



1 [Multifamily Housing Revenue Note - 1101 Connecticut Street ("Potrero Block X") - Not to  
2 Exceed \$49,454,000]

3 **Resolution authorizing the execution and delivery of a multifamily housing revenue**  
4 **note in one or more series in an aggregate principal amount not to exceed \$49,454,000**  
5 **for the purpose of providing financing for the construction of a 72-unit multifamily**  
6 **rental housing project known as "Potrero Block X;" approving the form of and**  
7 **authorizing the execution of a funding loan agreement providing the terms and**  
8 **conditions of the loan from the funding lender to the City and the execution and**  
9 **delivery of the note; approving the form of and authorizing the execution of a borrower**  
10 **loan agreement providing the terms and conditions of the loan from the City to the**  
11 **borrower; approving the form of and authorizing the execution of a regulatory**  
12 **agreement and declaration of restrictive covenants; authorizing the collection of**  
13 **certain fees; approving modifications, changes and additions to the documents;**  
14 **ratifying and approving any action heretofore taken in connection with the back-to-**  
15 **back loans, the note and the project; granting general authority to City officials to take**  
16 **actions necessary to implement this Resolution; and related matters, as defined herein.**

17  
18 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
19 "Board") desires to provide for a portion of the costs of the construction by Potrero Housing  
20 Associates I LP., a California limited partnership (the "Borrower"), of a 72-unit residential  
21 rental development located at 1101 Connecticut Street, in San Francisco, California, known  
22 as "Potrero Block X" (the "Project"), to provide housing for persons and families of low income  
23 and very low income through the issuance of a multifamily housing revenue note (the "Note");  
24 and  
25

1           WHEREAS, The City and County of San Francisco (the "City") is authorized to issue  
2 revenue notes for such purpose pursuant to the Charter of the City, Article I of Chapter 43 of  
3 the Administrative Code of the City and, to the extent applicable, Chapter 7 of Part 5 of  
4 Division 31 (commencing with Section 52075) of the Health and Safety Code of the State of  
5 California ("Health and Safety Code"), as now in effect and as it may from time to time  
6 hereafter be amended or supplemented (collectively, the "Act"); and

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

10           WHEREAS, The Mayor's Office of Housing and Community Development held a duly  
11 noticed public hearing on April 15, 2016 at which hearing an opportunity was provided for  
12 persons to comment on the issuance of the Note; and

13           WHEREAS, This Board, on May 17, 2016, adopted Resolution No. 193-16, (i)  
14 approving the execution and delivery of the Note solely for the purposes of Section 147(f) of  
15 the Code in an amount not to exceed \$56,000,000, and (ii) declaring its official intent to  
16 reimburse prior expenditures with proceeds of the Note pursuant to Section 1.150-2 of the  
17 United States Treasury Regulations; and

18           WHEREAS, On September 21, 2016, the California Debt Limit Allocation Committee  
19 ("CDLAC") in its Resolution No. 16-128 allocated \$49,454,000 in qualified private activity  
20 obligations to the Project; and

21           WHEREAS, There has been prepared and presented to the Board for consideration at  
22 this meeting the documentation required for the execution and delivery of the Note, and such  
23 documentation is on file with the Clerk of the Board of Supervisors (the "Clerk of the Board");  
24 and

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

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

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

11           WHEREAS, The City has engaged Ballard Spahr LLP and Fox Rothschild LLP, as co-  
12 special counsel with respect to the Note ("Co-Special Counsel"); and

13           WHEREAS, Citibank, N.A. (or an affiliate thereof) (the "Funding Lender") has  
14 expressed its intention to lend the City and County of San Francisco the funding loan in  
15 exchange for the Note authorized hereby; now, therefore, be it

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

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

20           Section 2. Approval of Execution and Delivery of Note. In accordance with the Act, the  
21 Funding Loan Agreement (hereinafter defined) and the Borrower Loan Agreement (hereinafter  
22 defined), the City is hereby authorized to execute and deliver notes in one or more series and  
23 subseries, and a revenue note designated as "City and County of San Francisco Multifamily  
24 Housing Revenue Note (Potrero Block X), 2016 Series Y" or such other designation as may  
25 be necessary or appropriate to distinguish such series from every other series of bonds or

1 notes, in an aggregate principal amount not to exceed \$49,454,000 (the "Note"), with an  
2 interest rate not to exceed twelve percent (12%) per annum for the Note, and which shall have  
3 a final maturity date not later than forty (40) years from the date of execution and delivery of  
4 the Note. The Note shall be in the form set forth in and otherwise in accordance with the  
5 Funding Loan Agreement (hereinafter defined) and shall be executed by the manual or  
6 facsimile signature of the Mayor of the City (the "Mayor") and as further provided in the  
7 Funding Loan Agreement.

8 Section 3. Approval of Funding Loan Agreement. The Funding Loan Agreement (the  
9 "Funding Loan Agreement") in the form presented to the Board, a copy of which is on file with  
10 the Clerk of the Board, is hereby approved. The Funding Loan Agreement shall be entered  
11 into by and among the City, the Funding Lender and a trust company, a state banking  
12 corporation or a national banking association with the authority to accept trusts in the State of  
13 California selected by the Director of the Mayor's Office of Housing and Community  
14 Development (the "Director") and otherwise meeting the requirements of the Funding Loan  
15 Agreement (the "Fiscal Agent"). Each of the Mayor, the Director, the Deputy Director for  
16 Housing of the Mayor's Office of Housing and Community Development, or any other  
17 Authorized Governmental Lender Representative (as such term is defined in the Funding  
18 Loan Agreement) is hereby authorized to execute the Funding Loan Agreement, approved as  
19 to form by the City Attorney of the City (the "City Attorney"), in substantially said form, together  
20 with such additions thereto and changes therein as the City Attorney and Co-Special Counsel  
21 may approve or recommend in accordance with Section 7 hereof.

22 Section 4. Approval of Borrower Loan Agreement. The Borrower Loan Agreement (the  
23 "Borrower Loan Agreement") by and between the City and the Borrower and The Assignment  
24 of Multifamily Deed of Trust and Loan Documents, from the City to the Funding Lender (The  
25 "Assignment"), in the forms presented to the Board, copies of which are on file with the Clerk

1 of the Board, are hereby approved. Each Authorized Governmental Lender Representative is  
2 hereby authorized to execute the Borrower Loan Agreement and the Assignment in  
3 substantially said form, together with such additions thereto and changes therein as the City  
4 Attorney and Co-Special Counsel may approve or recommend in accordance with Section 7  
5 hereof.

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

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

1           Section 7. Modifications, Changes, Additions. Any Authorized Governmental Lender  
2 Representative executing the City Documents, in consultation with the City Attorney and Co-  
3 Special Counsel, is hereby authorized to approve and make such modifications, changes or  
4 additions to the City Documents as may be necessary or advisable, provided that such  
5 modification does not authorize an aggregate principal amount of the Note in excess of  
6 \$49,454,000, provide for a final maturity of the Note later than forty (40) years, or provide for  
7 the Note to bear interest at a rate in excess of twelve percent (12%) per annum. The approval  
8 of any modification, addition or change to any of the aforementioned documents shall be  
9 evidenced conclusively by the execution and delivery of the document in question.

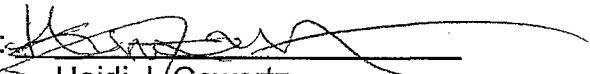
10           Section 8. Ratification. All actions heretofore taken by the officers and agents of the  
11 City with respect to the funding loan and the execution and delivery of the Note as consistent  
12 with the City Documents are hereby approved, confirmed and ratified.

13           Section 9. General Authority. The proper officers of the City are hereby authorized  
14 and directed, for and in the name and on behalf of the City, to do any and all things and take  
15 any and all actions and execute and deliver any and all certificates, agreements (including  
16 such agreements to provide adequate or additional security or indemnities as required by  
17 lenders to consummate the financing) and other documents, including but not limited to those  
18 documents described in the City Documents, which they, or any of them, may deem  
19 necessary or advisable in order to consummate the lawful execution and delivery of the Note  
20 and to effectuate the purposes thereof and of the City Documents. Any such actions are  
21 solely intended to further the purposes of this Resolution, and are subject in all respects to the  
22 terms of the Resolution. No such actions shall increase the risk to the City or require the City  
23 to spend any resources not otherwise granted herein. Final versions of such documents shall  
24 be provided to the Clerk of the Board for inclusion in the official file within 30 days of execution  
25 by all parties.

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Section 10. File. All documents referenced herein as being on file with the Clerk of the Board are located in File No. 161199, 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  
n:\land\as2016\1300402\01147369.docx



AFTER RECORDING RETURN TO:

Citibank, N.A.  
Transaction Management Group/Post Closing  
390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Tanya Jimenez  
Re: Potrero - Deal ID No. [\_\_\_\_\_]

**ASSIGNMENT OF DEED OF TRUST**

KNOW ALL PERSONS BY THESE PRESENTS:

**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation organized and existing under the laws of the State of California ("**Assignor**"), pursuant to that certain Funding Loan Agreement of even date herewith (the "**Funding Loan Agreement**") by and among [Fiscal Agent], Assignor and **CITIBANK, N.A.** ("**Assignee**"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does by these presents assign, without recourse, to Assignee all of Assignor's right, title and interest in and to, subject to the Unassigned Rights (as defined in the Funding Loan Agreement), the instruments ("**Assigned Instruments**") described on Schedule 1 attached hereto. This Assignment is dated for reference purposes only as of the 1st day of December, 2016, and will not be effective and binding on the parties hereto unless and until the Closing Date occurs.

TOGETHER with the Note described in the Assigned Instruments, and the money due and to become due thereon, with the interest thereon, TO HAVE AND TO HOLD the same unto the said Assignee forever, subject only to all the provisions contained therein, AND the said Assignor hereby constitutes and appoints the Assignee as the Assignor's true and lawful attorney, irrevocable in law or in equity, in the Assignor's name, place and stead, but at Assignee's cost and expense, to have, use and take all lawful ways and means for the recovery of all of the said money and interest; and in case of payment, to discharge the same as fully as the Assignor might or could if these presents were not made.

**Overriding Limitations.** In no event shall Assignor:

(i) prosecute its action to a lien on the Project (as defined in that certain Borrower Loan Agreement by and between Potrero Housing Associates I, LP, a California limited partnership ("**Borrower**") and Assignor (the "**Loan Agreement**"); or

(ii) take any action which may have the effect, directly or indirectly, of impairing the ability of Borrower to timely pay the principal of, interest on, or other amounts due under, the Loan or of causing Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(iii) interfere with the exercise by Assignee or Servicer of any of their rights under the Loan Documents upon the occurrence of an event of default by Borrower under the Loan Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Loan.

**Definitions.** All capitalized terms that are used and are not defined herein shall have the respective meanings ascribed to them in the Loan Agreement. In all references herein to any parties, persons, entities or corporations the use of any particular gender on the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

*[signature page follows]*

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Assignment of Deed of Trust or caused this Assignment of Deed of Trust to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**ASSIGNOR:**

**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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (here insert name and title of the officer), personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**SCHEDULE 1  
TO  
ASSIGNMENT OF DEED OF TRUST**

**ASSIGNEE:**

Citibank, N.A.  
390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attn: Transaction Management Group/Post Closing

**ASSIGNED INSTRUMENTS:**

1. Loan Agreement.
2. Multifamily Note by Borrower to Assignor dated as of Closing Date, in the original principal amount of up to \$[\_\_\_\_\_].
3. Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof executed by Borrower for the benefit of Assignor, which is being recorded immediately prior hereto in the Recorder's Office of the City and County of San Francisco, California and encumbers the real property (and improvements thereon) that is more particularly described on **Exhibit A**.

**EXHIBIT A**

**LEGAL DESCRIPTION**



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**BORROWER LOAN AGREEMENT**

**between**

**CITY AND COUNTY OF SAN FRANCISCO,**

**as Governmental Lender,**

**and**

**POTRERO HOUSING ASSOCIATES I, LP,  
A CALIFORNIA LIMITED PARTNERSHIP**

**as Borrower**

**Dated as of December 1, 2016**

**Relating to:**

**[\$\_\_\_\_\_]**

**Funding Loan originated by CITIBANK, N.A., as Funding Lender**

The interest of the Governmental Lender in this Borrower Loan Agreement (except for certain rights described herein) has been pledged and assigned to Citibank, N.A., as funding lender (the "Funding Lender"), under that certain Funding Loan Agreement, of even date herewith, by and between the City and County of San Francisco and the Funding Lender, under which the Funding Lender is originating a loan to the Governmental Lender to fund the Borrower Loan made under this Borrower Loan Agreement.

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## **BORROWER LOAN AGREEMENT**

THIS BORROWER LOAN AGREEMENT (this "Borrower Loan Agreement") is entered into as of December 1, 2016 between 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"), and POTRERO HOUSING ASSOCIATES I, LP, a California Limited Partnership (together with its successors and assigns, the "Borrower").

### **WITNESSETH:**

#### **RECITALS**

WHEREAS, the Act (as defined herein) authorizes the Governmental Lender (a) to make loans to any person to provide financing for residential rental developments located within the City and County of San Francisco (the "City"), and intended to be occupied in part or in whole by persons of low and moderate income; (b) to borrow funds for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with any such borrowing by 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 repayment of any such borrowing by the Governmental Lender; and

WHEREAS, the Borrower has applied to the Governmental Lender for a loan (the "Borrower Loan") for the acquisition, construction and development of a 72-unit affordable multifamily residential rental project located in the City, to be known as Potrero Block X (the "Project"); and

WHEREAS, the Borrower's repayment obligations under this Borrower Loan Agreement are evidenced by the Borrower Note; as defined herein; and

WHEREAS, the Borrower has requested the Governmental Lender to enter into that certain Funding Loan Agreement, of even date herewith (the "Funding Loan Agreement"), among the Governmental Lender, U.S. Bank National Association, as fiscal agent (the "Fiscal Agent") and Citibank, N.A. (the "Funding Lender"), under which the Funding Lender will make a loan (the "Funding Loan") to the Governmental Lender, the proceeds of which will be loaned under this Borrower Loan Agreement to the Borrower to finance the acquisition, construction and development of the Project; and

WHEREAS, the Borrower Loan is secured by, among other things, that certain Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (as amended, restated and/or supplemented from time to time, the "Security Instrument"), dated as of the date hereof and assigned to the Funding Lender to secure the Funding Loan, encumbering the Project, and will be advanced to Borrower pursuant to this Borrower Loan Agreement and the Construction Funding Agreement.

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; PRINCIPLES OF CONSTRUCTION

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

Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Security Instrument or, if not defined in the Security Instrument, in the Funding Loan Agreement.

All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the GAAP.

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.

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.

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."

Section 1.2 Definitions. The following terms, when used in this Borrower Loan Agreement (including when used in the above recitals), shall have the following meanings:

"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 and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended.

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

"ADA" shall have the meaning set forth in Section 4.1.37 hereof.

"Additional Borrower Payments" shall mean the payments payable pursuant to Section 2.5 hereof (Additional Borrower Payments), Section 2.6 hereof (Overdue Payments; Payments in

Default), Section 3.3.3 of the Construction Funding Agreement (Borrower Loan in Balance), Section 5.14 hereof (Expenses) and Section 10 of the Borrower Note (Voluntary and Involuntary Prepayments).

“Agreement of Environmental Indemnification” shall mean the Agreement of Environmental Indemnification, dated as of the date thereof, executed by the Borrower and Guarantor for the benefit of the Funding Lender, the Governmental Lender, any Servicer, their respective successors and assigns, and any lawful holder, owner or pledgee of the Borrower Note from time to time.

“Appraisal” shall mean an appraisal of the Project and Improvements, which appraisal shall be (i) performed by a qualified appraiser licensed in the State selected by Funding Lender, and (ii) satisfactory to Funding Lender (including, without limitation, as adjusted pursuant to any internal review thereof by Funding Lender) in all respects.

“Architect” shall mean any licensed architect, space planner or design professional that Borrower may engage from time to time, with the approval of Funding Lender, to design any portion of the Improvements, including the preparation of the Plans and Specifications.

“Architect’s Agreement” shall mean any agreement that Borrower and any Architect from time to time may execute pursuant to which Borrower engages such Architect to design any portion of the Improvements, including the preparation of the Plans and Specifications, as approved by Funding Lender.

“Authorized Borrower Representative” shall mean a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer and containing the specimen signature of such person and signed on behalf of the Borrower by its Borrower Controlling Entity which certificate may designate one or more alternates.

“Bankruptcy Code” shall mean the United State Bankruptcy Reform Act of 1978, as amended from time to time, or any substitute or replacement legislation.

“Bankruptcy Event” shall have the meaning given to that term in the Security Instrument.

“Bankruptcy Proceeding” shall have the meaning set forth in Section 4.1.8 hereof.

“Beneficiary Parties” shall mean, collectively, the Funding Lender, the Governmental Lender and the Fiscal Agent.

“Borrower” shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

“Borrower Affiliate” shall mean, as to the Borrower, its general partners or its Guarantor, (i) any entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of Borrower, its general partner or its Guarantor, (ii) any corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the Borrower, its general partners or

its Guarantor, (iii) any general partner, shareholder or, if a limited liability company, managing member of Borrower, its general partners or its Guarantor, or (iv) any other person that is related (to the third degree of consanguinity) by blood or marriage to the Borrower, its general partners or its Guarantor (to the extent any of the Borrower, its general partners or its Guarantor is a natural person).

“Borrower Controlling Entity” shall mean, if the Borrower is a partnership, any general partner or managing partner of the Borrower, or if the Borrower is a limited liability company, the manager or managing member of the Borrower, or if the Borrower is a not for profit corporation, the members thereof, if any.

“Borrower Deferred Equity” shall mean the Equity Contributions to be made by the Equity Investor to Borrower pursuant to and subject to the terms and conditions of the Partnership Agreement other than Borrower Initial Equity, substantially in accordance with the following schedule:

Amount	Timing
\$	Upon satisfaction of the conditions set forth in Section ____ of the Partnership Agreement
\$	The later to occur of ____ 1, 20__ and satisfaction of the conditions set forth in Section ____ of the Partnership Agreement
\$	The later to occur of ____ 1, 20__ and satisfaction of the conditions set forth in Section ____ of the Partnership Agreement
\$	Total

“Borrower Initial Equity” shall mean an initial installment of the Equity Contributions made to Borrower by the Equity Investor in an amount of at least \$ \_\_\_\_ to be made on or prior to the Closing Date.

“Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to this Borrower Loan Agreement, in the maximum principal amount of the Borrower Loan Amount, as evidenced by the Borrower Note.

“Borrower Loan Agreement” shall mean this Borrower Loan Agreement.

“Borrower Loan Amount” shall mean the original maximum principal amount of the Borrower Note.

“Borrower Loan Documents” shall mean this Borrower Loan Agreement, the Construction Funding Agreement, the Borrower Note, the Security Instrument, the Contingency

Draw-Down Agreement, the Agreement of Environmental Indemnification, the Guaranty, the Replacement Reserve Agreement and all other documents or agreements evidencing or relating to the Borrower Loan.

“Borrower Loan Payment Date” shall mean (i) the date upon which regularly scheduled Borrower Loan Payments are due pursuant to the Borrower Note, or (ii) any other date on which the Borrower Note is prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

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

“Borrower Loan Proceeds” shall mean proceeds of the Borrower Loan, to be disbursed in accordance with Section 2.10 of this Borrower Loan Agreement and the Construction Funding Agreement.

“Borrower Note” shall mean that certain Multifamily Note dated as of the Closing Date in the original maximum principal amount of the Borrower Loan Amount made by Borrower and payable to Governmental Lender, as endorsed and assigned to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

“Borrower Payment Obligations” shall mean all payment obligations of the Borrower under the Borrower Loan Documents, including, but not limited to, the Borrower Loan Payments and the Additional Borrower Payments.

“Business Day” shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which the Fiscal Agent or federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

“Calculation Period” shall mean three (3) consecutive full Calendar Months occurring prior to the Conversion Date, as the same may be extended in accordance with Section 3.1 hereof.

“Calendar Month” shall mean each of the twelve (12) calendar months of the year.

“CC&Rs” shall mean any covenants, conditions, restrictions, maintenance agreements or reciprocal easement agreements affecting the Project.

“Closing Date” means December [9], 2016, the date that the initial Borrower Loan Proceeds are disbursed hereunder.

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

“Collateral” shall mean all collateral described in (i) this Borrower Loan Agreement (including, without limitation, all property in which Governmental Lender is granted a security



interest pursuant to any provision of this Borrower Loan Agreement), (ii) the Security Instrument, or (iii) any other Security Document, including, without limitation, the Project, all of which collateral is pledged and assigned to Funding Lender under the Funding Loan Agreement to secure the Funding Loan.

“Completion” shall have the meaning set forth in Section 5.25.

“Completion Date” shall mean [\_\_\_\_\_, 20\_\_].

“Computation Date” shall have the meaning ascribed thereto in Section 1.148.3(e) of the Regulations.

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

“Conditions to Conversion” shall have the meaning ascribed thereto in the Construction Funding Agreement.

“Construction Consultant” shall mean a third-party architect or engineer selected and retained by Funding Lender, at the cost and expense of Borrower, to monitor the progress of construction and/or rehabilitation of the Project and to inspect the Improvements to confirm compliance with this Borrower Loan Agreement.

“Construction Contract” shall mean any agreement that Borrower and any Contractor from time to time may execute pursuant to which Borrower engages the Contractor to construct any portion of the Improvements, as approved by Funding Lender.

“Construction Funding Agreement” means that certain Construction Funding Agreement dated as of December 1, 2016, between the Funding Lender, as agent for the Governmental Lender, and Borrower, pursuant to which the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf), as agent of the Governmental Lender, to the Fiscal Agent for disbursement to the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

“Construction Schedule” shall mean a schedule of construction or rehabilitation progress with the anticipated commencement and completion dates of each phase of construction or rehabilitation, as the case may be, and the anticipated date and amounts of each Disbursement for the same, as approved by Funding Lender, as assignee of the Governmental Lender.

“Continuing Disclosure Agreement” shall mean that certain Continuing Disclosure Agreement dated as of December 1, 2016, between the Borrower and the Funding Lender, pursuant to which the Borrower agrees to provide certain information with respect to the Project, the Borrower and the Funding Loan subsequent to the Closing Date, as amended, supplemented or restated from time to time.

“Contractor” shall mean any licensed general contractor or subcontractor that Borrower may directly engage from time to time, with the approval of Funding Lender, to construct and/or rehabilitate any portion of the Improvements.

“Contractual Obligation” shall mean, for any Person, any debt or equity security issued by that Person, and any indenture, mortgage, deed of trust, contract, undertaking, instrument or agreement (written or oral) to which such Person is a party or by which it is bound, or to which it or any of its assets is subject.

“Conversion” shall mean Funding Lender’s determination that the Conditions to Conversion have been satisfied in accordance with the provisions of this Borrower Loan Agreement and the Construction Funding Agreement.

“Conversion Date” shall mean the date to be designated by Funding Lender once the Conditions to Conversion have been satisfied, the determination of the Permanent Period Amount has been made and any loan balancing payments in accordance with Section 3.3 hereof and the Construction Funding Agreement have been made. The Conversion Date must occur no later than the Outside Conversion Date.

“Cost Breakdown” shall mean the schedule of costs for the Improvements, as set forth in the Construction Funding Agreement and as the same may be amended from time to time with Funding Lender’s consent.

“Costs of Funding” shall mean the Governmental Lender’s Closing Fee and the fees, costs, expenses and other charges incurred in connection with the funding of the Borrower Loan and the Funding Loan, the negotiation and preparation of this Borrower Loan Agreement and each of the other Borrower Loan Documents and Funding Loan Documents and shall include, but shall not be limited to, the following: (i) counsel fees (including but not limited to Tax Counsel, counsel to the Governmental Lender, Borrower’s counsel, Fiscal Agent’s counsel and Funding Lender’s counsel); (ii) financial advisor fees incurred in connection with the closing of the Borrower Loan and the Funding Loan; (iii) certifying and authenticating agent fees and expenses related to funding of the Funding Loan; (iv) printing costs (for any preliminary and final offering materials relating to the Funding Loan); (v) any recording fees; (vi) any additional fees charged by the Governmental Lender or the Fiscal Agent pursuant to the Borrower Loan Documents or Funding Loan Documents; and (vii) costs incurred in connection with the required public notices generally and costs of the public hearing.

“Costs of Funding Deposit” shall mean the amount required to be deposited by the Borrower with the Title Company or the Fiscal Agent, as applicable, to pay Costs of Funding in connection with the closing of the Borrower Loan and the Funding Loan on the Closing Date.

“Cost of Improvements” shall mean the costs for the Improvements, as set forth on the Cost Breakdown.

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

“Credit Enhancer” shall mean a government sponsored enterprise that at any time, directly or indirectly, purchases the Borrower Loan or provides credit enhancement with respect to the Borrower Loan.

“Date of Disbursement” shall mean the date of a Disbursement.

“Day” or “Days” shall mean calendar days unless expressly stated to be Business Days.

“Debt” shall mean, as to any Person, any of such Person’s liabilities, including all indebtedness (whether recourse and nonrecourse, short term and long term, direct and contingent), all committed and unfunded liabilities, and all unfunded liabilities, that would appear upon a balance sheet of such Person prepared in accordance with GAAP.

“Default Rate” shall have the meaning given to that term in the Borrower Note.

“Determination of Taxability” shall mean (i) a determination by the Commissioner or any District Director of the Internal Revenue Service, (ii) a private ruling or Technical Advice Memorandum concerning the Governmental Lender Note issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (iii) a determination by any court of competent jurisdiction, (iv) the enactment of legislation, or (v) receipt by the Funding Lender, at the request of the Governmental Lender, the Borrower or the Funding Lender, of an opinion of Tax Counsel, in each case to the effect that the interest on the Governmental Lender Note is includable in gross income for federal income tax purposes of any holder or any former holder of all or a portion of the Governmental Lender Note, other than a holder who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (i) or (iii) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (a) a final determination from which no appeal may be taken with respect to such determination, (b) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (c) one year from the date of initial determination.

“Developer Fee” shall mean the fees and/or compensation payable to [\_\_\_\_\_] pursuant to the [Development Services Agreement] dated as of [\_\_\_\_\_], between Borrower and such developer, which fees and/or compensation shall not be paid prior to the Conversion Date except as otherwise permitted pursuant to Section 6.13(b).

“Disbursement” shall mean a disbursement of Borrower Loan Proceeds and Other Borrower Moneys pursuant to this Borrower Loan Agreement.

“Engineer” shall mean any licensed civil, structural, mechanical, electrical, soils, environmental or other engineer that Borrower may engage from time to time, with the approval of Funding Lender, to perform any engineering services with respect to any portion of the Improvements.

“Engineer’s Contract” shall mean any agreement that Borrower and any Engineer from time to time may execute pursuant to which Borrower engages such Engineer to perform any engineering services with respect to any portion of the Improvements, as approved by Funding Lender.

“Equipment” shall have the meaning given to the term “Personalty” in the Security Instrument.

“Equity Contributions” shall mean the equity to be contributed by the Equity Investor to Borrower, in accordance with and subject to the terms of the Partnership Agreement.

“Equity Investor” shall mean Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation, as a limited partner of the Borrower, and its permitted successors and assigns.

“ERISA” shall mean the Employment Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

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

“Event of Default” shall mean any Event of Default set forth in Section 8.1 of this Borrower Loan Agreement. An Event of Default shall “exist” if a Potential Default shall have occurred and be continuing beyond any applicable cure period.

“Excess Revenues” shall have the meaning ascribed thereto in Section 2.2 hereof.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Expenses of the Project” shall mean, for any period, the current expenses, paid or accrued, for the operation, maintenance and current repair of the Project, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Borrower Loan Documents), a management fee (however characterized) not to exceed [\_\_\_\_%] of Gross Income, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the Project shall not include any payments, however characterized, on account of any subordinate financing in respect of the Project or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

“Extended Outside Conversion Date” shall have the meaning set forth in the Construction Funding Agreement.

“Fair Market Value” shall mean the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is an interest in any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

“Fiscal Agent” shall mean the Fiscal Agent from time to time under and pursuant to the Funding Loan Agreement. Initially, the Fiscal Agent is U.S. Bank National Association

“Funding Lender” shall mean Citibank, N.A., in its capacity as lender under the Funding Loan.

“Funding Loan” shall mean the Funding Loan in the original maximum principal amount of \$[\_\_\_\_\_] made by Funding Lender to Governmental Lender under the Funding Loan Agreement, the proceeds of which are used by the Governmental Lender to make the Borrower Loan.

“Funding Loan Agreement” means the Funding Loan Agreement, of even date herewith, between Governmental Lender, Fiscal Agent and Funding Lender, as it may from time to time be supplemented, modified or amended by one or more amendments or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

“Funding Loan Documents” shall have the meaning given to that term in the Funding Loan Agreement.

“GAAP” shall mean generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

“General Partner” shall mean, collectively, (i) Potrero Housing I, LLC, a California limited liability company, as general partner and/or (ii) any other Person that the partners of Borrower, with the prior written approval of Funding Lender (or as otherwise permitted with Funding Lender’s approval pursuant to the Borrower Loan Documents), selected to be a general partner of Borrower.

“Governmental Authority” shall mean (i) any governmental municipality or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (iii) any court, administrative

tribunal or public utility, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), now or hereafter in existence.

“Governmental Lender” shall have the meaning set forth in the first paragraph of this Borrower Loan Agreement.

“Governmental Lender Note” shall mean that certain Governmental Lender Note dated the Closing Date in the original maximum principal amount of the Funding Loan, made by the Governmental Lender and payable to Funding Lender, as it may be amended, supplemented or replaced from time to time.

“Governmental Lender’s Closing Fee” shall mean \$\_\_\_\_\_. The Governmental Lender’s Closing Fee is payable to the Governmental Lender on the Closing Date pursuant to Section 2.3(d) hereof.

“Gross Income” shall mean all receipts, revenues, income and other moneys received or collected by or on behalf of Borrower and derived from the ownership or operation of the Project, if any, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the Project. Gross Income shall not include loan proceeds, equity or capital contributions, or tenant security deposits being held by Borrower in accordance with applicable law.

“Gross Proceeds” shall mean, without duplication, the aggregate of:

(a) the net amount (after payment of all expenses of originating the Funding Loan) of Funding Loan proceeds received by the Governmental Lender as a result of the origination of the Funding Loan;

(b) all amounts received by the Governmental Lender as a result of the investment of the Funding Loan proceeds;

(c) any amounts held in any fund or account to the extent that the Governmental Lender reasonably expects to use the amounts in such fund to pay any portion of the Funding Loan; and

(d) any securities or obligations pledged by the Governmental Lender or by the Borrower as security for the payment of any portion of the Funding Loan.

“Ground Lease” shall mean that certain \_\_\_\_\_ dated \_\_\_\_\_, between the Borrower, as lessee, and the City and County of San Francisco, as lessor.

“Guarantor” shall mean BRIDGE Housing Corporation, a California nonprofit public benefit corporation or any other person or entity which may hereafter become a guarantor of any of the Borrower’s obligations under the Borrower Loan.

“Guaranty” shall mean, collectively, (i) the Completion and Repayment Guaranty, of even date herewith, by Guarantor for the benefit of the Beneficiary Parties (as defined therein), and (ii) the Exceptions to Non Recourse Guaranty, of even date herewith, by Guarantor for the benefit of the Beneficiary Parties (as defined therein).

“Improvements” shall mean the 72-unit multifamily residential project to be constructed upon the Land and known or to be known as Potrero Block X, and all other buildings, structures, fixtures, wiring, systems, equipment and other improvements and personal property to be constructed, rehabilitated and/or installed at or on the Land in accordance with the Cost Breakdown and the Plans and Specifications.

“Indemnified Party” shall have the meaning set forth in Section 5.15 hereof.

“Installment Computation Date” shall mean any Computation Date other than the first Computation Date or the final Computation Date.

“Interest Rate” shall mean the rate of interest accruing on the Borrower Loan pursuant to the Borrower Note.

“Interim Phase Amount” shall mean \$[\_\_\_\_\_].

“Land” means the real property described on Exhibit A to the Security Instrument.

“Late Charge” shall mean the amount due and payable as a late charge on overdue payments under the Borrower Note, as provided in Section 7 of the Borrower Note and Section 2.5 hereof.

“Legal Action” shall mean an action, suit, investigation, inquiry, proceeding or arbitration at law or in equity or before or by any foreign or domestic court, arbitrator or other Governmental Authority.

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

“Liabilities” shall have the meaning set forth in Section 5.15 hereof.

“Licenses” shall have the meaning set forth in Section 4.1.21 hereof.

“Lien” shall mean any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a

deed of trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

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

"Manager" shall mean the management company to be employed by the Borrower and approved by the Funding Lender in accordance with the terms of the Security Instrument, this Borrower Loan Agreement or any of the other Borrower Loan Documents.

"Material Adverse Change" shall mean any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Borrower Loan Agreement or any other Borrower Loan Document; (b) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, results of operations or prospects of the Borrower, General Partner, Guarantor or the Mortgaged Property; (c) could reasonably be expected to impair materially the ability of the Borrower, General Partner or Guarantor to duly and punctually pay or perform any of their respective obligations under any of the Borrower Loan Documents to which they are a party; or (d) impairs materially or could reasonably be expected to impair materially any rights of or benefits available to the Governmental Lender under this Borrower Loan Agreement or any other Borrower Loan Document, including, without limitation, the ability of Governmental Lender or, upon the assignment of the Borrower Loan to it, of the Funding Lender, to the extent permitted, to enforce its legal remedies pursuant to this Borrower Loan Agreement or any other Borrower Loan Document.

"MOH" shall mean 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.

"Mortgaged Property" shall have the meaning given to that term in the Security Instrument.

"Net Operating Income" shall mean: (i) the Gross Income, less (ii) the Expenses of the Project.

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

"Ongoing Governmental Lender Fee" shall mean the Governmental Lender's annual administrative fee with respect to the Governmental Lender Note in the amount as set forth in and in accordance with and pursuant to the provisions of this Borrower Loan Agreement and Section 18 of the Regulatory Agreement. [The Ongoing Governmental Lender Fee due on the



Closing Date is equal to one eighth of one percent (0.125%) of the principal amount of the Governmental Lender Note then outstanding, but no less than \$2,500.]

“Other Borrower Moneys” shall mean monies of Borrower other than Borrower Loan Proceeds and includes, but is not limited to, the Subordinate Debt, Net Operating Income, Borrower’s Equity Contributions and any other funds contributed by or loaned to Borrower for costs associated with the Project.

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

“Outside Conversion Date” shall have the meaning set forth in the Construction Funding Agreement.

“Partnership Agreement” shall mean that certain Amended and Restated Agreement of Limited Partnership of the Borrower dated [December 1], 2016, as the same may be amended, restated or modified in accordance with its terms.

“Patriot Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

“Patriot Act Offense” shall have the meaning set forth in Section 4.1.48 hereof.

“Permanent Period” shall mean the period of time from the Conversion Date to the Maturity Date (as defined in the Funding Loan Agreement).

“Permanent Period Amount” shall mean the principal amount of the Borrower Loan following the calculation provided for in the Construction Funding Agreement.

“Permitted Encumbrances” shall have the meaning given to that term in the Security Instrument.

“Permitted Lease” shall mean a lease and occupancy agreement pursuant to the form approved by Funding Lender, to a residential tenant in compliance with the Legal Requirements, providing for an initial term of not less than twelve (12) months nor more than two (2) years.

“Person” shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

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

“Plans and Specifications” shall mean the plans and specifications for the construction of the Project approved by Funding Lender.

“Potential Default” shall mean the occurrence of an event which, under this Borrower Loan Agreement or any other Borrower Loan Document, would, but for the giving of notice or passage of time, or both, be an Event of Default.

“Prepayment Premium” shall mean any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Note (including any prepayment premium as set forth in the Borrower Note).

“Project” shall mean the Mortgaged Property (as defined in the Security Instrument) and Improvements thereon owned by the Borrower and encumbered by the Security Instrument, together with all rights pertaining to such real property and Improvements, as more particularly described in the Granting Clauses of the Security Instrument and referred to therein as the “Mortgaged Property.”

“Project Agreements and Licenses” shall mean any and all Construction Contracts, Engineer’s Contracts and Management Agreements, and all other rights, licenses, permits, franchises, authorizations, approvals and agreements relating to use, occupancy, operation or leasing of the Project or the Mortgaged Property.

“Provided Information” shall have the meaning set forth in Section 9.1.1 (a) hereof.

“Qualified Project Costs” shall mean costs paid with respect to the Project that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general Federal income tax principles and in accordance with United States Treasury Regulations §1.103-8(a)(1), provided, however, that only such portion of interest accrued during construction of the Project shall be eligible to be 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 interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed or rehabilitated by a Borrower Affiliate or persons or entities treated as related to the Borrower within the meaning of Sections 1504, 267 and 707 of the Code (whether as a general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out-of-pocket costs incurred by such Borrower Affiliate in constructing or rehabilitating the Project (or any portion thereof), (B) any reasonable fees for supervisory services actually rendered by the Borrower Affiliate, and (C) any overhead expenses incurred by the Borrower Affiliate 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 rehabilitation or construction of the Project or payments received by such Borrower Affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior to the date of a declaration of “official intent” to reimburse costs paid with respect to the Project (within the meaning of §1.150-2 of the

United States Treasury Regulations) or the date of issue of the Bonds, and (iv) if the Project Costs were previously paid and are to be reimbursed with proceeds of the Bonds such costs were (A) costs of issuance of the Bonds, (B) preliminary capital expenditures (within the meaning of United States Treasury Regulations §1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction of the Project that do not exceed twenty percent (20%) of the issue price of the Bonds (as defined in United States Treasury Regulations §1.148-1), or (C) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid).

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

“Rebate Analyst” shall mean the rebate analyst selected by the Borrower and acceptable to the Governmental Lender and the Funding Lender. The initial Rebate Analyst shall be \_\_\_\_\_.

“Rebate Analyst’s Fee” shall mean the fee of the Rebate Analyst. The Rebate Analyst’s Fee is payable by the Borrower to the Rebate Analyst.

“Rebate Fund” shall mean the Rebate Fund created pursuant to Section 5.35 hereof.

“Regulatory Agreement” shall mean the Regulatory Agreement and Declaration of Restrictive Covenants as of December 1, 2016, between the Governmental Lender and the Borrower, as amended and supplemented.

“Related Documents” shall mean, collectively, any agreement or other document (other than the Borrower Loan Documents) granting a security interest (including each agreement that is the subject of any Borrower Loan Document), the Partnership Agreement, and any other agreement, instrument or other document (not constituting a Borrower Loan Document) relating to or executed in connection with the transactions contemplated by this Borrower Loan Agreement.

“Rents” shall mean all rents (whether from residential or non residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contracts or similar agreements), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Project, whether now due, past due or to become due, and deposits forfeited by tenants.

“Replacement Reserve Agreement” shall mean any Replacement Reserve Agreement between the Borrower and the Funding Lender, as the same may be amended, restated or supplemented from time to time.

“Replacement Reserve Fund Requirement” means Borrower’s funding obligations from time to time under the Replacement Reserve Agreement.

“Retainage” shall have the meaning set forth in the Construction Funding Agreement.

“Review Fee” shall mean the three thousand dollar (\$3,000) fee payable to Funding Lender in connection with the review of requests from the Borrower in connection with events requiring the consent and/or approval of the Funding Lender, including, but not limited to, subordinate financings and easements.

“Secondary Market Disclosure Document” shall have the meaning set forth in Section 9.1.2 hereof.

“Secondary Market Transaction” shall have the meaning set forth in Section 9.1.1 hereof.

“Securities” shall have the meaning set forth in Section 9.1.1 hereof.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security Documents” shall mean the Security Instrument, the Replacement Reserve Agreement, the Collateral Agreements and the Collateral Assignments (as such terms are defined in the Security Instrument), this Borrower Loan Agreement, the Agreement of Environmental Indemnification, and such other security instruments that Funding Lender may reasonably request.

“Security Instrument” shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

“Servicer” shall mean the servicer contracting with or appointed by the Funding Lender to service the Borrower Loan. The initial Servicer shall be Citibank, N.A.

“Servicing Agreement” shall mean any servicing agreement or master servicing agreement, among the Servicer and the Funding Lender relating to the servicing of the Borrower Loan and any amendments thereto or any replacement thereof.

“State” shall mean the State in which the Project is located.

“Subordinate Citibank Loan” shall mean the subordinate loan in the original principal amount of \$[1,200,000] made by the Funding Lender to the Borrower.

“Subordinate City of San Francisco, MOH Predevelopment Loan” shall mean the subordinate loan in the original principal amount not to exceed \$[\_\_\_\_\_] made by MOH to the Borrower.

“Subordinate Debt” shall mean, individually and collectively, the Subordinate Citibank Loan and the Subordinate City of San Francisco, MOH Predevelopment Loan.

“Subordinate Lenders” shall mean, individually and collectively, Citibank, N.A. and MOH.

“Subordinate Loan Documents” shall mean collectively, all instruments, agreements and other documents evidencing, securing or otherwise relating to the Subordinate Debt or executed and delivered by Borrower and/or Subordinate Lender in connection with the Subordinate Debt.

“Substantial Completion Date” shall mean the date that is three (3) months prior to the Completion Date.

“Substantially Complete” or “Substantially Completed” shall mean the Funding Lender has determined that construction of the Improvements is sufficiently complete such that the Improvements can be occupied by tenants as a multifamily residential rental project.

“Tax Counsel” shall have the meaning set forth in the Funding Loan Agreement.

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

“Term” shall mean the term of this Borrower Loan Agreement pursuant to Section 10.14.

“Title Company” shall mean Old Republic Title Company.

“Title Insurance Policy” shall mean the mortgagee title insurance policy, in form acceptable to the Funding Lender, issued with respect to the Mortgaged Property and insuring the lien of the Security Instrument.

“Transfer” shall have the meaning given to that term in the Security Instrument.

“UCC” shall mean the Uniform Commercial Code as in effect in the State.

“Unassigned Rights” shall have the meaning given to that term in the Funding Loan Agreement.

“Unit” shall mean a residential apartment unit within the Improvements.

“Written Consent” and “Written Notice” shall mean a written consent or notice signed by an Authorized Borrower Representative or an authorized representative of the Governmental Lender or the Funding Lender, as appropriate.

## ARTICLE II

### GENERAL

Section 2.1 Origination of Borrower Loan. In order to provide funds for the purposes provided herein, the Governmental Lender agrees that it will, in accordance with the Act, enter into the Funding Loan Agreement and accept the Funding Loan from the Funding Lender. The proceeds of the Funding Loan shall be advanced by the Funding Lender and the Fiscal Agent to the Borrower in accordance with the terms of the Construction Funding Agreement, this Borrower Loan Agreement and the Funding Loan Agreement.

The Governmental Lender hereby appoints the Funding Lender as its agent with full authority and power to act on its behalf to take certain actions and exercise certain remedies with respect to the Borrower Loan, and for the other purposes set forth in this Borrower Loan Agreement and to do all other acts necessary or incidental to the performance and execution thereof. This appointment is coupled with an interest and is irrevocable except as expressly set forth herein. Accordingly, references to the rights of the Funding Lender to take actions under this Borrower Loan Agreement shall refer to Funding Lender in its role as agent of the Governmental Lender. The Funding Lender may, in its discretion, designate Servicer to fulfill the rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to this Section 2.1. Notwithstanding the foregoing, disbursements of the Borrower Loan shall be made from the Project Fund held by the Fiscal Agent pursuant to the Funding Loan Agreement.

## Section 2.2 Security for the Funding Loan.

(a) As security for the Funding Loan, the Governmental Lender has pledged and assigned to the Funding Lender under and pursuant to the Funding Loan Agreement (a) the Borrower Note and all of its right, title and interest in and to this Borrower Loan Agreement and the Borrower Loan Documents (except for the Unassigned Rights) and all revenues and receipts therefrom and the security therefor (including the Security Instrument) and (b) the amounts on deposit from time to time in any and all funds established under the Funding Loan Agreement. All revenues and assets pledged and assigned thereby shall immediately be subject to the lien of such pledge without any physical delivery thereof or any further act, except in the case of the Borrower Note, which shall be delivered to the Funding Lender. The Borrower hereby acknowledges and consents to such assignment to the Funding Lender.

With respect to the Unassigned Rights, subject to the limitations set forth in this Section 2.2, the Governmental Lender may:

(a) Tax Covenants. Seek specific performance of, and enforce, the tax covenants in Section 8.7 of the Funding Loan Agreement, the provisions of the Regulatory Agreement, the Tax Certificate and the covenants of the Borrower in Section 5.34 of this Borrower Loan Agreement, seek injunctive relief against acts which may be in violation of any of the tax covenants, and enforce the Borrower's obligation to pay amounts for credit to the Rebate Fund;

(b) Regulatory Agreement. Seek specific performance of the obligations of the Borrower or any other owner of the Project under the Regulatory Agreement and injunctive relief against acts which may be in violation of the Regulatory Agreement or otherwise in accordance with the provisions of the Regulatory Agreement; provided, however, that the Governmental Lender may enforce any right it may have under the Regulatory Agreement for monetary damages only against Excess Revenues (defined below), if any, of the Borrower, unless Funding Lender otherwise specifically consents in writing to the use of other funds; and

(c) Reserved Rights. Take whatever action at law or in equity which appears necessary or desirable to enforce the other Unassigned Rights, provided, however, that the Governmental Lender or any person under its control may only enforce any right it

may have for monetary damages against Excess Revenues, if any, of the Borrower, unless Funding Lender otherwise specifically consents in writing to the enforcement against other funds of the Borrower.

In no event shall the Governmental Lender, except at the express written direction of the Funding Lender:

(d) prosecute its action to a lien on the Project; or

(e) except in connection with actions permitted under Section 2.2(b) above, take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan, or which the Governmental Lender has reason to know or expect would have the effect of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(f) interfere with the exercise by the Funding Lender, the Fiscal Agent or the Servicer of any of their rights under the Borrower Loan Documents upon the occurrence of an event of default by the Borrower under the Borrower Loan Documents or the Funding Loan Documents; or

(g) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan or the Funding Loan.

The Governmental Lender shall provide Written Notice to the Funding Lender and the Servicer immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Borrower Loan Documents or the Funding Loan Documents.

As used in this Section 2.2, the term "Excess Revenues" means, for any period, the net cash flow of the Borrower available for distribution or payment to shareholders, members or partners (as the case may be) for such period, after the payment of all interest expense, the amortization of all principal of all indebtedness coming due during such period (whether by maturity, mandatory sinking fund payment, acceleration or otherwise) with respect to the Project, the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Borrower Loan or the Funding Loan, the payment of all operating, overhead, ownership and other expenditures of the Borrower directly or indirectly in connection with the Project (whether any such expenditures are current, capital or extraordinary expenditures), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Borrower is required to set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

### Section 2.3 Loan; Borrower Note; Conditions to Closing.

The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Note. The proceeds of the Borrower Loan shall be

used by the Borrower to pay costs of the acquisition, construction, development, equipping and/or operation of the Project. The Borrower hereby accepts the Borrower Loan and acknowledges that the Governmental Lender shall cause the Funding Lender to fund the Borrower Loan in the manner set forth herein and in the Funding Loan Agreement. The Governmental Lender acknowledges that the Borrower Loan shall be funded by the Funding Lender for the account of the Governmental Lender.

The Borrower hereby accepts the Borrower Loan. As evidence of its obligation to repay the Borrower Loan, simultaneously with the delivery of this Borrower Loan Agreement to the Governmental Lender, the Borrower hereby agrees to execute and deliver the Borrower Note. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Note.

Closing of the Borrower Loan on the Closing Date shall be conditioned upon the determination by the Governmental Lender and the Funding Lender, in their sole discretion, that each of the conditions precedent to closing set forth in the Funding Loan Agreement and this Borrower Loan Agreement, including but not limited to the following, have been satisfied or waived:

(a) evidence of proper recordation of the Security Instrument, an assignment of the Security Instrument from the Governmental Lender to the Funding Lender, the Regulatory Agreement, and each of the other documents specified for recording in instructions delivered to the Title Company by counsel to the Governmental Lender and the Funding Lender (or that such documents have been delivered to an authorized agent of the Title Company for recordation under binding, irrevocable recording instructions from Governmental Lender's and Funding Lender's respective counsel or such other counsel as may be acceptable to the Funding Lender);

(b) delivery to the Fiscal Agent or into escrow with the Title Company (or separate escrow company, if applicable) of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit, all as specified in written instructions delivered to the Title Company by counsel to the Funding Lender and the Governmental Lender (or such other counsel as may be acceptable to the Funding Lender) and/or as specified in a closing memorandum of the Funding Lender and approved by the Governmental Lender;

(c) delivery to the Title Company of Borrower of its escrow instructions in form acceptable to the Governmental Lender and the Funding Lender;

(d) payment of all fees payable in connection with the closing of the Borrower Loan, including the Governmental Lender's Closing Fee and Ongoing Governmental Lender Fee due on the Closing Date, and the initial fees and expenses of the Fiscal Agent and the Funding Lender;

(e) execution and delivery by the Borrower of the Tax Certificate; and

(f) receipt by Governmental Lender of an opinion of the Borrower's counsel and an opinion of the Fiscal Agent's counsel in form and substance acceptable to Governmental Lender and its counsel.



Section 2.4 Borrower Loan Payments.

(a) The Borrower shall make Borrower Loan Payments in accordance with the Borrower Note. Each Borrower Loan Payment made by the Borrower shall be made in funds immediately available to the Fiscal Agent or the Servicer by 2:00 p.m., New York City time, on the Borrower Loan Payment Date. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or Servicer, as applicable, may designate by Written Notice to the Borrower. Whenever any Borrower Loan Payment shall be stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make Borrower Loan Payments in accordance with the Borrower Note in the amounts and at the times necessary to make all payments due and payable on the Funding Loan. All payments made by the Borrower hereunder or by the Borrower under the other Borrower Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

Unless there is no Servicer, payments of principal and interest on the Borrower Note shall be paid to the Servicer and the Servicer shall then remit such funds to the Fiscal Agent. If there is no Servicer, payments of principal and interest on the Borrower Note shall be paid directly to the Fiscal Agent.

Section 2.5 Additional Borrower Payments.

(a) The Borrower shall pay the following amounts:

(i) to the Servicer or the Funding Lender, the Rebate Amount then due, if any, to be deposited in the Rebate Fund as specified in Section 5.35 hereof and the Rebate Analyst's Fee and any other costs incurred to calculate such Rebate Amount (to the extent such costs are not included in the Borrower Loan Payment);

(ii) to the Fiscal Agent for remittance to 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, and any taxes and assessments, if any, otherwise levied on or payable by Governmental Lender with respect to the Project, as and when the same become due;

(iii) [Reserved];

(iv) all Costs of Funding and fees, charges and expenses, including agent and counsel fees incurred in connection with the origination of the Borrower Loan and the Funding Loan, as and when the same become due;

(v) to the Funding Lender, on demand, all charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Funding Lender incurred by the Funding Lender at any time in connection with the Borrower Loan, the Funding Loan or the Project, including, without limitation, any Review Fee, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or

amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit;

(vi) any Late Charge due and payable under the terms of the Borrower Note and Section 2.6 hereof; provided, however, that all payments made pursuant to this subsection (vi) shall be made to the Servicer, and if there is no Servicer, such payments shall be made to the Funding Lender; and

(vii) to the Fiscal Agent, all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of Fiscal Agent incurred under the Borrower Loan Documents or the Funding Loan Documents as and when the same become due.

(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, the Fiscal Agent or the Servicer;

(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, the Fiscal Agent, the Servicer or the Construction Consultant, in accordance with the Borrower Loan Documents or the Funding Loan Documents or to reimburse such parties for such expenses, costs and fees.

Section 2.6 Overdue Payments; Payments in Default. If any Borrower Payment Obligation is not paid by or on behalf of the Borrower when due, the Borrower shall pay to the Funding Lender or to the Servicer, a Late Charge in the amount and to the extent set forth in the Borrower Note, if any.

Section 2.7 Calculation of Interest Payments and Deposits to Real Estate Related Reserve Funds. The Borrower acknowledges as follows: (a) calculation of all interest payments shall be made by the Funding Lender; (b) deposits with respect to the Taxes and Other Charges shall be calculated by the Servicer or if there is no Servicer, the Funding Lender in accordance with the Security Instrument; and (c) deposits with respect to any replacement reserve funds required by the Funding Lender shall be calculated by the Servicer in accordance with the Replacement Reserve Agreement. In the event and to the extent that the Servicer or the Funding Lender, pursuant to the terms hereof, shall determine at any time that there exists a deficiency in amounts previously owed but not paid with respect to deposits to such replacement reserve fund, such deficiency shall be immediately due and payable hereunder following Written Notice to the Borrower.

Section 2.8 Grant of Security Interest; Application of Funds. To the extent not inconsistent with the Security Instrument and as security for payment of the Borrower Payment Obligations and the performance by the Borrower of all other terms, conditions and provisions of the Borrower Loan Documents, the Borrower hereby pledges and assigns to the Fiscal Agent and the Funding Lender, and grants to the Fiscal Agent and the Funding Lender, a security interest in, all the Borrower's right, title and interest in and to all Rents and all payments to or moneys held in the funds and accounts created and held by the Fiscal Agent, the Funding Lender or the Servicer for the Project. The Borrower also grants to the Funding Lender a continuing security interest in, and agrees to hold for the benefit of the Funding Lender, all Rents in its possession prior to the payment of Rents or any portion thereof to the Funding Lender or the Servicer (to the extent that the Borrower is required to pay such Rents to the Fiscal Agent, the Funding Lender or the Servicer) except for Permitted Encumbrances. The Borrower shall not, without obtaining the prior Written Consent of the Funding Lender, further pledge, assign or grant any security interest in the Rents, or permit any Lien to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming the Funding Lender as the secured party, to be filed with respect thereto. This Borrower Loan Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default hereunder, the Fiscal Agent, the Funding Lender and the Servicer shall apply or cause to be applied any sums held by the Fiscal Agent, the Funding Lender and the Servicer with respect to the Project in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion.

Section 2.9 Marshalling; Payments Set Aside. The Governmental Lender, the Fiscal Agent and the Funding Lender shall be under no obligation to marshal any assets in favor of the Borrower or any other Person or against or in payment of any or all of the proceeds. To the extent that the Borrower makes a payment or payments or transfers any assets to the Governmental Lender, the Fiscal Agent or the Funding Lender, or the Governmental Lender, the Fiscal Agent or the Funding Lender enforces its liens, and such payment or payments or transfers, or the proceeds of such enforcement or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party in connection with any insolvency proceeding, or otherwise, then: (i) any and all obligations owed to the Governmental Lender, the Fiscal Agent or the Funding Lender and any and all remedies available to the Governmental Lender, the Fiscal Agent or the Funding Lender under the terms of the Borrower Loan Documents and the Funding Loan Documents or in law or equity against the Borrower, Guarantor or General Partner and/or any of their properties shall be automatically revived and reinstated to the extent (and only to the extent) of any recovery permitted under clause (ii) below; and (ii) the Governmental Lender, the Fiscal Agent and the Funding Lender shall be entitled to recover (and shall be entitled to file a proof of claim to obtain such recovery in any applicable bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding) either: (x) the amount of payments or the value of the transfer or (y) if the transfer has been undone and the assets returned in whole or in part, the value of the consideration paid to or received by the Borrower for the initial asset transfer, plus in each case any deferred interest from the date of the disgorgement to the date of distribution to the Governmental Lender or the Fiscal Agent in any bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding, and any costs and expenses due and owing, including, without limitation, any reasonable attorneys' fees incurred by the Governmental Lender, the Fiscal Agent or the Funding Lender in connection with the exercise

by the Governmental Lender, the Fiscal Agent or the Funding Lender of its rights under this Section 2.9.

Section 2.10 Borrower Loan Disbursements. The Borrower Loan shall be disbursed to or for the benefit of the Borrower from amounts deposited by the Funding Lender with the Fiscal Agent as provided in the Funding Loan Agreement.

### ARTICLE III

#### CONVERSION

Section 3.1 Conversion Date and Extension of Outside Conversion Date. Borrower shall satisfy each of the Conditions to Conversion and cause the Conversion Date to occur on or before the Outside Conversion Date (including the Extended Outside Conversion Date, if any), as further provided in the Construction Funding Agreement. The failure to satisfy each of the Conditions to Conversion on or before the Outside Conversion Date shall constitute an Event of Default under the Borrower Loan Documents.

Section 3.2 Notice From Funding Lender; Funding Lender's Calculation Final.

(a) Following satisfaction of all of the Conditions to Conversion, Funding Lender shall deliver Written Notice to Borrower of: (i) the Conversion Date, (ii) the amount of the Permanent Period Amount, (iii) any required prepayment of the Borrower Note (as described below in Section 3.3) and (iv) any amendments to the amortization schedule, as applicable.

(b) If the Funding Lender determines that amendments to the amortization schedule are necessary, the Funding Lender shall cause to be provided to the Governmental Lender a Tax Counsel No Adverse Effect Opinion with respect to any amendment to the amortization schedule.

(c) Funding Lender's calculation of the Permanent Period Amount and any amendments to the amortization of the Borrower Loan shall be, in the absence of manifest error, conclusive and binding on all parties.

Section 3.3 Mandatory Prepayment of the Borrower Loan.

(a) As further provided in the Construction Funding Agreement, if and to the extent the Permanent Period Amount is less than the Interim Phase Amount, Funding Lender may in its sole discretion require Borrower to make a partial prepayment of the Borrower Loan in an amount equal to the difference between the Interim Phase Amount and the Permanent Period Amount (a "Pre-Conversion Loan Equalization Payment"), provided, however, that if the Permanent Period Amount is less than the Minimum Permanent Period Amount (as defined in the Construction Funding Agreement), then Funding Lender may in its sole discretion require Borrower to prepay the Borrower Loan in full.

(b) Any prepayment in full or in part of the Borrower Loan required pursuant to Section 3.3(a) above shall be subject to a prepayment premium under certain circumstances as more particularly set forth in the Borrower Note.

Section 3.4 Release of Remaining Loan Proceeds. If and to the extent that the Permanent Period Amount is greater than the principal amount of the Borrower Loan which has previously been disbursed to Borrower, Funding Lender shall deliver Written Notice thereof to Borrower on or before the Conversion Date. Within ten (10) business days after delivery of such notice, but in no event later than the Outside Conversion Date, Funding Lender shall disburse Borrower Loan proceeds to Borrower so that the aggregate principal amount of the Borrower Loan disbursed equals the Permanent Period Amount. Any Borrower Loan proceeds previously disbursed to the Borrower in excess of the Permanent Period Amount shall be paid by Borrower to Funding Lender.

Section 3.5 No Amendment. Nothing contained in this Article III shall be construed to amend, modify, alter, change or supersede the terms and provisions of the Borrower Note, Security Instrument, the Construction Funding Agreement or any other Borrower Loan Document and, if there shall exist a conflict between the terms and provisions of this Article III and those of the Borrower Note, Security Instrument, the Construction Funding Agreement or other Borrower Loan Documents, then the terms and provisions of the Borrower Note, Security Instrument, the Construction Funding Agreement and other Borrower Loan Documents shall control, provided, however, that in the event of a conflict between the terms and provisions of this Article III and those of the Borrower's loan application with the Funding Lender, the terms and provisions of this Article III shall control.

Section 3.6 Determinations by Funding Lender. In any instance where the consent or approval of Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Funding Lender under this Article III, including in connection with the Construction Funding Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Funding Lender (or its designated representative), at its sole and exclusive option and in its sole and absolute discretion.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations. To induce the Governmental Lender to execute this Borrower Loan Agreement and to induce the Funding Lender to make Disbursements, Borrower represents and warrants for the benefit of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, that the representations and warranties set forth in this Section 4.1 are complete and accurate as of the Closing Date and will be complete and accurate, and deemed remade, as of the date of each Disbursement, as of the original Outside Conversion Date, as of the date of any extension thereof and as of the Conversion Date in accordance with the terms and conditions of the Borrower Note. Subject to Section 4.2 hereof, the representations, warranties and agreements set forth in this Section 4.1 shall survive the making of the Borrower Loan, and shall remain in effect and true and correct in all material respects until the Borrower Loan and all other Borrower Payment Obligations have been repaid in full:

Section 4.1.1 Organization; Special Purpose. The Borrower is a California limited partnership in good standing under the laws of the State, has full legal right, power and authority to enter into the Borrower Loan Documents to which it is a party, and to carry out and consummate all transactions contemplated by the Borrower Loan Documents to which it is a party, and by proper corporate or limited partnership action, as appropriate, has duly authorized the execution, delivery and performance of the Borrower Loan Documents to which it is a party. The Person(s) of the Borrower executing the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are fully authorized to execute the same. The Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party have been duly authorized, executed and delivered by the Borrower. The sole business of the Borrower is the ownership, management, construction and operation of the Project.

Section 4.1.2 Proceedings; Enforceability. Assuming due execution and delivery by the other parties thereto, the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

Section 4.1.3 No Conflicts. The execution and delivery of the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the Partnership Agreement of the Borrower, or to the best knowledge of the Borrower and with respect to the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever (other than the lien of the Security Instrument) upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

Section 4.1.4 Litigation; Adverse Facts. There is no Legal Action, nor is there a basis known to Borrower for any Legal Action, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower, the General Partner or the Guarantor, or their respective assets, properties or operations which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, the Borrower Loan Documents or the Funding Loan Documents, upon the ability of each of Borrower, General Partner and Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or upon the financial condition,

assets (including the Project), properties or operations of the Borrower, the General Partner or the Guarantor. None of the Borrower, the General Partner or Guarantor is in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the ability of each of Borrower, General Partner and Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or the financial condition, assets, properties or operations of the Borrower, General Partner or Guarantor. None of the Borrower, the General Partner or Guarantor are (a) in violation of any applicable law, which violation materially and adversely affects or may materially and adversely affect the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, General Partner or Guarantor, as applicable; (b) subject to, or in default with respect to, any other Legal Requirement that would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, General Partner or Guarantor, as applicable; or (c) in default with respect to any agreement to which Borrower, General Partner or Guarantor, as applicable, are a party or by which they are bound, which default would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, General Partner or Guarantor, as applicable; and (d) there is no Legal Action pending or, to the knowledge of Borrower, threatened against or affecting Borrower, General Partner or Guarantor questioning the validity or the enforceability of this Borrower Loan Agreement or any of the other Borrower Loan Documents or the Funding Loan Documents or of any of the Related Documents. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating its facilities.

Section 4.1.5 Agreements; Consents; Approvals. Except as contemplated by the Borrower Loan Documents and the Funding Loan Documents, the Borrower is not a party to any agreement or instrument or subject to any restriction that would materially adversely affect the Borrower, the Project, or the Borrower's business, properties, operations or financial condition or business prospects, except the Permitted Encumbrances. The Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Project is bound.

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

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

Section 4.1.6 Title. The Borrower shall have marketable title in a leasehold estate in the Project, free and clear of all Liens except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (i) a valid, perfected first priority lien on the Borrower's leasehold interest in the Project and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty included in the Project, including the Leases, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To the Borrower's knowledge, there are no delinquent real property taxes or assessments, including water and sewer charges, with respect to the Project, nor are there any claims for payment for work, labor or materials affecting the Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Borrower Loan Documents and the Funding Loan Documents.

Section 4.1.7 Survey. To the best knowledge of the Borrower, the survey for the Project delivered to the Governmental Lender and the Funding Lender does not fail to reflect any material matter affecting the Project or the title thereto.

Section 4.1.8 No Bankruptcy Filing. The Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "Bankruptcy Proceeding"), and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it. As of the Closing Date, the Borrower has the ability to pay its debts as they become due.

Section 4.1.9 Full and Accurate Disclosure. No statement of fact made by the Borrower in any Borrower Loan Document or any Funding Loan Document contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein in light of the circumstances in which they were made, not misleading. There is no material fact or circumstance presently known to the Borrower that has not been disclosed to the Governmental Lender and the Funding Lender which materially and adversely affects the Project or the business, operations or financial condition or business prospects of the Borrower or the Borrower's ability to meet its obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and Funding Loan Documents to which it is a party in a timely manner.

Section 4.1.10 No Plan Assets. The Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of the Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3 101.

Section 4.1.11 Compliance. The Borrower, the Project and the use thereof will comply, to the extent required, in all material respects with all applicable Legal Requirements. The Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which would materially adversely affect the financial condition or business prospects or the business of the Borrower. There has not been committed



by the Borrower or any Borrower Affiliate involved with the operation or use of the Project any act or omission affording any Governmental Authority the right of forfeiture as against the Project or any part thereof or any moneys paid in performance of the Borrower's obligations under any Borrower Loan Document or any Funding Loan Documents.

Section 4.1.12 Contracts. All service, maintenance or repair contracts affecting the Project have been entered into at arm's length (except for such contracts between the Borrower and any Borrower Affiliate or the affiliates of the Borrower Controlling Entity of the Borrower) in the ordinary course of the Borrower's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

Section 4.1.13 Financial Information. All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the Governmental Lender or the Funding Lender in respect of the Project by or on behalf of the Borrower, to the best knowledge of the Borrower, (i) are accurate and complete in all material respects, (ii) accurately represent the financial condition of the Project as of the date of such reports, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. Other than pursuant to or permitted by the Borrower Loan Documents or the Funding Loan Documents or the Borrower organizational documents, the Borrower has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of the Borrower from that set forth in said financial statements.

Section 4.1.14 Condemnation. No Condemnation or other proceeding has been commenced or, to the Borrower's knowledge, is contemplated, threatened or pending with respect to all or part of the Project or for the relocation of roadways providing access to the Project.

Section 4.1.15 Federal Reserve Regulations. No part of the proceeds of the Borrower Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Borrower Loan Document or Funding Loan Document.

Section 4.1.16 Utilities and Public Access. To the best of the Borrower's knowledge, the Project is or will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service it for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Project are or will be located in the public right-of-way abutting the Project, and all such utilities are or will be connected so as to serve the Project without passing over other property absent a valid easement. All roads necessary for the use of the Project for its current purpose have been or will be completed and dedicated to public use and accepted by all Governmental Authorities. Except for Permitted Encumbrances, the Project does not share ingress and egress through an easement or private road or share on-site or off-site recreational facilities and amenities that are not located on the Project and under the exclusive control of the

Borrower, or where there is shared ingress and egress or amenities, there exists an easement or joint use and maintenance agreement under which (i) access to and use and enjoyment of the easement or private road and/or recreational facilities and amenities is perpetual, (ii) the number of parties sharing such easement and/or recreational facilities and amenities must be specified, (iii) the Borrower's responsibilities and share of expenses are specified, and (iv) the failure to pay any maintenance fee with respect to an easement will not result in a loss of usage of the easement.

Section 4.1.17 Not a Foreign Person. The Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

Section 4.1.18 Separate Lots. Each parcel comprising the Land is a separate tax lot and is not a portion of any other tax lot that is not a part of the Land. There are no pending or, to the Borrower's best knowledge, proposed special or other assessments for public improvements or otherwise affecting the Project, or any contemplated improvements to the Project that may result in such special or other assessments.

Section 4.1.19 Enforceability. The Borrower Loan Documents and the Funding Loan Documents are not subject to, and the Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

Section 4.1.20 Insurance. The Borrower has obtained the insurance required by this Borrower Loan Agreement, if applicable, and the Security Instrument, and has delivered to the Servicer copies of insurance policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Borrower Loan Agreement and the Security Instrument.

Section 4.1.21 Use of Property; Licenses. The Project will be used exclusively as a multifamily residential rental project and other appurtenant and related uses, which use is consistent with the zoning classification for the Project. All certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use or legal, nonconforming use, as applicable, occupancy and operation of the Project (collectively, the "Licenses") required at this time for the construction, and equipping of the Project have been obtained. To the Borrower's knowledge, all Licenses obtained by the Borrower have been validly issued and are in full force and effect. The Borrower has no reason to believe that any of the Licenses required for the future use and occupancy of the Project and not heretofore obtained by the Borrower will not be obtained by the Borrower in the ordinary course following the Completion Date. No Licenses will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project, including any transfer pursuant to foreclosure sale under the Security Instrument or deed in lieu of foreclosure thereunder. The Project does not violate any density or building setback requirements of the applicable zoning law except to the extent, if any, shown on the survey. No proceedings are, to the best of the Borrower's knowledge, pending or threatened that would result in a change of the zoning of the Project.

Section 4.1.22 Flood Zone. Subsequent to Closing, if the Mortgaged Property is determined to be in a Special Flood Hazard Area, Borrower will obtain appropriate flood

insurance as required under the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994 as amended or as required by the Servicer pursuant to its underwriting guidelines.

Section 4.1.23 Physical Condition. The Project, including all Improvements, parking facilities, systems, fixtures, Equipment and landscaping, are or, after completion of the construction, will be in good and habitable condition in all material respects and in good order and repair in all material respects (reasonable wear and tear excepted). The Borrower has not received notice from any insurance company or bonding company of any defect or inadequacy in the Project, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. The physical configuration of the Project is not in material violation of the ADA, if required under applicable law.

Section 4.1.24 Encroachments. All of the Improvements included in determining the appraised value of the Project will lie wholly within the boundaries and building restriction lines of the Project, and no improvement on an adjoining property encroaches upon the Project, and no easement or other encumbrance upon the Project encroaches upon any of the Improvements, so as to affect the value or marketability of the Project, except those insured against by the Title Insurance Policy or disclosed in the survey of the Project as approved by the Servicer.

Section 4.1.25 State Law Requirements. The Borrower hereby represents, covenants and agrees to comply with the provisions of all applicable state laws relating to the Borrower Loan, the Funding Loan and the Project.

Section 4.1.26 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of the Project to the Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Borrower Loan Documents and the Funding Loan Documents have been or will be paid.

Section 4.1.27 Investment Company Act. The Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; or (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended.

Section 4.1.28 Fraudulent Transfer. The Borrower has not accepted the Borrower Loan or entered into any Borrower Loan Document or Funding Loan Document with the actual intent to hinder, delay or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Borrower Loan Documents and the Funding Loan Documents. Giving effect to the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the fair saleable value of the Borrower's assets exceeds and will, immediately following the execution and delivery of the Borrower Loan Documents and the

Funding Loan Documents, exceed the Borrower's total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower's assets is and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, be greater than the Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower's assets do not and, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

Section 4.1.29 Ownership of the Borrower. Except as set forth in the Partnership Agreement of the Borrower, the Borrower has no obligation to any Person to purchase, repurchase or issue any ownership interest in it.

Section 4.1.30 Environmental Matters. To the best of Borrower's knowledge, the Project is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, and will comply with covenants and requirements relating to environmental hazards as set forth in the Security Instrument. The Borrower will execute and deliver the Agreement of Environmental Indemnification.

Section 4.1.31 Name; Principal Place of Business. Unless prior Written Notice is given to the Funding Lender, the Borrower does not use and will not use any trade name, and has not done and will not do business under any name other than its actual name set forth herein. The principal place of business of the Borrower is its primary address for notices as set forth in Section 10.1 hereof, and the Borrower has no other place of business, other than the Project and such principal place of business.

Section 4.1.32 Subordinated Debt. There is no secured or unsecured indebtedness with respect to the Project or any residual interest therein, other than Permitted Encumbrances and the permitted secured indebtedness described in Section 6.7 hereof, except an unsecured deferred developer fee not to exceed the amount permitted by Funding Lender as determined on the Closing Date.

Section 4.1.33 Filing of Taxes. The Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments, if any, payable by the Borrower.

Section 4.1.34 General Tax. All representations, warranties and certifications of the Borrower set forth in the Regulatory Agreement and the Tax Certificate are incorporated by reference herein and the Borrower will comply with such as if set forth herein.

Section 4.1.35 Approval of the Borrower Loan Documents and Funding Loan Documents. By its execution and delivery of this Borrower Loan Agreement, the Borrower approves the form and substance of the Borrower Loan Documents and the Funding Loan Documents, and agrees to carry out the responsibilities and duties specified in the Borrower Loan Documents and the Funding Loan Documents to be carried out by the Borrower. The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the provisions of all of the Borrower Loan Documents and the Funding Loan Documents and other documents and instruments relating to the financing, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents or otherwise relied on the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer in any manner.

Section 4.1.36 Funding Loan Agreement. The Borrower Loan is being made in conjunction with the Funding Loan, Borrower has read and accepts and agrees to be subject to the Funding Loan Agreement and the Funding Loan Documents.

Section 4.1.37 Americans with Disabilities Act. The Project, as designed, will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, the Americans with Disabilities Act of 1990 ("ADA"), to the extent required (as evidenced by an architect's certificate to such effect).

Section 4.1.38 Requirements of Act, Code and Regulations. The Project satisfies all requirements of the Act, the Code and the Regulations applicable to the Project.

Section 4.1.39 Regulatory Agreement. The Project is, as of the date of origination of the Funding Loan, in compliance with all requirements of the Regulatory Agreement to the extent such requirements are applicable; and the Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code and the Regulations, and pursuant to leases which comply with all applicable laws.

Section 4.1.40 Intention to Hold Project. The Borrower intends to hold the Project for its own account and has no current plans, and has not entered into any agreement, except as contemplated by the Partnership Agreement, to sell the Project or any part of it; and the Borrower intends to occupy the Project or cause the Project to be occupied and to operate it or cause it to be operated at all times during the term of this Borrower Loan Agreement in compliance with the terms of this Borrower Loan Agreement and the Regulatory Agreement and does not know of any reason why the Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control.

Section 4.1.41 Concerning General Partner. The general partner of Borrower is a limited liability company, duly organized and validly existing under the laws of the State of California. The General Partner has all requisite power and authority, rights and franchises to enter into and

perform its obligations under the Borrower Loan Documents and the Funding Loan Documents to be executed by the General Partner for its own account and on behalf of Borrower, as general partner of Borrower, under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents.

General Partner has made all filings (including, without limitation, all required filings related to the use of fictitious business names) and is in good standing in the State and in each other jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a material adverse effect on the business, operations, assets, condition (financial or otherwise) or prospects of General Partner.

General Partner is duly authorized to do business in the State.

The execution, delivery and performance by Borrower of the Borrower Loan Documents and the Funding Loan Documents have been duly authorized by all necessary action of General Partner on behalf of Borrower, and by all necessary action on behalf of General Partner.

The execution, delivery and performance by General Partner, on behalf of Borrower, of the Borrower Loan Documents and the Funding Loan Documents will not violate (i) General Partner's organizational documents; (ii) any other Legal Requirement affecting General Partner or any of its properties; or (iii) any agreement to which General Partner is bound or to which it is a party; and will not result in or require the creation (except as provided in or contemplated by this Borrower Loan Agreement) of any Lien upon any of such properties, any of the Collateral or any of the property or funds pledged or delivered to Funding Lender pursuant to the Security Documents.

Section 4.1.42 Government and Private Approvals. All governmental or regulatory orders, consents, permits, authorizations and approvals required for the construction, use, occupancy and operation of the Improvements, that may be granted or denied in the discretion of any Governmental Authority, have been obtained and are in full force and effect (or, in the case of any of the foregoing that Borrower is not required to have as of the Closing Date, will be obtained), and will be maintained in full force and effect at all times during the construction of the Improvements. All such orders, consents, permits, authorizations and approvals that may not be denied in the discretion of any Governmental Authority shall be obtained prior to the commencement of any work for which such orders, consents, permits, authorizations or approvals are required, and, once obtained, such orders, consents, permits, authorizations and approvals will be maintained in full force and effect at all times during the construction of the Improvements. Except as set forth in the preceding two sentences, no additional governmental or regulatory actions, filings or registrations with respect to the Improvements, and no approvals, authorizations or consents of any trustee or holder of any indebtedness or obligation of Borrower, are required for the due execution, delivery and performance by Borrower or General Partner of any of the Borrower Loan Documents or the Funding Loan Documents or the Related Documents executed by Borrower or General Partner, as applicable. All required zoning approvals have been obtained, and the zoning of the Project for the Project is not conditional upon the happening of any further event.

Section 4.1.43 Concerning Guarantor. The Guaranty has been duly executed and delivered by Guarantor and is a legally valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

Section 4.1.44 No Material Defaults. Except as previously disclosed to Funding Lender in writing, there exists no material violation of or material default by Borrower under, and, to the best knowledge of Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default with respect to: (i) the terms of any instrument evidencing, securing or guaranteeing any indebtedness secured by the Project or any portion or interest thereof or therein; (ii) any lease or other agreement affecting the Project or to which Borrower is a party; (iii) any license, permit, statute, ordinance, law, judgment, order, writ, injunction, decree, rule or regulation of any Governmental Authority, or any determination or award of any arbitrator to which Borrower or the Project may be bound; or (iv) any mortgage, instrument, agreement or document by which Borrower or any of its respective properties is bound; in the case of any of the foregoing: (1) which involves any Borrower Loan Document or Funding Loan Document; (2) which involves the Project and is not adequately covered by insurance; (3) that might materially and adversely affect the ability of Borrower, General Partner or Guarantor to perform any of its respective obligations under any of the Borrower Loan Documents or the Funding Loan Documents or any other material instrument, agreement or document to which it is a party; or (4) which might adversely affect the priority of the Liens created by this Borrower Loan Agreement or any of the Borrower Loan Documents or the Funding Loan Documents.

Section 4.1.45 Payment of Taxes. Except as previously disclosed to Funding Lender in writing: (i) all tax returns and reports of Borrower, General Partner and Guarantor required to be filed have been timely filed, and all taxes, assessments, fees and other governmental charges upon Borrower, General Partner and Guarantor, and upon their respective properties, assets, income and franchises, which are due and payable have been paid when due and payable; and (ii) Borrower knows of no proposed tax assessment against it or against General Partner or Guarantor that would be material to the condition (financial or otherwise) of Borrower, General Partner or Guarantor, and neither Borrower nor General Partner have contracted with any Government Authority in connection with such taxes.

Section 4.1.46 Rights to Project Agreements and Licenses. Borrower is the legal and beneficial owner of all rights in and to the Plans and Specifications and all existing Project Agreements and Licenses, and will be the legal and beneficial owner of all rights in and to all future Project Agreements and Licenses. Borrower's interest in the Plans and Specifications and all Project Agreements and Licenses is not subject to any present claim (other than under the Borrower Loan Documents and the Funding Loan Documents and the Subordinate Loan Documents or as otherwise approved by Funding Lender in its sole discretion), set-off or deduction other than in the ordinary course of business.

Section 4.1.47 Patriot Act Compliance. Borrower is not now, nor has ever been (i) listed on any Government Lists (as defined below), (ii) a person who has been determined by a Governmental Authority to be subject to the prohibitions contained in Presidential Executive

Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" shall mean any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism; (B) the criminal laws against money laundering, (C) Bank Representative Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" shall mean (1) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control ("OFAC"), (2) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Funding Lender notified Borrower in writing is now included in "Government Lists", or (3) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Government Authority or pursuant to any Executive Order of the President of the United States of America that Funding Lender notified Borrower in writing is now included in "Government Lists".

Section 4.1.48 Rent Schedule. Borrower has prepared a prospective Unit absorption and rent collection schedule with respect to the Project substantially in the form attached as an exhibit to the Construction Funding Agreement, which schedule takes into account, among other relevant factors (i) a schedule of minimum monthly rentals for the Units, and (ii) any and all concessions by means of free rent periods, and on the basis of such schedule, Borrower believes it will collect rents with respect to the Project in amounts greater than or equal to debt service on the Borrower Loan.

Section 4.1.49 Subordinate Loan Documents. The Subordinate Loan Documents are in full force and effect and Borrower has paid all commitment fees and other amounts due and payable to the Subordinate Lenders thereunder. There exists no material violation of or material default by Borrower under, and, to the best knowledge of Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default under the Subordinate Loan Documents.

Section 4.1.50 Ground Lease. The Ground Lease is in full force and effect and Borrower has paid all commitment fees and other amounts due and payable to the lessor thereunder. There exists no material violation of or material default by Borrower under the Ground Lease, and, to the best knowledge of Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default under the Ground Lease.

Section 4.1.51 Other Documents. Each of the representations and warranties of Borrower or General Partner contained in any of the other Borrower Loan Documents or the Funding Loan Documents or Related Documents is true and correct in all material respects (or, in the case of representations or warranties contained in any of the other Borrower Loan



Documents or Funding Loan Documents or Related Documents that speak as of a particular date, were true and correct in all material respects as of such date). All of such representations and warranties are incorporated herein for the benefit of Funding Lender.

Section 4.2 Survival of Representations and Covenants. All of the representations and warranties in Section 4.1 hereof and elsewhere in the Borrower Loan Documents (i) shall survive for so long as any portion of the Borrower Payment Obligations remains due and owing and (ii) shall be deemed to have been relied upon by the Governmental Lender and the Servicer notwithstanding any investigation heretofore or hereafter made by the Governmental Lender or the Servicer or on its or their behalf, provided, however, that the representations, warranties and covenants set forth in Section 4.1.30 hereof shall survive in perpetuity and shall not be subject to the exculpation provisions of Section 11.1 hereof.

## ARTICLE V

### AFFIRMATIVE COVENANTS

During the term of this Borrower Loan Agreement, the Borrower hereby covenants and agrees with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer that:

Section 5.1 Existence. The Borrower shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and its material rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all material Licenses, and (iv) qualify to do business and remain in good standing under the laws of the State.

Section 5.2 Taxes and Other Charges. The Borrower shall pay all Taxes and Other Charges as the same become due and payable and prior to their becoming delinquent in accordance with the Security Instrument, except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Security Instrument.

The Borrower covenants to pay all taxes and Other Charges of any type or character charged to the Funding Lender affecting the amount available to the Funding Lender from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and Other Charges assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Funding Lender and taxes based upon or measured by the net income of the Funding Lender; provided, however, that the Borrower shall have the right to protest any such taxes or Other Charges and to require the Funding Lender, at the Borrower's expense, to protest and contest any such taxes or Other Charges levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or Other Charges pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Funding Lender. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

Section 5.3 Repairs; Maintenance and Compliance; Physical Condition. The Borrower shall cause the Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) as set forth in the Security Instrument and shall not remove, demolish or materially alter the Improvements or Equipment (except for removal of aging or obsolete equipment or furnishings in the normal course of business), except as provided in the Security Instrument.

Section 5.4 Litigation. The Borrower shall give prompt Written Notice to the Governmental Lender, the Funding Lender and the Servicer of any litigation, governmental proceedings or claims or investigations regarding an alleged actual violation of a Legal Requirement pending or, to the Borrower's knowledge, threatened against the Borrower which might materially adversely affect the Borrower's condition (financial or otherwise) or business or the Project.

Section 5.5 Performance of Other Agreements. The Borrower shall observe and perform in all material respects each and every term to be observed or performed by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Project.

Section 5.6 Notices. The Borrower shall promptly advise the Governmental Lender, the Funding Lender and the Servicer of (i) any Material Adverse Change in the Borrower's financial condition, assets, properties or operations other than general changes in the real estate market, (ii) any fact or circumstance affecting the Borrower or the Project that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Borrower Loan Document to which it is a party in a timely manner, or (iii) the occurrence of any Potential Default or Event of Default of which the Borrower has knowledge. If the Borrower becomes subject to federal or state securities law filing requirements, the Borrower shall cause to be delivered to the Governmental Lender, the Funding Lender and the Servicer any Securities and Exchange Commission or other public filings, if any, of the Borrower within two (2) Business Days of such filing.

Section 5.7 Cooperate in Legal Proceedings. The Borrower shall cooperate fully with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer with respect to, and permit the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer at their option, to participate in, any proceedings before any Governmental Authority that may in any way affect the rights of the Governmental Lender, the Funding Lender, the Fiscal Agent and/or the Servicer under any Borrower Loan Document or Funding Loan Document.

Section 5.8 Further Assurances. The Borrower shall, at the Borrower's sole cost and expense (except as provided in Section 9.1 hereof), (i) furnish to the Servicer and the Funding Lender all instruments, documents, boundary surveys, footing or foundation surveys (to the extent that Borrower's construction of the Project alters any existing building foundations or footprints), certificates, plans and specifications, appraisals, title and other insurance reports and agreements, reasonably requested by the Servicer or the Funding Lender for the better and more efficient carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents; (ii) execute and deliver to the Servicer and the Funding Lender such documents, instruments, certificates, assignments and other writings, and do such other acts

necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Borrower Loan, as the Servicer, the Fiscal Agent and the Funding Lender may reasonably require from time to time; (iii) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents, as the Servicer, the Fiscal Agent or the Funding Lender shall reasonably require from time to time; provided, however, with respect to clauses (i)-(iii) above, the Borrower shall not be required to do anything that has the effect of (A) changing the essential economic terms of the Borrower Loan or (B) imposing upon the Borrower greater personal liability under the Borrower Loan Documents and the Funding Loan Documents; and (iv) upon the Servicer's, the Fiscal Agent's or the Funding Lender's request therefor given from time to time after the occurrence of any Potential Default or Event of Default for so long as such Potential Default or Event of Default, as applicable, is continuing pay for (a) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to the Borrower and (b) searches of title to the Project, each such search to be conducted by search firms reasonably designated by the Servicer, the Fiscal Agent or the Funding Lender in each of the locations reasonably designated by the Servicer, the Fiscal Agent or the Funding Lender.

Section 5.9 Delivery of Financial Information. After notice to the Borrower of a Secondary Market Disclosure Document, the Borrower shall, concurrently with any delivery to the Funding Lender or the Servicer, deliver copies of all financial information required under Article IX.

Section 5.10 Environmental Matters. So long as the Borrower owns or is in possession of the Project, the Borrower shall (a) keep the Project in compliance with all Hazardous Materials Laws (as defined in the Security Instrument), (b) promptly notify the Funding Lender and the Servicer if the Borrower shall become aware that any Hazardous Materials (as defined in the Security Instrument) are on or near the Project in violation of Hazardous Materials Laws, and (c) commence and thereafter diligently prosecute to completion all remedial work necessary with respect to the Project required under any Hazardous Material Laws, in each case as set forth in the Security Instrument or the Agreement of Environmental Indemnification.

Section 5.11 Lender's and Funding Lender's Fees. The Borrower covenants to pay the reasonable fees and expenses of the Governmental Lender (including the Ongoing Governmental Lender Fee), the Fiscal Agent and the Funding Lender or any agents, attorneys, accountants, consultants selected by the Governmental Lender, the Fiscal Agent or the Funding Lender to act on its behalf in connection with this Borrower Loan Agreement and the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents, including, without limitation, any origination fee or application fee due to Funding Lender and any and all reasonable expenses incurred in connection with the making of the Borrower Loan or in connection with any litigation which may at any time be instituted involving the Borrower Loan, this Borrower Loan Agreement, the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or

termination of this Borrower Loan Agreement regarding any fees and expenses incurred prior to such repayment or termination.

Section 5.12 Estoppel Statement. The Borrower shall furnish to the Funding Lender, the Fiscal Agent or the Servicer for the benefit of the Funding Lender or the Servicer within ten (10) days after request by the Funding Lender and the Servicer, with a statement, duly acknowledged and certified, setting forth (i) the unpaid principal of the Borrower Note, (ii) the applicable Interest Rate, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment of the Borrower Payment Obligations, and (v) that the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are valid, legal and binding obligations of the Borrower and have not been modified or, if modified, giving particulars of such modification, and no Event of Default exists thereunder or specify any Event of Default that does exist thereunder. The Borrower shall use commercially reasonable efforts to furnish to the Funding Lender or the Servicer, within 30 days of a request by the Funding Lender or Servicer, tenant estoppel certificates from each commercial tenant at the Project in form and substance reasonably satisfactory to the Funding Lender and the Servicer; provided that the Funding Lender and the Servicer shall not make such requests more frequently than twice in any year.

Section 5.13 Defense of Actions. The Borrower shall appear in and defend any action or proceeding purporting to affect the security for this Borrower Loan Agreement hereunder or under the Borrower Loan Documents and the Funding Loan Documents, and shall pay, in the manner required by Section 2.4 hereof, all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Funding Lender may appear. If the Borrower fails to perform any of the covenants or agreements contained in this Borrower Loan Agreement or any other Borrower Loan Document, or if any action or proceeding is commenced that is not diligently defended by the Borrower which affects the Funding Lender's interest in the Project or any part thereof, including eminent domain, code enforcement or proceedings of any nature whatsoever under any Federal or state law, whether now existing or hereafter enacted or amended, then the Funding Lender may make such appearances, disburse such sums and take such action as the Funding Lender deems necessary or appropriate to protect its interests. Such actions include disbursement of attorneys' fees, entry upon the Project to make repairs or take other action to protect the security of the Project, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of Funding Lender appears to be prior or superior to the Borrower Loan Documents or the Funding Loan Documents. The Funding Lender shall have no obligation to do any of the above. The Funding Lender may take any such action without notice to or demand upon the Borrower. No such action shall release the Borrower from any obligation under this Borrower Loan Agreement or any of the other Borrower Loan Documents or Funding Loan Documents. In the event (i) that the Security Instrument is foreclosed in whole or in part or that any Borrower Loan Document is put into the hands of an attorney for collection, suit, action or foreclosure, or (ii) of the foreclosure of any mortgage, deed of trust or deed to secure debt prior to or subsequent to the Security Instrument or any Borrower Loan Document in which proceeding the Funding Lender is made a party or (iii) of the bankruptcy of the Borrower or an assignment by the Borrower for the benefit of its creditors, the Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including actual attorneys' fees in connection therewith and in connection with any

appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes.

Section 5.14 Expenses. The Borrower shall pay all reasonable expenses incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer (except as provided in Section 9.1 hereof) in connection with the Borrower Loan and the Funding Loan, including reasonable fees and expenses of the Governmental Lender's, the Fiscal Agent's, the Funding Lender's and the Servicer's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the recording or filing of the Borrower Loan Documents and the Funding Loan Documents. The Borrower shall pay or cause to be paid all reasonable expenses of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer (except as provided in Section 9.1 hereof) in connection with the issuance or administration of the Borrower Loan and the Funding Loan, including audit costs, inspection fees, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto. The Borrower shall, upon request, promptly reimburse the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer for all reasonable amounts expended, advanced or incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer to collect the Borrower Note, or to enforce the rights of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer under this Borrower Loan Agreement or any other Borrower Loan Document, or to defend or assert the rights and claims of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer under the Borrower Loan Documents and the Funding Loan Documents arising out of an Event of Default or with respect to the Project (by litigation or other proceedings) arising out of an Event of Default, which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be reasonably incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the date of disbursement until the date of reimbursement to the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, all of which shall constitute part of the Borrower Loan and the Funding Loan and shall be secured by the Borrower Loan Documents and the Funding Loan Documents. The obligations and liabilities of the Borrower under this Section 5.14 shall survive the Term of this Borrower Loan Agreement and the exercise by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, of any of its rights or remedies under the Borrower Loan Documents and the Funding Loan Documents, including the acquisition of the Project by foreclosure or a conveyance in lieu of foreclosure. Notwithstanding the foregoing, the Borrower shall not be obligated to pay amounts incurred as a result of the willful misconduct of the Governmental Lender, or the gross negligence or willful misconduct of any other party, and any obligations of the Borrower to pay for environmental inspections or audits will be governed by Section 18(i) and 43(i) of the Security Instrument.

The Governmental Lender shall not be responsible for any costs associated with any securitization of the Borrower Loan or the Funding Loan. The Borrower shall not be responsible for any costs associated with any securitization of the Borrower Loan or the Funding Loan, except to the extent provided in Article IX hereof or Section 5.15 below.

Section 5.15 Indemnity. 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, the Servicer, the Beneficiary Parties, Citigroup, Inc. and each of their respective officers, directors, employees, attorneys and agents (each an "Indemnified Party"), against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) (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, except with respect to any Secondary Market Disclosure Document (other than any Borrower's obligations under Article IX);

(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, installation or rehabilitation of, the Project or any part thereof;

(c) Any lien (other than a Permitted 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 and Other Charges imposed on the Governmental Lender, the Fiscal Agent or the Funding Lender in respect of any portion of the Project;

(d) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof during the period in which the Borrower is in possession or control of the Project;

(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) [Reserved];

(g) 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;

(h) Any Determination of Taxability;

(i) Any breach (or alleged breach) by Borrower of any 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, General Partner, Guarantor or their affiliates to Governmental Lender, the Fiscal Agent, the Funding Lender, Servicer 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);

(j) 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;

(k) 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; or

(l) The use of the proceeds of the Borrower Loan and the Funding Loan,

except, in the case of the foregoing indemnification of the Governmental Lender or any related Indemnified Party, to the extent such damages are caused by the willful misconduct of such Indemnified Party and, in the case of foregoing indemnification of the Fiscal Agent, the Funding Lender, the Servicer or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. Notwithstanding anything herein to the contrary, the Borrower's indemnification obligations to the parties specified in Section 9.1.4 hereof with respect to any securitization or Secondary Market Transaction described in Article IX hereof shall be limited to the indemnity set forth in Section 9.1.4 hereof. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the 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 any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement or the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 5.15 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the

Governmental Lender and the Funding Lender have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

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 the Servicer, any resignation or removal. The provisions of this Section 5.15 shall survive the termination of this Borrower Loan Agreement.

Section 5.16 No Warranty of Condition or Suitability by the Governmental Lender or Funding Lender. Neither the Governmental Lender nor the Funding Lender makes any warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Borrower's purposes or needs.

Section 5.17 Right of Access to the Project. The Borrower agrees that the Governmental Lender, the Funding Lender, the Servicer and the Construction Consultant, and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but no obligation at all reasonable times during business hours and upon reasonable notice, to enter onto the Land (a) to examine, test and inspect the Project without material interference or prejudice to the Borrower's operations or the rights of Tenants under their tenant leases and (b) to perform such work in and about the Project made necessary by reason of the Borrower's default under any of the provisions of this Borrower Loan Agreement. The Governmental Lender, the Funding Lender, the Servicer, and their duly authorized agents, attorneys, accountants and representatives shall also be permitted, without any obligation to do so, at all reasonable times and upon reasonable notice during business hours, to examine the books and records of the Borrower with respect to the Project.

Section 5.18 Notice of Default. The Borrower will advise the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer promptly in writing of the occurrence of any Potential Default or Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

Section 5.19 Covenant with Governmental Lender and Funding Lender. The Borrower agrees that this Borrower Loan Agreement is executed and delivered in part to induce the acceptance by the Funding Lender of the Governmental Lender Note and, accordingly, all covenants and agreements of the Borrower contained in this Borrower Loan Agreement are hereby declared to be for the benefit of the Governmental Lender, the Fiscal Agent, the Funding Lender and any lawful owner, holder or pledgee of the Borrower Note or the Governmental Lender Note from time to time.

Section 5.20 Obligation of the Borrower to Construct the Project. The Borrower shall proceed with reasonable dispatch to construct and equip the Project. If the proceeds of the Borrower Loan, together with the Other Borrower Moneys, available to be disbursed to the Borrower are not sufficient to pay the costs of such construction and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Funding Lender or the Servicer in respect of any such costs or to any diminution or abatement in the repayment of the Borrower Loan. The Governmental Lender, the Fiscal Agent and the Funding Lender shall not be



liable to the Borrower or any other person if for any reason the Project is not completed or if the proceeds of the Borrower Loan are insufficient to pay all costs of the Project. The Governmental Lender, the Fiscal Agent and the Funding Lender do not make any representation or warranty, either express or implied, that moneys, if any, which will be made available to the Borrower will be sufficient to complete the Project, and the Governmental Lender, the Fiscal Agent and the Funding Lender shall not be liable to the Borrower or any other person if for any reason the Project is not completed.

Section 5.21 Maintenance of Insurance. Borrower will maintain the insurance required by the Security Instrument.

Section 5.22 Information; Statements and Reports. Borrower shall furnish or cause to be furnished to Governmental Lender and Funding Lender:

(a) Notice of Default. As soon as possible, and in any event not later than five (5) Business Days after the occurrence of any Event of Default or Potential Default, a statement of an Authorized Representative of Borrower describing the details of such Event of Default or Potential Default and any curative action Borrower proposes to take;

(b) Financial Statements; Rent Rolls. In the manner and to the extent required under the Security Instrument, such financial statements, expenses statements, rent rolls, reports and other financial documents and information as required by the Security Instrument and the other Borrower Loan Documents and Funding Loan Documents, in the form and within the time periods required therein;

(c) General Partner. As soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of General Partner, copies of the financial statements of General Partner as of such date, prepared in substantially the form previously delivered to Governmental Lender and Funding Lender and in a manner consistent therewith, or in such form (which may include a form prepared in accordance with GAAP) as Funding Lender may reasonably request;

(d) Leasing Reports. Prior to the Conversion Date, on a monthly basis (and in any event within fifteen (15) days after the end of each Calendar Month), a report of all efforts made by Borrower, if any, to lease all or any portion of the Project during such Calendar Month and on a cumulative basis since Project inception, which report shall be prepared and delivered by Borrower, shall be in form and substance satisfactory to Funding Lender, and shall, if requested by Funding Lender, be supported by copies of letters of intent, leases or occupancy agreements, as applicable;

(e) Audit Reports. Promptly upon receipt thereof, copies of all reports, if any, submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

(f) Notices; Certificates or Communications. Immediately upon giving or receipt thereof, copies of any notices, certificates or other communications delivered at the Project or to

Borrower or General Partner naming Governmental Lender or Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the Project or the ability of Borrower to perform its obligations under the Borrower Loan Documents and the Funding Loan Documents;

(g) Certification of Non-Foreign Status. Promptly upon request of Funding Lender from time to time, a Certification of Non-Foreign Status, executed on or after the date of such request by Funding Lender;

(h) Compliance Certificates. Together with each of the documents required pursuant to Section 5.22(b) hereof submitted by or on behalf of Borrower, a statement, in form and substance satisfactory to Funding Lender and certified by an Authorized Borrower Representative, to the effect that Borrower is in compliance with all covenants, terms and conditions applicable to Borrower, under or pursuant to the Borrower Loan Documents and the Funding Loan Documents and under or pursuant to any other Debt owing by Borrower to any Person, and disclosing any noncompliance therewith, and any Event of Default or Potential Default, and describing the status of Borrower's actions to correct such noncompliance, Event of Default or Potential Default, as applicable; and

(i) Other Items and Information. Such other information concerning the assets, business, financial condition, operations, property, prospects and results of operations of Borrower, General Partner, Guarantor or the Project, as Funding Lender or Governmental Lender reasonably requests from time to time.

Section 5.23 Additional Notices. Borrower will, promptly after becoming aware thereof, give notice to Funding Lender and the Governmental Lender of:

(a) any Lien affecting the Project, or any part thereof, other than Liens expressly permitted under this Borrower Loan Agreement;

(b) any Legal Action which is instituted by or against Borrower, General Partner or Guarantor, or any Legal Action which is threatened against Borrower, General Partner or Guarantor which, in any case, if adversely determined, could have a material adverse effect upon the business, operations, properties, prospects, assets, management, ownership or condition (financial or otherwise) of Borrower, General Partner, Guarantor or the Project;

(c) any Legal Action which constitutes an Event of Default or a Potential Default or a default under any other Contractual Obligation to which Borrower, General Partner or Guarantor is a party or by or to which Borrower, General Partner or Guarantor, or any of their respective properties or assets, may be bound or subject, which default would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, General Partner or Guarantor, as applicable;

(d) any default, alleged default or potential default on the part of Borrower under any of the CC&Rs (together with a copy of each notice of default, alleged default or potential default received from any other party thereto);

(e) any notice of default, alleged default or potential default on the part of Borrower received from any tenant or occupant of the Project under or relating to its lease or occupancy agreement (together with a copy of any such notice), if, in the aggregate, notices from at least fifteen percent (15%) of the tenants at the Project have been received by Borrower with respect to, or alleging, the same default, alleged default or potential default;

(f) any change or contemplated change in (i) the location of Borrower's or General Partner's executive headquarters or principal place of business; (ii) the legal, trade, or fictitious business names used by Borrower or General Partner; or (iii) the nature of the trade or business of Borrower; and

(g) any default, alleged default or potential default on the part of any general or limited partner (including, without limitation, General Partner and the Equity Investor) under the Partnership Agreement.

Section 5.24 Compliance with Other Agreements; Legal Requirements. (a) Borrower shall timely perform and comply with, and shall cause General Partner to timely perform and comply with the covenants, agreements, obligations and restrictions imposed on them under the Partnership Agreement, and Borrower shall not do or permit to be done anything to impair any such party's rights or interests under any of the foregoing.

(b) Borrower will comply and, to the extent it is able, will require others to comply with, all Legal Requirements of all Governmental Authorities having jurisdiction over the Project or construction and/or rehabilitation of the Improvements, and will furnish Funding Lender with reports of any official searches for or notices of violation of any requirements established by such Governmental Authorities. Borrower will comply and, to the extent it is able, will require others to comply, with applicable CC&Rs and all restrictive covenants and all obligations created by private contracts and leases which affect ownership, construction, rehabilitation, equipping, fixturing, use or operation of the Project, and all other agreements requiring a certain percentage of the Units to be rented to persons of very low, low, or moderate income. The Improvements, when completed, shall comply with all applicable building, zoning and other Legal Requirements, and will not violate any restrictions of record against the Project or the terms of any other lease of all or any portion of the Project. Funding Lender shall at all times have the right to audit, at Borrower's expense, Borrower's compliance with any agreement requiring a certain percentage of the Units to be rented to persons of very low, low, or moderate income, and Borrower shall supply all such information with respect thereto as Funding Lender may request and otherwise cooperate with Funding Lender in any such audit. Without limiting the generality of the foregoing, Borrower shall properly obtain, comply with and keep in effect (and promptly deliver copies to Funding Lender of) all permits, licenses and approvals which are required to be obtained from Governmental Authorities in order to construct, occupy, operate, market and lease the Project.

Section 5.25 Completion and Maintenance of Project. Borrower shall cause the construction of the Improvements, to be prosecuted with diligence and continuity and completed substantially in accordance with the Plans and Specifications, and in accordance with the Construction Funding Agreement, free and clear of any liens or claims for liens (but without prejudice to Borrower's rights of contest under Section 10.16 hereof) ("Completion") on or

before the Completion Date. Borrower shall thereafter maintain the Project as a residential apartment complex in good order and condition, ordinary wear and tear excepted. A maintenance program shall be in place at all times to assure the continuation of first class maintenance.

Section 5.26 Fixtures. Borrower shall deliver to Funding Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower or any other Person claims title to any materials, fixtures or articles incorporated into the Improvements.

Section 5.27 Income from Project. Borrower shall first apply all Gross Income to Expenses of the Project, including all amounts then required to be paid under the Borrower Loan Documents and the Funding Loan Documents and the funding of all sums necessary to meet the Replacement Reserve Fund Requirement, before using or applying such Gross Income for any other purpose. Prior to the Conversion Date, Borrower shall not make or permit any distributions or other payments of Net Operating Income to its partners, shareholders or members, as applicable, in each case, without the prior Written Consent of Funding Lender.

Section 5.28 Leases and Occupancy Agreements.

(a) Borrower has submitted to Funding Lender, and Funding Lender has approved, Borrower's standard form of tenant lease for use in the Project. Borrower shall not materially modify that approved lease form without Funding Lender's prior Written Consent in each instance, which consent shall not be unreasonably withheld or delayed. Borrower may enter into leases of space within the Improvements (and amendments to such leases) in the ordinary course of business with bona fide third party tenants without Funding Lender's prior Written Consent if:

(A) The lease is a Permitted Lease, and is executed in the form attached as an exhibit to the Construction Funding Agreement without material modification;

(B) Borrower, acting in good faith following the exercise of due diligence, has determined that the tenant meets requirements imposed under any applicable CC&R and is financially capable of performing all of its obligations under the lease; and

(C) The lease conforms to the Rent Schedule attached as an exhibit to the Construction Funding Agreement and reflects an arm's-length transaction, subject to the requirement that the Borrower comply with any applicable CC&R.

(b) If any Event of Default has occurred and is continuing, Funding Lender may make written demand on Borrower to submit all future leases for Funding Lender's approval prior to execution. Borrower shall comply with any such demand by Funding Lender.

(c) No approval of any lease by Funding Lender shall be for any purpose other than to protect Funding Lender's security for the Borrower Loan and to preserve Funding Lender's rights under the Borrower Loan Documents and the Funding Loan Documents. No approval by Funding Lender shall result in a waiver of any default of Borrower. In no event shall any approval by Funding Lender of a lease be a representation of any kind with regard to the lease or its enforceability, or the financial capacity of any tenant or guarantor.

(d) **Landlord's Obligations.** Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Improvements.

(e) **Leasing and Marketing Agreements.** Except as may be contemplated in the Management Agreement with Borrower's Manager, Borrower shall not without the approval of Funding Lender enter into any leasing or marketing agreement and Funding Lender reserves the right to approve the qualifications of any marketing or leasing agent.

**Section 5.29 Project Agreements and Licenses.** To the extent not heretofore delivered to Funding Lender, Borrower will furnish to Funding Lender, as soon as available, true and correct copies of all Project Agreements and Licenses and the Plans and Specifications, together with assignments thereof to Funding Lender and consents to such assignments where required by Funding Lender, all in form and substance acceptable to Funding Lender. Neither Borrower nor General Partner has assigned or granted, or will assign or grant, a security interest in any of the Project Agreements and Licenses, other than to Funding Lender.

**Section 5.30 Payment of Debt Payments.** In addition to its obligations under the Borrower Note, Borrower will (i) duly and punctually pay or cause to be paid all principal of and interest on any Debt of Borrower as and when the same become due on or before the due date; (ii) comply with and perform all conditions, terms and obligations of other instruments or agreements evidencing or securing such Debt; (iii) promptly inform Funding Lender of any default, or anticipated default, under any such note, agreement, instrument; and (iv) forward to Funding Lender a copy of any notice of default or notice of any event that might result in default under any such note, agreement, instrument, including Liens encumbering the Project, or any portion thereof, which have been subordinated to the Security Instrument (regardless of whether or not permitted under this Borrower Loan Agreement).

**Section 5.31 ERISA.** Borrower will comply, and will cause each of its ERISA Affiliates to comply, in all respects with the provisions of ERISA to the extent applicable to the Borrower.

**Section 5.32 Patriot Act Compliance.** Borrower shall use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Project, including those relating to money laundering and terrorism. Funding Lender shall have the right to audit Borrower's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Project, including those relating to money laundering and terrorism. In the event that Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then Funding Lender may, at its option, cause Borrower to comply therewith and any and all costs and expenses incurred by Funding Lender in connection therewith shall be secured by the Security Instrument and shall be immediately due and payable.

Borrower covenants that it shall comply with all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Without limiting the foregoing, Borrower

shall not take any action, or permit any action to be taken, that would cause Borrower's representations and warranties in Article IV become untrue or inaccurate at any time during the term of the Funding Loan. Upon any Beneficiary Party's request from time to time during the term of the Funding Loan, Borrower shall certify in writing to such Beneficiary Party that Borrower's representations, warranties and obligations under Article IV remain true and correct and have not been breached, and in addition, upon request of any Beneficiary Party, Borrower covenants to provide all information required to satisfy obligations under all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, during the term of the Funding Loan. Borrower shall immediately notify the Funding Lender in writing of (a) Borrower's actual knowledge that any of such representations, warranties or covenants are no longer true and have been breached, (b) Borrower has a reasonable basis to believe that they may no longer be true and have been breached or (c) Borrower becomes the subject of an investigation by Governmental Authorities related to money laundering, anti-terrorism, trade embargos and economic sanctions. Borrower shall also reimburse Funding Lender for any expense incurred by Funding Lender in evaluating the effect of an investigation by Governmental Authorities on the Funding Loan and Funding Lender's interest in the collateral for the Funding Loan, in obtaining necessary license from Governmental Authorities as may be necessary for Funding Lender to enforce its rights under the Funding Loan Documents, and in complying with all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect applicable to Funding Lender as a result of the existence of such an event and for any penalties or fines imposed upon Funding Lender as a result thereof.

Section 5.33 Funds from Equity Investor. Borrower shall cause the Equity Investor to fund all installments of the Equity Contributions in the amounts and at the times subject and according to the terms of the Partnership Agreement.

Section 5.34 Tax Covenants. The Borrower further represents, warrants and covenants that:

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

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

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

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

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

(f) Private Activity Volume Cap. The Borrower represents that the California Debt Limit Allocation Committee has transferred a portion of the State of California's private activity bond allocation (within the meaning of section 146 of the Code) to the Governmental Lender with respect to the Governmental Lender Note in an amount equal to the principal amount of the Governmental Lender Note.

(g) Limitation on Issuance Costs. The Borrower covenants that, from the proceeds of the Governmental Lender Note and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Governmental Lender Note, will be used for costs of issuance of the Governmental Lender Note, all within the meaning of section 147(g)(1) of the Code. For this purpose, if the fees of the Funding Lender are retained as a discount on the purchase of the Governmental Lender Note, such retention shall be deemed to be an expenditure of proceeds of the Governmental Lender Note for said fees.

(h) Limitation of Expenditure of Proceeds. The Borrower covenants that not less than 95 percent (95%) of the net proceeds of the Governmental Lender Note (within the meaning of section 150(a)(3) of the Code) will be used to pay Qualified Project Costs.

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

(j) Existing Facilities Limit. The Borrower covenants that no proceeds of the Governmental Lender Note shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment thereof) if rehabilitation expenditures (as defined in section 145(d) of the Code) with respect to such building equal or exceed 15 percent (15%) of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent (100%) of the portion of the cost of acquiring such structure financed with the proceeds of the Governmental Lender Note.

(k) Certain Uses Prohibited. The Borrower covenants that no proceeds of the Governmental Lender Note shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises, and no portion of the proceeds of the Governmental Lender Notes shall be used for an office unless (i) the office is located on the premises of the facilities constituting the Project and (ii) not more than a de minimus amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

(l) Intentionally Omitted.

(m) Compliance with Regulatory Agreement and Tax Certificate. In furtherance of the covenants in this Section 5.34, the Borrower shall execute, deliver and comply with the provisions of the Regulatory Agreement and the Tax Certificate, which are by this reference incorporated into this Borrower Loan Agreement and made a part of this Borrower Loan Agreement as if set forth in this Borrower Loan Agreement in full.

#### Section 5.35 Payment of Rebate.

(a) Arbitrage Rebate. The Borrower agrees to take all steps necessary to compute and pay any rebatable arbitrage in accordance with Section 148(f) of the Code including:

(i) Delivery of Documents and Money on Computation Dates. The Borrower will deliver to the Servicer, or, if there is no Servicer, to Funding Lender, within fifty-five (55) days after each Computation Date:

(A) a statement, signed by the Borrower, stating the Rebate Amount as of such Computation Date;

(B) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90% of the Rebate Amount as of such Installment Computation Date, less any "previous rebate payments" made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations), or (2) if such Computation Date is the final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount as of such final Computation Date, less any "previous rebate payments" made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations); and

(C) an Internal Revenue Service Form 8038-T properly signed and completed as of such Computation Date.

(ii) Correction of Underpayments. If the Borrower shall discover or be notified as of any date that any payment paid to the United States Treasury pursuant to this Section 5.35 of an amount described in Section 5.35(a)(i)(A) or (B) above shall have failed to satisfy any requirement of Section 1.148-3 of the Regulations (whether or not such failure shall be due to any default by the Borrower, the Governmental Lender or the Funding Lender), the Borrower shall (1) pay to the Servicer (for deposit to the Rebate



Fund) and cause the Servicer to pay to the United States Treasury from the Rebate Fund the underpayment of the Rebate Amount, together with any penalty and/or interest due, as specified in Section 1.148-3(h) of the Regulations, within 175 days after any discovery or notice and (2) deliver to the Servicer an Internal Revenue Service Form 8038-T completed as of such date. If such underpayment of the Rebate Amount, together with any penalty and/or interest due, is not paid to the United States Treasury in the amount and manner and by the time specified in the Regulations, the Borrower shall take such steps as are necessary to prevent the Governmental Lender Note from becoming an arbitrage bond within the meaning of Section 148 of the Code.

(iii) Records. The Borrower shall retain all of its accounting records relating to the funds established under this Borrower Loan Agreement and all calculations made in preparing the statements described in this Section 5.35 for at least six years after the later of the final maturity of the Governmental Lender Note or the date the Funding Loan is retired in full.

(iv) Costs. The Borrower agrees to pay all of the fees and expenses of a nationally recognized Tax Counsel, the Rebate Analyst, a certified public accountant and any other necessary consultant employed by the Borrower or the Funding Lender in connection with computing the Rebate Amount.

(v) No Diversion of Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Funding Loan which is not purchased at Fair Market Value or includes terms that the Borrower would not have included if the Funding Loan were not subject to Section 148(f) of the Code.

(vi) Modification of Requirements. If at any time during the term of this Agreement, the Governmental Lender, the Funding Lender or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section 5.35, such Person shall be permitted to take such action if it shall first obtain and provide to the other Persons named herein a Tax Counsel No Adverse Affect Opinion with respect to such action.

(b) Rebate Fund. The Servicer shall establish and hold a separate fund designated as the "Rebate Fund." The Servicer shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Servicer by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.

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

(d) All payments to the United States of America pursuant to this Section 5.35 shall be made by the Servicer 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 Servicer by the Borrower or the Rebate Analyst as set forth in this Section 5.35).

(e) The Borrower shall preserve all statements, forms and explanations received and delivered pursuant this Section 5.35 and all records of transactions in the Rebate Fund until six years after the retirement of the Funding Loan.

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

(g) Notwithstanding anything to the contrary in this Borrower Loan Agreement, no payment shall be made to the United States if the Borrower shall furnish to the Governmental Lender and the Funding Lender 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 a Tax Counsel No Adverse Affect Opinion to the Governmental Lender and the Funding Lender with respect to such withdrawal.

(h) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 5.35 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 a Tax Counsel No Adverse Affect Opinion, a copy of which shall be provided to the Funding Lender.

**Section 5.36 Covenants under Funding Loan Agreement.** The Borrower will fully and faithfully perform all the duties and obligations which the Governmental Lender has covenanted and agreed in the Funding Loan Agreement to cause the Borrower to perform and any duties and obligations which the Borrower is required in the Funding Loan Agreement to perform. The foregoing will not apply to any duty or undertaking of the Governmental Lender which by its nature cannot be delegated or assigned.

**Section 5.37 Notice of Default.** The Borrower will advise the Governmental Lender, the Funding Lender and the Servicer promptly in writing of the occurrence of any Potential Default or Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.38 Continuing Disclosure Agreement.** The Borrower and the Funding Lender shall enter into the Continuing Disclosure Agreement to provide for the continuing disclosure of information about the Funding Loan, the Borrower and other matters as specifically provided for in such agreement. The duties and obligations of the Borrower under the Continuing Disclosure Agreement shall be as set forth in the Continuing Disclosure Agreement.

## ARTICLE VI

### NEGATIVE COVENANTS

Borrower hereby covenants and agrees as follows, which covenants shall remain in effect so long as any Borrower Payment Obligation or other obligation of Borrower under any of the other Borrower Loan Documents or the Funding Loan Documents remains outstanding or unperformed. Borrower covenants and agrees that it will not, directly or indirectly:

Section 6.1 Management Agreement. Without first obtaining the Funding Lender's prior Written Consent, enter into the Management Agreement, and thereafter the Borrower shall not, without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld or delayed) and subject to the Regulatory Agreement: (i) surrender, terminate or cancel the Management Agreement or otherwise replace the Manager or enter into any other management agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; (iv) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect any of its rights and remedies under, the Management Agreement; or (v) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the Manager to terminate the Management Agreement (or such successor management agreement); provided, however, that Funding Lender's prior written consent shall not be required for any extension or renewal of the Management Agreement on the same terms and conditions.

Section 6.2 Dissolution. Dissolve or liquidate, in whole or in part, merge with or consolidate into another Person.

Section 6.3 Change in Business or Operation of Property. Enter into any line of business other than the ownership and operation of the Project, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business and activities incidental or related thereto or otherwise cease to operate the Project as a multi-family property or terminate such business for any reason whatsoever (other than temporary cessation in connection with construction or rehabilitation, as appropriate, of the Project).

Section 6.4 Debt Cancellation. Cancel or otherwise forgive or release any claim or debt owed to the Borrower by a Person, except for adequate consideration or in the ordinary course of the Borrower's business in its reasonable judgment.

Section 6.5 Assets. Purchase or own any real property or personal property incidental thereto other than the Project.

Section 6.6 Transfers. Make, suffer or permit the occurrence of any Transfer other than a transfer permitted under the Security Instrument and the Regulatory Agreement, nor transfer any material License required for the operation of the Project.

Section 6.7 Debt. Other than as otherwise expressly approved in writing by the Funding Lender, create, incur or assume any indebtedness for borrowed money (including subordinate debt) whether unsecured or secured by all or any portion of the Project or interest therein or in the Borrower or any partner thereof (including subordinate debt) other than (i) the Borrower Payment Obligations, (ii) Subordinate Debt, (iii) secured indebtedness incurred pursuant to or permitted by the Borrower Loan Documents and the Funding Loan Documents, and (iv) trade payables incurred in the ordinary course of business.

Section 6.8 Assignment of Rights. Without the Funding Lender's prior Written Consent, attempt to assign the Borrower's rights or interest under any Borrower Loan Document or Funding Loan Document in contravention of any Borrower Loan Document or Funding Loan Document.

Section 6.9 Principal Place of Business. Change its principal place of business without providing 30 days' prior Written Notice of the change to the Funding Lender and the Servicer.

Section 6.10 Partnership Agreement. Without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) surrender, terminate, cancel, modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect, any of its rights or remedies under the Partnership Agreement, except as permitted in the Security Agreement; provided, however, the consent of Funding Lender is not required for an amendment of the Partnership Agreement resulting solely from the "Permitted Transfer" of partnership interests of Borrower as defined in and permitted by the Security Instrument.

Section 6.11 ERISA. Maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of the Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Plan, or permit the assets of the Borrower to become "plan assets," whether by operation of law or under regulations promulgated under ERISA.

Section 6.12 No Hedging Arrangements. Without the prior Written Consent of the Funding Lender or unless otherwise required by this Borrower Loan Agreement, the Borrower will not enter into or guarantee, provide security for or otherwise undertake any form of contractual obligation with respect to any interest rate swap, interest rate cap or other arrangement that has the effect of an interest rate swap or interest rate cap or that otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

Section 6.13 Loans and Investments; Distributions; Related Party Payments. (a) Without the prior Written Consent of Funding Lender in each instance, Borrower shall not (i) lend money, make investments, or extend credit, other than in the ordinary course of its business as presently conducted; or (ii) repurchase, redeem or otherwise acquire any interest in Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in Borrower except as otherwise permitted by the Partnership Agreement in accordance with the terms of the

Security Instrument, or make any distribution, in cash or in kind, in respect of interests in Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in Borrower (except to the extent permitted by the Partnership Agreement and the Security Instrument and subject to the limitations set forth in Section 5.27 hereof).

(b) Disbursements for fees and expenses of any Borrower Affiliate and developer fees (however characterized) will only be paid to the extent that such fee or expense bears a proportionate relationship to the percentage of completion of the construction or rehabilitation, as the case may be, of the Improvements, as determined by the Construction Consultant, and only after deducting the applicable Retainage. Except as otherwise permitted hereunder or under the Cost Breakdown, or approved by the Funding Lender, no Disbursements for the Developer Fee or any "deferred developer fees" shall be made prior to the Conversion Date.

Section 6.14 Amendment of Related Documents or CC&Rs. Without the prior Written Consent of Funding Lender in each instance, except as provided herein and except as required by any law or regulatory agency, Borrower shall not enter into or consent to any amendment, termination, modification, or other alteration of any of the Related Documents or any of the CC&Rs (including, without limitation, those contained in the Borrower Loan Agreement, any Architect's Agreement or Engineer's Contract, any Construction Contract, and any Management Agreement, but excluding the Partnership Agreement, which is covered by Section 6.10), or any assignment, transfer, pledge or hypothecation of any of its rights thereunder, if any.

Section 6.15 Personal Property. Borrower shall not install materials, personal property, equipment or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any Person other than Borrower to remove or repossess any such materials, equipment or fixtures, or whereby title to any of the same is not completely vested in Borrower at the time of installation, without Funding Lender's prior Written Consent; provided, however, that this Section 6.15 shall not apply to laundry equipment or other equipment that is owned by a third-party vendor and commercial tenants.

Section 6.16 Fiscal Year. Without Funding Lender's Written Consent, which shall not be unreasonably withheld, neither Borrower nor General Partner shall change the times of commencement or termination of its fiscal year or other accounting periods, or change its methods of accounting, other than to conform to GAAP.

Section 6.17 Publicity. Neither Borrower nor General Partner shall issue any publicity release or other communication to any print, broadcast or on-line media, post any sign or in any other way identify Funding Lender or any of its affiliates as the source of the financing provided for herein, without the prior written approval of Funding Lender in each instance (provided that nothing herein shall prevent Borrower or General Partner from identifying Funding Lender or its affiliates as the source of such financing to the extent that Borrower or General Partner are required to do so by disclosure requirements applicable to publicly held companies or any Governmental Authority). Borrower and General Partner agree that no sign shall be posted on the Project in connection with the construction of the Improvements unless such sign identifies Citigroup and its affiliates as the source of the financing provided for herein or Funding Lender consents to not being identified on any such sign.

Section 6.18 Subordinate Loan Documents. Without the Funding Lender's prior written consent, Borrower will not surrender, terminate, cancel, modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Subordinate Loan Documents.

Section 6.19 Ground Lease. Without the Funding Lender's prior written consent, Borrower will not surrender, terminate, cancel, modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Ground Lease.

## ARTICLE VII

RESERVED

## ARTICLE VIII

DEFAULTS

Section 8.1 Events of Default. Each of the following events shall constitute an "Event of Default" under the Borrower Loan Agreement:

(a) failure by the Borrower to pay any Borrower Loan Payment in the manner and on the date such payment is due in accordance with the terms and provisions of the Borrower Note or the failure by the Borrower to pay any Additional Borrower Payment on the date such payment is due in accordance with the terms and provisions of the Borrower Note, the Security Instrument, this Borrower Loan Agreement or any other Borrower Loan Document;

(b) failure by or on behalf of the Borrower to pay when due any amount (other than as provided in subsections (a) above or elsewhere in this Section 8.1) required to be paid by the Borrower under this Borrower Loan Agreement, the Borrower Note, the Security Instrument or any of the other Borrower Loan Documents or Funding Loan Documents, including a failure to repay any amounts that have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings, which default remains uncured for a period of five (5) days after Written Notice thereof shall have been given to the Borrower;

(c) an Event of Default as defined or described in the Borrower Note, the Security Instrument or any other Borrower Loan Document occurs (or to the extent an "Event of Default" is not defined in any other Borrower Loan Document, any default or breach by the Borrower or any Guarantor of its obligations, covenants, representations or warranties under such Borrower Loan Document occurs) and any applicable notice and/or cure period has expired;

(d) any representation or warranty made by any of the Borrower, the Guarantor or the General Partner in any Borrower Loan Document or Funding Loan Document to which it is a party, or in any report, certificate, financial statement or other instrument, agreement or document furnished by the Borrower, the Guarantor or the General Partner in connection with

any Borrower Loan Document or Funding Loan Document, shall be false or misleading in any material respect as of the Closing Date;

(e) the Borrower shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

(f) the Borrower Controlling Entity shall make a general assignment for the benefit of creditors, shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to the Borrower Controlling Entity shall occur, unless in all cases the Borrower Controlling Entity is replaced with a substitute Borrower Controlling Entity that satisfies the requirements of Section 21 of the Security Instrument; which, in the case of a non-profit Borrower Controlling Entity, may be replaced within sixty (60) days of such event with another non-profit Borrower Controlling Entity acceptable to the Funding Lender, in which case no Event of Default shall be deemed to have occurred;

(g) any portion of Borrower Deferred Equity to be made by Equity Investor and required for (i) completion of the construction of the Improvements, (ii) the satisfaction of the Conditions of Conversion or (iii) the operation of the Improvements, is not received in accordance with the Partnership Agreement and subject to the terms and conditions contained therein and after the expiration of all applicable notice and cure periods;

(h) the failure by Borrower or any ERISA Affiliate of Borrower to comply in all respects with ERISA, or the occurrence of any other event (with respect to the failure of Borrower or any ERISA Affiliate to pay any amount required to be paid under ERISA or with respect to the termination of, or withdrawal of Borrower or any ERISA Affiliate from, any employee benefit or welfare plan subject to ERISA) the effect of which is to impose upon Borrower (after giving effect to the tax consequences thereof) for the payment of any amount in excess of Fifty Thousand Dollars (\$50,000);

(i) a Bankruptcy Event shall occur with respect to Borrower, any General Partner or Guarantor, or there shall be a change in the assets, liabilities or financial position of any such Person which has a material adverse effect upon the ability of such Person to perform such Person's obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document, provided that any such Bankruptcy Event with respect to a Guarantor shall not constitute an Event of Default: (i) if such Bankruptcy Event occurs on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such Bankruptcy Event occurs prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(j) all or any part of the property of Borrower is attached, levied upon or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released:

(i) prior to completion of the construction of the Improvements, within ten (10) days of the date thereof or (ii) after completion of the construction of the Improvements, within thirty (30) days of the date thereof;

(k) subject to Section 10.16 hereof, Borrower fails to pay when due any monetary obligation (other than pursuant to this Borrower Loan Agreement) to any Person in excess of \$100,000, and such failure continues beyond the expiration of any applicable cure or grace periods;

(l) any material litigation or proceeding is commenced before any Governmental Authority against or affecting Borrower, any General Partner or Guarantor, or property of Borrower, any General Partner or Guarantor, or any part thereof, and such litigation or proceeding is not defended diligently and in good faith by Borrower, any General Partner or Guarantor, as applicable, provided that any such material litigation or proceeding against a Guarantor shall not constitute an Event of Default: (i) if such material litigation is commenced on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such material litigation or proceeding is commenced prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(m) a final judgment or decree for monetary damages in excess of \$50,000 or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Borrower, any General Partner or Guarantor by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged or stayed (i) prior to completion of the construction of the Improvements, within ten (10) days after entry thereof or (ii) after completion of the construction of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment, fine or penalty), provided that any such judgment, decree, fine or penalty against a Guarantor shall not constitute an Event of Default: (i) if such judgment, decree, fine or penalty is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, decree, fine or penalty is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(n) a final, un-appealable and uninsured money judgment or judgments, in favor of any Person other than a Governmental Authority, in the aggregate sum of \$50,000 or more shall be rendered against Borrower, any General Partner or Guarantor, or against any of their



respective assets, that is not paid, superseded or stayed (i) prior to completion of the construction of the Improvements, within ten (10) days after entry thereof or (ii) after completion of the construction of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment); or any levy of execution, writ or warrant of attachment, or similar process, is entered or filed against Borrower, any General Partner or Guarantor, or against any of their respective assets (that is likely to have a material adverse effect upon the ability of Borrower, any General Partner or Guarantor to perform their respective obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document), and such judgment, writ, warrant or process shall remain unsatisfied, unsettled, unvacated, unhandled and unstayed (i) prior to completion of the construction of the Improvements, for a period of ten (10) days or (ii) after completion of the construction of the Improvements, for a period of thirty (30) days, or in any event later than five (5) Business Days prior to the date of any proposed sale thereunder; provided that any such judgment; levy, writ, warrant, attachment or similar process against a Guarantor shall not constitute an Event of Default: (i) if such judgment, levy, writ, warrant, attachment or similar process is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, levy, writ, warrant, attachment or similar process is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(o) the inability of Borrower to satisfy any condition for the receipt of a Disbursement hereunder (other than an Event of Default specifically addressed in this Section 8.1) and failure to resolve the situation to the satisfaction of Funding Lender for a period in excess of thirty (30) days after Written Notice from Funding Lender unless (i) such inability shall have been caused by conditions beyond the control of Borrower, including, without limitation, acts of God or the elements, fire, strikes and disruption of shipping; (ii) Borrower shall have made adequate provision, acceptable to Funding Lender, for the protection of materials stored on-site or off-site and for the protection of the Improvements to the extent then constructed against deterioration and against other loss or damage or theft; (iii) Borrower shall furnish to Funding Lender satisfactory evidence that such cessation of construction or rehabilitation will not adversely affect or interfere with the rights of Borrower under labor and materials contracts or subcontracts relating to the construction or operation of the Improvements; and (iv) Borrower shall furnish to Funding Lender satisfactory evidence that the completion of the construction or rehabilitation of the Improvements can be accomplished by the Completion Date;

(p) the construction of the Improvements is abandoned or halted prior to completion for any period of thirty (30) consecutive days; provided that such cessation of construction or rehabilitation shall not constitute an Event of Default if (i) such cessation of construction or rehabilitation shall have been caused by conditions beyond the control of Borrower, including, without limitation, acts of God or the elements, fire, strikes and disruption of shipping, Borrower

notifies Funding Lender of such condition in writing within 15 days, and such cessation does not exceed an aggregate period of sixty (60) consecutive days; (ii) Borrower shall have made adequate provision, acceptable to Funding Lender, for the protection of materials stored on-site or off-site and for the protection of the Improvements to the extent then constructed against deterioration and against other loss or damage or theft; (iii) Borrower shall furnish to Funding Lender satisfactory evidence that such cessation of construction or rehabilitation will not adversely affect or interfere with the rights of Borrower under labor and materials contracts or subcontracts relating to the construction or operation of the Improvements; and (iv) Borrower shall furnish to Funding Lender satisfactory evidence that the completion of the construction or rehabilitation of the Improvements can be accomplished by the Completion Date;

(q) Borrower shall fail to keep in force and effect any material permit, license, consent or approval required under this Borrower Loan Agreement, or any Governmental Authority with jurisdiction over the Project orders or requires that construction of the Improvements be stopped, in whole or in part, or that any required approval, license or permit be withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect for a period of thirty (30) days;

(r) failure by the Borrower to Substantially Complete the construction of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Substantial Completion Date;

(s) failure by Borrower to complete the construction of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Completion Date;

(t) failure by Borrower to satisfy the Conditions to Conversion on or before the Outside Conversion Date;

(u) an "Event of Default" or "Default" (as defined in the applicable agreement) shall occur under any of the Subordinate Loan Documents, after the expiration of all applicable notice and cure periods;

(v) Borrower fails to obtain all grading, foundation, building and all other construction permits, licenses and authorizations from all applicable Government Authorities or third parties necessary for the completion of the construction of the Improvements, and access to, the Project, within 30 days after the Closing Date, except such permits, licenses and authorizations as may be obtained at a later date with the prior Written Consent of the Funding Lender, which consent shall not be reasonably withheld, conditioned or delayed; or

(w) any failure by the Borrower to perform or comply with any of its obligations under this Borrower Loan Agreement (other than those specified in this Section 9.1), as and when required, which continues for a period of thirty (30) days after written notice of such failure by Funding Lender or the Servicer on its behalf to the Borrower; provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the

Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in the Funding Lender's judgment, absent immediate exercise by the Funding Lender of a right or remedy under this Borrower Loan Agreement, result in harm to the Funding Lender, impairment of the Borrower Note or this Borrower Loan Agreement or any security given under any other Borrower Loan Document.

## Section 8.2 Remedies.

Section 8.2.1 Acceleration. Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (e), (f) or (i) of Section 8.1) and at any time and from time to time thereafter, as long as such Event of Default continues to exist, in addition to any other rights or remedies available to the Governmental Lender pursuant to the Borrower Loan Documents or at law or in equity, the Funding Lender may, take such action (whether directly or by directing the actions of the Fiscal Agent), without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Borrower Payment Obligations to be immediately due and payable (including, without limitation, the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Borrower Note to be immediately due and payable), without notice or demand, and apply such payment of the Borrower Payment Obligations in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion; and upon any Event of Default described in paragraph (e), (f) or (i) of Section 8.1, the Borrower Payment Obligations shall become immediately due and payable, without notice or demand, and the Borrower hereby expressly waives any such notice or demand, anything contained in any Borrower Loan Document to the contrary notwithstanding. Notwithstanding anything herein to the contrary, enforcement of remedies hereunder and under the Funding Loan Agreement shall be controlled by the Funding Lender.

Section 8.2.2 Remedies Cumulative. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to the Funding Lender against the Borrower under the Borrower Loan Documents or at law or in equity may be exercised by the Funding Lender, at any time and from time to time, whether or not all or any of the Borrower Payment Obligations shall be declared due and payable, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Borrower Loan Documents. Any such actions taken by the Funding Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as the Funding Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of the Funding Lender permitted by law, equity or contract or as set forth in the Borrower Loan Documents. Without limiting the generality of the foregoing, the Borrower agrees that if an Event of Default is continuing, all Liens and other rights, remedies or privileges provided to the Funding Lender shall remain in full force and effect until the Funding Lender has exhausted all of its remedies, the Security Instrument has been foreclosed, the Project has been sold and/or otherwise realized upon satisfaction of the Borrower Payment Obligations or the Borrower Payment Obligations has been paid in full. To the extent permitted by applicable law, nothing contained in any Borrower Loan Document shall be construed as requiring the Funding Lender to resort to any portion of

the Project for the satisfaction of any of the Borrower Payment Obligations in preference or priority to any other portion, and the Funding Lender may seek satisfaction out of the entire Project or any part thereof, in its absolute discretion.

Notwithstanding any provision herein to the contrary, the Governmental Lender and the Funding Lender agree that any cure of any default made or tendered by the Equity Investor shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

Section 8.2.3 Delay. No delay or omission to exercise any remedy, right, power accruing upon an Event of Default, or the granting of any indulgence or compromise by the Funding Lender shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Potential Default or Event of Default shall not be construed to be a waiver of any subsequent Potential Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Borrower Loan Agreement, the Funding Lender reserves the right to seek a deficiency judgment or preserve a deficiency claim, in connection with the foreclosure of the Security Instrument to the extent necessary to foreclose on the Project, the Rents, the funds or any other collateral.

Section 8.2.4 Funding Lender's Right to Perform the Obligations. If the Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Borrower Loan Documents or the Funding Loan Documents, then while any Event of Default exists under this Borrower Loan Agreement, and without notice to or demand upon the Borrower and without waiving or releasing any other right, remedy or recourse the Funding Lender or the Fiscal Agent may have because of such Event of Default, the Funding Lender may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of the Borrower, and shall have the right to enter upon the Project for such purpose and to take all such action thereon and with respect to the Project as it may deem necessary or appropriate. If the Funding Lender shall elect to pay any sum due with reference to the Project, the Funding Lender may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Borrower Loan Documents and the Funding Loan Documents, the Funding Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. All sums paid by the Funding Lender pursuant to this Section 8.2.4, and all other sums expended by the Funding Lender, to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to all amounts payable with respect to the Borrower Loan, shall be secured by the Borrower Loan Documents and the Funding Loan Documents and shall be paid by the Borrower to the Funding Lender upon demand.

Section 8.2.5 Set Off; Waiver of Set Off. Upon the occurrence of an Event of Default, Funding Lender may, at any time and from time to time, without notice to the Borrower or any other Person (any such notice being expressly waived), set off and appropriate and apply (against

and on account of any obligations and liabilities of the Borrower to the Funding Lender arising under or connected with this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents, irrespective of whether or not the Funding Lender shall have made any demand therefor, and although such obligations and liabilities may be contingent or unmatured), and the Borrower hereby grants to the Funding Lender, as security for the Borrower Payment Obligations, a security interest in, any and all deposits (general or special, including but not limited to Debt evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Debt at any time held or owing by the Funding Lender to or for the credit or the account of the Borrower.

Section 8.2.6 Assumption of Obligations. In the event that the Funding Lender or its assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement, and any other Borrower Loan Documents and Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

Section 8.2.7 Accounts Receivable. Upon the occurrence of an Event of Default, Funding Lender shall have the right, to the extent permitted by law, to impound and take possession of books, records, notes and other documents evidencing Borrower's accounts, accounts receivable and other claims for payment of money, arising in connection with the Project, and to make direct collections on such accounts, accounts receivable and claims for the benefit of Funding Lender.

Section 8.2.8 Defaults under Other Documents. Funding Lender shall have the right to cure any default under any of the Related Documents and the Subordinate Loan Documents, but shall have no obligation to do so.

Section 8.2.9 Abatement of Disbursements. Notwithstanding any provision to the contrary herein or any of the other Borrower Loan Documents or the Funding Loan Documents, Funding Lender's obligation to make further Disbursements shall abate (i) during the continuance of any Potential Default, (ii) after any disclosure to Funding Lender of any fact or circumstance that, absent such disclosure, would cause any representation or warranty of Borrower to fail to be true and correct in all material respects, unless and until Funding Lender elects to permit further Disbursements notwithstanding such event or circumstance; and (iii) upon the occurrence and during the continuation of any Event of Default.

Section 8.2.10 Completion of Improvements. Upon the occurrence and during the continuation of any Event of Default, Funding Lender shall have the right to cause an independent contractor selected by Funding Lender to enter into possession of the Project and to perform any and all work and labor necessary for the completion of the Project substantially in accordance with the Plans and Specifications, if any, and to perform Borrower's obligations under this Borrower Loan Agreement. All sums expended by Funding Lender for such purposes shall be deemed to have been disbursed to and borrowed by Borrower and shall be secured by the Security Documents.

Section 8.2.11 Right to Directly Enforce. Notwithstanding any other provision hereof to the contrary, the Funding Lender shall have the right to directly enforce all rights and remedies hereunder with or without involvement of the Governmental Lender or the Fiscal Agent, provided that only the Governmental Lender may enforce the Unassigned Rights. In the event that any of the provisions set forth in this Section 8.2.11 are inconsistent with the covenants, terms and conditions of the Security Instrument, the covenants, terms and conditions of the Security Instrument shall prevail.

Section 8.2.12 Power of Attorney. Effective upon the occurrence of an Event of Default, and continuing until and unless such Event of Default is cured or waived, Borrower hereby constitutes and appoints Funding Lender, or an independent contractor selected by Funding Lender, as its true and lawful attorney-in-fact with full power of substitution, for the purposes of completion of the Project and performance of Borrower's obligations under this Borrower Loan Agreement in the name of Borrower, and hereby empowers said attorney-in-fact to do any or all of the following upon the occurrence and continuation of an Event of Default (it being understood and agreed that said power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked until full payment and performance of all obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents):

(a) to use any of the funds of Borrower or General Partner, including any balance of the Borrower Loan, as applicable, and any funds which may be held by Funding Lender for Borrower (including all funds in all deposit accounts in which Borrower has granted to Funding Lender a security interest), for the purpose of effecting completion of the construction or rehabilitation, as the case may be, of the Improvements, in the manner called for by the Plans and Specifications;

(b) to make such additions, changes and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Project in substantially the manner contemplated by the Plans and Specifications;

(c) to employ any contractors, subcontractors, agents, architects and inspectors required for said purposes;

(d) to employ attorneys to defend against attempts to interfere with the exercise of power granted hereby;

(e) to pay, settle or compromise all existing bills and claims which are or may be liens against the Project, the Improvements or the Project, or may be necessary or desirable for the completion of the construction or rehabilitation, as the case may be, of the Improvements, or clearance of objections to or encumbrances on title;

(f) to execute all applications and certificates in the name of Borrower, which may be required by any other construction contract;

(g) to prosecute and defend all actions or proceedings in connection with the Project and to take such action, require such performance and do any and every other act as is deemed

necessary with respect to the completion of the construction or rehabilitation, as the case may be, of the Improvements, which Borrower might do on its own behalf;

(h) to let new or additional contracts to the extent not prohibited by their existing contracts;

(i) to employ watchmen and erect security fences to protect the Project from injury;

(j) to take such action and require such performance as it deems necessary under any of the bonds or insurance policies to be furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder, and in connection therewith to execute instruments of release and satisfaction.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default, rights and remedies may be pursued pursuant to the terms of the Borrower Loan Documents and the Funding Loan Documents. The parties hereto acknowledge that, among the possible outcomes to the pursuit of such remedies, is the situation where the Funding Lender assignees or designees become the owner of the Project and assume the obligations identified above, and the Borrower Note, the Borrower Loan and the other Borrower Loan Documents and Funding Loan Documents remain outstanding.

## ARTICLE IX

### SPECIAL PROVISIONS

#### Section 9.1 Sale of Note and Secondary Market Transaction.

Section 9.1.1 Cooperation. Subject to the restrictions of Section 2.4 of the Funding Loan Agreement, at the Funding Lender's or the Servicer's request (to the extent not already required to be provided by the Borrower under this Borrower Loan Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Funding Lender or the Servicer customarily adheres or which may be reasonably required in the marketplace or by the Funding Lender or the Servicer in connection with one or more sales or assignments of all or a portion of the Governmental Lender Note or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Governmental Lender Note (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that the Borrower shall not incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs shall be paid by the Funding Lender or the Servicer, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower shall, so long as the Borrower Loan is still outstanding:

(a) (i) provide such financial and other information with respect to the Borrower Loan, and with respect to the Project, the Borrower, the Manager, the contractor of the Project or the Borrower Controlling Entity, (ii) provide financial statements, audited, if available, relating to the Project with customary disclaimers for any forward-looking statements or lack of audit,

and (iii) at the expense of the Funding Lender or the Servicer, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports and other due diligence investigations of the Project, as may be reasonably requested from time to time by the Funding Lender or the Servicer or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Funding Lender or the Servicer pursuant to this paragraph (a) being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Funding Lender or the Servicer and the Rating Agencies;

(b) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project, the Borrower, the Borrower Loan Documents and the Funding Loan Documents reasonably acceptable to the Funding Lender or the Servicer, consistent with the facts covered by such representations and warranties as they exist on the date thereof; and

(c) execute such amendments to the Borrower Loan Documents and the Funding Loan Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Borrower Loan Documents and the Funding Loan Documents and is not otherwise adverse to the Borrower in its reasonable discretion.

Section 9.1.2 Use of Information. The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a "Secondary Market Disclosure Document"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 9.1.1(c) hereof, with the Funding Lender and the Servicer in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

Section 9.1.3 Borrower Obligations Regarding Secondary Market Disclosure Documents. In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Manager, cause it to provide, information reasonably requested by the Funding Lender pertaining to the Borrower, the Project or such third party (and portions of any other sections reasonably requested by the Funding Lender pertaining to the Borrower, the Project or the third party). The Borrower shall, if requested by the Funding Lender and the Servicer, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the Project or the Manager, and such portions (and portions of any other sections



reasonably requested and pertaining to the Borrower, the Project or the Manager) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such parties. Furthermore, the Borrower hereby indemnifies the Funding Lender and the Servicer for any Liabilities to which any such parties may become subject to the extent such Liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document that contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

The Borrower and the Funding Lender agree and acknowledge that the Governmental Lender undertakes no obligation hereunder or in the Funding Loan Agreement to participate in the preparation of, or to approve, any Secondary Market Disclosure Document and the parties hereto agree that any Secondary Market Disclosure Document will, unless approved in advance by the Governmental Lender in writing, disclose no more regarding the Governmental Lender than its name and status as a political subdivision of the State of California and that the Governmental Lender Note is a limited obligation of the Governmental Lender secured solely by the payments made by the Borrower under the Borrower Note and the Borrower Loan Agreement.

Section 9.1.4 Borrower Indemnity Regarding Filings. In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) indemnify Funding Lender and the underwriter group for any securities (the "Underwriter Group") for any Liabilities to which Funding Lender, the Servicer or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading and (ii) reimburse the Funding Lender, the Servicer, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Funding Lender, the Servicer or the Underwriter Group in connection with defending or investigating the Liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

Section 9.1.5 Indemnification Procedure. Promptly after receipt by an indemnified party under Sections 9.1.3 and 9.1.4 hereof of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to

the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party. After notice from the Borrower to such indemnified party under this Section 9.1.5, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower.

Section 9.1.6 Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.1.4 hereof is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.1.4 hereof, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 10(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

## ARTICLE X

### MISCELLANEOUS

Section 10.1 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Borrower Loan Document or Funding Loan Document (a "notice") shall be deemed to be given and made when delivered by hand, by recognized overnight delivery service, confirmed facsimile transmission (provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day), or five (5) calendar days after deposited in the United States mail, registered or certified, postage prepaid, with return receipt requested, addressed as follows:

If to the Governmental Lender: 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  
Facsimile: (415) 701-5501

If to the Borrower: Potrero Housing Associates I, LP

c/o Bridge Housing  
600 California Street, Suite 900  
San Francisco, California 94108  
(415) 495-4898  
Attention: Director  
Facsimile: (415) 495-4898

With a copy to:

Gubb & Barshay LLP  
505 14<sup>th</sup> Street, Suite 1050  
Oakland, California 94612  
Attention: Scott Barshay, Esq.  
Facsimile: (415) 781-6967

With a copy to:

Wells Fargo Affordable Housing Community  
Development Corporation  
MAC: D1053-170  
301 South College Street  
Charlotte, North Carolina 28288  
Attention: Director of Tax Credit Asset  
Management

With a copy to:

Sidley Austin LLP  
One South Dearborn  
Chicago, Illinois 60603  
Attention: Philip C. Spahn, Esq.  
Facsimile: (312) 853-7036

If to the Funding Lender:

Citibank, N.A.  
390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Transaction Management Group  
Deal ID# [\_\_\_\_\_] ]  
Facsimile: (212) 723-8209

With copies to:

Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Deal ID# [\_\_\_\_\_] ]  
Facsimile: (805) 557-0924

Prior to the Conversion  
Date, With a copy to:

Citibank, N.A.  
[ADDRESS]  
Attention: Account Specialist  
Deal ID# [\_\_\_\_\_] ]  
Facsimile: [( ) \_ \_ \_ ]

Following the Conversion  
Date, with a copy to:

Citibank, N.A.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Deal ID # [\_\_\_\_\_] ]  
Facsimile: (215) 328-0305

And a copy of any notices of  
default sent to:

Citibank, N.A.  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Deal ID # [\_\_\_\_\_] ]  
Facsimile: (646) 291-5754

Any party may change such party's address for the notice or demands required under this Borrower Loan Agreement by providing written notice of such change of address to the other parties by written notice as provided herein.

Section 10.2 Brokers and Financial Advisors. The Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Borrower Loan, other than those disclosed to the Funding Lender and whose fees shall be paid by the Borrower pursuant to separate agreements. The Borrower and the Funding Lender shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions contemplated herein. The provisions of this Section 10.2 shall survive the expiration and termination of this Borrower Loan Agreement and the repayment of the Borrower Payment Obligations.

Section 10.3 Survival. This Borrower Loan Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by the Governmental Lender of the Borrower Loan and the execution and delivery to the Governmental Lender of the Borrower Note and the assignment of the Borrower Note to the Funding Lender, and shall continue in full force and effect so long as all or any of the Borrower Payment Obligations is unpaid. All the Borrower's covenants and agreements in this Borrower Loan Agreement shall inure to the benefit of the respective legal representatives, successors and assigns of the Governmental Lender, the Fiscal Agent, the Funding Lender and the Servicer.

Section 10.4 Preferences. The Governmental Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by the Borrower to any portion of the Borrower Payment Obligations. To the extent the Borrower makes a payment to the Governmental Lender or the Servicer, or the Governmental Lender or the Servicer receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be

fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Borrower Payment Obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Governmental Lender or the Servicer.

Section 10.5 Waiver of Notice. The Borrower shall not be entitled to any notices of any nature whatsoever from the Funding Lender, the Fiscal Agent or the Servicer except with respect to matters for which this Borrower Loan Agreement or any other Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, to the Borrower and except with respect to matters for which the Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. The Borrower hereby expressly waives the right to receive any notice from the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, with respect to any matter for which no Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender, the Fiscal Agent or the Servicer to the Borrower.

Section 10.6 Offsets, Counterclaims and Defenses. The Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by the Funding Lender or the Servicer with respect to a Borrower Loan Payment. Any assignee of Funding Lender's interest in and to the Borrower Loan Documents or the Funding Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses that are unrelated to the Borrower Loan Documents or the Funding Loan Documents which the Borrower may otherwise have against any assignor of such documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by the Borrower in any action or proceeding brought by any such assignee upon such documents, and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrower.

Section 10.7 Publicity. The Funding Lender and the Servicer (and any affiliates of either party) shall have the right to issue press releases, advertisements and other promotional materials describing the Funding Lender's or the Servicer's participation in the making of the Borrower Loan or the Borrower Loan's inclusion in any Secondary Market Transaction effectuated by the Funding Lender or the Servicer or one of its or their affiliates. All news releases, publicity or advertising by the Borrower or any Borrower Affiliate through any media intended to reach the general public, which refers to the Borrower Loan Documents or the Funding Loan Documents; the Borrower Loan, the Funding Lender or the Servicer in a Secondary Market Transaction, shall be subject to the prior Written Consent of the Governmental Lender, the Funding Lender or the Servicer, as applicable, which shall not be unreasonably withheld or delayed.

Section 10.8 Construction of Documents. The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Borrower Loan Documents and the Funding Loan Documents and that the Borrower Loan Documents and the Funding Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

Section 10.9 No Third Party Beneficiaries. The Borrower Loan Documents and the Funding Loan Documents are solely for the benefit of the Governmental Lender, the Funding Lender, the Servicer and the Borrower and, with respect to Sections 9.1.3 and 9.1.4 hereof, the Underwriter Group, and nothing contained in any Borrower Loan Document shall be deemed to confer upon anyone other than the Governmental Lender, the Funding Lender, the Servicer, and the Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

Section 10.10 Assignment. The Borrower Loan, the Security Instrument, the Borrower Loan Documents and the Funding Loan Documents and all Funding Lender's or Fiscal Agent's rights, title, obligations and interests therein may be assigned by the Funding Lender or the Fiscal Agent, as appropriate, at any time in its sole discretion, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise, subject to the requirements of Article IV of the Funding Loan Agreement. Upon such assignment, all references to Funding Lender or the Fiscal Agent, as appropriate, in this Borrower Loan Agreement and in any Borrower Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the Funding Lender or the Fiscal Agent, as appropriate. The Borrower shall accord full recognition to any such assignment, and all rights and remedies of Funding Lender in connection with the interest so assigned shall be as fully enforceable by such assignee as they were by Funding Lender before such assignment. In connection with any proposed assignment, Funding Lender may disclose to the proposed assignee any information that the Borrower has delivered, or caused to be delivered, to Funding Lender with reference to the Borrower, General Partner, Guarantor or any affiliate, or the Project, including information that Borrower is required to deliver to Funding Lender pursuant to this Borrower Loan Agreement, provided that such proposed assignee agrees to treat such information as confidential. The Borrower may not assign its rights, interests or obligations under this Borrower Loan Agreement or under any of the Borrower Loan Documents or Funding Loan Documents, or Borrower's interest in any moneys to be disbursed or advanced hereunder, except only as may be expressly permitted hereby.

Section 10.11 Intentionally Omitted.

Section 10.12 Governmental Lender, Funding Lender and Servicer Not in Control; No Partnership. None of the covenants or other provisions contained in this Borrower Loan Agreement shall, or shall be deemed to, give the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer the right or power to exercise control over the affairs or management of the Borrower, the power of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer being limited to the rights to exercise the remedies referred to in the Borrower Loan Documents and the Funding Loan Documents. The relationship between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Borrower Loan Documents or the Funding Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer or to create an equity in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer. Neither the Governmental Lender, the Funding Lender, the Fiscal Agent nor the Servicer undertakes or assumes any responsibility or duty to the

Borrower or to any other person with respect to the Project or the Borrower Loan, except as expressly provided in the Borrower Loan Documents or the Funding Loan Documents; and notwithstanding any other provision of the Borrower Loan Documents and the Funding Loan Documents: (1) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members, or partners and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer do not intend to ever assume such status; (2) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall in no event be liable for any of the Borrower Payment Obligations, expenses or losses incurred or sustained by the Borrower; and (3) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Borrower, the Borrower Controlling Entities or its stockholders, members, or partners. The Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the Governmental Lender, the Funding Lender, the Servicer, the Fiscal Agent and the Borrower, or to create an equity in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, or any sharing of liabilities, losses, costs or expenses.

Section 10.13 Release. The Borrower hereby acknowledges that it is executing this Borrower Loan Agreement and each of the Borrower Loan Documents and the Funding Loan Documents to which it is a party as its own voluntary act free from duress and undue influence.

Section 10.14 Term of Borrower Loan Agreement. This Borrower Loan Agreement shall be in full force and effect until all payment obligations of the Borrower hereunder have been paid in full and the Borrower Loan and the Funding Loan have been retired or the payment thereof has been provided for; except that on and after payment in full of the Borrower Note, this Borrower Loan Agreement shall be terminated, without further action by the parties hereto; provided, however, that the obligations of the Borrower under Sections 5.11, 5.14, 5.15, 9.1.3, 9.1.4, 9.1.5, 9.1.6 and 10.15, as well as under Section 5.7 of the Construction Funding Agreement, shall survive the termination of this Borrower Loan Agreement.

Section 10.15 Reimbursement of Expenses. If, upon or after the occurrence of any Event of Default or Potential Default, the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer shall employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein, the Borrower will on demand therefor reimburse the Governmental Lender, the Funding Lender and the Servicer for fees of such attorneys and such other expenses so incurred.

The Borrower's obligation to pay the amounts required to be paid under this Section 10.15 shall be subordinate to its obligations to make payments under the Borrower Note.

Section 10.16 Permitted Contests. Notwithstanding anything to the contrary contained in this Borrower Loan Agreement, Borrower shall have the right to contest or object in good faith to any claim, demand, levy or assessment (other than in respect of Debt or Contractual Obligations of Borrower under any Borrower Loan Document or Related Document) by appropriate legal proceedings that are not prejudicial to Funding Lender's rights, but this shall

not be deemed or construed as in any way relieving, modifying or providing any extension of time with respect to Borrower's covenant to pay and comply with any such claim, demand, levy or assessment, unless Borrower shall have given prior Written Notice to the Governmental Lender and the Funding Lender of Borrower's intent to so contest or object thereto, and unless (i) Borrower has, in the Governmental Lender's and the Funding Lender's judgment, a reasonable basis for such contest, (ii) Borrower pays when due any portion of the claim, demand, levy or assessment to which Borrower does not object, (iii) Borrower demonstrates to Funding Lender's satisfaction that such legal proceedings shall conclusively operate to prevent enforcement prior to final determination of such proceedings, (iv) Borrower furnishes such bond, surety, undertaking or other security in connection therewith as required by law, or as requested by and satisfactory to Funding Lender, to stay such proceeding, which bond, surety, undertaking or other security shall be issued by a bonding company, insurer or surety company reasonably satisfactory to Funding Lender and shall be sufficient to cause the claim, demand, levy or assessment to be insured against by the Title Company or removed as a lien against the Project, (v) Borrower at all times prosecutes the contest with due diligence, and (vi) Borrower pays, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by Borrower, the amount so determined to be due and owing by Borrower. In the event that Borrower does not make, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by Borrower, any payment required to be made pursuant to clause (vi) of the preceding sentence, an Event of Default shall have occurred, and Funding Lender may draw or realize upon any bond or other security delivered to Funding Lender in connection with the contest by Borrower, in order to make such payment.

Section 10.17 Funding Lender Approval of Instruments and Parties. All proceedings taken in accordance with transactions provided for herein, and all surveys, appraisals and documents required or contemplated by this Borrower Loan Agreement and the persons responsible for the execution and preparation thereof, shall be satisfactory to and subject to approval by Funding Lender. Funding Lender's approval of any matter in connection with the Project shall be for the sole purpose of protecting the security and rights of Funding Lender. No such approval shall result in a waiver of any default of Borrower. In no event shall Funding Lender's approval be a representation of any kind with regard to the matter being approved.

Section 10.18 Funding Lender Determination of Facts. Funding Lender shall at all times be free to establish independently, to its reasonable satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Borrower Loan Agreement.

Section 10.19 Calendar Months. With respect to any payment or obligation that is due or required to be performed within a specified number of Calendar Months after a specified date, such payment or obligation shall become due on the day in the last of such specified number of Calendar Months that corresponds numerically to the date so specified; provided, however, that with respect to any obligation as to which such specified date is the 29th, 30th or 31st day of any Calendar Month: if the Calendar Month in which such payment or obligation would otherwise become due does not have a numerically corresponding date, such obligation shall become due on the first day of the next succeeding Calendar Month.



Section 10.20 Determinations by Lender. Except to the extent expressly set forth in this Borrower Loan Agreement to the contrary, in any instance where the consent or approval of the Governmental Lender and the Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by the Governmental Lender and the Funding Lender under this Borrower Loan Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Governmental Lender and the Funding Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

Section 10.21 Governing Law. This Borrower Loan Agreement shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

Section 10.22 Consent to Jurisdiction and Venue. Borrower agrees that any controversy arising under or in relation to this Borrower Loan Agreement shall be litigated exclusively in the State. The state and federal courts and authorities with jurisdiction in the State shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Borrower Loan Agreement. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Beneficiary Parties' right to bring any suit, action or proceeding relating to matters arising under this Borrower Loan Agreement against Borrower or any of Borrower's assets in any court of any other jurisdiction.

Section 10.23 Successors and Assigns. This Borrower Loan Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a "person" or "persons" shall be deemed to include individuals and entities.

Section 10.24 Severability. The invalidity, illegality or unenforceability of any provision of this Borrower Loan Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

Section 10.25 Entire Agreement; Amendment and Waiver. This Borrower Loan Agreement contains the complete and entire understanding of the parties with respect to the matters covered herein. This Borrower Loan Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Borrower Loan Agreement shall be considered as a general waiver. Without limiting the generality of the foregoing, no Disbursement shall constitute a waiver of any conditions to the Governmental Lender's or the Funding Lender's obligation to make further Disbursements nor, in the event Borrower is unable to satisfy any such conditions, shall any such waiver have the effect of precluding the Governmental Lender or the Funding Lender from

thereafter declaring such inability to constitute a Potential Default or Event of Default under this Borrower Loan Agreement.

Section 10.26 Counterparts. This Borrower Loan Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

Section 10.27 Captions. The captions of the sections of this Borrower Loan Agreement are for convenience only and shall be disregarded in construing this Borrower Loan Agreement.

Section 10.28 Servicer. Borrower hereby acknowledges and agrees that, pursuant to the terms of Section 39 of the Security Instrument: (a) from time to time, the Governmental Lender or the Funding Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Borrower Note, this Borrower Loan Agreement or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless Borrower receives Written Notice from the Governmental Lender or the Funding Lender to the contrary, any action or right which shall or may be taken or exercised by the Governmental Lender or the Funding Lender may be taken or exercised by such servicer with the same force and effect.

Section 10.29 Beneficiary Parties as Third Party Beneficiary. Each of the Beneficiary Parties shall be a third party beneficiary of this Borrower Loan Agreement for all purposes.

Section 10.30 Waiver of Trial by Jury. The Governmental Lender does not agree to not elect a trial by jury or to waive any jury trial and does not consent to any resolution by judicial reference. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW AND ONLY TO THE EXTENT ENFORCEMENT OF SUCH AGREEMENT WOULD NOT ADVERSELY AFFECT FISCAL AGENT AND THE ABILITY OF THE GOVERNMENTAL LENDER TO ELECT A TRIAL BY JURY, THE BORROWER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BORROWER LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN BY THE BORROWER, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. IF FOR ANY REASON THIS WAIVER IS DETERMINED TO BE UNENFORCEABLE, THE BORROWER AGREES TO THE RESOLUTION OF ALL DISPUTES BY JUDICIAL REFERENCE PURSUANT TO THE PROCEDURES SET FORTH IN THE SECURITY INSTRUMENT.

Section 10.31 Modifications. Modifications (if any) to this Borrower Loan Agreement ("Modifications") are set forth on Exhibit A attached to this Borrower Loan Agreement. In the event of a Transfer under the terms of the Security Instrument, some or all of the Modifications to this Borrower Loan Agreement may be modified or rendered void by the Governmental Lender or the Funding Lender at its option by notice to Borrower or such transferee.

Section 10.32 Reference Date. This Borrower Loan Agreement is dated for referenced purposes only as of December 1, 2016 and will not be effective and binding on the parties hereto unless and until the Closing Date (as defined herein) occurs.

## ARTICLE XI

### LIMITATIONS ON LIABILITY

Section 11.1 Limitation on Liability. Notwithstanding anything to the contrary herein, the liability of the Borrower hereunder and under the other Borrower Loan Documents and the Funding Loan Documents shall be limited to the extent set forth in the Borrower Note.

Section 11.2 Limitation on Liability of 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.

Section 11.3 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.

Section 11.4 Limitation on Liability of Funding Lender's Officers, Employees, Etc.

(a) 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.

(b) 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.

(c) 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.

Section 11.5 Delivery of Reports, Etc. The delivery of reports, information and documents to the Governmental Lender and the Funding Lender as provided herein is for informational purposes only and the Governmental Lender's and the Funding Lender's receipt of

such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Governmental Lender and the Funding Lender shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Borrower Loan Agreement against the Governmental Lender and the Funding Lender.

Section 11.6 City Contracting Provisions. The Borrower covenants and agrees to comply with the provisions set forth in Section 21 of the Regulatory Agreement as if fully set forth herein.

[balance of page left blank intentionally]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Borrower Loan Agreement or caused this Borrower Loan Agreement to be duly executed and delivered by its authorized representative as of the date first set forth above.

**BORROWER:**

**Potrero Housing Associates I LP,**  
a California Limited Partnership

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

By: MCB Family Housing, Inc.,  
a California nonprofit public benefit  
corporation, its sole  
member/manager

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**EXHIBIT A**  
**MODIFICATIONS**

**NONE**



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**FUNDING LOAN AGREEMENT**

**Among**

**CITIBANK, N.A.,  
as Funding Lender**

**And**

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

**And**

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

**Dated as of December 1, 2016**

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## FUNDING LOAN AGREEMENT

This Funding Loan Agreement, dated as of December 1, 2016 (this "Funding Loan Agreement"), is entered into by CITIBANK, N.A., (together with any successor hereunder, the "Funding Lender") and 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") and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as fiscal agent (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 California Health and Safety Code, as amended (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, Potrero Housing Associates I, LP, 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) apply the proceeds of the Funding Loan to make a loan (the "Borrower Loan") to the Borrower to finance the acquisition, construction and development of a multifamily rental housing development located in the City known as Potrero Block X (the "Project"); and

WHEREAS, simultaneously with the delivery of this Funding Loan Agreement, the Governmental Lender and the Borrower will enter into a Borrower Loan Agreement dated as of December 1, 2016 (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 Multifamily Note 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 Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of December 1, 2016 (the "Security Instrument"), 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 (Potrero Block X), 2016 Series [\_\_\_], dated December 1, 2016 (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 obligation 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; PRINCIPLES OF CONSTRUCTION

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

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Borrower Loan Agreement.

(b) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. The terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants."

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

(d) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance

with the Approved Accounting Method. All references herein to "Approved Accounting Method" refer to such principles as they exist at the date of application thereof.

(e) 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.

(f) 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.

(g) References to the Governmental Lender Note as "tax exempt" or to the "tax exempt status" of the Governmental Lender Note are to the exclusion of interest on the Governmental Lender Note (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) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

(h) The following terms have the meanings set forth below:

"Additional Borrower Payments" shall have the meaning given to such term in the Borrower Loan Agreement.

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

"Approved Transferee" shall mean (1) a "qualified institutional buyer" ("QIB") as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the "Securities Act") that is a financial institution or commercial bank having capital and surplus of \$5,000,000,000 or more, (2) an affiliate of the Funding Lender, or (3) a trust or custodial arrangement established by the Funding Lender or one of its affiliates the beneficial interests in which will be owned only by QIBs.

"Authorized Amount" shall mean \$[\_\_\_\_\_], the maximum principal amount of the Funding Loan under this Funding Loan Agreement.

"Authorized Governmental Lender Representative" shall mean the Mayor, the Director of the Mayor's Office of Housing and Community Development, the Director of Housing Development and the Deputy Director 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" shall mean Potrero Housing Associates I, LP, a California limited partnership.

“Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the aggregate principal amount of the Borrower Loan Amount, as evidenced by the Borrower Note.

“Borrower Loan Agreement” shall mean the Borrower Loan Agreement, dated as of December 1, 2016, between the Governmental Lender and the Borrower, as supplemented, amended or replaced from time to time in accordance with its terms.

“Borrower Loan Agreement Default” shall mean any event of default set forth in 8.1 of the Borrower Loan Agreement. A Borrower Loan Agreement Default shall “exist” if a Borrower Loan Agreement Default shall have occurred and be continuing beyond any applicable cure period.

“Borrower Loan Amount” shall mean the amount of \$[\_\_\_\_\_].

“Borrower Loan Documents” shall have the meaning given to such term in the Borrower Loan Agreement.

“Borrower Note” shall have the meaning given to such term in the Borrower Loan Agreement.

“Business Day” shall mean any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

“City” shall mean the City and County of San Francisco.

“Closing Date” shall mean December [9], 2016, the date that initial Funding Loan proceeds are disbursed hereunder.

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

“Conditions to Conversion” shall have the meaning given such term in the Construction Funding Agreement.

“Construction Funding Agreement” shall mean that certain Construction Funding Agreement dated as of December 1, 2016, between the Funding Lender, as agent for the Governmental Lender, and Borrower, pursuant to which the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf), as agent of the Governmental Lender, to the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

“Contingency Draw-Down Agreement” shall mean the Contingency Draw-Down Agreement dated as of December 1, 2016, among the Funding Lender, the Fiscal Agent and the



Borrower relating to possible conversion of the Funding Loan from a draw down loan to a fully funded loan.

“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.

“Default” shall mean the occurrence of an event, which, under any Funding Loan Document, would, but for the giving of notice or passage of time, or both, be an event of default under the applicable Funding Loan Document or a Borrower Loan Agreement Default.

“Defeasance Securities” shall mean (i) Government Obligations and (ii) pre-refunded fixed interest rate municipal obligations meeting the following conditions: (a) the municipal obligations are not subject to redemption prior to maturity, or the trustee has been given irrevocable instruction concerning their calling and redemption and the issuer has covenanted not to redeem such obligations other than as set forth in such instructions; (b) the municipal obligations are secured by cash and/or Government Obligations; (c) the principal of and interest on the Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the municipal obligations; (d) the Government Obligations serving as security for the municipal obligations are held by an escrow agent or trustee; (e) the Government Obligations are not available to satisfy any other claims, including those of or against the trustee or escrow agent; and (f) the municipal obligations are rated “AAA” by S&P or “Aaa” by Moody’s.

“Draw-Down Notice” has the meaning set forth in the Contingency Draw-Down Agreement.

“Event of Default” shall have the meaning ascribed thereto in Section 9.1 hereof.

“Equity Investor” shall have the meaning ascribed thereto in the Borrower Loan Agreement.

“Fiscal Agent’s Fees” shall mean the ongoing annual compensation and expenses of the Fiscal Agent payable [annually in arrears, on each anniversary of the Closing Date in an amount equal to \$\_\_\_\_\_ per annum].

“Fitch” shall mean Fitch, Inc., its successors and assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the functions of a securities rating agency for any reason, the term “Fitch” will be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“Funding Loan Agreement” shall mean this Funding Loan Agreement, dated as of December 1, 2016, by and among the Funding Lender, the Governmental Lender, and the Fiscal Agent as it may from time to time be supplemented, modified or amended by one or more indentures or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

“Funding Loan Documents” shall mean (i) this Funding Loan Agreement, (ii) the Borrower Loan Agreement, (iii) the Regulatory Agreement, (iv) the Tax Certificate, (v) the Borrower Loan Documents, (vi) all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and (vii) all amendments, modifications, renewals and substitutions of any of the foregoing.

“Government Certificates” shall mean evidences of indebtedness or ownership of proportionate interests in future principal and interest payments of Government Obligations, including depository receipts thereof, wherein (i) a bank or trust company acts as custodian and holds the underlying Government Obligations; (ii) the owner of the Government Certificate is a real party in interest with the right to proceed directly and individually against the obligor of the underlying Government Obligations; and (iii) the underlying Government Obligations are held in a special account, segregated from the custodian’s general assets, and are not available to satisfy any claim of the custodian or any person claiming through the custodian, or any person to whom the custodian may be obligated.

“Government Obligations” shall mean direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury) or evidence of ownership in a portion thereof (which may consist of specified portions of interest thereon) if held by a custodian on behalf of the Fiscal Agent, obligations the timely payment of principal of and interest on which are fully and unconditionally guaranteed by the United States of America, and prerefunded municipal obligations rated in the highest rating category by Moody’s and S&P.

“Governmental Lender” shall mean the City and County of San Francisco.

“Governmental Lender Note” shall mean the Governmental Lender Note described in the recitals of this Funding Loan Agreement.

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

“Maturity Date” shall mean [\_\_\_\_\_], [2053].

“Maximum Rate” shall mean the lesser of (i) 12% per annum and (ii) the maximum interest rate that may be paid on the Funding Loan under State law.

“Minimum Beneficial Ownership Amount” shall mean \$250,000.

“Moody’s” shall mean Moody’s Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the functions of a securities rating agency for any reason, the term “Moody’s” will be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“Negative Arbitrage Deposit” has the meaning set forth in the Contingency Draw-Down Agreement.

“Ongoing Governmental Lender Fee” shall mean the annual administrative fee of the Governmental Lender equal to one eighth of one percent (0.125%) of the principal amount of the Governmental Lender Note then outstanding, but no less than \$2,500, payable on the Closing Date and on each anniversary thereof, as provided in Section 18 of the Regulatory Agreement.

“Opinion of Counsel” shall mean a written opinion from an attorney or firm of attorneys, acceptable to the Funding Lender and the Governmental Lender with experience in the matters to be covered in the opinion; provided that whenever an Opinion of Counsel is required to address the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation, such opinion shall be provided by Tax Counsel.

“Permitted Investments” shall mean, if and to the extent permitted by law and only to the extent that the same are acquired at Fair Market Value:

- (1) Government Obligations or Government Certificates;
- (2) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any agency or instrumentality of the United States of America (other than the Federal Home Loan Mortgage Corporation) provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself) and any other agency or instrumentality of the United States of America the obligations of which are guaranteed by the full faith and credit of the United States of America;
- (3) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, and having a rating by S&P of “AAAm-G” or “AAAm” and by Moody’s of “Aaa”, including such funds for which the Fiscal Agent or an affiliate provides investment advice or other services;
- (4) Certificates of deposit issued by a state or national bank or a state or federal savings and loan; provided that such certificates of deposit will be either (i) continuously and fully insured by the FDIC; or (ii) have a maturity of

not greater than 365 days and the issuer thereof have one of the two highest short-term letter and numerical ratings, at the time of purchase, of Moody's and S&P;

(5) Savings accounts or money market deposits that are fully insured by FDIC;

(6) Investment agreements, including guaranteed investment contracts, provided either (i) the long-term unsecured debt or claims ability of the issuer or guarantor thereof is rated, at the time of purchase, in one of the two highest rating category by Moody's and S&P, or (ii) such agreement is fully collateralized by Government Obligations or Government Certificates;

(7) Commercial paper of "prime" quality rated, at the time of purchase, in one of the two highest rating category by Moody's and S&P, which commercial paper is limited to issuing corporations that are organized and operating within the United States;

(8) Bonds or notes issued by any state or municipality which are rated, at the time of purchase, by Moody's and S&P in one of the two highest long-term rating categories assigned by such agencies;

(9) Federal funds or banker's acceptances which are eligible for purchases by members of the Federal Reserve System, drawn on any bank the short-term obligations of which are rated in the highest rating category by Moody's and S&P; provided that the maturity cannot exceed 270 days;

(10) Repurchase agreements with maturities of either (a) 30 days or less, or (b) less than one year, provided that the collateral is marked-to-market daily, entered into with financial institutions such as banks or trust companies organized under state or federal law, insurance companies, or government bond dealers reporting to, or trading with, and recognized as a primary dealer by, the Federal Reserve Bank of New York and a member of SPIC, or with a dealer or parent holding company that is rated, at the time of purchase, "A" or better by Moody's and S&P. The repurchase agreement must be in respect of Government Obligations or Government Certificates or obligations described in paragraph (b) herein, which, exclusive of accrued interest, will be maintained at least 100% of par. In addition, repurchase agreements will meet the following criteria: (i) the third party (who will not be the provider of the collateral) has possession of the repurchase securities and the Government Obligations or Government Certificates; (ii) failure to maintain the requisite collateral levels will require liquidation; and (iii) the third party having possession of the securities has a perfected, first priority security interest in the securities;

(11) Defeasance Securities described in clause (ii) of the definition thereof;

(12) Any other debt or fixed income security specified by the City (except securities of the City and any agency, department, commission or

instrumentality thereof) and rated, at the time of purchase, in one of the two highest rating categories by Moody's and S&P, including prerefunded municipal obligations;

(13) The Local Agency Investment Fund administered by the State of California; and

(14) Any investment approved in writing by the Funding Lender and the City.

In connection with the purchase of any Permitted Investment, the City may enter into agreements, including forward purchase agreements, with the seller thereof.

"Person" shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"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 or owing to the Governmental Lender with respect to the Unassigned 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.

"Prepayment Premium" shall mean (i) any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Note (including any Prepayment Premium as set forth in the Borrower Note) and (ii) any premium payable on the Governmental Lender Note pursuant to this Funding Loan Agreement.

"Project" shall have the meaning given to that term in the Borrower Loan Agreement.

"Qualified Financial Institution" shall mean any (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, savings and loan association, or insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by the Funding Lender the liquidation of which is subject to the Securities Investors Protection Corporation or

other similar corporation and (vii) other entity which is acceptable to the Funding Lender. With respect to an entity which provides an agreement held by the Fiscal Agent for the investment of moneys at a guaranteed rate as set out in paragraph (g) of the definition of the term "Permitted Investments" or an entity which guarantees or insures, as applicable, the agreement, a "Qualified Financial Institution" may also be a corporation or limited liability company organized under the laws of any state of the United States of America.

"Regulations" shall mean with respect to the Code, the relevant U.S. Treasury regulations and proposed regulations thereunder or any relevant successor provision to such regulations and proposed regulations.

"Regulatory Agreement" shall mean that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated as of the date hereof, by and between the Governmental Lender and the Borrower, as hereafter amended or modified.

"Remaining Funding Loan Proceeds Account" has the meaning set forth in the Contingency Draw-Down Agreement.

"Remaining Funding Loan Proceeds Account Earnings Subaccount" has the meaning set forth in the Contingency Draw-Down Agreement.

"Required Transferee Representations" shall mean the representations in substantially the form attached to this Funding Loan Agreement as Exhibit B.

"Resolution" shall mean the resolution of the Governmental Lender authorizing the Funding Loan and the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party.

"Responsible Officer" shall mean any officer within the Corporate Trust Department (or any successor group) of the Fiscal Agent, including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Fiscal Agent customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, who is responsible for the administration of this Funding Loan Agreement.

"Second Highest Rating Category" shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody's in the second highest rating category given by that rating agency for that general category of security. By way of example, the Second Highest Rating Category for tax exempt municipal debt established by S&P is "AA" for a term greater than one year, with corresponding ratings by Moody's of "Aa." If at any time (i) both S&P and Moody's rate a Permitted Investment and (ii) one of those ratings is below the Second Highest Rating Category, then such Permitted Investment will not be deemed to be rated in the Second Highest Rating Category. For example, an Investment rated "AA" by S&P and "A" by Moody's is not rated in the Second Highest Rating Category.

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

“Security” shall mean the security for the performance by the Governmental Lender of its obligations under the Governmental Lender Note and this Funding Loan Agreement as more fully set forth in Article IV hereof.

“Security Instrument” shall mean the Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (as amended, restated and/or supplemented from time to time) dated as of December 1, 2016, 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.

“Servicer” shall mean any servicer appointed by the Funding Lender to perform certain servicing functions with respect to the Funding Loan and on the Borrower Loan pursuant to a separate servicing agreement to be entered into between the Funding Lender and the Servicer. Initially the Servicer shall be the Funding Lender pursuant to this Funding Loan Agreement.

“Servicing Agreement” shall mean any servicing agreement entered into between the Funding Lender and a Servicer with respect to the servicing of the Funding Loan and/or the Borrower Loan.

“S&P” shall mean Standard & Poor’s Rating Services, a division of McGraw Hill Financial, Inc., its successors and assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the functions of a securities rating agency for any reason, the term “S&P” will be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“State” shall mean the State of California.

“Tax Certificate” shall mean, collectively, the Certificate as to Arbitrage and Tax Matters, dated the Closing Date, executed and delivered by the Governmental Lender and the Borrower, and the Tax Matters Certificate of the Borrower, dated the Closing Date, executed and delivered by the Borrower.

“Tax Counsel” shall mean Ballard Spahr LLP and/or any other attorney or firm of attorneys designated by the Governmental Lender and approved by the Funding Lender having a national reputation for skill in connection with the authorization and issuance of municipal obligations under Sections 103 and 141 through 150 (or any successor provisions) of the Code.

“Tax Counsel Approving Opinion” shall mean an opinion of Tax Counsel substantially to the effect that the Governmental Lender Note constitutes a valid and binding obligation of the Governmental Lender and that, under existing statutes, regulations published rulings and judicial decisions, the interest on the Governmental Lender Note is excludable from gross income for federal income tax purposes (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“Tax Counsel No Adverse Effect Opinion” shall mean an opinion of Tax Counsel to the effect that the taking of the action specified therein will not impair the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“UCC” shall mean the Uniform Commercial Code as in effect in the State.

“Unassigned Rights” shall mean the Governmental Lender’s rights to reimbursement and payment of its fees, costs and expenses and the Rebate Amount under Section 2.5 of the Borrower Loan Agreement, its rights of access under Section 5.17 thereof, its rights to indemnification under Section 5.15 thereof, its rights to attorneys’ fees under Sections 5.11 and 5.14 thereof, its rights to receive notices, reports and other statements and its rights to consent to certain matters, as provided in this Funding Loan Agreement and the Borrower Loan Agreement, and 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.

“Written Certificate,” “Written Certification,” “Written Consent,” “Written Direction,” “Written Notice,” “Written Order,” “Written Request,” and “Written Requisition” shall mean a written certificate, direction, notice, order or requisition signed by an Authorized Borrower Representative, an Authorized Governmental Lender Representative or an authorized representative of the Funding Lender and delivered to the Funding Lender, the Servicer or such other Person as required under the Funding Loan Documents.

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

Section 1.2 Effect of Headings and Table of Contents. The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.3 Date of Funding Loan Agreement. The date of this Funding Loan Agreement is intended as a date for the convenient identification of this Funding Loan Agreement and is not intended to indicate that this Funding Loan Agreement was executed and delivered on said date.

Section 1.4 Designation of Time for Performance. Except as otherwise expressly provided herein, any reference in this Funding Loan Agreement to the time of day shall mean the time of day in the city where the Funding Lender maintains its place of business for the performance of its obligations under this Funding Loan Agreement.

Section 1.5 Interpretation. The parties hereto acknowledge that each of them and their respective counsel have participated in the drafting and revision of this Funding Loan Agreement. Accordingly, the parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Funding Loan Agreement or any amendment or supplement or exhibit hereto.

## ARTICLE II

### TERMS; GOVERNMENTAL LENDER NOTE

Section 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 to the Borrower in accordance with the disbursement provisions of this Funding Loan Agreement, the Borrower Loan Agreement and the Construction Funding Agreement. Subject to the terms and conditions of this Funding Loan Agreement, the Funding Lender agrees to advance to the Fiscal Agent the initial draw of the Funding Loan in an amount equal to \$[\_\_\_\_\_] on the Closing Date, which amount the Governmental Lender shall subsequently disburse to the Borrower under the terms and conditions of this Funding Loan Agreement, the Borrower Loan Agreement and the Construction Funding Agreement.

(c) Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts of the Funding Loan may be drawn down and funded hereunder after December 31, 2019; provided, however, that upon the delivery of a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Funding Lender such date may be changed to a later date as specified in such Tax Counsel No Adverse Effect Opinion. The Governmental Lender has reviewed and approved the form of the Contingency Draw-Down Agreement and consents to the terms thereof and agrees to take all actions reasonably required of the Governmental Lender in connection with the conversion of the Funding Loan to a fully drawn loan pursuant to the provisions of the Contingency Draw-Down Agreement in the event a Draw-Down Notice is filed by the Funding Lender or the Borrower.

(d) 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.

(e) 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 and the Construction Funding 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 (e) and in paragraphs (f) and (g) of this Section 2.1.

The Fiscal Agent on behalf of 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.

(f) 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.

(g) 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.

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

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

Section 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. In connection with Conversion, the Funding Lender shall have the right to exchange the then existing Governmental Lender Note on or after the Conversion Date for a new Governmental Lender

Note with a dated date of the Conversion Date and in a stated principal amount equal to the then outstanding principal amount of the Governmental Lender Note, which amount will equal the Permanent Period Amount of the Borrower Loan.

Section 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 signature of an Authorized Governmental Lender Representative. 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.

Section 2.4 Required Transferee Representations; Participations; Sale and Assignment.

(a) The Funding Lender shall deliver to the Governmental Lender the signed Required Transferee Representations 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 an Approved 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 or other beneficial ownership interests in the Governmental Lender Note and the Funding Loan in amounts that are no less than the Minimum Beneficial Ownership Amount, provided that the Governmental Lender Note and the Funding Loan or such interests shall be sold only to Approved Transferees that execute and deliver to the Funding Lender, with a copy to the Governmental Lender, the Required Transferee Representations.

(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 Note shall be in fully-registered form transferable to subsequent holders only on the registration books which shall be maintained by the Fiscal Agent for such purpose consistent with the registration requirements of the Code applicable to tax-exempt obligations and which shall be open to inspection by the Governmental Lender. The Governmental Lender Note shall not be transferred through the services of the Depository Trust Company or any other third party registrar.

(e) The parties agree that a rating will not be sought for the Governmental Lender Note or the Funding Loan from any rating agency.

## ARTICLE III

### PREPAYMENT

Section 3.1 Prepayment of the Governmental Lender Note from Prepayment under the Borrower Note. The Governmental Lender Note is subject to voluntary and mandatory prepayment as follows:

(a) The Governmental Lender Note shall be subject to voluntary prepayment in full or in part by the Governmental Lender, from funds received by the Governmental Lender from the Borrower to the extent and in the manner and on any date that the Borrower Note is subject to voluntary prepayment as set forth therein, at a prepayment price equal to the principal balance of the Borrower Note to be prepaid, plus interest thereon to the date of prepayment and the amount of any Prepayment Premium, if applicable, payable under the Borrower Note, plus any Additional Borrower Payments due and payable under the Borrower Loan Agreement through the date of prepayment.

The Borrower shall not have the right to voluntarily prepay all or any portion of the Borrower Note, thereby causing the Governmental Lender Note to be prepaid, except as specifically permitted in the Borrower Note, without the prior written consent of Funding Lender, which may be withheld in Funding Lender's sole and absolute discretion.

(b) The Governmental Lender Note shall be subject to mandatory prepayment in whole or in part upon prepayment of the Borrower Note, at the direction of the Funding Lender in accordance with the terms of the Borrower Note, at a prepayment price equal to the outstanding principal balance of the Borrower Note prepaid, plus accrued interest plus any other amounts payable under the Borrower Note or the Borrower Loan Agreement.

Section 3.2 Notice of Prepayment. Notice of prepayment of the Governmental Lender Note shall be deemed given to the extent that notice of prepayment of the Borrower Note is timely and properly given to Funding Lender in accordance with the terms of the Borrower Note and the Borrower Loan Agreement, and no separate notice of prepayment of the Governmental Lender Note is required to be given.

## ARTICLE IV

### SECURITY

Section 4.1 Security for the Funding Loan. To secure the payment of the Funding Loan and the Governmental Lender Note, to declare the terms and conditions on which the Funding Loan and the Governmental Lender Note are secured, and in consideration of the terms and provisions of this Funding Loan Agreement and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender does hereby grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Funding Lender (except as limited herein), a lien on and security interest in the following described

property (excepting, however, in each case, the Unassigned Rights) (said property, rights and privileges being herein collectively called, 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, Borrower Loan Payments and Additional Borrower Payments derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement (except to the extent made on account of the Unassigned Rights); provided that the pledge and assignment made under this Funding Loan Agreement shall not impair or diminish the obligations of the Governmental Lender under the provisions of the Borrower Loan Agreement;

(b) All right, title and interest of the Governmental Lender in, to and under, together with all rights, remedies, privileges and options pertaining to, the Funding 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 Funding Loan Documents;

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

(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 subjected to the lien of this Funding Loan Agreement as additional security by the Governmental Lender or anyone on its part or with its consent, or which pursuant to any of the provisions hereof or of the Borrower Loan Agreement may come into the possession or control of the Funding Lender or a receiver appointed pursuant to this Funding Loan Agreement; and the Funding Lender is hereby authorized to receive any and all such property as and for additional security for the Funding Loan and the Governmental Lender Note and to hold and apply all such property subject to the terms hereof.

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 4.1 for the payment of the 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 then or thereafter received by 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 in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof. The Funding Lender shall have, in connection with the security interest granted hereunder, all rights and remedies available to a secured party under the Uniform Commercial Code as enacted in the State.

Section 4.2 Delivery of Security. To provide security for the payment of the Funding Loan and the Governmental Lender Note, the Governmental Lender has pledged and assigned to secure payment of the Funding Loan and the Governmental Lender Note its right, title and interest in the Security to the Funding Lender. In connection with such pledge, assignment, transfer and conveyance, the Governmental Lender shall deliver to the Funding Lender the following documents or instruments promptly following their execution and, to the extent applicable, their recording or filing:

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

(b) The originally executed Borrower Loan Agreement and Regulatory Agreement;

(c) The originally executed Security Instrument and all other Borrower Loan Documents existing at the time of delivery of the Borrower Note and an assignment for security of the Security Instrument from the Governmental Lender to the Funding Lender, in recordable form;

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

(e) Uniform Commercial Code financing statements, in form suitable for filing, giving notice of the pledge by the Governmental Lender of the Security to Funding Lender under this Funding Loan Agreement.

The Governmental Lender shall deliver and deposit with the Funding Lender, at the expense of the Borrower, such additional documents, financing statements, and instruments as the Funding Lender may reasonably require from time to time for the better perfecting and assuring to the Funding Lender of its lien and security interest in and to the Security, including, at the request of the Funding Lender, without limitation any amounts held under the Contingency Draw-Down Agreement.

## ARTICLE V

### LIMITED LIABILITY

#### Section 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 City, 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 City, 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.

Section 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

### CLOSING CONDITIONS; APPLICATION OF FUNDS

Section 6.1 Conditions Precedent to Closing. Closing of the Funding Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Funding Lender and the Governmental Lender, each in its sole discretion, as applicable, of each of the conditions precedent to closing set forth in this Funding Loan Agreement, including but not limited to the following:

- (a) Receipt by the Funding Lender of the original Governmental Lender Note;
- (b) Receipt by the Funding Lender of the original executed Borrower Note, endorsed to the Funding Lender by the Governmental Lender;
- (c) Receipt by the Funding Lender of executed counterpart copies of this Funding Loan Agreement, the Borrower Loan Agreement, the Construction Funding Agreement, the Regulatory Agreement, the Tax Certificate and the Security Instrument;
- (d) Receipt by the Funding Lender of a certified copy of the Resolution;
- (e) Receipt by the Governmental Lender of the executed Required Transferee Representations from the Funding Lender;
- (f) Delivery into escrow of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit, in accordance with Section 2.3(b) of the Borrower Loan Agreement;
- (g) Receipt by the Funding Lender and the Governmental Lender of a Tax Counsel Approving Opinion;



(h) Receipt by the Funding Lender and the Governmental Lender of an Opinion of Counsel from Tax Counsel to the effect that the Governmental Lender Note is exempt from registration under the Securities Act of 1933, and this Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;

(i) Receipt by Funding Lender and Governmental Lender of an opinion of Borrower counsel and an opinion of Fiscal Agent counsel in form and substance acceptable to Funding Lender and Governmental Lender and their respective counsel; and

(j) Receipt by the Funding Lender and the Governmental Lender of any other documents or opinions that the Funding Lender or Tax Counsel may reasonably require.

## ARTICLE VII

### FUNDS AND ACCOUNTS

Section 7.1 Authorization to Create Funds and Accounts. Except as provided in Section 7.3 hereof, no other 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, Fiscal Agent, and the Servicer, if any, and any designee of the Funding Lender or the Servicer, 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, Fiscal Agent, or the Servicer 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.

Section 7.2 Investment of Funds. Amounts held in any funds or accounts created under this Funding Loan Agreement shall be invested by the Funding Lender, the Servicer or the designee of the Funding Lender or Servicer, as applicable, in Permitted Investments at the direction of the Borrower, subject in all cases to the restrictions of Section 8.7 hereof and of the Tax Certificate. Amounts held in any funds or accounts created under this Funding Loan Agreement and held by the Fiscal Agent shall be invested in Permitted Investments at the written direction of the Borrower, which shall provide such directions in all cases subject to the restrictions of Section 8.7 hereof and of the Tax Certificate. In the absence of such directions, the Fiscal Agent shall hold funds uninvested.

The Fiscal Agent shall not be liable for any loss from any investments made in accordance with the provisions of this Funding Loan Agreement. Interest earnings from any investments made in any funds or accounts hereunder shall be deposited in the respective fund or account.

The parties hereto acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Funding Lender or the Government Lender the right to receive brokerage confirmations of security transactions as they occur, the

Funding Lender and the Government Lender specifically waive receipt of such confirmations to the extent permitted by law. The Funding Lender and the Governmental 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. The Fiscal Agent will furnish the Funding Lender periodic cash transaction statements which shall include detail for all investment transactions made by the Fiscal Agent hereunder. Upon the Funding Lender's election, such statements will be delivered via the Fiscal Agent's online service and upon electing such service, paper statements will be provided only upon request.

Section 7.3 Establishment of Funds. There are established with the Fiscal Agent the following funds and accounts:

- (a) The Note Payment Fund;
- (b) The Project Fund (and within such fund, the Note Proceeds Account and the Equity Account);
- (c) The Expense Fund;
- (d) The Costs of Funding Fund; and
- (e) 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.

Section 7.4 Note Payment Fund. 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.

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.

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 to the Funding Lender, as Holder of the Governmental Lender Note, of the interest then due on the Funding Loan;

*Second*, to pay or provide for the payment or the prepayment, to the Funding Lender, as Holder of the Governmental Lender Note, 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.

Section 7.5 Expense Fund. 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 Ongoing Governmental Lender Fee 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.

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 five Business Days to the Fiscal Agent of the amount of such deficiency.

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.

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 the Ongoing Governmental Lender Fee, and shall remit moneys received from the Borrower to the Governmental Lender for payment of such fee.

Section 7.6 Costs of Funding Fund. On the Closing Date, the Borrower shall deposit or cause to be deposited with the Fiscal Agent, for deposit in the Costs of Funding Fund, the amount of \$ \_\_\_\_\_ from proceeds of the \_\_\_\_\_. Any amounts in the Costs of Funding Fund shall be disbursed by the Fiscal Agent to pay Costs of Funding on the Closing Date or as soon as practicable thereafter as follows: moneys on deposit in the Costs of Funding Fund shall be applied to pay Costs of Funding at the written direction of the Authorized

Borrower Representative, countersigned by the Funding Lender and the Governmental Lender, in the form attached hereto as Exhibit D. Any interest earnings on amounts on deposit in the Costs of Funding Fund shall remain in the Fund. Any moneys remaining in the Costs of Funding Fund (including investment proceeds) after the earlier of (i) the payment of all costs of issuance as certified in writing to the Fiscal Agent by the Borrower or (ii) a period of six (6) months after the Closing Date, shall be paid to or at the direction of the Borrower and the Costs of Funding Fund shall be closed.

#### Section 7.7 Project Fund.

All proceeds of the Funding Loan provided by the Funding Lender shall be deposited to the Note Proceeds Account of the Project Fund and disbursed as herein provided. Any other amounts provided to the Fiscal Agent by or for the account of the Borrower shall be deposited in the Equity Account of the Project Fund. 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.

Not less than 97% of the moneys deposited in and credited to the Note Proceeds Account of the Project Fund, and taking into account proceeds of the Funding Loan (if any) deposited in the Costs of Funding Fund, representing the proceeds of the Funding Loan, including Investment Income thereon, will be expended (or deemed expended pursuant to the Tax Certificate) 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 Funding.

Before any payment representing Note proceeds shall be made from the Project Fund, the Regulatory Agreement and the Security Instrument 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 E and approved by the Funding Lender pursuant to the terms, conditions and provisions of the Construction Funding Agreement, with a copy to the Governmental Lender. The Fiscal Agent shall be entitled to conclusively rely upon any Written Requisition in determining whether to disburse amounts from the Project Fund.

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

(1) Only the signature of an authorized officer of the Funding Lender shall be required on a Written Requisition during any period in which a default by the Borrower has occurred and is then continuing under the Borrower Loan (Written Notice of which default has been given in writing by an authorized officer of 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 Written 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 as set forth in the Written Requisition.

(3) The Fiscal Agent may conclusively rely on all Written Requisitions, the execution of the Written Requisitions by the Authorized Borrower Representative and the approval of all Written Requisitions by the 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 construction work or to make any independent investigation with respect to the matters set forth in any Written 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, construction, renovation, equipping, improvement and installation of the Project.

(b) Upon receipt of each Written 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 appropriate account within the Project Fund in accordance with such Written Requisition. The Fiscal Agent shall rely on such Written Requisition so given with no duty to authenticate or verify such instructions contained therein or the authority under which they were given, and 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 Written 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 Written 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 Written Requisition constitute Qualified Project Costs or other permitted Project costs.

The Fiscal Agent shall 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 this Section 7.7(b). Except as provided in the next sentence, all such payments shall be made by check or draft payable, or by wire transfer, either (i) directly to the person, firm or corporation to be paid, (ii) to the 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 Written 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 Written Requisition signed by the Authorized Borrower Representative and countersigned by an authorized officer of 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.

(c) 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 transferred to the Note Payment Fund to be applied to the prepayment of the Funding Loan pursuant hereto.

(d) Amounts on deposit in the Project Fund shall be invested in Permitted Investments directed in writing by the Borrower. Investment Income earned on amounts on deposit in each account of 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.

(e) Prior to the Completion Date, the Funding Lender may provide a written request for accrued interest due and payable on the Governmental Lender Note which shall be provided to the Governmental Lender within three (3) Business Days, but which shall not be subject to the Governmental Lender's prior approval.

Section 7.8 Rebate Fund. The Fiscal Agent shall establish the Rebate Fund when instructed to 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 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, a Tax Counsel No Adverse Effect Opinion and 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.

(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, in Permitted Investments, subject to the Code. The Fiscal Agent shall sell and reduce to cash a sufficient amount of such Permitted 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 a Tax Counsel No Adverse Effect Opinion 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 Outstanding 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 7.8 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 a Tax Counsel No Adverse Effect Opinion, a copy of which shall be provided to the Fiscal Agent.

## ARTICLE VIII

### REPRESENTATIONS AND COVENANTS

Section 8.1 General Representations. The Governmental Lender makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Governmental Lender is a municipal corporation organized and existing under the laws of the State of California, has the power and authority to (i) enter into the Funding Loan Documents to which it is a party and the transactions contemplated thereby, (ii) incur the limited obligation represented by the Governmental Lender Note and the Funding Loan and apply the proceeds of such obligation or loan to finance the Project and (iii) carry out its other obligations under this Funding Loan Agreement and the Governmental Lender Note, and by proper action has duly authorized the Governmental Lender's execution and delivery of, and its performance under, such Funding Loan Documents and all other agreements and instruments relating thereto.

(b) The Governmental Lender is not in default under or in violation of, and the execution and delivery of the Funding Loan Documents to which it is a party and its compliance with the terms and conditions thereof will not conflict or constitute a default under or a violation of (i) the Act, (ii) to its knowledge, any other existing laws, rules, regulations, judgments, decrees and orders applicable to it, or (iii) to its knowledge, the provisions of any agreements and instruments to which the Governmental Lender is a party, a default under or violation of which would prevent it from entering into the Funding Loan Agreement, executing and delivering the Governmental Lender Note, financing the Project, executing and delivering the other Funding Loan Documents to which it is a party or consummating the transactions contemplated thereby, and, to its knowledge, no event has occurred and is continuing under the provisions of any such agreement or instrument or otherwise that with the lapse of time or the giving of notice, or both, would constitute such a default or violation (it being understood, however, that the Governmental Lender is making no representations as to the necessity of registering the Borrower Note pursuant to any securities laws or complying with any other requirements of securities laws). For purposes of this Section 8.1(b), "to its knowledge" means the current, actual knowledge of any Authorized Governmental Lender Representative.

(c) No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender with respect to (i) the organization and existence of the Governmental Lender, (ii) its authority to execute or deliver the Funding Loan Documents to which it is a party, (iii) the validity or enforceability of any



such Funding Loan Documents or the transactions contemplated thereby, (iv) the title of any officer of the Governmental Lender who executed such Funding Loan Documents or (v) any authority or proceedings relating to the execution and delivery of such Funding Loan Documents on behalf of the Governmental Lender, and no such authority or proceedings have been repealed, revoked, rescinded or amended but are in full force and effect.

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

(e) The California Debt Limit Allocation Committee has provided an allocation of the State's 2016 private activity bond volume cap under Section 146 of the Code to the Governmental Lender for the Governmental Lender Note. 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.

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

Section 8.2 No Encumbrance on Security. The Governmental Lender will not knowingly create or knowingly permit the creation of any mortgage, pledge, lien, charge or encumbrance of any kind on the Security or any part thereof prior to or on a parity with the lien of this Funding Loan Agreement, except as expressly permitted or contemplated by the Funding Loan Documents.

Section 8.3 Repayment of Funding Loan. Subject to the provisions of Articles III and V hereof, the Governmental Lender will duly and punctually repay, or cause to be repaid, the Funding Loan, as evidenced by the Governmental Lender Note, as and when the same shall become due, all in accordance with the terms of the Governmental Lender Note and this Funding Loan Agreement, to the extent of repayments and prepayments received by the Governmental Lender with respect to the Borrower Loan.

Section 8.4 Servicer. The Funding Lender may appoint a Servicer to service and administer the Governmental Loan and/or the Borrower Loan on behalf of the Funding Lender, including without limitation the fulfillment of rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to Section 2.1 of the Borrower Loan Agreement.

Section 8.5 Borrower Loan Agreement Performance.

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

(b) The Governmental Lender will promptly notify the Borrower, the Servicer and the Funding Lender in writing of the occurrence of any Borrower Loan Agreement Default, provided that the Governmental Lender has received written notice or otherwise has knowledge of such event.

Section 8.6 Maintenance of Records; Inspection of Records.

(a) The Funding Lender shall keep and maintain adequate records pertaining to any funds and accounts established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Funding Loan and interests therein. The Funding Lender shall retain in its possession all certifications and other documents presented to it, all such records and all records of principal, interest and premium paid on the Funding Loan, subject to the inspection of the Governmental Lender and its representatives at all reasonable times and upon reasonable prior notice.

(b) The Governmental Lender will at any and all times, upon the reasonable request of the Servicer, the Borrower or the Funding Lender, afford and procure a reasonable opportunity by their respective representatives to inspect the books, records, reports and other papers of the Governmental Lender relating to the Project and the Funding Loan, if any, and to make copies thereof.

Section 8.7 Tax Covenants. The Governmental Lender covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other instrument, it will:

(a) 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 any such violation is first discovered by the Governmental Lender, to the extent necessary in order to assure that interest paid by the Governmental Lender on the Governmental Lender Note will be excluded from the gross income of the holders of the Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Governmental Lender Note or a portion thereof is a "substantial user" of the facilities financed with the Funding Loan or a "related person" within the meaning of Section 147(a) of the Code;

(b) Solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, not knowingly take or cause to be taken any action or actions, or knowingly

fail to take any action or actions, which would cause the interest payable on the Governmental Lender Note to be includable in gross income of the holders of the Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Governmental Lender Note or a portion thereof is a "substantial user" of the facilities financed with the Funding Loan or a "related person" within the meaning of Section 147(a) of the Code;

(c) 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 in order to assure that interest paid by the Governmental Lender on the Governmental Lender Note will be excluded from the gross income of the holders of the Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Governmental Lender Note or a portion thereof is a "substantial user" of the facilities financed with the Funding Loan or a "related person" within the meaning of Section 147(a) of the Code;

(d) Solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, not knowingly take any action, or knowingly 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; and

(e) Require the Borrower to agree, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, not to commit any act and not to make any use of the proceeds of the Funding Loan, or any other moneys which may be deemed to be proceeds of the Funding Loan pursuant to the Code, which would cause the Governmental Lender Note to be an "arbitrage bond" within the meaning of Sections 103(b) and 148 of the Code, and to comply with the requirements of the Code throughout the term of the Funding Loan; and

(f) Require the Borrower, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, to take all steps necessary to compute and pay any rebatable arbitrage in accordance with Section 148(f) of the Code.

In furtherance of the covenants in this Section 8.7, 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.

For purposes of this Section 8.7 the Governmental Lender's compliance shall be based solely on matters within the Governmental Lender's knowledge and control and no acts, omissions or directions of the Borrower, the Funding Lender or any other Persons shall be attributed to the Governmental Lender.

In complying with the foregoing covenants, the Governmental Lender may rely from time to time on a Tax Counsel No Adverse Effect Opinion or other appropriate opinion of Tax Counsel.

Section 8.8 Performance by the Borrower. Without relieving the Governmental Lender from the responsibility for performance and observance of the agreements and covenants required to be performed and observed by it hereunder, the Borrower, on behalf of the Governmental Lender, may perform any such agreement or covenant if no Borrower Loan Agreement Default or Default under the Borrower Loan Agreement exists.

Section 8.9 Maintenance of Records. The Fiscal Agent shall keep and maintain adequate records pertaining to the funds and accounts, if any, established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Governmental Lender Note and interests therein.

## ARTICLE IX

### DEFAULT; REMEDIES

Section 9.1 Events of Default. Any one or more of the following shall constitute an event of default (an "Event of Default") under this Funding Loan Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) A default in the payment of any interest upon the Governmental Lender Note when such interest becomes due and payable; or

(b) A default in the payment of principal of, or premium on, the Governmental Lender Note when such principal or premium becomes due and payable, whether at its stated maturity, by declaration of acceleration or call for mandatory prepayment or otherwise; or

(c) Subject to Section 8.8 hereof, default in the performance or breach of any material covenant or warranty of the Governmental Lender in this Funding Loan Agreement (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 30 days after there has been given written notice, as provided in Section 12.1 hereof, to the Governmental Lender and the Borrower (with a copy to the Equity Investor) by the Funding Lender or the Servicer, specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" under this Funding Loan Agreement; provided that, so long as the Governmental Lender has commenced to cure such failure to observe or perform within the thirty (30) day cure period and the subject matter of the default is not capable of cure within said thirty (30) day period and the Governmental Lender is diligently pursuing such cure to the Funding Lender's satisfaction, with the Funding Lender's Written Direction or Written Consent, then the Governmental Lender shall have an additional

period of time as reasonably necessary (not to exceed 30 days unless extended in writing by the Funding Lender) within which to cure such default; or

(d) A default in the payment of any Additional Borrower Payment; or

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

Section 9.2 Acceleration of Maturity; Rescission and Annulment; Discharge of Funding Loan.

(a) Subject to the provisions of Section 9.9 hereof, upon the occurrence of an Event of Default under Section 9.1 hereof, then and in every such case, the Funding Lender may declare the principal of the Funding Loan and the Governmental Lender Note and the interest accrued to be immediately due and payable, by notice to the Governmental Lender and the Borrower and upon any such declaration, all principal of and Prepayment Premium, if any, and interest on the Funding Loan and the Governmental Lender Note shall (subject to Section 9.15 hereof) become immediately due and payable.

(b) At any time after a declaration of acceleration has been made pursuant to subsection (a) of this Section, the Funding Lender may by Written Notice to the Governmental Lender rescind and annul such declaration and its consequences if:

(i) There has been deposited with the Funding Lender a sum sufficient to pay (1) all overdue installments of interest on the Funding Loan, (2) the principal of and Prepayment Premium on the Funding Loan that has become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in the Funding Loan, (3) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in the Funding Loan, and (4) all sums paid or advanced by the Funding Lender and the reasonable compensation, expenses, disbursements and advances of the Funding Lender, its agents and counsel (but only to the extent not duplicative with subclauses (1) and (3) above); and

(ii) All Events of Default, other than the nonpayment of the principal of the Funding Loan which have become due solely by such declaration of acceleration, have been cured or have been waived in writing as provided in Section 9.9 hereof.

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

(c) At any time following the third anniversary of the occurrence of an Event of Default and acceleration of the Funding Loan, the Governmental Lender may elect to pay the Funding Loan and the Governmental Lender Note by transferring and assigning the Security to the Funding Lender, and upon such transfer the Funding Lender shall have

no further rights against the Governmental Lender hereunder and such payment shall constitute payment in full of the Funding Loan and the Governmental Lender Note.

The Funding Lender hereby agrees that upon such transfer and assignment the Funding Lender shall no longer look to the Governmental Lender to receive payment of the principal and interest and all other sums, if any, which are due under the Governmental Lender Note, but shall look solely to the Security, the rights under the Security to enforce the indebtedness and other obligations of the Borrower and the other parties, and the funds and other assets transferred to the Funding Lender hereunder.

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

Section 9.3 Additional Remedies; Funding Lender Enforcement.

(a) Upon the occurrence of an Event of Default, the Funding Lender may, subject to the provisions of Section 9.2(c) hereof, this Section 9.3, Section 9.9 hereof and Section 9.15 hereof, proceed to protect and enforce its rights by mandamus or other suit, action or proceeding at law or in equity. No remedy conferred by this Funding Loan Agreement upon or remedy reserved to the Funding Lender is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy given to the Funding Lender hereunder or now or hereafter existing at law or in equity or by statute.

(b) Upon the occurrence and continuation of any Event of Default, the Funding Lender may proceed forthwith to protect and enforce its rights and this Funding Loan Agreement by such suits, actions or proceedings as the Funding Lender, in its sole discretion, shall deem expedient. Funding Lender shall have upon the occurrence and continuation of any Event of Default all rights, powers, and remedies with respect to the Security as are available under the Uniform Commercial Code applicable thereto or as are 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:

(i) to take possession of the Security or any part thereof, with or without legal process, and to hold, service, 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 part of the Security;

(ii) to become mortgagee of record for the Borrower Loan including, without limitation, completing the assignment of the Security Instrument by the Governmental Lender to the Funding Lender as anticipated by this Funding Loan Agreement, and recording the same in the real estate records of the jurisdiction in

which the Project is located, without further act or consent of the Governmental Lender, and to service and administer the same for its own account;

(iii) to service and administer the Funding Loan as agent and on behalf of the Governmental Lender or otherwise, and, if applicable, to take such actions necessary to enforce the Borrower Loan Documents and the Funding Loan Documents on its own behalf, and to take such alternative courses of action, as it may deem appropriate; or

(iv) to take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents, or the Borrower Loan Documents, or in and of the execution of any power herein granted, or for foreclosure hereunder, or for enforcement of any other appropriate legal or equitable remedy or otherwise as the Funding Lender may elect.

(c) Whether or not an Event of Default has occurred, the Funding Lender, in its sole discretion, shall have the sole right to waive or forbear any term, condition, covenant or agreement of the Security Instrument, the Borrower Loan Agreement, the Borrower Note or any other Borrower Loan Documents or Funding Loan Documents applicable to the Borrower, or any breach thereof, other than a covenant that would adversely impact the tax exempt status of the interest on the Governmental Lender Note, and provided that the Governmental Lender may enforce specific performance with respect to the Unassigned Rights; provided, however, that any such forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion.

(d) If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreement, and if such default remains uncured for a period of 60 days after the Borrower and the Funding Lender receive Written Notice stating that a default under the Regulatory Agreement has occurred and specifying the nature of the default (with a copy of such Written Notice provided to the Equity Investor), the Funding Lender shall have the right to seek specific performance of the provisions of the Regulatory Agreement or to exercise its other rights or remedies thereunder; provided, however, that any such forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion.

(e) If the Borrower defaults in the performance of its obligations under the Borrower Loan Agreement to make rebate payments, to comply with any applicable continuing disclosure requirements, or to make payments owed pursuant to Sections 2.5, 5.14 or 5.15 of the Borrower Loan Agreement for fees, expenses or indemnification, the Funding Lender shall have the right to exercise all its rights and remedies thereunder (subject to the last paragraph of Section 9.14 hereof).

(f) Notwithstanding anything to the contrary in this Funding Loan Agreement, the Equity Investor shall have the right, but not the obligation, to cure within any applicable cure period, any default of the Borrower described in Sections 9.3(d) and (e) or any default by the Governmental Lender that may be cured by the Borrower pursuant to the terms of the Funding Loan Documents, and the Funding Lender shall accept any such cure by the Equity Investor as if tendered and performed by the Borrower or the Governmental Lender, as applicable.

Section 9.4 Application of Money Collected. Any money collected by the Funding Lender pursuant to this Article and any other sums then held by the 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 the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Rebate Analyst;

(b) Second: To the payment of the whole amount of the Funding Loan, as evidenced by the Governmental Lender Note, then due and unpaid in 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 a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Funding Loan) on overdue principal of, and Prepayment Premium and overdue installments of interest on the Funding Loan; provided, however, that partial interests in any portion of the Funding Loan shall be paid in such order of priority as may be prescribed by Written Direction of the Funding Lender in its sole and absolute discretion; and

(c) Third: The payment of the remainder, if any, to the Borrower or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

(d) If and to the extent this Section 9.4 conflicts with the provisions of the Servicing Agreement, the provisions of the Servicing Agreement shall control. Capitalized terms used in this Section 9.4 but not otherwise defined in this Funding Loan Agreement shall have the meanings given such terms in the Servicing Agreement.

Section 9.5 Remedies Vested in Funding Lender. All rights of action and claims under this Funding Loan Agreement or the Governmental Lender Note may be prosecuted and enforced by the Funding Lender without the possession of the Governmental Lender Note or the production thereof in any proceeding relating thereto.

Section 9.6 Restoration of Positions. If Funding Lender shall have instituted any proceeding to enforce any right or remedy under this Funding Loan Agreement and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Funding Lender, then and in every such case the Governmental



Lender and the Funding Lender shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Governmental Lender and the Funding Lender shall continue as though no such proceeding had been instituted.

Section 9.7 Rights and Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Funding Lender is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 9.8 Delay or Omission Not Waiver. No delay or omission of the Funding Lender to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Funding Lender may be exercised from time to time, and as often as may be deemed expedient, by Funding Lender. No waiver of any default or Event of Default pursuant to Section 9.9 hereof shall extend to or shall affect any subsequent default or Event of Default hereunder or shall impair any rights or remedies consequent thereon.

Section 9.9 Waiver of Past Defaults. Before any judgment or decree for payment of money due has been obtained by the Funding Lender, the Funding Lender may, subject to Section 9.6 hereof, by Written Notice to the Governmental Lender and the Borrower, waive any past default hereunder or under the Borrower Loan Agreement and its consequences except for default in obligations due the Governmental Lender pursuant to or under the Unassigned Rights. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Funding Loan Agreement and the Borrower Loan Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 9.10 Remedies Under Borrower Loan Agreement or Borrower Note. As set forth in this Section 9.10 but subject to Section 9.9 hereof, the Funding Lender shall have the right, in its own name or on behalf of the Governmental Lender, to declare any default and exercise any remedies under the Borrower Loan Agreement or the Borrower Note, whether or not the Governmental Lender Note has been accelerated or declared due and payable by reason of an Event of Default.

Section 9.11 Waiver of Appraisalment and Other Laws.

(a) To the extent permitted by law, the Governmental Lender will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisalment, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws. The Governmental Lender, for

itself and all who may claim under it, waives, to the extent that it may lawfully do so, all right to have the property in the Security marshaled upon any enforcement hereof.

(b) If any law now in effect prohibiting the waiver referred to in Section 9.11(a) shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section 9.11.

Section 9.12 Suits to Protect the Security. The Funding Lender shall have power to institute and to maintain such proceedings as it 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 its interests in the Security and in the rents, issues, profits, revenues and other income arising therefrom, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any Governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Funding Lender.

Section 9.13 Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Funding Loan Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 9.14 Assumption of Obligations. In the event that the Funding Lender or its assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under the Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement and any other Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default hereunder, rights and remedies may be pursued pursuant to the terms of the Funding Loan Documents.

Section 9.15 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 X

### AMENDMENT; AMENDMENT OF BORROWER LOAN AGREEMENT AND OTHER DOCUMENTS

Section 10.1 Amendment of Funding Loan Agreement. Any of the terms of this Funding Loan Agreement and the Governmental Lender Note may be amended or waived only by an instrument signed by the Funding Lender, the Fiscal Agent and the Governmental Lender; provided, however, no such amendment which materially adversely affects the rights, duties, or obligations of the Borrower shall be made without the consent of the Borrower. All of the terms of this Funding Loan Agreement shall be binding upon the successors and assigns of and all persons claiming under or through the Governmental Lender or any such successor or assign, and shall inure to the benefit of and be enforceable by the successors and assigns of the Funding Lender.

Section 10.2 Amendments Require Funding Lender Consent. The Governmental Lender shall not consent to any amendment, change or modification of the Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document without the prior Written Consent of the Funding Lender.

Section 10.3 Consents and Opinions. No amendment to this Funding Loan Agreement or any other Funding Loan Document entered into under this Article X or any amendment, change or modification otherwise permitted under this Article X shall become effective unless and until (i) the Funding Lender shall have approved the same in writing in its sole discretion and (ii) to the extent requested by the Funding Lender, the Funding Lender shall have received, at the expense of the Borrower, a Tax Counsel No Adverse Effect Opinion and/or an Opinion of Counsel to the effect that any such proposed amendment is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

## ARTICLE XI

### THE FISCAL AGENT

Section 11.1 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.

Section 11.2 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) 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, except that:

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

(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 duty 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.

Subject to its rights to indemnification pursuant to Section 11.4 hereof, the Fiscal Agent is directed to enter into any Borrower Loan Documents to which it is a party and any other related documents, solely in its capacity as Fiscal Agent.

(c) 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.

(d) 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.

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

(f) The rights of the Fiscal Agent and limitations of liability enumerated herein and in Section 11.4 shall extend to actions taken or omitted in its role as assignee

of the Governmental Lender under the Borrower Loan Agreement and the other Funding Loan Documents.

Section 11.3 Notice of Defaults. Upon the occurrence of any default hereunder or under any Borrower Loan Document, and provided that a Responsible Officer of 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, the Equity Investor, the Servicer, if any, and the Funding Lender, in the manner and at the addresses for notices set forth in Section 12.1 hereof, notice of such default hereunder known to the Fiscal Agent pursuant to Section 11.4(g) hereof, unless such default shall have been cured or waived.

Section 11.4 Certain Rights of Fiscal Agent. Except as otherwise provided in Section 11.1 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 Governmental Lender Representative;

(c) Whenever in the administration of this Funding Loan Agreement or any Borrower Loan Document 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 Governmental Lender, the Funding Lender, the Servicer 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 or any Borrower Loan Document 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, provided, that nothing contained in this subparagraph (d) shall be construed to require such security or indemnity for the performance by the Fiscal Agent of its obligations under Article VIII hereof;

(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 duties or 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 Governmental Lender Fee when due, unless a Responsible Officer of the Fiscal Agent shall be specifically notified by a Written Direction of such default by the Governmental Lender, the Servicer 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 a Responsible Officer of the Fiscal Agent at the Office of 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.

(h) The Fiscal Agent will not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy or terrorists, acts of a government, acts of the other parties, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to any project financed with the proceeds of the Governmental Lender Note, malicious mischief, condemnation, and unusually severe weather or any similar event and/or occurrences beyond the control of the Fiscal Agent.

Section 11.5 Not Responsible for Recitals. 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.

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.

The Fiscal Agent shall not be required to monitor the financial condition of the Borrower or the physical condition of the Project. Unless otherwise expressly provided, 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.

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.

Section 11.6 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.

Section 11.7 Moneys Held by the 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.

Section 11.8 Compensation and Reimbursement. 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.

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.

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

(b) As security for the performance of the obligations of the Borrower under this Section 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.

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

Section 11.9 Fiscal Agent Required; Eligibility. Any successor Fiscal Agent shall at all times be a trust company, a state banking corporation or a national banking association with the authority to accept trusts in the State 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 and 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 and 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.

Section 11.10 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 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, the Servicer, if any, 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, 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 the later of such resignation, removal or incapability or the occurrence of such vacancy



and receipt of written notice of such by the Governmental Lender, 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, the Servicer, if any, 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.

#### Section 11.11 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, to the extent operative.

Section 11.12 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, 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.

Section 11.13 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, 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, 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.

Section 11.14 Loan Servicing. The Governmental Lender and the Fiscal Agent acknowledge that the Funding Lender shall have the right to appoint a Servicer to service and administer the Funding Loan and the Borrower Loan as set forth in a Servicing Agreement. The Governmental Lender and the Fiscal Agent shall not be responsible for monitoring the performance of any Servicer or for any acts or omissions of such Servicer. The Funding Lender may, in its sole discretion, terminate or replace the Servicer.

Section 11.15 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 XII

### MISCELLANEOUS

Section 12.1 Notices. All notices, demands, requests and other communications required or permitted to be given by any provision of this Funding Loan Agreement shall be in writing and sent by first class, regular, registered or certified mail, commercial delivery service, overnight courier, telegraph, telex, telecopier or facsimile transmission, air or other courier, or hand delivery to the party to be notified addressed as follows:

If to the Governmental Lender: 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  
Facsimile: (415) 701-5501

If to the Borrower: Potrero Housing Associates I, LP  
c/o Bridge Housing  
600 California Street, Suite 900  
San Francisco, California 94108  
(415) 495-4898  
Attention: Director  
Facsimile: (415) 495-4898

With a copy to: Gubb & Barshay LLP  
505 14<sup>th</sup> Street, Suite 1050  
Oakland, California 94612  
Attention: Scott Barshay, Esq.  
Facsimile: (415) 781-6967

With a copy to: Wells Fargo Affordable Housing  
Community Development  
MAC: D1053-170  
301 South College Street  
Charlotte, North Carolina 28288  
Attention: Director of Tax Credit  
Asset Management  
Facsimile: [\_\_\_\_\_]

With a copy to: Sidley Austin LLP  
One South Dearborn  
Chicago, Illinois 60603  
Attention: Philip C. Spahn, Esq.  
Facsimile: (312) 853-7036

If to the Funding Lender: Citi Community Capital  
One Sansome Street  
Glendale, California 91204  
Attention: Merle Malakoff  
(415) 658-4309  
Deal ID# [\_\_\_\_\_] ]  
Facsimile: [\_\_\_\_\_] ]

With copies to: Paul Hasting LLP  
515 South Flower Street, 25<sup>th</sup> Floor  
Los Angeles, California 90071  
Kenneth Krug  
(213) 683-6230  
Facsimile: [\_\_\_\_\_] ]

And if prior to the Conversion Date: Citibank, N.A.  
[ADDRESS]  
Attention: Account Specialist  
Deal ID# [\_\_\_\_\_] ]  
Facsimile: [(\_\_\_\_) \_\_\_\_ \_\_\_\_] ]

Following the Conversion Date, with a copy to: Citibank, N.A.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Deal ID # [\_\_\_\_\_] ]  
Facsimile: (215) 328-0305

And a copy of any notices of default sent to: Citibank, N.A.  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Deal ID # [\_\_\_\_\_] ]  
Facsimile: (646) 291-5754

If to the Fiscal Agent:

U.S. Bank National Association  
Global Corporate Trust Services  
One California Street, Suite 1000  
San Francisco, California 94111  
Attention: Corporate Trust Department  
Facsimile:

Any such notice, demand, request or communication shall be deemed to have been given and received for all purposes under this Funding Loan Agreement: (i) three Business Days after the same is deposited in any official depository or receptacle of the United States Postal Service first class, or, if applicable, certified mail, return receipt requested, postage prepaid; (ii) on the date of transmission when delivered by telecopier or facsimile transmission, telex, telegraph or other telecommunication device, provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day; (iii) on the next Business Day after the same is deposited with a nationally recognized overnight delivery service that guarantees overnight delivery; and (iv) on the date of actual delivery to such party by any other means; provided, however, if the day such notice, demand, request or communication shall be deemed to have been given and received as aforesaid is not a Business Day, such notice, demand, request or communication shall be deemed to have been given and received on the next Business Day. Any facsimile signature by a Person on a document, notice, demand, request or communication required or permitted by this Funding Loan Agreement shall constitute a legal, valid and binding execution thereof by such Person. Any email notice, demand, request or communication does not constitute a notice, request or other communication hereunder but rather the portable document format or similar attachment attached to such email shall constitute a notice, request or other communication hereunder.

Any party to this Funding Loan Agreement may change such party's address for the purpose of notice, demands, requests and communications required or permitted under this Funding Loan Agreement by providing written notice of such change of address to all of the parties by written notice as provided herein.

Section 12.2 Term of Funding Loan Agreement. This Funding Loan Agreement shall be in full force and effect until all payment obligations of the Governmental Lender hereunder have been paid in full and the Funding Loan has been retired or the payment thereof has been provided for; except that on and after payment in full of the Governmental Lender Note, this Funding Loan Agreement shall be terminated, without further action by the parties hereto.

Section 12.3 Successors and Assigns. All covenants and agreements in this Funding Loan Agreement by the Governmental Lender shall bind its successors and assigns, whether so expressed or not.

Section 12.4 Legal Holidays. In any case in which the date of payment of any amount due hereunder or the date on which any other act is to be performed pursuant to this Funding Loan Agreement shall be a day that is not a Business Day, then payment of such amount or such act need not be made on such date but may be made on the next succeeding Business Day, and such later payment or such act shall have the same force and effect as if made on the date of

payment or the date fixed for prepayment or the date fixed for such act, and no additional interest shall accrue for the period from and after such date and prior to the date of payment.

Section 12.5 Governing Law. This Funding Loan Agreement shall be governed by and shall be enforceable in accordance with the laws of the State.

Section 12.6 Severability. If any provision of this Funding Loan Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement contained in the Governmental Lender Note or in this Funding Loan Agreement shall for any reason be held to be usurious or in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Governmental Lender or the Funding Lender only to the full extent permitted by law.

Section 12.7 Execution in Several Counterparts. This Funding Loan Agreement may be contemporaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

Section 12.8 Nonrecourse Obligation of the Borrower. Except as otherwise provided in the Borrower Loan Agreement, any obligations of the Borrower under this Funding Loan Agreement pursuant to Section 4.1.36 of the Borrower Loan Agreement or other provisions of the Borrower Loan Agreement are without recourse to the Borrower or to the Borrower's partners or members, as the case may be, and the provisions of Section 11.1 of the Borrower Loan Agreement are by this reference incorporated herein.

Section 12.9 Waiver of Trial by Jury. The Governmental Lender does not agree to not elect a trial by jury or to waive any jury trial and does not consent to any resolution by judicial reference. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW AND ONLY TO THE EXTENT ENFORCEMENT OF SUCH AGREEMENT WOULD NOT ADVERSELY AFFECT THE ABILITY OF THE GOVERNMENTAL LENDER TO ELECT A TRIAL BY JURY, THE BORROWER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS FUNDING LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN BY THE BORROWER, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. IF FOR ANY REASON THIS WAIVER IS DETERMINED TO BE UNENFORCEABLE, THE BORROWER AGREES TO THE RESOLUTION OF ALL DISPUTES BY JUDICIAL REFERENCE PURSUANT TO THE PROCEDURES SET FORTH IN THE SECURITY INSTRUMENT.

Section 12.10 Electronic Transactions. The transactions described in this Funding Loan Agreement may be conducted and related documents and may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed

documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 12.11 City Contracting Provisions. The Funding Lender and the Fiscal Agent each covenant and agree to comply with the provisions set forth in Exhibit C to this Funding Loan Agreement, which is incorporated in and made a part of this Funding Loan Agreement by this reference.

Section 12.12 Reference Date. This Funding Loan Agreement is dated for reference purposes only as of December 1, 2016 and will not be effective and binding upon the parties hereto unless and until the Closing Date occurs.

IN WITNESS WHEREOF, the Funding Lender, the Governmental Lender, and the Fiscal Agent have caused this Funding Loan Agreement to be duly executed as of the date first written above.

CITIBANK, N.A., as Funding Lender

By: \_\_\_\_\_  
Merle Malakoff, Vice President



U.S. BANK NATIONAL ASSOCIATION,  
as Fiscal Agent

By: \_\_\_\_\_  
Authorized Representative

CITY AND COUNTY OF SAN FRANCISCO, as  
Governmental Lender

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

**EXHIBIT A**

**FORM OF GOVERNMENTAL LENDER NOTE**

**THIS NOTE MAY BE OWNED ONLY BY AN APPROVED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT, AND THE HOLDER HEREOF, BY THE ACCEPTANCE OF THIS GOVERNMENTAL LENDER NOTE (A) REPRESENTS THAT IT IS AN APPROVED TRANSFEREE AND (B) ACKNOWLEDGES THAT IT CAN ONLY TRANSFER THIS GOVERNMENTAL LENDER NOTE TO ANOTHER APPROVED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT.**

**CITY AND COUNTY OF SAN FRANCISCO  
MULTIFAMILY HOUSING REVENUE NOTE,  
(POTRERO BLOCK X), [2016 SERIES [ ]]**

Dated December [9], 2016

\$\_[ ]

FOR VALUE RECEIVED, the undersigned City and County of San Francisco ("Obligor") promises to pay to the order of CITIBANK, N.A. ("Holder") the maximum principal sum of [ ] (\$[ ]) on [MATURITY DATE], or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Holder on or before each date on which payment is due under that certain Funding Loan Agreement, dated as of December 1, 2016 (the "Funding Loan Agreement"), among Obligor, U.S. BANK NATIONAL ASSOCIATION, as fiscal agent ("Fiscal Agent") and Holder, an amount in immediately available funds sufficient to pay the principal amount of the Funding Loan then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts are derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on the Funding Loan in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of the Funding Loan so paid.

Obligor shall pay to the Holder on or before each date on which interest on the Funding Loan is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on the Funding Loan then due and payable in the amounts and at the rate or rates set forth in the Funding Loan Agreement.

The Funding Loan and this Governmental Lender Note are pass-through obligations relating to a construction and permanent loan (the "Borrower Loan") made by Obligor from proceeds of the Funding Loan to Potrero Housing Associates I, LP, a California limited partnership, as borrower (the "Borrower"), under that certain Borrower Loan Agreement, dated as of December 1, 2016 (as the same may be modified, amended or supplemented from time to time, the "Borrower Loan Agreement"), between the Obligor and the Borrower, evidenced by the

Borrower Note (as defined in 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, payments on which are passed-through under this Governmental Lender Note.

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 Obligor, the State, or any political subdivision thereof (except the Obligor, 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 this 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 Obligor'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. Neither the faith and credit nor the taxing power of the Obligor is pledged to the payment of the principal of or premium or interest on this Governmental Lender Note.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement or in the Borrower Loan Agreement.

This Governmental Lender Note is subject to the express condition that at no time shall interest be payable on this Governmental Lender Note or pursuant to the Funding Loan Agreement at a rate in excess of the Maximum Rate provided in the Funding Loan Agreement; and Obligor shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such Maximum Rate. If by the terms of this Governmental Lender Note or of the Funding Loan Agreement, Obligor is required to pay interest at a rate in excess of such Maximum Rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such Maximum Rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

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

This Governmental Lender Note is subject to all of the terms, conditions, and provisions of the Funding Loan Agreement, including those respecting prepayment and the acceleration of maturity.

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

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Governmental Lender Note or the Funding Loan Documents shall operate as a waiver

of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Holder under this Governmental Lender Note and the Funding Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

Obligor shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the indebtedness hereunder, together with interest thereon, to the extent allowed by law, as set forth in the Funding Loan Agreement.

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

The Funding Loan, or any interest therein, and this Governmental Lender Note, shall be in fully-registered form transferable to subsequent holders only on the registration books which shall be maintained by the Funding Lender for such purpose and which shall be open to inspection by the Governmental Lender. The Funding Loan, or any interest therein, and this Governmental Lender Note, is only transferable subject to and in accordance with the limitations set forth in the Funding Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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 REQUIRED TRANSFEREE REPRESENTATIONS

\_\_\_\_\_, 20\_\_

The undersigned, as holder (the "Holder") of the funding loan (the "Funding Loan") in the maximum amount of \$[\_\_\_\_\_] from CITIBANK, N.A. (the "Funding Lender") to the CITY AND COUNTY OF SAN FRANCISCO (the "Governmental Lender") under a Funding Loan Agreement dated as of December 1, 2016 (the "Funding Loan Agreement") among the Funding Lender, the Governmental Lender, and U.S. BANK NATIONAL ASSOCIATION, as fiscal agent, 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. We are 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 of the Borrower, 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 security therefor so that, as a reasonable investor, the Holder has been able to make its decision to [extend/purchase] the Funding Loan [or an interest therein]. In entering into this transaction, the Holder acknowledges that it has not relied upon any representations or opinions of the Governmental Lender relating to the legal consequences to the Funding Lender or other aspects of its making the Funding Loan and acquiring the Governmental Lender Note, nor has it looked to, nor expected, the Governmental Lender to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the financing or management thereof), or any other matter pertaining to the merits or risks of the transactions contemplated by the Funding Loan Agreement and the Borrower Loan Agreement, or the adequacy of the funds pledged to the Funding Lender to secure repayment of the Governmental Lender Note.

3. The Holder is an Approved Transferee (as defined in the Funding Loan Agreement).

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 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 have the meanings given such terms in the Funding Loan Agreement.

[ ], as Holder

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



## EXHIBIT C

### 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 C 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 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. Contractorship 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 Contractorship 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.

**EXHIBIT D**

**FORM OF WRITTEN REQUISITION  
OF THE BORROWER – COSTS OF FUNDING FUND**

To: U.S. Bank National Association, as Fiscal Agent (the “Fiscal Agent”) under that certain Funding Loan Agreement, dated as of December 1, 2016, among Citibank, N.A., as 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 Costs of Funding Fund pursuant to Section 7.6 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. You shall disburse such funds in accordance with the payment instructions set forth on Schedule I or the related invoice and you have no duty or liability to verify or authenticate such payment instructions or the authority under which they were given.

2. The undersigned certify that as of the date hereof no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under the Funding Loan Agreement.

*[Signatures on page to follow]*

Dated: \_\_\_\_\_

**BORROWER:**

**Potrero Housing Associates I LP,**  
a California Limited Partnership

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

By: MCB Family Housing, Inc.,  
a California nonprofit public benefit  
corporation, its sole  
member/manager

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved:

Citibank, N.A., Funding Lender

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

[City Approval of Written Requisition of the Borrower – Costs of Funding Fund]

Approved:

By: \_\_\_\_\_  
Olson Lee, Director  
Mayor's Office of Housing and  
Community Development

SCHEDULE I

**EXHIBIT E**

**FORM OF WRITTEN REQUISITION  
OF THE BORROWER - PROJECT FUND**

**[\$\_\_\_\_\_] City and County of San Francisco, Multifamily Housing Revenue Note  
(Potrero Block X) 2016 Series [\_\_]**

**Draw # \_\_\_\_\_**

To: U.S. BANK NATIONAL ASSOCIATION, as Fiscal Agent (the "Fiscal Agent") under that certain Funding Loan Agreement, dated as of December 1, 2016, among Citibank, N.A., as Funding Lender, the CITY AND COUNTY OF SAN FRANCISCO, as Governmental Lender, and the Fiscal Agent (the "Funding Loan Agreement") pursuant to which the above-captioned Note (the "Governmental Lender Note") was issued.

1. You are requested to disburse funds from the [Note Proceeds Account/Equity Account] of the Project Fund pursuant to Section 7.7 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 Funding 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: Potrero Block X

Draw # \_\_\_\_\_

Page 2

Project Fund, have been or will be applied (or deemed applied pursuant to the Tax Certificate) 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; and

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

3. The undersigned has provided you with this Requisition an endorsement to the mortgage title insurance policy delivered to the Fiscal Agent at closing increasing the affirmative mechanics and materialmen's lien coverage to an amount equal to the aggregate amount paid out of the Project Fund including the amount to be paid under the requisitions then being submitted, together with any lien waivers or reports with respect to title to the Project required for the issuance of such endorsement.

Project: Potrero Block X

Draw # \_\_\_\_\_

Page 3

Dated: \_\_\_\_\_

**BORROWER:**

**Potrero Housing Associates I LP,**  
a California Limited Partnership

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

By: MCB Family Housing, Inc.,  
a California nonprofit public benefit  
corporation, its sole  
member/manager

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Project: Potrero Block X

Draw # \_\_\_\_\_

Page 4

Approved:

Citibank, N.A., Funding Lender

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

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REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

POTRERO HOUSING ASSOCIATES I, LP

Dated as of December 1, 2016

Relating to:

City and County of San Francisco  
Multifamily Housing Revenue Note  
(Potrero Block X),  
2016 Series \_\_\_\_\_

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REGULATORY AGREEMENT AND DECLARATION OF  
RESTRICTIVE COVENANTS

This REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Regulatory Agreement") is made and entered into as of December 1, 2016, by and 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 POTRERO HOUSING ASSOCIATES I, LP, a California limited partnership (the "Owner"), owner of a leasehold interest in the land described in Exhibit A attached hereto.

RECITALS

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

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

C. WHEREAS, simultaneously with the delivery of this Regulatory Agreement, the City is entering into a Funding Loan Agreement (the "Funding Loan Agreement") with Citibank, N.A. (the "Funding Lender") pursuant to which the Funding Lender (i) will advance funds (the "Funding Loan") to or for the account of the City, and (ii) the City will apply the proceeds of the Funding Loan to make a loan (the "Borrower Loan") to the Owner to finance the acquisition, construction and development of the Project; and

D. WHEREAS, in furtherance of the purposes of the Act and to evidence its obligation to make the payments due to the Funding Lender under the Funding Loan, the City is executing and delivering to the Funding Lender its revenue notes in one or more series designated "City and County of San Francisco Multifamily Housing Revenue Note (Potrero Block X), 2016 Series \_\_\_\_\_" (the "Revenue Note") pursuant to a Resolution adopted by the City on \_\_\_\_\_, 2016 (the "Resolution"); and

E. WHEREAS, simultaneously with the delivery of this Regulatory Agreement, the City and the Owner will enter into a Borrower Loan Agreement dated as of the date hereof (the "Borrower Loan Agreement"), whereby the City will make the Borrower Loan to the Owner and the Owner agrees to make loan payments to the City in an amount which will be sufficient to enable the City to repay the Funding Loan and to pay all costs and expenses related thereto when due;



F. WHEREAS, City hereby certifies that all things necessary to make the Revenue Note, when executed and delivered as provided in the Resolution, the valid, binding and limited obligations of the City have been done and performed, and the execution and delivery of the Revenue Note, in all respects have been duly authorized; and

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

### AGREEMENT

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

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

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

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

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

“Annual Monitoring Report” has the meaning set forth in Section 5(l).

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

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

“Available Units” - Residential units in the Project (except for not more than one unit set aside for resident managers) that are actually occupied and residential units in the Project that are vacant and have been occupied at least once after becoming available for occupancy, provided that (a) a residential unit that is vacant on the later of (i) the date the Project is acquired or (ii) the date of the execution and delivery of the Revenue 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.

“Bond Counsel” - An attorney or a firm of attorneys of nationally recognized standing in matters pertaining to the issuance, sale and delivery of bonds issued by states and their political subdivisions including as the context requires matters pertaining to the Act and the Code, who is selected by the City and duly admitted to the practice of law before the highest court of the State.

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

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

“CDLAC” - The California Debt Limit Allocation Committee.

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

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

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

]“Certificate of Preference” - A residential Certificate of Preference issued by the City pursuant to the City’s Certificate of Preference Program, as further described in attached Exhibit I.]

“City” The City and County of San Francisco, California.

“City Median Income” the “Maximum Income by Household Size” derived by the Mayor’s Office of Housing and Community Development and published annually, based on the

unadjusted area median income for the Area, as determined annually by HUD in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act and Section 3009a of the Housing and Economic Recovery Act of 2008 or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination, and being adjusted for household size, but unadjusted for high housing cost area.

“Closing Date” - The date of the execution and delivery of the Revenue Note, being \_\_\_\_ [ ], 2016.

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

“Completion Certificate” - The certificate of completion of the construction of the Project required to be delivered to the City and the 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.

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

“CTCAC” The California Tax Credit Allocation Committee.

“EAHP Certificate Holder” a person or household that has been issued a certificate under the Ellis Act Housing Preference Program, as further described in [Exhibit J].

“Facilities” - The multifamily buildings, structures and other improvements on the Site to be acquired, constructed, improved, and equipped, and all fixtures and other property owned by the Owner and located on the Site, or used in connection with, such buildings, structures and other improvements.

“Fiscal Agent” – US Bank, National Association and its successors and assigns.

“Funding Lender” – Citibank, N.A. and its successors and assigns.

“Funding Loan” – The loan by the Funding Lender to the City, the proceeds of which are loaned by the City to the Owner pursuant to the Borrower Loan Agreement.

“Funding Loan Agreement” – The Funding Loan Agreement of even date herewith, among the City, the Fiscal Agent and the Funding Lender, pursuant to which the Funding Loan was made.

“General Partner” - Potrero Housing I, LLC, and/or any other Person that the partners of Owner, with the prior written approval of City [and the Funding Lender] (to the extent required pursuant to the Loan Documents), have selected to be a general partner of Owner, and any

successor general partner of the Owner, in each case to the extent permitted under the Loan Documents and hereunder.

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

“Housing 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” – \_\_\_\_\_, the date of adoption of the Inducement Resolution.

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

“Investor Limited Partner” – Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation, or its affiliate(s), that has been admitted as a limited partner in Owner in accordance with the Partnership Agreement, together with its successors and assigns.

“Low Income Tenant” any Tenant whose Adjusted Income does not exceed sixty percent (60%) 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 Qualified Tenants. The determination of a Tenant’s status as a 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.

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

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

“Owner” – Potrero Housing Associates I, L.P., a California limited partnership, and its permitted successors and assigns.

“Partnership Agreement” - The Amended and Restated Agreement of Limited Partnership relating to 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 portion of the Facilities constituting a multifamily rental housing development and the portion of the common areas and the Site set aside or allocated for use by the Tenants and managers.

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

“Qualified Project Costs” - The Project Costs incurred after the date which is sixty days prior to the Inducement Date and that are chargeable to a capital account with respect to the Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Owner or but for the proper election by the Owner to deduct those amounts, within the meaning of Treasury Regulations Section 1.103-8(a)(1); provided, however, that only such portion of the interest accrued during construction of the Project shall constitute a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs, and provided further that such interest shall cease to be a Qualified Project Cost on the Completion Date, and provided still further that if any portion of the Project is being constructed by an Affiliated Party (whether as a general contractor or a subcontractor), “Qualified Project Costs” shall include only (a) the actual out-of-pocket costs incurred by such Affiliated Party in constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Affiliated Party, and (c) any overhead expenses incurred by the Affiliated Party which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from

members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such Affiliated Party due to early completion of the Project (or any portion thereof). Qualified Project Costs do not include Costs of Issuance.

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

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

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

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

(d) the date that is fifty-five (55) years after the Closing Date; or

(e) such later date as may be provided in Section 5 or Section 7 hereof.

“Qualified Tenant” – a Low Income Tenant or a Very Low Income Tenant.

“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 or a Low Income Unit.

“Revenue Note” - City and County of San Francisco Multifamily Housing Revenue Note (Potrero Block X), 2016 Series \_\_\_\_, issued pursuant to the Resolution.

“Security Instrument” – The Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof and assigned to the Funding Lender to secure the Funding Loan, encumbering the Project,

“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” – Collectively, the Certificate as to Arbitrage of the City, dated the date of the execution and delivery of the Revenue Note, executed and delivered by the City and the Owner, as amended or supplemented from time to time, and the Certificate Regarding Use of

Proceeds of the Borrower, dated the date of the execution and delivery of the Revenue Note, as amended or supplemented from time to time.

“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. [NOTE: In the event of loss of HUD subsidy, this 50% figure may increase to 60%. Language reflecting this possibility to be added.] 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. Acquisition and Construction of the Project. The Owner hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Owner has incurred, or will incur within six months after the Closing Date, a substantial binding obligation to commence the construction of the Project, pursuant to which the Owner is or will be obligated to expend at least the lesser of (i) 5 percent of the aggregate principal amount of the Revenue Note or (ii) \$100,000.

(b) The Owner's reasonable expectations respecting the total cost of construction of the Project and the disbursement of Revenue 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 acquisition and construction of the Project and expects to expend the maximum authorized amount of the Borrower Loan for Project Costs within 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 Revenue 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 Revenue 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 Revenue 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 sale of the Revenue 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 Revenue Note, the expenditure of such draw, when added to all previous disbursements representing proceeds of the Revenue Note, will result in not less than 97 percent of all disbursements of the proceeds of the Revenue Note having been used to pay or reimburse the Owner for Qualified Project Costs and less than 25 percent of all disbursements having been used to pay for the acquisition of land or any interest therein.

(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 Revenue 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 Revenue Note shall be used to pay issuance costs of the Revenue 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 Revenue 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 Revenue 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 Bond Counsel to the City, to comply fully with the Act, the Code and all applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service to the extent necessary to maintain the exclusion from gross income for federal income tax purposes of the Holder of the Revenue 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 Revenue 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 acquired and constructed for the purpose of providing affordable multifamily residential rental property, and the Owner shall own, manage and operate the Project as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with applicable provisions of Section 142(d) of the Code and Section 1.103-8(b) of the Regulations, and the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

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

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

(d) No part of the Project will at any time be owned as a condominium or by a cooperative housing corporation, nor shall the Owner take any steps in connection with a conversion to such ownership or uses. Other than obtaining a final subdivision map on the Project and a Final Subdivision Public Report from the California Department of Real Estate and, the Owner shall not take any steps in connection with a conversion of the Project to a condominium ownership except with the prior written opinion of Bond Counsel that the interest on the Revenue 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) 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 (iii) of this paragraph, upon receipt by the Owner, the Funding Lender and the City of an opinion of Bond Counsel to the effect that compliance with such other requirement will not adversely affect the Tax-Exempt status of interest on the Revenue 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 (including the portions of the common areas allocated to the Project), as evidenced by the ownership, management, accounting and operation of the Project.

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

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

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

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

(k) The Project will have 72 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, the 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, that is, in favor of the lowest income and rent restriction.

(i) Very Low Income Units. 62 units in the Project shall be rented to and continuously occupied by households who qualify as Very Low-Income Tenants. The monthly rent charged for all the Very Low Income Units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 50% of the lower of City Median Income or Median Income for the Area [NOTE: In the event of loss of HUD subsidy, this 50% figure may increase to 60%. Language reflecting this possibility to be added.].

(ii) Low Income Units. 9 units in the Project shall be rented to and continuously occupied by households who qualify as Low-Income Tenants.

(iii) Income Restrictions Pursuant to the Code. Pursuant to the requirements of Section 142(d) of the Code, for the Qualified Project Period, not less than forty percent (40%) of the total number of completed units in the Project (excluding the manager's unit), or twenty-nine (29) 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 the 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)(iii) 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.

(iv) 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-nine (29) 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 the 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 502080(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)(iv) by complying with the requirements of Section 4(a)(i), to the extent such compliance meets the requirements of Section 52080(a)(1)(B) of the Housing Law.

(v) CDLAC Requirements. To the extent the income and rent restrictions contained in the CDLAC Requirements are more restrictive, the Owner shall comply with the CDLAC Requirements.

(b) Over-Income Tenants. Notwithstanding the foregoing provisions of Section 4(a), no Tenant qualifying as a Low-Income Tenant or a Very Low Income Tenant (a "Qualified Tenant") upon initial occupancy shall be denied continued occupancy of a Restricted Unit in the Project because, after admission, the aggregate Adjusted Income of all Tenants in the Restricted Unit increases to exceed the qualifying limit for such Restricted Unit.

However, should the aggregate Adjusted Income of Tenants in a Restricted Unit, as of the most recent determination thereof, exceed one hundred forty percent (140%) of the applicable income limit for such Restricted Unit occupied by the same number of Tenants, the next available unit of comparable or smaller size must be rented to (or held vacant and available for immediate occupancy by) a Qualified Tenant. The unit occupied by such Tenants whose aggregate Adjusted Income exceeds such applicable income limit shall continue to be treated as occupied by a Qualified Tenant for purposes of the requirements of Section 4(a) hereof unless and until an Available Unit of comparable or smaller size is rented to persons other than Qualified Tenants. Moreover, a unit previously occupied by a Qualified Tenant and then vacated shall be considered occupied by a Qualified Tenant until reoccupied, other than a reoccupation for a temporary period, at which time the character of the unit shall be re-determined. In no event shall such temporary period exceed thirty-one (31) days. The parties agree that this paragraph shall have no practical effect because 100% of the units in the Project are required to be Restricted Units pursuant to Section 4(a).

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

rules, rulings, policies, procedures or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code.

(d) Certificate of Continuing Program Compliance. Upon the commencement of the Qualified Project Period, and on each February 1st thereafter (or such other date as shall be requested in writing by the City or the Program Administrator) during the term of this Regulatory Agreement, the Owner shall advise the Program Administrator of the status of the occupancy of the Project by delivering to the Program Administrator (with a copy to the Fiscal Agent) 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 Revenue 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 Fiscal Agent, 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 Fiscal Agent. Failure to comply with the provisions of this paragraph will subject the Owner to penalty, as provided in Section 6652(j) of the Code.

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

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

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

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

(i) encumber any portion of the Project or grant commercial leases of any part thereof; or permit the conveyance, transfer or encumbrance of any part of the Project (except for apartment leases), except (i) pursuant to the provisions of this Regulatory Agreement and on a basis subordinate to the provisions of this Regulatory Agreement, to the extent applicable, (ii) upon receipt by the Owner, the Fiscal Agent and the City of an opinion of Bond Counsel that such action will not adversely affect the Tax-Exempt status of interest on the Revenue 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 a Restricted Unit shall be limited to the percentage of the annual increase in the applicable Median Income for the Area for that Unit. Rent increases which are permitted but not made in a given year may not be carried forward and made in any subsequent year.

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

(d) Management Agent. The Owner shall not enter into any agreement providing for the management or operation of the Project with any party other than BRIDGE Property Management Company, a California nonprofit public benefit 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 [and attached Exhibit J], to the extent such compliance is not in conflict with any other requirements imposed on the Project pursuant to Section 142(d) of the Code, the Act, the CDLAC Resolution, or CTCAC.

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

(g) 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 Qualified Tenant's income, pursuant to Section 4(c), indicates that the Qualified Tenant's income exceeds one hundred twenty percent (120%) of the Median Income for the Area, the Owner shall terminate such lease upon one

hundred twenty (120) days prior written notice to the Tenant, and the lease for each Restricted Unit shall contain a statement to the foregoing effect. Notwithstanding the foregoing, the Owner shall not be required to terminate the Qualified Tenant's lease if any regulation or statute governing the Project or the financing thereof prohibits the termination of the Tenant's lease in this manner.

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

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

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

(k) Marketing and Tenant Selection Plan. Owner will market the Restricted Units in accordance with the marketing and tenant selection plan approved by the City, which shall be substantially in the form attached hereto as Exhibit K.

(l) Annual Reporting. Owner must file with the City annual report forms (the "Annual Monitoring Report") no later than one hundred twenty (120) days after the end of Borrower's business year. The Annual Monitoring Report must be in substantially the form attached as Exhibit I or as later modified during the Compliance Term.

6. Additional Requirements of State Law. In addition to the requirements set forth above, the 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 6(e) shall have no practical effect because one hundred percent (100%) of the units in the Project (excluding the manager's unit) 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 and redemption of the Revenue Note, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units reserved for occupancy as required by Subsection 4(a)(iv) shall remain available to any eligible Tenant occupying a reserved unit at the date of such expiration or termination, at the rent determined by Subsection 4(a)(iv), until the earliest of (1) the household's income exceeds 120% of the maximum eligible income specified therein, (2) the household voluntarily moves or is evicted for good cause, as deemed in the Act, (3) 55 years after the date of the commencement of the Qualified Project Period, and (4) the Owner pays the relocation assistance and benefits to households if required by Section 7264(b) of the California Government Code.

(g) Availability Preceding Expiration of Qualified Project Period. During the three (3) years prior to the later of (i) the expiration of the Qualified Project Period or (ii) the date that is 55 years after the date of commencement of the Qualified Project Period, the 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 subsequent 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 so long as the Owner's partnership agreement will not be amended, modified or supplemented other than in connection with such syndication; provided, however, that the Owner shall provide to the City, at least five (5) Business Days prior to the effective date of any such subsequent syndication, written notice of such syndication certifying that no amendment, modification or supplement to the Owner's partnership agreement will be effected other than in connection with such syndication, together with copies of any assignments of limited partnership interests and any other syndication documents. In addition, the City's prior approval shall not be required for any transfer of the Investor Limited Partner's interest in the Owner pursuant to the Partnership Agreement as amended from time to time. Any other syndication of the Project shall be subject to the prior written approval of the Director of the Mayor's Office of Housing of the City, which approval shall be granted only after the City determines that the terms and conditions of such syndication (1) shall not reduce or limit any of the requirements of the Act or regulations adopted or documents executed pursuant to the Act, (2) shall not cause any of the requirements of the City set forth in this Section 6 hereof to be subordinated to the syndication agreement, and (3) shall not result in the provision of fewer Restricted Units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

7. CDLAC Requirements. The 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. \_\_\_\_ adopted on \_\_\_\_\_, \_\_\_\_, attached hereto as Exhibit G (the "CDLAC Resolution"), which conditions (the "CDLAC Requirements") are incorporated herein by reference and are made a part hereof. The Owner shall prepare and submit to the City a Certificate of Compliance in substantially the form attached hereto as Exhibit G, executed by an authorized representative of the Owner.

8. 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 Revenue 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 Borrower Loan or the Funding Loan or otherwise, including without limitation, any advances of the Borrower Loan or the Funding Loan; (c) arising from any act or omission of the Owner or any of its agents, servants, employees or licensees, in connection with the Borrower 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 Borrower Loan Agreement, 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, acquisition, installation, or construction of, the Project or any part thereof; and (f) arising out of or in connection with the exercise by the City or the Funding Lender of their powers or duties under the Borrower Loan Agreement, 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 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 employment of counsel selected by the Indemnified Party; and the Owner shall assume the payment of all reasonable fees and expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Notwithstanding the foregoing, no indemnification obligation shall give rise to an obligation to pay principal and interest in the Loan, which is not otherwise set forth in the Funding Loan Agreement, the Loan Agreement, the Note or any other agreement relating to the Revenue 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, provided that if the Indemnified Party is the City, the selection of counsel rests in the sole discretion of the City Attorney, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. If a potential conflict exists between Owner's defense and the interests of an Indemnified Party, then such Indemnified Party shall have the right to engage separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Owner shall pay the reasonable fees and expenses of such separate counsel.

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

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

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

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

9. Consideration. The City has issued the Revenue Note and made the Borrower 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 Borrower Loan by the City, the Owner has entered into this Regulatory Agreement and has agreed to restrict the use of the Project on the terms and conditions set forth herein.

10. Reliance. The City and the Owner hereby recognize and agree that the representations, warranties, covenants and agreements set forth herein may be relied upon by all persons interested in the legality and validity of the Revenue Note, and in the exclusion from gross income for federal income tax purposes of the interest on the Revenue Note. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner, Qualified Tenants, and upon audits of the books and records of the Owner pertaining to the Project. In addition, the City may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the City hereunder in good faith and in conformity with such opinion.

11. Sale or Transfer of the Project. The Owner intends to hold the Project for its own account, has no current plans to sell, transfer or otherwise dispose of the Project, and, except as otherwise provided herein, hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof (other than for individual tenant use as contemplated hereunder) or interest therein, including any interest in the Owner, without obtaining the prior written consent of the City, which consent shall not be unreasonably withheld, and receipt by the City of (i) evidence satisfactory to the City that the Owner's purchaser or transferee has assumed in writing and in full, the Owner's duties and obligations under this Regulatory Agreement, (ii) an opinion of counsel of the transferee that the transferee has duly assumed the obligations of the Owner under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee, (iii) evidence acceptable to the City that either (A) the purchaser or assignee has experience in the ownership, operation and management of rental housing projects in the City such as the Project without any record of material violations of discrimination restrictions or other state or federal laws or regulations applicable to such projects, or (B) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subparagraph (A) above or (C) if the purchaser or assignee does not have management experience, the City may cause the Program Administrator to provide

on-site training in program compliance if the City determines such training is necessary, (iv) evidence satisfactory to the City that no event of default exists under this Regulatory Agreement, the Borrower Loan Agreement or any document related to the Borrower 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 Bond Counsel to the effect that such transfer will not, in itself, cause interest on the Revenue Note to become includable in the gross income of the recipients thereof for federal income tax purposes. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 11 shall be null, void and without effect, shall cause a reversion of title to the Owner, and shall be ineffective to relieve the Owner of its obligations under this Regulatory Agreement. Nothing in this Section 11 shall affect any provision of any other document or instrument between the Owner and any other party which requires the Owner to obtain the prior written consent of such other party in order to sell, transfer or otherwise dispose of the Project. Not less than 60 days prior to consummating any sale, transfer or disposition of any interest in the Project, the Owner shall deliver to the City a notice in writing explaining the nature of the proposed transfer. Notwithstanding the foregoing, the provisions of this Section 11 shall not apply 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 paragraph (i) of Section 6), and (b) the General Partner interest to an affiliate of the General Partner or any affiliate of the Investor Limited Partner.

12. Term. Subject to the following paragraph of this Section 12, Section 8 hereof and to any other provision expressly agreed herein to survive the termination of this Regulatory Agreement, this Regulatory Agreement and all of the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for the longer of (a) the Qualified Project Period or (b) fifty-five (55) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied.

The terms of this Regulatory Agreement to the contrary notwithstanding, this Regulatory Agreement shall terminate and be of no further force and effect in the event of (i) involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency after the Closing Date, which prevents the City from enforcing such provisions, or (ii) foreclosure, exercise of power of sale, transfer of title by deed in lieu of foreclosure, or condemnation or a similar event, but only if, in case of the events described in either clause (i) or (ii) above, within a reasonable period, either the Revenue Note is paid in full or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, exercise of power of sale, or the delivery of a deed in lieu of foreclosure or a similar event, the Owner or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Owner hereby agrees that, following any foreclosure, exercise of power of sale, transfer of title by deed in lieu of foreclosure or similar event, neither the Owner nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes. Notwithstanding any other provisions of this Regulatory Agreement to the contrary, this entire Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the City and the Owner subject to compliance with any of the provisions contained

in this Regulatory Agreement only if there shall have been received an opinion of Bond Counsel that such termination will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Revenue Note or the exemption from State personal income taxation of the interest on the Revenue 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.

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

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

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

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

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

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

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

18. Payment of Fees. Notwithstanding any prepayment of the Borrower Loan Agreement notwithstanding a discharge of the Borrower Loan Agreement or the Revenue Note, 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 any of them hereunder and reimbursement for all expenses incurred by it in connection therewith.

The Owner shall pay to the City (i) an initial issuance fee of \$[\_\_\_\_\_] (which is equal to one quarter of one percent (0.25%) of the maximum principal amount of the Revenue Note) and (ii) an annual administrative fee not to exceed one eighth of one percent (0.125%) of the principal amount of the Revenue 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, the Fiscal Agent and/or the Program Administrator in connection with such action.

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





If to the Owner: Potrero Housing Associates I, LP  
c/o Bridge Housing  
600 California Street, Suite 900  
San Francisco, California 94108  
(415) 495-4898  
Attention: Director  
Facsimile: (415) 495-4898

With a copy to: Gubb & Barshay LLP  
505 14<sup>th</sup> Street, Suite 1050  
Oakland, California 94612  
Attention: Scott Barshay, Esq.  
Facsimile: (415) 781-6967

If to the Investor Limited Partner: Wells Fargo Affordable Housing  
Community Development Corporation  
MAC D1053-170  
301 South College Street  
Charlotte, NC 28288  
Attention: Director of Tax Credit Asset Management

With a copy to: Sidley Austin, LLP  
One South Dearborn  
Chicago, Illinois 60603  
Attention: Philip C. Spahn, Esq.  
Facsimile: (312) 853-7036

If to the Funding Lender: Citi Community Capital  
One Sansome Street  
Glendale, California 91204  
Attention: Merle Malakoff  
(415) 658-4309  
Deal ID# [\_\_\_\_\_] ]  
Facsimile: [\_\_\_\_\_] ]

With a copy to: Paul Hasting LLP  
515 South Flower Street, 25<sup>th</sup> Floor  
Los Angeles, California 90071  
Kenneth Krug  
(213) 683-6230  
Facsimile: [\_\_\_\_\_] ]

If to the Fiscal Agent: US Bank, National Association

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

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

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

25. Third-Party Beneficiaries. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are entered into for the benefit of various parties, including CDLAC. The parties hereto acknowledge that the 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 16 hereof, the terms hereof and the terms of the CDLAC Resolution. In addition, CDLAC is intended to be and shall be a third-party beneficiary of this Regulatory Agreement. Notwithstanding the above, CDLAC shall be entitled solely to enforce the terms of the CDLAC Resolution, and any enforcement of the terms and provisions of the CDLAC Resolution by CDLAC shall not adversely affect the interests of the 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 6 hereof may be enforced either in law or in equity by any resident, local agency, entity, or by any other person adversely affected by the Owner's failure to comply with that Section.

[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

Approved as to Form:  
DENNIS J. HERRERA  
City Attorney

By \_\_\_\_\_  
Deputy City Attorney

[Signatures continue on following page.]

OWNER:

POTRERO HOUSING ASSOCIATES I, LP,  
a California limited partnership

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

By: MCB Family Housing, Inc.,  
a California nonprofit public benefit corporation,  
its sole member/manager

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

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SITE**

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

**EXHIBIT B**

**INCOME CERTIFICATION FORM**

[insert current TCAC Income Certification Form and Instructions (Date)]

## EXHIBIT C

### COMPLETION CERTIFICATE

CITY AND COUNTY OF SAN FRANCISCO

Mayor's Office of Housing

1 South Van Ness Avenue, 5th Floor

San Francisco, California 94103

The undersigned (the "Owner") hereby certifies that all aspects of the construction of the Project (as that term is used in the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of \_\_\_\_\_, 2016, by and between the City and County of San Francisco and the Owner (the "Regulatory Agreement")) were substantially completed and available for occupancy by tenants in the Project as of \_\_\_\_\_.

1. The undersigned hereby certifies that:

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

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

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

[Signatures appear on next page]

OWNER:

POTRERO HOUSING ASSOCIATES I, LP,  
a California limited partnership

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

By: MCB Family House, Inc.,  
a California nonprofit public benefit corporation,  
its sole member/manager

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

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



**EXHIBIT D**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

Project Name:

CDLAC Application Number(s):

CDLAC Resolution Number(s):

Property Address:

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

Name of Obligation:

The undersigned, being the authorized representatives of Potrero Housing Associates, I, L.P., a California limited partnership (the "Owner"), hereby certifies that he/she has read and is thoroughly familiar with the provisions of the various documents associated with the Owner's participation in the City and County of San Francisco (the "City") Multifamily Housing Program, such documents including:

2. the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of \_\_\_\_\_ (the "Regulatory Agreement"), between the Owner and the City; and

3. the Borrower Loan Agreement, dated as of \_\_\_\_\_, between the City and the Owner.

The undersigned further certifies that:

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

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

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

B. During the preceding twelve-months (i) such Project was continually in compliance with the Regulatory Agreement executed in connection with such loan from the City and (ii) and \_\_\_% of the units in the Project were occupied by Very Low Income Tenants (minimum of 100%).

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

Occupied by Qualified Tenants:

Studio units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_  
2 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_  
3 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

Total percentage occupied by Qualified Tenants: \_\_\_\_\_

Held vacant for occupancy continuously since last occupied by a Qualified Tenant:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

Vacant Units:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

It hereby is confirmed that each tenant currently residing in a unit in the Project has completed an Income Certification Form in the form approved by the City and that since commencement of the Qualified Project Period (as such term is defined in the Regulatory Agreement), not less than 100% of the occupied units in the Project have been rented to (or are vacant and last occupied by) Qualified Tenants. The undersigned hereby certifies that the Owner is not in default under any of the terms and provisions of the above documents.

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

E Select appropriate certification: [No unremedied default has occurred under this Regulatory Agreement, the Revenue Note, the Loan Borrower Agreement or the Security Instrument.] [A default has occurred under the \_\_\_\_\_. The nature of the default and the measures being taken to remedy such default are as follows: \_\_\_\_\_.]

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

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

[Describe any requirements not satisfied: \_\_\_\_\_]

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

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

\_\_\_\_\_ After-school Programs

\_\_\_\_\_ Educational, health and wellness, or skill building classes

\_\_\_\_\_ Health and Wellness services and programs (not group classes)

\_\_\_\_\_ Licensed Childcare provided for a minimum of 20 hours per week (Monday-Friday)

\_\_\_\_\_ Bona-Fide Service Coordinator/ Social Worker

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

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

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

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

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

Date: \_\_\_\_\_

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

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

**EXHIBIT E - SAMPLE**

**CERTIFICATE AS TO COMMENCEMENT OF QUALIFIED PROJECT PERIOD**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

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

\$ \_\_\_\_\_  
City and County of San Francisco  
Multifamily Housing Revenue Note  
(Potrero Block X), 2016 Series \_\_\_\_

The undersigned, being the authorized representative(s) of, Potrero Housing Associates, L.P., a California limited partnership, hereby certifies that: (complete blank information):

Ten percent (10%) of the dwelling units in the Project financed in part from the proceeds of the captioned Revenue Note were first occupied on \_\_\_\_\_;

Fifty percent (50%) of the dwelling units in the Project financed in part from the proceeds of the captioned Revenue Note were first occupied on \_\_\_\_\_.

DATED:

OWNER:

POTRERO HOUSING ASSOCIATES I, LP,  
a California limited partnership

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

By: MCB Family House, Inc.,  
a California nonprofit public benefit corporation,  
its sole member/manager

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

Acknowledged:  
City and County of San Francisco

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

**EXHIBIT F**  
**CDLAC RESOLUTION**

**EXHIBIT G - SAMPLE**

**CERTIFICATE OF COMPLIANCE (CDLAC RESOLUTION)**

Project Name: Potrero Block X

CDLAC Application No.: \_\_\_\_\_

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

I further certify that I have read and understand Section 3 of the Resolution, which specifies that once the Revenue Note is executed and delivered, the terms and conditions set forth in the Resolution shall be enforceable by the Committee through an action for specific performance or any other available remedy (as further explained in Section \_\_\_\_\_ of the Resolution).

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

\_\_\_\_\_  
Date

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

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

## EXHIBIT H

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

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

1. Nondiscrimination; Penalties.

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

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

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

(iv) Condition to Contract. As a condition to this Regulatory Agreement, the Owner shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(v) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Regulatory Agreement as though fully set



forth herein. The Owner shall comply fully with and be bound by all of the provisions that apply to this Regulatory Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Owner understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Regulatory Agreement may be assessed against the Owner and/or deducted from any payments due the Owner.

2. Local Business Enterprise Utilization; Liquidated Damages.

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

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

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

Owner agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and

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

3. Prevailing Wages. Owner understands and agrees that all provisions of section 1770, *et seq.*, of the California Labor Code are required to be incorporated into every contract for any public work or improvement and are hereby incorporated into this contract. Owner also understands and agrees that all provisions of sections 6.22E and 6.22F of the San Francisco Administrative Code are hereby incorporated into this contract. Owner also understands and agrees that all applicable provisions of the Davis-Bacon Act (40 U.S.C. §§3141 *et seq.*) are hereby incorporated into this contract.

4. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing this Regulatory Agreement, the person executing this Regulatory Agreement on behalf of the Owner acknowledges and agrees that he or she has read and understood this Section.

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

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

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

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

organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

9. Limitations on Contributions. Through execution of this Regulatory Agreement, the Owner acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Owner acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Owner further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Owner's board of directors; the Owner's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Owner; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Owner. Additionally, the Owner acknowledges that the Owner must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. The Owner further agrees to provide to the City the names of each person, entity or committee described above.

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

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

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

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

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

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

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

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

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

11. Requiring Health Benefits for Covered Employees. The Owner agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance

(HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Regulatory Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Regulatory Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Protection of Private Information. The Owner has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. The Owner agrees that any failure of the Owner to comply with the requirements of Section 12M.2 of this Chapter shall

be a material breach of this Regulatory Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Regulatory Agreement, bring a false claim action against the Owner pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Owner.

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

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

Any failure by the Owner to comply with this section of this Regulatory Agreement shall constitute a material breach of this Regulatory Agreement.

15. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for penalties set forth in that Section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement

to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

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

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

18. Proprietary or Confidential Information of City. The Owner understands and agrees that, in the performance of the work or services under this Regulatory Agreement or in contemplation thereof, the Owner may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. The Owner agrees that all information disclosed by City to the Owner shall be held in confidence and used only in the performance of the Regulatory Agreement. The Owner shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

19. Earned Income Credit (EIC) Forms. Administrative Code Section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. The Owner shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Regulatory Agreement becomes effective (unless the Owner has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is



hired by the Owner; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Regulatory Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Owner of the terms of this Regulatory Agreement. If, within thirty days after the Owner receives written notice of such a breach, the Owner fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, the Owner fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Regulatory Agreement or under applicable law. Any Subcontract entered into by the Owner shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section. Capitalized terms used in this Section and not defined in this Regulatory Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

**EXHIBIT I**

**Form of Annual Monitoring Report**

[To be attached]

## EXHIBIT J

### OPERATIONAL RULES FOR SAN FRANCISCO HOUSING LOTTERIES AND RENTAL LEASE UP ACTIVITIES

In order to implement consistent and transparent marketing practices for all affordable housing under the purview of the Mayor's Office of Housing and Community Development (MOHCD), the following policies and procedures have been adopted. The Borrower hereby acknowledges and agrees to follow these procedures as outlined below, except as otherwise agreed to in writing between the Borrower and the City.

If ever there is a conflict between a recorded development agreement and this document, the executed development agreement will prevail. Likewise, when state and federal funding sources conflict with anything outlined in this document, they too shall prevail.

#### HOUSING PREFERENCE PROGRAMS

The Borrower hereby agrees that first preference in occupying units designated for Low Income Households (Low Income Units) will be given to persons who have been issued a Residential Certificate of Preference (COP) and who meet all qualifications for the unit.

The Borrower further agrees that second preference in occupying units designated for Low Income Households will be given to persons who have been issued an Ellis Act Housing Preference Program (EAHP) Certificate and who meet all qualifications for the unit; provided, however, if the Project will include funds from the California Department of Housing and Community Development, this EAHP priority (and the corresponding requirements set forth below) will not apply for so long as the Project is subject to the requirements associated with such financing.

For new residential developments going through the initial lease-up process, the EAHP priority shall apply to twenty percent (20%) of the Low Income Units. Thus, if the number of units available exceeds the number of qualified applicants who hold a COP or other preference as dictated by specific loan documents or marketing plan, the next priority will go to EAHP certificate holders for up to twenty percent (20%) of the total Low Income Units. The EAHP priority does not apply at initial lease-up or sale to buildings having four (4) or fewer Low Income Units. However, the EAHP priority does apply to these same units upon re-rental.

Low Income Units with other occupancy priorities required by law, contract, or program rules may apply the COP and EAHP after other preferences, with COP holders being granted priority above EAHP certificate holders. Preferences required by a former Redevelopment Project Area Plan are not pre-empted by the COP Program or the Ellis Act Housing Preference Program. Preferences required by the LOSP, Direct Access to Housing Program, Housing First Program, or other government programs are not pre-empted by the Ellis Act Housing Preference Program.

#### Marketing and Tenant Selection Plan

The Borrower agrees to supply Mayor's Office of Housing and Community Development (MOHCD or the City) with a complete and updated marketing and tenant selection plan in form and substance acceptable to the City ("Marketing and Tenant Selection Plan"), including resident selection criteria, at least six months prior to construction completion. The Marketing and Tenant Selection Plan shall be submitted on a template form as provided by MOHCD, substantially in the form attached as Exhibit K. This Marketing and Tenant Selection Plan shall not be changed without providing the City with at least fourteen (14) calendar days' written notice.

New rental units shall be marketed for at least a twenty-eight (28) -day period, including a listing on the MOHCD website and on MOHCD's email housing alert system. Applicants shall submit an abridged lottery application form only and supply full income and other documentation if selected in the lottery process to proceed with a rental.

### **Outreach to Certificate Holders**

The City shall furnish the following:

- Written and/or printed notices to EAHP certificate holders advising them that units will soon be available.
- Names and addresses of COP certificate holders. MOHCD shall address printed notices created by Borrower using an MOHCD provided template. Borrower is responsible for the full cost of the mailing to COP certificate holders.
- Assistance to qualified tenants in filing COP and EAHP applications or referral to an appropriate housing counseling organization.

The Borrower agrees to:

- Written and mailed notices to COP certificate holders advising them that units are available using a template provided by MOHCD. COP mailings are at the cost of the Borrower.
- During the application period, conduct at least one general informational meeting for all persons interested in applying for occupancy in the development, at which the Borrower shall review application procedures.
- Specifically for COP and EAHP certificate holders, make support services staff available to provide assistance throughout the application process, as it may be needed, with the goal of maximizing COP/EAHP participation to the extent possible. The Borrower shall ensure that COP/EAHP certificate holders are aware that such assistance is available.

### **Application**

The Borrower agrees to use a pre-lottery application template provided by MOHCD. After the lottery, the Borrower may require applicants to complete an additional application provided such additional application is included in the Marketing and Tenant Selection Plan and pre-approved by MOHCD.

### **Pre-Lottery Application Status Reports**

The Borrower agrees to supply the City with the names, addresses, and housing preference certificate numbers (when available) of all applicants, including whether or not they indicate they are eligible for COP or EAHP priority status. The City will provide a template to be used to provide this status report, at a minimum, every seven (7) calendar days from the initial date applications are accepted. The City will, in turn, verify within seven (7) calendar days which such applicants are qualified as COP or EAHP certificate holders.

After the application period has closed, and at least five (5) business days prior to lottery proceedings, a non-prioritized list of all interested applicants will be provided to MOHCD on the template provided. The list shall include applicant names, addresses, and whether the applicant holds a COP or an EAHP certificate. If MOHCD does not receive this final applicant list within five (5) business days prior to the lottery, it will be cause to postpone the lottery proceedings until the complete list is received.

### **Lottery**

The Borrower shall ensure that all COP certificate holders receive first priority for occupancy and EAHP certificate holders receive second priority for occupancy in twenty percent (20%) of units, except in cases where approved and documented occupancy priorities preempt the COP and EAHP preferences. EAHP certificate holders who are not offered a unit in the twenty percent (20%) set aside shall have equal chance at any remaining units as other qualified applicants.

The Borrower shall hold a public lottery to select renters. Applicants who submit a complete application by the application deadline receive a numbered lottery ticket whose twin ticket is entered into the lottery. Upon pre-approval from the City, lotteries may also be conducted using names of applicants.

When a Borrower chooses to receive applications by mail, applicants must be notified that applications must be post marked prior to the application deadline. Borrowers receiving applications via mail must allow five (5) business days from the application deadline before scheduling the lottery to allow for mail delivery. As stated above, the final application list is due to MOHCD at least five (5) business days prior to the lottery, therefore Borrowers who elect to receive applications via mail must allow ten (10) business days from the application deadline to the lottery date.

Lotteries are held in a public, accessible location. Applicants are invited to attend lotteries, but attendance is not mandatory.

To conduct the lottery, the City and/or the Borrower shall pull application tickets from a vessel and order and record the lottery results in rank order by application ticket number. When using names, Borrower shall pre-enter all applicant names onto individual name cards. All EAHP certificate holders should have two name cards. Names shall be pulled from a vessel in rank order. There should be separate lotteries held for each preference. First, COP certificate holders will be drawn and ranked, followed by EAHP certificate holders, followed by applicants from the general population. The EAHP certificate holder's second card will be included in the general lottery. Electronic lotteries are not allowed.

The Borrower should use a large computer or projector screen or hand printed flip chart sheets to display all numbers/names drawn and the sequenced lottery number assigned for each preference lottery and the general lottery. This can be done by listing all applicants in separate columns under each preference category.

The Borrower should record each name card/number ticket assigned a lottery number onto the applicant list template provided by MOHCD. A computer master list as well as a hand printed paper list for double checking. Results will remain projected on a screen or posted flip chart paper throughout the lottery drawing process for the public to view and record results.

The Borrower shall record the order of lottery numbers/names drawn and produce a final ranked lottery list for each preference and for the general lottery. Once the lottery preferences have been confirmed and applied, the Borrower must notify applicants of their position in the lottery by posting the results on Borrower's website or another public site and/or by mail.

### **Post-Lottery Lease up Instructions**

The Borrower agrees to contact each applicant in lottery rank order to set up an interview where the Borrower will receive supporting documents from the applicant (i.e., income documentation, tax returns, and bank statements).

The Borrower agrees to income qualify each household member based on the supporting documents submitted by the applicant. Income qualification cannot be based solely on what's reported by the applicant on the application.

In accordance with San Francisco Administrative Code Section 12H and applicable laws of the State of California, Borrower shall not use citizen status as a qualification for selection. Borrower shall not ask for social security information prior determining the household's income eligibility.

The Borrower shall comply with San Francisco Police Code Article 49, Sections 4901-4920 (the "Fair Chance Ordinance") and the specific screening requirements set forth in Exhibit I (Tenant Screening Criteria Policy).

The Borrower agrees to offer units in ranked order to applicants who meet all qualifications. If an applicant is still in the review process and the applicant behind them in lottery rank order has been approved, the first applicant must be offered a specific unit that is reserved for that applicant until all qualifications have been reviewed and approved.

**In the case where an applicant is denied for housing and appeals the denial, the Borrower agrees to hold a comparable unit until the final decision has been made regarding the appeal. Should Borrower determine that an applicant's denial appeal will be denied, Borrower will inform MOHCD of this decision with documentation used to sustain the denial. MOHCD will confirm the denial is in accordance with Borrower's eligibility requirements. Borrower agrees to be in compliance with all Fair Chance Ordinance appeals process requirements.**

If ineligibility is determined, the applicant will be notified in writing within one week after such determination is made, with a copy to the City. These applicants will also appear on the status report.

### **Post-Lottery Status Report**

Every seven (7) business days following any lottery the Borrower shall supply the City with a lease-up status report on a MOHCD-provided template. MOHCD has the right to audit the Borrower's lease up procedure and applicant files within 24-hour notice during the lease up period.

### **Response Deadline**

Applicants who have been accepted and notified in writing by the Borrower shall have at least ten (10) calendar days thereafter to enter into a lease agreement. If the applicant fails to affirmatively respond, the application may be closed, making that unit available to the next eligible tenant. Written notice shall be provided to applicants whose applications are closed after 10 days due to a lack of response. Rejection of the unit by a COP or EAHP certificate holder and closed applications must be shown on the status report to the City.

### **Final Documentation**

Within fourteen (14) calendar days after execution of a lease, the Borrower shall supply the City with a copy of the following for all COP and EAHP tenants:

- signed copy of lease
- copy of complete application
- a demographic report on all COP and EAHP applicants

### **Retention Policy**

For MOHCD auditing purposes, Borrowers are required to keep all supporting documents for each applicant that has been interviewed for at least one year after the interview.

### **Re-rental of Low Income Units**

Upon re-rental of any Low Income Unit or when re-opening the project waitlist to new applicants, the Borrower shall notify the City in advance of any vacancy or waitlist opportunity. In no event shall the City be notified fewer than thirty (30) days before the date of re-occupancy for a vacant unit. In no event shall the City be notified fewer than thirty (30) days before a closed waitlist is re-opened for new applications. Violation of the thirty (30) day notification requirement may delay re-occupancy.

Waitlist applications shall be entered into a lottery as described above. All lottery procedures listed in this document apply to wait list openings. Appeals, response deadline, application forms, and final documentation requirements listed above shall apply to all re-rentals.

Borrowers filling unit vacancies off a waitlist must accept applications from approved COP and EAHP certificate holders at any time, regardless of whether the waitlist is closed to other applicants. If a COP or EAHP certificate holder is found eligible for a Low Income Unit in the building, they shall be placed at the top of the waitlist.

No more than seven (7) calendar days following the date that any new applications are accepted for a waitlist, the Borrower shall supply the City with a status report listing names, addresses and certificate numbers (when available) of COP and EAHP certificate holders indicating the status of each application as of that date and the reason for any rejections.

The City will, in turn, verify within seven (7) calendar days which such applicants are qualified as COP or EAHP certificate holders.

On an annual basis and each time a new waitlist lottery is conducted, the City shall be provided with a complete list of all applicant names, lottery rank on the waitlist, and whether they hold a COP or EAHP certificate upon finalization of the waitlist.]

## EXHIBIT K

<b>How are utilities paid by the renter?</b>	<p>Renter pays own utility bills directly.</p> <p>-OR-</p> <p>Renter is charged a flat rate of \$___ by a third party vendor for the following utilities: _____ on a monthly basis.</p> <p>-OR-</p> <p>All utilities are paid by the building.</p>
<b>Other fees and/or building rules</b>	Please list any fees for pets, mandatory insurance, bounced check, etc. here.
<b>Contact Person</b>	
<b>Phone</b>	
<b>Email</b>	
<b>Website</b>	
<b>How to obtain an application</b>	
<b>Application deadline</b>	<p>_____, 5pm</p> <p>Applications must be <u>received</u> in paper form (no faxes or emails) by 5pm on the date of the deadline.</p>
<b>Address to which application should be delivered</b>	<p>Office:</p> <p>Rental Manager Name:</p> <p>Address:</p> <p>City/State/Zip Code:</p> <p>Attn:</p>
<b>Open House Dates (if applicable)</b>	<p>Date:</p> <p>Time:</p> <p>Date:</p> <p>Time:</p> <p>Date:</p> <p>Time:</p>
<b>Information Session</b>	Enter date, time and location
<b>Lottery</b>	<p>Enter date, time and location</p> <p>(Consider working with City to rent Main Library Koret Auditorium if a larger lottery is anticipated.)</p> <p>Applicants do not need to be present at the lottery. Results will be posted to (place your web URL here) within two weeks of the lottery.</p>
<b>Special Note(s)</b>	



**VII. Application/Selection Process and Timeline**

The City and County of San Francisco’s requirements for the marketing, application process, lottery process, tenant selection process and tenant screening criteria are defined by Exhibits H, I, J, & K.

[Please complete the following timeline as part of your Marketing Plan]

Timeline of Entire Process (add info as needed)

Task Name	Date
Submittal of Marketing Plan to MOHCD	
Marketing period (3 months)	
Copy of Advertisements to required newspapers	
Applications Available to public	
Informational Workshop #1	
Informational Workshop #2	
Additional Community Outreach (if applicable)	
Application Deadline	
Lottery	
Demographic Summary of all Applicants to MOHCD	
Certificate of Preference count to MOHCD	
Application Review / Approval Process- start date	
Lease-up process / timeline	
Initial MOHCD approvals returned	
First Occupancy	
Construction start date- projected	
Project Closing- projected date	

**VIII. Document Review**

I/We certify that I/we and all agents involved in the process of renting affordable units have read Exhibits, H, I, J & K.

Representative (sign) \_\_\_\_\_

Representative (print) - \_\_\_\_\_

Title (print) - \_\_\_\_\_

Company (print) - \_\_\_\_\_

Date (print) - \_\_\_\_\_

# Flyer Template

## Affordable Homes for Rent in San Francisco

Exterior Photo	Interior Photo

**3 two-bedroom + 3 three-bedroom “Below Market Rate” rental units available**

**Bayside Village, 1125 Laurel Court, San Francisco**

- New Units with Modern Design + Amenities
- (2) Two-bedroom units for \_\_\_\_ available to households at or under 55% of median income
- Renter households must earn no more than the income levels listed below:

Household Size	One Person	Two Person	Three Person	Four Person	Five Person
<b>55% of Median Income 2014</b>	\$37,350	\$42,750	\$48,050	\$53,400	\$57,650

**Applications must be received by 5pm on Friday, April 13, 2014** to Smith Rentals, 300 Church St., San Francisco, CA 94114.

Contact Smith Rentals at (415) 282-10000 or [john@smithrentals.com](mailto:john@smithrentals.com) for application and information on the units and view the full unit posting at [www.sfmohcd.org](http://www.sfmohcd.org).

Units are monitored through the San Francisco Mayor’s Office of Housing and Community Development and are subject to monitoring and other restrictions. Visit [www.sfmohcd.org](http://www.sfmohcd.org) for program information.

**Information session  
Monday, June 2, 2013, 6pm  
123 Hyde Street**

## Open House Dates

**June 2, 5-6pm; June 12, 12-1pm; June 25, 5-6pm** All applicants are encouraged to apply. Lottery preference will be given to Certificate of Preference and Ellis Act Housing Preference holders\* and households that live or work in San Francisco.

Unit #	Bedroom Count	Bath Count	Square Feet	Floor	Rent	Income Maximum	Minimum Monthly Household Income Required	Deposit Required
E113	Studio	1	448	1	\$939	55% of AMI	\$2347.50	\$939
E114	1	1	605	1	\$1066	55% of AMI	\$2665	\$1066
E105	2	1	846	1	\$1192	55% of AMI	\$2980	\$1192

*\*Certificate of Preference holders are primarily households displaced in Redevelopment Project Areas during the 1960's and 1970's, but may also include other persons displaced by Agency action. Ellis Act Housing Preference holders are long term San Francisco tenants who were evicted because of the Ellis Act. Contact 415-701-5613 for more information.*



## COP Postcard Template

### Affordable Homes for Rent in San Francisco

Exterior Photo	Interior Photo
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**3 two-bedroom (\$rent amount)+ 3 three-bedroom (\$rent amount) rental units available at Bayside Village, 1125 Laurel Court**

- Renter Households must have a minimum monthly income of \$\_\_\_\_\_
- Renter households must earn no more than the income levels listed below:

Household Size	One Person	Two Person	Three Person	Four Person	Five Person
<b>55% of Median Income 2012</b>	\$39,650	\$45,300	\$51,000	\$56,650	\$61,200

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**Side Two:  
 Mayor's Office of Housing & Community Development  
 1 South Van Ness, 5<sup>th</sup> Floor  
 San Francisco, CA 94103**

**Applications must be received by  
 5pm on Friday, April 13, 2012 to:**

Makras Real Estate, 1193 Church St.  
San Francisco, CA 94114.

For more information & to apply Contact JM Rentals  
(415) 282-8400 or victor@jmrentals.com or  
www.sfmohcd.org

**Information session**  
**Monday, June 2, 2012, 6pm**  
**123 Hyde Street**

**Open House Dates**  
**June 2, 5-6pm; June 12, 12-1pm; June 25, 5-6pm**



Print Form

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED  
 BOARD OF SUPERVISORS  
 SAN FRANCISCO  
 2016 NOV -1 PM 2:54  
 Time stamp  
 or meeting date  
 BY *B*

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):**

Cohen

**Subject:**

Multifamily Housing Revenue Note - 1101 Connecticut Street ("Potrero Block X") - Not to Exceed \$49,454,000

**The text is listed below or attached:**

Attached

Signature of Sponsoring Supervisor: *Melai Cohen*

**For Clerk's Use Only:**

**FORM SFEC-126:  
NOTIFICATION OF CONTRACT APPROVAL  
(S.F. Campaign and Governmental Conduct Code § 1.126)**

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s):	City elective office(s) held:
<b>Members, Board of Supervisors</b>	<b>Members, Board of Supervisors</b>

**Contractor Information** *(Please print clearly.)*

Name of contractor: **Potrero Housing Associates I LP., a California limited partnership**

*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.*

The borrowing entity for the Potrero Block X project is Potrero Housing Associates I LP. This entity has no employees, and decisions are made by Bridge Housing Corporation ("BRIDGE"). The names requested above for BRIDGE are as follows:

- |  |   |
|--|---|
| <p>(1) <b>Richard Holliday, Board Chairman</b><br/> <b>Douglas D. Abbey, Board Member</b><br/> <b>Ray Carlisle, Board Member</b><br/> <b>Kent Colwell, Board Member</b><br/> <b>Robert Freed, Board Member</b><br/> <b>Harry M. Haigood, Board Member</b><br/> <b>Nancy Hemmenway, Board Member</b><br/> <b>Ron Nahas, Vice Chairman</b><br/> <b>Kenneth M. Novack, Board Member</b><br/> <b>Dennis O'Brien, Board Member</b><br/> <b>Peter Palmisano, Board Member</b><br/> <b>Lynn Sedway, Board Member</b><br/> <b>Susanne B. Wilson, Board Member Emeritus</b></p> | <p><b>Paul Stein, Board Member</b><br/> <b>Ernesto Vasquez, Board Member</b><br/> <b>Jay Wunderman, Board Member</b><br/> <b>Richard Bender, Board Member Emeritus</b><br/> <b>Anthony Frank, Board Member Emeritus</b><br/> <b>Sunne Wright McPeak, Board Member Emeritus</b><br/> <b>Angelo Siracusa, Board Member Emeritus</b><br/> <b>Alan L. Stein, Board Member Emeritus</b><br/> <b>Clark Wallace, Board Member Emeritus</b></p> |
| <p>(2) <b>Cynthia A. Parker, President and CEO</b><br/> <b>D. Kemp Valentine, Executive VP and SFO</b></p>   |   |
| <p>(3) <b>N/A</b></p>  |   |
| <p>(4) <b>N/A</b></p>  |   |
| <p>(5) <b>N/A</b></p>  |   |

Contractor address: **600 California St #900  
San Francisco, CA 94108**

Date that contract was approved:	Amount of contract: <b>\$49,454,000</b>
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Describe the nature of the contract that was approved: **Tax-exempt multifamily housing revenue note financing for the construction of a project at 1101 Connecticut Street known as "Potrero Block X."**

Comments:



This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: **San Francisco Board of Supervisors**

Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

**Filer Information** (Please print clearly.)

Name of filer: <b>Angela Calvillo, Clerk of the Board</b>	Contact telephone number: <b>( 415 ) 554-5184</b>
Address: <b>City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102</b>	E-mail: <b>Board.of.Supervisors@sfgov.org</b>

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

