not more than 30 days after the recordation of the Deed of Trust.

7.4.3 Borrower shall cause (a) the Improvements to be constructed in a good and workmanlike manner, with materials of high quality, and in accordance with the Plans, Governmental Requirements and sound building and engineering practices, (b) the construction of the Improvements to be prosecuted with diligence and continuity and completed in accordance with the Plans and to otherwise cause Project Completion to occur on or before the Completion Date, free and clear of liens or claims for liens, and (c) all licenses and permits necessary for the occupancy, use or sale of the Improvements to be issued. Borrower shall promptly commence and diligently proceed with the Project.

7.4.4 Borrower shall complete the construction of the Improvements on or before the Completion Date. The construction of the Improvements shall be considered complete for purposes of this Agreement only when (a) the construction of the Improvements has been completed substantially in accordance with the Plans and has been fully paid for subject to Borrower's obligations to pay and discharge or cause the release of any mechanics' lien, (b) all work requiring inspection or certification by any Governmental Authority has been completed and all requisite certificates, approvals and other necessary authorizations (including any required final certificates of occupancy) have been obtained, (c) streets and offsite utilities located within or pertaining to the Property have been completed to the satisfaction of all applicable authorities, and (d) HUD has executed and delivered a permission to occupy the Improvements (Form HUD-92485).

#### 7.5 Change Orders.

7.5.1 Borrower shall not permit any change in the Plans without Funding Lender's prior consent if any such change (a) constitutes a material change in material or equipment specifications, architectural or structural design, or the value or quality of the Improvements, or (b) would result in an increase or decrease in the cost of construction of the Improvements in excess of the Single Change Order Limit for any single change, or in excess of the Aggregate Change Order Limit for all changes.

7.5.2 Borrower shall submit any proposed change in the Plans to Funding Lender not later than ten Business Days prior to the commencement of construction relating to such change.

7.5.3 Borrower shall deliver to Funding Lender in connection with any proposed change requiring Funding Lender's prior written consent (a) a written request therefor, together with working drawings and a written description of the proposed change, submitted on a change order form acceptable to Funding Lender and executed by Borrower, Architect and Contractor, (b) evidence satisfactory to Funding Lender as to the cost and time necessary to complete the proposed change, and (c) evidence satisfactory to Funding Lender that HUD and MOHCD have approved the proposed change to the extent approval is required pursuant to the HUD Commitment and the MOHCD Documents, respectively.

7.5.4 Prior to permitting any change in the Plans requiring Funding Lender's consent, Borrower shall satisfy any condition of Funding Lender's consent, including, but not limited to, depositing funds to cover any increased Construction Costs into the Borrower's Funds Account as required by Funding Lender, which Funding Lender

is authorized to disburse in accordance with the Project Budget and the Disbursement Schedule for payment of such Change Orders upon completion of such changes to Funding Lender's satisfaction.

7.6 Detailed Cost Breakdown. Borrower shall not modify the Project Budget or the Detailed Cost Breakdown without Funding Lender's prior written consent, which consent may be conditioned upon, among other things, (a) Funding Lender's receipt of evidence satisfactory to Funding Lender that the change in the Project Budget or the Detailed Cost Breakdown is reasonably necessary, and (b) Funding Lender's confirmation that, in the opinion of Funding Lender, sufficient funds remain in the undisbursed proceeds of the Borrower Loan (and in the Borrower's Funds Account, if any) to pay for all remaining direct or indirect costs to complete construction of the Improvements.

7.7 Contractor Covenants. Borrower shall (a) require from the Contractor (i) covenants similar to the covenants made by Borrower in Sections 7.3, 7.4 and 7.5, and (ii) a covenant that Contractor will, upon request, deliver to Funding Lender the names of all Persons with whom Contractor has contracted or intends to contract for construction of the Improvements or for furnishing of labor or materials therefore; and (b) cause the Contractor (or if no Contractor, the subcontractors) to cooperate with Funding Lender.

7.8 Construction Contract Only. Borrower shall not execute any contract or become party to any arrangement for the performance of work on the Real Property with any Person except Contractor, and if there is no Contractor, Borrower shall contract only with major subcontractors approved by Funding Lender for the performance of work on the Real Property.

7.9 Paid Vouchers. Borrower shall deliver to Funding Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements.

7.10 Application of Disbursements. Borrower shall receive the disbursements to be made hereunder in trust, strictly for the purpose of paying the costs identified in the request for such disbursement.

7.11 Foundation Completion. Borrower shall notify Funding Lender immediately upon completion of the foundation of the Improvements and, if required by Funding Lender, deliver to Funding Lender, promptly after completion of the foundation, a foundation survey in form satisfactory to Funding Lender and Title Insurer.

7.12 Personal Property Installation. Without Funding Lender's written consent, Borrower shall not install materials, personal property, equipment, or fixtures subject to any security agreement or other agreement or contract giving any Person other than Borrower any right or title to such property.

7.13 Defect Corrections. Upon demand of Funding Lender, Borrower shall correct any defect in the Improvements or any departure from the Plans not approved by Funding Lender.

7.14 Stop Notices; Mechanic's Liens. If (a) a bonded stop notice is received by Funding Lender that Funding Lender believes requires the withholding of funds from any



Advance or from any disbursement of proceeds from the Borrower's Funds Account, or (b) a mechanics' lien, material supplier's lien or other construction lien is recorded against the Real Property, then Borrower shall within 20 days of such receipt or recordation or within five days of Funding Lender's demand (whichever first occurs):

7.14.1 pay and discharge same;

7.14.2 effect the release of same by recording a surety bond in sufficient form and amount issued by a surety acceptable to Funding Lender; or

7.14.3 provide Funding Lender with such other assurance as Funding Lender, in its sole discretion, deems to be satisfactory for the payment of, and protection of Funding Lender from, such lien or bonded stop notice.

7.15 Record Keeping, Financial and Other Information. Borrower shall keep and maintain full and complete books of account and other records reflecting the results of operations of the Property in accordance with accounting practices and principles acceptable to Funding Lender and consistently applied, and shall furnish or cause to be furnished to Funding Lender such financial information concerning Borrower, each Loan Party and the Property as Funding Lender may require, including but not limited to:

7.15.1 within 45 days after the close of each quarter, except for the final quarter of each year, Borrower's and Guarantor's Financial Statement as of the close of such period,

7.15.2 within 120 days of the close of each fiscal year-end, the annual Financial Statements for Borrower and each Loan Party,

7.15.3 within 30 days after written request by Funding Lender, a copy of the most recent filed Federal income tax returns for Borrower and each Loan Party, together with all supporting schedules,

7.15.4 within 30 days after written request by Funding Lender, the Financial Statements of all affiliates and subsidiaries of Borrower and each Loan Party,

7.15.5 within 45 days after the close of each quarter, including the final quarter of each year, a certified statement of Liquid Assets for Guarantor,

7.15.6 within 30 days of the final quarter of each year, a projected cash flow statement for the next succeeding calendar year for Guarantor, and

7.15.7 Promptly, upon request, any other financial information requested by Governmental Lender and Funding Lender.

7.16 Post-Construction Financial Reporting. Upon completion of construction of the Improvements, Borrower shall furnish to Funding Lender, without prior request or demand:

7.16.1 Within thirty (30) days after the close of each calendar month, a monthly Operating Statement, a current rent roll and, if retail property, a schedule of gross sales; and

7.16.2 Within 120 days after the close of the operating year for the Property, an annual Operating Statement.

7.17 Audit and Inspection Rights. Borrower shall permit any representative of Governmental Lender or Funding Lender, at any reasonable time upon prior notice, to inspect, audit and examine and copy the books and records of Borrower and each Loan Party.

7.18 Dividends, Distributions. Following the occurrence and during the continuance of an Event of Default, Borrower shall not (a) make any distribution either in cash, stock or any other property, (b) redeem, retire, repurchase or otherwise acquire any shares or interest in Borrower, or (c) repay any outstanding indebtedness or other advance to any shareholder, partner, member or, if a trust, any trustor or beneficiary of Borrower.

7.19 Payment of Lawful Claims. Borrower shall pay or discharge all lawful claims, including taxes, assessments and governmental charges or levies imposed upon Borrower or Borrower's income or profits or upon any property belonging to Borrower prior to the date upon which any penalties attach; provided that Borrower shall not be required to pay any such tax, assessment, charge or levy, the payment of which is being contested in good faith and by proper proceedings and for which Borrower is maintaining adequate reserves in accordance with generally accepted accounting principles.

7.20 Payment of Costs. Borrower shall pay all costs and expenses incurred by Funding Lender in connection with the enforcement by Funding Lender of any of Borrower's obligations under this Agreement or the other Borrower Loan Documents, and the preparation of this Agreement and the other Borrower Loan Documents, including but not limited to (a) all appraisal fees, cost engineering and inspection fees, legal fees and expenses (including the fees and costs of in-house counsel and legal staff), accounting fees, environmental consultant fees and costs of title insurance, survey, seismic, escrow and other fees and charges, and (b) all taxes and recording expenses, including stamp taxes, if any. Borrower shall pay all costs and expenses set forth in Exhibit C.

7.21 Approval of Easements and Other Documents. Borrower shall submit to Funding Lender for Funding Lender's approval all prospective easements, private or public dedications, service provider contracts, and declarations of covenants, conditions and restrictions intended to affect the Real Property and Funding Lender's approval shall be obtained in writing prior to the execution or granting thereof by Borrower. Borrower's request for approval of any prospective easement or private or public dedication shall be accompanied by a drawing or survey showing the precise location of such prospective easement or private or public dedication. Borrower's request for approval of any prospective declaration of covenants, conditions and restrictions shall be accompanied by a description of the property affected thereby.

7.22 Compliance With Laws; Preservation of Rights. Borrower shall comply promptly with all Governmental Requirements, and shall obtain, preserve and maintain in good standing,

as applicable, all rights, privileges and franchises necessary or desirable for the operation of the Property and the conduct of Borrower's business thereon and therefrom. If payment of the indebtedness secured by the Deed of Trust or any of the other Security Documents is to be insured or guaranteed by any governmental agency, Borrower shall comply with all rules, regulations, requirements and statutes relating thereto or provided in any commitment issued by any such agency to insure or guarantee payment of such indebtedness.

7.23 Notices. Borrower shall promptly notify Funding Lender and the Governmental Lender in writing of:

7.23.1 the occurrence of any Event of Default;

7.23.2 any litigation affecting Borrower, any Loan Party or the Property, or any other circumstance, event or occurrence that may reasonably be expected to result in a material adverse change in (a) the financial condition of Borrower or any Loan Party, (b) Borrower's ability to timely perform any of Borrower's obligations under any of the Borrower Loan Documents and the Funding Loan Documents, (c) the physical condition or operation of the Property; or (d) the tax exempt status of the interest payable on the Governmental Lender Note. and

7.23.3 any notice that the Improvements or construction thereof, the Property or Borrower's business fails in any respect to comply with any applicable Governmental Requirement.

7.23.4 any proposed amendment, modification or termination of the Tax-Exempt Regulatory Agreement.

7.24 Indemnity.

7.24.1 In addition to its other obligations hereunder, and in addition to any and all rights of reimbursement, indemnification, subrogation and other rights of Governmental Lender, the Fiscal Agent or Funding Lender pursuant hereto and under law or equity, to the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Funding Lender, the Fiscal Agent, and each of their respective partners, officers, directors, employees, attorneys and agents past, present or future (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) (hereinafter, the "Liabilities") to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to:

(a) The Borrower Loan Documents and the Funding Loan Documents or the execution or amendment thereof or in connection with transactions contemplated thereby, including the sale, transfer or resale of the Borrower Loan or the Funding Loan;

(b) Any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan, the Funding 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, construction, or installation of, the Project or any part thereof;

(c) Any lien or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Funding Lender hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions on the Governmental Lender, the Fiscal Agent or the Funding Lender in respect of any portion of the Project (Other than franchise taxes or income taxes based upon the capital or income of the Fiscal Agent or Funding Lender);

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

(e) The enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender related to remedies under, this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents;

(f) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower made in the course of Borrower's applying for the Borrower Loan or the Funding Loan or contained in any of the Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party;

(g) Any breach (or alleged breach) by Borrower of any material representation, warranty or covenant made in or pursuant to this Borrower Loan Agreement or in connection with any written or oral representation, presentation, report, appraisal or other information given or delivered by Borrower or General Partner or their Affiliates to Governmental Lender, the Fiscal Agent, the Funding Lender, or any other Person in connection with Borrower's application for the Borrower Loan and the Funding Loan (including, without limitation, any breach or alleged breach by Borrower of any agreement with respect to the provision of any substitute credit enhancement, if applicable);

(h) Any failure (or alleged failure) by Borrower, the Funding Lender or the Governmental Lender to comply with applicable federal and state laws and regulations pertaining to the making of the Borrower Loan and the Funding Loan;

(i) The Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, construction of, the Project or any part thereof;

(j) The use of the proceeds of the Borrower Loan and the Funding Loan;

(k) Any finder's fee, brokerage commission, loan commission or other sum in connection with the consummation of the transactions contemplated hereby;

(l) The development of the Property, construction of the Improvements or the ownership, operation or use of the Property;

(m) Any declaration of taxability of interest on the Governmental Lender Note, or allegations (or regulatory inquiry) that interest on the Governmental Lender Note is taxable, for federal tax purposes (other than any portion of the Governmental Lender Note owned by a "substantial user" of the Project or a "related person" within the meaning of Section 147 of the Code);

(n) The issuance of any Set Aside Letter, whether such matters are based on theories of derivative liability, comparative negligence or otherwise, at Borrower's own cost and with counsel approved by Funding Lender, unless Funding Lender elects to conduct its own defense at the expense of Borrower;

(o) The defeasance and/or redemption, in whole or in part, of the Borrower Note;

(p) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any closing certificate, offering statement or disclosure or continuing disclosure document for the Governmental Lender Note or any of the documents relating to the Governmental Lender Note to which the Borrower is a party, or any omission or alleged omission from any offering statement or disclosure or continuing disclosure document for the Governmental Lender Note 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; or

(q) The Funding Lender's acceptance or administration of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties as Funding Lender thereunder or under any of the documents relating to the Governmental Lender Note to which it is a party.

7.24.2 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. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party 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. Notwithstanding the foregoing, the foregoing indemnification of the Governmental Lender

or any related Indemnified Party shall not extend to any damages that are caused by the willful misconduct of such Indemnified Party and, in the case of the foregoing indemnification of the Fiscal Agent, the Funding Lender, or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party.

7.24.3 Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement or the Tax-Exempt Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 7.24 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Governmental Lender and the Funding Lender have consented in writing to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

7.24.4 The liability of Borrower under this indemnity shall not be limited or impaired in any way by (a) the release, reconveyance, foreclosure or other termination of the Deed of Trust, the payment in full of the Borrower Loan, any bankruptcy or other bankruptcy proceeding, or any other event whatsoever; (b) any provision in the Borrower Loan Documents or the Funding Loan Documents or applicable law limiting Borrower's liability or any Indemnified Party's recourse or rights to a deficiency judgment; or (c) any change, extension, release, inaccuracy, breach or failure to perform by any party under the Borrower Loan Documents or the Funding Loan Documents (other than a failure to perform by the Funding Lender). Borrower's liability hereunder is direct and primary and not secondary as a guarantor or surety. For as long as those certain documents executed in connection with the capital advance from HUD as described in the HUD Commitment are outstanding, enforcement by the Funding lender of any indemnification provisions in the Loan Documents will not and shall not result in any monetary claim against the Project, the proceeds of the capital advance from HUD, any reserve or deposit required by HUD in connection with the capital advance from HUD, or the rents or other income from the Project other than the residual receipts authorized for release by HUD, without the prior written consent of HUD.

7.24.5 This indemnity is not intended to give rise to, and shall not give rise to, a right of Funding Lender to claim payment of the principal and accrued interest with respect to the Borrower Loan as a result of a claim under this Section 7.24.

7.24.6 The rights of any persons to indemnity hereunder shall survive the final payment or defeasance of the Borrower Loan and the Funding Loan and, in the case of Funding Lender or Fiscal Agent, any resignation. The provisions of this Section 7.24 shall survive the termination of this Borrower Loan Agreement.

7.25 Performance of Acts. Upon request by Funding Lender, Borrower shall perform all acts that may be necessary or advisable to perfect any lien or security interest provided for in the Borrower Loan Documents or the Funding Loan Documents to carry out the intent of the Borrower Loan Documents or the Funding Loan Documents.

7.26 Notice of Change. Borrower shall give Funding Lender prior written notice of any change in the location of Borrower's place of business (or Borrower's chief executive office if Borrower has more than one place of business) or Borrower's name, business structure or place of incorporation or other formation, and, unless otherwise approved by Funding Lender in writing, Borrower shall maintain all tangible Personal Property (other than the books and records) at the Real Property and all books and records at Borrower's place of business (or chief executive office if Borrower has more than one place of business).

7.27 Tax Certificate. Borrower shall timely comply with all of its obligations under the Tax Certificate (which Tax Certificate is hereby incorporated herein as fully as if set forth at length herein).

7.28 Funding Loan Documents. Borrower shall timely perform its obligations under the Funding Loan Documents.

7.29 Regulatory Agreements. Borrower hereby covenants and agrees (a) to comply with all provisions of the Regulatory Agreements and to advise Funding Lender and Governmental Lender in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of Borrower set forth in the Regulatory Agreements; (b) upon written direction by Governmental Lender, to cooperate fully and promptly with Governmental Lender in enforcing the terms and provisions of the Tax-Exempt Regulatory Agreement; and (c) to file in accordance with the time limits established by the Regulatory Agreements all reports and certificates required thereunder, and the Certification to the Secretary of the Treasury required by the Tax-Exempt Regulatory Agreement. Neither Governmental Lender nor Funding Lender shall incur any liability in the event of any breach or violation of any of the Regulatory Agreements by Borrower, and Borrower agrees to indemnify the Indemnified Parties from any claim or liability for any such breach under the Regulatory Agreements. If an event of default occurs under the Tax-Exempt Regulatory Agreement, the Governmental Lender may declare an event of default or exercise any available remedy under the Tax-Exempt Regulatory Agreement, however, the Governmental Lender may not, without the prior written consent of the Funding Lender, (i) declare the principal of, and the interest accrued on, the Borrower Note to be immediately due and payable, (ii) declare an event of default under the other Borrower Loan Documents, (iii) commence foreclosure proceedings under the Deed of Trust, or (iv) exercise any other remedy under the Borrower Loan Documents, except with respect to enforcement of Reserved Rights.

7.30 Prohibited Activities. Without Funding Lender's prior written consent Borrower shall not:

7.30.1 Engage in any business activities substantially different from Borrower's present business or liquidate or dissolve Borrower's business;

7.30.2 Suffer or permit any liens or encumbrances to be placed on the Property other than the Permitted Liens.

7.30.3 Transfer any interest in the Property (other than (1) the lease of residential units within the Property for a term of one-year or less and otherwise in

compliance with the Regulatory Agreements, (2) the Commercial Master Lease Agreement, and (3) dispositions of Personal Property expressly permitted by the Borrower Loan Documents) without the prior written consent of Funding Lender, which consent may be withheld in Funding Lender's absolute discretion. In connection with the foregoing consent requirements, Borrower acknowledges that Funding Lender relied upon Borrower's particular expertise in entering into this Agreement and continues to rely on such expertise to ensure the satisfactory completion and operation of the Property. Transfers requiring Funding Lender's prior written consent shall include, without limitation, (a) involuntary transfers and transfers by operation of law; (b) liens and assignments as security for obligations, whether voluntary or involuntary; and (c) except as otherwise expressly permitted by the terms of the Deed of Trust, the issuance, sale, assignment, disposition, encumbering or other transfer of any direct or indirect ownership interest in Borrower, any Loan Party or any general partner, member or shareholder of any Loan Party, whether voluntary or involuntary, by operation of law or otherwise. No sale, lease or other transfer shall relieve Borrower from primary liability for its obligations under the Borrower Loan Documents or the Funding Loan Documents, and Borrower shall deliver to Funding Lender all documents reasonably required by Governmental Lender to evidence its continuing liability. No consent by Funding Lender in connection with any Transfer shall constitute (x) a consent by Governmental Lender under the Tax-Exempt Regulatory Agreement to any sale, assignment, encumbrance, transfer or other disposition of all or any part of the Property, or any direct or indirect interest therein, or (y) a waiver by Governmental Lender of any term or condition of the Tax-Exempt Regulatory Agreement. Notwithstanding the foregoing, (a) Tax Credit Investor may transfer its limited partnership interests in Borrower to any limited partnership or limited liability company in which MUFG Union Bank, N.A., or an affiliate thereof is the general partner or managing member; provided that following such transfer, Tax Credit Investor shall remain jointly and severally liable for all contributions to be made by Tax Credit Investor under the Partnership Agreement, (b) the transfer of limited partnership interests or non-managing membership interest in Tax Credit Investor shall not constitute a "transfer" hereunder, and (c) subject to Funding Lender's consent, which shall not be unreasonably withheld, Tax Credit Investor may remove and replace the General Partner in accordance with the Partnership Agreement following a default by the General Partner thereunder.

7.30.4 Amend or modify in any material respect any organizational documents pertaining to Borrower or any Loan Party Notwithstanding the foregoing, Borrower may modify its partnership agreement in connection with permitted transfers as described herein provided (a) no additional material changes are made thereto and (b) copies of any such modifications are provided to Funding Lender within ten (10) days of execution.

7.30.5 Cause or otherwise consent to the formation of any community facilities district that includes the Property or any part of the Property pursuant to the Mello-Roos Community Facilities Act of 1982, any assessment district that includes the Property or any part of the Property pursuant to the Municipal Improvement Act of 1913, or any other comparable or similar district, area or territory that includes the Property or any part of the Property pursuant to any Law, or cause or otherwise consent to the levying of special taxes by any community facilities district against the Property or any part thereof, the levying of assessments by any such assessment district against the Property or any part



thereof, or the levying of assessments, taxes and/or other impositions by any such district, area or territory.

7.30.6 Enter into any new Funding Loan Documents, or amend, modify, supplement, cancel or terminate any Funding Loan Documents, including, without limitation, the Tax-Exempt Regulatory Agreement.

7.30.7 Take, or omit to take, any action that, if taken or omitted, would jeopardize or adversely affect the tax-exempt status of the interest payable on the Governmental Lender Note.

7.30.8 Accept any deed or other restriction or enter into any regulatory or other similar agreement regulating or restricting the use or operation of the Property or restricting the tenant income and/or rent levels for the Property in connection with the allocation to the Property of federal low-income housing tax credits or otherwise.

7.30.9 Amend, modify, supplement, cancel or terminate the HUD Commitment or the TOD Commitment.

7.30.10 Amend, modify, supplement, cancel or terminate the APRAC Contract or the PRAC Contract.

7.30.11 Amend, modify, supplement, cancel or terminate the Commercial Master Lease Agreement.

7.31 Set Aside Letters. In the event Funding Lender issues, at Borrower's request, any Set Aside Letter, Borrower represents, warrants and agrees as follows:

7.31.1 The sum that Borrower requests Funding Lender to allocate for Bonded Work shall be sufficient to pay for the costs of construction and completion of the Bonded Work in accordance with any agreement between Borrower and the Governmental Authority and a copy of such agreement shall be furnished to Funding Lender by Borrower as a condition precedent to the issuance by Funding Lender of any Set Aside Letter;

7.31.2 Funding Lender is irrevocably and unconditionally authorized to disburse to the Governmental Authority or Surety all or any portion of proceeds of the Borrower Loan upon a demand of the Governmental Authority or Surety made in accordance with the terms and conditions of the Set Aside Letter;

7.31.3 Any disbursement or payments that Funding Lender makes or may be obligated to make under any Set Aside Letter, whether made directly to the Governmental Authority, Surety, or to others for completion of all or part of the Bonded Work, shall be deemed an Advance to or for the benefit of Borrower; and

7.31.4 Funding Lender shall have no obligation to release any security under the Borrower Loan Documents unless and until Funding Lender has received a full and final written release of its obligations under each Set Aside Letter.

7.31.5 The fee for issuing each Set Aside Letter hereunder shall be determined when each Set Aside Letter is issued by Funding Lender.

7.32 Management of Property. Borrower shall not enter into any agreement providing for the management or operation of the Real Property or the Improvements without the prior written consent of Funding Lender. The Funding Lender approves Mercy Housing Management Group, a Nebraska not-for-profit corporation, as the property management agent.

7.33 Leases.

7.33.1 **Negative Covenants**. In addition to the provisions of the Deed of Trust, and regardless of whether or not Funding Lender's prior written approval is required, Borrower shall not, without Funding Lender's prior written consent: (a) grant to any tenant any right or option to purchase the Property or any portion thereof, or any other present or future interest in any portion of the Property other than the right to use and occupy the leased premises, (b) grant to any tenant the right to terminate its lease if the lease of one or more other tenant is terminated, or (c) accept payment of rent from any tenant in any form other than cash or cash equivalent.

7.33.2 **Affirmative Covenants**. In addition to the provisions of the Deed of Trust, Borrower shall (a) document all Leases covering any portion of the Property or the Improvements on a standard lease form approved by Funding Lender (with no material change), (b) not enter into any lease for any Unit with a potential tenant unless such lease is an Acceptable Unit Lease and the rent charged thereunder complies with the Governmental Documents, the Ground Lease, all Regulatory Agreements and is consistent with the rent proforma submitted by Borrower and approved by Funding Lender, (c) other than the Commercial Master Lease Agreement, enter into Leases only with bona fide third party tenants in an arm's length transaction on such other terms and conditions as are reasonably acceptable to Funding Lender, (d) whether or not Funding Lender's prior written approval is required, deliver to Funding Lender, upon Funding Lender's request, all new Leases (together with all financial information obtained by Borrower regarding the tenant) and all modifications, amendments and consents to assignment or subletting of existing Leases, and (e) promptly notify Funding Lender in writing of (i) the termination, abandonment, or surrender of any Lease, and (ii) claims of any breach of any of Borrower's obligations as landlord under any Lease.

7.34 Compliance. Upon the request of Funding Lender from time to time and at any time certification of the matters set forth below is provided to Governmental Lender or any Governmental Authority, Borrower shall promptly provide to Funding Lender the following:

7.34.1 Borrower's certification of the Property's compliance with the rules qualifying the interest payable on the Governmental Lender Note for federal tax exemption pursuant to Section 142(d) of the Code and the regulations issued under Section 142(d) and the requirements of the Regulatory Agreements;

7.34.2 Property has received or receives a tax credit allocation, Borrower's certification of the Property's compliance with the requirements of Section 42 of the Code

and the regulations issued under Section 42 and if the tax credits have not yet been syndicated, Borrower's report regarding progress in syndicating the tax credit allocation until the syndication is completed; and

7.34.3 Such other documents, certificates and other information as may be deemed necessary or appropriate to enable Funding Lender to perform the functions under this Agreement or the Funding Loan Agreement.

7.35 HUD and TOD Commitment. Borrower shall comply with all conditions of the HUD Commitment and the TOD Commitment, and shall execute all documents necessary to close the financings contemplated by each of the HUD Commitment and TOD Commitment.

7.36 Compliance with the APRAC Contract and PRAC Contract. Borrower hereby agrees to observe and comply with all provisions of the APRAC Contract and PRAC Contract. Borrower shall advise Funding lender in writing promptly upon learning of any default with respect to the APRAC Contract or PRAC Contract..

7.37 Borrower's Equity. Borrower shall provide evidence as Funding Lender may require evidencing expenditure of Borrower's Equity on Project costs in accordance with this Agreement of at least \$11,780,596 by April 30, 2017.

7.38 Rent Restrictions. Borrower shall comply, and cause the tenants occupying the Units to comply, with the Rent Restrictions, including, without limitation, maintaining all appropriate records.

7.39 Preservation of Tax Credits. Borrower shall observe and perform all obligations imposed on Borrower for the purpose of obtaining, maintaining and utilizing the maximum amount of Tax Credits allocated pursuant to the Tax Credit Allocation Documents and to operate the Project, or to cause the appropriate parties to operate the Project, in accordance with all applicable provisions of the Code and the R&T Code, if applicable, and all other statutes and regulations governing the Tax Credits including, without limitation, the monitoring and reporting requirements set forth in the Qualified Allocation Plan.

7.40 GP Contribution. Borrower shall provide evidence as Funding Lender may require evidencing General Partner's capital contribution to Borrower of at least \$1,300,000 by April 30, 2017.

7.41 Compliance With Subordinate Lender Documents, Commercial Master Lease Agreement, Ground Lease and Regulatory Agreements. Borrower won't amend, modify, supplement, cancel or terminate, and shall observe and comply with all of the terms and conditions set forth in the Subordinate Lender Documents, the Commercial Master Lease Agreement, the Ground Lease and all Regulatory Agreements.

7.42 Payment of Development Fee. Not pay Mercy Housing California more than \$702,000 of its development fee on or prior to the Closing Date, and more than \$2,002,000 of its development fee prior to the Completion Date.

7.43 IRS Form 8609 and California FTB Form 3521A. Borrower shall deliver to Funding Lender the IRS Form 8609 and California FTB Form 3521A (if applicable) within five (5) business days following Borrower's receipt of the same from the Allocation Committee.

7.44 Obtaining and Maintaining Real Property Tax Exemption. Borrower shall cause General Partner to maintain its status as an "eligible non-profit corporation" (as such term is used in Section 214(g) of the R&T Code) and take all actions and provide such certifications as may be necessary from time to time so that the Project (other than the portion of the Project subject to the Commercial Master Lease Agreement) shall be exempt from the payment of real property taxes in accordance with the provisions of Section 214(g) of the R&T Code.

7.45 Draws under Subordinate Lender Loan and Disbursement of Borrower's Funds. Request and receive disbursements of the entire Subordinate Lender Loan (except for the \$5,000,000 of the MOHCD Loan to be disbursed after Project Completion, the ten percent (10%) hard cost retention under the MOHCD Loan, and \$121,148 of the MOHCD Loan representing the reimbursement amount under the PRAC Contract) prior to requesting disbursements of Borrower's Funds.

7.46 Intentionally Omitted.

7.47 Intentionally Omitted.

7.48 Draw Requests. Borrower shall furnish to Funding Lender such statements and other financial data as Funding Lender shall from time to time reasonably request in writing with respect to disbursements made under the Subordinate Lender Loan, if any. Borrower shall deliver, or cause to be delivered, to Funding Lender (concurrently with the delivery of the same to Subordinate Lender) copies of all draw requests (and accompanying back-up documentation), if any, submitted to the Subordinate Lender with respect to disbursements made under the Subordinate Lender Loan from time to time.

7.49 Progress Reports and Annual Project Status Reports; Allocation Committee Notices. Borrower shall promptly deliver to Funding Lender copies of all "Progress Reports" all "Annual Project Status Reports" and all other reports delivered by Borrower to the Allocation Committee or Subordinate Lender from time to time including, without limitation, those reports required by the terms and conditions of the Qualified Allocation Plan or as otherwise required under the terms of the Tax Credit Allocation Documents; such reports shall be delivered to Funding Lender concurrently with the delivery of the same to the Allocation Committee. Borrower shall promptly deliver to Funding Lender copies of all notices and/or correspondence it receives from time to time from the Allocation Committee to the extent the same relate to the allocation of Tax Credits as evidenced by the Carryover Allocation.

7.50 Funding of Permanent Loan. Upon funding (partial or full) of the loan made pursuant to or authorized by the HUD Commitment and/or TOD Commitment, Borrower shall promptly deliver to Funding Lender the net proceeds of such loan funding to paydown the outstanding balance of the Borrower Loan.

7.51 Intentionally Omitted.

7.52 Tax Covenants of the Borrower. The Borrower covenants and agrees that:

7.52.1 It will at all times comply with the terms of the Tax Certificate and the Tax-Exempt Regulatory Agreement;

7.52.2 It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Governmental Lender Note to be included in gross income, for federal income tax purposes, and will take such action as may be necessary in the opinion of Tax Counsel to continue such exclusion from gross income, including, without limitation, the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Tax-Exempt Regulatory Agreement);

7.52.3 No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Governmental Lender Note;

7.52.4 It will comply with the requirements of Section 148 of the Code and the Regulations issued thereunder throughout the term of the Governmental Lender Note and will not make any use of the proceeds of the Governmental Lender Note, or of any other funds which may be deemed to be proceeds of the Governmental Lender Note under the Code and the related regulations of the United States Treasury, which would cause the Governmental Lender Note to be "arbitrage bonds" within the meaning of Section 148 of the Code;

7.52.5 If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Governmental Lender Note becoming includable in gross income for purposes of federal income tax purposes, it will promptly give written notice of such circumstance, event or condition to the Governmental Lender, the Fiscal Agent, and the Funding Lender.

In the event of a conflict between the terms of this Section 7.52 and the Tax Certificate, the terms of the Tax Certificate shall control.

## **ARTICLE VIII EVENTS OF DEFAULT**

The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder and, at Funding Lender's option, exercisable in its sole discretion, shall terminate any obligation of Funding Lender to make any Advance or disbursement of Borrower's Funds. Upon the occurrence of an Event of Default, Funding Lender shall also have the option, exercisable in its sole discretion, to declare the Borrower Loan immediately due and payable, without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demand of any kind or character; provided, however, upon the occurrence of any Event of Default that, under the terms of any Loan Document or Funding Loan Document, results in the Borrower Loan becoming automatically due and payable, such occurrence shall result in automatic acceleration of payments of all principal and interest due under the Borrower Loan:

8.1 Borrower fails to (a) pay within five (5) days when due (unless the Maturity Date is the next due date, then Borrower shall pay on the Maturity Date) any sums payable under any Borrower Loan Document or Funding Loan Document after giving effect to any express curative provisions (if any) provided herein or therein, or (b) deposit with Funding Lender any of Borrower's Funds within five (5) days as and when required under this Agreement.

8.2 Borrower has breached, or defaulted under, any term, condition or provision contained in (a) any Loan Document that is not specifically referred to in this Section 8, which is not cured within ten (10) days of written notice from Funding Lender, or such other time as is specifically set forth in the Loan Documents; provided that, if cure cannot reasonably be effected within such 10-day period, such failure shall not be an Event of Default hereunder so long as Borrower promptly (in any event, within ten (10) days after receipt of such notice) commences cure, and thereafter diligently (in any event, within sixty (60) days after receipt of such notice) prosecutes such cure to completion, (b) the Tax-Exempt Regulatory Agreement or other Funding Loan Document, which is not cured within the applicable notice and cure period set forth therein, or (c) the Ground Lease, which is not cured within any applicable notice and cure period set forth therein applicable to the Borrower.

8.3 Borrower or Contractor does not (a) commence construction of the Improvements within the time period required in this Agreement, (b) proceed diligently and continuously with the construction of the Improvements, or the construction of the Improvements is otherwise discontinued for a period of five consecutive Business Days or more, for any reason other than events of Force Majeure, or (c) complete the construction of the Improvements and cause the issuance of all licenses and permits necessary for the occupancy and use of the Improvements, on or before the Completion Date.

8.4 Any representation or warranty by Borrower or any Loan Party made hereunder or under any other Loan Document proves to be materially false or misleading.

8.5 Any person obtains an order or decree in any court of competent jurisdiction prohibiting the construction of the Improvements or Borrower or Governmental Lender and Funding Lender from performing this Agreement, and such order or decree is not vacated within ten days after the granting thereof.

8.6 Borrower neglects, fails or refuses to keep in full force and effect any permit or approval with respect to the construction of the Improvements or the use and occupancy thereof.

8.7 Any bonded notice to withhold in connection with the Borrower Loan is validly served on Governmental Lender or Funding Lender and within five days of the receipt of such service (a) is not discharged, or (b) if the amount claimed is disputed in good faith by Borrower or Contractor, an appropriate counter bond or equivalent acceptable to Funding Lender is not provided to Funding Lender.

8.8 The imposition, voluntary or involuntary, of any lien or encumbrance upon the Property without Funding Lender's written consent, unless an adequate counter bond is provided and such lien is accordingly released within ten days of the imposition of such lien.

8.9 Funding Lender fails to have an enforceable first lien on or security interest in any property given as security for the Borrower Loan, except as permitted by Funding Lender in writing.

8.10 An event or condition (other than a casualty event) occurs or arises that materially impairs Borrower's intended use of the Property.

8.11 Borrower neglects, fails or refuses to keep in force and effect any insurance coverage required by Funding Lender.

8.12 Any Funding Loan Document, Subordinate Lender Document, the Commercial Master Lease Agreement, the Ground Lease or Regulatory Agreement is amended, modified or terminated without Funding Lender's prior written consent.

8.13 Interest on the Governmental Lender Note is no longer excludable from the gross income of the holder thereof for federal income tax purposes.

8.14 Borrower modifies, amends or terminates, or otherwise fails to consummate the HUD Closing or TOD Closing, or takes any action that might or does result in the modification, amendment, termination or expiration of either of the HUD Commitment or TOD Commitment without Funding Lender's written consent.

8.15 The occurrence of an event of default by Borrower under the Subordinate Lender Documents, the Commercial Master Lease Agreement, APRAC Contract, PRAC Contract or Regulatory Agreement(s) (following the expiration of any curative periods set forth therein).

8.16 Borrower modifies, amends or terminates the APRAC Contract or the PRAC Contract unless such modification, amendment or termination is required by applicable federal laws or regulations applicable to the APRAC Contract or the PRAC Contract, respectively.

8.17 The failure of Borrower to comply with any of the terms and conditions of the Tax Credit Allocation Documents, the failure of Borrower to cause Project Completion to occur on or before the Completion Date, or the failure of Borrower to comply with any of the monitoring or reporting requirements set forth in the Qualified Allocation Plan.

8.18 The determination by Funding Lender (in Funding Lender's reasonable opinion) at any time that (i) paragraph (1) of Section 42(h) of the Code will apply to the allocation of the Tax Credits on or before April 30, 2017, or (ii) Project Completion will not occur on or before the Completion Date.

8.19 The maximum amount of Tax Credits reserved by the Allocation Committee under the Preliminary Reservation is reduced by the Allocation Committee which results in a reduction of the Tax Credit Investor's capital contributions to Borrower which, together with other financing or equity investment permitted under the Borrower Loan Documents, would prevent Borrower from fully repaying the Borrower Loan on or before the Maturity Date, as determined by Funding Lender in its sole discretion.

Tax Credit Investor shall have the right to cure any default by Borrower hereunder within the time periods (if any) set forth herein for such cure and Funding Lender agrees to accept such cure as if cured by Borrower.

## **ARTICLE IX** **REMEDIES**

If an Event of Default occurs under this Agreement:

9.1 Governmental Lender and Funding Lender (whether directly or by directing the actions of the Fiscal Agent) may exercise any right or remedy that it has under any of the Borrower Loan Documents, or that is otherwise available at law or in equity or by statute, and all of Governmental Lender's and Funding Lender's rights and remedies shall be cumulative.

9.2 Funding Lender shall have the right, in its sole discretion, to enter the Property and take possession of it, whether in person, by agent or by court-appointed receiver, to perform any and all work and labor necessary to complete the Improvements substantially in accordance with the Plans, and to collect rents and otherwise protect its collateral and exercise its rights and remedies under the Borrower Loan Documents. If Funding Lender exercises any of the rights or remedies provided in this Section, that exercise shall not make Funding Lender a partner or joint venturer of Borrower. All sums that are expended by Funding Lender in completing the Improvements or in preserving Funding Lender's collateral for the Borrower Loan shall be considered an additional loan to Borrower secured by the Deed of Trust and Security Documents and shall bear interest at the Default Rate.

9.3 Notwithstanding the exercise of any remedy described above or the existence of any Event of Default, Funding Lender, at its option, may make any Advance or disburse any or all of Borrower's Funds without (a) waiving Funding Lender's right to demand payment of the Borrower Loan, (b) incurring liability to make any other or further Advances, and (c) waiving Funding Lender's right to require compliance with Borrower's covenant to correct any defect in the Improvements or departure from the Plans not approved by Funding Lender.

## **ARTICLE X** **POWER OF ATTORNEY**

Borrower hereby constitutes and appoints Funding Lender as Borrower's true and lawful attorney in fact with the power and authority, including full power of substitution upon the occurrence and during the continuance of an Event of Default, as follows:

10.1 To take possession of the Property and complete the Improvements.

10.2 To use any of Borrower's Funds and any undisbursed proceeds of the Borrower Loan for the purpose of completing the Improvements and for other costs related thereto.

10.3 To make such additions and changes and corrections in the Plans as may be necessary or desirable, as Funding Lender, in Funding Lender's sole discretion, deems proper to complete the Improvements.



10.4 To employ such contractors, subcontractors, agents, architects, engineers and inspectors as are required to complete the Improvements.

10.5 To employ security personnel to protect the Property from damage.

10.6 To pay, settle or compromise all existing bills and claims against Borrower's Funds or any undisbursed proceeds of the Borrower Loan as may be necessary or desirable or as Funding Lender deems proper, in Funding Lender's sole discretion, for the completion of the Improvements, or for the protection or clearance of title to the Property, or for the protection of Funding Lender's interest with respect thereto.

10.7 To prosecute and defend all actions and proceedings in connection with the construction of the Improvements.

10.8 To record any notices of completion, cessation of labor and other notices that Funding Lender deems necessary to protect any interest of Funding Lender under the provisions of this Agreement, the Deed of Trust, any of the Security Documents, or any other Borrower Loan Document.

10.9 To execute, acknowledge, and deliver all instruments and documents in the name of Borrower that may be necessary or desirable or as Funding Lender deems proper, in Funding Lender's sole discretion, and to perform any and every act with respect to the construction of the Improvements that Borrower might perform on Borrower's own behalf.

This Power of Attorney is a power coupled with an interest and cannot be revoked. Any costs or expenses incurred by Funding Lender in connection with any acts performed by Funding Lender under or pursuant to this Section shall be paid by Borrower. If such costs are not paid by Borrower upon demand of Funding Lender, interest shall accrue thereon at the Default Rate. Any such advances made or costs or expenses incurred by Funding Lender shall be secured by the Deed of Trust and Security Documents.

## **ARTICLE XI**

### **LIMITATIONS ON LIABILITY**

11.1 Limitation on Liability of Governmental Lender. Notwithstanding anything herein or in any other instrument to the contrary, the Governmental Lender shall not be obligated to pay the principal or prepayment price of or interest on the Funding Loan, except from moneys and assets received by the Fiscal Agent or the Funding Lender on behalf of the Governmental Lender pursuant to this Borrower Loan Agreement. Neither the faith and credit nor the taxing power of the State, nor any public agency or political subdivision of the State, is pledged to the payment of the principal or prepayment price of or interest on the Funding Loan. The Governmental Lender 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 Borrower Loan Agreement or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement.

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

11.2 Waiver of Personal Liability. No member, officer, agent or employee of the Governmental Lender or any commissioner, officer, agent or employee of the Governmental Lender shall be individually or personally liable for the payment of any principal or prepayment price of or interest on the Funding Loan or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Borrower 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 Borrower Loan Agreement.

11.3 Limitation on Liability of Funding Lender's Officers, Employees, Etc. Borrower assumes all risks of the acts or omissions of the Governmental Lender and the Funding Lender, provided, however, this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the Governmental Lender and the Funding Lender at law or under any other agreement. None of Governmental Lender, the Fiscal Agent and the Funding Lender, nor any of its commissioners, officers, directors, employees or agents shall be liable or responsible for (i) any acts or omissions of the Governmental Lender and the Funding Lender; or (ii) the validity, sufficiency or genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the Governmental Lender and the Funding Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes willful misconduct on the part of the Governmental Lender, or gross negligence or willful misconduct on the part of the Funding Lender.

None of the Governmental Lender, the Fiscal Agent, the Funding Lender, the other Beneficiary Parties or any of their respective officers, directors, employees or agents shall be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. The Governmental Lender and the Funding Lender shall not be liable for any debts or claims accruing in favor of any such parties against the Borrower or others or against the Project or the Mortgaged Property. The Borrower is not and shall not be an agent of the Governmental Lender and the Funding Lender for any purpose. The Governmental Lender and the Funding Lender are not joint venture

partners with the Borrower or with each other in any manner whatsoever. Prior to default by the Borrower under this Borrower Loan Agreement and the exercise of remedies granted herein, the Governmental Lender and the Funding Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by the Governmental Lender and the Funding Lender. Approvals granted by the Governmental Lender and the Funding Lender for any matters covered under this Borrower Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of the Borrower.

Any obligation or liability whatsoever of the Governmental Lender and the Funding Lender that may arise at any time under this Borrower Loan Agreement or any other Borrower Loan Document shall be satisfied, if at all, out of the Funding Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the Project or any of the Governmental Lender's or the Funding Lender's shareholders (if any), directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

11.4 City Contracting Provisions. The Borrower and the Funding Lender each covenant and agree to comply with the provisions set forth in Exhibit D to this Borrower Loan Agreement, which is incorporated in and made a part of this Borrower Loan Agreement by this reference.

## **ARTICLE XII** **MISCELLANEOUS**

12.1 Disclaimer. WHETHER OR NOT GOVERNMENTAL LENDER OR FUNDING LENDER ELECT TO EMPLOY ANY OR ALL OF THE REMEDIES AVAILABLE TO GOVERNMENTAL LENDER OR FUNDING LENDER UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, NEITHER GOVERNMENTAL LENDER NOR FUNDING LENDER SHALL BE LIABLE FOR THE CONSTRUCTION OF, OR FAILURE TO CONSTRUCT, COMPLETE OR PROTECT, THE IMPROVEMENTS.

12.2 Notices. All notices, demands, requests or other communications (including communications by facsimile transmission or e-mail) provided for or allowed hereunder shall be in writing and shall be effective only if the same is delivered by personal service, mailed (postage prepaid, return receipt requested), faxed, or e-mailed to the address given with the signatures at the end of this Agreement. Any such notice shall be deemed to have been received by the addressee, (a) if mailed, on the third day following the date of such mailing, or (b) if faxed or e-mailed, upon telephone confirmation of receipt. Any party may at any time change its address for such notices by delivery or mailing the other parties to this Agreement a notice of such change.

12.3 Waivers. Any forbearance, failure or delay by Funding Lender in exercising any right, power or remedy shall not be deemed a waiver thereof and any single or partial exercise of any power, right or remedy shall not preclude any further exercise thereof. No waiver of or

consent to any breach of any of the covenants or conditions of this Agreement or any other Loan Document shall be construed to be a waiver of or a consent to any previous or subsequent breach of the same or any other condition or covenant. No waiver or consent shall be effective under any Loan Document unless it is in writing and signed by an officer of Funding Lender.

12.4 Governmental Lender's and Funding Lender's Expenses; Rights of Governmental Lender and Funding Lender.

12.4.1 Borrower shall promptly pay to Governmental Lender and Funding Lender, upon demand, with interest thereon from the date of demand at the Default Rate, reasonable attorneys' fees (including the fees and costs of Governmental Lender's, Fiscal Agent's and Funding Lender's in-house counsel and legal staff) and all costs and other expenses paid or incurred by Governmental Lender, Fiscal Agent and Funding Lender in exercising its rights or remedies provided for in this Agreement or any other Loan Document. If at any time Borrower fails to perform any of its obligations hereunder, Funding Lender shall have the right, but not the obligation, to perform such obligations at the expense of Borrower. The amount of any monies so expended or obligations so incurred by Governmental Lender, Fiscal Agent and Funding Lender, together with interest thereon at the Default Rate, shall be repaid to Governmental Lender, Fiscal Agent and Funding Lender promptly upon demand and payment thereof shall be secured by the Deed of Trust and Security Documents.

12.4.2 Governmental Lender and Funding Lender, and any of Governmental Lender's and Funding Lender's representatives, shall have the right, at any time and from time to time, and without notice, to enter upon the Property, to inspect the Improvements and all materials to be used in the construction thereof and to examine the Plans and all detailed plans and shop drawings that are or may be kept at the construction site.

12.5 No Third Party. This Agreement is made for the sole benefit of Borrower, Governmental Lender, Funding Lender and Governmental Lender's and Funding Lender's successors and assigns, and no other Person shall have any rights or remedies under or by reason of this Agreement or any right to exercise any right or power of Governmental Lender and Funding Lender hereunder or arising from any default by Borrower. Governmental Lender and Funding Lender shall owe no duty whatsoever to any claimant for labor performed or material furnished in connection with the construction of the Improvements nor any duty whatsoever to apply any undisbursed proceeds of the Borrower Loan to the payment of any such claim or to exercise any right or power of Funding Lender hereunder or arising from any default by Borrower.

12.6 Time of Essence. Time is of the essence of this Agreement and every part hereof.

12.7 Successors and Assigns. Neither this Agreement nor any right of Borrower to receive any sums, proceeds or disbursements hereunder, may be assigned, pledged, hypothecated, anticipated or otherwise encumbered by Borrower without the prior written consent of Funding Lender. Subject to the foregoing restriction and the restrictions contained in the Deed of Trust, this Agreement shall inure to the benefit of Governmental Lender and

Funding Lender and Governmental Lender's and Funding Lender's successors and assigns and shall bind Borrower and Borrower's successors and assigns.

12.8 Participation or Syndication. Funding Lender shall have the right, in its sole discretion, to assign all or any part of Funding Lender's rights in the Borrower Loan and under the Borrower Loan Documents or the Funding Loan Documents, either through direct assignment or through participating interests, subject to the provisions of Section 2.4 of the Funding Loan Agreement. Funding Lender is hereby authorized to disclose to any prospective assignee or participant in the Borrower Loan any and all information regarding Borrower, any Loan Party, the Property or the Borrower Loan.

12.9 Governing Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.

12.10 Entire Agreement. This Agreement and all other Borrower Loan Documents and the Funding Loan Documents constitute the entire understanding between the parties hereto with respect to the subject matter hereof, superseding all prior written or oral understandings. This Agreement and the other Borrower Loan Documents may be modified, amended or terminated only in writing signed by all parties hereto or thereto.

12.11 Joint and Several Liability. If Borrower consists of more than one Person, each shall be jointly and severally liable to Funding Lender for the performance of this Agreement and the other Borrower Loan Documents.

12.12 Publicity, Signs. Borrower hereby agrees that Funding Lender, at Funding Lender's expense, may publicize the financing of the Property (including the name of Borrower) and, in connection therewith, may use the project name and address, and a description, photograph or other illustrative drawing of the Property. Borrower hereby grants Funding Lender the right to erect or cause to be erected Funding Lender's sign or signs in size and location desired by Funding Lender on the Property so long as such sign or signs do not interfere with the construction of the Improvements. Borrower will exercise, and will cause Contractor and subcontractors to exercise, due care to protect said sign or signs from damage.

12.13 Credit Information and Reports. Borrower authorizes Funding Lender to release information concerning Borrower's financial condition to suppliers, other creditors, credit bureaus and other credit reporters, and to obtain such information from any third party at any time.

12.14 Headings. The various headings of this Agreement are included for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

12.15 Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

12.16 Counterparts. This Agreement and each other Loan Document may be executed in two or more counterparts, each of which shall be deemed an original but taken together shall be one and the same document.

12.17 USA Patriot Act. Funding Lender is subject to the USA Patriot Act and hereby notifies Borrower that pursuant to the requirements of that Act, Funding Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Funding Lender to identify Borrower in accordance with the Act.

12.18 Waiver of Jury Trial. To the extent permitted by law, in connection with any action or proceeding, whether brought in state or federal court, the Borrower and Funding Lender hereby expressly, intentionally and deliberately waive any right they may otherwise have to trial by jury of any Claim (as defined below).

12.19 Judicial Reference. If the waiver of jury trial set forth hereinabove is not enforceable under the laws of the state in which the Property is located, then the Borrower and Funding Lender hereby agree that all Claims, including any and all questions of law or fact relating thereto, shall, at the written request of any party, be determined by Reference (as hereinafter defined) as set forth hereinbelow:

12.19.1 Selection Or Appointment Of Referee. The Funding Lender, Fiscal Agent and Borrower shall select a single neutral referee, who shall be a retired state or federal judge. In the event that the Funding Lender, Fiscal Agent and Borrower cannot agree upon a referee, the referee shall be appointed by the court.

12.19.2 Conduct Of Reference. Except as otherwise provided in this Agreement, the Reference shall be conducted pursuant to the laws of the state in which the Property is located. The referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of the Borrower Loan Documents or Funding Loan Documents. The referee shall report a statement of decision to the court. The Funding Lender, Fiscal Agent and Borrower shall equally bear the fees and expenses of the referee, unless the referee otherwise provides in the statement of decision.

12.19.3 Provisional Remedies, Self-Help And Foreclosure. No provision of this Agreement shall limit the right of any party to (i) exercise self-help remedies including, without limitation, set-off, (ii) foreclose against or sell any collateral, by power of sale or otherwise or (iii) obtain or oppose provisional or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of the Reference. The exercise of, or opposition to, any such remedy does not waive the right of any party to a Reference pursuant to this Agreement.

12.19.4 No Decision By Jury. The Funding Lender, Fiscal Agent and Borrower hereby acknowledge that if a referee is selected or appointed to determine the Claims, then the Claims will not be decided by a jury.

12.19.5 Miscellaneous. In the event that multiple Claims are asserted, some of which are not subject to this Section, the Funding Lender, Fiscal Agent and Borrower agree to stay the proceedings of the Claims not subject to this Section until all other Claims are resolved in accordance with this Section. In the event that Claims are asserted against multiple parties, some of whom are not subject to this Section, the Funding Lender, Fiscal

Agent and Borrower agree to sever the Claims subject to this Section and resolve them in accordance with this Section.

12.19.6 Claim. "Claim" shall mean any claim, cause of action, action, dispute or controversy between or among the parties, whether sounding in contract, tort or otherwise, which arises out of or relates to: (i) any of the Borrower Loan Documents or the Funding Loan Documents; (ii) and negotiations or communications relating to any of the Borrower Loan Documents or the Funding Loan Documents, whether or not incorporated into the Borrower Loan Documents or the Funding Loan Documents or any indebtedness evidenced thereby; or (iii) any alleged agreements, promises, representations or transactions in connection therewith.

12.19.7 Reference. "Reference" shall mean a judicial reference conducted pursuant to this Agreement and in accordance with the laws of the state in which the Property is located, as in effect at the time the referee is selected or appointed.

12.20 Limitation on Damages. In the event that punitive damages are permitted under the laws of the state in which the Property is located, the amount thereof shall not exceed a sum equal to three times the amount of actual damages.

12.21 Exhibits. All exhibits attached hereto are incorporated herein as if fully set forth within this Agreement.

**[Signatures on following page]**

IN WITNESS WHEREOF, the parties have executed this Borrower Loan Agreement as of the date and year first above written.

**BORROWER:**

**MERCY HOUSING CALIFORNIA 51,**  
a California Limited Partnership

By: Mercy Housing California Family Properties,  
a California nonprofit public benefit corporation,  
its general partner

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

Address for Notices to Borrower:

Mercy Housing California 51  
1360 Mission Street, Suite 300  
San Francisco, CA 94103  
Attn: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

[signatures continued on following page]



**FUNDING LENDER:**

**MUFG UNION BANK, N.A.**

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

Name: Rebecca Koch

Title: Vice President

**Address for Notice to Funding Lender:**

MUFG Union Bank, N.A.

Attn: Manager

Commercial Real Estate Loan Administration

Attn: Manager

3151 E. Imperial Highway, 1<sup>st</sup> Floor

Brea, CA 92821

Fax No. (949) 553-7123

With a copy to

MUFG Union Bank, N.A.

Attn: Rebecca Koch

Community Development Finance

200 Pringle Avenue, Suite 355

Walnut Creek, CA 94596

Fax No.: (925) 947-2455

Phone No.: (925) 947-2449

E-mail address: [rebecca.koch@unionbank.com](mailto:rebecca.koch@unionbank.com)

[signatures continued on following page]

**GOVERNMENTAL LENDER:**

**CITY AND COUNTY OF SAN FRANCISCO**

By: \_\_\_\_\_  
Olson Lee, Director  
Mayor's Office of Housing  
and Community Development

**APPROVED AS TO FORM:**

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

**JOINDER REGARDING DEVELOPMENT FEE**

The undersigned hereby acknowledges and agrees that the undersigned shall not be entitled to receive more than \$702,000 of its development fee on or prior to the Closing Date, more than \$2,002,000 of its development fee prior to the Completion Date, and more than \$2,401,500 prior to the issuance of IRS Form 8609 to the Borrower by the Allocation Committee; any portion of such development fee received by the undersigned in excess of such permitted amounts shall be remitted to MUFG Union Bank, N.A. to be held as additional collateral for the Borrower Loan and, upon an event of default with respect thereto, applied in reduction of amounts outstanding under the Borrower Loan in such amounts and in such order as MUFG Union Bank, N.A. shall elect in its sole and absolute discretion.

Mercy Housing California,  
a California nonprofit public benefit corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**

This **Exhibit A** is attached to and a part of that certain Borrower Loan Agreement dated October 1, 2014 by and between Mercy Housing California 51, a California Limited Partnership, City and County of San Francisco, a municipal corporation organized and existing under the laws of the State of California, and MUFG Union Bank, N.A.

**LEGAL DESCRIPTION**

A leasehold estate as created by that certain Ground Lease dated October 1, 2014, executed by and between the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development, as lessor, and Mercy Housing California 51, a California Limited Partnership, as lessee, as evidenced by that certain "Memorandum of Ground Lease" recorded concurrently with the Deed of Trust in the Official Records of San Francisco County, California, in and to the following:

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Beginning at the point of intersection of the Southwesterly line of Sixth Street and the Southeasterly line of Howard Street; running thence Southwesterly and along said line of Howard Street 80 feet; thence at a right angle Southeasterly 125 feet; thence at a right angle Northeasterly 80 feet to the Southwesterly line of Sixth Street; thence at a right angle Northwesterly along said line of Sixth Street 125 feet to the point of beginning.

Being part of 100 Vara Block No. 395.

**Assessor's Parcel Number:** Lot 1, Block 3731

**EXHIBIT B**  
**DISBURSEMENT SCHEDULE**

This **Exhibit B** is attached to and a part of that certain Borrower Loan Agreement dated October 1, 2014 by and between Mercy Housing California 51, a California Limited Partnership, City and County of San Francisco, a municipal corporation organized and existing under the laws of the State of California, and MUFG Union Bank, N.A.

**EXHIBIT B-1**  
**PROJECT BUDGET**

This **Exhibit B-1** is attached to and a part of that certain Borrower Loan Agreement dated October 1, 2014 by and between Mercy Housing California 51, a California Limited Partnership, City and County of San Francisco, a municipal corporation organized and existing under the laws of the State of California, and MUFG Union Bank, N.A.

**EXHIBIT C**  
**SPECIAL CONDITIONS**

Additional Borrower Payments.

- a) The Borrower shall pay on demand the following amounts:
- i. to the Fiscal Agent, the Rebate Amount then due, if any, to be deposited in the Rebate Fund pursuant to Section 9.7 of the Funding Loan Agreement, the Rebate Analysts' fee and any other costs incurred to calculate such Rebate Amount);
  - ii. to the Fiscal Agent for remittance to, or on the order of, the Governmental Lender, the Ongoing Governmental Lender Fee and all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Governmental Lender incurred under the Borrower Loan Documents or the Funding Loan Documents, including any outstanding costs related to the closing of the Borrower Loan and the Funding Loan, and any taxes and assessments with respect to the Project, as and when the same become due; and
  - iii. to the Fiscal Agent, the Fiscal Agent's Fees.
- b) The Borrower shall pay to the party entitled thereto as expressly set forth in this Borrower Loan Agreement or the other Borrower Loan Documents or Funding Loan Documents:
- i. all expenses incurred in connection with the enforcement of any rights under this Borrower Loan Agreement or any other Borrower Loan Document, the Regulatory Agreement, or any Funding Loan Document by the Governmental Lender, Funding Lender, or the Fiscal Agent;
  - ii. all other payments of whatever nature that the Borrower has agreed to pay or assume under the provisions of this Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document; and
  - iii. all expenses, costs and fees relating to inspections of the Project required by the Governmental Lender, the Funding Lender, or the Fiscal Agent, if any, in accordance with the Borrower Loan Documents or the Funding Loan Documents or to reimburse such parties for such expenses, costs and fees.

**EXHIBIT D**  
**CITY CONTRACTING PROVISIONS**

The following provisions shall apply to this Borrower Loan Agreement as if set forth in the body thereof. Capitalized terms used but not defined in this Exhibit D shall have the meanings given in this Borrower Loan Agreement. For purposes of this Exhibit, "Contractor" shall mean each of Borrower and Funding Lender.

**1. 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 and County of San Francisco ("City") for the statutory 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.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1). 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.

**2. Payment Does Not Imply Acceptance of Work.** The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

**3. Qualified Personnel.** Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

**4. Independent Contractor; Payment of Taxes and Other Expenses**

**a. Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees.



Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

**b. Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

**5. Conflict of Interest.** Through its execution of this Agreement, Contractor 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 Agreement.

**6. Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor 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. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect

such information as a reasonably prudent contractor would use to protect its own proprietary data.

**7. Ownership of Results.** Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**8. Works for Hire.** If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

**9. Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

**10. 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. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor 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 Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor 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 Agreement or under applicable law. Any Subcontract entered into by Contractor 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 Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

#### **11. Local Business Enterprise Utilization; Liquidated Damages**

**a. The LBE Ordinance.** Contractor, 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 Contractor's obligations or liabilities, or materially diminish Contractor'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. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, 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, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

#### **b. Compliance and Enforcement**

1) If Contractor 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, Contractor shall be liable for liquidated damages in an amount equal to Contractor'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 City's Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of CMD") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of CMD 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, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor 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 CMD or the Controller upon request.

#### **12. Nondiscrimination; Penalties**

**a. Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such Contractor or subcontractor, applicant for employment with such contractor or subcontractor, 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.

**b. Subcontracts.** Contractor 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 Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of 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.

**d. Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (formerly 'Human Rights Commission').

**e. 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 Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor 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 Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**13. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco 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 and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**14. Tropical Hardwood and Virgin Redwood Ban.** Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco 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.

**15. Drug-Free Workplace Policy.** Contractor 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. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

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

**17. 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 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.

**18. Limitations on Contributions.** Through execution of this Agreement, Contractor 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. Contractor 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. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section

1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

#### **19. Requiring Minimum Compensation for Covered Employees**

a. Contractor 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 Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor'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 Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor 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 Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor 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.

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

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this 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 Contractor fails to comply with these requirements. Contractor 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 Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor 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 Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor 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.

**h.** Contractor 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.

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

## **20. Requiring Health Benefits for Covered Employees**

Contractor 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 Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

**b.** Notwithstanding the above, if the Contractor 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.

**c.** Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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 City.

**d.** Any Subcontract entered into by Contractor 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. Contractor 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. Each Contractor 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 Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor'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.

f. Contractor 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.

g. Contractor 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 City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

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

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



**22. Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

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

**24. Food Service Waste Reduction Requirements.** Effective June 1, 2007, Contractor 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 Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor 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 City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Squire Patton Boggs (US) LLP  
555 South Flower Street, 31<sup>st</sup> Floor  
Los Angeles, CA 90071  
Attn: Andréa Caruso Townsend, Esq.

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REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

MERCY HOUSING CALIFORNIA 51,  
A California Limited Partnership

Dated as of October 1, 2014

Relating to:

City and County of San Francisco  
Multifamily Housing Revenue Note  
(Bill Sorro Community)  
2014 Series C

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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 October 1, 2014, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, organized and existing under the laws of the State of California (together with any successor to its rights, duties and obligations, the "City"), and MERCY HOUSING CALIFORNIA 51, 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 Health and Safety Code of the State of California, as now in effect and as may be amended or supplemented (collectively, the "Act"), the City is authorized to issue revenue bonds and to execute and deliver revenue notes to finance the acquisition, construction and development of multifamily rental housing; and

B. WHEREAS, the Board of Supervisors of the City has authorized the execution and delivery of a multifamily mortgage revenue note under the Act in connection with the construction of a multifamily and special needs residential affordable rental housing development located on the site described in Exhibit A hereto and to be known as Bill Sorro Community (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 note designated "City and County of San Francisco Multifamily Housing Revenue Note (Bill Sorro Community), 2014 Series C" (the "Governmental Lender Note") pursuant to the terms of a Funding Loan Agreement of even date herewith (the "Funding Loan Agreement"), among MUFG Union Bank, N.A., as the funding lender (the "Funding Lender"), the City and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent"), the proceeds of which Governmental Lender Note are to be loaned to the Owner (the "Loan") pursuant to a Borrower Loan Agreement, of even date herewith (the "Borrower Loan Agreement"), among the City, the Funding Lender and the Owner; and

D. WHEREAS, the City hereby certifies that all things necessary to make the Governmental Lender Note, when executed and delivered as provided in the Funding Loan Agreement, the valid, binding and limited obligation of the City have been done and performed, and the execution and delivery of the Funding Loan Agreement and the execution and delivery of the Governmental Lender Note, 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 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 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 Fiscal Agent containing the specimen signature of such person and signed on behalf of the Owner by its General Partner(s), which certificate may designate an alternate or alternates.

“Available Units” – Residential units in the Project (except for one (1) unit set aside for a residential 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 constructed or (ii)

the date of issuance of the Governmental Lender Note 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 the renovations are completed.

“Borrower Loan Agreement” – shall have the meaning set forth in Section C of the Recitals above.

“CDLAC” – The California Debt Limit Allocation Committee.

“CDLAC Requirements” – The requirements described in Section 8 of this Regulatory Agreement.

“CDLAC Resolution” – The Resolution described in Section 8 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 and executed by an Authorized Owner Representative, 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” – The City and County of San Francisco, California.

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

“Closing Date” – The date of the execution and delivery of the Governmental Lender Note, being \_\_\_\_\_, 2014.

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

“Commercial Space” – means approximately 2,500 square feet of ground floor space of the Project intended to be used for retail space.

“Completion Certificate” – The certificate of completion of the construction of the Project required to be delivered to the City and the Funding 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 and executed by an Authorized Owner Representative.

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

“CTCAC” – The California Tax Credit Allocation Committee.

“Facilities” – The multifamily buildings, structures and other improvements on the Site to be 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.

“Fiscal Agent” – shall have the meaning assigned to such term in Section C of the Recitals above.

“Funding Lender” – MUFG Union Bank, N.A., and its successor and assigns.

“Funding Loan Agreement” – The Funding Loan Agreement, of even date herewith, among the Funding Lender, the City and the Fiscal Agent.

“General Partners” – Collectively (i) Mercy Housing California Family Properties, a California nonprofit public benefit corporation, as general partner; and/or (ii) any other Person that the partners of Owner, with the prior written approval of the Funding Lender (to the extent required pursuant to the Borrower 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 Borrower Loan Documents and hereunder.

“Governmental Lender Note” – The City and County of San Francisco Multifamily Housing Revenue Note (Bill Sorro Community), 2014 Series C, executed and delivered pursuant to the Funding Loan Agreement.

“Holder” – The Person who is the owner of the Governmental Lender Note.

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

“Housing Authority” – The Housing Authority of the City and County of San Francisco and any successors.

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

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



“Income Certification Form” – 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.

“Inducement Date” – April 3, 2014, the effective date of the Inducement Resolution.

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

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

“Loan” – The loan of the proceeds of the Governmental Lender Note made to the Owner pursuant to the Borrower Loan Agreement to provide financing for the construction of the Project.

“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 Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Construction Trust Deed) (Multifamily Housing Back to Back Loan Program), dated for reference purposes as of the date hereof, executed by the Owner and granting a first lien on the Project for the benefit of the City and Funding Lender and assigned by the City to the Funding Lender, including any amendments and supplements thereto as permitted by the Funding Loan Agreement.

“Owner” – Mercy Housing California 51, A California Limited Partnership, and its permitted successors and assigns.

“Partnership Agreement” – The First Amended and Restated Agreement of Limited Partnership of Owner, by and among the General Partner and the Investor Limited Partner.

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

“Project” – The 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 (60) 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 or costs of constructing the Commercial Space.

"Qualified Project Period" – The period beginning on the later of the Closing Date or the first day on which at least ten percent (10%) of the units in the Project are first occupied, and ending on the later of the following:

- (a) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied;
- (b) the first date on which no tax-exempt private activity bonds with respect to the Project are Outstanding;
- (c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates;
- (d) the date that is fifty-five (55) years after the Closing Date; or

(e) such later date as may be provided in Section 5 or Section 8 hereof.

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

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

“Restricted Unit” – A Very Low Income Unit.

“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, dated the date of execution and delivery of the Governmental Lender Note, executed and delivered by the City and the Owner, as amended or supplemented from time to time.

“Tax Counsel” – An 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.

“Very Low Income Tenant” – Any Tenant whose Adjusted Income does not exceed fifty percent (50%) of the lower of City Median Income or Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not qualify as Very Low Income Tenants. The determination of a Tenant’s status as a Very Low Income Tenant shall initially be made by the 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” – 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. 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 a third party 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) two and one-half percent (2.5%) of the aggregate principal amount of the Governmental Lender Note for the payment of Qualified Project Costs or (ii) \$100,000.

(b) The Owner's reasonable expectations respecting the total cost of construction of the Project and the disbursement of Governmental Lender Note 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 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 Funding 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 Funding 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 Governmental Lender Note, 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 Governmental Lender Note to be an "arbitrage bond" 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 Governmental Lender Note from being an "arbitrage bond" 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 execution and delivery of the Governmental Lender Note to be applied in a manner contrary to the requirements of the Funding Loan Agreement, the Borrower Loan Agreement, or this Regulatory Agreement.

(i) On or concurrently with the final draw by the Owner of amounts representing proceeds of the Governmental Lender Note, the expenditure of such draw, when added to all previous disbursements representing proceeds of the Governmental Lender Note, will result in not less than ninety-seven percent (97%) of all disbursements of Governmental Lender Note proceeds having been used to pay or reimburse the Owner for Qualified Project Costs and less than twenty-five 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 Governmental Lender Note 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 Governmental Lender Note shall be used to pay execution and delivery costs of the Governmental Lender Note, 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 Governmental Lender Note (other than with respect to interest on any portion thereof for a period during which such portion is held by a "substantial user" of any facility financed with the proceeds of the Governmental Lender Note 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 Governmental Lender Note (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 Governmental Lender Note 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)(B) of the Code and the Owner hereby elects to comply with Section 142(d)(1)(B) 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 constructed for the purpose of providing affordable multifamily and special needs residential rental property, and the Owner shall own, manage and operate the Project as a project to provide multifamily and special needs 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 thirty (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, 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 Governmental Lender Note 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, by (i) this Regulatory Agreement, (ii) any regulatory or restrictive use agreement to which the Project is subject pursuant to Section 42 of the Code, (iii) HUD, to restrict the rental of fourteen (14) units to developmentally disabled individuals in accordance with the Firm Commitment for Capital Advance Upon Project Completion (Section 811) issued by HUD with respect to the Project; (iv) any additional tenant income and rent restrictions imposed by any other federal, State or local governmental agencies, and (v) any other legal or contractual requirement not excepted by clauses (i) through (iv) of this paragraph, upon receipt by the Owner, the Trustee and the City of an opinion of Tax Counsel to the effect that compliance with such other requirement will not adversely affect the tax-exempt status of interest on the Governmental Lender Note.

(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., TANF, 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 Governmental Lender Note or, if permitted under the provisions of the Mortgage and the Funding Loan Agreement, 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 in 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 Governmental Lender Note. 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 Borrower Loan Agreement and the Mortgage.

(k) The Project will have sixty-seven (67) 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. In addition to the requirements of Section 5, hereof, Project shall comply with the income and rent restrictions of this Section 4(a), and any conflict or overlap between any two or more of such provisions shall be resolved in favor of the most restrictive of such provisions.

(i) Very Low Income Units. All of the 67 units in the Project (excluding the manager's unit) shall be rented to and continuously occupied by households who qualify as Very Low-Income Tenants. The monthly rent charged for all the Very Low Income Units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 50% of the Median Income for the Area.

(ii) 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 forty percent (40%) of the total number of completed units in the Project (excluding the manager's unit), or twenty-seven (27) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed sixty percent (60%) of Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not be qualified Tenants pursuant to this sentence. The Owner shall satisfy the requirements of this Section 4(a)(ii) by complying with the requirements of Section 4(a)(i), to the extent such compliance meets the requirements of Section 142(d)(1)(B) of the Code.

(iii) Income and Rent Restrictions Pursuant to the Act. Pursuant to the requirements of Section 52080(a)(1)(B) of the Housing Law, for the Qualified Project Period, not less than forty percent (40%) of the total number of completed units in the Project (excluding the manager's unit), or twenty-seven (27) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed sixty percent (60%) of Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not be qualified Tenants pursuant to this sentence. Pursuant to the requirements of Section 52080(a)(1)(B) of the Housing Law, the monthly rent charged for such units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 60% of the Median Income for the Area. The Owner shall satisfy the requirements of this Section 4(a)(iii) by complying with the requirements of Section 4(a)(i), to the extent such compliance meets the requirements of Section 52080(a)(1)(B) of the Housing Law.

(iv) CDLAC Requirements. To the extent the income and rent restrictions contained in the CDLAC Requirements are more restrictive, the Owner shall comply with the CDLAC Requirements.

(b) Over-Income Tenants. Notwithstanding the foregoing provisions of Section 4(a), no Tenant who satisfies the applicable income limit for a Restricted Unit upon



initial occupancy shall be denied continued occupancy of such 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 Tenant satisfying the applicable income limit for such Restricted Unit. The unit occupied by such Tenants whose aggregate Adjusted Income exceeds such applicable income limit shall continue to be treated as occupied by a Tenant who satisfies the applicable income limit for such Restricted 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 Tenants satisfying the applicable income limit for such Restricted Unit. Moreover, a unit previously occupied by a Tenant who satisfies the applicable income limit for such Restricted Unit and then vacated shall be considered occupied by a Tenant who satisfies the applicable income limit for such Restricted Unit 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. Because all of the units (except the manager's unit) in the Project are required to be Very Low Income Units pursuant to Section 4(a), hereof, each next available unit must be rented to or held vacant for a Very Low Income Tenant.

(c) Income Certifications. The Owner will obtain, complete and maintain on file an Income Certification Form for each Tenant (i) immediately prior to the initial occupancy of a Restricted Unit by such Tenant, and (ii) thereafter, annually, 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 Form. In addition, the Owner will provide such further information as may be required in the future by the State, 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 Funding Lender) 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 Governmental Lender Note 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 Funding Lender, 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 Funding Lender. 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 or otherwise) 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 Section 4(c) hereof and that failure to cooperate with the annual recertification process reasonably instituted by the Owner pursuant to Section 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 Funding Lender. Failure to keep such lists and applications or to make them available to the City 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 (except to the Commercial Space) 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 Funding Lender, and the City of an opinion of Tax Counsel that such action will not adversely affect the tax-exempt status of interest on the Governmental Lender Note, 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 an occupied Restricted Unit shall be limited to the percentage of the annual increase in the City Median Income or applicable Median Income for the Area, whichever is lower, for that Restricted 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, a Nebraska not-for-profit corporation, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

(e) Certificate of Preference Program. To the fullest extent permitted by law, the Owner shall comply with the City's Certificate of Preference Program pursuant to San Francisco Administrative 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 SSD), 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) Overincome Provisions after Expiration of Qualified Project Period. Notwithstanding the provisions of Section 4(b), from and after the expiration of the Qualified Project Period, in the event that 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 said Very Low Income Tenant's lease if any regulation or statute governing the Project or the financing thereof prohibits the termination of said 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) Marketing Plan. Owner will market the Restricted Units in accordance with the marketing plan approved by the City, if any.

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

6. Amendment or Waiver by City; Conflicting Provisions. The requirements of Section 4(a)(i) 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 Funding Lender have received an opinion of Tax 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 Governmental Lender Note except to the extent held by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code. Any requirement of Section 4(a)(i) or Section 5 shall be void and of no force and effect if the City and the Owner receive a written opinion of Tax Counsel to the effect that compliance with such requirement would be in conflict with the Act or any other applicable state or federal law.

7. Additional Requirements of State Law. In addition to the requirements set forth above, the Owner hereby agrees that it shall also comply with each of the requirements of Section 52080 of the Housing Law, including the following:

(a) Tenants Under Section 8 of the Housing Act. The 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 Restricted Units shall remain available on a priority basis for occupancy at all times.

(c) Binding Covenants and Conditions. The covenants and conditions of this Regulatory Agreement shall be binding upon successors in interest of the 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. Notwithstanding the foregoing, the parties agree that this Section 7(e) shall have no practical effect because one hundred percent (100%) of the units in the Project are required to be Restricted Units pursuant to Section 4(a).

(f) Availability Following Expiration of Qualified Project Period. Following the expiration or termination of the Qualified Project Period, except in the event of foreclosure, repayment of the Governmental Lender Note, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units reserved for occupancy as required by Section 4(a)(iii) shall remain available to any eligible Tenant occupying a Restricted Unit at the date of such expiration or termination, at the rent determined by Section 4(a)(iii), until the earliest of (1) the household's income exceeds one hundred twenty percent (120%) of the maximum eligible income specified therein, except as specified in Section 5(g), (2) the household voluntarily moves or is evicted for good cause, as defined in the Housing Law, (3) fifty-five (55) years after the date of the commencement of the Qualified Project Period, or (4) the Owner pays the relocation assistance and benefits to households if required by, and 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 fifty-five (55) years after the date of commencement of the Qualified Project Period, the Owner shall continue to make available to eligible households Restricted Units that have been vacated to the same extent that non-Restricted Units, if any, are made available to non-eligible households.

(h) Notice and Other Requirements. The 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 syndication of tax credits with respect to the Project to an affiliate of the Investor Limited Partner shall not require the prior written approval of the City if the Owner's Partnership Agreement will not be amended, modified or supplemented in connection with such syndication except to reflect such transfer of limited partnership interests; provided, however, that the Investor Limited Partner shall provide to the City, at least five (5) business days prior to the effective date of any such syndication, written notice of such syndication certifying that no other amendment, modification or supplement to the Owner's Partnership Agreement will be effected in connection with such syndication, together with copies of any assignments of limited partnership interests and any other syndication documents. Any other or subsequent syndication of the Project shall be subject to the prior written approval of the Director of the Mayor's Office of Housing and Community Development of the City, which approval shall be

granted only after the City determines that the terms and conditions of such syndication (1) shall not reduce or limit any of the requirements of the Act or regulations adopted or documents executed pursuant to the Act, (2) shall not cause any of the requirements of the City set forth in this Section 7 hereof to be subordinated to the syndication agreement, and (3) shall not result in the provision of fewer Restricted Units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

8. CDLAC Requirements. 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. 14-80 adopted on July 16, 2014, attached hereto as Exhibit F (the "CDLAC Resolution"), which conditions are incorporated herein by reference and are made a part hereof. The Owner shall annually on February 1, and as otherwise requested by CDLAC, prepare and submit to the City a Certificate of Compliance in substantially the form attached hereto as Exhibit G, executed by an Authorized Owner Representative.

9. Indemnification. The Owner hereby releases the City, the Funding 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 Funding 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 Governmental Lender Note, 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 Funding Lender, as defined in the Funding Loan Agreement, 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 Funding 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, installation, or construction of, the Project or any part thereof; and (f) arising out of or in connection with the exercise by the Funding Lender or the Fiscal Agent of their powers or duties under the Funding 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 Funding Lender from any claims, costs, fees, expenses or liabilities arising from the gross negligence or willful misconduct of the Funding 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 engagement 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 Funding Loan Documents, as defined in the Funding Loan Agreement, the Governmental Lender Note or any other agreement relating to the Governmental Lender Note.

The Owner also shall pay and discharge and shall indemnify and hold harmless the City and the Funding Lender from (i) any lien or charge upon payments by the Owner to the City and the Funding 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 Funding 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 engagement 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 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 any Indemnified Party, then such Indemnified Party shall have the right to engage separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the 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 12 of this Regulatory Agreement, the Owner shall remain obligated to indemnify the City pursuant to this Section 9 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 9 shall survive the term of the Governmental Lender Note and this Regulatory Agreement, including termination of this Regulatory Agreement pursuant to the second paragraph of Section 13 below.

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.



10. Consideration. The City has executed the Governmental Lender Note and delivered 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.

11. 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 Governmental Lender Note, and in the exclusion from gross income for federal income tax purposes of the interest on the Governmental Lender Note. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner, the 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.

12. 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 (except in accordance with the Right of First Refusal and Option (as defined in the Partnership Agreement), and, except as expressly otherwise provided herein), 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 and/or pursuant to the aforementioned option) 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 Fiscal Agent 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 Governmental Lender Note to become includable in the gross income of the recipients thereof for federal income tax purposes except to the extent held by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 12 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 12 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 sixty (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 12 shall not apply to the transfer of all or any portion of (a) the limited partner interest of the Investor Limited Partner in the Owner (which is instead subject to Section 7(i)), (b) the Managing General Partner interest to an affiliate of the Managing General Partner, or (c) the transfer of any non-managing member interest in the Investor Limited Partner.

13. Term. Subject to the following paragraph of this Section 13, Section 9 hereof and to any other provision expressly agreed herein to survive the termination of this Regulatory Agreement, this Regulatory Agreement and all of the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for the longer of (a) the Qualified Project Period or (b) fifty-five (55) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied.

The terms of this Regulatory Agreement to the contrary notwithstanding, 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, transfer of title by assignment of the leasehold interest in the Project, 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 Governmental Lender Note is paid in full or cancelled 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, transfer of title by assignment of the leasehold interest in the Project 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 Governmental Lender Note or the exemption from State personal income taxation of the interest on the Governmental Lender Note. 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.

14. 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.

15. 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 Governmental Lender Note was executed and delivered.

16. 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.

17. 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 (the "cure period") after written notice thereof shall have been given by the City to the Owner (and a copy of such notice shall also be given to the Funding Lender, provided however that the failure of the City to provide such copy to the Funding Lender shall have no effect on the sufficiency of the notice to the Owner). The City may, at its sole option, extend the cure period if the default is of the nature which would reasonably require more than sixty (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 Governmental Lender Note), then the City may declare an "event of default" to have occurred hereunder, and, subject to the provisions of the Funding Loan Agreement, 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, subject, however, to those limits on accelerating the Borrower Note and commencing foreclosure proceedings under the Mortgage as described in Section 7.29 of the Borrower Loan Agreement.

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.

18. 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.

19. Payment of Fees. Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Funding Loan Agreement and/or the Borrower 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 by the City 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 \$93,750 (which is equal to one quarter of one percent (0.25%) of the maximum par amount of the Governmental Lender Note) and (ii) an annual administrative fee not to exceed one eighth of one percent (0.125%) of the maximum principal amount of the Governmental Lender Note 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 Regulatory 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 Funding Lender, and/or the Program Administrator in connection with such action.

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

21. Amendments. To the extent any amendments to the Act, the Treasury Regulations or the Code shall, in the written opinion of Tax Counsel filed with the City, the

Fiscal Agent 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 Governmental Lender Note, 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.

22. 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.

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

If to the City:

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

With copies to:

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

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

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:

Mercy Housing California 51  
1360 Mission Street, Suite 300  
San Francisco, CA 94103  
Attention: Asset Management  
Telephone: (415) 355-7199

With a copy to:	Gubb & Barshay LLP 505 14 <sup>th</sup> Street, Suite 1050 Oakland, California 94612 Attention: Natalie Gubb, Esq. Telephone: (415) 781-6600
If to the Investor Limited Partner:	MUFG Union Bank, N.A. 200 Pringle Avenue, Suite 355 Walnut Creek, CA 94596-3570 Attention: CDF Manager Re: Bill Sorro Community
If to the Funding Lender:	MUFG Union Bank, N.A. Commercial Real Estate Loan Administration 3151 E. Imperial Highway, 1 <sup>st</sup> Floor Brea, California 92821 Attention: Manager Re: Bill Sorro Community
With copies to:	MUFG Union Bank, N.A. Community Development Finance Department 200 Pringle Avenue, Suite 355 Walnut Creek, CA 94596-3570 Attention: Rebecca Koch Telephone: (925) 947-2449
If to the Fiscal Agent:	U.S. Bank National Association One California Street, Suite 1000 Mail Code: SF-CA-SFCT San Francisco, CA 94111 Attention: Andrew Fung, Vice President Telephone: (415) 677-3593

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.

24. 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.

25. 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.

26. Third-Party Beneficiaries. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are entered into for the benefit of various parties, including CDLAC. The parties hereto acknowledge that the Funding Lender is a third party beneficiary of this Regulatory Agreement. CDLAC shall accordingly have contractual rights in this Regulatory Agreement and shall be entitled (but not obligated) to enforce, in accordance with Section 17 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 Funding 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 4 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.

[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: \_\_\_\_\_  
Olson Lee, Director  
Mayor's Office of Housing and Community  
Development

Approved as to Form:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Kenneth Roux  
Deputy City Attorney

[Signatures continue on following page.]



[REGULATORY AGREEMENT SIGNATURE PAGE]

Date: \_\_\_\_\_

OWNER:

MERCY HOUSING CALIFORNIA 51,  
A California Limited Partnership

By: Mercy Housing California Family Properties,  
a California nonprofit public benefit corporation,  
its general partner

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:

SAN FRANCISCO CHRONICLE

925 MISSION ST. SAN FRANCISCO, CA 94103  
Telephone (415) 615-3562 / Fax (415) 348-3084

This space for filing stamp only

PROOF OF PUBLICATION

(2015.5 C.C.P.)

State of California )  
County of SAN FRANCISCO ) ss

Notice Type: HRG - NOTICE OF HEARING

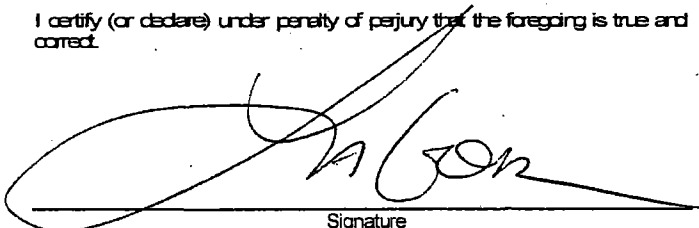
Ad Description:  
TEFRA Hearing

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the SAN FRANCISCO CHRONICLE, a newspaper published in the English language in the city of SAN FRANCISCO, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of SAN FRANCISCO, State of California, under date of 11/13/1951, Case No.411596. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

03/08/2014

Executed on: 03/10/2014  
At SAN FRANCISCO, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

  
Signature

CNS#: 2596000

NOTICE OF PUBLIC HEARING  
NOTICE IS HEREBY GIVEN that on March 24, 2014, at 10 a.m., at the Mayor's Office of Housing and Community Development, 1 South Van Ness Avenue, 5th Floor, San Francisco, California 94103, the City and County of San Francisco (the "City") will conduct a public hearing (the "Public Hearing") at which time the City will hear and consider information concerning the proposed sale and issuance by the City of private activity multifamily affordable housing mortgage revenue bonds (the "Bonds") in an aggregate principal amount not to exceed thirty five million dollars (\$35,000,000). All or a portion of the proceeds of the Bonds will be loaned to Mercy Housing California 51 L.P. (or any successor thereto including any successor owner of the Project) (the "Borrower"), pursuant to a loan agreement (the "Loan Agreement"). The proceeds of the Bonds loaned to the Borrower will be used to finance the construction of up to 67 housing units located at 200 Sixth Street, San Francisco, California 94103 (the "Project"). The Project will be owned and operated by the Borrower.

The Bonds will be paid entirely by the Borrower from the revenues of the Project, in accordance with the Loan Agreement. Neither the full faith and credit nor the taxing power of the City, the State of California (the "State") or any other political corporation, subdivision or agency of the State is pledged to the payment of the principal, premium, if any, or interest on the Bonds, nor shall the City, the State or any other political corporation, subdivision or agency of the State be liable or obligated to pay the principal, premium, if any, or interest on the Bonds.

The Public Hearing is intended to comply with the public approval requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended. All those interested in matters related to the issuance of the Bonds and to the financing of the Project are invited to attend and be heard at this hearing. Interested parties may appear in person at the time and place indicated above or submit written comments, which must be received prior to the Public Hearing, to the City, c/o Kevin Kitchingham, Mayor's Office of Housing and Community Development, at the address indicated above.  
Date: March 4, 2014

CITY AND COUNTY  
OF SAN FRANCISCO  
Teresa Yanga  
Housing Development Director  
Mayor's Office of Housing  
and Community Development



\* A 0 0 0 0 0 3 3 6 1 2 5 6 \*

CITY AND COUNTY OF SAN FRANCISCO

Public Hearing as required by Section 147(f) of the Internal Revenue Code of 1986

200 6th Street

Date: March 24, 2014

Time: 10:00 AM

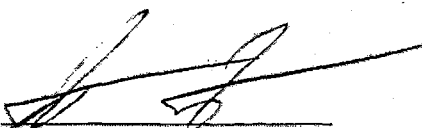
Location: Mayor's Office of Housing and Community Development (MOHCD) of  
the City and County of San Francisco  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103

Present: Kevin Kitchingham, MOHCD

The hearing was held to obtain public comment on the proposed issuance by the City and County of San Francisco of multifamily affordable housing mortgage revenue bonds in an amount not to exceed \$35 million for the purpose of financing the construction of a 67- unit, 100% affordable residential rental housing development located at 200 6<sup>th</sup> Street in San Francisco.

The public hearing was convened at 10:00 AM. There were no written comments received on the proposed issuance. Except for a representative from the Mayor's Office of Housing and Community Development, there were no persons present wishing to comment on the proposed issuance or on the project. The hearing was adjourned at 10:30 AM.

Minutes prepared by:

  
Kevin Kitchingham

Date:

3/24/2014



CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

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

MEMBERS

BILL LOCKYER, CHAIRMAN  
State Treasurer

EDMUND G. BROWN JR.  
Governor

JOHN CHIANG  
State Controller

EXECUTIVE DIRECTOR

Sean L. Spear

July 16, 2014

Olson Lee  
Director  
City and County of San Francisco  
One South Van Ness Ave, 5th Floor  
San Francisco, CA 94103

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

Dear Mr. Lee,

Enclosed is a copy of Resolution No. 14-80, adopted by the California Debt Limit Allocation Committee (the "Committee") on July 16, 2014, transferring \$25,000,000 of the 2014 State Ceiling on Qualified Private Activity Bonds to the City and County of San Francisco for the Bill Sorro Community Apartments Project. The Resolution establishes the terms and conditions under which the allocation has been granted. Please read it carefully and keep a copy in your permanent files.

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

- 1. Performance Deposit:** Pursuant to Section 5050 of the Committee's Regulations, the performance deposit certified in support of this project (\$100,000) is to remain on deposit until you receive written authorization from the Committee that it may be released. This written release will be provided once the Committee receives the "Report of Action Taken" form indicating that the allocation transferred was used for the issuance of bonds for the specific Project and the payment of the second installment of the CDLAC filing fee. The full amount of the deposit will be released upon the Committee's approval if at least 80% of the allocation is used for the issuance of bonds. If an amount less than 80% of the allocation is used to issue bonds, a proportionate amount of the deposit will be subject to forfeiture.
- 2. Reporting of Issuance:** Enclosed is a "Report of Action Taken" form to be used to report the issuance of bonds pursuant to Section 9 of the Resolution
- 3. IRS Certification:** The IRS-required certification will be prepared and sent to bond counsel once the Committee receives the "Report of Action Taken" form.
- 4. Second Installment of Filing Fee:** Enclosed is an invoice for this Project. Please note that this is a change from past practice where the Committee's invoice for the second installment of the filing fee was sent with the IRS Certification after the Report of Action Taken. The Committee will no longer forward an invoice with the IRS Certification. The invoice attached herein should be considered final, due and payable upon the issuance of bonds.

Olson Lee  
July 16, 2014  
Page 2

5. Certification of Compliance: Enclosed is a Certification of Compliance to be submitted to the Committee annually on March 1st of each year on sponsor letterhead pursuant to Section 13 of the Resolution. In addition, an Annual Applicant Public Benefits and On-going Compliance Self-Certification form must be submitted annually on March 1st of each year pursuant to Section 5144 of the CDLAC Regulations. A copy of the form may be found at this website location: <http://www.treasurer.ca.gov/cdlac>.

Please consult the Committee's Regulations for a full explanation of the use of allocation. Do not hesitate to contact me should you have questions.

Sincerely,



Sean L. Spear  
Executive Director

Enclosures

c: Kevin Kitchingham, City and County of San Francisco  
Andrea Caruso Townsend, Esq., Squire Sanders  
Sharori Christen, Mercy Housing California 51, LP

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

RESOLUTION NO. 14-80

A RESOLUTION TRANSFERRING A PORTION OF THE 2014 STATE CEILING  
ON QUALIFIED PRIVATE ACTIVITY BONDS FOR A  
QUALIFIED RESIDENTIAL RENTAL PROJECT

WHEREAS, the California Debt Limit Allocation Committee ("Committee") has received an application ("Application") from the City and County of San Francisco ("Applicant") for the transfer to the Applicant of a portion of the 2014 State Ceiling on Qualified Private Activity Bonds under Section 146 of the Internal Revenue Code of 1986, as amended, for use by the Applicant to issue bonds or other obligations ("Bonds") for a Project as specifically described in Exhibit A ("Project") (capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Regulations of the Committee implementing the Allocation of the State Ceiling on Qualified Private Activity Bonds); and

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

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

WHEREAS, it is appropriate for the Committee to make a transfer of a portion of the 2014 State Ceiling on Qualified Private Activity Bonds ("Allocation") in order to benefit such Project described in the Application;

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

**Section 1.** There is hereby transferred to the Applicant an amount of the 2014 State Ceiling on Qualified Private Activity Bonds equal to **\$25,000,000**. Such Allocation may be used only by the Applicant and only for the issuance of Bonds for the Project, as specifically described in Exhibit A. All of the terms and conditions of Exhibit A are incorporated herein as though set forth in full (this resolution, together with Exhibit A are hereafter referred to collectively as this "Resolution").

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

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

**RESOLUTION NO. 14-80**

Page 2 of 3

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

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

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

**Section 7.** The Allocation transferred herein to the Applicant shall automatically revert to this Committee unless the Applicant has issued Bonds for the Project by the close of business on **November 3, 2014**. Upon the discretion of the Executive Director, the expiration may be extended pursuant to the provisions in Article 8, Chapter 1 of the Committee's Regulations.

**Section 8.** Within twenty-four (24) hours of using the Allocation to issue Qualified Private Activity Bonds, the Applicant shall notify the Committee by facsimile communication to the fax number listed in Section 5140 of the Committee's Regulations that the Allocation has been used. This facsimile notice shall identify the Applicant, the project or program, the date the Allocation was used, and the amount of Allocation used.

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

**Section 10.** Any differences between the amount of Bonds issued and the amount of the Allocation granted in Section 1 of this Resolution shall automatically revert to the Committee. If at any time prior to the expiration date set forth in Section 7 hereof, the Applicant determines that part or all of the Allocation will not be used to issue Bonds by that date, the Applicant shall take prompt action by resolution of its governing Board or by action of its authorized officer to return such unused Allocation to the Committee.

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



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

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

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

**CERTIFICATION**

I, SEAN L. SPEAR, Executive Director of the California Debt Limit Allocation Committee, hereby certify that the above is a full, true, and correct copy of the Resolution adopted at a meeting of the Committee held in the Jesse Unruh Building, 915 Capitol Mall, Room 587, Sacramento, California 95814, on July 16, 2014 at 11:03 a.m. with the following votes recorded:

AYES: Michael Paparian for State Treasurer Bill Lockyer  
Eraina Ortega for Governor Edmund G. Brown Jr.  
Natalie Sidarous for State Controller John Chiang

NOES: None  
ABSTENTIONS: None  
ABSENCES: None

  
SEAN L. SPEAR, Executive Director

Date: July 16, 2014

**RESOLUTION NO. 14-80**  
**(QUALIFIED RESIDENTIAL RENTAL PROJECT)**  
**EXHIBIT A**

1. Applicant: City and County of San Francisco
2. Application No.: 14-081
3. Project Sponsor: Mercy Housing California 51, LP (Mercy Housing California Family Properties; South of Market Mercy Housing)
4. Property Management Co.: Mercy Housing Management Group
5. Project Name: Bill Sorro Community Apartments
6. Type of Project: New Construction/Family
7. Location: San Francisco, CA
8. Private Placement Purchaser: Citibank, N.A.(construction)/ HUD Section 811 (perm)
9. The Private Placement Purchaser at the time of issuance will be the same as represented in the application.  
**Applicable**
10. Total Number of Units: 66 plus 1 manager unit
11. Total Number of Restricted Rental Units: 66
12. The term of the income and rental restrictions for the Project will be at least 55 years.
13. The Project will utilize Gross Rents as defined in Section 5170 of the Committee's Regulations.  
**Applicable**
14. Income and Rental Restrictions:  
For the entire term of the income and rental restrictions, the Project will have:  
  
At least 66 Qualified Residential units rented or held vacant for rental for persons or families whose income is at 50% or below of the Area Median Income.

---

15. For acquisition and rehabilitation projects, a minimum of \$10,000 in hard construction costs will be expended for each Project unit.  
**Not Applicable**
16. A minimum of \$7,223,534 of public funds will be expended for the Project.  
**Applicable**

**RESOLUTION NO. 14-80**

**Exhibit A**

Page 2 of 4

17. At a minimum, the financing for the Project shall include a Taxable Tail in the amount of \$0,000. Taxable debt may only be utilized for Project related expenses, not for the cost of issuance, for which the Project Sponsor could otherwise have used tax-exempt financing.  
**Not Applicable**
18. If the Project received points for having large family units, for the entire term of the income and rental restrictions, the Project will have at least three-bedroom or larger units.  
**Not Applicable**
19. For a period of ten (10) years after the Project is placed in use, the Project will provide to Project residents high-speed Internet or wireless (WiFi) service in each Project unit.  
**Not Applicable**
20. For a period of ten (10) years after the Project is placed in use, the Project will offer to Project residents an after school programs of an ongoing nature on-site or there must be an after school program available to Project residents within 1/4 mile of the Project. The programs shall include, but are not limited to: tutoring, mentoring, homework club, and art and recreation activities to be provided weekdays throughout the school year for at least 10 hours per week.  
**Not Applicable**
21. For a period of ten (10) years after the Project is placed in use, the Project will offer to Project residents instructor-led educational, health and wellness, or skill building classes. The classes shall include, but are not limited to: financial literacy, computer training, home-buyer education, GED, resume building, ESL, nutrition, exercise, health information/awareness, art, parenting, on-site food cultivation and preparation and smoking cessation. Classes shall be provided at a minimum of 84 hours per year (drop-in computer labs, monitoring and technical assistance shall not qualify) and be located within 1/4 mile of the Project.  
**Not Applicable**
22. For a period of ten (10) years after the Project is placed in use, the Project will offer to Project residents 20 hours or more per week of licensed childcare on-site or there must be 20 hours or more per week of licensed childcare available to Project residents within 1/4 mile of the Project.  
**Not Applicable**
23. For a period of ten (10) years after the Project is placed in use, the Project will offer to Project residents health and wellness services and programs within 1/4 mile of the Project. Such services and programs shall provide individualized support for tenants (not group classes) but need to be provided by licensed individuals or organizations. ~~The services shall include, but are not limited to:~~ visiting nurses programs, intergenerational visiting programs, and senior companion programs. Services shall be provided for a minimum of 100 hours per year.  
**Not Applicable**
24. For a period of ten (10) years after the Project is placed in use, the Project will offer to Project residents a bona fide service coordinator. The responsibilities must include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or enrichment activities for tenants (such as holiday events, tenant council, etc.)  
**Not Applicable**
25. All projects that receive points for being a Federally Assisted At-Risk Project will renew all Section 8 HAP Contracts or equivalent Project-based subsidies for their full term, and will seek additional renewals, if available, throughout the Project's useful life.  
**Not Applicable**

**RESOLUTION NO. 14-80**

**Exhibit A**

Page 3 of 4

26. All projects that receive points for being a Federally Assisted At-Risk Project based on an expiring Low Income Housing Tax Credit Regulatory Agreement or Tax-Exempt Bond Regulatory Agreement shall have a plan in place to re-certify the incomes of the existing tenants and shall not cause involuntary displacement of any tenant whose income may exceed the Project's income limits.

**Not Applicable**

27. Applicants shall meet the multiple sustainable building standards utilizing landscaping and construction materials which are compatible with the neighborhood in which the proposed project is to be located, and that the architectural design and construction materials will provide for low maintenance and durability, as well as be suited to the environmental conditions to which the project will be subjected:

**Applicable**

Section Waived:

- Energy Efficiency
- CALGreen Compliance
- Landscaping
- Roofs
- Exterior Doors
- Appliances
- Window Coverings
- Water Heater
- Floor Coverings
- Paint
- Insulation

28. The project commits to becoming certified under any one of the following programs upon completion:

- a. Leadership in Energy & Environmental Design (LEED) **Not Applicable**
- b. Green Communities **Not Applicable**
- c. GreenPoint Rated Multifamily Guidelines **Applicable**

29. The project is a New Construction or Adaptive Reuse Project exceeding the Standards of Title 24, Part 6, of the California Building Code by:

- a. 17.5% **Not Applicable**
- b. 20% **Not Applicable**
- c. 25% **Not Applicable**

30. The Project will exceed the minimum energy efficiency certification requirements for New Construction/ Adaptive Reuse:

- a. LEED for Homes (Silver) **Not Applicable**
- b. LEED for Homes (Gold) **Not Applicable**
- c. Green Point Rated (100) **Not Applicable**
- d. Green Point Rated (125) **Applicable**

31. The project is a Home Energy Rating System (HERS II) Rehabilitation Project that commits to improve energy efficiency above the current modeled energy consumption of the building(s) by:

- a. 15% **Not Applicable**
- b. 20% **Not Applicable**
- c. 25% **Not Applicable**
- d. 30% **Not Applicable**

**RESOLUTION NO. 14-80**

**Exhibit A**

Page 4 of 4

32. The project is a Rehabilitation Project that commits to developing, and/or managing the Project with the following Photovoltaic generation or solar energy:

- |   |                |
|---|----------------|
| a. Photovoltaic generation that offsets tenants loads               | Not Applicable |
| b. Photovoltaic generation that offsets 50% of common area load     | Not Applicable |
| c. Solar hot water for all tenants who have individual water meters | Not Applicable |

33. The project will implement sustainable building management practices that include: 1) development of a percent-specific maintenance manual including replacement specifications and operating information on all energy and green building features; 2) Certification of building management staff in sustainable building operations per BPI Multifamily Building Operator or equivalent training program; and 3) Undertaking formal building systems commissioning, retro-commissioning or re-commissioning as appropriate (continuous commissioning is not required:

**Not Applicable**

34. The project will sub-meter centralized hot water systems for all tenants:

**Not Applicable**

The following certification must be submitted by the Project Sponsor (on Project Sponsor letterhead) to the Applicant (Issuer) who will then forward it to the California Debt Limit Allocation Committee annually on March 1st (or at such other time as requested by the Committee).

CERTIFICATION OF COMPLIANCE

Project Name: Bill Sorro Community Apartments

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

Name of Bond Issuer: City and County of San Francisco

CDLAC Application No.: 14-081

Pursuant to Section 13 of Resolution No. 14-80 (the "Resolution"), adopted by the California Debt Limit Allocation Committee (the "Committee") on July 16, 2014, I, \_\_\_\_\_, an Officer of the Project Sponsor, hereby certify under penalty of perjury that, as of the date of this Certification, the above-mentioned Project is in compliance with all of the terms and conditions set forth in the Resolution.

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

*Please check or write N/A to the items list below :*

\_\_\_\_\_ The project is currently in the Construction or Rehabilitation phase.

\_\_\_\_\_ The project has incorporated the minimum specifications into the project design for all new construction and rehabilitation projects as evidenced by attached the applicable third party certification (HERS Rater, Green Point Rater or US Green Building Council). For projects under construction or rehabilitation, the information is due following receipt of the verification but in no event shall the documentation be submitted more than two years after the issuance of bonds.

\_\_\_\_\_ For projects that received points for exceeding the minimum requirements please attach the appropriate California Energy Commission compliance form for the project which shows the necessary percentage improvement better than the appropriate standards. The compliance form must be signed by a California Association of Building Consultants, Certified Energy Plans Examiner or HERS Rater as applicable.

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

\_\_\_\_\_  
Date

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

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

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

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

FILING FEE INVOICE

PAYMENT IS DUE WITHIN 30 DAYS OF BOND CLOSING

Date: July 16, 2014

Invoice No.: FY 14-013  
Application No.: 14-081  
Analyst Initials: LC

To: Kevin Kitchingham  
Project Manager  
City and County of San Francisco  
One South Van Ness Ave, 5th Floor  
San Francisco, CA 94103

*2nd Installment of fee levied pursuant to Section 8869.90 of the California Government Code:*

NAME OF ISSUER: City and County of San Francisco

NAME OF PROJECT: Bill Sorro Community Apartments

ALLOCATION AWARD DATE: July 16, 2014

ALLOCATION AWARD AMOUNT: \$25,000,000

<u>AMOUNT DUE:</u>	Allocation award x .00035	=	\$	8,750.00
	Less initial application fee	=	-\$	600.00
	<b>Amount Due</b>	=	\$	<b>8,150.00</b>

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

BOND ISSUANCE DATE:

PRINCIPAL AMOUNT OF BOND ISSUE: \$

AMOUNT OF BOND ALLOCATION USED: \$

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

<u>REVISED AMOUNT DUE:</u>	Amount issued x .00035	=	\$	
	Less initial application fee	=	-\$	600.00
	<b>Revised Amount Due</b>	=	\$	

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

1 [Resolution of Intent - Multifamily Housing Revenue Bonds - 200-6th Street]

2  
3 **Resolution declaring the intent of the City and County of San Francisco (the "City") to**  
4 **reimburse certain expenditures from proceeds of future bonded indebtedness;**  
5 **authorizing the Director of the Mayor's Office of Housing and Community Development**  
6 **(the "Director") to submit an application and related documents to the California Debt**  
7 **Limit Allocation Committee (CDLAC) to permit the issuance of residential mortgage**  
8 **revenue bonds for 200-6th Street, (Assessor's Parcel No. 3731, Lot No. 1); authorizing**  
9 **and directing the Director to direct the Controller's Office to hold in trust an amount not**  
10 **to exceed \$100,000 in accordance with CDLAC procedures; authorizing the Director to**  
11 **certify to CDLAC that the City has on deposit the required amount; authorizing the**  
12 **Director to pay an amount equal to such deposit to the State of California if the City**  
13 **fails to issue the residential mortgage revenue bonds; approving, for purposes of the**  
14 **Internal Revenue Code of 1986, as amended, the issuance and sale of residential**  
15 **mortgage revenue bonds by the City; authorizing and directing the execution of any**  
16 **documents necessary to implement this Resolution; and ratifying and approving any**  
17 **action heretofore taken in connection with the Project (as defined herein) and the**  
18 **Application (as defined herein).**

19  
20 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
21 "Board of Supervisors"), after careful study and consideration, has determined that there is a  
22 shortage of safe and sanitary housing within the City and County of San Francisco (the "City"),  
23 particularly for low and moderate income persons, and that it is in the best interest of the  
24 residents of the City and in furtherance of the health, safety, and welfare of the public for the  
25 City to assist in the financing of multi-family rental housing units; and



1           WHEREAS, Acting under and pursuant to the powers reserved to the City under  
2 Sections 3, 5, and 7 of Article XI of the Constitution of the State of California and Sections  
3 1.101 and 9.107 of the Charter, the City has enacted the City and County of San Francisco  
4 Residential Mortgage Revenue Bond Law (the "City Law"), constituting Article I of Chapter 43  
5 of the San Francisco Administrative Code, in order to establish a procedure for the  
6 authorization, issuance and sale of residential mortgage revenue bonds by the City for the  
7 purpose of providing funds to encourage the availability of adequate housing and home  
8 finance for persons and families of low or moderate income, and to develop viable  
9 communities by providing decent housing, enhanced living environments, and increased  
10 economic opportunities for persons and families of low or moderate income; and

11           WHEREAS, In addition, pursuant to Division 31 of the Health and Safety Code of the  
12 State of California, and particularly Chapter 7 of Part 5 thereof (the "State Law"), the City is  
13 empowered to issue and sell bonds for the purpose of making mortgage loans or otherwise  
14 providing funds to finance the development of multi-family rental housing including units for  
15 lower income households and very low income households; and

16           WHEREAS, Mercy Housing California 51 L.P., a California liability partnership (or any  
17 successor thereto including any successor owner of the Project, the "Developer"), desires to  
18 construct a 67-unit affordable residential rental housing development located at 200-6th  
19 Street, (Assessor's Parcel No. 3731 – Lot No. 1) San Francisco, California 94103 (the  
20 "Project"); and

21           WHEREAS, The Developer has requested that the City assist in the financing of the  
22 Project through the issuance of one or more series of tax-exempt mortgage revenue bonds  
23 (the "Bonds"); and

24           WHEREAS, The City expects that proceeds of the Bonds will be used to pay certain  
25 costs incurred in connection with the Project prior to the date of issuance of the Bonds; and

1           WHEREAS, The City intends to issue the Bonds in an amount not to exceed  
2 \$35,000,000 and to loan the proceeds of the Bonds to the Developer (the "Loan") to finance  
3 the costs of the Project; and

4           WHEREAS, The Board of Supervisors has determined that the moneys advanced and  
5 to be advanced to pay certain expenditures of the Project are or will be available only for a  
6 temporary period and it is necessary to reimburse such expenditures with respect to the  
7 Project from the proceeds of the Bonds; and

8           WHEREAS, Section 1.150-2 of the United States Treasury Regulations requires that  
9 the Board of Supervisors declare its reasonable official intent to reimburse prior expenditures  
10 for the Project with proceeds of the Bonds; and

11           WHEREAS, The interest on the Bonds may qualify for tax exemption under Section  
12 103 of the Internal Revenue Code of 1986, as amended (the "Code"), only if the Bonds are  
13 approved in accordance with Section 147(f) of the Code; and

14           WHEREAS, The City now wishes to approve the issuance of the Bonds in order to  
15 satisfy the public approval requirements of Section 147(f) of the Code; and

16           WHEREAS, The Project is located wholly within the City; and

17           WHEREAS, On March 4, 2014, the City caused a notice stating that a public hearing  
18 with respect to the issuance of the Bonds would be held by the Mayor's Office of Housing and  
19 Community Development on March 24, 2014, to appear in The San Francisco Chronicle,  
20 which is a newspaper of general circulation in the City; and

21           WHEREAS, The Mayor's Office of Housing and Community Development held the  
22 public hearing described above on March 24, 2014, and an opportunity was provided for  
23 persons to comment on the issuance of the Bonds and the Project; and the minutes of such  
24 hearing were provided to this Board of Supervisors prior to this meeting; and

25

1           WHEREAS, This Board of Supervisors is the elected legislative body of the City and is  
2 the applicable elected representative authorized to approve the issuance of the Bonds within  
3 the meaning of Section 147(f) of the Code; and

4           WHEREAS, Section 146 of the Code limits the amount of tax-exempt private activity  
5 bonds, which include qualified mortgage bonds, that may be issued in any calendar year by  
6 entities within a state and authorizes the legislature of each state to provide the method of  
7 allocating authority to issue tax-exempt private activity bonds within the respective state; and

8           WHEREAS, Chapter 11.8 of Division 1 of Title 2 of the Government Code of the State  
9 of California governs the allocation in the State of California of the state ceiling established by  
10 Section 146 of the Code among governmental units in the State having the authority to issue  
11 tax-exempt private activity bonds; and

12           WHEREAS, Section 8869.85(b) of the Government Code requires that a local agency  
13 file an application for a portion of the state ceiling with or upon the direction of the California  
14 Debt Allocation Committee (CDLAC) prior to the issuance of tax-exempt private activity  
15 bonds, including qualified mortgage bonds; and

16           WHEREAS, CDLAC procedures require an applicant for a portion of the state ceiling to  
17 certify to CDLAC that applicant has on deposit an amount equal to one-half of one percent  
18 (1/2%) of the amount of allocation requested not to exceed \$100,000.00; now, therefore be it

19           RESOLVED, By the Board of Supervisors of the City and County of San Francisco, as  
20 follows:

21           Section 1. The Board of Supervisors finds and determines that the foregoing recitals  
22 are true and correct.

23           Section 2. The Board of Supervisors adopts this Resolution for purposes of  
24 establishing compliance with the requirements of Section 1.150-2 of the United States  
25 Treasury Regulations. This Resolution does not bind the Board of Supervisors to issue the

1 Bonds, approve the Loan or to make any expenditure, incur any indebtedness or proceed with  
2 the Project.

3 Section 3. The Board of Supervisors hereby declares its official intent under United  
4 States Treasury Regulations Section 1.150-2 to use proceeds of the Bonds to reimburse  
5 expenditures incurred in connection with the Project. The Board of Supervisors hereby further  
6 declares its intent to use such proceeds to reimburse the Developer for actual expenditures  
7 made by the Developer on the Project.

8 Section 4. On the date of the expenditure to be reimbursed, all reimbursable costs of  
9 the Project will be of a type properly chargeable to a capital account under general federal  
10 income tax principles.

11 Section 5. The maximum principal amount of debt expected to be issued for the Project  
12 is \$35,000,000.

13 Section 6. This Board of Supervisors, as the applicable elected representative of the  
14 governmental unit having jurisdiction over the area in which the Project is located, hereby  
15 approves the issuance of the Bonds for purposes of Section 147(f) of the Code.

16 Section 7. This approval of the issuance of the Bonds by the City is neither an approval  
17 of the underlying credit issues of the proposed Project nor an approval of the financial  
18 structure of the Bonds.

19 Section 8. The Board of Supervisors hereby authorizes the Director, or his designee of  
20 the Mayor's Office of Housing and Community Development (the "Director"), on behalf of the  
21 City, to submit an application (the "Application"), and such other documents as may be  
22 required, to CDLAC pursuant to Government Code Section 8869.85 for an allocation for the  
23 Project of a portion of the state ceiling for private activity bonds in a principal amount not to  
24 exceed \$35,000,000.

25

1 Section 9. An amount equal to \$100,000 ("Deposit") is hereby authorized to be held on  
2 deposit in connection with the Application and the applicable CDLAC procedures, and the  
3 Director is authorized to certify to CDLAC that such funds are available; which Deposit shall  
4 consist of a restriction on cash in the Hotel Tax Fund established pursuant to Section 515.01  
5 of Article 7 of the San Francisco Business and Tax Regulations Code (the "Hotel Tax Fund").

6 Section 10. If the City receives a CDLAC allocation and the applicable issuance  
7 requirements are not met, the Mayor's Office of Housing and Community Development is  
8 hereby authorized to cause an amount equal to the Deposit to be paid to the State of  
9 California from the Hotel Tax Fund, if required by CDLAC.

10 Section 11. The officers and employees of the City and the Director are hereby  
11 authorized and directed, jointly and severally, to do any and all things necessary or advisable  
12 to consummate the receipt of an allocation from CDLAC and otherwise effectuate the  
13 purposes of this Resolution, and all actions previously taken by such officers and employees  
14 with respect to the Project, including but not limited to the submission of the application to  
15 CDLAC, are hereby ratified and approved.

16 Section 12. This Resolution shall take effect from and after its adoption by the Board  
17 and approval by the Mayor.


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APPROVED AS TO FORM:

DENNIS J. HERRERA

City Attorney

By:



HEIDI J. GEWERTZ

Deputy City Attorney



City and County of San Francisco

Tails  
Resolution

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 140265

Date Passed: March 25, 2014

Resolution declaring the intent of the City and County of San Francisco (the "City") to reimburse certain expenditures from proceeds of future bonded indebtedness; authorizing the Director of the Mayor's Office of Housing and Community Development (the "Director") to submit an application and related documents to the California Debt Limit Allocation Committee (CDLAC) to permit the issuance of residential mortgage revenue bonds for 200-6th Street, (Assessor's Parcel No. 3731, Lot No. 1); authorizing and directing the Director to direct the Controller's Office to hold in trust an amount not to exceed \$100,000 in accordance with CDLAC procedures; authorizing the Director to certify to CDLAC that the City has on deposit the required amount; authorizing the Director to pay an amount equal to such deposit to the State of California if the City fails to issue the residential mortgage revenue bonds; approving, for purposes of the Internal Revenue Code of 1986, as amended, the issuance and sale of residential mortgage revenue bonds by the City; authorizing and directing the execution of any documents necessary to implement this Resolution; and ratifying and approving any action heretofore taken in connection with the Project (as defined herein) and the Application (as defined herein).


March 25, 2014 Board of Supervisors - ADOPTED


Ayes: 8 - Avalos, Breed, Chiu, Cohen, Farrell, Mar, Tang and Yee

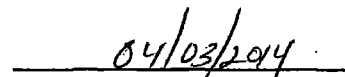
Absent: 3 - Campos, Kim and Wiener

File No. 140265

I hereby certify that the foregoing  
Resolution was ADOPTED on 3/25/2014 by  
the Board of Supervisors of the City and  
County of San Francisco.

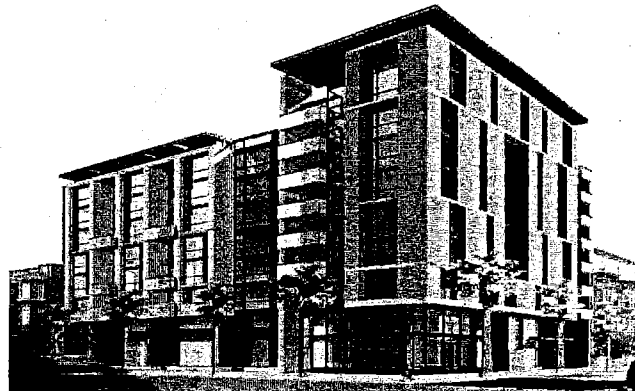
  
Angela Calvillo  
Clerk of the Board

  
Mayor

  
Date Approved



## Bill Sorro Community



Mercy Housing California was selected by the San Francisco Redevelopment Agency to redevelop the current Hugo Hotel site at 200 Sixth Street. It is anticipated that the existing building will be replaced by a 9-story structure with 67 units of affordable family housing and approximately 2,315 sq. ft. of ground floor neighborhood serving retail space. The proposed new building will include: 8 Studios, 24 1- Bedroom, 25 2- Bedroom, and 10 3-Bedroom apartments. Fourteen of the units will serve low income adults with developmental disabilities and will be financed using the HUD 811 program. The remaining 53 units will serve low income families with incomes at 40% and 50% of AMI. The development will have on-site professional property management (the Mercy Housing Management Group) whose on-site staff will consist of a property manager, janitor, and maintenance person. Mercy Housing California will employ a Resident Services Coordinator to assist residents in connecting to social service resources throughout San Francisco. Mercy also anticipates that its successful Motivational Achievement Together (MAT) program (operated for the last 10 years at nearby Columbia Park Apartments) for youth aged 13 years and under will be expanded at 200 Sixth Street, with MAT providing afterschool, educationally enriched programming to youth 13-18 years of age. The Arc of San Francisco will provide services for the residents with developmental disabilities living in the HUD 811 subsidized units. The South of Market Child Care Center will utilize an office and the community room on the second floor of 200 Sixth Street for a Sixth Street satellite location for their Family Resource Center providing parenting classes and family case management to SOMA residents.

For the commercial spaces, the prominent corner space is planned to be a high quality neighborhood-serving restaurant providing moderately-priced ethnic cuisine. Mercy is also working with the United Playaz to explore the possibility of locating a youth led café. Mercy will work with Urban Solutions to market the retail spaces and anticipates that the commercial tenants will utilize the Six on Sixth program to fund Tenant Improvements within the spaces.

The affordable rental housing units are anticipated to be affordable to households with incomes at or below 50% of the San Francisco unadjusted Area Median Income. Those income and rent MAXIMUMS for 2014 are:

[www.mercyhousing.org](http://www.mercyhousing.org)

1360 Mission Street • Suite 300 • San Francisco, CA 94103 • 415.355.7100 • Fax: 415.355.7101

3120 Freeboard Drive • Suite 202 • West Sacramento, CA 95691 • 916.414.4400 • Fax: 916.414.4490

211 Gault Street • Santa Cruz, CA 95062 • 831.471.1914 • Fax: 831.471.1917

1500 South Grand Avenue • Suite 100 • Los Angeles, CA 90015 • 213.743.5820 • Fax: 213.743.5828

480 South Batavia • Orange, CA 92868 • 714.550.5080 • Fax 714.550.5085

Mercy Housing is sponsored by communities of Catholic Sisters 2730



Income Definition	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person
50% OF MEDIAN Income limits **	\$34,000	\$31,100	\$43,700	\$48,550	\$52,450	\$56,350	\$60,200
<b>RENTS</b>	<b>0 Bedroom/Studio</b>	<b>1 Bedroom</b>	<b>2 Bedroom</b>	<b>3 Bedroom</b>			
Maximum Rent – including utilities ** At 50% AMI	\$850	\$971	\$1,093	\$1,214			

\*\*MEDIAN income maximum amounts and maximum rents change annually. These amounts are presented here just for reference and will not be the final rent structure for the residential units.

The building will be built to a high level of sustainable building standards and comply with the city's Green Building ordinance. The project will seek Green Points Rating and achieve a point total of at least 100 points.

#### Timeline:

- Summer, 2013: EIR certified, Conditional Use and Variance approvals by SF Planning Commission
- November, 2014: Start of construction
- December, 2016: Construction completion

#### Developer

Mercy Housing California (MHC) is a California-based, non-profit housing development corporation with the mission of creating and strengthening healthy communities through the provision of quality, affordable, service-enriched housing for individuals and families who are economically poor. MHC has a strong, 30 year presence in San Francisco reflected in its 32 housing developments for families, senior, and persons with special needs. MHC's portfolio includes approximately 7,940 units in 128 California properties in operation that date from 1974 to the present with an additional 5,021 units currently in development throughout California. MHC is an affiliate of Mercy Housing, Inc. (MHI), a national non-profit housing development, management and resident services organization sponsored by eleven congregations of women religious.

**FOR MORE INFORMATION** about this residential development, please contact Amy Bayley, RSM, at (415) 355-7148 or [abayley@mercyhousing.org](mailto:abayley@mercyhousing.org).

November 2012



# Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2014 SEP -2  
Bz

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for Letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.**

**Sponsor(s):**

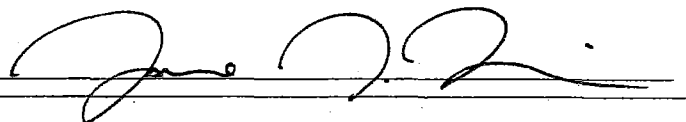
Jane Kim

**Subject:**

Multifamily Housing Revenue Note (Bill Sorro Community) - \$25,000,000.

**The text is listed below or attached:**

See attached.

Signature of Sponsoring Supervisor: 

**For Clerk's Use Only:**

2732/40924

**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: <b>Mercy Housing California 51, a California Limited Partnership</b>	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.	
(1) and (2) - Please see attached Board of Directors / Officers of the Board and Corporation for Mercy Housing California Family Properties. (3), (4) and (5) not applicable	
Contractor address: <b>1360 Mission Street, Suite 300, San Francisco, CA 94103</b>	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: <b>\$25,000,000</b>
Describe the nature of the contract that was approved: <b>Funds will be used for the development of 67 new affordable, family-rental housing units in the South of Market neighborhood.</b>	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors  
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

\_\_\_\_\_  
Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
Date Signed

# BOARD OF DIRECTORS MERCY HOUSING CALIFORNIA FAMILY PROPERTIES

Year 2014

Member:  
Mercy Housing California.

CURRENT BOARD & TERM	OFFICERS	MEMBER(S)
1) Val Agostino (VCh)                      05-19	<i>President</i>	Mercy Housing California
2) <b>Jane Graf</b> (Ch)                              07-15	D. Shoemaker	
3) Amy Bayley                                      07-15	<i>Vice President</i>	
4) Barbara Gualco                                13-18	J. Graf	
5) Chris Burckhardt                              14-19	V. Agostino	
	E. Holder	
	B. Gualco	
	S. Daues	
	B. Phillips	
	S. Spears	
	M. Clayton	
	B. Saab	
	<i>J. Dolin</i>	
	Treasurer	
	V. Dodds	
	Secretary	
	J. Rosenblum	
	Asst. Secretary	
	A. Bayley	

## Mercy Housing California Family Properties - Officers of the Board and Corporation

### Current Board

<p><b>Jane Graf - Chair</b>  <b>Mercy Housing Inc.</b>            1360 Mission Street, Suite 300            San Francisco, CA 94103  <b>Bus: 415-355-7146</b>  <b>Fax: 415-355-7101</b>  <b>E-Mail: <a href="mailto:jgraf@mercyhousing.org">jgraf@mercyhousing.org</a></b></p>	<p><b>Valerie Agostino – Vice Chair</b>  <b>Vice President of the Corporation</b>  <b>Mercy Housing California</b>            1360 Mission Street, Suite 300            San Francisco, CA 94103  <b>Bus: 415-355-7150</b>  <b>Fax: 415-355-7101</b>  <b>E-mail: <a href="mailto:agostino@mercyhousing.org">agostino@mercyhousing.org</a></b></p>

<p><b>Barbara Gualco</b>  <b>Mercy Housing California</b>  <b>1360 Mission Street, Suite 300</b>  <b>San Francisco, CA 94103</b>  <b>Bus: 415-355-7148</b>  <b>Fax: 415-355-7101</b>  <b>E-mail: <a href="mailto:bgualco@mercyhousing.org">bgualco@mercyhousing.org</a></b></p>	<p><b>Amy Bayley, RSM</b>  <b>Mercy Housing California</b>  <b>1360 Mission Street, Suite 300</b>  <b>San Francisco, CA 94103</b>  <b>Bus: 415-355-7148</b>  <b>Fax: 415-355-7101</b>  <b>E-mail: <a href="mailto:abayley@mercyhousing.org">abayley@mercyhousing.org</a></b></p>
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**Chris Burckhardt**  
**Mercy Housing, Inc.**  
**1999 Broadway, Suite 1000**  
**Denver, CO 80202**  
**Bus: 303-830-6621**  
**Fax: 303-830-3301**  
**E-mail: [cburckhardt@mercyhousing.org](mailto:cburckhardt@mercyhousing.org)**

**Officers of the Board and Corporation**

<p><b>Jane Graf</b>  <b>Vice President of the Corporation</b>  <b>Mercy Housing Inc.</b>  <b>1360 Mission Street, Suite 300</b>  <b>San Francisco, CA 94103</b>  <b>Bus: 415-355-7146</b>  <b>Fax: 415-355-7101</b>  <b>E-Mail: <a href="mailto:jgraf@mercyhousing.org">jgraf@mercyhousing.org</a></b></p>	<p><b>Doug Shoemaker</b>  <b>President of the Corporation</b>  <b>Mercy Housing California</b>  <b>1360 Mission Street, Suite 300</b>  <b>San Francisco, CA 94103</b>  <b>Bus: 415-355-7151</b>  <b>Fax: 415-355-7101</b>  <b>E-mail: <a href="mailto:dshoemaker@mercyhousing.org">dshoemaker@mercyhousing.org</a></b></p>
<p><b>Steve Spears</b>  <b>Vice President of the Corporation</b>  <b>Mercy Housing, Inc.</b>  <b>1999 Broadway, Suite 1000</b>  <b>Denver, CO 80202</b>  <b>Bus: 303-830-6621</b>  <b>Fax: 303-830-3301</b>  <b>E-mail: <a href="mailto:sspears@mercyhousing.org">sspears@mercyhousing.org</a></b></p>	<p><b>Melissa Clayton</b>  <b>Vice President of the Corporation</b>  <b>Mercy Housing, Inc.</b>  <b>1999 Broadway, Suite 1000</b>  <b>Denver, CO 80202</b>  <b>Bus: 303-830-6621</b>  <b>Fax: 303-830-3301</b>  <b>E-mail: <a href="mailto:mclayton@mercyhousing.org">mclayton@mercyhousing.org</a></b></p>
<p><b>Bruce Saab</b>  <b>Vice President of the Corporation</b>  <b>Mercy Housing, Inc.</b>  <b>1999 Broadway, Suite 1000</b>  <b>Denver, CO 80202</b>  <b>Bus: 303-830-6621</b>  <b>Fax: 303-830-3301</b>  <b>E-mail: <a href="mailto:bsaab@mercyhousing.org">bsaab@mercyhousing.org</a></b></p>	<p><b>Jennifer Dolin</b>  <b>Vice President of the Corporation</b>  <b>Mercy Housing California</b>  <b>1360 Mission Street, Suite 300</b>  <b>San Francisco, CA 94103</b>  <b>Bus: 415-355-7148</b>  <b>Fax: 415-355-7101</b>  <b>E-mail: <a href="mailto:jdolin@mercyhousing.org">jdolin@mercyhousing.org</a></b></p>

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