

File No. 220017

Committee Item No. 11

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date January 26, 2022

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

- |                                     |                          |                                              |
|-------------------------------------|--------------------------|----------------------------------------------|
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU                                          |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

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|-------------------------------------|--------------------------|------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>DRAFT Loan Agreement</u>                                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>DRAFT Regulatory Agreement and Declaration of Restrictive</u> |
|                                     |                          | <u>Covenants</u>                                                 |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>DRAFT Indenture of Trust</u>                                  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>DRAFT Assignment of Deed of Trust</u>                         |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>TEFRA Public Hearing Notice - 7/26/2021</u>                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>TEFRA Hearing Minutes - 7/29/2021</u>                         |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>CDLAC Resolution No. 21-178 - 8/11/2021</u>                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                                                            |
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Completed by: Brent Jalipa Date January 19, 2022

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Multifamily Housing Revenue Bonds - 4101 Noriega, 363 Noe, 200 Randolph/409 Head,  
2 2206-2268 Great Highway and 1357-1371 Eddy (also known as 1353-1367 Eddy) - SFHA  
Scattered Sites - Not to Exceed \$50,776,000]

3  
4 **Resolution authorizing the issuance and delivery of multifamily housing revenue bonds**  
5 **(tax-exempt) in an aggregate principal amount not to exceed \$40,776,000 and**  
6 **multifamily housing revenue bonds (taxable) in an aggregate principal amount not to**  
7 **exceed \$10,000,000 for the purpose of providing financing for the acquisition and**  
8 **rehabilitation of a 69-unit, affordable multifamily rental housing project located at 4101**  
9 **Noriega Street, 363 Noe Street, 200 Randolph/409 Head Street, 2206-2268 Great**  
10 **Highway and 1357-1371 Eddy Street (also known as 1353-1367 Eddy Street) known as**  
11 **“SFHA Scattered Sites” within the City; approving the form of and authorizing the**  
12 **execution of an indenture of trust providing the terms and conditions of the bonds;**  
13 **approving the form of and authorizing the execution of one or more regulatory**  
14 **agreements and declarations of restrictive covenants; approving the form of and**  
15 **authorizing the execution of one or more loan agreements providing the terms and**  
16 **conditions of the loan from the City to the borrower; approving the form of and**  
17 **authorizing the execution of an assignment of deed of trust documents; authorizing the**  
18 **collection of certain fees; approving modifications, changes and additions to the**  
19 **documents, as defined herein; ratifying and approving any action heretofore taken in**  
20 **connection with the bonds and the project; and granting general authority to City**  
21 **officials to take actions necessary to implement this Resolution, as defined herein; and**  
22 **related matters, as defined herein.**

23  
24 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
25 “Board”) desires to provide for the financing of a portion of the costs of the acquisition and

1 rehabilitation by MHDC New Map, L.P., a California limited partnership (the "Borrower"), of a  
2 69-unit residential rental housing development, consisting of five sites located at 4101 Noriega  
3 Street, 363 Noe Street, 200 Randolph Street/409 Head Street, 2206-2268 Great Highway and  
4 2215-2263 48<sup>th</sup> Avenue, and 1357-1371 Eddy Street (also known as 1353-1367 Eddy Street),  
5 San Francisco, California, known as "SFHA Scattered Sites," (the "Project"), to provide  
6 housing for persons and families of low and very low income through the issuance of  
7 multifamily housing revenue bonds as described herein; and

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

14 WHEREAS, The Project is located wholly within the City; and

15 WHEREAS, This Board on April 27, 2021, adopted Resolution No. 171-21 declaring  
16 the intent of the City to reimburse certain Project expenditures from proceeds of future tax-  
17 exempt multifamily housing revenue bonds, for the purposes of 1.150-2 of the U.S. Treasury  
18 Regulations, in an amount not to exceed \$60,000,000; and

19 WHEREAS, On July 16, 2021, the City caused a notice stating that a public hearing  
20 with respect to the issuance of tax-exempt multifamily housing revenue bonds for the Project  
21 would be held by the Mayor's Office of Housing and Community Development on July 29,  
22 2021, published in the Notices section of the Mayor's Office of Housing and Community  
23 Development website (at <https://sfmohcd.org/notices-0>); and

1           WHEREAS, The Mayor's Office of Housing and Community Development held the  
2 public hearing described above on July 29, 2021, and an opportunity was provided for  
3 persons to comment on the issuance of the tax-exempt bonds and the Project; and

4           WHEREAS, The minutes of such public hearing were provided to this Board prior to  
5 this meeting; and

6           WHEREAS, On August 11, 2021, the California Debt Limit Allocation Committee  
7 ("CDLAC"), in its Resolution No. 21-178, allocated an amount not to exceed \$40,776,000 in  
8 qualified private activity bond volume cap to the Project; and

9           WHEREAS, There has been prepared and presented to this Board for consideration at  
10 this meeting the documentation required for the issuance of Tax-Exempt Bonds (hereinafter  
11 defined) and Taxable Bonds (hereinafter defined, and together with the Tax-Exempt Bonds,  
12 the "Bonds") in connection with the Project, and such documentation is on file with the Clerk  
13 of the Board of Supervisors (the "Clerk of the Board"); and

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

17           WHEREAS, This Board finds that public interest and necessity require that the City at  
18 this time make arrangements for the sale, issuance and delivery of the Bonds; and

19           WHEREAS, The City has engaged Jones Hall, A Professional Law Corporation, and  
20 Curls Bartling P.C. as co-bond counsel with respect to the Bonds ("Co-Bond Counsel"); and

21           WHEREAS, Any Bonds to be issued to finance the Project will be limited obligations of  
22 the City, the sole source of repayment for which shall be payments made by the Borrower  
23 under the Loan Agreement (hereinafter defined) and collateral pledged by the Borrower for  
24 the repayment of the Bonds, together with investment income on certain funds and accounts  
25 held under the Indenture (hereinafter defined); and

1 WHEREAS, Western Alliance Bank has expressed its intention to purchase, or cause  
2 an affiliate to purchase, the Bonds authorized hereby; now, therefore, be it

3 RESOLVED, by this Board of Supervisors of the City and County of San Francisco as  
4 follows:

5 ///

6 Section 1. Approval of Recitals. This Board hereby finds and declares that the above  
7 recitals are true and correct.

8 Section 2. Approval of Issuance of Bonds. In accordance with the Act and the  
9 Indenture (hereinafter defined), the City is hereby authorized to issue and deliver (a) tax-  
10 exempt multifamily housing revenue bonds designated as "City and County of San Francisco  
11 Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-1 (Tax-Exempt)"  
12 in an aggregate principal amount not to exceed \$40,776,000 (the "Tax-Exempt Bonds") and  
13 (b) taxable multifamily housing revenue bonds designated as "City and County of San  
14 Francisco Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-2  
15 (Taxable)" in an aggregate principal amount not to exceed \$10,000,000 (the "Taxable Bonds"  
16 and together with the Tax-Exempt Bonds, the "Bonds") or such other designation as may be  
17 necessary or appropriate to distinguish each such series from every other series of bonds of  
18 the City, with an interest rate not to exceed twelve percent (12%) per annum for the Bonds,  
19 and with a final maturity date not later than forty (40) years from the date of issuance of the  
20 Bonds. The Bonds shall be in substantially the form set forth in, and otherwise in accordance  
21 with, the Indenture, and shall be executed by the manual signature of the Mayor of the City  
22 (the "Mayor") and as further provided in the Indenture. This approval is also intended to  
23 constitute the approval of the applicable elected representative of the governmental unit  
24 having jurisdiction over the area in which the Project is located, pursuant Section 147(f) of the  
25 Internal Revenue Code of 1986, as amended (the "Code").

1           Section 3.   Indenture. The Indenture of Trust (the “Indenture”), by and between the  
2 City and U.S. Bank National Association (the “Trustee”) in substantially the form presented to  
3 this Board, a copy of which is on file with the Clerk of the Board, is hereby approved. Each of  
4 the Mayor, the Director of the Mayor's Office of Housing and Community Development (the  
5 “Director”), the Deputy Director of Housing of the Mayor’s Office of Housing and Community  
6 Development or any other Authorized City Representative (as such term is defined in the  
7 Indenture) of the City (collectively, the “Authorized Officers”) is hereby authorized to execute  
8 the Indenture in said form, together with such additions thereto and changes therein as the  
9 City Attorney and Co-Bond Counsel may approve or recommend in accordance with Section 8  
10 hereof.

11           Section 4.   Regulatory Agreement and Declaration of Restrictive Covenants. The  
12 Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory  
13 Agreement”), by and between the City and the Borrower, in substantially the form presented  
14 to this Board, a copy of which is on file with the Clerk of the Board, is hereby approved. Each  
15 Authorized Officer is hereby authorized to execute one or more Regulatory Agreements, in  
16 said form, together with such additions thereto and changes therein as the City Attorney and  
17 Co-Bond Counsel may approve or recommend in accordance with Section 8 hereof.

18           Section 5.   Approval of Loan Agreement. The Loan Agreement (the “Loan  
19 Agreement”), by and between the City and the Borrower, in substantially the form presented  
20 to this Board, a copy of which is on file with the Clerk of the Board, is hereby approved. Each  
21 Authorized Officer is hereby authorized to execute one or more Loan Agreements in said  
22 form, together with such additions thereto and changes therein as the City Attorney and Co-  
23 Bond Counsel may approve or recommend in accordance with Section 8 hereof.

24           Section 6.   Approval of Assignment of Deed of Trust Documents. The Assignment of  
25 Deed of Trust Documents, from the City to the Trustee (the “Assignment”), in substantially the

1 form presented to this Board, a copy of which is on file with the Clerk of the Board, is hereby  
2 approved. Each Authorized Officer is hereby authorized to execute the Assignment, in said  
3 form, together with such additions thereto and changes therein as the City Attorney and Co-  
4 Bond Counsel may approve or recommend in accordance with Section 8 hereof.

5 Section 7. Issuer Fees. The City, acting through the Mayor's Office of Housing and  
6 Community Development, may charge a fee for the administrative costs associated with  
7 issuing the Bonds (the "Issuance Fee") in an amount not to exceed one-quarter of one percent  
8 (0.25%) of the maximum aggregate principal amount of the Bonds. Such Issuance Fee shall  
9 be payable at closing and shall be contingent on the issuance of the Bonds. The City may  
10 also charge an annual administrative fee (the "Annual Fees") for monitoring compliance with  
11 the provisions of the Regulatory Agreement(s) in an amount not to exceed one-eighth of one  
12 percent (0.125%) of the outstanding aggregate principal amount of the Bonds, but no less  
13 than \$2,500 annually. The Board hereby authorizes the Mayor's Office of Housing and  
14 Community Development to charge and collect, or appoint an agent, which may be the  
15 Trustee, to collect on behalf of the City, the fees described in this section. Notwithstanding  
16 the foregoing provisions of this Section, the City, acting through the Mayor's Office of Housing  
17 and Community Development, is authorized to charge an Issuance Fee or Annual Fees, or  
18 both, that is, or are, lower than the fees prescribed in this Section if, upon the advice of Co-  
19 Bond Counsel, lower fees are necessary or advisable to ensure that the Bonds do not  
20 become "arbitrage bonds" within the meaning of Section 148 of the Code, or to ensure that  
21 interest on the Bonds does not become includable in gross income for federal income tax  
22 purposes under Section 103 of the Code.

23 Section 8. Modifications, Changes, Additions. Any Authorized Officer executing the  
24 Indenture, any Loan Agreement, the Assignment or any Regulatory Agreement (collectively,  
25 the "City Agreements"), in consultation with the City Attorney and Co-Bond Counsel, is hereby

1 authorized to approve and make such modifications, changes or additions to the City  
2 Agreements as may be necessary or advisable, provided that such modification does not  
3 authorize an aggregate principal amount of the Tax-Exempt Bonds in excess of \$40,776,000  
4 or the Taxable Bonds in excess of \$10,000,000, provide for a final maturity on the Bonds later  
5 than forty (40) years from the date of issuance of the Bonds, or provide for the Bonds to bear  
6 interest at a rate in excess of twelve percent (12%) per annum. The approval of any  
7 modification, addition or change to any of the City Agreements shall be evidenced  
8 conclusively by the execution and delivery of the document in question by an Authorized  
9 Officer.

10 Section 9. Ratification. All actions heretofore taken by the officers and agents of the  
11 City with respect to the sale, issuance and delivery of the Bonds, as consistent with the City  
12 Agreements and this Resolution, are hereby approved, confirmed and ratified.

13 Section 10. General Authority. The proper officers of the City, including, but not  
14 limited to, the Authorized Officers, are hereby authorized and directed, for and in the name  
15 and on behalf of the City, to do any and all things and take any and all actions and approve,  
16 execute, acknowledge and/or deliver any and all certificates, agreements and other  
17 documents including, but not limited to, subordinations, assignments, tax documents and  
18 those documents described or referenced in the City Agreements, which they, or any of them,  
19 may deem necessary or advisable in order to consummate the lawful issuance and delivery of  
20 the Bonds and to effectuate the purposes thereof and of the City Agreements in consultation  
21 with the City Attorney. Any such actions are solely intended to further the purposes of this  
22 Resolution and the Project and are subject in all respects to the terms of this Resolution. No  
23 such actions shall increase the risk to the City or require the City to spend any resources not  
24 otherwise granted herein. Final versions of any such documents shall be provided to the  
25



1 Clerk of the Board for inclusion in the official file within thirty (30) days of execution by all  
2 parties.

3 Section 11. File. All documents referenced herein as being on file with the Clerk of  
4 the Board are located in File No. 220017, which is hereby declared to be a part of this  
5 Resolution as if set forth fully herein.

6 ///

7 ///

8 ///

9 Section 12. Effectiveness. This Resolution shall take effect from and after its adoption  
10 by the Board and approval by the Mayor.

11  
12 APPROVED AS TO FORM:  
13 DAVID CHIU, City Attorney

14  
15 By: /s/ KENNETH D. ROUX  
16 KENNETH D. ROUX  
Deputy City Attorney

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**LOAN AGREEMENT**

**by and between**

**MHDC NEW MAP, LP.**

**and**

**CITY AND COUNTY OF SAN FRANCISCO**

**Dated as of February 1, 2022**

**Relating to:**

**\$ \_\_\_\_\_**  
**City and County of San Francisco, California**  
**Multifamily Housing Revenue Bonds**  
**(SFHA Scattered Sites), Series 2022A-1**

**and**

**\$ \_\_\_\_\_**  
**City and County of San Francisco, California**  
**Multifamily Housing Revenue Bonds**  
**(SFHA Scattered Sites), Series 2022A-2 (Taxable)**

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The amounts payable to City **and County of San Francisco, California** (the “City”) and other rights of the City (except for Reserved Rights), under this Loan Agreement have been pledged and assigned to [Name of Trustee], as trustee (the “Trustee”) under the Indenture of Trust between the City and the Trustee dated as of February 1, 2022.

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## LOAN AGREEMENT

This LOAN AGREEMENT (as amended, modified or supplemented from time to time, this “Agreement”) made as of February 1, 2022, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation\_, duly organized and validly existing under its charter and the laws and Constitution of the State of California (together with its successors and assigns, the “City”) and **MHDC NEW MAP, L.P.**, a limited partnership duly organized and validly existing under the laws of the State of California (together with its permitted successors and assigns, the “Borrower”),

### WITNESSETH:

**WHEREAS**, the City is authorized under Section 9.107 of the Charter of the City, and Article I of Chapter 43 of the City’s Administrative Code and, to the extent applicable, Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the California Health and Safety Code, each as amended (collectively, the “Act”) to enter into loan agreements with respect to one or more projects authorized under the Act for such payments and upon such terms and conditions as the City may deem advisable in accordance with the provisions of the Act; and

**WHEREAS**, the City has determined that the public purposes set forth in the Act will be furthered by the issuance, sale and delivery of \$\_\_\_\_\_ in original aggregate principal amount of the City’s Multifamily Housing Revenue Bonds (Scattered Sites), Series 2022A-1 and its Multifamily Housing Revenue Bonds (Scattered Sites), Series 2022A-2 (Taxable) (collectively, the “Bonds”), pursuant to an Indenture of Trust (as amended, modified or supplemented from time to time, the “Indenture”), dated as of February 1, 2022, between the City and [Name of Trustee], as trustee (together with any successor trustee under the Indenture and their respective successors and assigns, the “Trustee”), to provide funds to finance the costs of the acquisition, **rehabilitation** and equipping of the Project Facilities (as hereunder defined); and

**WHEREAS**, the proceeds of the Bonds are being applied to finance the acquisition, **rehabilitation** and equipping of a multifamily apartment housing facility consisting of total of 69 units and related personal property and equipment, located on five scattered sites in San Francisco, California, and known as “SFHA Scattered Sites” (the “Project Facilities”).

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE UNDERTAKINGS HEREIN SET FORTH AND OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND, THE BORROWER AND THE CITY HEREBY AGREE AS FOLLOWS:

### ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. In this Agreement (except as otherwise expressly provided for or unless the context otherwise requires), any capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Indenture.

Section 1.2 Rules of Construction; Time of Day. In this Agreement, unless otherwise indicated, (i) defined terms may be used in the singular or the plural and the use of any gender includes all genders, (ii) the words “hereof”, “herein”, “hereto”, “hereby” and “hereunder” refer to this entire Agreement, and (iii) all references to particular Articles or Sections are references to the Articles or Sections of this Agreement, (iv) the terms “agree” and “agreements” contained herein are intended to include and

mean “covenant” and “covenants”, (v) the term “including” shall mean “including, but not limited to,” and (vi) the terms “best knowledge” or “knowledge” shall mean the actual knowledge of any Authorized Person of the Borrower after due inquiry. References to any time of the day in this Agreement shall refer to Pacific standard time or Pacific daylight saving time, as in effect in San Francisco, California, on such day.

## **ARTICLE 2**

### **LOAN AND PROVISIONS FOR REPAYMENT**

#### **Section 2.1     Basic Loan and Repayment Terms.**

(a)     The City agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the City from the sale of the Bonds. The Loan shall be made by depositing the proceeds from the initial sale of the Bonds in accordance with Article IV of the Indenture. Such proceeds shall be disbursed to or on behalf of the Borrower as provided for in this Agreement and the Indenture. The Borrower’s obligation to repay the Loan shall be evidenced by the Note, the form of which is attached hereto as Exhibit A.

(b)     The Borrower hereby agrees to pay the Note and repay the Loan made pursuant to this Agreement by paying or causing to be paid to the Trustee in immediately available funds for the account of the City for deposit into the Bond Fund or the Redemption Fund, as applicable, two Business Days before the dates, and in the amounts, set forth on the Debt Service Schedule, and two Business Days before any other date that any payment of interest, premium, if any, or principal is required to be made in respect of the Bonds pursuant to the Indenture whether at maturity, upon acceleration or by sinking fund redemption or mandatory redemption, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, a sum which will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or upon mandatory redemption or acceleration or otherwise), premium, if any, and interest on the Bonds, as provided in the Indenture.

(c)     It is understood and agreed that the Note and all payments payable by the Borrower under this Section 2.1 are assigned by the City to the Trustee for the benefit of the Bondholders. The Borrower assents to such assignment. The City hereby directs the Borrower and the Borrower hereby agrees to pay to the Trustee, at the address specified in or in accordance with Section 10.1 hereof, all loan repayments payable to the City pursuant to the Note and this subsection.

(d)     The Borrower shall have, and is hereby granted, the option to prepay the unpaid principal amount of the Loan, together with interest thereon to the date of redemption of the Bonds, but only pursuant to the provisions of Section 2.3(b) hereof and Section 3.4(a) of the Indenture with respect to voluntary prepayment of the Loan and optional redemption of the Bonds.

#### **Section 2.2     Fees.**

(a)     On the date of execution and delivery of this Agreement, the Borrower shall pay, or cause to be paid, to [\_\_\_\_\_] the Origination Fee and to [\_\_\_\_\_] a Construction Monitoring Fee , together with the fees and expenses of its counsel.

(b)     The Borrower shall pay (as directed by the Controlling Person) two Business Days before each Interest Payment Date, commencing on the First Interest Payment Date and continuing through final completion of the Work in respect of the Project Facilities, an amount equal to the costs of the Engineering Consultant incurred by the Controlling Person in the prior month in an amount not to exceed \$2,500 per month (plus travel and reasonable and necessary expenses). If the Borrower fails to requisition



such costs, the Controlling Person may direct the Trustee to disburse such amounts as part of any Advance, and the Trustee shall follow such direction.

(c) The Borrower shall pay the City Fees and all expenses of the City as provided in Section [ ] and Section [ ] of the Land Use Restriction Agreements.

(d) The Borrower shall pay the Trustee Fees and all expenses of the Trustee and the fees and expenses of any Qualified Custodian.

(e) The Borrower shall pay any and all special servicing fees or costs in accordance with Section 6.34 hereof.

Section 2.3 Termination; Voluntary Prepayment and Redemption.

(a) Notwithstanding anything to the contrary contained in this Agreement or the other Bond Documents, the Controlling Person's and the Majority Owner's and each Holder's rights, interests and remedies hereunder and under the other Bond Documents shall not terminate or expire or be deemed to have been discharged or released until the earlier to occur of (i) the payment in full of the Bonds, or (ii) defeasance of all of the Bonds. No such termination, expiration or release shall affect the survival of the indemnification provisions of this Agreement, which provisions shall survive any such termination, expiration or release.

(b) The Loan may be prepaid by the Borrower, and the Bonds shall be optionally redeemed pursuant to Section 3.4(a) of the Indenture, on any Interest Payment Date on or after the First Optional Call Date, upon the payment of the principal amount of the Bonds plus interest accrued thereon to, but not including, the date of redemption, without premium or penalty.

(c) Acceleration of the obligations of the Borrower hereunder upon an Event of Default prior to the First Optional Call Date, shall constitute an evasion of the prepayment provisions of this Agreement and any tender of payment of an amount necessary to satisfy the entire indebtedness evidenced by this Agreement shall include an acceleration premium, equal to the amount of interest which would have accrued on the amount of Bonds scheduled to be Outstanding from the date of acceleration to, but not including, the First Optional Call Date.

(d) The Borrower shall be required to prepay the Loan at the times and in the amounts necessary to provide funds for the payment of the mandatory redemption of the Bonds pursuant to Section 3.4(b) of the Indenture. In addition, on each Interest Payment Date, the Borrower shall pay to the Trustee for deposit into the Redemption Fund the amount set forth for such purpose on the Debt Service Schedule, which amount shall be applied on each Principal Payment Date to the mandatory sinking fund redemption of the Bonds pursuant to Section 3.4(c) of the Indenture.

(e) Notwithstanding the foregoing, the Borrower shall have the right at any time to defease the Bonds in accordance with the provisions of Article V of the Indenture, without premium.

Section 2.4 Obligations Absolute. The obligations of the Borrower under this Agreement shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation the following circumstances: (i) any lack of validity or enforceability of the Bond Documents or any other agreement or document relating thereto; (ii) any amendment or waiver of or any consent to or departure from the Bond Documents or any document relating thereto; or (iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the City or the Trustee (or any persons or entities

for whom the Trustee may be acting) or any other person or entity, whether in connection with this Agreement, the transactions described herein or any unrelated transaction. The Borrower understands and agrees that no payment by it under any other agreement (whether voluntary or otherwise) shall constitute a defense to its obligations hereunder, except to the extent that the Loan evidenced hereby has been indefeasibly paid in full, whether owing under this Agreement or under the other Bond Documents.

Section 2.5 Indemnification. To the fullest extent permitted by law, the Borrower covenants to defend, indemnify and hold harmless the City, the Trustee, the Controlling Person, the Majority Owner, and each of their respective Affiliates and each of their and their Affiliates' respective supervisors, directors, officials, officers, employees, representatives and agents (collectively, the "Indemnified Parties"), except as limited below, from and against any and all claims, damages, losses, liabilities, costs or expenses (including attorneys' fees for counsel of each of the Indemnified Parties' choice and other costs of investigation or defense) whatsoever which the Indemnified Parties may incur (or which may be claimed against any of the Indemnified Parties by any person or entity whatsoever) by reason of or in connection with:

(a) the Bonds, Indenture, Loan Agreement, Regulatory Agreement or Tax Agreement, or the execution or amendment hereof or thereof or in connection with the transactions contemplated hereby or thereby, including the issuance, sale or resale, defeasance or redemption of the Bonds;

(b) any breach by the Borrower of any representation, warranty, covenant, term or condition in, or the occurrence of any default under, this Agreement or the other Bond Documents, including all reasonable fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default or any Determination of Taxability;

(c) the involvement of any of the Indemnified Parties in any legal suit, investigation, proceeding, inquiry or action as a consequence, direct or indirect, of the Controlling Person or the Majority Owner's actions taken pursuant to this Agreement or any of the other Bond Documents or any other event or transaction contemplated by any of the foregoing;

(d) any untrue statement or alleged untrue statement contained or incorporated by reference in any offering or reoffering materials prepared in respect of the Bonds or any Secondary Market Transaction, or any supplement or amendment thereof, or the omission or alleged omission to state therein a material fact necessary to make such statements in light of the circumstances in which they are or were made not misleading;

(e) the acceptance or administration of the Bond Documents or the Security Interests thereunder or the performance of duties under the Bond Documents or any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project Facilities or the use thereof, including without limitation any lease thereof or assignment of its interest in this Agreement;

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

(g) any Lien (other than a Permitted Encumbrance) or charge upon payments by the Borrower to the City and the Trustee hereunder, or any taxes (including, without limitation, all ad valorem

taxes and sales taxes), assessments, impositions and other charges imposed on the City or the Trustee in respect of any portion of the Project Facilities;

(h) any violation or alleged violation of any applicable law or regulation including, without limitation, any Environmental Law or any inspection, review or testing with respect to, or the release of any toxic substance from, the Project Facilities or any part thereof;

(i) the enforcement of, or any action taken by the City or any Indemnified Party, related to remedies under, this Agreement, the Indenture and the other Bond Documents;

(j) any action, suit, claim, proceeding, audit, inquiry, examination, or investigation of a judicial, legislative, administrative or regulatory nature concerning or related to the Project Facilities, the Bonds, the Bond Documents, or interest payable on the Bonds not being excludable from gross income for purposes of federal income taxation or exempt from state income taxation;

(k) any action, suit, claim or demand contesting or affecting the title of the Project Facilities;

(l) the investigation of, preparation for or defense of any litigation, proceeding or investigation in connection with the Project Facilities or the transactions to be consummated in connection therewith of any nature whatsoever, commenced or threatened against the Borrower, the Project Facilities or any Indemnified Party; and

(m) any brokerage commissions or finders' fees claimed by any broker or other party in connection with the Bonds or the Project.

The indemnification shall include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and attorneys' fees incurred by the Indemnified Parties, provided the Borrower shall not be required to indemnify any of the Indemnified Parties for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of any Indemnified Party indemnification for which is not permitted by law. The obligations of the Borrower under this Section shall survive the termination of this Agreement and the Indenture. Notwithstanding any other provision of this Agreement or the Indenture to the contrary, the Borrower agrees (i) not to assert any claim or institute any action or suit against the Trustee or its employees arising from or in connection with any investment of funds made by the Trustee in good faith as directed by the Borrower, the Controlling Person or the Majority Owner, and (ii) to indemnify and hold the Trustee and its employees harmless against any liability, losses, damages, costs, expenses, causes of action, suits, claims, demands and judgments of any nature arising from or in connection with any such investment. Nothing in this Section is intended to limit the Borrower's obligations contained in Section 2.1 and 2.2 hereof or in the Land Use Restriction Agreements. Upon demand of the City, Borrower shall assume the investigation and defense of any claim, action, suit, investigation or proceeding with counsel selected by the City Attorney of the City in his sole discretion, including the payment of the costs of such investigation and defense. Amounts otherwise payable to the City hereunder shall be due and payable five (5) days after demand and will accrue interest at the Default Rate, commencing with the expiration of the five (5) day period. When the City 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. The obligations of Borrower to the Indemnified Parties under this Section shall not be subject to the recourse limitations of Section 10.13 hereof.

Section 2.6 Amounts Remaining on Deposit Upon Payment of the Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds (or defeasance of the Bonds) and upon payment of amounts payable to the United States pursuant to any rebate requirement and the payment of any other amounts owed hereunder or under the Indenture, all amounts on deposit with the Trustee pursuant to the Indenture, this Agreement or any other Bond Document shall be paid by the Trustee to the Borrower.

### **ARTICLE 3 SECURITY**

Section 3.1 Mortgage and Other Bond Documents. To further secure the Borrower's obligations under this Agreement, the Borrower shall, at its sole expense, execute and deliver, or cause to be executed and delivered, to the Trustee (and where required, duly record) the Mortgage and each of the other Bond Documents.

Section 3.2 Financing Statements. The Borrower hereby authorizes [[the Trustee]] and the Controlling Person, without the signature of the Borrower, to file such financing statements and continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to perfect and maintain perfection of the City's and/or the Trustee's security interests under this Agreement, the Indenture, the Mortgage and the other Bond Documents. The Borrower will pay upon demand the costs of filing the foregoing financing or continuation statements and the Financing Statements required under Section 7.8 of the Indenture in such public offices as the Controlling Person may designate.

### **ARTICLE 4 REPRESENTATIONS OF CITY**

Section 4.1 Representation by the City. The City represents and warrants to the Borrower, the Trustee and the Holders from time to time of the Bonds as follows:

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

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

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

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

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

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

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

Section 4.2 No Liability of City; No Charge Against City's Credit. Notwithstanding anything herein or in any other document, agreement or instrument to the contrary, the following provisions of this paragraph shall apply to the Indenture, the Loan Agreement, the Bonds, the Bond Documents, and any other document, agreement or instrument securing the same. Any obligation of the City created by, arising out of, or entered into in contemplation of this Agreement, including the payment of the principal of, premium if any, and interest on the Bonds, shall not impose or constitute a debt or pecuniary liability upon the City, the State or any political subdivision thereof or constitute a charge upon the general credit or taxing powers of any of the foregoing. Any such obligation shall be payable solely out of the revenues and any other moneys derived hereunder and under the Indenture, except (as provided in the Indenture and in this Agreement) to the extent it shall be paid out of moneys attributable to the proceeds of the Bonds or the income from the temporary investment thereof. No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement of the City hereunder against any past, present or future trustee, officer, member, employee or agent of the City, whether directly or indirectly, and all such liability of any such individual as such is expressly waived and released as a condition of and in consideration for the execution of this Agreement, the making of the loan of the proceeds of the Bonds to the Borrower, and the issuance of the Bonds.

## **ARTICLE 5**

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

The Borrower represents and warrants to and for the benefit of the City, the Trustee, the Controlling Person and the Holders from time to time of the Bonds as follows:

Section 5.1 Existence. The Borrower is a limited partnership, duly organized, validly existing and in good standing under the Legal Requirements of the state of its organization and is duly qualified to do business in the State. The Borrower has furnished to the City, the Trustee and the Controlling Person true and complete copies of its Partnership Agreement and certificate of limited partnership. The Borrower owns and will own no other assets other than the Project Facilities. The Borrower and the General Partner have been, are and will be engaged solely in the business of acquiring, rehabilitating, equipping, financing, owning, managing and operating the Project Facilities and activities incident thereto. The General Partner

of the Borrower is MHDC New Map LLC, a California limited liability company, duly organized, validly existing and in good standing under the laws of the State of California and is duly qualified to do business in the State. The General Partner has furnished to the City, the Trustee and the Controlling Person true and complete copies of its \_\_\_\_\_ and \_\_\_\_\_. The General Partner has and will have no other assets other than its partnership interests in the Borrower.

Section 5.2 Power, Authorization and No Conflicts. The Borrower has all requisite power and authority and the legal right to own and operate its properties and to conduct its business and operations as they are currently being conducted and as proposed to be conducted by it. The execution, delivery and performance by the Borrower of this Agreement and the other Bond Documents [and the Subordinate Debt Documents] to which the Borrower is a party (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary company and legal action by or on behalf of the Borrower, and (iii) do not contravene the Partnership Agreement, operating agreement, articles of incorporation, bylaws, or certificate of limited partnership of the Borrower or the General Partner, as applicable, or any Legal Requirement applicable to the Borrower or the General Partner or any Material Contract or restriction binding on or affecting the Borrower, the General Partner or any of their respective assets, or result in the creation of any mortgage, pledge, lien or encumbrance upon any of its assets other than as provided by the terms thereof.

Section 5.3 Governmental Authorizations and Other Approvals. The Borrower and the General Partner have all necessary Governmental Actions and qualifications, and have complied with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own, operate and rehabilitate the Project Facilities in accordance with the provisions of the Bond Documents. Except as set forth on Schedule 5 hereto, the Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to renovate, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities (upon completion of rehabilitation of the Project Facilities as contemplated in the Plans and Specifications) will comply with all Governmental Actions and Legal Requirements, including all zoning restrictions (including without limitation, use density, setbacks, parking and other similar requirements) or the Borrower has a valid variance for or exemption from such requirements. All Governmental Actions obtained by the Borrower have been validly issued and are in full force and effect. With respect to any Government Actions not yet obtained, the Borrower knows of no reason such Governmental Actions will not be timely obtained in the ordinary course of business and as needed in connection with the rehabilitation or operation of the Project Facilities. No such Governmental Action will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project Facilities including any transfer pursuant to foreclosure sale under the Mortgage.

Section 5.4 Validity and Binding Effect. This Agreement and the other Bond Documents [and the Subordinate Debt Documents] to which the Borrower is a party are the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their respective terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirement affecting creditors' rights generally.

Section 5.5 No Litigation. Except as disclosed on Schedule 1 attached hereto, there is no pending action or proceeding, including eminent domain proceedings, before any Governmental Authority or arbitrator against or involving the Borrower, the General Partner or to the Borrower's knowledge after due inquiry, the Project Facilities and, to the best knowledge of the Borrower and the General Partner, there is no threatened action or proceeding, including eminent domain proceedings, affecting the Borrower or the General Partner before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of the

Borrower or the General Partner, or the validity or enforceability of this Agreement, the Bonds, [the Subordinate Debt Documents] or the Bond Documents or the rehabilitation, operation or ownership of the Project Facilities, or the exclusion from gross income of interest on the Bonds for purposes of federal income taxation or, if specified on the Schedule of Financial Terms, as applicable, the exemption of the Project Facilities from ad valorem real estate taxation under the laws of the State.

Section 5.6     No Violations. The Borrower and the General Partner are in compliance with, and not in breach of or default under (a) any applicable Governmental Actions or Legal Requirements with respect to the Project Facilities of any Governmental Authority having jurisdiction, or (b) the Bond Documents[, the Subordinate Debt Documents] or any other credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject. No event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument. The Borrower is not in violation, nor is there any notice or other record of any violation of any Legal Requirements, restrictive covenants or other restrictions applicable to any of the Project Facilities.

Section 5.7     Compliance. The ownership of the Project Facilities, the **rehabilitation of** the Project Facilities, and the use and operation of the Project Facilities as contemplated hereby do and shall, in all material respects, comply with, and are lawful and permitted uses under, the Tax Certificate and the Land Use Restriction Agreements, all applicable building, fire, safety, zoning, subdivision, sewer, Environmental Laws, health, insurance and other Legal Requirements and plan approval conditions of any Governmental Authority. The Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to rehabilitate, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities are located wholly within the boundaries of the City's jurisdiction. The Project Facilities will satisfy all requirements of the Act and the Code with respect to multifamily rental housing and/or qualified residential rental facilities, and, if specified as applicable on the Schedule of Financial Terms, the requirements for exemption from ad valorem real estate taxation under the laws of the State.

Section 5.8     Title to Properties; Liens and Encumbrances. The Borrower has a leasehold interest in the real property on which the Project Facilities will be constructed pursuant to the Ground Lease and is the fee simple owner of the Improvements thereon, free and clear of all liens or encumbrances except for the Permitted Encumbrances. All such real property, fixtures and equipment necessary to the conduct of the business of the Borrower and the operation of the Project Facilities are and will be in reasonable working order and are suitable for the purposes for which they are and will be used. There exist no liens, encumbrances or other charges against the Project Facilities (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances.

Section 5.9     Utilities and Access. All utility services necessary for the operation of the Project Facilities in the manner contemplated hereby, including water supply, storm and sanitary sewer facilities, gas, electricity and telephone facilities are available within the boundaries of the Project Facilities; and all roads necessary for the full utilization of the Project Facilities in the manner contemplated hereby either have been completed or rights-of-way therefor have been acquired by the appropriate governmental authority or others or have been dedicated to public use and accepted by such Governmental Authority.

Section 5.10    Financial Information.

(a) All of the financial information furnished to the Controlling Person or the Majority Owner with respect to the Borrower, the Guarantor, and the General Partner in connection with this Agreement (i) is complete and correct in all material respects as of the date hereof; and (ii) accurately presents the financial condition of such party as of the date hereof. None of the Borrower, the Guarantor or the General Partner has any material liability or contingent liability not disclosed to the Controlling Person or the Majority Owner in writing; and

(b) Since its formation, each of the Borrower, the Guarantor, and the General Partner has conducted its operations in the ordinary course, and no material adverse change has occurred in the business, operations, assets or financial condition of the Borrower, the Guarantor, or the General Partner.

Section 5.11 ERISA. No employee pension plan maintained by the Borrower or the General Partner or any ERISA Affiliate which is subject to Part 3 of Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) has an accumulated funding deficiency (as defined in Section 302(a) of ERISA), no reportable event (as defined in Section 4043 of ERISA) has occurred with respect to any employee pension plan maintained for employees of the Borrower or any ERISA Affiliate and covered by Title IV of ERISA, no liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by the Pension Benefit Guaranty Corporation (“PBGC”) or by a trustee appointed pursuant to Section 4042(b) or (c) of ERISA, and no lien has been attached and no person has threatened to attach a lien to any of the Borrower’s, the General Partner’s or any ERISA Affiliate’s property as a result of failure to comply with ERISA or as a result of the termination of any employee pension plan covered by Title IV of ERISA. Each employee pension plan (as defined in Section 3(2) of ERISA) maintained for employees of the Borrower, the General Partner or any ERISA Affiliate which is intended to be qualified under Section 401 (a) of the Code, including all amendments to such plan or to any trust agreement, group annuity or insurance contract or other governing instrument, is the subject of a favorable determination by the Internal Revenue Service with respect to its qualification under Section 401(a) of the Code. With respect to any multi-employer pension plan (as defined in Section 3(37) of ERISA) to which the Borrower, the General Partner or any ERISA Affiliate is or has been required to contribute after September 25, 1980, (i) no withdrawal liability (within the meaning of Section 4201 of ERISA) has been incurred by the Borrower, the General Partner or any ERISA Affiliate, (ii) no withdrawal liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by a sponsor or an agent of a sponsor of any such multi-employer plan, (iii) no such multi-employer pension plan is in reorganization (as defined in Section 4241(a) of ERISA), and (iv) neither the Borrower, the General Partner nor any ERISA Affiliate has any unfilled obligation to contribute to any such multi-employer pension plan. As used in this Agreement, “ERISA Affiliate” means (i) any corporation included with the Borrower or the General Partner in a controlled group of corporations within the meaning of Section 414(b) of the Code, (ii) any trade or business (whether or not incorporated or for-profit) which is under common control with the Borrower, or the General Partner within the meaning of Section 414(c) of the Code, (iii) any member of an affiliated service group of which the Borrower, or the General Partner is a member within the meaning of Section 414(m) of the Code, and (iv) any other entity treated as being under common control with the Borrower or the General Partner under Section 414(o) of the Code.

Section 5.12 Environmental Representations. Except as set forth on the Environmental Audit delivered to the Controlling Person (a) the Borrower has no knowledge of any activity at the Project Facilities, or any storage, treatment or disposal of any Hazardous Substances connected with any activity at the Project Facilities, which has been conducted, or is being conducted, in violation of any Environmental Law; (b) the Borrower has no knowledge of any of the following which could give rise to material liabilities, material costs for remediation or a material adverse change in the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower: (i) Contamination present at the Project Facilities, (ii) polychlorinated biphenyls present at the Project Facilities, (iii) asbestos or materials containing asbestos present at the Project Facilities, (iv) urea formaldehyde foam insulation present at the Project Facilities, or



(v) lead-based paint at the Project Facilities; (c) no portion of the Project Facilities constitutes an Environmentally Sensitive Area; (d) the Borrower has no knowledge of any investigation of the Project Facilities for the presence of radon; (e) no tanks presently or formerly used for the storage of any liquid or gas above or below ground are present at any of the Project Facilities; (f) no condition, activity or conduct exists on or in connection with the Project Facilities which constitutes a violation of Environmental Laws; (g) no notice has been issued by any Governmental Authority to the Borrower or the General Partner identifying the Borrower or the General Partner as a potentially responsible party under any Environmental Laws; (h) there exists no investigation, action, proceeding or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanctions or judgment under any Environmental Laws with respect to the Project Facilities; and (i) the Borrower is not required to obtain any permit or approval from any Governmental Authority or need notify any Governmental Authority pursuant to any Environmental Law with regard to the **rehabilitation** of the Project Facilities.

Section 5.13 Outstanding Obligations and Material Contracts. Attached hereto as Schedule 2 is (i) a complete list of all Obligations of the Borrower and the General Partner as of the date of execution and delivery hereof, together with a description of the instruments evidencing, governing or securing such obligations (provided that no description need be provided of the Obligations hereunder) and (ii) a complete list of all other Material Contracts. There exists no default under any such instrument. Except for the obligations listed on Schedule 2, neither the Borrower nor the General Partner has incurred any Obligations, secured or unsecured, direct or contingent. Each of the Borrower and the General Partner has complied with all provisions of such Material Contracts in all material respects, to the extent such contract is applicable to such party, and there exists no default or event which, with the giving of notice or the passage of time, or both, would constitute a default, under any such Material Contract.

Section 5.14 Solvency. Each of the Borrower, the Guarantor and the General Partner is and, after giving effect to this Agreement and all other agreements of the Borrower, the Guarantor and the General Partner entered into on the date of execution and delivery of this Agreement, will be solvent (which for this purpose shall mean that it is able to pay its current debts as they come due).

Section 5.15 Full Disclosure. This Agreement, the exhibits hereto and the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person or the Majority Owner by or on behalf of the Borrower, the Guarantor, or the General Partner in connection with the transactions contemplated hereby or by the Bond Documents, do not contain any untrue statement of a material fact with respect to the Borrower, the Guarantor or the General Partner or the Project Facilities and do not omit to state a material fact with respect to the Borrower, the Guarantor or the General Partner or the Project Facilities necessary in order to make the statements contained therein not misleading in light of the circumstances under which they were made. There is no fact known to the Borrower, the Guarantor or the General Partner which materially adversely affects or in the future may adversely affect the business, operations, properties, assets or financial condition of the Borrower, the Guarantor or the General Partner which has not been set forth in this Agreement or in the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person and the Majority Owner on behalf of any such party before the date of execution and delivery of this Agreement in connection with the transactions contemplated hereby.

Section 5.16 Bond Documents. Each of the Borrower, the Guarantor and the General Partner has provided the Controlling Person and the Majority Owner with true, correct and complete copies of: (i) all documents executed by the Borrower, the Guarantor or the General Partner in connection with the Bonds, including all amendments thereto and compliance reports filed thereunder; (ii) all management and service contracts entered into by the Borrower in connection with the Project Facilities, including all amendments thereto; (iii) all correspondence, if any, relating to the Bonds from the Trustee, the City, the Securities and Exchange Commission, the Internal Revenue Service or any state or local securities

regulatory body or taxing authority or any securities rating agency; and (iv) all documentation, if any, relating to governmental grants, subsidies or loans or any other loans, lines of credit or other subordinate financing [(including, without limitation, the Subordinate Debt)] relating to the Borrower or the Project Facilities, whether or not secured by the Project Facilities. Each of the representations and warranties on the Borrower's part made in the Bond Documents to which the Borrower is a party remain true and correct in all material respects and no Default exists under any covenants on the Borrower's part to perform under the Bond Documents to which the Borrower is a party.

Section 5.17 Illegal Activity. No portion of any of the Project Facilities has been or will be acquired, rehabilitated, fixtured, equipped or furnished with proceeds of any illegal activity conducted by the Borrower.

Section 5.18 Executive Order 13224. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in any of those entities is included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in Executive Order 13224 — Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended. It shall constitute an Event of Default hereunder if the foregoing representation and warranty shall ever become false.

Section 5.19 No Broker. The Borrower has used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 5.20 Construction Contract; Architect's Agreement. The Construction Contract and the Architect's Agreement are each in full force and effect, and the parties thereto are in full compliance with their respective obligations thereunder. The work to be performed by the Contractor under the Construction Contract is the work called for by the Plans and Specifications, and all Work required to complete the Improvements in accordance with the Plans and Specifications is provided for under the Construction Contract.

Section 5.21 Development Budget. The Development Budget attached hereto as Schedule 3 accurately reflects: (i) all anticipated costs of implementing and completing the Work within the Plans and Specifications and (ii) anticipated uses by source allocations for the purpose of complying with Section 142(a) of the Code.

Section 5.22 Plans and Specifications. The Borrower has furnished the Trustee, the Controlling Person and the Majority Owner with true and complete sets of the Plans and Specifications. The Plans and Specifications so furnished to the Trustee, the Controlling Person and the Majority Owner comply with all Legal Requirements, all Governmental Actions, and all restrictions, covenants and easements affecting the Project Facilities, and have been approved by the Investor Limited Partner and such Governmental Authority as is required for renovation of the Project Facilities.

Section 5.23 Survey. The survey for the Project Facilities delivered to the Trustee, the Controlling Person and the Majority Owner does not fail to reflect any material matter of survey affecting the Project Facilities or the title thereto.

Section 5.24 Flood Plain. No part of the Project Facilities is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazard or to the extent any part of the Project Facilities is an area identified as an area having special flood hazard, flood insurance in an amount equal to 100% of the appraised insurable value of the Project Facilities has been obtained by the Borrower.

Section 5.25 Rent Roll. To the Borrower's actual knowledge, the rent roll dated \_\_\_\_\_ 20\_\_, provided to the Controlling Person, is a true, correct and complete rent roll for the Project Facilities (the "Rent Roll"), which includes all leases affecting the Project Facilities. Except as set forth on the Rent Roll, to the Borrower's actual knowledge: (i) each lease is in full force and effect; (ii) the tenants under the leases have accepted possession of and are in occupancy of all of their respective demised Project Facilities, have commenced the payment of rent under such leases, and there are no offsets, claims, or defenses to the enforcement thereof; (iii) all rents due and payable under the leases have been paid and no portion thereof has been paid for any period more than thirty (30) days in advance; (iv) the rent payable under each lease is the amount of fixed rent set forth in the Rent Roll, and there is no claim or basis for a claim by tenant thereunder for an adjustment to the rent; (v) no tenant has made any claim against the landlord under the leases which remains outstanding, there are no defaults on the part of the landlord under any lease, and no event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default; and (vi) to the Borrower's best knowledge, there is not present a material default by the tenant under any lease. The Borrower will hold any security deposits under the leases in a non-commingled bank account in the name of the Borrower and meeting the requirements of applicable laws. None of the leases contains any option to purchase or right of first refusal to purchase the Project Facilities or any part thereof. Neither the leases nor the Rents have been assigned or pledged to any Person and no Person has any interest therein except the tenants thereunder.

Section 5.26 Requisition. Each Requisition submitted to the Controlling Person shall constitute an affirmation that the representations and warranties of the Borrower contained in this Agreement and in the other Bond Documents remain true and correct as of the date thereof unless otherwise noted in writing; and unless the Controlling Person is notified to the contrary, in writing, prior to the requested date of the advance under such Requisition, shall constitute an affirmation that the same remain true and correct on the date of such advance.

## **ARTICLE 6 GENERAL COVENANTS**

So long as any amount is due and owing hereunder, the Borrower covenants and agrees, except to the extent the Controlling Person shall otherwise consent in writing to perform and comply with each of the following covenants:

Section 6.1 Conduct of Business; Maintenance of Existence; Mergers. The Borrower and the General Partner will (i) engage solely in the business of financing, constructing, owning and operating the Project Facilities, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited partnership, limited liability company or corporation, as applicable, under the Legal Requirements of the state of its organization, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets, (iv) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, (v) not amend any provision of its certificate of limited partnership or its Partnership Agreement, as applicable, relating to its purpose, management or operation without the prior written consent of the Controlling Person, and (vi) promptly and diligently enforce its rights under the Partnership Agreement and cause the Investor Limited Partner to make its capital contributions as and when required under the Partnership Agreement.

Section 6.2 Compliance with Legal Requirements; Payment of Impositions. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities. The Borrower will pay all Impositions and insurance premiums when due and will make the applicable deposits required by Section 8.2 of this Agreement for such purposes. The Borrower shall make commercially reasonably

efforts to direct that copies of all regular Impositions and insurance premiums shall be sent directly by the Governmental Authority or insurer, as applicable, to Controlling Person.

Section 6.3     Maintenance of Governmental Authorizations. The Borrower shall timely obtain any Governmental Actions required for the rehabilitation of the Project Facilities not obtained prior to the Issue Date and shall provide copies thereof to the Controlling Person and the Trustee upon receipt. The Borrower will maintain in full force and effect all of its Governmental Actions and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership, rehabilitation and operation of the Project Facilities as they are presently being operated and as contemplated by the terms of the Bond Documents. The Borrower will promptly furnish copies of all reports and correspondence relating to a loss or proposed revocation of any such qualification to the Controlling Person.

Section 6.4     Maintenance of Insurance.

(a)     At all times throughout the term hereof, the Borrower shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as required by the Controlling Person for facilities of the type and size of the Project Facilities and shall pay, as the same become due and payable, all premiums with respect thereto. The initial insurance requirements shall include, but not necessarily be limited to, the requirements set forth on Schedule 12 hereto and such additional insurance as Controlling Person may require from time to time.

(b)     All insurance required by this Section 6.4 shall be produced and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All property and casualty insurance policies required by Section 6.4(a) hereof shall contain a standard non-contributory mortgagee clause showing the interest of the Trustee as first mortgagee and shall provide for payment to the Trustee of the net proceeds of insurance resulting from any claim for loss or damage thereunder. All policies of insurance required by Section 6.4(a) hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Trustee, with a copy to the Controlling Person. The policy evidencing liability insurance required by Section 6.4(a) hereof shall name the City, the Controlling Person and the Trustee as additional named insureds. The Borrower acknowledges that a security interest in the policies of property and casualty insurance required by Section 6.4(a) and the net proceeds thereof is being granted to the Trustee pursuant to the Mortgage. Upon request of the Trustee, the Borrower will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default hereunder) to the Trustee, the policies of property and casualty insurance required under Section 6.4(a), so and in such manner and form that the Trustee shall at all times, upon such request and until the payment in full of the Bonds, have and hold said policies and the net proceeds thereof as collateral and further security under the Mortgage for application as provided in the Mortgage. The policies under Section 6.4(a) hereof shall contain appropriate waivers of subrogation.

(c)     Copies of the policy or certificate (or binder) of insurance required by Section 6.4(a) hereof shall be delivered to the Trustee, with a copy to the Controlling Person on or before the Issue Date. The Borrower shall deliver to the City and the Trustee before the first (1<sup>st</sup>) Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts required by this Section 6.4. Prior to the expiration of each such policy, the Borrower shall furnish the Trustee, with a copy to the Controlling Person, with evidence that such policy has been renewed or replaced or is no longer required by this

Agreement. The Borrower shall provide such further information with respect to the insurance coverage required by this Agreement as the Controlling Person may, from time to time, reasonably require.

(d) The net proceeds of the property and casualty insurance carried pursuant to the provisions of Section 6.4(a) hereof shall be applied as provided in the Mortgage and the net proceeds of the liability insurance required by Section 6.4(a) hereof shall be applied, with the prior written consent of the Controlling Person toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.5 Compliance with Other Contracts and Bond Documents. The Borrower will comply with all of its covenants and agreements under the Bond Documents to which it is a party, as the same may hereafter be amended or supplemented from time to time, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower acknowledges that the Indenture imposes certain obligations upon the Borrower and the Borrower agrees to discharge such obligations as if they were fully set forth herein (notwithstanding that the Borrower is not a party to the Indenture). [The Borrower shall comply with all of its covenants and agreements under the Subordinate Debt Documents.] The Borrower shall comply in all material respects with, or cause to be complied with, all requirements and conditions of all Material Contracts and insurance policies which relate to the Borrower or the Project Facilities.

Section 6.6 Maintenance of Project Facilities. The Borrower will, at its sole expense and as one of the Expenses (including use of the funds on deposit in the Accounts, in accordance with the terms of the Indenture and the Replacement Reserve Agreement), (i) maintain and preserve the Project Facilities in good working order and repair, fit for the purposes for which they were originally erected; (ii) not permit, commit or suffer any waste or abandonment of the Project Facilities; (iii) not use (and use reasonable efforts to not permit tenants to use) the Project Facilities for any unlawful purpose and use reasonable efforts to not permit any nuisance to exist thereon; (iv) promptly make such repairs or replacements (structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project Facilities in an economical and efficient manner and consistent with customary and prudent practices, standards and procedures applicable to properties of like size and type; (v) perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Governmental Actions and Legal Requirements; (vi) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; (vii) not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Project Facilities; and (viii) not sell, lease (other than pursuant to residential leases), cause a Sale of or otherwise dispose of any part of the Project Facilities, except as otherwise permitted hereunder and under the other Bond Documents.

Section 6.7 Inspection Rights.

(a) The Borrower will, at any reasonable time and from time to time, permit the Controlling Person, the Trustee, the City, and the agents or representatives of the Controlling Person, the Trustee and the City, to examine and copy and make abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with the General Partner and the Accountant. Upon reasonable prior notice, and subject to the rights of tenants, the Borrower will permit the Engineering Consultant to inspect, or cause to be inspected, the Project Facilities at any reasonable time or times as the Controlling Person may direct. The Borrower shall pay or reimburse the Controlling Person on demand for fees and expenses incurred in connection with such inspections.

(b) After the Engineering Consultant shall have inspected or caused to have been inspected the Project Facilities, the Engineering Consultant shall send written notice to the Controlling Person notifying the Controlling Person of the nature and extent of capital needs of the Project Facilities, if any, which are, in the Engineering Consultant's professional judgment, necessary to maintain and preserve the Project Facilities in accordance with the standards set forth in Section 6.6 hereof, and which are not addressed in the Annual Budget for the Project Facilities. After considering the Engineering Consultant's recommendation, the Controlling Person shall notify the Borrower of the work which the Engineering Consultant recommends be performed in order to comply with the requirements of Section 6.6 hereof and the time period over which, in its professional judgment, such work should be commenced and completed.

(c) The Borrower shall promptly commence and diligently complete the work recommended by the Engineering Consultant within the time period set forth in the report. If the Borrower fails to complete the work within such time period, the Controlling Person, at the Controlling Person's discretion, may complete such work for and on the Borrower's behalf and may do any act or thing the Controlling Person deems necessary or appropriate to that end. The expenses incurred by the Controlling Person in completing such work shall bear interest at the Default Rate, shall be borne by the Borrower and shall be reimbursed to the Controlling Person immediately upon demand. All work performed by the Borrower shall be performed in a good and workmanlike manner and shall be completely free and clear of any mechanics or materialman's liens and encumbrances and shall be subject to the requirements of Section 6.6 hereof.

Section 6.8 Keeping of Books. The Borrower will keep proper books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Borrower in accordance with GAAP, and have a complete audit of such books of record and account made by the Accountant for each Fiscal Year.

Section 6.9 Reporting Requirements. The Borrower will furnish or cause to be furnished to the Controlling Person the following in form satisfactory to the Controlling Person and in such number of copies as the Controlling Person may reasonably require:

(a) As soon as available and in any event within forty-five (45) days after the close of each fiscal quarter of each Fiscal Year of the Borrower:

(1) unaudited financial statements for the Borrower and the Project Facilities, including a balance sheet and related statement of income as of the end of such fiscal quarter and for such fiscal quarter and the current Fiscal Year to the end of such fiscal quarter, which shall be internally prepared and presented on a consistent basis;

(2) a certificate signed by an Authorized Person stating that, except as disclosed in such certificate, (i) during such fiscal quarter the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents (including the rules qualifying the interest payable on the Bonds for federal tax exemption pursuant to Section 142(d) of the Code and the regulations issued thereunder), except as disclosed in such certificate, (ii) if the Project Facilities have received a tax credit allocation, during such fiscal quarter the Project Facilities have complied with the requirements of Section 42 of the Code and the regulations issued thereunder, and (iii) no Event of Default has occurred or exists;

(b) As soon as available and in any event within one hundred twenty (120) days after the close of each Fiscal Year of the Borrower:

(1) audited financial statements for the Borrower, on a consolidated basis, including a balance sheet and related statements of income and changes in financial position as of the end of such Fiscal Year and for such Fiscal Year, which shall be prepared and reported on without qualification by the Accountant in accordance with GAAP, and shall fairly present the financial condition of the Borrower and the Project Facilities as of the end of such Fiscal Year (with a draft of such financial statements delivered within ninety (90) days of the close of such Fiscal Year); and

(2) a certificate signed by an Authorized Person stating that (i) during such Fiscal Year the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents, except as disclosed in such certificate, and (ii) no Default or Event of Default has occurred or exists, except as disclosed in such certificate;

(3) an occupancy report stating as of the last day of the month prior to the date of delivery thereof, with respect to each lease of all or any part of the Project Facilities, the tenant's name, the date thereof, the premises demised, the term, the rent, the security deposits, any advance rent payments in excess of one month and any defaults by the tenant or the Borrower in respect thereof (including, without limitation, the amounts of arrearages); and

(4) notwithstanding the foregoing, if the Issue Date occurred on or after November 15, the Borrower may elect, by written notice to Controlling Person, to include the period from the Issue Date through the end of such Fiscal Year in the subsequent Fiscal Year audited financial statements in lieu of providing audited annual statements for the Fiscal Year in which the Issue Date occurred.

(c) As soon as possible and in any event within twenty-five (25) days after the end of each calendar month, operating statements of the Project Facilities certified by an Authorized Person and containing itemized information regarding all items of expense and income as well as occupancy reports, a rent roll and, if required by the Controlling Person, other reports such as reports on concessions, security deposits and advance rents, all in such detail as may be required by the Controlling Person;

(d) Weekly during any period with occupancy of less than 90% and monthly for other periods, an occupancy report for the Project Facilities, certified by an Authorized Person;

(e) Upon receipt thereof by the Borrower, copies of any letter or report with respect to the management, operations or properties of the Borrower submitted to the Borrower by the Accountant in connection with any annual or interim audit of the Borrower's accounts, and a copy of any written response of the Borrower to any such letter or report;

(f) As soon as possible and in any event within fifteen (15) days after receipt of notice thereof, notice of any pending or threatened litigation, investigation or other proceeding involving the Borrower, the General Partner, the Guarantor or the Project Facilities; (i) which could have a material adverse effect on the operations or financial condition of the Borrower, the General Partner, the Guarantor or the Project Facilities; (ii) wherein the potential damages, in the reasonable judgment of the Borrower based upon the advice of counsel experienced in such matters, are not fully covered by the insurance policies maintained by the Borrower (except for the deductible amounts applicable to such policies); or (iii) which challenges the exclusion from gross income of interest on the Bonds for purposes of federal income taxation;

(g) As soon as possible, notice of any material adverse change in the operations, financial condition or prospects of the Borrower, the General Partner, the Guarantor or the Project Facilities;

(h) Upon delivery thereof by the Borrower, copies of any reports, certifications, financial information, compliance documents, rebate information, audits and all other items submitted by or on behalf of the Borrower to the Trustee or the City;

(i) As and when required under the Land Use Restriction Agreements, the monthly compliance certificates, the annual copies of IRS Forms 8703 and other reports and notices required to be delivered under the Land Use Restriction Agreements;

(j) Upon receipt thereof by the Borrower, notice of the cancellation or expiration (without renewal or replacement) of any insurance required to be maintained by this Agreement;

(k) Not later than the Completion Date (i) a Completion Certificate in the form attached as Schedule 7 hereto; and (ii) an Estimated Use of Proceeds Certificate in the form set forth in Schedule 8 hereto;

(l) Not later than the Stabilization Date: (i) a Construction Closeout Deliveries Certificate in the form attached as Schedule 9 hereto; (ii) a Final Use of Proceeds Certificate in the form set forth in Schedule 10 hereto; and (iii) a Stabilization Certificate in the form set forth on Schedule 11 hereto;

(m) As soon as possible and in any event within fifteen (15) days after the occurrence of an Event of Default, a statement of the General Partner setting forth the details of such Event of Default and the action which the Borrower proposes to take with respect thereto;

(n) Contemporaneously with the delivery to the Trustee copies of any notices, reports or other information provided to the Trustee under the Bond Documents; and

(o) Copies of IRS Forms 8609 as issued and received by the Borrower; and

(p) As soon as possible, notice of any violation of the terms and conditions of the Ground Lease and a copy of any notice it receives from the landlord under the Ground Lease;

(q) Upon receipt thereof, copies of all real estate tax bills and insurance bills;

(r) Upon receipt thereof, copies of all bills for City Fees or Trustee Fees and, upon payment, evidence of payment of such fees.

(s) Promptly following filing thereof, all tax returns of the Borrower and, if requested by the Controlling Person, the General Partner; and

(t) Such other information respecting the operations and properties, financial or otherwise, of the Borrower as the Controlling Person may from time to time reasonably request.

**Section 6.10 Tax-Exempt Status.** In furtherance of the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds, the Borrower hereby represents, warrants and agrees as follows:



(a) **Qualified Residential Rental Project Exempt Facility Bonds.** The Borrower shall use or allocate the proceeds of the Tax-Exempt Bonds in a manner such that the Tax-Exempt Bonds will satisfy the requirements of section 142(d) of the Code relating to qualified residential rental projects.

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

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

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

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

(f) **Private Activity Volume Cap.** The Tax-Exempt Bonds upon issuance and delivery shall be considered "private activity bonds" within the meaning of the Code with respect to which the California Debt Limit Allocation Committee has transferred a portion of the State of California's private activity bond allocation (within the meaning of section 146 of the Code) equal to the principal amount of the Tax-Exempt Bonds.

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

(h) **Limitation of Expenditure of Proceeds.** The Borrower shall cause not less than 95 percent of the net proceeds of the Tax-Exempt Bonds (within the meaning of section 150(a)(3) of the Code) to be paid for Qualified Project Costs.

(i) **Limitation on Land.** The Borrower shall not use or allocate more than twenty-five percent (25%) of the proceeds of the Tax-Exempt Bonds, directly or indirectly, for the acquisition of land.

(j) **Existing Facilities Limit.** The Borrower shall not use or allocate proceeds of the Tax-Exempt Bonds for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in section 145(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with proceeds of the Tax-Exempt Bonds; and provided, further, that this limitation shall not apply with respect to any structure

other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds of the Tax-Exempt Bonds.

(k) **Certain Uses Prohibited.** The Borrower covenants not to use any proceeds of the Tax-Exempt Bonds 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, nor to use or allocate any portion of the proceeds of the Tax-Exempt Bonds for an office unless (i) the office is located on the premises of the facilities constituting the Project and (ii) not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

(l) **Income Targeting.** The Borrower hereby elects to have the Project meet the requirements of section 142(d)(1)(B) of the Code in that forty percent (40%) or more of the residential units in the Project Facilities shall be occupied by persons or families whose Adjusted Income (as defined in the Land Use Restriction Agreement) is sixty percent (60%) or less of Median Income for the Area (as defined in the Land Use Restriction Agreement), adjusted for household size.

(m) **Program Investment.** The Borrower shall not purchase, nor permit any related party of the Borrower to purchase, the Tax-Exempt Bonds or any portion thereof in an amount related to the amount of the loan of the proceeds of the Tax-Exempt Bonds to the Borrower (the "Tax-Exempt Loan") or any other obligation acquired by the City in furtherance of the governmental program (the "Program") of the City to acquire investments to carry out the financing of qualified residential rental projects, being the governmental purposes of the Program. The City has not waived its right to treat the Tax-Exempt Loan or the Tax-Exempt Bonds as a "program investment" within the meaning of the Code.

(n) **The Borrower covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Tax-Exempt Bonds (within the meaning of section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Indenture or the Code) at Fair Market Value.**

(o) **Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code and (unless valuation is undertaken at least annually) investments in any reserve fund shall be valued at their present value (within the meaning of section 148 of the Code).**

#### **Section 6.11 Single Purpose Entities.**

(a) **The Borrower and the General Partner shall (i) not engage in any business or activity, other than the ownership, renovation, operation and maintenance of the Project Facilities and activities incidental thereto; and (ii) not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Project Facilities and such personal property as may be necessary for the operation of the Project Facilities and shall conduct and operate its business as presently conducted and operated.**

(b) **The Borrower and the General Partner shall (i) not maintain its assets in a way difficult to segregate and identify; (ii) ensure that business transactions between the Borrower and any Affiliate of the Borrower or any Affiliate of the General Partner shall be entered into upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with a third Person other than the General Partner, or any respective Affiliate thereof; (iii) not incur or contract to incur any obligations, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than, in the case of the Borrower, the Obligations evidenced by this Agreement and the other Bond**

Documents [and the Subordinate Debt Documents], or unsecured loans or guaranty payments made by the partners or members of the Borrower or Guarantor pursuant to the Partnership Agreement, or unsecured trade payables or the Developer Fee; (iv) not make any loans or advances to any third Person (including any Affiliate of the Borrower or the General Partner), except as otherwise permitted under this Agreement or the Bond Documents; (v) do or cause to be done all things necessary to preserve its existence; (vi) not amend, modify or otherwise change its partnership certificate, Partnership Agreement, articles of incorporation or bylaws without obtaining the prior written consent of the Controlling Person, not to be unreasonably withheld, conditioned or delayed (and which Controlling Person will endeavor to accept or reject within ten (10) Business Days of request); provided that no consent shall be required for changes or amendments to the Partnership Agreement to the extent such change or amendment is solely required to effect a Permitted Transfer, and provided that any changes with respect to installments of capital contributions which constitute Required Equity Funds or the timing thereof, or that otherwise, except for a change or amendment solely required to effect a Permitted Transfer, materially and adversely affect the rights and interests of the Holders also require Majority Owner consent, which consent shall not be unreasonably withheld, conditioned or delayed; (vii) conduct and operate its business as presently conducted and operated; (viii) maintain its books and records and bank accounts separate from those of its Affiliates; (ix) be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate); (x) file its own tax returns; (xi) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and in any event not less than that required under State law in order to remain a separate legal entity; (xii) not seek or consent to the dissolution or winding up, in whole or in part, of the Borrower or the General Partner; (xiii) not (A) consent to the dissolution or liquidation in whole or in part of the Borrower, or (B) permit the General Partner to dissolve, or (C) consent to the dissolution or liquidation of the General Partner; (xiv) not commingle the funds and other assets of the Borrower with those of the General Partner, any Affiliate thereof or any other Person; and (xv) not enter into any transaction with an Affiliate without the prior written consent of the Controlling Person or as permitted pursuant under the Loan Documents.

#### Section 6.12 Negative Pledge; No Sale.

(a) The Borrower will not create, incur, assume or permit to exist any mortgage, pledge, security interest, encumbrance or other Lien upon the Project Facilities or any property, tangible or intangible, now owned or hereafter acquired (including without limitation property leased to or being acquired by the Borrower under capital leases or installment sale agreements), by the Borrower (the sale with recourse of receivables or any “sale and lease back” of any fixed assets being deemed to be the giving of a lien thereon for money borrowed), other than Permitted Encumbrances.

(b) Other than Permitted Transfers and the making of residential leases, the Borrower shall not sell, assign, transfer, convey or otherwise dispose of the Project Facilities, or any part thereof, or permit or consent to a Sale without in each instance (i) obtaining the express prior written consent of the Controlling Person, which consent may be withheld or granted (and be subject to the payment of such fees and the satisfaction of other conditions as set forth in Section 1.12 of the Mortgage) in the Controlling Person’s sole and absolute discretion; and (ii) complying with the applicable requirements of the Land Use Restriction Agreements.

Section 6.13 Payment of Indebtedness; Accounts Payable; Restrictions on Indebtedness.

(a) The Borrower will pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of the Borrower's Indebtedness under the Bond Documents[, the Subordinate Debt Documents] and all of its other Obligations, whether now existing or hereafter arising, and comply with all covenants and agreements set forth in agreements evidencing Obligations of the Borrower.

(b) The Borrower shall pay or cause to be paid the Expenses, and capital expenditures and its other accounts payable with respect to and costs of operation and maintenance of the Project Facilities within thirty (30) days of receipt of an invoice therefor, or when the same shall otherwise be due and payable. The Borrower shall make no distribution of funds to its partners unless no Default or Event of Default exists, such distribution is in accordance with the provisions of the Partnership Agreement, and all current accounts payable shall have been paid and funds shall have been set aside for the payment of accounts payable becoming due within thirty (30) days of said distribution.

(c) Without obtaining the prior written consent of the Controlling Person, the Borrower will not create, incur, assume, guarantee or be or remain liable for any indebtedness or Obligations other than (i) Indebtedness under the Bond Documents; [(ii) Indebtedness in respect of the Subordinate Debt]; (iii) current liabilities of the Borrower relating to the Project Facilities incurred in the ordinary course of business but not incurred through the borrowing of money or obtaining of credit; and (iv) any unsecured loans or guaranteed payments from partners or their Affiliates or the Guarantor pursuant to the Partnership Agreement.

Section 6.14 Environmental Covenants.

(a) The Borrower will cause all activities at the Project Facilities during the term of this Agreement to be conducted in full compliance with all applicable Environmental Laws. The Borrower will obtain all Governmental Actions and will make all notifications, as required by Environmental Laws, and will, at all times, comply with the terms and conditions of any such Governmental Actions or notifications. During the term of this Agreement, if requested by the Controlling Person, the Borrower will provide to the Controlling Person copies of (i) applications or other materials submitted to any Governmental Authority in compliance with Environmental Laws, (ii) any notifications submitted to any Person pursuant to Environmental Laws, (iii) any Governmental Action granted pursuant to Environmental Laws, (iv) any record or manifest required to be maintained pursuant to Environmental Laws, and (v) any correspondence, notice of violation, summons, order, complaint or other document received by the Borrower, its lessees, sub-lessees or assigns, pertaining to compliance with any Environmental Laws.

(b) The Borrower will, at all times during the term of this Agreement, cause Hazardous Substances used at the Project Facilities to be handled, used, stored and disposed in accordance with all Environmental Laws and in a manner which will not cause an undue risk of Contamination.

(c) The Borrower will cause all construction of new structures at the Project Facilities during the term of this Agreement to use design features which safeguard against or mitigate the accumulation of radon or radon products in concentrations exceeding the Environmental Protection Agency's recommended threshold of 4.0pCi/L.

(d) The Borrower shall not install or permit to be installed any temporary or permanent tanks for storage of any liquid or gas above or below ground, except after obtaining written permission from the Controlling Person to do so and in compliance with Environmental Laws.

(e) The Borrower shall implement a moisture management and control program (the “Moisture Management Program”) for the Improvements at the Project Facilities to prevent the occurrence of mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduces through the release of spores or the splitting of cells (collectively, “Mold”), at, on or under the Project Facilities, which Moisture Management Program shall include, at a minimum: (a) periodic inspections of the Improvements at the Project Facilities for Mold, (b) removing or cleaning up any Mold and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person, and (c) in the event that the Mold identified at the Improvements at the Project Facilities cannot be removed or cleaned from any impacted building materials (e.g., porous materials such as carpeting, certain types of ceiling materials, etc.) and/or equipment, removing all such impacted building materials and/or equipment from the Project Facilities, all in accordance with the procedures set forth in the United States Environmental Protection Agency’s (“EPA”) guide entitled “Mold Remediation in Schools and Commercial Buildings”, EPA No. 402-K-01-001, dated March 2001 and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person. The Borrower shall include as part of every residential lease a Mold/Mildew Addendum in the form attached hereto as Exhibit C. The Borrower further covenants and agrees that, in connection with any mold remediation undertaken by or on behalf of the Borrower hereunder, the source (e.g., leaking pipe, water damage, water infiltration, etc.) of any Mold at the Improvements at the Project Facilities shall be promptly identified and corrected to prevent the occurrence or re-occurrence of any Mold.

(f) Upon the occurrence of an Event of Default, or if the Controlling Person has reason to believe that there has occurred and is continuing a violation of Environmental Law or that there exists a condition that could give rise to any Governmental Action, the Controlling Person may, at its discretion, commission an investigation at the Borrower’s expense of (i) compliance at the Project Facilities with Environmental Laws, (ii) the presence of Hazardous Substances or Contamination at the Project Facilities, (iii) the presence at the Project Facilities of materials which are described in clause (b) of Section 5.12, (iv) the presence at the Project Facilities of Environmentally Sensitive Areas, (v) the presence at the Project Facilities of radon products, (vi) the presence at the Project Facilities of tanks of the type described in paragraph (e) of Section 5.12 or in paragraph (d) of Section 6.14 above, or (vii) the presence of Mold at the Project Facilities. In connection with any investigation pursuant to this paragraph, the Borrower, and its lessees, sub-lessees and assigns, will comply with any reasonable request for information made by the Controlling Person or its agents in connection with any such investigation. Any response to any such request for information will be full and complete. The Borrower will assist the Controlling Person and its agents to obtain any records pertaining to the Project Facilities or to the Borrower and the lessees, sub-lessees or assigns of the Borrower in connection with an investigation pursuant to this paragraph. The Borrower will permit the Controlling Person and its agents access to all areas of the Project Facilities at reasonable times and in reasonable manners in connection with any investigation pursuant to this paragraph. No investigation commissioned pursuant to this paragraph shall relieve the Borrower from any responsibility for its representations and warranties under Section 5.12 hereof or under the Environmental Indemnity Agreement.

(g) In the event of any Contamination affecting the Project Facilities, whether or not the same originates or emanates from the Project Facilities or any contiguous real estate, or if the Borrower otherwise shall fail to comply with any of the requirements of Environmental Laws, the Controlling Person may, at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Project Facilities and take any and all other actions as the Controlling Person shall deem necessary or advisable in order to remedy said Contamination or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by the Controlling Person, shall be immediately due and payable by the Borrower and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof

prior to any right, title or interest in or claim upon the Project Facilities attaching or accruing subsequent to the lien of the Mortgage on the Project Facilities.

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

The indemnifications and protections set forth in this Section 6.14(h) shall be extended, with respect to the City, to the members of its Board of Supervisors, officers, employees, agents and servants and persons under the City's control or supervision, and (ii) shall be for the full and equal benefit of the Trustee, as assignee of the City under the Indenture.

Anything to the contrary in this Agreement notwithstanding, the covenants of the Borrower contained in this Section 6.14(h) shall remain in full force and effect after the termination of this Loan Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought, and (ii) payment in full or the satisfaction of such claim or cause of action and of all expense and charges incurred by the City relating to the enforcement of the provisions herein specified.

For the purposes of this Section 6.14(h), the Borrower shall not be deemed an employee, agent or servant of the City or person under City's control or supervision.

During the period in which this Loan Agreement is in effect, the Borrower hereby grants the City and the Trustee, and their respective agents, attorneys, employees, consultants and contractors, an irrevocable license and authorization upon reasonable notice of not less than 24 hours to enter upon and inspect the Project Facilities and perform such tests, including, without limitation, subsurface testing, soils and ground water testing, and other tests which may physically invade the Project, as the City or the Trustee, in their respective reasonable discretion, determine are necessary to protect the interests of the City or the owners of the Bonds. The provisions of this Section 6.14(h) shall be for the full and equal benefit of the City, and of the Trustee as assignee of the City under the Indenture.

**Section 6.15 Controlling Person.** The Borrower acknowledges and agrees that (i) the Majority Owner has the sole and exclusive right to arrange for servicing of the Loan and to appoint another person or entity to serve as its representative hereunder, under the other Bond Documents and under the Indenture; (ii) the Majority Owner has appointed [ ] to serve in the capacity of Controlling Person hereunder, under the other Bond Documents, and under the Indenture; and (iii) the Majority Owner retains

the sole and exclusive right to appoint, remove or replace the Controlling Person, without the consent or approval of the Borrower. The Borrower shall comply with the directions of the Controlling Person made on behalf of the Majority Owner.

Section 6.16 Tax Returns. The General Partner will timely file all tax returns for itself and for the Borrower, pay or cause to be paid when due all taxes imposed on their operations, assets, income or properties, and, upon request, provide to the Controlling Person copies of such returns and receipts for payment of such taxes.

Section 6.17 Leases. The Borrower hereby represents that there are no leases or agreements to lease all or any part of the Project Facilities now in effect except for leases to residential tenants in compliance with the Land Use Restriction Agreements. Except for leases to residential tenants in compliance with the Land Use Restriction Agreements and leases for services associated with residential rental properties (such as laundry and cable lease), the Borrower shall not enter into or become liable under, any leases or agreements to lease all or any part of the Project Facilities without the prior written approval thereof and of the prospective tenant by the Controlling Person. Each lease of residential units in the Project Facilities to a residential tenant shall be on a form of lease approved by the Controlling Person and shall be in compliance with the requirements of the Land Use Restriction Agreements.

Section 6.18 Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the City, the Trustee or the Controlling Person to carry out the purposes and provisions of this Agreement and the other Bond Documents, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and to assure the Controlling Person and the Majority Owner of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents and by the Indenture. The Borrower shall obtain any approvals required under the Ground Lease [and the Subordinate Debt Documents] in connection with any of the foregoing.

Section 6.19 Management Agreement. The Borrower has entered into a property management agreement in a form approved by the Controlling Person with the Managing Agent (together with any extension and replacements thereof and as the same may be amended, modified or supplemented from time to time the "Management Agreement"). Under the Management Agreement, the Managing Agent shall provide certain management services and shall be entitled to receive as compensation for those services an amount not in excess of the Underwritten Management Fee. Any amounts due the Managing Agent in excess of the Underwritten Management Fee shall be subordinated to the payment by the Borrower of all principal of, premium, if any, and interest due on the Bonds, all Third Party Costs and all required deposits into the Accounts and all payments due under the Ground Lease. The Borrower shall not replace the Managing Agent for the Project Facilities without the Controlling Person's prior written approval, and the Management Agreement shall not be terminated or modified without the Controlling Person's prior written approval. In the event the Managing Agent resigns or is removed, the Borrower shall promptly seek a replacement Managing Agent and submit such Managing Agent and its proposed form of Management Agreement to the Controlling Person for approval; if the Borrower has not done so within thirty (30) days of becoming aware of such resignation or removal, the Controlling Person may (but shall not be required to) engage a new Managing Agent on terms satisfactory to the Controlling Person in its sole discretion and at the expense of the Borrower. The sole and exclusive compensation (exclusive of reimbursement for expenses pursuant to the applicable Management Agreement) paid to manage the Project Facilities under the Management Agreement shall be as described in this Section 6.19. The Borrower shall have no employees whatsoever. The Managing Agent shall execute a consent to the Assignment of the Management Agreement pursuant to which the Managing Agent shall [confirm the subordination provisions described

above and] agree that the Management Agreement shall be terminable by the Controlling Person, with or without cause, on thirty (30) days' notice following and during the existence of an Event of Default.

Section 6.20 Determination of Taxability. Neither the Borrower nor the General Partner shall admit in writing to the City or the Trustee or to any Governmental Authority that interest on the Bonds has become includable in gross income for purposes of federal income taxation without first providing reasonable advance notice to the Controlling Person and the Majority Owner and permitting the Controlling Person or the Majority Owner, at its sole discretion and at its expense, to contest such conclusion. Promptly after the Borrower first becomes aware of any Determination of Taxability or an event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the City, the Trustee, the Controlling Person and the Majority Owner.

Section 6.21 List of Bondholders. Upon the written request of the Controlling Person, the Borrower shall exercise any right it may have under the Indenture to request a list of Bondholders and shall deliver such list to the Controlling Person. Any costs associated with obtaining the list of Bondholders at the Controlling Person's request shall be paid by the Controlling Person.

Section 6.22 Use of Proceeds. The Borrower agrees that the proceeds of the Bonds will be allocated exclusively to pay Project Costs and that, for the greatest possible number of buildings, the Bond proceeds will be allocated on a pro rata basis to each building in the Project Facilities and the land on which such building is located, so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code.

Section 6.23 Compliance With Anti-Terrorism Regulations. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in the Borrower shall at any time during the Term be described in, covered by or specially designated pursuant to or be affiliated with any Person described in, covered by or specially designated pursuant to Executive Order 13224 —Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, or any similar list issued by OFAC or any other department or agency of the United States of America. Notwithstanding the foregoing, the Borrower and the General Partner hereby each confirm that if it becomes aware or receives any notice of any violation of the foregoing covenant and agreement (an "OFAC Violation"), the Borrower or the General Partner, as applicable, will immediately (i) give notice to the Controlling Person of such OFAC Violation, and (ii) comply with all Legal Requirements applicable to such OFAC Violation, including, without limitation, Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Iraqi Sanctions Act, Pub. L. 101-5 13, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 (collectively, the "Anti-Terrorism Regulations"), and the Borrower and the General Partner hereby authorize and consent to the Controlling Person's taking any and all reasonable steps the Controlling Person deems necessary, in its sole discretion, to comply with all Legal Requirements applicable to any such OFAC Violation, including the requirements of the Anti-Terrorism Regulations. Notwithstanding anything to the contrary in this Section, the Borrower shall not be deemed to be in violation of the covenants and agreements set forth in the first sentence of this Section if the Borrower timely complies with all requirements imposed by the foregoing sentence and all requirements of the Antiterrorism Regulations and all other applicable Legal Requirements relating to such OFAC Violation.

Section 6.24 Adoption of Capital and Operating Budgets.



(a) On or before December 1 of each Fiscal Year, the Borrower shall submit to the Controlling Person for approval a proposed capital and operating budget with respect to the Project Facilities to be effective for the next following Fiscal Year (the "Proposed Budget"). The Controlling Person shall have the right to approve or disapprove any Proposed Budget, which approval shall not be unreasonably withheld or delayed. Third party costs not within the Borrower's control and costs associated with remediation of emergency conditions shall be permitted variances to the Annual Budget. If any Proposed Budget is not disapproved by the Controlling Person within thirty (30) days following submission by the Borrower, such budget shall be deemed approved. If any budget is disapproved, the Borrower shall thereafter consult with the Controlling Person in an effort to achieve a mutually acceptable Annual Budget for an additional thirty (30) days. To the extent the proposed operating budget is disapproved, the operating budget for the previous Fiscal Year shall remain in effect increased by five percent (5%) over the previous Fiscal Year (except for costs of utilities, Impositions and insurance and other third-party costs or cost associated with remediation of emergency conditions which shall be permitted variances to the Proposed Budget) until the parties resolve their differences. In addition to, and not in limitation of the foregoing, each Annual Budget may be revised from time to time with approval of Controlling Person to reflect changes to Expenses and proposed Capital Expenditures set forth in the then-current Annual Budget.

(b) Without limiting the generality that each Proposed Budget must be approved by the Controlling Person, each Proposed Budget:

- (i) shall be prepared on the basis of sound accounting practices consistently applied;
- (ii) shall reflect all amounts projected to be deposited in the Replacement Reserve Fund and the projected revenues and Expenses of the Project Facilities;
- (iii) shall reflect all projected Capital Expenditures which are reasonably expected to be made in connection with the Project Facilities during the Fiscal Year covered by such Proposed Budget; and
- (iv) shall be in such form as is reasonably acceptable to the Controlling Person and containing such other information as reasonably may be requested by the Controlling Person.

Section 6.25 Borrower's Approval of Indenture. The Borrower understands that the City will, pursuant to the Indenture and as security for the payment of the principal of, acceleration premium, if any, and the interest on the Bonds, assign and pledge to the Trustee, and create a security interest in favor of the Trustee in certain of its rights, title and interest in and to this Agreement (including all payments hereunder) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. The Borrower acknowledges that it has received a copy of the Indenture for its examination and review. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by the applicable provisions of the Indenture. The Borrower agrees that the Trustee shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it notwithstanding the fact that it is not a signatory hereto. Borrower hereby agrees to perform any express obligations on its part contained in the Indenture, notwithstanding the fact that it is not a signatory thereto.

Section 6.26 Conditions Precedent; Payment of Certain Fees, Deposits and Expenses. On the date of execution and delivery hereof, (a) the Controlling Person shall have received, in immediately available funds, an amount equal to the fees set forth in Section 2.2(a) hereof, and the fees of the Engineering Consultant set forth in Section 2.2(b) hereof incurred as of the date of the execution and

delivery hereof, and (b) the Trustee shall have received the deposits required to be made in the Accounts on such date pursuant to Article 8 hereof.

Section 6.27 Additional Conditions Precedent. The rights of the Borrower to draw the initial advance of funds from the Project Fund under this Agreement shall be subject to the conditions precedent set forth in Section 9.12 hereof and on Schedule 6 hereof.

Section 6.28 No Amendments. The Borrower shall not amend, modify or otherwise change the Ground Lease [or the Subordinate Debt Documents] without the prior written consent of the Controlling Person. The Borrower shall not agree to any amendment, modification or any other change to the Note, the Bonds or any other Bond Document without first obtaining a Favorable Opinion of Bond Counsel.

Section 6.29 Rehabilitation of Improvements. The Borrower shall rehabilitate the Project Facilities in a true, thorough and workmanlike manner and substantially in accordance with the Plans and Specifications and in compliance with all applicable Governmental Actions and Legal Requirements. The Borrower shall provide, at the Borrower's expense all manner of materials, labor, implements and cartage of every description for the due completion of renovation or construction of the Project Facilities. The Borrower shall take all necessary steps to assure that commencement of renovation or construction of the Project Facilities shall begin within thirty (30) days following the Issue Date, shall proceed continuously and diligently and in a commercially reasonable manner, and shall be completed lien free in a timely manner substantially in accordance with the Plans and Specifications and in all instances in compliance with all applicable Governmental Actions and Legal Requirements, on or before the Completion Date, subject to delays caused by a Force Majeure.

Section 6.30 Evidence of Payment of Costs. If requested by the Controlling Person, the Borrower shall furnish, before each advance agreed to be made and on completion of construction, all receipted bills, certificates, affidavits, conditional releases of lien and other documents which may be reasonably required by the Controlling Person, as evidence of full payment for all labor and materials incident to the construction of the Project Facilities for each requested draw with copies of unconditional releases of lien from each prior draw and will promptly secure the release of the Project Facilities from all liens by payment thereof or transfer to bond or other security.

Section 6.31 Correction of Deficiencies in Improvements. The Borrower agrees that it will correct any work performed and replace any materials that do not comply with the Plans and Specifications in any material respect. In the event of any dispute between the Borrower and the Controlling Person with respect to the interpretation and meaning of the Plans and Specifications, the same shall be determined by an independent engineer selected by the Borrower from the list of engineers approved by the Controlling Person.

Section 6.32 Loan Rebalancing. If, for any reason, the Controlling Person shall, in the reasonable exercise of the Controlling Person's judgment, determine that the combined total of (i) the remaining proceeds of the Loan, (ii) the capital contributions from Borrower's partners; (iii) any other source of funds shown in the Development Budget attached hereto; and (iv) any other sums deposited by the Borrower with the Trustee are insufficient to pay through completion of the Project Facilities, all of the following sums: (x) all remaining costs of construction, rehabilitation, marketing, ownership, maintenance and leasing of the Project Facilities; and (y) all remaining interest and all other remaining sums which may accrue or be payable under the Bond Documents, then the Controlling Person may require the Borrower to deposit with the Trustee for deposit into the Project Fund, within ten (10) days after written request by the Controlling Person, the projected deficiency, and such deposit shall be first disbursed in the same manner as the Loan is to be disbursed as provided herein before any further disbursements of the proceeds of the Loan shall be made. Notwithstanding the foregoing, if, at any time, Controlling Person determines, in

Controlling Person's reasonable discretion, that it is unlikely that Borrower will receive all or a portion of the sources of funds shown on the Development Budget (other than Loan proceeds), Controlling Person may exclude such amount from its determination of whether the Loan is "in balance" as provided above.

Section 6.33 Use of Loan Proceeds. All labor and materials contracted for and in connection with the **rehabilitation of** the Project Facilities shall be used and employed solely for the Improvements and in said construction and only in accordance with the Plans and Specifications. Moneys disbursed from Accounts held under the Indenture to or for the account of the Borrower under this Agreement shall constitute a trust fund in the hands of the Borrower or other payee and shall be used solely by such payee for the payment of the Qualified Project Costs and for no other purpose unless another use is specifically provided for in this Agreement or consented to in writing by the Controlling Person. Nothing in this paragraph shall be deemed to impose a trust on the undisbursed portion of the Loan or any other amounts held under the Indenture or to impose any duty on the Controlling Person with respect thereto.

Section 6.34 Special Servicing Costs. The Controlling Person, as servicer of the Loan, may charge the Borrower additional servicing fees and costs for special servicing requests. The Borrower shall pay as and when due all such special servicing fees or costs.

Section 6.35 Developer Fee. Borrower will not pay any Developer Fee unless permitted under Section 2 of the Developer Fee Pledge.

Section 6.36 Payment and Performance Bonds. Borrower shall furnish to Controlling Person, and shall maintain in effect through final completion of the Work, such Payment and Performance Bonds with respect to the Contractor, or if the Contractor does not obtain such Payment and Performance Bond, such Payment and Performance Bonds shall be obtained with respect to each contractor that enters into a Major Contract; provided, however, that if Payment and Performance Bonds have been provided by any contractor under a Major Contract in accordance with the terms hereof, any subcontractor of such contractor shall not be required to post any Payment and Performance Bonds in respect of such subcontract. Borrower shall take such action and require such performance as Controlling Person deems necessary under the Payment and Performance Bonds. In the event that any payments under any Payment and Performance Bonds are issued jointly to Borrower and Trustee or Borrower and Controlling Person, Borrower shall endorse any such jointly issued payments to the order of Trustee or Controlling Person, as determined by Controlling Person in its discretion, promptly upon Controlling Person's demand. Notwithstanding the foregoing, provided no Default or Event of Default exists, the Borrower may request that Controlling Person consent in writing to the release of the Payment and Performance Bonds following achievement of Completion.

Section 6.37 Extension of the Outside Stabilization Date.

(a) The Borrower may, upon 30 days prior written notice to the Controlling Person, extend the deadline for the Project Facilities to achieve Stabilization so long as:

(1) there is no uncured Default or Event of Default exists and the Borrower is then in compliance with its obligations under the Bond Documents;

(2) the extended deadline for the achievement of Stabilization is no later than six months after the initial Outside Stabilization Date;

(3) and an extension fee equal to 0.25% times the principal amount of Bonds Outstanding at the date of extension is paid to the Controlling Person with respect to such extension;

(4) the Borrower certifies in writing to the Controlling Person that cash flows generated from property operations and/or funds on deposit with the Trustee (or other sources approved by the Controlling Person) will be sufficient to pay debt service during the term of the extension; and

(5) the Borrower obtains a Favorable Opinion of Bond Counsel.

(b) [INCLUDE IF AMORTIZATION COMMENCES AFTER STABILIZATION-In connection with such extension, the First Principal Payment Date shall be extended to commence on the first Interest Payment Date following achievement of Stabilization.]

## **ARTICLE 7 DEFAULTS AND REMEDIES**

Section 7.1 Defaults. Each of the following shall constitute an event of default hereunder (“Event of Default”):

(a) Failure by the Borrower to pay any amount required to be paid by the Borrower under this Agreement, the Note or any of the other Bond Documents when the same shall become due and payable;

(b) Failure by the Borrower to perform or comply with any of the terms or conditions contained in Section 6.1, 6.11 or 6.12 hereof;

(c) Failure by the Borrower to perform or comply with any of the terms or conditions contained in this Agreement and any of the other Bond Documents to which the Borrower is a party, other than as described in paragraphs (a) and (b) above, and continuation of such failure for thirty (30) days after written notice from the Trustee or the Controlling Person to the Borrower (with a copy to the Investor Limited Partner, or such longer period to which the Controlling Person may agree in the case of a default not curable by the exercise of due diligence within such thirty (30) day period, if the Borrower, the General Partner or the Investor Limited Partner shall have commenced a cure of such default within such thirty (30) day period and shall be diligently pursuing such cure as quickly as reasonably possible;

(d) Any of the representations or warranties of the Borrower set forth in this Agreement, any of the other Bond Documents or any other document furnished to the City, the Trustee, the Controlling Person or the Majority Owner pursuant to the terms hereof proves to have been false or misleading in any material respect when made;

(e) Any provision of this Agreement or any of the other Bond Documents to which the Borrower, the General Partner or any Guarantor is a party for any reason ceases to be valid and binding on the Borrower, the General Partner or the Guarantor, is declared to be null and void, or is violative of any applicable Legal Requirement relating to a maximum amount of interest permitted to be contracted for, charged or received, or the validity or enforceability thereof is contested by the Borrower, the General Partner or any Guarantor or any Governmental Authority, or the Borrower, the General Partner or any Guarantor denies that it has any or further liability or obligation under this Agreement or any of the Bond Documents to which the Borrower, the General Partner or any Guarantor is a party;

(f) The occurrence of an Event of Default as defined in the Indenture or the other Bond Documents [or the Subordinate Debt Documents] or an act or event (or failure to act or non-occurrence of an act) which, with the passage of time, the giving of notice or both, would constitute an Event of Default under the Indenture or the other Bond Documents [or the Subordinate Debt Documents]; [or the occurrence

of a breach under the [HAP Contract] [IRP Agreement] which causes, or, with the giving of notice, the passage of time, or both, would cause HUD to terminate the payments thereunder;]

(g) The Borrower, any Guarantor or the General Partner (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner, as applicable, or of property of any such party or (ii) admits in writing the inability of the Borrower, any Guarantor or the General Partner to pay its debts generally as they become due, or (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated bankrupt or insolvent, (v) commences a voluntary case under the Bankruptcy Code or files a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or files an answer admitting the material allegations of a petition filed against the Borrower, any Guarantor or the General Partner in any bankruptcy, reorganization or insolvency proceeding, or action of the Borrower, any Guarantor or the General Partner is taken for the purpose of effecting any of the foregoing, or (vi) has instituted against it, without the application, approval or consent of the Borrower, any Guarantor or the General Partner, as applicable, a proceeding in any court of competent jurisdiction, under any Legal Requirements relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking in respect of the Borrower, any Guarantor or the General Partner an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up or liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner or of all or any substantial part of the assets of such party or other like relief in respect thereof under any Legal Requirements relating to bankruptcy or insolvency law, and, if such proceeding is being contested by the Borrower, such Guarantor or the General Partner, as applicable, in good faith, the same (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed and undischarged for a period of sixty (60) days;

(h) The Borrower fails to maintain in full force and effect any insurance required pursuant to this Agreement;

(i) The Project Facilities suffer a loss by fire or other casualty and such loss is not fully insured and any deficiency in the amount of insurance proceeds paid with respect to such loss is not posted with the Trustee within thirty (30) days of the determination of such deficiency;

(j) Subject to any extensions or cure periods contemplated herein or in the Indenture, the Project Facilities fail to achieve (i) Completion on or before the Completion Date; (ii) Stabilization on or before the Stabilization Date, or (iii) if specified on the Schedule of Financial Terms, as applicable, to obtain and maintain the exemption from ad valorem real estate taxation under the laws of the State;

(k) Any litigation or administrative proceeding ensues, and is not dismissed within thirty (30) days, involving the Borrower, the General Partner, any Guarantor or any instrument, contract or document delivered by the Borrower to the Controlling Person or the Trustee in compliance with this Agreement, and the adverse result of such litigation or proceeding would have, in the Controlling Person's reasonable opinion, a materially adverse effect on the Borrower's, the General Partner's or any Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(l) Any one or more judgments or orders are entered against the Borrower, any Guarantor or the General Partner, and (1) continue unsatisfied and unstayed for thirty (30) days or (2) a judgment lien on any property of the Borrower, any Guarantor or the General Partner is recorded in respect thereof and is not stayed pending appeal by a bond or other arrangement given or obtained by the Borrower, any Guarantor or the General Partner on terms which do not violate any of the Borrower's covenants under this Agreement;

(m) Failure by the Borrower or the Guarantor (1) to make any payment or payments in respect of any Obligation or Indebtedness (unless a bona fide dispute exists as to whether such payment is due), when such payment or payments are due and payable (after the lapse of any applicable grace period), (2) to perform any other obligation or covenant under any such obligation or obligations or (3) to pay or perform any obligation or covenant under any Material Contract, any of which (x) results in the acceleration of such Obligation or Indebtedness or enables the holder or holders of such Obligation or Indebtedness or any person acting on behalf of such holder or holders to accelerate the maturity of such obligation or (y) would have, in the Controlling Person's reasonable opinion, a materially adverse effect on either the Borrower's or the Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(n) Rehabilitation of the Improvements shall have been discontinued for thirty (30) consecutive working days for any reason whatsoever, except such reason as the Controlling Person shall deem reasonable;

(o) If at any time the Borrower shall have been unable for a period of forty-five (45) days to meet the requirements for an Advance under this Agreement, regardless of whether the Borrower has requested an Advance that has not been funded;

(p) The Contractor shall have defaulted under the Construction Contract, which default the Controlling Person, in its sole opinion, shall deem to be substantial, and the Borrower, upon five (5) days written notice from the Controlling Person, shall have failed to exercise any right or remedy to which it shall be entitled; and

(q) [An event of default shall have occurred under the Subordinate Debt Documents.]

Section 7.2 Remedies. If an Event of Default has occurred and is continuing uncured, the Trustee, acting solely at the direction of the Controlling Person, shall:

(a) Declare the principal of all Bonds then Outstanding and the interest accrued thereon to be due and payable; and

(b) Declare the Borrower's obligations hereunder, under the Note and under the other Bond Documents to be, whereupon the same shall become, immediately due and payable, provided, no such declaration shall be required, and acceleration shall be automatic, upon occurrence of an event set forth in Section 7.1(g) hereof; and

(c) Enter upon the Project Facilities and take possession thereof, together with the Improvements in the course of rehabilitation or completed, and all of the Borrower's materials, supplies, tools, equipment and construction facilities and appliances located thereon, and proceed either in the name of the Trustee or in the name of the Borrower as the attorney-in-fact of the Borrower (which authority is coupled with an interest and is irrevocable by the Borrower) as the Controlling Person shall elect, to complete the rehabilitation of the Improvements at the cost and expense of the Borrower; if the Controlling Person elects to complete or cause the rehabilitation of the Improvements to be so completed, it may do so according to the terms of the Plans and Specifications and as the Controlling Person shall deem expedient or necessary, and the Trustee may enforce or cancel all contracts entered into as aforesaid or make other contracts which in the Controlling Person's reasonable opinion may seem advisable, and the Borrower shall be liable, under this Agreement and under the Note or any other note given by it pursuant to the provisions hereof, to pay the Trustee upon demand any amount or amounts expended by the Trustee or its representatives for such performance, together with any costs, charges or expenses incident thereto or otherwise incurred or expended by the Trustee or its representatives on behalf of the Borrower in connection

with the Improvements, and the amounts so expended shall bear interest at the default rate specified in the Note, and shall be considered part of the indebtedness evidenced by the Note and secured by the Mortgage; and

(d) In the event the Contractor shall have defaulted as aforesaid, and the Contractor has no surety, the Controlling Person shall proceed to negotiate or invite bidding to procure, within an additional fifteen (15) days, a successor Contractor to complete the Improvements under a performance bond and labor and material payment bond approved by the Controlling Person in the full amount of the new contract price; if the Contractor has a surety, but the surety refuses or fails to commence completion of the Improvements within fifteen (15) days after notice from the Borrower to do so, the Controlling Person shall proceed, within ten (10) days, to negotiate or invite bidding as herein provided or to take action against the entity; and

(e) (1) Enter upon or take possession of the Project Facilities and call upon or employ suppliers, agents, managers, maintenance personnel, security guards, architects, engineers and inspectors to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury; (2) pay out additional sums (which sums shall be immediately due and payable by the Borrower to the Trustee) and use any property of the Borrower associated with the Project Facilities, or any property of the Borrower in which the Trustee has or obtains an interest for application to or as a reserve for payment of any or all of the following with respect to the protection, management, operation or maintenance of the Project Facilities or the protection of the Trustee's interest therein, and in such connection deliver or disburse the same to such entities in such amounts and with such preferences and priorities as the Controlling Person in its sole discretion shall determine, either with or without vouchers or orders executed by the Borrower: (A) all sums due from the Borrower to the Trustee; (B) premiums and costs of title and any other insurance; (C) leasing fees and brokerage or sales commissions; (D) fees, costs and expenses of the Trustee and its counsel in connection with the enforcement and performance of this Agreement, the other Bond Documents and the other documents contemplated hereby; (E) any taxes (including federal, state and local taxes) or other governmental charges; (F) any sums required to indemnify and hold the Trustee harmless from any act or omission of the Trustee (except such as are grossly negligent or due to its willful misconduct) under Section 2.5 hereof, the other Bond Documents or any other document; (G) architectural and engineering costs or any sums due to contractors, subcontractors, mechanics or materialmen for work or services actually furnished on or for the Project Facilities; (H) claims of any Governmental Authority for any required withholding of taxes on wages payable or paid by the Borrower; and (I) other costs and expenses which are required to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury or maintain the Trustee's security position before the rights of all others; (3) place additional encumbrances upon the Project Facilities; and (4) employ leasing and sales agents and negotiate and execute leases, sales contracts and financing undertakings in connection with all or any part of the Project Facilities; and

(f) Subject to all Legal Requirements, require the Borrower to transfer all security deposits to the Trustee; and

(g) Exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement, the other Bond Documents or at law or in equity.

Section 7.3 No Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Trustee at the direction of the Controlling Person (or by the City if the same relates to Reserved Rights), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 7.4 No Waiver; Remedies Cumulative. No failure on the part of the City, the Trustee, the Controlling Person or any Bondholder to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 7.5 Set-Off. Upon the occurrence and during the continuation of an Event of Default hereunder, the Trustee is hereby authorized at any time and from time to time without notice to the Borrower or the General Partner (any such notice being expressly waived by the Borrower and the General Partner) and, to the fullest extent permitted by applicable Legal Requirements, to set off and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys at any time held (including any amounts in the Accounts except for the Rebate Fund and the Tax and Insurance Escrow Fund) and other indebtedness at any time owing by the City to or for the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, the Bond Documents or any other agreement or instrument delivered by the Borrower to the City in connection therewith, whether or not the City shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. The rights of the Trustee under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Trustee may have.

Section 7.6 City and Borrower to Give Notice of Default. The City and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Trustee, the Controlling Person and the Investor Limited Partner and to each other written notice of the occurrence of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice, but the City shall not be liable for failing to give such notice.

Section 7.7 Cure by Investor Limited Partner . Notwithstanding anything to the contrary contained herein, the City hereby agrees that any timely cure of any default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower; provided, however, that the Investor Limited Partner shall not have any obligation or duty to take any action to cure any default or to cause any default to be cured.

Section 7.8 Default Rate; Acceleration Premium. In the event there shall have occurred an acceleration of the obligations of the Borrower hereunder following an Event of Default on or before the First Optional Call Date, any tender of payment of an amount necessary to satisfy the indebtedness evidenced by this Agreement shall include the acceleration premium set forth in Section 2.3(c) hereof. In addition, in the event that principal or interest payable hereunder is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 7.9 Reserved Rights; Regulatory Agreement Defaults.

(a) Notwithstanding anything to the contrary contained herein, the City may enforce its Reserved Rights under the Bond Documents and exercise the permitted remedies with respect thereto against the Borrower, subject to the provisions of subparagraph (c) below.

(b) If there shall have occurred and be then continuing an event of default under a Land Use Restriction Agreement which would, in the reasonable judgment of the City or the Trustee, jeopardize the exclusion from gross income of interest on the Bonds (a "Regulatory Agreement Default") and such Regulatory Agreement Default remains uncured or unwaived for a period of sixty (60) days after the Borrower, the Controlling Person and the Majority Owner receive written notice from the Trustee or



the City stating that a Regulatory Agreement Default has occurred and specifying the nature of such default, then, if authorized by the Bond Documents, the City and the Trustee may, without the consent of the Controlling Person or the Majority Owner, exercise the remedy of pursuing specific performance of the Bond Documents on account of such default, unless:

(i) The City and the Trustee, prior to the end of such sixty (60) day period, are provided with an opinion of Bond Counsel to the effect that the failure to cure such default will not have an adverse effect on the exclusion from gross income for federal income tax purposes of interest on the Bonds (which opinion may be requested and obtained by the Controlling Person or the Majority Owner);

(ii) The Controlling Person, the Majority Owner or the Borrower institutes action to cure such Regulatory Agreement Default within such sixty (60) day period and diligently pursues such action thereafter until such Regulatory Agreement Default is cured; or

(iii) If such Regulatory Agreement Default is not reasonably curable by the Controlling Person or the Majority Owner without the Trustee's first securing possession of the Project Facilities and/or operational control of the Borrower and the Controlling Person or the Majority Owner (subject to extension during any stay on account of the bankruptcy of the Borrower) (x) instructs the Trustee, subject to the terms of the Indenture, to institute, within such sixty (60) day period, proceedings or other action for the purposes of obtaining such possession or control pursuant to the Bond Documents; (y) thereafter instructs the Trustee, pursuant to the terms of the Indenture, to pursue diligently such proceedings until such possession or control is obtained; and (z) diligently pursues action to cure such default after the Trustee or other designee of the Controlling Person or the Majority Owner obtains possession or control of the Project Facilities, until such default is cured; provided, however, that any extension of the period within which a Regulatory Agreement Default must be cured shall only be effective if and to the extent that, in the opinion of Bond Counsel provided to the Trustee, such extension will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds; and provided further, that the Trustee, upon five (5) Business Days' prior written notice to the Controlling Person and the Majority Owner following any such Regulatory Agreement Default, may reduce the 60-day period provided above to such shorter period of time as is specified in such notice (but in no event less than fifteen (15) Business Days), but only if the Trustee, the Controlling Person and the Majority Owner shall have been provided with an opinion of Bond Counsel to the effect that such reduction of such period is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(c) In the event of a default in respect of Reserved Rights or a Regulatory Agreement Default which remains uncured after written notice thereof to the Borrower, the Controlling Person and the Majority Owner, nothing in this Section 7.9 shall restrict or in any way limit the right of the City or the Trustee to take any action for specific performance available under a Land Use Restriction Agreement or at law or in equity in order to enforce the terms of a Land Use Restriction Agreement or to enforce Reserved Rights hereunder, so long as neither the City nor the Trustee takes any action (i) to declare the outstanding balance of the Bonds or the Loan to be due on account of such default, (ii) to have a receiver appointed in respect of the Project Facilities, (iii) to foreclose any liens upon or security interests or to enforce any other similar remedy against any of the property described in the Mortgage, or (iv) to enforce any other similar remedy which would cause such liens or security interests to be discharged or materially impaired thereby.

## **ARTICLE 8 DEPOSITS TO FUNDS**

Section 8.1     Deposits to and Disbursements from the Replacement Reserve Fund. Pursuant to the Replacement Reserve Agreement, the Borrower shall pay or cause to be paid to the Trustee, for deposit into the Replacement Reserve Fund established by the Indenture, the amounts described in the Replacement Reserve Agreement. The sums contained in the Replacement Reserve Fund from time to time, shall be maintained, disbursed, and applied as provided in the Replacement Reserve Agreement and pursuant to Section 4.5(d) of the Indenture.

Section 8.2     Deposits to Tax and Insurance Escrow Fund.

(a)     Unless otherwise directed by the Controlling Person, two Business Days before each Interest Payment Date, commencing the First Interest Payment Date, and continuing each month thereafter, the Borrower shall pay, or cause to be paid, to the Trustee an amount equal to the Monthly Tax and Insurance Amount for the Project Facilities to be deposited in the Tax and Insurance Escrow Fund.

Section 8.3     Deposits to Transition and IRP Reserve Fund. On the Stabilization Date, the Borrower shall pay or cause to be paid to the Trustee, to be deposited in the Transition and IRP Reserve Fund the sum of \$\_\_\_\_\_ pursuant to Section 4.1 of the Indenture.

Section 8.4     Deposits to Redemption Fund. Two Business Days before each Principal Payment Date, commencing on the First Principal Payment Date and continuing thereafter until the date on which the Bonds are no longer Outstanding or have been defeased, the Borrower shall pay to the Trustee the monthly amount shown on the Debt Service Schedule, as modified from time to time pursuant to Section 3.4(e) of the Indenture, for deposit into the Redemption Fund pursuant to Section 4.5(a) of the Indenture. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all amounts required to redeem the Bonds pursuant to Section 3.4(b)(vi) of the Indenture on or before the Interest Payment Date specified in the notice of the Controlling Person as provided in Section 3.4(b)(vi) of the Indenture. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all other amounts required to redeem Bonds pursuant to Section 3.4 of the Indenture, as provided therein.

Section 8.5     [Deposits to Operating Reserve Fund. [IF OPERATING RESERVE FUND IS HELD UNDER THE INDENTURE: The Borrower [upon achievement of Stabilization,] [upon receipt of the Installment under the Partnership Agreement of the Borrower] shall pay or cause to be paid to the Trustee, to be deposited in the Operating Reserve Fund, the sum of \$\_\_\_\_\_ pursuant to Section 4.1 of the Indenture. Following any disbursement, payment or transfer of moneys from the Operating Reserve Fund, the Borrower shall replenish the Operating Reserve Fund monthly, from and to the extent of revenue from the operation of the Project Facilities available after payment of Expenses, capital expenditures and amounts then due and owing under the Bond Documents, and prior to the payment of any distributions to the Borrower's partners, until such time as the balance on deposit in the Operating Reserve Fund equals \$\_\_\_\_\_.] [IF OPERATING RESERVE FUND IS HELD UNDER THE PARTNERSHIP AGREEMENT: [Establishment of Operating Reserve Fund. The Borrower shall, [upon the achievement of Stabilization,] [upon receipt of the Installment under the Partnership Agreement of the Borrower] establish and maintain, at a bank approved by Controlling Person, an operating reserve fund (the "Operating Reserve Fund") in the amount of \$\_\_\_\_\_. Moneys in the Operating Reserve Fund may be used by the Borrower only to fund any operating deficits of the Borrower, Expenses, or for any other operating or capital needs approved by the Controlling Person and Investor Limited Partner in writing. During the continuance of an Event of Default or in order to prevent an Event of Default, the Operating Reserve Fund shall be applied to by the Borrower, at the direction of the Controlling Person: (i) first to pay current debt service on the Bonds; (ii) second to pay other operating deficits of the Project Facilities; and (iii) thereafter

to payment of other amounts owed by the Borrower. Borrower additionally covenants and agrees that promptly following the date that the Investor Limited Partner, or an Affiliate of Investor Limited Partner, is no longer a partner under the Partnership Agreement of the Borrower (the “Operating Reserve Trigger”), the Operating Reserve Fund shall be transferred to the Trustee and held as additional security for the Bonds.]

Section 8.6 Investment. Funds in the Accounts shall be invested in Permitted Investments upon the direction of the Borrower with the consent of the Controlling Person, as set forth in Section 4.7 of the Indenture. Earnings on the Accounts hereunder shall be held or disbursed as set forth in Article IV of the Indenture. The Trustee shall have the right to invest or withdraw any deposited funds or to direct the liquidation of any investments held in order to pay the amounts required under this Agreement and the other Bond Documents. The Trustee shall not be liable for any loss sustained as a result of any liquidation of any collateral prior to its maturity. Any income or gain realized on such investments shall be credited to and become part of the respective Account and reinvested and applied as provided in the Indenture. Provided that no Default or Event of Default exists, the Borrower from time to time may request the Controlling Person to consent to the disbursement to or upon the order of the Borrower of the investment income previously credited to the Accounts, which consent by the Controlling Person shall not be unreasonably withheld or delayed.

Section 8.7 Security Interest in Accounts. The Borrower hereby assigns and pledges to the City, and grants the City a security interest in, as additional collateral security for the Borrower’s obligations to the City hereunder (and the Borrower acknowledges and agrees that the City shall have a continuing security interest in) all of the Borrower’s right, title and interest, if any, in all Accounts, all cash, cash equivalents, instruments, investments and other securities at any time held in the Accounts, all proceeds of the foregoing, and all of the Borrower’s rights associated with such Accounts, if any. The City hereby directs the Trustee to hold all moneys in the Accounts from time to time as assignee of the City.

Section 8.8 Reports. The Trustee shall provide to the Borrower detailed monthly reports on or before the fifth (5<sup>th</sup>) day of the month following the month to which such report relates showing receipts, disbursements, balances and investments of each Account. Within ten (10) days of a written request of the Borrower to such effect, the Trustee shall deliver to the Borrower an accounting of receipts, disbursements and balances in one or more of the Accounts as necessary and appropriate to assist the Borrower in complying with its covenants to calculate and pay any rebate amount or yield reduction payments due and owing to the United States of America with respect to the Bonds.

Section 8.9 No Liability of Trustee. In performing any of its duties hereunder, the Trustee shall not incur any liability to anyone for any damages, losses or expenses, except for its gross negligence, bad faith or willful misconduct; and the Trustee shall not incur any liability with respect to any action taken or omitted in good faith in the performance of its duties and responsibilities under this Agreement.

## **ARTICLE 9**

### **REHABILITATION AND FUNDING OF ADVANCES**

Section 9.1 Rehabilitation of Project Facilities; Completion and Stabilization. The Borrower shall commence performance of the Work in respect of the Improvements no later than thirty (30) days’ following the Issue Date, and shall achieve Completion of such Work in accordance with the Plans and Specifications on or before the Completion Date and Stabilization on or before the Stabilization Date. At the request of the Borrower and with the prior written approval of the Controlling Person, the Completion Date may be extended one or more times for such periods as the Controlling Person may approve in its sole discretion and upon delivery of such other information and funds as the Controlling Person may require in its sole discretion and the Stabilization Date may be extended as provided in Section 6.37 herein.

Section 9.2     Making The Advances.

(a)     At such time as the Borrower desires to obtain an advance from the Project Fund, an Authorized Person shall complete, execute and deliver a Requisition to the Controlling Person for its approval; no Requisition shall be delivered to the Trustee until it has been approved by the Controlling Person, and each advance by the Trustee of the amounts in the Project Fund shall be subject to the prior approval of the Requisition by the Controlling Person. The Controlling Person shall endeavor to approve or object to any Requisition within ten (10) Business Days of its submission and the submission of all additional information required in connection with such Requisition and shall endeavor to provide specific information concerning the nature of any objection it may have.

(b)     Each Requisition shall be submitted to the Controlling Person at least fifteen (15) Business Days prior to the date of the requested Advance, and no more frequently than once each month (excluding the month in which the initial advance is requested). The Borrower shall open and maintain a checking account with a financial institution reasonably satisfactory to the Controlling Person. Except as otherwise provided for herein, the Controlling Person shall direct the Trustee to deposit the proceeds of each Requisition into such account.

Section 9.3     Advances to Contractors; to Others. At its option during the existence of any Event of Default or Default, the Controlling Person may direct the Trustee to make any or all advances: (a) for costs incurred under any construction contract directly to a contractor, subcontractor or vendor, (b) through the Title Company, or (c) to any Person to whom the Controlling Person in good faith determines payment is due.

Section 9.4     Requisition. Each Requisition shall be in the form set forth on Exhibit B hereto, shall be signed on behalf of the Borrower by an Authorized Person, shall be subject to approval by the Controlling Person prior to payment and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; (c) that each obligation therein for which such disbursement is being requested has been properly incurred and has not been the basis for any previous disbursement; and (d) that the expenditure of such disbursement, when added to all previous disbursements, will result in not less than ninety-five percent (95%) of all disbursements having been used to pay or reimburse the Borrower for Qualified Project Costs.

Section 9.5     Project Costs. The Development Budget reflects the purposes and the amounts for which funds to be advanced by the Trustee from the Project Fund are to be used. Subject to Section 9.7 hereof, the Controlling Person shall not be required to approve any Requisition requiring disbursement of funds from the Project Fund for any item of Work in an amount exceeding the amount specified for any item in the Development Budget. Subject to Section 9.7 hereof, in no event shall the Controlling Person approve any Advance in an amount exceeding (a) the total cost (as determined by the Controlling Person) of the labor, materials, fixtures, machinery and equipment completed, approved and incorporated into the Project Facilities prior to the date of such Requisition, less (b) Retainage (if required) less (c) the total amount of any advances previously made by the Trustee from the Project Fund for such costs.

Section 9.6     Retainage. The Controlling Person shall approve disbursement of Retainage upon completion of the Work or category of Work by the contractor or subcontractor under the contract for which the Retainage was held. No advance of funds from the Project Fund shall be approved unless all Work done at the date the Requisition for such advance is submitted is done in a good and workmanlike manner and without defects, as confirmed by the report of the Engineering Consultant.

Section 9.7     Contingency Reserve. The amount allocated to “contingency” in the Development Budget is not intended to be disbursed without, and will only be disbursed upon, the prior approval of the

Controlling Person. The disbursement of a portion of the contingency reserve shall in no way prejudice the Controlling Person from directing the Trustee to withhold disbursement of any further portion of the contingency reserve.

#### Section 9.8     Stored Materials; Removal of Materials..

(a)     The Controlling Person shall approve Requisitions for funds for materials, furnishings, fixtures, machinery or equipment not yet incorporated into the Improvements, provided that any such disbursement shall be subject to and shall be contingent upon the Controlling Person's receiving satisfactory evidence that:

(1)     such materials are components in a form ready for incorporation into the Improvements and shall be so incorporated within a period of thirty (30) days; and

(2)     such materials are stored at the Project Facilities, or at such other site as the Controlling Person shall approve, and are insured and protected against theft and damage.

(b)     Within five (5) days after receiving notice from the Controlling Person (or the Engineering Consultant), the Borrower will commence or cause to be commenced the removal of all materials, whether worked or unworked, and all portions of the rehabilitation which the Controlling Person (or the Engineering Consultant) may condemn as failing in a substantial way to conform with the Plans and Specifications, and will prosecute diligently or cause to be prosecuted diligently such removal. The Borrower further agrees to make good all portions of the rehabilitation and other materials damaged by such removal.

#### Section 9.9     Cost Overruns and Savings.

(a)     If the Borrower becomes aware of any change in the costs of the Work which will increase or decrease the projection of the costs reflected on the Development Budget by \$50,000 or more, the Borrower shall immediately notify the Controlling Person in writing and promptly submit to the Controlling Person for its approval a revised Development Budget. If the Controlling Person otherwise becomes aware of any such change in costs of the Work, the Controlling Person shall have the right to prepare and to authorize disbursements on the basis of a revised Development Budget.

(b)     If the revised Development Budget indicates an increase in costs of the Work for the Project Facilities (in excess of the aggregate contingency amount and savings), no further Requisitions for the Work at the Project Facilities need be approved by the Controlling Person unless and until the Borrower has deposited with the Trustee any required funds necessary to cause the amount remaining on deposit in the Project Fund and any Required Equity Funds yet to be deposited with the Trustee to be sufficient to complete fully the rehabilitation of the Improvements in accordance with the Plans and Specifications to the extent applicable, and to pay all other Projected costs in connection with the Work.

(c)     If the revised schedule indicates a decrease in costs of the Work for the Project Facilities, no savings may be reallocated by the Borrower unless and until the Borrower has furnished the Controlling Person and the Engineering Consultant with evidence satisfactory to them that the labor performed and materials supplied in connection with such line item of costs have been satisfactorily completed and paid for in full. At such time, such savings may be reallocated by the Borrower, with the consent of the Controlling Person, to other line items.

(d) The City does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Project Costs will be sufficient to pay all of the Project Costs, nor does the City have any obligation to provide additional funds to pay any Project Costs from any source whatsoever, other than from proceeds of the Bonds and [\_\_\_\_]. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Project Costs as required herein, the Borrower shall not be entitled to any reimbursement therefor from the City, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement or under the Note.

Section 9.10 Right to Retain the Engineering Consultant.

(a) The Trustee shall have the right to retain, at the direction of the Controlling Person and at the Borrower's cost and expense, the Engineering Consultant to perform various services on behalf of the Controlling Person, including, without limitation, to make periodic inspections for the purpose of assuring that rehabilitation of the Improvements to date is in accordance with the Plans and Specifications, to advise the Controlling Person of the anticipated cost of and time for completion of rehabilitation of the Improvements and to review all construction contracts and subcontracts.

(b) The fees of the Engineering Consultant during the performance of the rehabilitation shall be paid by the Borrower in accordance with Section 2.2(b) hereof.

(c) Neither the City, the Controlling Person, Majority Owner nor the Engineering Consultant shall have any liability to the Borrower on account of (i) the services performed by the Engineering Consultant, (ii) any neglect or failure on the part of the Engineering Consultant to properly perform its services, or (iii) any approval by the Engineering Consultant of rehabilitation of the Improvements. Neither the City, the Controlling Person nor the Engineering Consultant assumes any obligation to the Borrower, the General Partner or any other Person concerning the quality of the Work performed or the absence of defects from the Improvements.

Section 9.11 Inspections. The Borrower agrees to provide and cause to be provided to the Controlling Person and its authorized agents, at all times, facilities commonly made available by responsible general contractors for the inspection of the Improvements, and to afford full and free access to the Controlling Person and its authorized agents to all plans, drawings and records with respect to the rehabilitation of the Improvements. The Borrower further agrees to promptly send to the Controlling Person a copy of all construction inspection reports made by the Borrower's Architect or engineer.

Section 9.12 Initial Advances. The right of the Borrower to draw the initial Advance on the Issue Date shall be subject to the satisfaction of the conditions precedent listed on Part A of Schedule 6 attached hereto.

Section 9.13 Subsequent Advances. The right of the Borrower to draw any subsequent advances of funds from the Project Fund shall be subject to the satisfaction of the conditions listed on Part B of Schedule 6 attached hereto.

Section 9.14 Construction Information and Verification. From time to time, within ten (10) days after the written request of Controlling Person, Borrower shall deliver to Controlling Person any and all of the following information and documents, to the extent applicable to the construction or renovation of the Project Facilities, that Controlling Person may request, all in forms acceptable to Controlling Person, as applicable:

(a) Current Plans and Specifications for the Improvements certified by the Architect as being complete and accurate, and a line item cost breakdown for the proposed construction and/or rehabilitation of the Improvements;

(b) A current, complete and correct list showing the name, address, telephone number and license information of each contractor, subcontractor and material supplier engaged in connection with the construction and/or rehabilitation of the Improvements, and the total dollar amount of each contract and subcontract (including any changes) and the scope of work involved, together with the amounts paid through the date of the list and all other information reasonably requested by Controlling Person;

(c) True and correct copies of the most current versions of all executed contracts and subcontracts with each party identified in the list described in clause (b) above, including any changes;

(d) True and correct copies of all grading, foundation, building and all other construction permits, licenses and authorizations from all applicable Governmental Authorities or third parties necessary for the construction and/or rehabilitation of the Improvements and the operation of, and access to, the Project;

(e) Copies of (i) owner/architect/contractor project meeting minutes; (ii) requests for information (RFI), submittal logs, proposed change orders (PCO), and change order logs; (iii) independent test results, (iv) quality inspection reports; and (v) anticipated cost reports, buy-out logs and Major Contracts;

(f) A construction schedule showing the progress of construction or rehabilitation, as the case may be, and the projected sequencing and completion times for uncompleted Work, all as of the date of the schedule; and

(g) Any update to any item described above which Borrower may have previously delivered to Controlling Person.

(h) Borrower expressly authorizes Controlling Person to contact Architect, Contractor or any contractor, subcontractor, material supplier, surety or any Governmental Authority to verify any information disclosed in accordance with this Section 9.14. Controlling Person shall give notice to Borrower of any such contacts, provided that neither Controlling Person nor Trustee shall incur any liability to Borrower by reason of the failure to give such notice, and Borrower's obligations under the Borrower Loan Documents shall not be affected in any manner by any failure to give such notice. The Construction Contract shall require the Contractor to disclose such information to Trustee and Controlling Person. Any defaulting architect, contractor, subcontractor, material supplier or surety shall be promptly replaced, and Borrower shall promptly deliver all required information and documents to Controlling Person and Trustee regarding each replacement architect, contractor, subcontractor, material supplier and surety. Controlling Person may disapprove any architect, contractor, subcontractor, material supplier, surety or other party whom Controlling Person in its reasonable judgment may deem financially or otherwise unqualified, however, the absence of any such disapproval shall not constitute a representation of qualification.

Section 9.15 Effect of Approval. Approval of any Requisition by the Controlling Person shall not constitute an approval or acceptance of the Work or materials, nor shall such approval give rise to any liability or responsibility relating to: (i) the quality of the work, the quantity of the work, the rate of progress in completion of the Work, or the sufficiency of materials or labor being supplied in connection therewith; and (ii) any errors, omissions, inconsistencies or other defects of any nature in the Plans and Specifications. Any inspection of the work that the Controlling Person may choose to make, whether through any consulting engineer or architect, agent or employee or officer, during the progress of the work shall be

solely for the Controlling Person's information and under no circumstances will they be deemed to have been made for the purpose of supervising or superintending the Work, or for the information or protection of any right or interest of any person or entity other than the Controlling Person and the Majority Owner.

## **ARTICLE 10 MISCELLANEOUS**

Section 10.1 Notices. All notices and other communications provided for hereunder shall be in writing and sent by electronic mail (with confirmed receipt) and by reputable overnight mail service or private delivery service addressed as follows:

To the Borrower:

MHDC South Park Properties, L.P.  
c/o Mission Housing Development  
Corporation  
474 Valencia Street, Suite 280  
San Francisco CA 94103  
Attention: John Lovell  
Telecopier: (415) \_\_\_\_\_

With a copy to:

Gubb & Barshay, LLP  
505 14th Street, Suite 300  
Oakland, CA 94612  
Attention: Sarah Perez, Esq.  
Telecopier: 415-781-6967

If to the City:

City and County of San Francisco  
Mayor's Office of Housing and  
Community Development  
1 S. Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attention: Ryan VanZuylen  
E-mail: ryan.vanzuylen@sfgov.org



With copies to (none of which shall not constitute notice to the City under this Indenture):

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 316  
San Francisco, CA 94102  
Attention: City Controller  
Telecopier: 415-554-7466

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 140  
San Francisco, CA 94102  
Attention: City Treasurer  
Telecopier: 415-554-4672

City and County of San Francisco  
Mayor's Office of Housing and  
Community Development  
One South Van Ness, 5th Floor  
San Francisco, CA 94103  
Attention: Director  
Telecopier: 415-701-5501

Office of the City Attorney  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 234  
San Francisco, CA 94102  
Attention: Finance Team  
Telecopier: 415-554-4755

City and County of San Francisco  
Office of Public Finance  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 336  
San Francisco, CA 94102  
Attention: Finance Team  
Telecopier: 415-554-4864

If to the Trustee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
E-mail: \_\_\_\_\_

If to the Controlling Person:	Western Alliance Bank One East Washington Street, Suite 1400 Phoenix, Arizona 85004 Attention: Legal Department Telephone: (602) 386-5500
With a copy to:	Squire Patton Boggs (US) LLP 1201 W. Peachtree St. NW, Suite 3150 Atlanta, GA 30309 Attention: Isaac Yilma
If to the Majority Owner:	At the address set forth on the Register maintained by the Trustee
If to Investor Limited Partner:	MCC Housing LLC c/o Merritt Community Capital Corporation 1970 Broadway, Suite 250 Oakland, California 94612 Attention: President & CEO E-mail: abeliak@merrittcap.org
With a copy to:	Bocarsly Emden Cowan Esmail & Arndt LLP 633 West Fifth Street, 64th Floor Los Angeles, CA 90071 Attention: Rachel Rosner E-mail: rrosner@bocarsly.com

The above parties may change the address to which notices to it are to be sent by written notice given to the other persons listed in this Section. All notices shall, when sent as aforesaid, be effective when received.

Section 10.2 Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, the Trustee. The Controlling Person and the Majority Owner are express third party beneficiaries of this Agreement and the rights of the Trustee (as assignee of the City) hereunder, with full rights of enforcement thereof. The Borrower may not assign its interests in or its rights, duties or obligations under this Agreement without the prior written consent of the Controlling Person. The Borrower and the City intend that no person other than the parties hereto, the Majority Owner, the Controlling Person, and their respective successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 10.3 Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the issuance, sale and delivery of the Bonds, the delivery of this Agreement and the payment of any amounts under the Bond Documents.

Section 10.4 Counterparts; Electronic Signature. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement. To the fullest extent permitted by applicable law,

facsimile or electronically transmitted signatures shall be treated as original signatures for all purposes hereunder.

Section 10.5 Costs, Expenses and Taxes. The Borrower agrees to pay on the Issue Date and thereafter within thirty (30) days after demand, all reasonable costs and expenses of the City, the Trustee, the Controlling Person and the Majority Owner in connection with the preparation, execution, delivery and administration of this Agreement, the other Bond Documents and any other documents that may be delivered in connection with this Agreement or the other Bond Documents or any amendments or supplements thereto, including, without limitation, the fees and expenses of counsel, advisors and other consultants to the City and the Trustee, the fees and expenses of the Engineering Consultant, the cost of an annual appraisal (but only upon the occurrence and during the continuation of an Event of Default) of the Project Facilities by an appraiser selected by the Controlling Person, and the reasonable fees and expenses of counsel for the Majority Owner and the Controlling Person with respect thereto and with respect to advising the Majority Owner and the Controlling Person as to their respective rights and responsibilities under this Agreement, the other Bond Documents and such other documents, and all costs and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Controlling Person and the Majority Owner) in connection with the enforcement of this Agreement, the other Bond Documents and such other documents. This Section 10.6 is not intended to limit the Borrower's obligations under Section [ ] of the Land Use Restriction Agreements.

Section 10.6 Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the City in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable Legal Requirements to be contracted for, charged or received, and if any payments by the Borrower to the Trustee include interest in excess of such a maximum amount, the Trustee shall apply such excess to the reduction of the unpaid principal amount due pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by applicable Legal Requirements, in the event the interest is not collected, is applied to principal or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by applicable Legal Requirements, any non-principal payment (except payments specifically stated in this Agreement to be "interest") shall be deemed, to the extent permitted by applicable Legal Requirements, to be an expense, fee, premium or penalty rather than interest.

Section 10.7 Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Bond Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 10.8 Complete Agreement. Taken together with the other Bond Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the Borrower, the General Partner, the Guarantor, the Controlling Person, the Trustee, the City and the Holders from time to time of the Bonds, with respect to the subject matter hereof.

Section 10.9 Consent to Jurisdiction; Venue; Waiver of Jury Trial. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding relating to the Bond Documents shall be brought solely in a federal or state court located in the City and (ii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address (including without limitation the addresses of such party's counsel) provided under or pursuant to Section 10.1 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable legal requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Controlling Person and the Majority Owner to serve legal process in any other manner permitted by applicable Legal Requirements.

Section 10.10 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Legal Requirements of the State without reference to its principles of conflicts of law.

Section 10.11 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.12 Sale of Bonds and Secondary Market Transaction.

(a) At the Controlling Person or Majority Owner's request (to the extent not already required to be provided by the Borrower under this Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Controlling Person or Majority Owner customarily adheres or which may be reasonably required in the marketplace or by the Controlling Person or Majority Owner in connection with obtaining a rating or one or more sales or assignments of all or a portion of the Bonds 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 Bonds (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that neither the Borrower nor the City shall 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 including, without limitation, any costs associated with receiving a rating on the Bonds, shall be paid by the Controlling Person or Majority Owner, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower shall, so long as the Loan is still outstanding:

(i) (1) provide financial and other information with respect to the Bonds, and with respect to the Project Facilities, the Borrower, the General Partner, the Managing Agent, or the contractor of the Project Facilities, (2) provide financial statements, audited, if available, relating to the Project Facilities with customary disclaimers for any forward looking statements or lack of audit, and (3) at the expense of the Controlling Person or Majority Owner, 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, termite and other insect infestation reports and other due diligence investigations of the Project Facilities, the Borrower, General Partner, Guarantor, Managing Agent, Contractor and other third parties in connection with the Bonds, as may be reasonably requested from time to time by the Controlling Person or Majority Owner 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 Controlling Person or Majority Owner pursuant to

this paragraph (i) and the other information provided pursuant to this Agreement and the other Bond Documents used in connection with a Secondary Market Transaction 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 Controlling Person or Majority Owner and the Rating Agencies;

(ii) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project Facilities, the Borrower, General Partner, Guarantor, Managing Agent, Contractor or other third parties and the Bond Documents reasonably acceptable to the Controlling Person or Majority Owner, consistent with the facts covered by such representations and warranties as they exist on the date thereof, including a “bringdown” of the representations and warranties contained in the Bond Documents as of the date thereof and a representation that no default or event of default has occurred and is continuing; and

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

(b) 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 10.12(c) hereof, with the Controlling Person and Majority Owner 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 Facilities 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.

(c) In connection with a Secondary Market Disclosure Document, the Borrower, General Partner or Guarantor shall provide, or in the case of a Borrower-engaged third party such as the Managing Agent, cause it to provide, information reasonably requested by the Controlling Person or the Majority Owner pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or such third party (and portions of any other sections reasonably requested by the Controlling Person or the Majority Owner pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or the third party). The Borrower shall, if requested by the Controlling Person or the Majority Owner, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or the third party, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project Facilities or the third party) 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 third parties; provided further that the Borrower will be required to cause such third parties to provide similar certification with respect to any information not so certified by the

Borrower. Furthermore, the Borrower hereby indemnifies the Majority Owner, the Controlling Person, the Trustee, the City and issuer, sponsor, guarantor and the underwriter group for any securities, and their affiliates, officers, directors, partners, members, agents, attorneys and controlling persons (the “Underwriter Group”) 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.

(d) In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) defend and indemnify the Controlling Person, the Majority Owner, the Trustee, the City, its members, and the Underwriter Group for any liabilities to which the Majority Owner, the Controlling Person, the City, the Trustee or the Underwriter Group may become subject insofar as such liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of 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 Controlling Person, the Majority Owner, the Trustee, the Underwriter Group, the City and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Controlling Person, the Majority Owner, the Trustee, the City 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, but shall require such third parties to provide such indemnification with respect to information they certify.

(e) Promptly after receipt by an indemnified party under this Section 10.12 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 in its sole discretion and shall, with respect to the City, assume such defense upon request of the City, with counsel selected by the City Attorney of the City in his sole discretion. After notice from the Borrower to such indemnified party under this Section 10.12 and provided that the Borrower duly provides the defense and indemnity herein described, including payment of all required fees, expenses and liabilities, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party (other than the City) 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.

(f) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section 10.12 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 this Section 10.12, 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 11(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.

(g) Notwithstanding any contrary provision of this Section, the City is under no obligation whatsoever to take any action to facilitate or consent to a Secondary Market Transaction.

Section 10.13 Nonrecourse.

(a) Notwithstanding anything to the contrary contained in this Agreement (other than Sections 10.13(b) through (e) hereof) or the other Bond Documents, the City agrees that, in connection with the exercise of any rights or remedies available to the City under this Agreement or any of the other Bond Documents (other than the Environmental Indemnity and the other guaranty agreements of the Guarantors), the City shall look solely to the enforcement of the lien and security interests created by this Agreement and the other Bond Documents and to the collateral and other security held by the Trustee.

(b) Notwithstanding the preceding subsection, the Borrower and the Guarantor shall have full recourse and personal liability for, and be subject to, judgments and deficiency decrees arising from and to the extent of any loss or damage suffered or incurred by the City, the Trustee, the Majority Owner, the Controlling Person or the Bondholders as a result of the occurrence of any of the following events:

(i) the Borrower fails to pay to the Trustee upon demand after an Event of Default all Rents to which the Trustee is entitled under Section 2 of the Mortgage and the amount of all security deposits collected by Borrower from tenants then in residence. However, Borrower will not be personally liable for any failure described in this Section 10.13(b)(i) if Borrower is unable to pay to the Trustee all Rents and security deposits as required by the Mortgage because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(ii) the Borrower fails to apply all insurance proceeds or casualty or condemnation proceeds as required by the Bond Documents. However, Borrower will not be personally liable for any failure described in this Section 10.13(b)(ii) if Borrower is unable to apply insurance or casualty or condemnation proceeds as required by the Bond Documents because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(iii) if an Event of Default has occurred and is continuing, the Borrower fails to deliver all books and records relating to the Mortgaged Property or its operation in accordance with the provisions of Section 6.8 or 6.9 of this Agreement;

(iv) the Borrower engages in any willful act of material waste of the Project Facilities;

(v) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof;

(vi) the occurrence of any of the following transfers:

(A) any Person that is not an Affiliate creates a mechanic's lien or other involuntary lien or encumbrance against the Project Facilities and Borrower has not complied with the provisions of this Agreement.

(B) a transfer of property by devise, descent or operation of law occurs upon the death of a natural person in violation of the requirements set forth in the Bond Documents.

(C) the Borrower grants an easement that does not meet the requirements set forth in the Bond Documents.

(D) Borrower executes a Lease that does not meet the requirements set forth in the Bond Documents;

(vii) any act of fraud or willful misconduct or any criminal act of the Borrower, the General Partner or the Guarantor;

(viii) the Borrower's misappropriation of funds or other Collateral; or

(ix) any litigation or other legal proceeding related to the Obligations filed by any of the Borrower, Guarantor, or any of their Affiliates, or any other action of any such Person that delays, opposes, impedes, binders, enjoins or otherwise interferes with or frustrates the efforts of Trustee to exercise any rights and remedies available to Trustee provided herein or in the other Bond Documents.

(c) The Borrower and the Guarantor shall have full recourse and personal liability for all of the Indebtedness (and the limitation on liability in the first sentence of Section 10.13(a) hereof shall be null and void) as a result of the occurrence of any of the following:

(i) a violation of Section 6.11(a), 6.12(b) or 6.13(c) hereof;

(ii) the Borrower's taking any action which adversely affects the exclusion from gross income of interest on the Bonds for federal income tax purposes, or the Borrower's omitting or failing to take any action required to maintain the exclusion from gross income of interest on the Bonds for federal income tax purposes;

(iii) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof and a court of competent jurisdiction holds or determines that such failure or combination of failures is the basis, in whole or in part, for the substantive consolidation of the assets and liabilities of the Borrower or the General Partner with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code;

(iv) a transfer that is an Event of Default under Section 7.1 hereof occurs (other than a transfer described in Section 10.13(b)(vi) above, for which Borrower will have personal liability for any loss or damage); provided, however, that Borrower will not have any personal liability for a transfer consisting solely of the involuntary removal or involuntary withdrawal of the General Partner;

(v) there was fraud or written material misrepresentation by the Borrower or any officer, director, partner, member or employee of the Borrower in connection with the application for or creation of the Indebtedness or there is fraud in connection with any request for any action or consent by the City, Trustee, Controlling Person or the Bondholders;



(vi) the Borrower or the General Partner voluntarily files for bankruptcy protection under the Bankruptcy Code;

(vii) the Borrower or the General Partner voluntarily becomes subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

(viii) the Project Facilities or any part of the Project Facilities becomes an asset in a voluntary bankruptcy or becomes subject to any voluntary reorganization, receivership, insolvency proceeding, or other similar voluntary proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

(ix) an order of relief is entered against the Borrower or the General Partner pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights in any involuntary bankruptcy proceeding initiated or joined in by a Related Party; or

(x) an involuntary bankruptcy or other involuntary insolvency proceeding is commenced against the Borrower or the General Partner (by a party other than the Trustee or the owner of any Bonds) but only if the Borrower or the General Partner, as applicable, has failed to use commercially reasonable efforts to dismiss such proceeding or has consented to such proceeding. "Commercially reasonable efforts" will not require any direct or indirect interest holders in the Borrower or the General Partner to contribute or cause the contribution of additional capital to the Borrower or the General Partner.

(d) The Borrower and the Guarantor shall have full recourse and personal liability for all of the following:

(i) the performance of and compliance with all of Borrower's obligations under Sections 5.12 and 6.14 of this Agreement (relating to environmental matters) or the Borrower's failure to comply with the provisions of the Environmental Indemnity;

(ii) the costs of any audit under Section 6.8 of this Agreement;

(iii) any costs and expenses incurred by the City, Trustee, the Controlling Person and the Majority Owner in connection with the collection of any amount for which Borrower is personally liable under this Section 10.13, including attorneys' fees and costs and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability; and

(iv) Borrower's indemnity obligations pursuant to Section 2.5 and 10.12.

(e) Further, nothing contained in this Section shall be deemed to limit, vary, modify or amend any obligation owed under any guaranty, master lease or indemnification agreement, including the Environmental Indemnity and the other guaranty agreements of the Guarantors, furnished in connection with financing of the acquisition, rehabilitation and equipping of the Project Facilities, recourse under which is not, by its terms, expressly limited in accordance with this Section 10.13.

(f) Notwithstanding anything to the contrary, City, Trustee, Controlling Person and Holders shall not be deemed to have waived any right such Persons may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of Borrower's

and Guarantor's Obligations under the Bond Documents or to require that all collateral shall continue to secure all Obligations under the Bond Documents.

Section 10.14 Publicity. The Borrower hereby authorizes the Controlling Person or the Majority Owner and their respective affiliates, without further notice or consent, to use the Borrower's and its affiliates' name(s), logo(s) and photographs related to the Project Facilities in its advertising, marketing and communications materials on a national and/or international basis. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, the Controlling Person or the Majority Owner also may discuss at a high level the types of services and solutions the Controlling Person or the Majority Owner has provided the Borrower. This authorization shall remain in effect unless the Borrower notifies the Controlling Person in writing in accordance with the notice provisions set forth herein that such authorization is revoked. The Controlling Person or the Majority Owner shall also have the right to publicize its involvement in the financing of the Project Facilities, including the right to maintain a sign indicating such involvement at a location at the Project Facilities reasonably acceptable to the Borrower and Controlling Person.

Section 10.15 Determinations by the City, the Majority Owner and Controlling Person. Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the City, the Controlling Person or the Majority Owner may be given or is required, or where any determination, judgment or decision is to be rendered by the City, the Controlling Person or the Majority Owner under this 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 City, the Controlling Person or the Majority Owner (or its designated representative) at its sole and absolute discretion. The Trustee may, and shall at the written direction of the Holders of all Outstanding Bonds, by separate instrument delegate, assign, transfer and set over unto the Controlling Person any or all of the rights, remedies, duties and obligations of the Trustee under this Indenture and the other Bond Documents, in which event the Controlling Person shall have each of the rights, remedies, duties and obligations delegated to it as if specifically named herein and in the other Bond Documents, as applicable, and shall be entitled to act in its own name, but if necessary in the name and stead of the Trustee, to enforce each of the remedies provided to the Trustee hereunder or under the other Bond Documents. Any certification, acknowledgment, consent, approval, direction, determination, judgment or decision to be rendered by the City under this Indenture shall be made by an Authorized City Representative.

Section 10.16 Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the City, the Trustee or the Controlling Person to carry out the purposes and provisions of this Agreement and to the other Bond Documents, to make elections or take actions (or, as requested, to refrain from making elections or taking actions) related to the audit procedures involving the Borrower and/or its partners set forth in the Bipartisan Budget Act of 2015 so that the Borrower's members, equity holders, shareholders and partners will be directly responsible for any audit adjustments, changes or modifications rather than the Borrower, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and the other Bond Documents and to assure the Controlling Person and the Majority Owner of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents in connection with any of the foregoing and such approvals shall be in form satisfactory to the Controlling Person.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the City and the Borrower have caused this Agreement to be duly executed and delivered on the day and year first above written.

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

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

**[BORROWER]**, a \_\_\_\_\_

By: \_\_\_\_\_, a \_\_\_\_\_, its  
\_\_\_\_\_

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

**EXHIBIT A**  
**FORM OF PROMISSORY NOTE**

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

\$ \_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, MHDC NEW MAP, L.P. a limited partnership duly formed and validly existing under the laws of the State of California (the "Borrower"), by this promissory note hereby promises to pay to the order of the CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA (the "City") the principal sum of \_\_\_\_\_ and no/100 Dollars (\$ \_\_\_\_\_), together with interest on the unpaid principal amount hereof, from the Issue Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds (as hereinafter defined), and acceleration premium, if any, on the Bonds. All such payments of principal, interest and acceleration premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the principal corporate trust office of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, or its successor as trustee under the Indenture.

The principal amount and interest shall be payable on the dates and in the amounts set forth on the Debt Service Schedule and on such other dates, that principal and redemption price of, and interest on the Bonds, and the acceleration premium, if any, are payable, subject to prepayment as provided in the Indenture and the Agreement.

This promissory note is the "Note" referred to in the Loan Agreement, dated as of February 1, 2022 (as the same may be amended, modified or supplemented from time to time, the "Agreement") between the Borrower and the City, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to \_\_\_\_\_, as trustee under the Indenture of Trust, dated as of February 1, 2022 (as the same may be amended, modified or supplemented from time to time, the "Indenture"), by and between the City and \_\_\_\_\_, as trustee (the "Trustee"), and such payments will be made directly to the Trustee for the account of the City pursuant to such assignment. Such assignment is made as security for the payment of \$ \_\_\_\_\_ in aggregate principal amount of the City's Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-[\_\_\_\_] (the "Bonds"), issued by the City pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

The obligations of the Borrower to pay any and all amounts due on this Note is a non-recourse obligation as provided in Section 10.13 of the Loan Agreement.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Agreement.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of default on this Note.

This Note shall be governed by, and construed in accordance with, the laws of the State of California, without regard to conflict of laws principles.

**MHDC NEW MAP, L.P.**, a California limited partnership

By: \_\_\_\_\_, a \_\_\_\_\_, its  
\_\_\_\_\_

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

**ENDORSEMENT**

Pay to the order of \_\_\_\_\_, without warranty or recourse, as Trustee under the Indenture referred to in the within mentioned Agreement, as security for such Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note or any other matter.

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

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

Dated: \_\_\_\_\_, 2022

**EXHIBIT B**  
**FORM OF WRITTEN REQUISITION**  
**OF THE BORROWER**

BORROWER:

PROJECT :

REQUISITION NO.: \_\_\_\_\_

In the Amount of \$\_\_\_\_\_

TO: \_\_\_\_\_, as trustee

\_\_\_\_\_

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

\_\_\_\_\_, as Controlling Person

\_\_\_\_\_

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

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

Amount

Source

Payable to:

[identify name of Account &  
Fund]

[Borrower's account #]  
[third party payment/wire  
instructions must be attached]

**Requisition - Contents and Attachments**

- ☐ Borrower's Request for Payment
- ☐ Borrower's Representations and Warranties
- ☐ Updated Loan Balancing (Sources and Uses) & Monthly Requisition Spreadsheet
- ☐ Contractor's Application and Certification for Payment (AIA Form G-702 & G-703)
- ☐ Architect, Contractor, Owner Change Order (Executed AIA G-701(s) added to G-702)
- ☐ Pending Change Order and Change Order Log (dated)
- ☐ Vendor Payee List or equivalent
- ☐ Requisitions and Invoices Supporting Application
- ☐ Contractor's Requisition Certificate
- ☐ Architect's Requisition Certificate
- ☐ Lien Waivers, Conditional for the current Hard cost pay request
- ☐ Lien Waivers, Unconditional for payment thru the prior period pay request
- ☐ Stored Materials Log and documentation (e.g., insurance, bill of sale, invoices, photos) as Applicable
- ☐ Current Project Schedule
- ☐ Other Documents as Requested by the Trustee or Controlling Person

### **Representations and Warranties**

1. No changes have been made in the Plans and Specifications which require and have not received the prior approval of (i) the Controlling Person under the terms of the Loan Agreement dated as of February 1, 2022 (the "Agreement"), (ii) any Governmental Authority having jurisdiction over the Project Facilities or (iii) any other parties from whom such approval is required.
2. **rehabilitation of** the Improvements has been performed in accordance with the Plans and Specifications (other than any changes that did not constitute Material Change Orders).
3. As of the date hereof, the Borrower has executed change orders (increasing/decreasing) the cost of **rehabilitation of** the Improvements by \$\_\_\_\_\_ in the aggregate, has notified the Engineering Consultant of such changes and, to the extent necessary, has received any and all necessary approvals from the Controlling Person.
4. Funding of this Requisition shall be in accordance with the terms and provisions of the (i) Agreement, and (ii) the Indenture of Trust dated as of February 1, 2022, with respect to the Bonds.
5. All money requisitioned by the Borrower for rehabilitation of the Improvements and disbursed by the Trustee under previously approved requisitions have been paid to the Contractor and, to the Borrower's best knowledge, all subcontractors, vendors and suppliers; all other funds requisitioned by the Borrower and disbursed by the Trustee under previously approved requisitions have been expended for the purpose for which they were requisitioned.
6. All of the information submitted to the Controlling Person and the Trustee in connection with this Requisition is true and accurate in all material respects as of the date of submission.
7. The representations and warranties set forth in the Bond Documents are true and correct in all material respects as of the date hereof with the same effect as if made on this date.
8. The Borrower represents and warrants that (i) there has occurred no Event of Default or event which, with the passage of time or the giving or notice or both, would constitute an Event of Default on the part of the Borrower or the Guarantor under the terms of the Bond Documents, (ii) except as previously disclosed by the Borrower to the Controlling Person, the Borrower has not received notice from or been informed by any Governmental Authority or the Engineering Consultant of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or notice of any assertion of a claim that the Improvements have not been rehabilitated in accordance with all applicable Legal Requirements, (iii) with the exception of any Permitted Liens and those being contested by the Borrower in accordance with the terms of the Bond Documents, there are no liens against any portion of the Project Facilities or any other asset of the Borrower, and (iv) the Bond Documents are in full force and effect.
9. The Borrower represents and warrants that this Requisition is in the form of requisition required by the Controlling Person.
10. The Borrower represents and warrants that, following payment of the amounts requested under this Requisition, not less than 95% of amounts paid from proceeds of the Bonds have been applied to the payment of Qualified Project Costs.
11. Attached hereto are copies of lien waivers from all such contractors, subcontractors and materialmen requisitioning payment under this Requisition, the originals of which have been delivered to the Title Insurance Company.

12. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Loan Agreement.

Executed this \_\_\_\_ day of \_\_\_\_, 20\_\_.

**MHDC NEW MAP, L.P.**, a California limited partnership

By: \_\_\_\_\_, a \_\_\_\_\_, its  
\_\_\_\_\_

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

Approved:

[\_\_\_\_\_] , as Controlling Person

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

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

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

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



**Contractor's Application for Payment**

Contractor's Application and Certification for Payment (AIA Form G-702 & G-703)  
Architect, Contractor, Owner Change Order (Executed AIA G-701(s) added to G-702)  
Pending Change Order and Change Order Log (dated)

## **Requisitions and Invoices**

**Contractor's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO: \_\_\_\_\_ ("Trustee")  
[\_\_\_\_\_] ("Controlling Person")

FROM: \_\_\_\_\_ ("Contractor")

RE: Rehabilitation of SFHA Scattered Sites (the "Project Facilities") by MHDC New Map, L.P. ("Borrower").

We are the general contractor for the Project Facilities and, to induce the Controlling Person to approve disbursements of Bond proceeds and other amounts by the Trustee to assist in funding **rehabilitation** of the Improvements and knowing that the Trustee and the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1. In reference to our contract dated \_\_\_\_\_, 20\_\_, with Borrower for **rehabilitation** of the Improvements, and the Plans and Specifications therefor, no amendments, modifications or changes have been made with respect to our contract or the Plans and Specifications except such as have had your prior written approval. There are no pending change orders except as follows:
2. Our Application for Payment No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, which we understand is to be included as an item in the Borrower's requisition to you, is in full compliance with the terms of our contract with Borrower, and, upon the payment of same, we will have no other or additional claim (including claims for so-called "extras") against Borrower on account of our contract or otherwise for and through the period of time ending upon the date of our Application for Payment, for all labor and materials furnished by us through and including the date of our Application for Payment except as follows:
  - a. Retainage not exceeding \_\_\_% of the value of labor and materials incorporated into the Project Facilities and covered by applications submitted by us on account of the **rehabilitation** of the Improvements for which payment is to be made to us after substantial completion of our contract, as provided therein (the amount of said retainage), as of the end of the period covered by our Application for Payment dated \_\_\_\_\_, 20\_\_, is \$\_\_\_\_\_); and
  - b. [specify other claims, if any]
3. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows: \_\_\_\_\_ [none]
4. We have paid in full all our obligations to subcontractors, workmen, suppliers and materialmen for and with respect to all labor and materials supplied through and including the date of our last Application for Payment, except for an amount equal to \_\_\_% thereof, which we are holding in accordance with the terms of such obligations and our contract, and all our subcontractors have paid their subcontractors, workmen and materialmen in full for and with respect to all labor and materials supplied through and including the date of our last Application for Payment.
5. To the fullest extent allowed by law, we waive and release any and all rights to claim any lien for labor done or materials furnished up to an amount equal to the amount of our Application for Payment dated \_\_\_\_\_, 20\_\_ plus the amount of all our previously funded applications.



Executed as an instrument under seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[CONTRACTOR]

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

Name:

Title:

### Architect's Requisition Certificate

Application for Payment No. \_\_\_\_\_

TO: \_\_\_\_\_ ("Trustee")  
[ \_\_\_\_\_ ] ("Controlling Person")

FROM: \_\_\_\_\_ ("Architect")

RE: Rehabilitation of SFHA Scattered Sites (the "Project Facilities") by MHDC New Map, L.P. ("Borrower").

We are the architect for the Project Facilities and, to induce the Controlling Person to approve disbursements of Bond proceeds and other amounts by the Trustee to assist in funding **rehabilitation of** the Improvements, and knowing that the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1. We inspected the Project Facilities on \_\_\_\_\_, 20\_\_ and found the status of Work at the Project Facilities on that date and the progress made on the Project Facilities since our last certificate to you dated \_\_\_\_\_, 20\_\_ to be as follows: \_\_\_\_\_ [substantially in accordance with the approved, as amended and approved, plans and specifications], [non-compliant with the approved plans and specifications], [other – describe here]
2. We delivered the Plans and Specifications for the Project Facilities, copies of which have been delivered to you (the "Plans and Specifications"). We have made no changes to the Plans and Specifications except as you have approved in writing. There are no pending change orders or construction change directives except as provided in the current Pending Change Order and Change Order Log.
3. All Work to date has been done in accordance with the Plans and Specifications and in a good and workmanlike manner. All materials and fixtures usually furnished and installed or stored on site at the current stage of **rehabilitation** have been furnished, installed or stored on site. All of the Work to date is hereby approved except as follows: \_\_\_\_\_
4. We have examined the requisition being submitted herewith to you by Borrower, which requisition includes an Application for Payment from [ \_\_\_\_\_ ] ("Contractor") respecting **rehabilitation of** the Improvements. The payment so applied for by Contractor does not exceed (when added to the payments heretofore applied for by and paid to Contractor) \_\_\_\_\_% of the value of labor and materials incorporated into the Improvements.
5. All permits, licenses, approvals and the like required to complete **rehabilitation of** the Improvements have been validly issued by the appropriate authorities and are in full force and effect, and there is no violation of any of the provisions thereof or of any Legal Requirements applicable to the Project Facilities of which we have notice or knowledge as of the date hereof except as follows:

6. Access to and egress from the Project Facilities and all improvements to be constructed thereon are in accordance with all applicable Legal Requirements. Water, drainage and sanitary sewerage facilities and telephone, gas and electric services of public utilities are or are due to be installed in the locations indicated on the Plans and Specifications and are adequate to serve the Project Facilities. All necessary approvals for installation of or connection to said facilities or services have been obtained.
7. To the best of our knowledge, there are no petitions, actions or proceedings pending or threatened to revoke, rescind, alter or declare invalid any laws, ordinances, regulations, permits, licenses or approvals for or relating to the Project Facilities.
8. No amendments, modifications or changes have been made to our contract dated \_\_\_\_\_, 20\_\_ with the Borrower except such as have had your prior written approval.
9. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows: \_\_\_\_\_

This certificate is rendered based on our examination of the Project Facilities, the Plans and Specifications, the data comprising the Application for Payment and all other matters which we deem relevant. We are to incur no liability under this certificate except for failure to exercise due professional skill and diligence.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[ARCHITECT]

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

Name:

Title:



**Borrower's Request for Payment**

[attach spreadsheets in form provided by Servicer]

**Lien Waivers**

**EXHIBIT C**  
**MOLD/MILDEW ADDENDUM**

This Mold and Mildew Addendum (the "Addendum") dated \_\_\_\_\_, 20\_\_ is attached to and made a part of the lease dated \_\_\_\_\_, 20\_\_ (the "Lease") by and between **MHDC New Map, L.P.** ("Lessor") and \_\_\_\_\_ ("Resident") for unit number \_\_\_\_\_ (the "Unit") in \_\_\_\_\_.

Resident acknowledges that it is necessary for Resident to provide appropriate climate control, keep the Unit clean, and take other measures to retard and prevent mold and mildew from accumulating in the Unit. Resident agrees to clean and dust the Unit on a regular basis and to remove visible moisture accumulation on windows, walls and other surfaces as soon as reasonably possible. Resident agrees not to block or cover any of the heating, ventilation or air- conditioning ducts in the Unit. Resident also agrees to immediately report to the management office: (i) any evidence of a water leak or excessive moisture in the Unit, as well as in any storage room, garage or other common area; (ii) any evidence of mold- or mildew-like growth that cannot be removed by simply applying a common household cleaner and wiping the area; (iii) any failure or malfunction in the heating, ventilation or air conditioning system in the Unit; and (iv) any inoperable doors or windows. Resident further agrees that Resident shall be responsible for damage to the Unit and Resident's property as well as personal injury to Resident and Occupants resulting from Resident's failure to comply with the terms of this Addendum.

A default under the terms of this Addendum shall be deemed a material default under the terms of the Lease, and Lessor shall be entitled to exercise all rights and remedies at law or in equity. Except as specifically stated herein, all other terms and conditions of the Lease shall remain unchanged. In the event of any conflict between the terms of this Addendum and the terms of the Lease, the terms of this Addendum shall control. Any term that is capitalized but not defined in this Addendum that is capitalized and defined in the Lease shall have the same meaning for purposes of this Addendum as it has for purposes of the Lease.

Resident or Residents:  
(all Residents must sign here)

Lessor:

**MHDC NEW MAP, L.P.**

\_\_\_\_\_  
Resident's Signature

By: \_\_\_\_\_  
Authorized Representative:

\_\_\_\_\_  
Resident's Name

\_\_\_\_\_  
Resident's Unit No.

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Resident's Signature

---

Resident's Name

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Resident's Unit No.

**EXHIBIT D**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**MANDATORY CONTRACTING PROVISIONS**

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

1. Nondiscrimination; Penalties.

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

(b) *Nondiscrimination in the Provision of Employee Benefits.* *San Francisco Administrative Code 12B.2.* The Borrower 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 employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

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

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

4. Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require the Borrower to remove from, City facilities personnel of the Borrower who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

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

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

8. Requiring Minimum Compensation for Covered Employees. If Administrative Code Chapter 12P applies to this Agreement, the Borrower shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Borrower is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. The Borrower is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, the Borrower certifies that it complies with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. If Administrative Code Chapter 12Q applies to this Agreement, the Borrower shall comply with the requirements of Chapter 12Q. For each Covered Employee, the Borrower shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Borrower chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The

Borrower is subject to the enforcement and penalty provisions in Chapter 12Q. Any subcontract entered into by the Borrower shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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

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

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

The requirements of Chapter 12T shall only apply to the Borrower’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes Airport property. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. Reserved

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

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

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

17. Distribution of Beverages and Water. The Borrower agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement. The Borrower agrees that it shall not sell, provide or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

18. Consideration of Salary History. The Borrower shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." The Borrower is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

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



reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Appendix A are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/)

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

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

**SCHEDULE 1**  
**SCHEDULE OF LITIGATION**

**SCHEDULE 2**  
**SCHEDULE OF OBLIGATIONS AND MATERIAL CONTRACTS**

**SCHEDULE 3**  
**DEVELOPMENT BUDGET**

**SCHEDULE 4**  
**PLANS AND SPECIFICATIONS**

**SCHEDULE 5**  
**PERMITS AND APPROVALS NOT YET OBTAINED**

[Borrower to provide list]

## SCHEDULE 6 CONDITIONS TO ADVANCES

A. **CONDITIONS TO INITIAL ADVANCE.** The right of Borrower to draw the initial advance shall be subject to the fulfillment of the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. **Construction Documents.** Each of the Architect's Agreement and the Construction Contract shall have been duly executed and delivered by the respective parties thereto and shall be in full force and effect. The Architect and the Contractor shall have duly executed and delivered to the Controlling Person a consent to the assignment of the Architect's Contract, the Engineer's Agreement and the Construction Contract in form and substance satisfactory to the Controlling Person.

2. **Subcontracts; Other Contracts.** The Borrower shall have delivered to the Controlling Person, and the Controlling Person shall have approved, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be supplying labor or materials for the Project Facilities in the amount of \$10,000 or more. The Borrower shall have delivered to the Controlling Person correct and complete photocopies of all other executed contracts with contractors, subcontractors, engineers or consultants for the Project Facilities in an amount of \$25,000 or more, and of all development, management, brokerage, sales or leasing agreements for the Project Facilities.

3. **Validity of Liens.** The Mortgage, the Assignment of Project Documents, the Assignment of Capital Contributions, [the Assignment of HAP Contract,] [the Assignment of Subordinate Debt Documents,] the Developer Fee Pledge and the General Partner Pledge shall be effective to create in the Trustee a legal, valid and enforceable lien and security interest in the collateral identified therein. All filing, recordings, deliveries of preserve such liens and security interests shall have been duly effected.

4. **Deliveries.** The following items or documents shall have been delivered to the Controlling Person by the Borrower and shall be in form and substance satisfactory to the Controlling Person.

(a) **Plans and Specifications.** Two complete sets of the Plans and Specifications and approval thereof by any necessary Governmental Authority, with a certification from the Architect that the Improvements to be constructed comply with all Legal Requirements and Governmental Actions and that the Construction Contract satisfactorily provides for the **rehabilitation of** the Improvements.

(b) **Title Policy.** The Title Policy, or a pro forma policy that constitutes a commitment to issue the Title Policy in the form of such pro forma policy, together with proof of payment of all fees and premiums for such policy and true and accurate copies of all documents listed as exceptions under such policy.

(c) **Other Insurance.** Duplicate originals or certified copies of all policies of insurance required hereunder to be obtained and maintained during the **rehabilitation of** the Improvements.

(d) **Evidence of Sufficiency of Funds.** Evidence that the proceeds of the Bonds, [the proceeds of the Subordinate Debt] together with Required Equity Funds delivered to the Trustee on the Issue Date or to be delivered after the Issue Date pursuant to the Partnership Agreement, will be sufficient to cover all Project Costs reasonably anticipated to be incurred to rehabilitate the Improvements prior to the Completion Date and to carry the Project Facilities through to Stabilization.

5. Evidence of Access, Availability of Utilities, Project Approvals. Evidence as to:
- (a) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;
  - (b) the availability of water supply and stone and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;
  - (c) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and
  - (d) the obtaining of all approvals, permits and licenses (or evidence that no such permits or licenses are required) which are required, necessary or desirable for the **rehabilitation** of the Improvements and the access thereto, together with copies of all such Governmental Actions.
6. Environmental Report. An environmental site assessment report or reports of one or more qualified environmental engineering or similar inspection firms approved by the Controlling Person, which report or reports shall indicate a condition of the Land and any existing improvements thereon in compliance with all Requirements and in all respects satisfactory to the Controlling Person in its sole discretion and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.
7. Soils Report. A soils report for the Project Facilities prepared by a soils engineer approved by the Controlling Person, which report shall indicate that based upon actual surface and subsurface examination of the Project Facilities, the soils conditions are fully satisfactory for the proposed renovation and operation of the Improvements and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely. A termite or other insect infestation report prepared by a firm approved by the Controlling Person, which report shall indicate that based upon actual inspection of the Project Facilities either (i) that no termite or other insect infestation at the Project Facilities, or (ii) that termite or insect infestation is present and recommended steps for extermination and remediation of the conditions at the Project Facilities, and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.
8. Survey and Taxes. A Survey of the Land (and any existing improvements thereon) and Surveyor's Certificate, and evidence of payment of all real estate taxes and municipal charges on the Land (and any existing improvements thereon) which were due and payable prior to the Issue Date.
9. Deposit of Funds. The initial installment of Required Equity Funds and the other deposits required pursuant to the Closing Memorandum shall have been delivered in accordance with the Closing Memorandum.
10. Requisition. If any portion of the initial Advance shall be for hard costs of rehabilitation, a completed Requisition and together with the approval of the Engineering Consultant.
11. Form Lease. The standard form of lease to be used by the Borrower in connection with the Improvements.
12. Engineering Consultant Report. The Controlling Person shall have received a report or written confirmation from the Engineering Consultant that (i) the Engineering Consultant has reviewed the Plans



and Specifications, (ii) the Plans and Specifications have been received and approved by each Governmental Authority to which the Plans and Specifications are required under applicable Legal Requirements to be submitted, (iii) the Construction Contract satisfactorily provides for the **rehabilitation of the Improvements**, and (iv) in the opinion of the Engineering Consultant, **rehabilitation of the Improvements** can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose in the Development Budget.

13. Searches. The Controlling Person shall have received searches from a recognized search firm (which shall be updated from time to time at Borrower's expense upon request by the Controlling Person) that searches of the public record disclosed (a) no conditional sales contracts, security agreements, chattel mortgages, leases of personalty, financing statements or title retention agreements which affect the collateral, (b) no bankruptcy filings on the part of any of [the Borrower, the General Partner and the Guarantor] (collectively, the "Obligors"), and (c) no litigation with respect to the Project Facilities or any of the Obligors that would materially adversely affect the obligations of the Obligors hereunder.

14. Mechanics' Liens. In the event that for any reason the initial Advance is not funded on the Issue Date, the Controlling Person may withhold or refuse to approve the initial Advance if any mechanic's lien or notice of intention to record or file a mechanic's lien has been filed or given.

15. Notices. All notices required by any Governmental Authority under applicable Legal Requirements to be filed prior to commencement of **rehabilitation of the Improvements** shall have been filed.

16. Appraisal. The Controlling Person shall have received an Appraisal, in form and substance satisfactory to the Controlling Person.

17. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of the initial advance, and on the date of the initial advance there shall exist no Event of Default.

18. Representations and Warranties. The representations and warranties made by the Obligors in the Bond Documents, the General Partner Pledge, the Developer Fee Pledge or the documents executed by the Guarantor or otherwise made by or on behalf of the Obligors in connection therewith or after the date thereof shall have been true and correct in all respects when made and shall be true and correct in all respects on the date of the initial advance.

19. Proceedings and Documents. All proceedings in connection with the transactions contemplated by this Agreement and the other Bond Documents shall be satisfactory to the Controlling Person and their counsel in form and substance, and the Controlling Person shall have received all information and such counterpart originals or certified copies of such documents and such other certificates, opinions or documents as they or their counsel may reasonably require.

20. Payment and Performance Bonds. The Controlling Person shall have received the original Payment and Performance Bonds in form and content and from a surety satisfactory in all respects to the Controlling Person.

B. CONDITIONS TO SUBSEQUENT ADVANCES. The right of the Borrower to draw each advance after the initial advance shall be subject to the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. Prior Conditions Satisfied. All conditions precedent to any prior disbursement shall continue to be satisfied as of the date of the Requisition of such subsequent advance.

2. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of such Requisition, and on such date there shall exist no Default or Event of Default.
3. Representations and Warranties. Each of the representations and warranties made by the Borrower in the Bond Documents or otherwise made by or on behalf of the Borrower in connection therewith after the date thereof shall have been true and correct in all respects on the date on when made and shall also be true and correct in all material respects on the Borrower on the date of such Requisition (except to the extent of changes resulting from transactions contemplated or permitted by the Bond Documents).
4. No Damage. If the Improvements shall have been materially injured or damaged by fire, explosion, accident, flood or other casualty, such Improvements are able to be and are diligently being restored in accordance with the terms of the Mortgage.
5. Receipt by Controlling Person. The Controlling Person shall have received:
  - (a) Requisition. A completed Requisition in the form set forth on Exhibit B to this Agreement, accompanied by the certificates, applications, invoices and other materials required thereby together with approval of the portion of the Requisition applicable to the Work for such Advance by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the Work for which the advance is requested to the date thereof was performed in a good and workmanlike manner and stating that the remaining non-disbursed portion of the Bond proceeds and other available funds specified in the Development Budget are adequate to complete **rehabilitation** of the Improvements in accordance with the Plans and Specifications; and
  - (b) Endorsement to Title Policy. At the time of each advance to update the date of and increase the amount of coverage by the amount of such advance, such endorsements (a "Down Date Endorsement") shall be delivered by the Title Insurer, increasing the coverage under the Title Policy by the amount of the approved Requisition plus the amount of any Bond proceeds disbursed from the Capitalized Interest Account of the Project Fund;
6. Foundation Survey; Current Survey. If the Plans and Specifications provide for construction of the foundations, including expansion or modification of existing foundations, within thirty (30) days after completion of **rehabilitation** of the foundations of the Improvements, a survey certified by a registered engineer or surveyor showing that the foundations are located within the perimeter of the Land and any set back lines and at the location shown on the Plans and Specifications, and from time to time. An updated Survey if required by the Title Insurance Company or the Controlling Person;
7. Approval by Engineering Consultant. Approval of the Requisition for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the **rehabilitation** of the Improvements to the date thereof was performed in a good and workmanlike manner and in accordance with the Plans and Specifications, stating the estimated total cost of **rehabilitation** of the Improvements, stating the percentage of in-place **rehabilitation** of the Improvements, and stating that the remaining non-disbursed portion of the Project Fund and Required Equity Funds allocated for such purpose in the Development Budget is adequate to complete the **rehabilitation** of the Improvements;
8. Contracts. Evidence that one hundred percent (100%) of the cost of the remaining Work is covered by firm fixed price or guaranteed maximum price contracts or subcontracts, or orders for the supplying of

materials, with contractors, subcontractors, materialmen or suppliers satisfactory to the Controlling Person, and that the Payment and Performance Bonds have been obtained, as required.

9. Mechanics' Liens. The Controlling Person may withhold or refuse to fund any advance hereunder if any mechanic's lien has been filed or recorded and not bonded over or otherwise collateralized to the satisfaction of the Controlling Person, or if notice of intention to record or file any such lien has been received.

10. Lien Waivers. No sums shall be disbursed until the Borrower has delivered a waiver or full, conditional or partial release of liens from all contractors, subcontractors, materialmen or others who may be entitled to a lien, as permitted by law for the work supplied or materials provided and for which payment is requested, and with respect to all contractors, subcontractors, material men or others entitled to a lien for work done or materials provided and paid from any prior advance funded by reliance on conditional lien waivers, on unconditional waiver or release of lien with respect to such work.

11. Required Equity Funds. All installments of Required Equity Funds which shall be then due and payable under the Partnership Agreement shall have been deposited with the Trustee.

12. Release of Retainage. In addition to the conditions set forth in this Section, the Controlling Person's obligation to approve any Requisition for Retainage shall be subject to receipt by the Controlling Person of the Engineering Consultant's certification of completion as to the Work performed under any contract or subcontract for which the Retainage will be disbursed.

13. Loan Rebalancing. The Controlling Person shall not be obligated to authorize any further advances until the requirements of Section 6.32 of this Agreement have been satisfied.

14. Material Change Orders. No Material Change Order shall have been made without the written approval of the Controlling Person.

**SCHEDULE 7**  
**FORM OF COMPLETION CERTIFICATE**

\_\_\_\_\_, 20\_\_

\_\_\_\_\_, as trustee

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

\_\_\_\_\_, as Controlling Person

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

Re: SFHA Scattered Sites (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to \_\_\_\_\_, as trustee (the "Trustee"), and [\_\_\_\_\_] as Controlling Person, acting on behalf of the Majority Owner of the Bonds issued in connection with the Project Facilities (the "Controlling Person") that "Completion" of the Project Facilities (as defined in the Indenture of Trust dated as of February 1, 2022 (the "Indenture") by and between the Trustee and the City and County of San Francisco, California (the "City")) has been attained as of the date hereof and all conditions relating thereto as set forth in the Loan Agreement dated as of February 1, 2022 between the undersigned and the City (the "Loan Agreement") have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture or the Loan Agreement.

The undersigned hereby represents and warrants that:

1. Attached hereto is schedule of all Punchlist Items attached to an AIA Form G-704 or other similar notice of substantial completion as required by clause (i) of the definition of "Completion" contained in the Indenture;
2. Attached hereto are true copies of all Governmental Actions as required by clause (ii) of the definition of "Completion" contained in the Indenture;
3. The requirement of clause (iii) and clause (iv) of the Indenture are true and correct as of the date hereof except for the following: [\_\_\_\_\_] [Not Applicable]

**MHDC NEW MAP, L.P.**, a California limited partnership

By: \_\_\_\_\_, a \_\_\_\_\_, its  
\_\_\_\_\_

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

Accepted and agreed to by:

[\_\_\_\_\_] as Controlling Person

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

Effective Date:

## **Schedule of Attachments to Completion Certificate**

Punchlist Items

Governmental Actions

**SCHEDULE 8**  
**FORM OF ESTIMATED USE OF PROCEEDS COMPLIANCE CERTIFICATE**

\_\_\_\_\_, 20\_\_

\_\_\_\_\_, as trustee

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

\_\_\_\_\_, as Controlling Person

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

Re: SFHA Scattered Sites (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to \_\_\_\_\_, as trustee (the "Trustee"), and [\_\_\_\_\_], as Controlling Person, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the "Controlling Person") that;

(i) no less than 95% of the Net Proceeds of the Bonds has been or will be spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code.

(ii) not less than 50% of the land and basis of the Project Facilities has been financed with the proceeds of the Bonds for purposes of Section 42(h)(4).

(iii) the undersigned has expended, within two (2) years of the later of the date the Project Facilities were acquired or the date of issuance of the Bonds, from proceeds of the Bonds or other sources, an amount equal to at least 15% of the "portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the Bonds" for "rehabilitation expenses" within the meaning of Section 147(b) of the Code.

Attached hereto is a schedule of expected expenditures evidencing compliance with the foregoing and showing all costs of the Project Facilities, the amounts expended, for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Bonds expended.

Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture of Trust dated as of February 1, 2022, between the Trustee and the City and County of San Francisco, California.

WITNESS WHEREOF, the undersigned has duly executed this Estimated Use of Proceeds Compliance Certificate as of the day and year first above written.

**MHDC NEW MAP, L.P.**, a California  
limited partnership

By: \_\_\_\_\_, a \_\_\_\_\_, its  
\_\_\_\_\_

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





**Schedule of Attachments to Estimated Use of Proceeds Certificate**

[Attach Schedule]

## SCHEDULE 9

### FORM OF CONSTRUCTION CLOSEOUT DELIVERIES CERTIFICATE

\_\_\_\_\_, 20\_\_

\_\_\_\_\_, as trustee

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

\_\_\_\_\_, as Controlling Person

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

Re: SFHA Scattered Sites (the “Project Facilities”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to \_\_\_\_\_, as trustee (the “Trustee”), and [\_\_\_\_\_] as Controlling Person, acting on behalf of the Majority Owner of the Bonds issued in connection with the Project Facilities (the “Controlling Person”) that each of the “Construction Closeout Deliveries” (as defined in the Indenture of Trust dated as of February 1, 2022 (the “Indenture”) by and between the Trustee and the City and County of San Francisco, California (the “City”)) has been attained as of the date hereof and all conditions relating thereto as set forth in the Loan Agreement dated as of February 1, 2022 between the undersigned and the City (the “Loan Agreement”) have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture or the Loan Agreement.

The undersigned hereby represents and warrants that:

1. Attached hereto is an original, executed Architect’s certificate in the form attached hereto as Exhibit A as required by clause (ii) of the definition of “Construction Closeout Deliveries” contained in the Indenture.
2. Attached hereto are true, complete and correct copies of all use and occupancy permits issued in connection with the Project Facilities (the “Permits”) as referenced in clause (ii) of the definition of “Completion” contained in the Indenture. The Permits are all of the permits, licenses or approvals required for the occupancy of the Project Facilities as a multifamily residential facility. No appeal, action or proceeding challenging any of the Permits has been filed; there is no pending claim, litigation or governmental proceeding challenging the Permits.
3. Attached hereto is a complete schedule of all Punchlist Items referenced in clause (i) of the definition of “Completion” contained in the Indenture. The undersigned has completed all Punchlist Items.
4. Attached are lien waivers required by clause (vi) of the definition of “Construction Closeout Deliveries” contained in the Indenture.

5. Attached hereto is an endorsement down dating the Title Policy insuring the Mortgage in favor of the Trustee, subject only to Permitted Encumbrances, as required by clause (vii) of the definition of "Construction Closeout Deliveries" contained in the Indenture.

6. Attached hereto is an as-built ALTA/ACSM Urban Class Survey, certified to the Trustee and the controlling Person and meeting the requirements of clause (ix) of the definition of "Construction Closeout Deliveries" contained in the Indenture.

7. Attached hereto is evidence of completion of the Environmental Completion Conditions.

8. Attached hereto is evidence of insurance meeting the requirements of Section 6.4 of the Loan Agreement.

9. Attached hereto is evidence of payment of all Impositions which are due and payable.

**MHDC NEW MAP, L.P.**, a California limited partnership

By: \_\_\_\_\_, a \_\_\_\_\_, its  
\_\_\_\_\_

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

Accepted and agreed to by:

[\_\_\_\_\_] as Controlling Person

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

Effective Date:

## **Schedule of Attachments to Construction Closeout Deliveries Certificate**

Architect's Completion Certificate

Occupancy Permits

Lien Waivers

Endorsement to Title Policy

[As-Built Survey]

Insurance Certificates

Evidence of Payment of Impositions

Evidence of Satisfaction of Environmental Completion Conditions

**EXHIBIT A**

Form of Architect's Certificate

**ARCHITECT'S COMPLETION CERTIFICATE**

The undersigned, an architect duly licensed and registered in the State of California has prepared final working plans and detailed specifications (the "Plans and Specifications") for MHDC New Map, L.P. (the "Borrower") in connection with the rehabilitation of improvements on certain real property located in San Francisco, California, such improvements or project being known as SFHA Scattered Sites (the "Improvements").

The undersigned hereby certifies to [TRUSTEE] and [SERVICER] that to the best of our knowledge, information and belief: (i) all of the Improvements and the Property have been completed in accordance with the Plans and Specifications, (ii) a [temporary] certificate of occupancy has been issued for the Project[, provided however that there is no work remaining to be done that would impair or delay the permanent occupancy of the Project or any portion thereof and issuance of a permanent certificate of occupancy with respect to the Project, and other permits required for the continued use and occupancy of the Improvements have been issued with respect thereto by the governmental agencies having jurisdiction thereof], and (iii) the Improvements have been constructed in compliance with the Plans and Specifications and are in compliance with the requirements and restrictions of the governmental authorities having jurisdiction, including applicable zoning, building, environmental, fire, and health ordinances, rules and regulations, including without limitation, the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the design and construction requirements of the Fair Housing Act.

[Architect]

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

Date: \_\_\_\_\_

**SCHEDULE 10**  
**FORM OF FINAL USE OF PROCEEDS COMPLIANCE CERTIFICATE**

\_\_\_\_\_, 20\_\_

\_\_\_\_\_, as trustee

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

\_\_\_\_\_, as Controlling Person

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

Re: SFHA Scattered Sites (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to \_\_\_\_\_, as trustee (the "Trustee"), and \_\_\_\_\_, as Controlling Person, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the "Controlling Person") that;

(i) no less than 95% of the Net Proceeds of the Bonds has been or will be spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code.

(ii) not less than 50% of the land and basis of the Project Facilities has been financed with the proceeds of the Bonds for purposes of Section 42(h)(4).

(iii) the undersigned has expended, within two (2) years of the later of the date the Project Facilities were acquired or the date of issuance of the Bonds, from proceeds of the Bonds or other sources, an amount equal to at least 15% of the "portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the Bonds" for "rehabilitation expenses" within the meaning of Section 147(b) of the Code.

Attached hereto is the Cost Certification evidencing compliance with the foregoing and showing all costs of the Project Facilities, the amounts expended, for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Bonds expended.

Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture of Trust dated as of February 1, 2022 between the Trustee and the City and County of San Francisco, California.

WITNESS WHEREOF, the undersigned has duly executed this Final Use of Proceeds Compliance Certificate as of the day and year first above written.

**MHDC NEW MAP, L.P.**, a California  
limited partnership

By: \_\_\_\_\_, a \_\_\_\_\_, its  
\_\_\_\_\_

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



**Schedule of Attachments to Final Use of Proceeds Compliance Certificate**

Cost Certification

\_\_\_\_\_, 20\_\_

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

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

8. Attached hereto is \_\_\_\_\_ showing the calculation of Stabilization.

Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture of Trust dated as of February 1, 2022 between the Trustee and City and County of San Francisco, California.

**MHDC NEW MAP, L.P.**, a California limited partnership

By: \_\_\_\_\_, a \_\_\_\_\_, its  
\_\_\_\_\_

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

Accepted and agreed to by:

[\_\_\_\_\_] , as Controlling  
Person

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

Effective Date:

## **Stabilization Spreadsheet**

**SCHEDULE 12**  
**INITIAL INSURANCE REQUIREMENTS**

The Project Facilities must be continuously covered by acceptable property insurance policies meeting the minimum requirements described below. This is a general outline of the insurance coverage's required by the Controlling Person, additional coverage may be required at the Controlling Person's discretion.

[Insert Servicer Current Insurance Guidelines]

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Ron Lee, Esq.  
Jones Hall, Professional Law Corporation  
475 Sansome St., Suite 1700  
San Francisco, CA 94111

---

APN: Assessor's Lot \_\_\_\_\_; Block \_\_\_\_\_  
Property Address:

REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

MHDC NEW MAP, L.P.,  
a California limited partnership

Dated as of February 1, 2022

Relating to:

City and County of San Francisco, California  
Multifamily Housing Revenue Bonds  
(SFHA Scattered Sites)  
Series 2022A-1 (Tax-Exempt)

and

City and County of San Francisco, California  
Multifamily Housing Revenue Bonds  
(SFHA Scattered Sites)  
Series 2022A-2 (Taxable)

(\_\_\_\_\_ Project)

(Site I)

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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 February 1, 2022, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation and chartered city and county, duly organized and validly existing under its City Charter and the Constitution and laws of the State of California (together with any successor to its rights, duties and obligations, the “City”), acting by and through the Mayor’s Office of Housing and Community Development, and MHDC NEW MAP, L.P., 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, as now in effect and as may be amended and supplemented (collectively, the “Act”), the City is authorized to issue revenue bonds to finance the acquisition, rehabilitation and development of multifamily rental housing; and

B. WHEREAS, the Board of Supervisors of the City has authorized the issuance of multifamily mortgage revenue bonds under the Act in connection with the acquisition and rehabilitation of affordable rental housing developments on five (5) sites consisting of a total of sixty-nine (69) residential rental apartment units (which includes three (3) manager’s unit) and related fixtures, equipment, furnishings and site improvements, known collectively as “SFHA Scattered Sites Project,” located in the city of San Francisco, California, which includes \_\_\_\_\_ (\_\_\_) units located at \_\_\_\_\_ (the “\_\_\_\_\_ Project”), which shall be subject to the terms and provisions hereof; and

C. WHEREAS, in furtherance of the purposes of the Act and as a part of the City’s plan of financing affordable housing, the City is issuing its revenue bonds designated “City and County of San Francisco, California Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-1 (Tax-Exempt) and City and County of San Francisco, California Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-2 (Taxable)” (together the “Bonds”) pursuant to the terms of an Indenture of Trust of even date herewith (the “Indenture”), between the City and \_\_\_\_\_, as trustee (the “Trustee”), the proceeds of which Bonds are to be loaned to the Owner (the “Loans”) pursuant to [a] Loan Agreement, of even date herewith (the “Loan Agreement”), between the City and the Owner to finance a portion of the acquisition and rehabilitation of the Project; and

D. WHEREAS, in connection with the Loans and the financing of the SFHA Scattered Sites Project, the City and the Owner will enter into five (5) separate Regulatory Agreements and Declarations of Restrictive Covenants, each dated as of February 1, 2022, one with respect to each of the contiguous sites collectively comprising the real property on which the SFHA Scattered Sites Project is located; and

E. WHEREAS, this is one of such regulatory agreements, which pertains to the site of the \_\_\_\_\_ Project, described in Exhibit A attached hereto (“Site P”), which \_\_\_\_\_ Project shall be subject to the terms and provisions hereof; and

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

K. WHEREAS, the Internal Revenue Code of 1986 (as further defined below, 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, rehabilitated, 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, rehabilitation 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) 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) 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) 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 Market (rent) Area (HMFA), or the successor area determined by HUD in which the Project is located.

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

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

“Bonds” – The Tax-Exempt Bonds and the Taxable Bonds.

“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.

“CDLAC” – The California Debt Limit Allocation Committee.

“CDLAC Requirements” – The requirements described in Section 26 of this Regulatory Agreement.

“CDLAC Resolution” – The resolution described in Section 26 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 and executed by an Authorized Owner Representative.

“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 the Operational Rules attached hereto as Exhibit J.

“City” – The City and County of San Francisco, California.

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

“Closing Date” – The date of the issuance of the Bonds, being on or about February \_\_\_, 2022.

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

“Completion Certificate” – The certificate of completion of the rehabilitation of the \_\_\_\_\_ Project required to be executed by an Authorized Owner Representative and delivered to the City and the Lender by the Owner pursuant to Section 2(e) 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 rehabilitation of the \_\_\_\_\_ Project, as that date shall be certified as provided in Section 2 of this Regulatory Agreement.

[“Construction Disbursement Agreement” – The Construction Disbursement Agreement of even date herewith between Owner and the Lender.]

“Costs of Issuance” – The issuance costs for purposes of Section 147(g) of the Code incurred with respect to the issuance of the Tax-Exempt Bonds (as further defined in the Loan Agreement, but does not include fees charged by the City with respect thereto (i.e., the issuance fee). In the event of a conflict between this definition and in the requirements of the Tax Certificate, the Tax Certificate shall control.

“CTCAC” – The California Tax Credit Allocation Committee.

“Declarations of Restriction – Gap Loan” – The Declaration of Restrictions and Affordable Housing Covenants (\_\_\_\_\_), related to the SFHA Scatter Sites Project and the Gap Loan, made as of \_\_\_\_\_ and executed by the Owner.

“Displaced Tenant Preference Certificate Holder” – A person or household that has been issued a certificate under the Displaced Tenant Preference Program, as further described in the Operational Rules attached as Exhibit J.

“Existing Tenant” – Any Tenant lawfully residing at, or legally entitled to return to the Site, as of the Closing Date.

“Facilities” – The multifamily buildings, structures and other improvements on Site I to be acquired, constructed, improved, rehabilitated and equipped, and all fixtures and other property owned by the Owner and located on Site I, or used in connection with, such buildings, structures and other improvements.

“Gap Loan” – Collectively, the loans from the City, acting through MOHCD, to the Owner and evidenced by the [Amended and Restated] Loan Agreement (City and County of San Francisco), dated as of \_\_\_\_\_, between the City, acting thru MOHCD and the Owner.

“General Partner” – \_\_\_\_\_ LLC, a California limited liability company, and/or any other Person that the partners of Owner, with the prior written approval of City and the 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.

“Ground Lease” – The Ground Lease Agreement, dated as of \_\_\_\_\_, between the Owner, as lessee and the Housing Authority, as the lessor, pursuant to which the Housing Authority is leasing the Site to the Owner.

“\_\_\_\_\_ Project” - The Facilities and Site I.

"HAP Contract" – The Section 8 Project Based Voucher Program - PBV Housing Assistance Payment Contract between the Owner and the Housing Authority relating to the Project.

“Housing Act” – 42 U.S.C. Section 1437, known as the United States Housing Act of 1937, as amended.

“Housing Authority” – The Housing Authority of the City and County of San Francisco and any of its successors.

“Housing Law” – The 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” – A fully completed and executed Income Certification Form substantially in the form designated in Exhibit B, or such other form as may be provided by the City.

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

“Inducement Date” – April 27, 2021, the date of adoption of the Inducement Resolution.

“Inducement Resolution” – The resolution adopted by the Board of Supervisors of the City on the Inducement Date and approved by the Mayor on April 30, 2021, indicating its intention to issue Tax-Exempt obligations to finance a portion of the Project.

“Investor Limited Partner” – Merritt Community Capital Corp., a \_\_\_\_\_ corporation, and any successor or assignee that has been admitted as an investor limited partner of the Owner in accordance with the Partnership Agreement.

“Lender” – Western Alliance Bank and its successor and assigns.

“Life of the Project” – means the period of time from completion of the \_\_\_\_\_ Project and initial occupancy and thereafter for so long as the \_\_\_\_\_ Project continues to operate as a multi-family residential project in accordance with the term hereof.

“Loans” – The Taxable Loan and Tax-Exempt Loan.

“Loan Documents” – Has the meanings ascribed thereto in the Loan Agreement.

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

“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 or who fail to be described in Section 42(i)(3)(D), such occupants shall not qualify as Low Income Tenants. The determination of a Tenant’s status as a Low Income Tenant shall initially be made by the Owner on the basis of the Income Certification Form executed by the Tenant upon such Tenant’s occupancy of a Restricted Unit in the \_\_\_\_\_ Project and upon annual recertification thereafter. In determining if any Tenant is a Low Income Tenant for purposes of any requirement of the City hereunder, the maximum Adjusted Income shall be based on the applicable percentage of the lower of the City Median Income or Median Income for the Area.

“Low Income Unit” – A dwelling unit 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 3009(a) of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat 2654) 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 and high housing cost area.

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

"Operational Rules" – The Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities are incorporated by reference in Exhibit J.

"Owner" – MHDC New Map, 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.

"Permitted Encumbrances" – Has the definition given to it in the Construction Disbursement Agreement.

"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 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 rehabilitation 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 rehabilitation 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 rehabilitation and prior to the Completion Date.

"Qualified Project Costs" – [The Project Costs incurred after the date which is sixty (60) days prior to the Inducement Date and that are chargeable to a capital account with respect to the Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Owner or but for the proper election by the Owner to deduct those amounts, within the meaning of Regulations Section 1.103-8(a)(1); provided, however, that only such portion of the interest accrued during rehabilitation 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 connection with 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 rehabilitation 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. In the event of any conflict by this definition and the requirements of the Tax Certificate, the Tax Certificate shall control.

“Qualified Project Period” – The period beginning on the later of the Closing Date or the first day on which at least ten percent (10%) of the units in the \_\_\_\_\_ Project are first occupied, and ending on the later of the following:

- (a) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the \_\_\_\_\_ Project are first occupied;
- (b) the first date on which no Tax-Exempt private activity bonds with respect to the \_\_\_\_\_ Project are Outstanding;
- (c) the date on which any assistance provided with respect to the \_\_\_\_\_ Project under Section 8 of the Housing Act terminates;
- (d) the date that is the later of (i) seventy-five (75) years after the Closing Date or (ii) the end of the Life of the Project; provided, however, that if the Life of the Project is less than seventy-five (75) years due to casualty, then the end date of the Life of the Project controls; or
- (e) such later date as may be provided in Section 5, Section 6 or Section 25 hereof.

“Qualified Tenant” – An Existing Tenant, a Low Income Tenant or a Very Low Income Tenant.

“Regulations” – The income tax regulations promulgated by the Internal Revenue Service or 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 Low Income Unit or a Very Low Income Unit.

“Section 8” – Section 1437f of the Housing Act, unless explicitly referring to a section of this Regulatory Agreement (e.g., “Section 8 hereof”).

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

“SFHA Scattered Site Project” – Collectively the \_\_\_\_\_ Project, the \_\_\_\_\_ Project, the \_\_\_\_\_ Project, the \_\_\_\_\_ Project and the \_\_\_\_\_ Project.



“Site I” – The parcel or parcels of real property leased to the Owner by the Housing Authority and described in Exhibit A, which is attached hereto, and all rights and appurtenances thereto.

“SSI” – Supplemental Security Income administered pursuant to P.L. 74-271, approved August 14, 1935, 49 Stat. 620, as now in effect and as it may from time to time hereafter be amended or supplemented.

“State” – The State of California.

“TANF” – The Temporary Assistance for Need Families Program administered purposes to 42 U.S.C. Sections 601-687.

“Tax Certificate” – The Tax Certificate and Agreement, dated the Closing Date, among the City and the Owner.

“Taxable Bonds” – City and County of San Francisco, California Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-2 (Taxable), issued pursuant to the Indenture.

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

“Tax-Exempt” – With respect to the status of interest on the Bonds, the exclusion of interest thereon from gross income of the bondholder for federal income tax purposes pursuant to Section 103(a) of the Code (other than interest on any portion of the Bonds owned by a “substantial user” of the Project or a “related person” within the meaning of Section 147 of the Code).

“Tax-Exempt Bonds” – City and County of San Francisco, California Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-1 (Tax-Exempt), issued pursuant to the Indenture.

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

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

“Trustee” – Shall mean the party assigned such term in the Recitals and any successors and assigns thereof.

“Very Low Income Tenant” means any Tenant whose Adjusted Income does not exceed fifty percent (50%) of the lower of City Median Income or Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code or who fail to be

described in Section 42(i)(3)(D), such occupants shall not qualify as Very Low Income Tenants. The determination of a Tenant's status as a Very Low Income Tenant shall initially be made by the Owner on the basis of the Income Certification Form executed by the Tenant upon such Tenant's occupancy of a unit in the Project and upon annual recertification thereafter. In determining if any Tenant is a Very Low Income Tenant for purposes of any requirement of the City hereunder, the maximum Adjusted Income shall be based on the applicable percentage of the lower of the City Median Income or Median Income for the Area.

“Very Low Income Unit” – The dwelling unit 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 Rehabilitation 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 (6) months after the Closing Date, a substantial binding obligation to a third party to expend at least 5% of the aggregate principal amount of the Bonds for the payment of Qualified Project Costs.

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

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

(d) The Owner shall prepare and submit to the City a final allocation of the proceeds of the Tax-Exempt Bonds to the payment of Qualified Project Costs, which allocation shall be consistent with the cost certification (as defined in the Partnership Agreement) within sixty (60) days after the Completion Date, but in any event no later than the earlier of (1) eighteen

(18) months from the placed in service date for the Project, (2) the Maturity Date (as defined in the Loan Agreement) for the Tax-Exempt Loan or (3) the fifth anniversary of the Closing Date.

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

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

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

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

(i) On or concurrently with the final draw by the Owner of amounts representing proceeds of the Tax-Exempt Bonds, the expenditure of such draw, when added to all previous disbursements representing proceeds of the Tax-Exempt Bonds, will result in not less than [97] percent of all disbursements of Tax-Exempt Bond proceeds 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 in connection with the issuance and delivery of the Bonds are true and correct.

(k) All of the amounts received by the Owner from the proceeds of the Tax-Exempt Bonds and earnings from the investment of such proceeds will be used to pay Project Costs; and no more than two percent (2%) of the proceeds of the Tax-Exempt Bonds shall be used to pay Cost of Issuance of the Tax-Exempt Bonds.

(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 Tax-Exempt status of the interest on the Bonds, 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 Tax-Exempt status of the Tax-Exempt Bonds.

(n) No portion of the proceeds of the Tax-Exempt Bonds shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises. No portion of the proceeds of the Tax-Exempt Bonds shall be used for an office unless the office is located on the premises of the facilities constituting the \_\_\_\_\_ Project and unless not more than a de minimis amount of the functions to be performed of such office is not related to the day-to-day operations of the Project.

(o) In accordance with Section 147(b) of the Code, the average maturity of the Tax-Exempt Bonds does not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the facilities being financed by the Tax-Exempt Bonds.

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 and covenants to comply with Section 142(d)(1)(B) of the Code with respect to the \_\_\_\_\_ Project. 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 rehabilitated for the purpose of providing multifamily residential rental property, and the Owner shall own, manage and operate the \_\_\_\_\_ Project as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with applicable provisions of Section 142(d) of the Code and Section 1.103-8(b) of the Regulations, and the Act, and in accordance with such requirements as may be imposed thereby on the \_\_\_\_\_ Project from time to time.

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

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

(d) No part of the \_\_\_\_\_ Project will at any time be owned as a condominium or by a cooperative housing corporation, nor shall the Owner take any steps in connection with a conversion to such ownership or uses. Other than obtaining a final subdivision map on the \_\_\_\_\_ Project and a Final Subdivision Public Report from the California Department of Real Estate 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 Tax-Exempt status of the interest on the Tax-Exempt Bonds will not be adversely affected 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) the Gap Loan and the Declarations of Restrictions – Gap Loan; (iii) any regulatory or restrictive use agreement to which the Project is or becomes subject pursuant to Section 42 of the Code, (iv) any additional tenant income and rent restrictions imposed by the City, (v) any other federal, State or local governmental agencies that imposes any additional tenant income and rent restrictions, and (vi) any other legal or contractual requirement not excepted by clauses (i) through (v) of this subsection, upon receipt by the Owner, the Trustee 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 Tax-Exempt Bonds.

(f) The Site consists of a parcel or parcels that are contiguous 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 any building in the \_\_\_\_\_ Project contains five (5) or more residential dwelling units, this subsection shall not be construed to prohibit occupancy of residential dwelling units by one or more resident managers or maintenance personnel any of whom may be the Owner; provided that the number of such managers or maintenance personnel is not unreasonable given industry standards in the area for the number of residential dwelling units in the \_\_\_\_\_ Project.

(h) The Owner shall not discriminate on the basis of race, creed, religion, color, sex, source of income (*e.g.*, TANF, Section 8 or SSI), physical disability (including HIV/AIDS), age, national origin, ancestry, marital or domestic partner status, sexual preference or gender identity in the rental, lease, use or occupancy of the \_\_\_\_\_ Project or in connection with the employment or application for employment of persons for the rehabilitation, 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 assignment of the leasehold interest in the \_\_\_\_\_ Project 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 Code and the Regulations, or condemnation or similar event, the Owner covenants that, within a “reasonable period” determined in accordance with the Regulations, it will either prepay the Bonds or, if permitted under the provisions of the Mortgage and the Indenture, apply any proceeds received as a result of any of the preceding events to reconstruct the \_\_\_\_\_ Project to meet the requirements of Section 142(d) of the Code and the Regulations.

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

(k) The \_\_\_\_\_ Project will have and continue to have \_\_\_\_\_ (\_\_\_\_) residential dwelling units, [one (1) 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 with respect to the \_\_\_\_\_ Project 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 (2) or more of such provisions shall be resolved in favor of the most restrictive of such provisions, that is in favor of the one that has the lowest income and rent restrictions.

(i) Low Income Units. \_\_\_\_\_ (\_\_\_\_) units in the \_\_\_\_\_ Project shall be rented to and continuously occupied by households who qualify as Very Low-Income Tenants, with priority given to Existing 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 60% of the lower of the City Median Income or the Median Income for the Area, less the utility allowance, provided however that the monthly rent charged for the Very Low Income Units receiving the Section 8 subsidy shall be as determined in accordance with the HAP Contract.

(ii) Very Low Income Units. \_\_\_\_\_ (\_\_\_\_) units in the \_\_\_\_\_ Project shall be rented to and continuously occupied by households who qualify as Very Low-Income Tenants, with priority given to Existing 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 the City Median Income or the Median Income

for the Area less the utility allowance, provided however that the monthly rent charged for the Very Low Income Units receiving the Section 8 subsidy shall be as determined in accordance with the HAP Contract.

(iii) Additional MOHCD Restrictions. In addition to the above paragraphs (a)(i) and (ii), all Restricted Units shall at all times be occupied, or held vacant and available for rental, as required by the Declarations of Restrictions – Gap Loan, except where otherwise expressly restricted or prohibited by any CDLAC Requirements.

(iv) 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 \_\_\_\_\_ (\_\_\_\_) 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, that 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 or who failed to be described in Section 42(i)(3)(D), such occupants shall not be Qualified Tenants pursuant to this sentence. The Owner shall satisfy the requirements of this Subsection 4(a)(iv) by complying with the requirements of Subsection 4(a)(i) [and Subsection 4(a)(ii)], to the extent such compliance meets the requirements of Section 142(d)(1)(B) of the Code.

(v) Income and Rent Restrictions Pursuant to the Housing Law. 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 \_\_\_\_\_ (\_\_\_\_) 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 lower City Median Income or Median Income for the Area; provided, however, that 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 or who failed to be described in Section 42(i)(3)(D), such occupants shall not be Qualified Tenants pursuant to this sentence. Pursuant to the requirements of Section 52080(a)(1)(B) of the Housing Law, the monthly rent charged for such units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 60% of the Median Income for the Area. The Owner shall satisfy the requirements of this Section 4(a)(v) by complying with the requirements of Subsection 4(a)(i) [and Subsection 4(a)(ii)], to the extent such compliance meets the requirements of Section 52080(a)(1)(B) of the Housing Law.

(vi) 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.

(vii) Income and Rent Restrictions in Event of Loss of Subsidy. If any Section 8 rental subsidy related to the \_\_\_\_\_ Project is terminated or substantially reduced, the occupancy and rent restrictions set forth in Subsections 4(a)(i) and (ii) may be

altered, but only to the minimum extent required for the financial feasibility of the Project, as determined by the City in its reasonable discretion in accordance with substantially similar underwriting criteria used by the City to evaluate the Project's financial feasibility prior to the Closing Date, provided that, in any event, [one hundred percent (100%) of the units formerly under the Section 8 Contract, as applicable, must at all times be occupied by Qualified Households whose Adjusted Income does not exceed eighty percent (80%) of Median Income and the monthly rent paid by the Qualified Households may not exceed (a) thirty percent (30%) of eighty percent (80%) of Median Income. To the extent financially feasible, as mutually determined by the Parties, any such rent increase will be limited to (or will be first implemented with) any vacant units.] In such event, the City shall use good faith efforts to meet with Owner, within fifteen (15) business days after Owner's written request to meet, in order to determine the amount of any rent increase. The relief provided by this section shall not be construed as authorizing the Owner to exceed any income or rent restrictions imposed on the Project by CDLAC, CTCAC or other agreements, and the Owner represents and warrants that it shall have obtained any necessary approvals or relief from any other applicable income and rent limitations prior to implementing the relief provided by this Section.

(b) Over-Income Tenants. Notwithstanding the foregoing provisions of Section 4(a), no Tenant qualifying as a 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 Low Income Tenant or] a Very Low Income Tenant. The unit occupied by such Tenants whose aggregate Adjusted Income exceeds such applicable income limit shall continue to be treated as occupied by [a Low Income Tenant or] a Very Low Income 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 [Low Income Tenants or] Very Low Income Tenants. Moreover, a unit previously occupied by a [Low Income Tenant or] a Very Low Income Tenant and then vacated shall be considered occupied by [a Low Income Tenant or] a Very Low Income Tenant until reoccupied, other than a reoccupation for a temporary period, at which time the character of the unit shall be re-determined. In no event shall such temporary period exceed thirty-one (31) days. Because all of the units [(except the manager's unit)] in the \_\_\_\_\_ Project are required by the City to be Restricted Units pursuant to Subsection 4(a), hereof, each next available unit must be rented to or held vacant for [a Low Income Tenant or a] Very Low Income Tenant.]

(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. In addition, the Owner will provide such further information as may be required in the future by the State, the



City (on a reasonable basis), the Program Administrator and by the Act, Section 142(d) of the Code or the Regulations, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code.

(d) Certificate of Continuing Program Compliance. Upon the commencement of the Qualified Project Period, and on each February 1st thereafter (or such other date as shall be requested in writing by the City or the Program Administrator) during the term of this Regulatory Agreement, the Owner shall advise the Program Administrator of the status of the occupancy of the \_\_\_\_\_ Project by delivering to the Program Administrator (with a copy to the Trustee) a Certificate of Continuing Program Compliance (in the form of that which is attached hereto as Exhibit D). The Owner shall also timely provide to the City such information as is requested by the City to comply with any reporting requirements applicable to it with respect to the Bonds or the \_\_\_\_\_ Project under any federal or State law or regulation, including without limitation, CDLAC regulations (Division 9.5 of Title 4 of the California Code of Regulations).

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

(f) Annual Certification to Secretary of Treasury. The Owner shall submit to the Secretary of the Treasury annually on or before March 31 of each year, or such other date as is required by the Secretary of the Treasury, a completed Internal Revenue Service Form 8703, and shall provide a copy of each such form to the Program Administrator and the Trustee. Failure to comply with the provisions of this Subsection 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 Form, (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 Form 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 Form 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 or not intentional) will be cause for immediate termination of such lease or rental agreement; and (4) agrees that the

Tenant's income is subject to annual certification in accordance with Subsection 4(c) hereof and that failure to cooperate with the annual recertification process reasonably instituted by the Owner pursuant to Subsection 4(d) above may provide grounds for termination of the lease.

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

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

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

(i) Except for the Permitted Encumbrances or as otherwise previously approved by the City, encumber any portion of the Project or grant commercial leases or subleases of any part thereof, or permit the conveyance, transfer or encumbrance of any part of the \_\_\_\_\_ Project (except for apartment leases), except (a) pursuant to the provisions of this Regulatory Agreement and on a basis subordinate to the provisions of this Regulatory Agreement, to the extent applicable, (b) upon receipt by the Owner, the Trustee and the City of an opinion of Bond Counsel that such action will not adversely affect the Tax-Exempt status of interest on the Tax-Exempt Bonds, or (c) 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, or cause compliance, 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, is diligently prosecuting such correction and is keeping the City updated on the progress.

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 lower of the City Median Income or Median Income for the Area, as applicable, 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 and the Program Administrator 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 City may change the Program Administrator at its sole and exclusive discretion. 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 Caritas Management 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 the Operational Rules, to the extent such compliance is not in conflict with any other requirements imposed on the \_\_\_\_\_ Project pursuant to Sections 42 and 142(d) of the Code, the Act, the CDLAC Resolution, CTCAC requirements or other applicable Federal or State law.

(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 federal 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). Further, Owner shall comply with all notice provisions set forth in the Housing Act prior to terminating any lease to which any Tenant is a party. The Owner acknowledges that (i) federal notice requirements under the Housing Act are distinct from those under State law or City law and the Owner shall comply with all federal, State and local laws in connection with any such notice requirements, and (ii) compliance with the law of one jurisdiction shall not be deemed compliance with the laws of all jurisdictions.

(g) Overincome Provisions after Expiration of Qualified Project Period. Notwithstanding the provisions of Subsection 4(b), from and after the expiration of the Qualified Project Period, in the event that Owner's certification of the Tenant's income, pursuant to Subsection 4(c), indicates that the Tenant's income exceeds [one hundred twenty percent (120%)] lower of the City Median Income or 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 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 voluntarily agreed to by the Owner such additional restrictions in consideration of the 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 Subsection 4(a)(i), Subsection 4(a)(ii) and of Section 5 hereof may be amended, modified or waived (but not increased or made more onerous), at the City's sole discretion, by written amendment signed by the City and the Owner, or expressly waived by the City in writing, but no such waiver by the City shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement except to the extent the City and the Trustee have received an opinion of Bond Counsel to the effect that any such provision is not required by the Code or the Act and may be waived without adversely affecting the Tax-Exempt status of interest on the Tax-Exempt Bonds. Any requirement of Subsection 4(a)(i), Subsection 4(a)(ii) or Section 5 shall be void and of no force and effect if the City, the Trustee and the Owner receive a written opinion of Bond Counsel to the effect that compliance with such requirement would be in conflict with the Act or any other applicable state or federal law.

(j) Extension of 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 later of (i) the date that is seventy-five (75) years from the Closing Date or (ii) the end of the Life of the Project, provided, however, that if the Life of the Project is less than 75 years due to casualty, then the term of the Life of the Project controls;

provided that certain provisions of this Section 5 shall survive and remain in full force and effect following the end of the Qualified Project Period, as specified in Section 11 hereof.

(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 referred to in Exhibit K, as may be updated by the City from time to time.

(l) Annual Reporting. Owner must file with the City annual reports (the "Annual Monitoring Report") no later than one hundred twenty (120) days after the end of Owner's fiscal year. The Annual Monitoring Report must be in substantially the form attached as Exhibit I, as may be updated by the City from time to time. Thereafter and for the remainder of the Life of the Project, the Owner shall maintain sufficient records of the information generally requested in the Annual Monitoring Report.

6. Additional Requirements of State Law. In addition to the requirements set forth herein, pursuant to Section 52080 of the Housing Law, the Owner hereby agrees that it shall also comply with each of the following requirements, in each case, for the Term of this Regulatory Agreement, 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 by Qualified Tenants.

(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 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 Bonds, assignment of the leasehold interest in the Project in lieu of

foreclosure, eminent domain, or action of a federal agency preventing enforcement, units reserved for occupancy as required by Subsection 4(a)(v) shall remain available to any eligible Tenant occupying a Restricted Unit at the date of such expiration or termination, at the rent determined by Subsection 4(a)(v), until the earliest of (1) the household's income exceeds [140%] of the maximum eligible income specified therein, (2) the household voluntarily moves or is evicted for good cause, as defined in the Housing Act, (3) the Owner pays the relocation assistance and benefits to households if, and as, required by Section 7264(b) of the California Government Code, and (4) seventy-five (75) years after the date of the Commencement of the Qualified Project Periods.

(g) Availability Preceding Expiration of Qualified Project Period. During the three (3) years prior to the expiration 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 Partnership Agreement. Any syndication of tax credits with respect to the Project to an affiliate of the Investor Limited Partner shall not require the prior written approval of the City if the Partnership Agreement will not be amended, modified or supplemented in connection with such syndication except to reflect such transfer of limited partnership interests; provided, however, that the Owner shall provide to the City, at least five (5) business days prior to the effective date of any such syndication, written notice of such syndication certifying that no other amendment, modification or supplement to the Partnership Agreement will be effected in connection with such syndication, together with copies of any assignments of limited partnership interests and any other syndication documents. Any other syndication of the \_\_\_\_\_ Project shall be subject to the prior written approval of the Director of the Mayor's Office of Housing and Community Development of the City, which approval shall be granted only after the City determines that the terms and conditions of such syndication (1) shall not reduce or limit any of the requirements of the Act or regulations adopted or documents executed pursuant to the Act, (2) shall not cause any of the requirements of the City set forth in this Section 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. Indemnification. The Owner hereby releases the City (which includes MOHCD), the Trustee and the Lender and their respective officers, members, directors, officials and employees from, and covenants and agrees to indemnify, hold harmless and defend the City, the Trustee and the Lender and the officers, members, directors, officials, agents and employees of each of them (collectively, the "Indemnified Parties," and each an "Indemnified Party") from and against any and all claims, losses, costs, damages, demands, expenses, taxes, suits, judgments,

actions and liabilities of whatever nature, joint and several (including, without limitation, costs of investigation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments), directly or indirectly (a) by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated hereby or otherwise in connection with the \_\_\_\_\_ Project, the issuance, sale, transfer or resale of the Bonds, including any securitization thereof, any cancellation of the Bonds and any assignment or transfer of the Loan Documents pursuant to [Section 4.08] of the Indenture, or the execution or amendment of any document relating thereto; (b) arising from any cause whatsoever in connection with the approval of financing for the Project or the making of the Loan or otherwise, including without limitation, any advances of the Loan, or any failure by the Lender, as defined in the Indenture, to make any advance thereunder; (c) arising from any act or omission of the Owner or any of its agents, servants, employees or licensees, in connection with the Loan or the Project; (d) arising in connection with the issuance and sale, resale or reissuance of any bonds, including any secondary market transaction with respect thereto, or any certifications or representations made by any person other than the City or the party seeking indemnification in connection therewith and the carrying out by the Owner of any of the transactions contemplated by the Indenture, the Loan Agreement and this Regulatory Agreement; (e) arising in connection with the operation and management 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 rehabilitation of, the Project or any part thereof; and (f) arising out of or in connection with the exercise by the City, the Lender, the Trustee or the Servicer of their powers or duties under the Indenture, the Loan Agreement, this Regulatory Agreement or any other agreements in connection therewith to which either of them is a party or assignee; provided, however, that this provision shall not require the Owner to indemnify (i) the Lender from any claims, costs, fees, expenses or liabilities arising from the negligence or willful misconduct of the Lender, or (ii) the City for any claims, costs, fees, expenses or liabilities arising solely from the willful misconduct of the City. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the engagement of counsel selected by the Indemnified Party; and the Owner shall assume the payment of all reasonable fees and expenses related thereto (provided however that if the Indemnified Party is the City, the selection of the counsel rests in the sole discretion of the City Attorney and the Owner shall assume the payment of all attorneys' fees and expenses related thereto), with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Notwithstanding the foregoing, no indemnification obligation shall give rise to an obligation to pay principal and interest on the Loan, which is not otherwise set forth in the Indenture, the Loan Agreement, the Bonds or any other agreement relating to the Bonds.

Additionally, the Owner also shall pay and discharge and shall indemnify and hold harmless the City and the Lender from (i) any lien or charge upon payments by the Owner to the City and the Lender hereunder and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the City or the Lender shall give prompt notice to the Owner, and the Owner shall have the sole right and duty to assume, and

will assume, the defense thereof, including the engagement of counsel approved by the Indemnified Party in, and the payments of all reasonable fees and expenses related thereto (provided that if the Indemnified Party is the City, the selection of counsel rests in the sole discretion of the City Attorney) and the Owner 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 the Owner's defense and the interests of an Indemnified Party, then such Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Owner shall pay the reasonable fees and expenses (and in the case of the City, all such fees and expenses) of such separate counsel.

Notwithstanding any transfer of the Project to another Owner in accordance with the provisions of Section 10 of this Regulatory Agreement, the Owner shall remain obligated to indemnify the City pursuant to this Section 7 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 7 shall survive the term of the Bonds and this Regulatory Agreement, including termination of this Regulatory Agreement pursuant to the second paragraph of Section 11 hereof and the earlier removal or resignation of the Trustee.

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.

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

9. Reliance. The City and the Owner hereby recognize and agree that the representations, warranties, covenants and agreements set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds, and in the Tax-Exempt status of the interest on the Tax-Exempt Bonds. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner and the 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.



10. Sale or Transfer of the Project. The Owner intends to hold the \_\_\_\_\_ Project for its own account, has no current plans to sell, transfer or otherwise dispose of the \_\_\_\_\_ Project (except in accordance with the Right of First Refusal (as defined in the Partnership Agreement), 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 and/or pursuant to the aforementioned Right of First Refusal) or interest therein, including any interest in the Owner, without obtaining the prior written consent of the City, which consent shall not be unreasonably withheld, and receipt by the City of (i) evidence satisfactory to the City that the Owner's purchaser or transferee has assumed in writing and in full, the Owner's duties and obligations under this Regulatory Agreement, (ii) an opinion of counsel of the transferee that the transferee has duly assumed the obligations of the Owner under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee, (iii) evidence acceptable to the City that either (A) the purchaser or assignee has experience in the ownership, operation and management of rental housing projects in the City such as the \_\_\_\_\_ Project without any record of material violations of discrimination restrictions or other state or federal laws or regulations applicable to such projects, or (B) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subparagraph (A) above or (C) if the purchaser or assignee does not have management experience, the City may cause the Program Administrator to provide on-site training in program compliance if the City determines such training is necessary, (iv) evidence satisfactory to the City that no event of default exists under this Regulatory Agreement, the Loan Agreement or any document related to the Loan, and payment of all fees and expenses of the City and the Trustee due under any of such documents is current, and (v) an opinion of Bond Counsel to the effect that such transfer will not, in itself, cause interest on the Tax-Exempt Bonds to become includable in the gross income of the recipients thereof for federal income tax purposes except to the extent held by a "substantial user" of the \_\_\_\_\_ Project or a "related person" within the meaning of Section 147(a) of the Code. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the \_\_\_\_\_ Project in violation of this Section 10 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 10 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 and providing relevant information regarding the proposed transfer.

Notwithstanding the foregoing, the provisions of this Section 10 shall not apply to the granting of the Mortgage or 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, (b) the Managing General Partner interest to an affiliate of the Managing General Partner or Investor Limited Partner if Investor Limited Partner has removed and replaced the Managing General Partner for cause pursuant to the Partnership Agreement, or (c) the transfer of any non-managing member or limited partner interest in the Investor Limited Partner.

11. Term. Subject to the following paragraph of this Section 11, Section 7 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 until the later of (a) the Qualified Project Period or (b) seventy-five (75) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied.

The terms of this Regulatory Agreement notwithstanding, 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 events such as 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 assignment of the leasehold interest in the \_\_\_\_\_ Project in lieu of foreclosure, or condemnation or a similar event, but only if, in case of the events described in either clause (i) or (ii) above, within a reasonable period, either the Bonds are paid in full or cancelled or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, exercise of power of sale, or the delivery of an assignment of leasehold interest in the \_\_\_\_\_ Project 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 assignment of the leasehold interest in the \_\_\_\_\_ Project 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 by the City an opinion of Bond Counsel that such termination will not adversely affect the Tax-Exempt status of the interest on the Tax-Exempt Bonds or the exemption from State personal income taxation of the interest on the Bonds. The Owner shall provide written notice of any termination of this Regulatory Agreement to the City in the event of the occurrence of any of the events described in clause (i) above.

Upon the expiration or termination of this Regulatory Agreement, or certain terms hereof, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge said expired or terminated 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.

12. 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 expiration or termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire except those terms which are expressly intended to survive expiration or termination. 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.

13. 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 [Low Income Tenants and] Very Low Income Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Bonds were issued.

14. 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.

15. Enforcement. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days (the "Cure Period") after written notice thereof shall have been given by the City to the Owner and the Investor Limited Partner (and a copy of such notice shall also be given to the Trustee, provided however that the failure of the City to provide such copy to the Trustee shall have no effect on the sufficiency of the notice to the Owner), the City may, as its sole option, extend the Cure Period (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 Tax-Exempt status of interest on the Tax-Exempt Bonds). Upon the expiration of the Cure Period, as the same may be extended, then the City may declare an "event of default" to have occurred hereunder, and, subject to the provisions of the Indenture, may take any one or more of the following steps:

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

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

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

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

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

16. 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, California 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.

17. Payment of Fees. The Owner shall pay to the City, or to the Trustee at the direction of the City, (i) on the Closing Date an initial issuance fee (the "Issuance Fee") equal to one quarter of one percent (0.25%) of the maximum par amount of the Bonds and (ii) an annual administrative fee (the "Annual Fee") [equal to one-eighth of one percent (0.125%) of the maximum outstanding amount of the Bonds, 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.] [Notwithstanding the foregoing, the Owner shall pay the first installment of the annual administrative fee in the amount of \$\_\_\_\_\_ on the Closing Date.]

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

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

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

19. Amendments. To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Bond Counsel filed with the City, the Trustee and the Owner, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement which must be complied with in order to maintain the Tax-Exempt status of interest on the Tax-Exempt Bonds, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements. Otherwise, this Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, with the consent of the Bondowner, as defined in

the Indenture, and duly recorded in the real property records of the City and County of San Francisco, California, provided that any amendment to the CDLAC Requirements shall also be subject to the consent of CDLAC, and provided further, that any amendment to Sections 3 and 4 thereof shall require an opinion of Bond Counsel filed with the City, the Trustee, the Lender and the Owner, to the effect that such amendment will not adversely affect the Tax-Exempt status of interest on the Tax-Exempt Bonds.

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

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

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

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

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

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

If to the Owner: MHDC New Map, L.P.  
c/o Mission Housing Development Corp.  
474 Valencia Street, Suite 280  
San Francisco, CA 94103

With copies to: Gubb & Barshay LLP  
505 14th Street, Suite 1050  
Oakland, CA 94612  
Attn: Sarah Perez, Esq.

and

If to the Lender: Western Alliance Bank  
1 East Washington Street, Suite 1400  
Phoenix, AZ 85004

With copy to: Squire Patton Boggs, LLP  
One Atlantic Center  
1201 W. Peachtree, NE, Suite 3150  
Atlanta, GA 30309

If to the Trustee:

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.

22. Interpretation. The parties to this Regulatory Agreement acknowledge that each party and their respective counsel have participated in the drafting of this Regulatory Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Regulatory Agreement or any supplement or exhibit hereto.

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 this 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 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 15 hereof, the terms hereof and the terms of the CDLAC Resolution. In addition, CDLAC is intended to be and shall be a third-party beneficiary of this

Regulatory Agreement. Notwithstanding the above, CDLAC shall be entitled solely to enforce the terms of the CDLAC Resolution, and any enforcement of the terms and provisions of the CDLAC Resolution by CDLAC shall not adversely affect the interests of the Lender, and shall otherwise be subject to the terms, conditions and limitations otherwise applicable to the enforcement of remedies under this Regulatory Agreement. Pursuant to Section 52080(k) of the Housing Law, the provisions of Subsection 4(a)( v) 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.

26. CDLAC Requirements. In addition to the other requirements set forth herein and to the extent not prohibited by the requirements set forth in Sections 2 through 6 hereof, the Owner hereby agrees: i) to comply with the CDLAC Resolution; ii) that the acquisition, rehabilitation and operation of the SFHA Scattered Sites Project, of which the \_\_\_\_\_ Project is a part thereof, and the financing thereof, is and shall be in compliance with the conditions set forth in Exhibit A ("CDLAC Requirements") to CDLAC Resolution No. 21-278 adopted on August 11, 2021 attached hereto as Exhibit F (the "CDLAC Resolution"), which CDLAC Requirements are incorporated herein by this reference; and iii) that the Owner will cooperate fully with the City in connection with the City's monitoring and reporting requirements as provided herein.

After the Tax-Exempt Bonds are issued and delivered, the terms and conditions set forth in the CDLAC Resolution shall be enforceable by CDLAC (or in its sole discretion the City) through an action for specific performance or any other available remedy. In addition, after the Bonds are issued, a) changes to Items #1, #6, #7, #10 thru #12, #14 thru #16, #18 thru #26, and #37 of the CDLAC Requirements require CDLAC's Committee or Executive Director's approval (or as otherwise required by CDLAC); and b) items #2, #13, #17, #27, and #39 thru #41 of the CDLAC Requirements cannot be altered. Changes to Items #3 thru #5 of the CDLAC Requirements require no CDLAC Committee or Executive Director's approval but any alterations must be reported to CDLAC staff for the affordability period. Changes to Items #8 and #9 of the CDLAC Requirements require no CDLAC notification and changes to Items #28 thru #36 and #38 of the CDLAC Requirements require CDLAC Committee or Executive Director's approval only prior to the Project being Placed in Service by the CTCAC.

Compliance with the terms of the CDLAC Requirements not specifically set forth in this Regulatory Agreement are the responsibility of the Owner to report to the City.

In addition to its obligations to CDLAC, set forth in the CDLAC Requirements, annually, on February 1<sup>st</sup>, until rehabilitation of the Project has been completed and the Owner has submitted to the City the Certificate of Completion, and thereafter on February 1<sup>st</sup> every three years, the Owner shall prepare and submit to the City a Certificate of Compliance II in substantially the form attached hereto as Exhibit G (or as otherwise required by CDLAC), executed by an Authorized Owner Representative.

Any of the foregoing requirements of CDLAC contained in this Section 26 may be expressly waived by CDLAC, in its sole discretion, in writing, but (i) no waiver of CDLAC of any requirement of this Section 26 shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement, except to the extent that the City has received an opinion of Tax Counsel that any such provision is not required by the Act or the Code and may be waived without

adversely affecting the Tax-Exempt status of interest on the Tax-Exempt Bonds for federal income tax purposes; and (ii) any requirement of this Section 26 shall be void and of no force and effect if the City and the Owner receive a written opinion of Bond Counsel to the effect that compliance with any such requirement would cause interest on the Tax-Exempt Bonds to cease to be Tax-Exempt or to the effect that any compliance with such requirement would be in conflict with the Act, the Code or any other state or federal law.

27. California Debt and Investment Advisory Commission Reporting Requirements.

No later than January 31 of each calendar year (commencing January 31, 2023), the Owner, on behalf of the City, agrees to provide the California Debt and Investment Advisory Commission, by any method approved by such Commission, with a copy to the City, the annual report information required by Section 8855(k)(1) of the California Government Code. This covenant shall remain in effect until the later of the date (i) the Bonds are no longer outstanding or (ii) the proceeds of the Bonds and the Loan have been fully spent.

[Remainder of Page Intentionally Left Blank]



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

CITY AND COUNTY OF SAN FRANCISCO,  
acting by and through the Mayor's Office of  
Housing and Community Development

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

Approved as to Form:

DAVID CHIU  
City Attorney

By \_\_\_\_\_  
Kenneth D. Roux  
Deputy City Attorney

[Signatures continue on following page.]

OWNER:

MHDC NEW MAP, L.P.,  
a California limited partnership

By:



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SITE**

**EXHIBIT B**  
**INCOME CERTIFICATION FORM**

A current version of the CTCAC form may be downloaded from the State Treasurer's website at the following link: <http://www.treasurer.ca.gov/ctcac/compliance/tic.pdf>.

## EXHIBIT C

### COMPLETION CERTIFICATE

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

Re: City and County of San Francisco, California  
Multifamily Housing Bonds (SFHA Scattered Sites)  
Series 2022A-1 (Tax-Exempt) and Series 2022A-2 (Taxable)

The undersigned (the "Owner") hereby certifies that all aspects of the rehabilitation of the Project (as that term is used in the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of February 1, 2022, by and between the City and County of San Francisco and the Owner (the "Regulatory Agreement")) were substantially completed and available for occupancy by tenants in the Project as of \_\_\_\_\_.

1. The undersigned hereby certifies that:

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

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

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

[Signature appears on next page]

OWNER:

MHDC NEW MAP, L.P.,  
a California limited partnership

By:

## EXHIBIT D

### CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Project Name: SFHA Scattered Sites: \_\_\_\_\_ Project

CDLAC Application Number(s): 21-588

CDLAC Resolution Number(s): 21-178

Property Address:

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

Name of Obligation: City and County of San Francisco, California Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-1 (Tax-Exempt) and Series 2022A-2 (Taxable)

The undersigned, being the authorized representatives of MHDC New Map, 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:

1. the Regulatory Agreement and Declaration of Restrictive Covenants (\_\_\_\_\_, dated as of February 1, 2022 (the "Regulatory Agreement"), between the Owner and the City; and
2. the Loan Agreement, dated as of February 1, 2022, between the City and the Owner.

The undersigned further certifies that:

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

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

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

B. During the preceding twelve-months (i) such \_\_\_\_\_ Project was continually in compliance with the Regulatory Agreement executed in connection with such loan from the City and (ii) \_\_\_\_% of the units in the \_\_\_\_\_ Project were occupied by Low Income Tenants and Very Low Income Tenants (minimum of 40%, excluding the manager's unit).

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 Low Income Tenants and 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 Low Income Tenants or a Very Low Income Tenant vacated such unit, as indicated below:

Occupied by Very Low Income Tenants:

1 bedroom units: Unit Nos. \_\_\_\_\_

2 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

3 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

4 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

Total percentage occupied by Very Low Income Tenants: \_\_\_\_\_

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

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

Vacant Units:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

Occupied by Low Income Tenants:

1 bedroom units: Unit Nos. \_\_\_\_\_

2 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

3 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

4 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

Total percentage occupied by Low Income Tenants: \_\_\_\_\_

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

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

Vacant Units:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

It hereby is confirmed that each tenant currently residing in a unit in the \_\_\_\_\_ Project has completed an Income Certification Form in the form approved by the City and that since commencement of the Qualified Project Period (as such term is defined in the Regulatory Agreement), not less than 40% of the occupied units in the \_\_\_\_\_ Project (excluding the manager's unit) have been rented to (or are vacant and last occupied by) Very Low Income Tenants. The undersigned hereby certifies that the Owner is not in default under any of the terms and provisions of the above documents.

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

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

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

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

[Describe any requirements not satisfied: \_\_\_\_\_]

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

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

\_\_\_\_\_ After-school Programs

\_\_\_\_\_ Educational, health and wellness, or skill building classes

\_\_\_\_\_ Health and Wellness services and programs (not group classes)

\_\_\_\_\_ Licensed Childcare provided for a minimum of 20 hours per week (Monday-Friday)

\_\_\_\_\_ Bona-Fide Service Coordinator/ Social Worker

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

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

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

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

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

DATED: \_\_\_\_\_

OWNER:

MHDC NEW MAP, L.P.,  
a California limited partnership

By:

**EXHIBIT E**

**CERTIFICATE AS TO COMMENCEMENT OF QUALIFIED PROJECT PERIOD**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

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

City and County of San Francisco, California  
Multifamily Housing Revenue Bonds (SFHA Scattered Sites),  
Series 2022A-1 (Tax-Exempt)

City and County of San Francisco, California  
Multifamily Housing Revenue Bonds (SFHA Scattered Sites),  
Series 2022A-2 (Taxable)

The undersigned, being the authorized representative(s) of MHDC New Map, 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 Bonds were first occupied on \_\_\_\_\_;

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

DATED:

OWNER:

MHDC NEW MAP, L.P.,  
a California limited partnership

By:

Acknowledged:

City and County of San Francisco

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

**EXHIBIT F**  
**CDLAC RESOLUTION**

## EXHIBIT G

### CERTIFICATE OF COMPLIANCE II (CDLAC RESOLUTION)

Project Name: SFHA Scattered Sites: \_\_\_\_\_ Project

CDLAC Application No.: 21-588

Pursuant to Section 14 of Resolution No. 21-178 (the "Resolution"), adopted by the California Debt Limit Allocation Committee (the "Committee") on August 11, 2021, 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 13 of the Resolution, which specifies that once the Bonds are issued, the terms and conditions set forth in the Resolution shall be enforceable by the Committee through an action for specific performance or any other available remedy (as further explained in Section 12 of the Resolution).

*Please check or write N/A to the items listed below:*

\_\_\_\_\_ The project is currently in the Construction or Rehabilitation phase.

\_\_\_\_\_ The project has incorporated the minimum specifications into the project design for all new construction and rehabilitation projects as evidenced by attached the applicable third party certification (HERS Rater, Green Point Rater or US Green Building Council.) For projects under construction or rehabilitation, the information is due following receipt of the verification but in no event shall the documentation be submitted more than two years after the issuance of bonds.

\_\_\_\_\_ For projects that received points for exceeding the minimum requirements please attach the appropriate California Energy Commission compliance form for the project which shows the necessary percentage improvement better than the appropriate standards. The compliance form must be signed by a California Association of Building Consultants, Certified Energy Plans Examiner or HERS Rater as applicable.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Officer

\_\_\_\_\_  
Title of Officer

\_\_\_\_\_  
Telephone Number

## EXHIBIT H

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

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

1. Nondiscrimination; Penalties.

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

(b) *Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2.* The Owner 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 employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

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

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

4. Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require the Owner to remove from, City facilities personnel of the Owner who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual

lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

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

7. Limitations on Contributions. By executing this Agreement, the Owner acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of the 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 10% in the Owner; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Owner. The Owner certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

8. Requiring Minimum Compensation for Covered Employees. If Administrative Code Chapter 12P applies to this Agreement, the Owner shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Owner is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. The Owner is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, the Owner certifies that it complies with Chapter 12P.



9. Requiring Health Benefits for Covered Employees. If Administrative Code Chapter 12Q applies to this Agreement, the Owner shall comply with the requirements of Chapter 12Q. 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. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The Owner is subject to the enforcement and penalty provisions in Chapter 12Q. Any subcontract entered into by the Owner shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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

In the performance of services provided under this Agreement, the Owner may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to the Owner, such information must be held by the Owner in confidence and used only in performing this 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 or confidential information.

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

The requirements of Chapter 12T shall only apply to the Owner's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to

applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes Airport property. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. Reserved

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

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

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

17. Distribution of Beverages and Water. The Owner agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement. The Owner agrees that it shall not sell, provide or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

18. Consideration of Salary History. The Owner shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." The Owner is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of

this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

19. Laws Incorporated by Reference. The full text of the laws listed in this Appendix A, including enforcement and penalty provisions, are incorporated into this Agreement by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Appendix A are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/)

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

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

**EXHIBIT I**  
**FORM OF ANNUAL MONITORING REPORT**

[See Attached]

## **EXHIBIT J**

### **OPERATIONAL RULES FOR SAN FRANCISCO HOUSING LOTTERIES AND RENTAL LEASE UP ACTIVITIES**

The Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities may be found in the current version of the Housing Preferences and Lottery Procedures Manual which is incorporated herein by this reference and may be downloaded from the Mayor's Office of Housing and Community Development website at the following link:

[http://sfmohcd.org/sites/default/files/Preferences%20Manual%20-%20%203.31.2017\\_0.pdf](http://sfmohcd.org/sites/default/files/Preferences%20Manual%20-%20%203.31.2017_0.pdf).

## **EXHIBIT K**

### **MARKETING AND TENANT SELECTION PLAN**

The Marketing Plan and Tenant Selection Plan (also referred “Resident Section Criteria”) may be downloaded from the Mayor’s Office of Housing and Community Development website at the following link:

[https://sfmohcd.org/sites/default/files/Documents/MOH/Inclusionary%20Manuals/Preferences%20Manual%20-%20%203.31.2017\\_0.pdf](https://sfmohcd.org/sites/default/files/Documents/MOH/Inclusionary%20Manuals/Preferences%20Manual%20-%20%203.31.2017_0.pdf)

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**INDENTURE OF TRUST**

**by and between**

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

**and**

**[TRUSTEE],**

**as Trustee**

**Dated as of February 1, 2022**

**Relating to:**

**\$ \_\_\_\_\_**

**City and County of San Francisco, California  
Multifamily Housing Revenue Bonds  
(SFHA Scattered Sites), Series 2022A-1**

**and**

**\$ \_\_\_\_\_**

**City and County of San Francisco, California  
Multifamily Housing Revenue Bonds  
(SFHA Scattered Sites), Series 2022A-2 (Taxable)**

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## INDENTURE OF TRUST

This **INDENTURE OF TRUST** (as amended, modified or supplemented from time to time, this “Indenture”), dated as of February 1, 2022, made and entered into by and between City and County of San Francisco, California, a municipal corporation duly organized and existing pursuant to its charter and the laws and constitution of the State of California (together with its successors and assigns, the “City”), and [TRUSTEE], a \_\_\_\_\_, as trustee (together with any successor trustee hereunder and their respective successors and assigns, (the “Trustee”),

### WITNESSETH:

**WHEREAS**, by virtue of the authority of the laws of the State of California, and particularly the Act, the City is empowered to issue its revenue bonds to provide financing or refinancing for acquisition, construction or rehabilitation of housing in the City to encourage the availability of adequate housing and home finance for persons and families, including those of low or moderate income, and to develop viable communities by providing decent housing and an enhanced living environment; and

**WHEREAS**, the City has determined to issue and sell its Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-1 in the original aggregate principal amount of \$\_\_\_\_\_ (the “Tax-Exempt Bonds”) and its Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-2 (Taxable) in the original aggregate principal amount of \$\_\_\_\_\_ (together with the Tax-Exempt Bonds, the “Bonds”), for the purpose of financing the cost of the acquisition, rehabilitation, installation and equipping of certain multifamily rental housing facilities, consisting of a total of 69 units and related personal property and equipment on five scattered sites located in San Francisco, California (the “Project Facilities”) all pursuant to this Indenture and the Loan Agreement, dated as of February 1, 2022 (as amended, modified or supplemented from time to time, the “Loan Agreement”), between the City and MHDC New Map, L.P., a limited partnership duly organized and existing under the laws of the State of California (together with its permitted successors and assigns, the “Borrower”); and

**WHEREAS**, the City is authorized to enter into this Indenture and to do or cause to be done all the acts and things herein provided or required to be done to finance the Project Costs by the issuance of the Bonds, all as hereinafter provided; and

**WHEREAS**, all acts, conditions and things required to happen, exist, and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed in order to make the Bonds, when issued, delivered and authenticated, valid obligations of the City in accordance with the terms thereof and hereof, and in order to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

**WHEREAS**, the Trustee has accepted the trusts created by this Indenture and has accepted its obligations hereunder, and in evidence thereof, this Indenture has been executed and delivered thereby.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE COVENANTS AND UNDERTAKINGS HEREIN EXPRESSED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO AGREE AS FOLLOWS:

### GRANTING CLAUSES

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

- (a) All moneys from time to time paid by the Borrower pursuant to the terms of the Loan Agreement, the Note and the Bond Documents and all right, title and interest of the City (including, but not limited to, the right to enforce any of the terms thereof) under and pursuant to and subject to the provisions of the Loan Agreement, the Bond Documents and the Note (but in each instance excluding the Reserved Rights, as defined herein); and
- (b) All other moneys and securities from time to time held by the Trustee under the terms of this Indenture, excluding the Rebate Fund and excluding amounts required to be rebated to the United States Treasury under Section 148(f) of the Internal Revenue Code of 1986, as amended, whether or not held in the Rebate Fund; and
- (c) Any and all property, rights and interests (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder to the Trustee, which the Trustee is hereby authorized to receive at any and all times and to hold and apply the same subject to the terms of this Indenture; and
- (d) All of the proceeds of the foregoing (except the amounts payable to or on behalf of the City on account of its Reserved Rights), including without limitation investments thereof;

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

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

PROVIDED, NEVERTHELESS, and these presents are upon the express condition, that if the City or its successors or assigns shall well and truly pay or cause to be paid the principal of and premium, if any, on such Bonds with interest, according to the provisions set forth in the Bonds, or shall provide for the payment or redemption of such Bonds by depositing or causing to be deposited with the Trustee the entire amount of funds or securities requisite for payment or redemption thereof when and as authorized by the provisions of Article V (it being understood that any payment with respect to the principal of or interest on Bonds made by the Borrower shall not be deemed payment or provision for the payment of the principal of or interest on Bonds, except Bonds purchased or paid and canceled by the Trustee, all such uncanceled Bonds to remain Outstanding and the principal of and interest thereon payable to the Holders thereof), and shall also pay or cause to be paid all other sums payable hereunder by the City, then these presents and the estate and rights hereby granted shall cease, terminate and become void, and thereupon the Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the City and upon the payment by the City of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the City such

instruments of satisfaction or release as may be necessary or proper to discharge this Indenture of record, and if necessary shall grant, reassign and deliver to the City all and singular the property, rights, privileges and interests by it hereby granted, conveyed and assigned, and all substitutes therefor, or any part thereof, not previously disposed of or released as herein provided; otherwise this Indenture shall be and remain in full force;

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

## **ARTICLE I DEFINITIONS**

**Section 1.1     Defined Terms.** In addition to terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

**“Accountant”** means \_\_\_\_\_, or such other accounting firm approved in writing by the Controlling Person.

**“Accounts”** means all funds and accounts established under this Indenture from time to time.

**“Act”** means Section 9.107 of the Charter of the City, and Article I of Chapter 43 of the City’s Administrative Code and, to the extent applicable, Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the California Health and Safety Code.

**“Advance”** means any disbursement from the Project Fund established under this Indenture made or to be made by the Trustee pursuant to the terms of the Loan Agreement.

**“Affiliate”** means, with respect to any designated Person, each Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another designated Person, pursuant to the organizational document(s) of an entity or by other express, written agreement.

**“Annual Budget”** means, for any Fiscal Year, the capital and operating budget adopted by the Borrower and approved by the Controlling Person, or deemed approved, pursuant to Section 6.24 of the Loan Agreement.

**“Anti-Terrorism Regulations”** shall have the meaning ascribed to such term in Section 6.23 of the Loan Agreement.

**“Approved Buyer”** means (1) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act, as in effect on the date hereof, (2) an “accredited investor” as defined in Regulation D promulgated under the Securities Act or (3) any other transferee expressly permitted under the Investor Letter, (iii) an Affiliate of the Purchaser; or (iv) a trust or custodial arrangement in which all of the beneficial ownership interests would be owned by one or more other Approved Buyers.

**“Architect”** means \_\_\_\_\_.

[**“Architect’s Agreement”** means the contract dated [\_\_\_\_\_] between the Borrower and the Architect, providing for the design of the Improvements and the supervision of the rehabilitation thereof, including ongoing monthly inspection of the Improvements, certification of Requisitions and certification of final completion, among other things, as the same may be amended, modified or supplemented from time to time.]

**“Assignment of Capital Contributions”** means the Assignment of Capital Contributions, dated the date hereof, by the Borrower for the benefit of the Trustee.

[**“Assignment of HAP Contract”** means the Assignment of Housing Assistance Payments, dated as of the date hereof, made by the Borrower to the Trustee for the HAP Contracts in effect for the Project Facilities, consented to by HUD.]

**“Assignment of Management Agreement and Consent”** means the Assignment of Management Agreement, dated as of the date hereof, by the Borrower to and for the benefit of the Trustee, consented to by the Managing Agent.

**“Assignment of Project Documents”** means the Assignment of Project Documents, dated as of the date hereof, made by the Borrower in favor of the Trustee.

**“Authorized City Representative”** means the Mayor, the Director of the Mayor’s Office of Housing and Community Development (or any successor thereof) of any designee of either.

**“Authorized Denomination”** means \$250,000, and any amount in excess of \$250,000, but not in excess of the aggregate principal amount of Bonds then Outstanding.

**“Authorized Person”** means one or more individuals duly authorized to bind the Borrower in connection with the administration of the Project Facilities. The initial Authorized Persons of the Borrower are \_\_\_\_\_ and \_\_\_\_\_.

**“Bankruptcy Code”** means Title 11 of the United States Code, as amended, and any successor statute or statutes having substantially the same function.

**“Beneficial Owner”** means the Person in whose name a Bond is recorded as beneficial owner of such Bond by the Securities Depository or a DTC Participant or an Indirect Participant on the records of such Securities Depository, DTC Participant or Indirect Participant, as the case may be, or such Person’s subrogee.

**“Bond”** or **“Bonds”** shall have the meaning given to such term in the recitals to this Indenture.

**“Bond Counsel”** means an attorney, or firm of attorneys, nationally recognized and experienced in legal work relating to the financing of facilities through the issuance of tax-exempt bonds, reasonably acceptable to both the City and the Controlling Person.

**“Bond Coupon Rate”** means the lower of (i) the rate set forth on the Schedule of Financial Terms and (ii) the Maximum Rate.

**“Bond Documents”** means, collectively, the Bonds, this Indenture, the Loan Agreement, the Note, the Land Use Restriction Agreements, the Tax Certificate, the Mortgage, the Environmental Indemnity, the Assignment of Management Agreement and Consent, [the City Assignment,] [the Assignment of HAP Contract,] the Continuing Disclosure Agreement, [the Ground Lease,] the Replacement Reserve

Agreement, the Assignment of Project Documents, the General Partner Pledge, the Developer Fee Pledge, [the IRP Agreement], the Assignment of Capital Contributions, [the Subordination Agreement], the Guaranty of Recourse Obligations, the Guaranty of Debt Service and Stabilization and the Guaranty of Completion, and all other agreements or instruments relating to, or executed in connection with the issuance and delivery of the Bonds, including all modifications, amendments or supplements thereto.

**“Bond Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Bond Proceeds Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

**“Bondholder”** or **“Holder”** or words of similar import, when used with reference to the Bonds, means the registered owner or owners or Beneficial Owner or Beneficial Owners of the Bonds, as applicable.

**“Book-Entry System”** means a book-entry system established and operated for the recordation of Beneficial Owners of the Bonds pursuant to Section 2.11 hereof.

**“Borrower”** shall have the meaning given to such term in the recitals to this Indenture.

**“Business Day”** means any day on which the offices of the Trustee, are open for business and on which The New York Stock Exchange is not closed.

**“Capital Expenditures”** means the capital expenditures relating to any construction, renovation, rehabilitation, repair and replacement of the Improvements or made pursuant to the recommendations of the Engineering Consultant.

**“Capitalized Interest Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

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

**“City”** means the \_\_\_\_\_, a \_\_\_\_\_, duly organized and existing under the laws of the State of \_\_\_\_\_, including the Act, or any successor to its rights and obligations under the Loan Agreement and this Indenture.

**“City Assignment”** means that certain Assignment of Mortgage Documents dated as of February 1, 2022, from the City to the Trustee and acknowledged by the Borrower, as the same may be amended, modified or supplemented from time to time.]

**“City Fee”** shall have the same definition as the term “\_\_\_” in the Land Use Restriction Agreements, and shall be payable as provided in Section [\_\_\_] of the Land Use Restriction Agreements.

**“Closing Memorandum”** means Closing Memorandum signed by the Controlling Person, the Borrower and the Trustee with respect to the initial disbursement of Bond Proceeds and other amounts specified therein.

**“Code”** means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date

of issuance of the Bonds, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

**“Collateral”** means all property of the Borrower in which the Trustee is granted a security interest to secure payment of the Bonds.

**“Completion”** means, with respect to the Project Facilities, that each of the following conditions has been satisfied:

(i) the Controlling Person shall have received from the Borrower a schedule of all Punchlist Items attached to an AIA Form G-704 or other similar notice of substantial Completion, in form and substance approved by the Controlling Person, executed by the Borrower, Contractor, and Architect;

(ii) the Borrower shall have obtained the Governmental Actions, if any, required by the Legal Requirements and all Governmental Authorities associated with the Project Facilities, including use and occupancy permits (if any are required), and shall have furnished true copies of all such Governmental Actions to the Controlling Person. Temporary certificates of occupancy, as opposed to final certificates of occupancy or their equivalent, shall be acceptable provided (A) that the Punchlist Items do not have a total cost to complete exceeding two percent (2%) of the contract price of the Work, nor an estimated time to complete, as reasonably determined by the Engineering Consultant, exceeding forty-five (45) days (except for items such as landscaping, the completion of which is subject to seasonal conditions), (B) such Punchlist Items do not substantially interfere with or prevent the use and occupancy of the Project Facilities, (C) such Punchlist Items do not include major appliances or materially affect the systems (including plumbing, electrical, HVAC, mechanical, roofing and sprinklers) serving the Project Facilities or major structural components of the Project Facilities, and (D) adequate reserves, in amounts equal to 110% of the cost of completion of such items as estimated by the Architect and approved by the Engineering Consultant (or 125%, with respect to the items described in subsection (A) as being subject to seasonal conditions) have been deposited into the Project Fund;

(iii) as to all such Governmental Actions, no appeal or other action or proceeding challenging any such Governmental Actions shall have been filed or, if filed and decided, there shall have been no appeal (or further appeal) taken and all other statutory appeal periods must have expired, and there shall be no claim, litigation or governmental proceeding pending against the Borrower or the Project Facilities challenging the validity or the issuance of any zoning, subdivision or other land use ordinance, variance, permit or approval, or any Governmental Action of the kind described in this subparagraph (iii). In addition, as to all of such permits, approvals and certificates having statutory, regulatory or otherwise expressly specified and determinable appeal periods, such periods, if any, must have expired without an appeal having been taken (or any such appeal shall have been denied or shall have affirmed the granting of such Governmental Action);

(iv) the Controlling Person has determined that construction or rehabilitation, as the case may be, of the Improvements is sufficiently complete such that the Improvements can be occupied by tenants as a multifamily residential rental project;

(v) the Completion Certificate in the form required under the Loan Agreement shall have been provided to the Controlling Person and shall be reasonably acceptable to the Controlling Person; and



(vi) the Estimated Use of Proceeds Certificate in the form required under the Loan Agreement shall have been provided to the Controlling Person and shall be reasonably acceptable to the Controlling Person.

**“Completion Date”** means the date by which the rehabilitation of the Improvements must achieve Completion. The initial Completion Date for the renovations is set forth in the Schedule of Financial Terms; provided, however, that at the request of the Borrower and with the prior written approval of the Controlling Person, the Completion Date may be extended one or more times for such periods as the Controlling Person may approve in its sole discretion, upon delivery of such other information and funds as reasonably requested by the Controlling Person or the Majority Owner. The approval of the Controlling Person shall not be unreasonably withheld, conditioned or delayed in connection with any reasonably required extension of the Completion Date as a result of any Force Majeure event.

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

**“Construction Closeout Deliveries”** means, with respect to the Project Facilities, that each of the following conditions has been satisfied:

- (i) All conditions to Completion have been satisfied;
- (ii) the Controlling Person shall have received a copy of the final Plans and Specifications containing all Change Orders and there shall have been no Material Change Orders other than Material Change Orders approved by the Controlling Person;
- (iii) the Controlling Person shall have received from the Architect, and the Engineering Consultant shall have approved, a certificate of the Architect in the form attached as Exhibit A to the form of Construction Deliveries Certificate of completion attached as Schedule 9 to the Loan Agreement and otherwise customary for projects of the scope of the Work for the Project Facilities with respect to completion of the Work at the Project Facilities;
- (iv) all Work set forth in the Plans and Specifications for the Project Facilities shall have been incorporated into the Improvements at the Project Facilities;
- (v) except for Permitted Encumbrances and Impositions not then due and payable, the Project Facilities shall be free of any and all private or governmental charges, claims or Liens (filed or not) of any nature, excepting only the liens and security interests in favor of the Trustee and any other encumbrances approved by the Controlling Person in writing;
- (vi) with respect to all contractors and subcontractors and materialmen (for contracts less than \$50,000, only as required by the Title Company; provided that the Title Company insures over any mechanics’ and materialmen’s liens arising from such excepted contractors, subcontractors or materialmen), the Borrower shall have obtained an unconditional waiver and release (or a conditional waiver and release conditioned solely upon receipt of final payment) of mechanics’ and materialmen’s liens for all of the Improvements at the Project Facilities and true copies thereof have been delivered to the Controlling Person;
- (vii) the Construction Deliveries Certificate in the form required under the Loan Agreement shall have been provided to the Controlling Person and shall be reasonably acceptable to the Controlling Person;

(viii) and an endorsement down dating the Title Policy insuring the Mortgage as a first lien, subject to Permitted Encumbrances;

(ix) if construction work resulted in new structures or expansion of foot prints of the existing structures, the Trustee shall have received an as-built ALTA/ACSM Urban Class Survey certified to the Trustee and the Controlling Person;

(x) the final complete Use of Proceeds Certificate in the form required under the Loan Agreement shall have been provided to the Controlling Person and shall be reasonably acceptable to the Controlling Person; and

(xi) the Borrower has, in form and substance acceptable to the Controlling Person, completed the Environmental Completion Conditions.

**“Construction Contract”** means the contract, dated on or about \_\_\_\_\_, 20\_\_, between the Borrower and the Contractor, providing for the rehabilitation of the Improvements and certification of Requisitions, among other things, as the same may be amended, modified or supplemented from time to time.

**“Construction Monitoring Fee”** shall have the meaning set forth in the Schedule of Financial Terms.

**“Contamination”** means the uncontained release, discharge or disposal of any Hazardous Substances at, on, upon or beneath the Project Facilities, whether or not originating at the Project Facilities, or arising from the Project Facilities into or upon any land or water or air, or otherwise into the environment, which may require remediation under any applicable Legal Requirements.

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement dated as of February 1, 2022, between the Borrower and the Trustee, as dissemination agent, as the same may be amended, modified or supplemented from time to time.

**“Contractor”** means \_\_\_\_\_, a \_\_\_\_\_.

**“Control”** (including, with the correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) means, as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such other Person, or of the Person, whether through contract, stock ownership, partnership interests, membership, voting rights, governing boards, committees, divisions or other bodies with one or more common members, directors, trustees or other managers, or otherwise.

**“Controlling Person”** means any entity designated in writing by the Majority Owner to act as a Controlling Person hereunder, in accordance with Article IX hereof. If at any time a Controlling Person has not been designated by the Majority Owner, all references herein and in other Bond Documents to “Controlling Person” shall refer to the Majority Owner. The initial Controlling Person is Western Alliance Bank.

**“Cost Certification”** means a final cost certification with respect to the Project Facilities, in form and substance acceptable to the Controlling Person, prepared by the Accountant or another independent firm approved by Controlling Person.

**“Cost of Issuance Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

**“Counsel”** means an attorney, or firm of attorneys, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia, including any Bond Counsel.

**“Current Index”** means the Index that is determined by Indexing Agent on each Rate Determination Date, subject to the limitation that the Current Index shall not be less than 0.00%.]

**“Debt Service Schedule”** means the schedule of debt service payments with respect to the Bonds, together with any replacement thereof, each as delivered by Controlling pursuant to Section 3.4(e) of this Indenture.

**“Default”** means an event or condition which is, or which after giving notice or lapse of time or both would be, an Event of Default.

**“Default Interest”** means interest payable at the Default Rate.

**“Default Rate”** means a rate per annum equal to ten percent (10%) per annum; provided that such rate shall in no event exceed the Maximum Rate.

**“Depository Agreement”** means that certain Depository Agreement, between Trustee and [Purchaser] [bank affiliate of Purchaser].]

**“Determination of Taxability”** means a determination that the interest accrued or paid on any of the Tax-Exempt Bonds is included in gross income of the Holders or former Holders for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

- (i) the day on which the Borrower, the City, the Trustee or any Holder is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;
- (ii) the day on which the Borrower receives notice from the Trustee in writing that the Trustee has received (1) a notice in writing by any Holder or former Holder that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to such Holder or former Holder that asserts in effect that the interest on the Tax-Exempt Bonds received by such Holder or former Holder is included in the gross income of such Holder or former Holder for federal income tax purposes, or (2) an Opinion of Bond Counsel that concludes in effect that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;
- (iii) the day on which the Borrower, the City, the Trustee or any Holder is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal Revenue Service that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes; or
- (iv) the day on which the Borrower, the City, the Trustee or any Holder is advised in writing by Counsel that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Borrower

has been given written notice and an opportunity to participate and defend that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

provided, however, no Determination of Taxability shall occur to the extent that the interest on any of the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder for federal income tax purposes solely because such Bond was held by a Person who is a Substantial User or a Related Person.

**“Developer”** means \_\_\_\_\_, a \_\_\_\_\_ authorized to conduct its business in the State, together with its successors and assigns approved by the Controlling Person.

**“Developer Fee Pledge”** means the Developer Limited Guaranty, Pledge and Security Agreement dated as of the date hereof from Developer in favor of the Trustee.

**“Development Budget”** means the budget for the implementation and completion of the acquisition, rehabilitation and equipping of the Project Facilities, initially as attached to the Loan Agreement as Schedule 3, together with any modifications or amendments thereto made in accordance with the Loan Agreement and with the prior written consent of the Controlling Person.

**“DTC Participant”** means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository.

**“Effective Gross Revenues”** of the Borrower means, for the Testing Period prior to the determination of Stabilized NOI, the annualized aggregate revenues during such period generated from all tenants and others occupying or having a right to occupy or use the Project Facilities or any portion thereof pursuant to leases, including (at the Controlling Person’s reasonable discretion, taking into account whether such income is recurring and is appropriate for a stabilized property), vending machine income, cable TV revenues, laundry service and parking income, as adjusted in the Controlling Person’s judgment for factors including but not limited to: (i) seasonal fluctuation in the rental rate in the market in which the Project Facilities are located; (ii) evidence of rent deterioration; (iii) concessions, reductions, inducements or forbearances (such as any cash reduction in monthly rent during the term of a lease, any free rent before, during or after the term of a lease, any rent coupons, gift certificates and tangible goods or any other form of rent reduction or forbearance); (iv) economic vacancy at the higher of: (1) Underwritten Economic Vacancy, or (2) actual economic vacancy based on the annualized vacancies of the Project Facilities; (v) 30-day or more delinquencies; (vi) low-income restrictions required by any applicable federal, state or local subsidy program, or any restrictive covenant or regulatory agreement; and (vii) other applicable adjustments as reasonably determined by the Controlling Person; Effective Gross Revenues shall exclude revenues from Section 8 vouchers to the extent such revenues cause the rent on any unit to exceed the maximum allowable tax credit rent designated for such unit.

**“Engineer’s Agreement”** means the agreement, if any, between the Borrower and the structural engineer for the Project Facilities approved by the Controlling Person, relating to the rehabilitation of the Improvements, as the same may be amended, modified or supplemented from time to time.

**“Engineering Consultant”** means a consultant licensed to practice in the State and chosen by the Controlling Person.

**“Environmental Audit”** means the written Phase I environmental site assessment for the Project Facilities prepared by \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ [Add Phase II if necessary].

**“Environmental Completion Conditions”** shall [have the meaning set forth in the Partnership Agreement] [shall mean \_\_\_\_\_].

**“Environmental Indemnity”** means the Environmental Indemnity Agreement dated as of the date hereof, by the Borrower and Guarantor in favor of the Trustee.

**“Environmental Laws”** means all Legal Requirements governing or relating to the protection of the environment, natural resources or human health concerning (i) activities at any of the Project Facilities, (ii) repairs or rehabilitation of any Improvements, (iii) handling of any materials at any of the Project Facilities, (iv) releases into or upon the air, soil, surface water or ground water from any of the Project Facilities, and (v) storage, distribution, use, treatment, transport or disposal of any waste at or connected with any activity at any of the Project Facilities, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 42 U.S.C. §§ 9601 et seq., as amended from time to time; the Hazardous Materials Transportation Act 49 U.S.C. §§ 5101 et seq., as amended from time to time; the Resource Conservation and Recovery Act 42 U.S.C. §§ 6901 et seq., as amended from time to time; the Federal Water Pollution Control Act 33 U.S.C. §§ 1251 et seq., as amended from time to time; and comparable State statutes.

**“Environmentally Sensitive Area”** means (i) a wetland or other “water of the United States” for purposes of Section 404 of the federal Clean Water Act or any similar area regulated under any State or local Legal Requirements, (ii) a floodplain or other flood hazard area as defined pursuant to any applicable state Legal Requirements, (iii) a portion of the coastal zone for purposes of the federal Coastal Zone Management Act, or (iv) any other area development of which is specifically restricted under applicable Legal Requirements by reason of its physical characteristics or prior use.

**“EPA”** shall have the meanings ascribed to such term in Section 6.14(e) of the Loan Agreement.

**“Equity Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

**“ERISA”** shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

**“ERISA Affiliate”** shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

**“Event of Default”** means, with respect to this Indenture, any of the events specified in Section 6.1 hereof, or with respect to the Loan Agreement, any of the events specified in Section 7.1 thereof.

**“Executive”** means any one of the Mayor or the Director of the Mayor’s Office of Housing and Community Development of the City.

**“Expenses”** means the aggregate annualized operating expenses (including replacement reserves) of the Project Facilities as reasonably determined by the Controlling Person in an amount equal to the greater of: (i) the actual amount of aggregate annualized Expenses for the Testing Period prior to the determination of Stabilized NOI, provided that such actual expenses reflect normalized/stabilized operations as reasonably determined by the Controlling Person; and (ii) Underwritten Expenses.

**“Fair Market Value”** means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term "Fair Market Value"

means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City 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 the investment. To the extent required by the Regulations, the term "investment" will include a hedge.

**"Favorable Opinion of Bond Counsel"** means an opinion of Bond Counsel, addressed to the City, the Trustee and the Majority Owner, with a copy to the Controlling Person, to the effect that a proposed action, event or circumstance (i) does not affect the exclusion from gross income of interest on the Tax-Exempt Bonds for federal income tax purposes, and (ii) does not affect the treatment of interest on the Bonds as not being an item of tax preference for purposes of the federal alternative minimum tax, which opinion may be subject to customary assumptions and exclusions.

**"Financing Statements"** means any and all financing statements (including continuation statements) or other instruments filed or recorded to perfect the Security Interest created in this Indenture.

**"First Interest Payment Date"** shall have the meaning set forth in the Schedule of Financial Terms.

**"First Optional Call Date"** shall have the meaning set forth in the Schedule of Financial Terms.

**"First Principal Payment Date"** shall have the meaning set forth in the Schedule of Financial Terms.

**"First Put Date"** shall have the meaning set forth in the Schedule of Financial Terms.

**"Fiscal Year"** means the annual accounting year of the Borrower, which currently begins on \_\_\_\_\_ 1 of each calendar year.

**"Fitch"** means Fitch, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the City and the Trustee.

**"Force Majeure"** means any acts of God, strikes, walkouts or other labor disputes, riots, civil strife, war, acts of a public enemy, lightning, fires, explosions, storms or floods or shortages of labor or materials or other causes of a like nature beyond the control of the Borrower; provided, however, that the unavailability of sources of financing, the insufficiency of funds, the loss of a tenant or changes in market conditions shall not constitute Force Majeure.

**"GAAP"** means generally accepted accounting principles in effect in the United States from time to time, consistently applied.

**"General Partner"** means MHDC New Map LLC, a California limited liability company, authorized to conduct its business in the State, the general partner of the Borrower, together with its

successors and assigns, as permitted by the Controlling Person and the restrictions described in the definition of “Permitted Transfer” herein.

**“General Partner Pledge”** means the Limited Guaranty, Pledge of Partnership Interests and Security Agreement, dated the date hereof, by the General Partner, in favor of the Trustee.

**“Government Obligations”** means (i) direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, and (ii) obligations issued by a Person controlled or supervised by and acting as an instrumentality of the United States of America, the full and timely payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (i) or (ii) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), which obligations, in either case, are not subject to redemption prior to maturity at less than par at the option of anyone other than the holder thereof.

**“Governmental Action”** means all permits, authorizations, registrations, consents, certifications, approvals, waivers, exceptions, variances, claims, orders, judgments and decrees, licenses, exemptions, publications, filings, and notices to and declarations of or with any Governmental Authority and shall include all permits and licenses required to rehabilitate, use, operate and maintain any of the Project Facilities.

**“Governmental Authority”** means any federal, state, or local governmental or quasi - governmental subdivision, authority, or other instrumentality thereof and any entity asserting or exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Borrower and/or the Project Facilities.

**“Ground Lease”** means, in reference to a particular Site, that certain ground lease for such Site, dated as of \_\_\_\_\_, 20\_\_ between the Borrower and Housing Authority of the City and County of San Francisco pursuant to which the Borrower holds a leasehold interest in the real property comprising such Site upon which a portion of the Project Facilities are situated, as the same may be amended, modified or supplemented from time to time.. The term “Ground Leases” means more than one Ground Lease or, as the context may require, all of the Ground Leases.

**“Guarantor”** means the Guarantor[s] specified on the Schedule of Financial Terms.

**“Guaranty of Completion”** means the Guaranty of Completion, dated as of the date hereof made by the Guarantor in favor of the Trustee.

**“Guaranty of Debt Service and Stabilization”** means the Guaranty of Debt Service and Stabilization dated as of the date hereof made by the Guarantor in favor of the Trustee.

**“Guaranty of Recourse Obligations”** means the Guaranty of Recourse Obligations, dated as of the date hereof, made by the Guarantor in favor of the Trustee.

**[“HAP Contract”** means the Housing Assistance Payments Contract #\_\_\_\_\_, between HUD and the Borrower, providing for housing assistance payments to be made to the Borrower.]

**“Hazardous Substances”** means any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), asbestos-containing materials (ACMs), lead-containing or lead-based paint (LBP), radon, Mold, medical

waste and other bio-hazardous materials and any chemicals, pollutants, materials or substances defined as or included in the definition of “hazardous substances” as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, “regulated substances” within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Laws.

**“Holder” or “Owner”** means the Person who shall be the registered owner of any Bond.

**[“HUD”** means the United States Department of Housing and Urban Development.]

**“Impositions”** means, with respect to the Project Facilities, all taxes including, without limitation, all real and personal property taxes, water charges and sewer rents, any special assessments, charges or claims and any other item which at any time may be or become a lien upon the Project Facilities.

**“Improvements”** means all buildings and other improvements included in the Project Facilities.

**“Indebtedness”** means, collectively, and includes all present and future indebtedness, liabilities and obligations of any kind or nature whatsoever of the Borrower to the City, the Controlling Person, the Trustee or to the Holders from time to time of the Bonds, now existing and hereafter arising, under or in connection with this Indenture or any of the other Bond Documents [or any of the Subordinate Debt Documents], including future advances, principal, interest, indemnities, other fees, late charges, enforcement costs and other costs and expenses whether direct or contingent, matured or unmatured and all other obligations of the Borrower to the Controlling Person, the Trustee, the City or the Holders from time to time of the Bonds.

**“Indemnified Parties”** shall have the meaning given to such term in Section 2.5 of the Loan Agreement.

**“Indenture”** shall have the meaning given to such term in the first paragraph hereof.

**[“Index”** means the London Inter-Bank Offered Rate for 1-month U.S. Dollar-denominated deposits administered by the ICE Benchmark Administration Limited (formerly administered by the British Bankers Association), or such other person which takes over the administration of that rate which appears on Reuters Screen LIBOR01 Page (or any successor page) as of 11:00 a.m., London time, on the date that is two (2) London Business Days prior to the applicable on the Rate Determination Date. If Indexing Agent determines that use of the Index would violate any applicable law or regulation, or if the Index becomes unavailable, then Indexing Agent, on behalf of Bondholders, will select a replacement index.]

**[“Indexing Agent”** shall mean the indexing agent appointed by the Majority Owner to determine the Bond Coupon Rate in accordance with the provisions of this Indenture. The initial Indexing Agent shall be the Majority Owner.]

**“Indirect Participant”** means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository through a DTC Participant.

**“Insurance and Condemnation Proceeds Account”** means the account within the Project Fund created pursuant to Section 4.1(a) hereof.

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



**“Interest Payment Date”** means the first (1<sup>st</sup>) calendar day of each month that the Bonds are Outstanding, commencing on the First Interest Payment Date.

**“Investor Limited Partner”** means MCC Housing LLC, a California limited liability company, and its successors and assigns in such capacity pursuant to the Partnership Agreement.

**“Investor Letter”** means that certain Investor Letter, substantially in the form attached hereto as Exhibit B.

**“IRP Agreement”** means the Agreement for Interest Reduction Payments dated as of \_\_\_\_\_, 20\_\_ among the Borrower, the Trustee, and HUD.]

**“Issue Date”** means \_\_\_\_\_ 20\_\_, the date on which the initial draw of the Bonds are issued and delivered to the purchaser or purchasers thereof.

**“Land Use Restriction Agreements”** means the five (5) Regulatory Agreements and Declarations of Restrictive Covenants, one for each scattered site comprising the Project Facilities, each dated as of February 1, 2022, each between the City and the Borrower, and each as the same may be amended, modified or supplemented from time to time.

**“Lease”** shall have the meaning assigned to such term in the Mortgage.

**“Legal Requirements”** means all statutes, codes, laws, ordinances, regulations, rules, policies, or other federal, state, local and municipal requirements of any Governmental Authority whether now or hereafter enacted or adopted, and all judgments, decrees, injunctions, writs, orders or like action of an arbitrator or a court or other Governmental Authority of competent jurisdiction (including those pertaining to health, safety or the environment).

**“Lien”** means any lien, mortgage, security interest, tax lien, pledge, encumbrance, conditional sale or title retention arrangement, or any other interest in property designed to secure the repayment of indebtedness, whether arising by agreement or under any statute or law, or otherwise.

**“Loan”** means the loan of proceeds of the Bonds from the City to the Borrower, as evidenced by the Note and pursuant to the terms of the Loan Agreement [and the principal shall consist of two components: the “Real Estate Portion” which means the portion of the Bonds supported by cash flow in the principal amount of \$\_\_\_\_\_ and the “IRP Portion” which means the portion of the Bonds supported by the payments made under the Loan Agreement for Interest Reduction Payments in the principal amount of \$\_\_\_\_\_, for a total Loan of \$\_\_\_\_\_.]

**“Loan Agreement”** shall have the meaning given to such term in the recitals to this Indenture.

**“Local Time”** means Pacific Time (daylight or standard, as applicable) in San Francisco, California.

**“Major Contract”** shall mean any subcontract for labor or materials, or both, in connection with the Improvements which is for an aggregate contract price equal to or greater than \$250,000, whether pursuant to one contract or agreement or multiple contracts or agreements, after taking into account all change orders.

**“Majority Owner”** means any one Person that is the [Beneficial] Owner of the Outstanding Bonds; provided, however, if no one Person [owns] [is the Beneficial Owner of] all of the Outstanding Bonds,

“Majority Owner” means the [Beneficial] Owner or Owners of at least fifty-one percent (51%) in aggregate principal amount of all Outstanding Bonds.

“**Management Agreement**” shall have the meaning ascribed to such term in Section 6.19 of the Loan Agreement.

“**Managing Agent**” means \_\_\_\_\_, a \_\_\_\_\_, together with any successor manager of the Project Facilities approved by the Controlling Person and their respective successors and assigns.

“**Mandatory Prepayment Amount**” shall mean the amount specified on the Schedule of Financial Terms.

“**Material Change Order**” means, with respect to the Project Facilities, a Change Order which (i) would result in an increase or decrease of \$50,000 in the aggregate contract price of the Work to be performed on the Project Facilities; (ii) when aggregated with other Change Orders previously effected, would result in an increase or decrease in excess of \$250,000 in the aggregate contract price for the Work to be performed on the Project Facilities; (iii) would reduce the number of apartment units in the Project Facilities; (iv) would materially reduce the aggregate useable square footage of the apartment units or the parking areas in the Project Facilities; (v) would change the number of one, two and three bedroom apartments in the Project Facilities; (vi) would alter the scope of the recreational facilities or ancillary facilities of the Project Facilities; (vii) would alter the number of apartment units in the Project Facilities designated for occupancy by low and moderate income tenants; (viii) makes a substitution for any material or product that is of lesser quality, in the Controlling Person’s determination, than that specified in the Plans and Specifications relating to the Project Facilities; or (ix) would materially adversely impair the value of the Project Facilities once the Work is completed.

“**Material Contract**” means each indenture, mortgage, agreement or other written instrument or contract to which the Borrower is a party or by which any of its assets are bound (including, without limitation, any employment or executive compensation agreement, collective bargaining agreement, agreement relating to an Obligation, agreement for the acquisition, rehabilitation, repair or disposition of real or personal property, agreement for the purchasing or furnishing of services, operating lease, joint venture agreement, agreement relating to the acquisition or disposition of an Affiliate or agreement of merger or consolidation) which (i) evidences, secures or governs any outstanding obligation of the Borrower of \$100,000 or more per annum, or (ii) if canceled, breached or not renewed by any party thereto, would have a material adverse effect on the business operations, assets, condition (financial or otherwise) or prospects of the Borrower.

“**Maturity Date**” means the date set forth on the Schedule of Financial Terms.

“**Maximum Bond Amount**” shall mean the amount specified on the Schedule of Financial Terms.

“**Maximum Rate**” means ten (10) percent per annum; provided that such rate shall in no event exceed the maximum rate allowed by law.

“**Minimum Coverage**” shall mean the debt service coverage ratio set forth on the Schedule of Financial Terms.

“**Minimum Occupancy**” shall mean the minimum percentage of occupancy set forth on the Schedule of Financial Terms.

**“Moisture Management Program”** shall have the meaning ascribed to such term in Section 6.14(e) of the Loan Agreement.

**“Mold”** shall have the meaning ascribed to such term in Section 6.14(e) of the Loan Agreement.

**“Monitoring Fee”** shall have the meaning given to such term in Section 2.2(a) of the Loan Agreement.

**“Monthly Tax and Insurance Amount”** means an amount equal to the sum of (i) one-twelfth (1/12th) of the annual Impositions, plus (ii) one-twelfth (1/12th) of the annual insurance premiums for the insurance coverages for the Project Facilities required by Section 6.4 of the Loan Agreement, as any such amounts may be increased if the Controlling Person determines that funds in the Tax and Insurance Escrow Fund will be insufficient to pay Impositions and insurance premiums when due.

**“Moody’s”** means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the City and the Trustee.

**“Mortgage”** means the Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of the date hereof, made by the Borrower to [the City and assigned to] the Trustee covering the Project Facilities.

**“Note”** means the promissory note of the Borrower, dated the Issue Date, as endorsed by the City to the Trustee, in the form attached as Exhibit A to the Loan Agreement.

**“Obligations”** means any and all obligations of the Borrower for the payment of money including without limitation any and all (i) obligations for money borrowed, (ii) obligations evidenced by bonds, debentures, notes, guaranties or other similar instruments, (iii) construction contracts, installment sale agreements and other purchase money obligations in connection with the performance of work, sale of property or rendering of services, (iv) leases evidencing the acquisition of capital assets, (v) obligations under any applicable ground lease, (vi) reimbursement obligations in connection with letters of credit and other credit enhancement facilities, (vii) obligations for unfunded pension liabilities, (viii) guaranties of any such obligation of a third party, and (ix) any such obligations of third parties secured by assets of the Borrower; but excluding obligations under contracts for supplies, services and pensions allocable to current Expenses during the current or future Fiscal Years in which the supplies are to be delivered, the services rendered or the pension paid.

**“OFAC Violation”** shall have the meanings ascribed to such term in Section 6.23 of the Loan Agreement.

**“Operating Reserve Amount”** shall have the meaning as set forth on the Schedule of Financial Terms.

**“Operating Reserve Fund”** means [the fund of that name created pursuant to Section 4.1(a) hereof] [[the Operating Reserve Fund created pursuant to Section 8.4 of the Loan Agreement prior to the occurrence of an Operating Reserve Trigger and thereafter the fund of that name created pursuant to Section 4.1(a) hereof].

**["Operating Reserve Trigger"]** shall have the meaning ascribed to such term in Section 8.4 of the Loan Agreement.]

**"Opinion of Bond Counsel"** means any opinion of Bond Counsel delivered pursuant to this Indenture with respect to the excludability of interest on the Tax-Exempt Bonds from gross income of the Holders thereof for federal income tax purposes or other matters specified in this Indenture. Each such opinion shall be addressed to the Trustee, the Majority Owner, the Controlling Person and the City.

**"Origination Fee"** shall mean the origination fee set forth on the Schedule of Financial Terms and payable pursuant to Section 2.2(a) of the Loan Agreement.

**"Outside Stabilization Date"** means the date by which Stabilization must be achieved as specified on the Schedule of Financial Terms.

**"Outstanding"** means, when used with reference to the Bonds at any date as of which the amount of Outstanding Bonds to be determined, all Bonds that have been authenticated and delivered by the Trustee hereunder, except:

- (i) Bonds cancelled or delivered for cancellation at or prior to such date;
- (ii) Bonds deemed to be paid in accordance with Section 5.2 hereof;
- (iii) Bonds in lieu of which others have been authenticated under Sections 2.8 and 2.9 hereof; [and]
- (iv) Bonds authorized but not yet drawn-down and delivered to Purchaser; and]

(iv)/(v) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the Holders of a specified percentage of Outstanding Bonds hereunder, all Bonds held by or for the account of the City, the Borrower or any Affiliate of the Borrower; provided, however, that for purposes of any such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being outstanding only Bonds known by the Trustee by actual notice thereof to be so held; provided, further, that if all of the Bonds are at any time held by or for the account of the Borrower or any Affiliate of the borrower, then such Bonds shall be deemed to be Outstanding at such time for the purpose of this subparagraph (iv)/(v).

**"Partnership Agreement"** means the \_\_\_\_\_ of the Borrower dated as of \_\_\_\_\_, 2022, as may be amended, modified or supplemented from time to time.

**"Payment and Performance Bonds"** shall mean dual-obligee payment and performance bonds (or a letter of credit in lieu of such bonds) relating to the Contractor (or, if required by Controlling Person, each contractor that enters into a Major Contract with Borrower), issued by a surety company or companies authorized to do business in the State and acceptable to Controlling Person, and in form and content reasonably acceptable to Controlling Person, in each case in an amount not less than the full contract price; together with a dual obligee and modification rider naming the Controlling Person (or at Controlling Person's election, the Trustee) and in the form and substance acceptable to Controlling Person which shall be attached thereto.

**"PBGC"** shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

**“Permitted Encumbrances”** means only:

- (i) the Land Use Restriction Agreements;
- (ii) the Mortgage;
- (iii) [the Ground Lease;]
- (iv) [liens securing the Subordinate Debt;]
- (v) Impositions not yet due and payable or being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person, and any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed;
- (vi) statutory liens of landlords and liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested by appropriate proceedings promptly initiated and diligently conducted if (1) such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided (2) such liens have been bonded or the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person; and
- (vii) the exceptions listed in the Title Policy and any other matters affecting title which are approved in writing by the Controlling Person.

**“Permitted Investments”** means any one or more of the following investments, if and to the extent the same are then (i) legal investments under the applicable laws of the State for moneys proposed to be invested therein and (ii) acquired at Fair Market Value:

- (i) Bonds or other obligations of the United States;
- (ii) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;
- (iii) Direct obligations issued by the United States or obligations guaranteed in full as to principal and interest by the United States or repurchase agreements with a qualified depository bank or securities dealers fully collateralized by such obligations, maturing on or before the date when such funds will be required for disbursement;
- (iv) Obligations of state and local government and municipal bond issuers, which are rated investment-grade by either S&P or Moody’s or other non-rated obligations of such issuers guaranteed or credit enhanced by a Person whose long-term debt or long-term deposits or other obligations are rated investment-grade by either S&P or Moody’s;
- (v) Prime commercial paper rated either “A-1” by S&P or “P-1” by Moody’s and, if rated by both, not less than “A-1” by S&P and “P-1” by Moody’s;
- (vi) Bankers’ acceptances drawn on and accepted by commercial banks;

(vii) Interests in any money market fund or trust, the investments of which are restricted to obligations described in clauses (i) through (vi) of this definition or obligations determined to be of comparable quality by the board of directors of such fund or trust, including, without limitation, any such money market fund or trust for which the Trustee, an affiliate of the Trustee, a Qualified Custodian or an affiliate of the Qualified Custodian serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian; [and]

(viii) [The depository accounts established pursuant to the Depository Agreement; and]

(ix) Such other investments selected by the Borrower as may be authorized by applicable law and consented to by the Controlling Person.

**“Permitted Transfer”** means (i) a transfer by devise or descent or by operation of law upon the death of a direct or indirect owner in the Borrower, so long as such transfer does not result in a change of management or control of the affected entity, (ii) the transfer of a direct or indirect ownership interest in the General Partner for estate planning purposes, so long as such transfer does not result in a change of management or control of the General Partner, (iii) a transfer of partnership interests in Borrower to the Investor Limited Partner, (iv) a transfer of the limited partner interests of the Investor Limited Partner in the Borrower to an Affiliate of such Investor Limited Partner, (v) a transfer of indirect shares or ownership interests in the Investor Limited Partner so long as the direct ownership interests in the Investor Limited Partner are owned or controlled by Investor Limited Partner or an Affiliate thereof, (vi) a transfer of any shares or ownership interests in the Investor Limited Partner after the contributions by the owners of the Investor Limited Partner of all installments of capital contributions required to be made by the Investor Limited Partner under the Partnership Agreement, (vii) transfers of any interests in the General Partner so long as the Guarantor, or one or more members of the Guarantor, controls the Borrower after such transfer occurs, (viii) the removal and replacement of the General Partner pursuant to the Partnership Agreement, (ix) after the payment in full of all capital contributions under the Partnership Agreement, any other transfer, assignment, pledge, hypothecation or conveyance of limited partner] interests in, or change in the limited partners of, the Borrower (and the owners of such limited partners) not described above, in accordance with the terms of the Partnership Agreement, or (x) the extension, amendment or replacement of commercial leases approved by the Controlling Person.

**“Person”** means any individual, for-profit or not-for-profit corporation, partnership, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

**“Plans and Specifications”** means, with respect to the Project Facilities, the plans and specifications for the rehabilitation of Improvements prepared by the Architect and more particularly identified on Schedule 4 attached to the Loan Agreement and approved by the Controlling Person, as the same may be amended, modified or supplemented as permitted under the Loan Agreement through Change Orders or otherwise.

**“Principal Payment Date”** means the first (1st) calendar day of each month, commencing on the First Principal Payment Date.

**“Project Costs”** means the costs, fees, and expenses associated with the acquisition, rehabilitation, and equipping of the Project Facilities for use as affordable rental housing including but not limited to the cost of materials, appliances, equipment, and other items of tangible personal property, the fees and expenses of architects, contractors, engineers, attorneys, accountants, developers, surveyors, payment of capitalized interest, payment of certain costs and expenses incidental to the issuance of the Bonds and payment of any other costs shown on the Development Budget.

**“Project Facilities”** means the leasehold interest in \_\_\_ acres of land and the multifamily apartment housing facilities consisting of a total of 69 units and related personal property and equipment, located on five scattered sites in San Francisco, California, the acquisition, rehabilitation and equipping of which are being financed by the proceeds of the Bonds.

**“Project Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Proposed Budget”** shall have the meaning given to such term in Section 6.24 of the Loan Agreement.

**“Punchlist Items”** means any items necessary at the time of the issuance of a temporary use and occupancy permit to complete fully the rehabilitation of the Project Facilities in accordance with the Plans and Specifications for the Project Facilities, or required for the issuance of a final certificate of occupancy or its equivalent.

**“Purchaser”** means \_\_\_\_\_, or its designated affiliate, together with its successors and assigns.

**“Qualified Custodian”** means a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000.

**“Qualified Project Costs”** means costs paid with respect to the Project Facilities 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 rehabilitation or construction of the Project Facilities (in the case of rehabilitation, with respect to vacated units only) 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 construction or rehabilitation Project Facilities shall not be a Qualified Project Cost; and provided still further that if any portion of the Project Facilities is being constructed or rehabilitated by an 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 Affiliate in constructing or rehabilitating the Project Facilities (or any portion thereof), (B) any reasonable fees for supervisory services actually rendered by the Affiliate, and (C) any overhead expenses incurred by the Affiliate which are directly attributable to the work performed on the Project Facilities, 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 Facilities or payments received by such Affiliate due to early completion of the Project Facilities (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 Facilities (within the meaning of §1.150-2 of the United States Treasury Regulations) or the date of issue of the Tax-Exempt Bonds, and (iv) if the Project Costs were previously paid and are to be reimbursed with proceeds of the Tax-Exempt Bonds such costs were (A) costs of issuance of the Tax-Exempt Bonds, (B) preliminary capital expenditures (within the meaning of United States Treasury Regulations §1.150-2(f)(2)) with respect to the Project Facilities (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction of the Project Facilities that do not exceed twenty percent (20%) of the issue price of the Tax-Exempt Bonds (as defined in United States Treasury Regulations §1.148-1), or (C) were capital

expenditures with respect to the Project Facilities that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the rehabilitation of the Project Facilities is placed in service (but no later than three (3) years after the expenditure is paid)..

**["Rate Determination Date"]** means the Issue Date and each Interest Payment Date thereafter until the Stabilization Date.]

**"Rebate Amount"** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement.

**"Rebate Analyst"** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement and shall be reasonably acceptable to the Controlling Person.

**"Rebate Fund"** means the fund of that name created pursuant to Section 4.1(a) hereof.

**"Rebate Report"** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement.

**"Record Date"** means with respect to each Interest Payment Date, the Trustee's close of business on the day before such Interest Payment Date occurs, regardless of whether such day is a Business Day.

**"Redemption Fund"** means the account of that name created pursuant to Section 4.1(a) hereof.

**"Register"** means the register of the record Owners of Bonds maintained by the Trustee.

**"Regulatory Agreement Default"** shall have the meaning given to such term in Section 7.9(b) of the Loan Agreement.

**"Related Person"** with reference to any Substantial User, means a "related person" within the meaning of Section 147(a)(2) of the Code.

**"Rents"** shall have the meaning assigned to such term in the Mortgage.

**"Repayments"** means all payments of principal and interest on the Loan required to be paid by the Borrower to the Trustee, as the assignee of the City pursuant to the Loan Agreement.

**"Replacement Reserve Agreement"** means the Replacement Reserve and Security Agreement, dated as of the date hereof, made by the Borrower in favor of the Trustee.

**"Replacement Reserve Fund"** means the fund of that name created pursuant to Section 4.1(a) hereof.

**"Required Equity Funds"** means all installments of equity contributions to be made to the Borrower by the Investor Limited Partner through achievement of Stabilization [and funding of the Operating Reserve Fund], subject to and in accordance with the terms of the Partnership Agreement.

**"Requisition"** means a requisition in the form attached to the Loan Agreement as Exhibit B, together with all invoices, bills of sale, schedules, applications for payment, certifications and other submissions required for the disbursement of the proceeds of the Bonds from the Project Fund pursuant to the terms hereof.



**“Reserved Rights”** means those certain rights of the City under the Loan Agreement to indemnification and to payment or reimbursement of fees and expenses of the City, including the City’s annual fee as well as the fees and expenses of counsel, and indemnity payments, its right to give and receive notices and to enforce notice and reporting requirements and restrictions on transfer of ownership, its right to inspect and audit the books, records and premises of the Borrower and of the Project Facilities, its right to collect attorney’s fees and related expenses, its right to specifically enforce the Borrower’s covenant to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the City), its right to receive notices under the Loan Agreement, its rights to give or withhold consent to amendments, changes, modifications and alterations to the Loan Agreement as specifically set forth herein, and to the extent not included above, the rights of the City under Sections 2.2(c), 2.5, 4.2, 6.10, 6.14(h), 10.5, 10.9 and 10.13 of the Loan Agreement.

**“Retainage”** means the greater of: (i) a holdback of the percentage of the hard costs of rehabilitation of the Improvements under each contract or subcontract set forth on the Schedule of Financial Terms or (ii) the amount required to be held back pursuant to the Construction Contract.

**“Sale”** means the direct or indirect sale, agreement to sell, assignment, transfer, conveyance, hypothecation, lien, mortgage, grant of a security interest in or a deed to secure debt or deed of trust with respect to, encumbrance, lease, sublease or other disposition of the Project Facilities, or any part thereof or interest therein whether voluntary, involuntary, by operation of law or otherwise, other than (i) the leasing of individual residential units to tenants, (ii) the extension, amendment, renewal or replacement of commercial leases currently in effect, and (iii) the grant of easements for utilities and similar purposes in the ordinary course provided, such easements do not impair the use of the Project Facilities or diminish the value of the Project Facilities. “Sale” shall also include the direct or indirect sale, transfer, assignment, pledge, hypothecation or conveyance of legal or beneficial ownership of (a) equity ownership interests in the Borrower, (b) a controlling interest in the aggregate, at any time or times, of the equity ownership interests in the General Partner, or (c) the substitution of a new General Partner in the Borrower without the Controlling Person’s written consent, which it may withhold in its sole discretion; provided, however, that “Sale” shall not include a Permitted Transfer.

**“S&P”** means Standard & Poor’s Ratings Services, a division of Standard & Poor’s Financial Services LLC, a limited liability company organized and existing under the laws of the State of New York, its successors and assigns and, if such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the City and the Trustee.

**“Schedule of Financial Terms”** shall mean Schedule A to this Indenture as modified from time to time pursuant to Section 6.1 hereof.

**“Secondary Market Transaction”** shall have the meaning given to such term in Section 10.12(a) of the Loan Agreement.

**“Securities”** shall have the meaning given to such term in Section 10.12(a) of the Loan Agreement.

**“Securities Depository”** means The Depository Trust Company and any substitute for or successor to such securities depository that shall maintain a Book-Entry System with respect to the Bonds.

**“Securities Depository Nominee”** means the Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the Register the Bonds to be delivered to

such Securities Depository during the continuation with such Securities Depository of participation in its Book-Entry System.

**“Security”** shall have the meaning given to such term in the Granting Clauses of this Indenture.

**“Security Interest”** or **“Security Interests”** means the security interests created herein and shall have the meanings set forth in the U.C.C.

**“Site”** means each of the five (5) scattered sites on which Project Facilities are situated, and each of which may be comprised of one or more contiguous legal parcels. The term **“Sites”** means more than one Site or, as the context may require, all five (5) of the Sites.

**“Stabilization”** means the point at which (i) the Improvements have met Minimum Occupancy by credit-worthy, qualified tenants meeting the requirements of the Bond Documents in each month of the Testing Period; (ii) the ratio of Stabilized NOI in each month of the Testing Period to maximum principal, interest, City Fees and Trustee Fees payable in any month [other than the month in which the Maturity Date occurs] on the amount of Bonds Outstanding equals or exceeds the Minimum Coverage; (iii) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be then continuing under the Bond Documents; (iv) the Project Facilities shall have achieved Completion and satisfied each of the Construction Closeout Deliveries; [and] (v) the Bonds have been redeemed in an amount equal to the Mandatory Prepayment Amount pursuant to Section 3.4(b)(vii); [and (vi) the Borrower shall have deposited an amount equal to the Operating Reserve Amount, or such other amount as approved by the Controlling Person, in the Operating Reserve Account], all as determined or approved by the Controlling Person.

**“Stabilization Date”** means the earlier to occur of: (i) the date specified by the Controlling Person that all of the conditions to achievement of Stabilization have been satisfied; or (ii) the Outside Stabilization Date, as the same may be extended pursuant to Section 6.37 of the Loan Agreement.

**“Stabilized NOI”** means, for any period, (x) Effective Gross Revenues for such period less (y) Expenses for such period, as determined or approved by the Controlling Person.

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

**“Subordinate Debt”** means, collectively, (i) that certain loan in the maximum amount set forth in the Schedule of Financial Terms from the Subordinate Lender to the Borrower and (ii) that certain loan in the maximum amount set forth in the Schedule of Financial Terms from the Subordinate Lender to the Borrower, evidenced and secured by the Subordinate Debt Documents.]

**“Subordinate Debt Documents”** means all documents evidencing or securing the Subordinate Debt or otherwise executed and delivered by the Borrower in connection therewith or as a condition of the advance of the proceeds thereof, together with a subordination agreement executed by lender of such Subordinate Debt, all in form and substance acceptable to the Controlling Person.]

**“Subordinate Lender”** shall mean the Subordinate Lender(s) specified on the Schedule of Financial Terms.]

**“Subordination Agreement”** means that certain Subordination Agreement dated on or about the Issue Date among the City, the Trustee, the Borrower and Subordinate Lender, as subordinate lender, as may be amended, modified or supplemented from time to time.]

**“Substantial User”** means, with respect to any “facilities” (as the term “facilities” is used in Section 144(a) of the Code), a “substantial user” of such “facilities” within the meaning of Section 147(a) of the Code.

**“Surplus Bond Proceeds”** means all moneys and any unliquidated investments remaining in the Bond Proceeds Account of the Project Fund, but not later than Stabilization, and after payment in full of the Project Costs (except for proceeds of the Bonds being retained at the written direction of the Controlling Person).

**“Surplus Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Tax and Insurance Escrow Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Tax Certificate”** means, collectively, the Certificate as to Arbitrage, dated the Issue Date, and executed by the City and the Borrower, and the Certificate Regarding of Use of Proceeds Certificate, dated the Issue Date, and executed by the Borrower, as each may be amended, modified or supplemented from time to time.

**“Tax-Exempt Bonds”** has the meaning given in the recitals hereof.

**“Tax-Exempt Subaccount”** means (i) when used in reference to the Bond Proceeds Account of the Project Fund, the subaccount of that name within such Account created pursuant to Section 4.1(a) hereof; (ii) when used in reference to the Costs of Issuance Account of the Project Fund, the subaccount of that name within such Account created pursuant to Section 4.1(a) hereof; and (iii) when used in reference to the Capitalized Interest Account of the Project Fund, the subaccount of that name within such Account created pursuant to Section 4.1(a) hereof.

**“Taxable Subaccount”** means (i) when used in reference to the Bond Proceeds Account of the Project Fund, the subaccount of that name within such Account created pursuant to Section 4.1(a) hereof; (ii) when used in reference to the Costs of Issuance Account of the Project Fund, the subaccount of that name within such Account created pursuant to Section 4.1(a) hereof; and (iii) when used in reference to the Capitalized Interest Account of the Project Fund, the subaccount of that name within such Account created pursuant to Section 4.1(a) hereof..

**“Testing Period”** means the period for testing set forth on the Schedule of Financial Terms immediately preceding the date of such determination.

**“Third Party Costs”** means the ongoing City Fees, Trustee Fees and the fees of the Rebate Analysts or any other third party in connection with the Bonds.

**“Title Company”** means the title insurance company insuring the lien of the Mortgage on the Issue Date together with any successor title company approved by the Controlling Person.

**“Title Policy”** means the mortgagee’s title insurance policy relating to the Project Facilities issued by the Title Company to the Trustee, effective on the date of recording of the Mortgage, as the same may be subsequently down-dated or endorsed from time to time, with the approval of the Controlling Person.

**[“Transition and IRP Reserve Fund”** means the fund of that name created pursuant to Section 4.1(a).]

**“Trustee”** shall have the meaning given to such term in the first paragraph of this Indenture.

**“Trustee Fee”** means (i) \$\_\_\_\_\_ payable on the Closing Date, and (ii) an annual fee of \$\_\_\_\_\_ payable [annually in arrears on each \_\_\_\_\_1].

**“U.C.C.”** means the Uniform Commercial Code of the State as now in effect or hereafter amended.

**“Underwriter Group”** shall have the meaning given to such term in Section 10.12 of the Loan Agreement.

**“Underwritten Economic Vacancy”** shall mean the amount set forth on the Schedule of Financial Terms.

**“Underwritten Expenses”** shall have the meaning set forth on the Schedule of Financial Terms.

**“Underwritten Management Fee”** means the percentage of gross income specified on the Schedule of Financial Terms received from the Project Facilities on account of rents, service fees, late charges, penalties and other charges under Leases.

**“Work”** means the items of rehabilitation of the Improvements required to be performed under the Plans and Specifications for the Improvements.

**Section 1.2     Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Indenture:

(a) All terms defined in the Loan Agreement and not defined herein shall have the meaning given to such terms in the Loan Agreement.

(b) Words importing the singular number shall include the plural number and vice versa.

(c) The table of contents, captions, and headings herein are for convenience of reference only and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

(d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(e) All references in this Indenture to particular Articles or Sections are references to Articles or Sections of this Indenture, unless otherwise indicated.

## **ARTICLE II**

### **SOURCE OF PAYMENTS, GENERAL TERMS AND PROVISIONS OF THE BONDS**

**Section 2.1     Ratably Secured.** All Bonds issued hereunder are and are to be, to the extent provided in this Indenture, equally and ratably secured by this Indenture without preference, priority or distinction on account of the actual time or times of the authentication, delivery or maturity of the Bonds so that subject as aforesaid, all Bonds at any time Outstanding shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date.

**Section 2.2     Security.** The Bonds and the interest and any premium thereon shall be limited obligations of the City as provided in Section 10.9 hereof, and shall be secured by and payable from the Security pledged and assigned to the Trustee by the City pursuant to the Granting Clauses hereof.

**Section 2.3     Payment of Bonds and Performance of Covenants.** The City shall promptly pay, but only out of the Security, the principal of, premium, if any, and interest on the Bonds at the place, on the dates and in the manner provided in the Bonds. The City shall promptly perform and observe all covenants, undertakings and obligations set forth herein, in the Bonds or in the other Bond Documents to which the City is a party on its part to be performed or observed. The City shall fully cooperate with the Trustee in the enforcement by the Trustee of any such rights granted to the City under the Loan Agreement and the other Bond Documents to which the City is a party.

**Section 2.4     Execution; Limited Obligation.**

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of the Executive of the City. In case any officer whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such manual or facsimile signatures shall nevertheless be valid and sufficient for all purposes.

(b) Notwithstanding anything herein or in any other document, agreement or instrument to the contrary, the following provisions of this paragraph shall apply to the Indenture, the Loan Agreement, the Bonds, the Bond Documents, and any other document, agreement or instrument securing the same. The Bonds shall be limited obligations of the City. The Bonds and the interest thereon and redemption premium, if any, shall not be deemed to constitute or create an indebtedness, liability or obligation of the City, the State or any political subdivision or agency thereof within the meaning of any State constitutional provision or statutory limitation or a pledge of the faith and credit or the taxing power of the State or any such political subdivision or agency. The Bonds and the interest thereon are payable solely from and secured by the Security, all as described in and subject to limitations set forth in this Indenture, for the equal and ratable benefit of the Holders, from time to time, of the Bonds.

(c) Notwithstanding anything herein or in any other document, agreement or instrument to the contrary, the following provisions of this paragraph shall apply to the Indenture, the Loan Agreement, the Bonds, the Bond Documents, and any other document, agreement or instrument securing the same. None of the City, the members of the Board of Supervisors, the directors, officers, officials, employees, attorneys or agents of the City, or any person executing the Bonds is liable personally on the Bonds or subject to any personal liability or accountability by reason of their issuance. The Bonds are limited obligations of the City, payable only as provided herein, and are not a general obligation, nor are they secured by a pledge of the faith and credit, of the City, the State or any of its political subdivisions, nor are the Bonds payable out of any funds or properties other than those of the City expressly pledged for

the payment thereof under this Indenture. The Bonds do not constitute indebtedness within the meaning of any constitutional or statutory debt limitation. The issuance of the Bonds shall not directly, indirectly, or contingently obligate the City, State of California or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(d) No recourse shall be had for the payment of the principal of or premium or interest on the Bonds against any past, present or future supervisor, officer, official, director, employee or agent of the City, or of any successor thereto, as such, either directly or through the City or any successor to the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such supervisors, officers, officials, directors, employees or agents, as such, is hereby expressly waived and released as a condition of, and consideration for, the execution and issuance of the Bonds.

(e) The City shall not be liable for payment of the principal of or interest on the Bonds or any other 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 Indenture, the Bonds or any other documents, except only to the extent amounts are received for the payment thereof from the Borrower under the Loan Agreement.

**Section 2.5      Certificate of Authentication.** No Bonds shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of authentication, substantially in the form as set forth in the form of Bond referred to in Sections 2.6 and 3.1 hereof, executed by an authorized representative of the Trustee and such certificate on any Bond issued by the City shall be conclusive evidence and the only competent evidence that it has been duly authenticated and delivered hereunder.

**Section 2.6      Form of Bonds.**

(a) The Bonds, the Trustee's certificate of authentication and the form of assignment shall be in substantially the form set forth as Exhibit A hereto, with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or are required by law and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by the officer of the City executing such Bonds, as evidenced by such officer's execution of the Bonds.

(b) Bonds shall be in either typewritten or printed form, as the Borrower shall direct, on behalf of the City, with approval of the Trustee. Any expenses, including but not limited to expenses of printing, incurred in connection with the preparation of the form of the Bonds shall be paid by the Borrower.

**Section 2.7      Delivery of Bonds.**

(a) Upon the execution and delivery hereof, the City shall execute the Bonds and deliver them to the Trustee, and the Trustee shall authenticate the Bonds and deliver them through the Securities Depository in the manner described in Section 2.11(a) hereof.

(b) Prior to the delivery by the Trustee of the Bonds, there shall be filed with the Trustee:

(i) A certified copy of all resolutions adopted and proceedings had by the City authorizing execution of this Indenture, the Loan Agreement and the other Bond Documents to which the City is a party and the issuance of the Bonds; and

(ii) An original executed counterpart of the Bond Documents (and with respect to the Note, endorsed without recourse by the City to the Trustee); and

(iii) Copies of any Financing Statements required to be filed to perfect the security interests in the Security or under Section 3.2 of the Loan Agreement; and

(iv) A copy of completed IRS Form 8038 to be filed by or on behalf of the City pursuant to Section 149(e) of the Code; and

(v) An original executed counterpart of the Tax Certificate; and

(vi) An Opinion of Bond Counsel or Counsel to the City to the effect that this Indenture and the Loan Agreement have been duly authorized, executed and delivered by the City and are legal, valid and binding agreements of the City; and

(vii) An approving Opinion of Bond Counsel that the Bonds have been duly authorized and validly issued, that this Indenture creates a valid lien on the Security, that interest on the Tax-Exempt Bonds will be excludable from gross income of the Holders thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax, that the Bonds are not required to be registered under the Securities Act of 1933, as amended, and that the Trust Indenture need not be qualified under the Trust Indenture Act of 1939, as amended; and

(viii) An opinion of Counsel for the Borrower to the effect that the Continuing Disclosure Agreement and the Bond Documents to which it is a party have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower and such other opinions as are reasonably requested by the Controlling Person or the Majority Owner; and

(ix) A pro forma title insurance policy reasonably acceptable to the Controlling Person; and

(x) Reliance letters for, or address of the opinions to, the Controlling Person and Majority Owner of each of the opinions filed with the Trustee;

(xi) Investor Letter addressed to the City and the Trustee, and executed by the Purchaser; and

(xii) Such other documents as may be required by the City, Trustee, Bond Counsel, or Controlling Person.

(c) Upon receipt of the foregoing, the Trustee shall authenticate and deliver the Bonds as provided in the written instructions of the City to the Trustee.

**Section 2.8 Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond is mutilated, lost, stolen or destroyed, the City may execute and the Trustee may authenticate and deliver a new Bond of the same maturity, interest rate, principal amount and tenor in lieu of and in substitution for the Bond mutilated, lost, stolen or destroyed; provided, that there shall be first furnished to the Trustee evidence satisfactory to it and the City of the ownership of such Bond and of such loss, theft or destruction (or, in the case of a

mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee), together with indemnity satisfactory to the Trustee and the City and compliance with such other reasonable regulations as the City and the Trustee may prescribe. If any such Bond shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Bond the City may pay the same without surrender thereof. The City and the Trustee may charge the Holder of such Bond with their reasonable fees and expenses in connection with this Section.

**Section 2.9     Exchangeability and Transfer of Bonds; Persons Treated as Owners.**

(a)     The Register and all other records relating to the registration of the Bonds and the registration of transfer of the Bonds as provided herein shall be kept by the Trustee.

(b)     Any Holder of a Bond, in person or by his/her duly authorized attorney, may transfer title to his/her Bond on the Register upon surrender thereof at the principal office of the Trustee, by providing the Trustee with a written instrument of transfer (in substantially the form of assignment attached to the Bond) executed by the Holder or such Holder's attorney, duly authorized in writing, together with an Investor Letter executed by each transferee of such Bond, and thereupon, the City shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same aggregate principal amount and tenor as the Bond surrendered (or for which transfer of registration has been effected) and of any Authorized Denomination or Authorized Denominations.

(c)     Bonds may be exchanged upon surrender thereof at the principal office of the Trustee with a written instrument of transfer satisfactory to the Trustee executed by the Holder or such Holder's attorney duly authorized in writing, for an equal aggregate principal amount of Bonds of the same tenor as the Bonds being exchanged and of any Authorized Denomination or Authorized Denominations. The City shall execute and the Trustee shall authenticate and deliver Bonds that the Holder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

(d)     Such registrations of transfer or exchanges of Bonds shall be without charge to the Holders of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder of the Bond requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Trustee for any such registration of transfer or exchange and all reasonable expenses of the City shall be paid by the Borrower.

(e)     The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of either principal or interest shall be made only to or upon the order of the registered owner thereof or his/her duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(f)     All Bonds issued upon any registration of transfer or exchange of Bonds shall be legal, valid and binding limited obligations of the City, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Bonds surrendered upon such registration of transfer or exchange.

(g)     Notwithstanding the foregoing, for so long as the Bonds are held under the Book-Entry System, transfers of beneficial ownership will be effected pursuant to rules and procedures established by the Securities Depository, as more fully described in Section 2.11 hereof.

**Section 2.10     Non-presentment of Bonds.** In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption



thereof or otherwise, if funds sufficient to pay the principal of and interest on such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, all liability of the City and the Borrower to the owner thereof for the payment of such Bond or portion thereof as the case may be, shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee, subject to any applicable escheat laws, to hold such fund or funds uninvested in the Bond Fund, without liability to the Holder of such Bond for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his/her part on, or with respect to, said Bond, or portion thereof.

## **Section 2.11    Book-Entry System.**

(a)        On the date of issuance and delivery of the Bonds, the Bonds shall be in certificated form registered in the name of the initial Purchaser. At the written direction of 100% of the Bondholders and upon delivery to the Trustee of the prior written consent of the City, the Bonds may be placed in the Book-Entry System. Failure to obtain the prior written consent of the City, the Trustee and the Borrower shall remove the Bonds from the Book-Entry System and shall redeliver Bonds in certificated form to the beneficial owners thereof. During any period that the Book-Entry System is in effect one Bond in the aggregate principal amount of the Bonds and registered in the name of the Securities Depository Nominee will be issued and deposited with the Securities Depository and held in its custody. The Book-Entry System will be maintained by the Securities Depository and the DTC Participants and Indirect Participants and will evidence beneficial ownership of the Bonds in Authorized Denominations, with registration of transfers of ownership effected on the records of the Securities Depository, the DTC Participants and the Indirect Participants pursuant to rules and procedures established by the Securities Depository, the DTC Participants and the Indirect Participants. The principal of and interest on each Bond shall be payable to the Securities Depository Nominee or any other person appearing on the Register as the registered Holder of such Bond or his/her registered assigns or legal representatives at the principal office of the Trustee. So long as the Book-Entry System is in effect, the Securities Depository will be recognized as the Holder of the Bonds for all purposes except as otherwise provided herein. Transfer of principal and interest payments or notices to DTC Participants and Indirect Participants will be the responsibility of the Securities Depository, and transfer of principal and interest payments or notices to Beneficial Owners will be the responsibility of the DTC Participants and the Indirect Participants. No other party will be responsible or liable for such transfers of payments or notices or for maintaining, supervising or reviewing such records maintained by the Securities Depository, the DTC Participants or the Indirect Participants. While the Securities Depository Nominee or the Securities Depository, as the case may be, is the registered owner of the Bonds, notwithstanding any other provisions set forth herein, payments of principal of and interest on the Bonds shall be made to the Securities Depository Nominee or the Securities Depository, as the case may be, by wire transfer in immediately available funds to the account of said Holder as may be specified in the Register maintained by the Trustee or by such other method of payment as the Trustee may determine to be necessary or advisable with the concurrence of the Securities Depository.

(b)        If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds, or (ii) the Borrower, on behalf of the City, with the consent of the Controlling Person, elects to remove the Securities Depository, then the Borrower, on behalf of the City, with the consent of the Controlling Person, may appoint a new Securities Depository.

(c)        If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds or has been removed and the Borrower fails to appoint a new Securities Depository, (ii) the Controlling Person or the Borrower, with the consent of the Controlling Person, determines that continuation of a Book-Entry System of evidence and transfer of ownership of the Bonds would adversely affect the interests of the Beneficial Owners, or (iii) 100% of the Bondholders so elect, the Book-Entry System will be discontinued, in which case the Trustee will deliver replacement Bonds in the

form of fully registered certificates in Authorized Denominations in exchange for the Outstanding Bonds as required by the Trustee and the Beneficial Owners.

**Section 2.12 Authority.** The City represents and warrants that (i) it is duly authorized under its charter and the laws of the State to issue the Bonds, and to execute, deliver and perform the terms of the Loan Agreement and this Indenture; (ii) all action on its part for the issuance of the Bonds and execution and delivery of the Bond Documents to which it is a party has been duly taken; (iii) the Bonds, upon issuance and authentication, and the Bond Documents to which it is a party upon delivery, assuming that they are the respective legal, valid, binding and enforceable obligations of the other parties thereto, shall be valid and enforceable obligations of the City in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles; (iv) it has not heretofore conveyed, assigned, pledged, granted a security interest in or otherwise disposed of the Security; (v) it has not received any payments under the Loan Agreement; (vi) without making any independent investigation, it has no knowledge of any right of set-off, defense or counterclaim to payment or performance of the terms or conditions of the Loan Agreement; and (vii) the execution, delivery and performance of the Bond Documents to which it is a party and issuance of the Bonds are not in contravention of law or any agreement, instrument, indenture or other undertaking to which it is a party or by which it is bound and no other approval, consent or notice from any governmental agency is required on the part of the City.

**Section 2.13 No Litigation.** The City represents and warrants that, as of the date of its execution and delivery of this Indenture, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the City, threatened against or affecting the City wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, this Indenture or the other Bond Documents to which the City is a party, or (ii) the exclusion from gross income of interest on the Tax-Exempt Bonds.

**Section 2.14 Further Assurances.** The City covenants that it will cooperate to the extent necessary with the Borrower and the Trustee in their defenses of the Security against the claims and demands of all Persons and, upon payment or provision for payment of the fees and expenses to be incurred by the City in connection therewith, will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better pledging of the Security. Except for any amendment, modification, supplement, waiver or consent related to the Reserved Rights, the City shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement without the prior written consent of the Trustee, which consent shall be governed by Article VIII hereof.

**Section 2.15 No Other Encumbrances; No Dissolution.** The City covenants that, (i) except as otherwise provided herein and in the Loan Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security, and (ii) to the fullest extent permitted by applicable law, for so long as the Bonds are Outstanding, it will not dissolve, terminate or permit itself to be dissolved or terminated without a successor to its obligations hereunder and under the Bonds having assumed its obligations hereunder and under the Bonds.

**Section 2.16 No Personal Liability.** No recourse shall be had for the enforcement of any obligation, promise or agreement of the City contained herein or in the Bonds or the other Bond Documents to which the City is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any supervisor, director, official, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the City or of any successor entity, either directly or through

the City or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, member, officer, agent, attorney or employee as such, past, present or future, of the City or of any successor entity, either directly or through the City or any successor entity, under or by reason of any of the obligations, promises or agreements entered into in the Bonds or between the City and the Trustee, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such trustee, member, officer, agent, attorney and employee is, by the execution of this Indenture and as a condition of, and as part of the consideration for, the execution of this Indenture, expressly waived and released.

### **ARTICLE III**

#### **INTEREST RATE, PAYMENT AND REDEMPTION OF BONDS**

**Section 3.1     Authorized Amount of Bonds.** No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued and Outstanding hereunder is expressly limited to the Maximum Bond Amount. The Bonds shall be designated “City and County of San Francisco, California, Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-1: and “City and County of San Francisco, California, Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-2 (Taxable).” The form of Bonds attached as Exhibit A to this Indenture shall be the form of Bonds referred to herein. The Bonds shall be issued as draw-down Bonds in accordance with Section 3.2(e) below.

#### **Section 3.2     Issuance of Bonds.**

(a) The Bonds shall bear interest from the Issue Date until paid or exchanged, as applicable, at the rate set forth in Section 3.3 hereof computed on the basis set forth in the form of the Bonds, and the Bonds shall mature, unless sooner paid, on the Maturity Date, on which date all unpaid principal of and interest on the Bonds shall be due and payable.

(b) The Bonds shall be issued as fully registered bonds without coupons in Authorized Denominations only. The Bonds shall be numbered from R-1 upwards bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Trustee.

(c) The Bonds shall be dated the Issue Date and initially issued as provided herein and in the written instructions from the City. Interest on the Bonds shall be computed from the most recent Interest Payment Date to which interest has been paid or duly provided for or if no interest has been paid or provided for, from the Issue Date. The Bonds shall mature on the Maturity Date, on which date all unpaid principal of and interest on the Bonds shall be due and payable. The Bonds are subject to mandatory sinking fund redemption as provided in Section 3.4(c) hereof.

(d) The principal of and the interest on the Bonds shall be payable in lawful currency of the United States. The principal of the Bonds shall be payable at the principal office of the Trustee upon presentation and surrender of the Bonds; provided, however, that Bonds need not be presented for payment upon redemption pursuant to Section 3.4(c) of this Indenture. Payments of interest on the Bonds will be mailed to the persons in whose names the Bonds are registered on the Register at the close of business on the Record Date next preceding each Interest Payment Date; provided that, any Holder of a Bond or Bonds in an aggregate principal amount of not less than \$250,000 may, by prior written instructions filed with the Trustee (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments be made by wire transfer to an account in the continental United States or other means acceptable to the Trustee.

(e) The Bonds are issued as draw-down Bonds. The Purchaser shall fund the purchase price of the Bonds from time to time, on the dates and in the amounts set forth on the Schedule of Financial Terms, to provide funds for deposit in the Project Fund for the payment of requisitions therefrom. The initial purchase of Bonds by the Purchaser on the Issue Date will be in an amount equal to not less than \$55,000. The Trustee shall record amounts funded in such manner in the Bond recordkeeping system maintained by the Trustee. The Holders may request exchange of the Bonds for Bonds reflecting the principal draw-down from time to time in accordance with Section 2.9. Upon deposit by the Purchaser of each installment of the purchase price of each draw-down Bond, the aggregate amount of Bonds purchased shall be deemed Outstanding and shall begin to accrue interest. Notwithstanding anything herein to the contrary, the aggregate purchase price of the Bonds funded by the Purchaser may not exceed the authorized amount set forth in Section 3.1 and no additional amounts may be funded after the last day of the third calendar year following the Issue Date) unless there is delivered a Favorable Opinion of Bond Counsel. The City and the Trustee acknowledge that the Borrower and the Purchaser have agreed pursuant to [ ] that under certain circumstances the Bonds may be converted from a draw down bond issue to a fully funded issue, and each of the City and the Trustee agrees to take all actions reasonably required of it in connection with such a conversion of the Bonds to a fully funded bond issue.

**Section 3.3 Interest Rate on Bonds.** The Bonds shall bear interest at the Bond Coupon Rate from the Issue Date to the date of payment in full of the Bonds, calculated in the manner set forth in the form of the Bonds. Interest accrued on the Bonds shall be paid in arrears on each Interest Payment Date and on the Maturity Date and any date of redemption prior to the Maturity Date; provided however, that in the event that principal of or interest payable on the Bonds is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate, as more fully set forth in Section 6.8 hereof. [The Indexing Agent will promptly after each Rate Determination Date notify the City, the Trustee, the Borrower and the Controlling Person via electronic mail of the applicable Bond Coupon Rate. The determination of the Bond Coupon Rate by the Indexing Agent, absent manifest error, shall be conclusive and binding on the Bondholders, the Borrower, the Controlling Person and the Trustee.]

**Section 3.4 Redemption of Bonds.**

(a) Optional Redemption of Bonds.

(i) The Bonds are subject to optional redemption in whole but not in part, at the direction of the Borrower upon not less than forty-five (45) days written notice to the Trustee and the Controlling Person (which notice shall be unconditional and irrevocable), in Authorized Denominations on any Interest Payment Date occurring on or after the First Optional Call Date [, at a redemption price equal to 100% of the principal amount thereof] [at a redemption price equal to the percentage of principal amount thereof set forth on the Schedule of Financial Terms], plus accrued interest thereon to, but not including, the redemption date.

(ii) The Bonds are subject to optional redemption in part on any Interest Payment Date specified by the Borrower and consented to by the Controlling Person following Completion, but not later than the Stabilization Date, in an amount not to exceed, in the aggregate, the Mandatory Prepayment Amount at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed without premium or penalty, plus interest accrued thereon to, but not including, the redemption date.

(b) Mandatory Redemption of Bonds.

(i) The Bonds are subject to mandatory redemption from, and to the extent of, amounts on deposit in the Surplus Fund (subject to Section 4.4 hereof) on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture, following the deposit of Surplus Bond Proceeds in the Surplus Fund at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(ii) The Bonds are subject to mandatory redemption in whole or in part on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture after and to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project Facilities are deposited in the Project Fund and are not to be used to repair or restore the Project Facilities at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(iii) The Bonds are subject to mandatory redemption in part on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture, in the amount as specified by the Controlling Person to the Trustee necessary to cause the Project Facilities to meet the requirements of clause (ii) of the definition of "Stabilization," if the Project Facilities have not achieved Stabilization by the Stabilization Date at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(iv) The Bonds are subject to extraordinary mandatory redemption in whole or in part, at the direction of the Controlling Person to the Trustee and the Borrower, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture following receipt by the Trustee of the direction of the Controlling Person, within one hundred eighty (180) days of the occurrence of any of the following events:

(1) the Project Facilities shall have been damaged or destroyed to such an extent that in the judgment of the Controlling Person (A) it cannot reasonably be restored within a period of three (3) consecutive months to the condition thereof immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months, or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

(2) title in and to, or the temporary use of, all or substantially all of the Project Facilities shall have been taken under the exercise of the power of eminent domain by any Governmental Authority or any Person acting under Governmental Authority (including such a taking as, in the judgment of the Controlling Person, results in the Borrower being prevented thereby from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months);

(3) as a result of any changes in the Constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), any material provision of the Loan Agreement or the Bond Documents, in the judgment of the Controlling Person shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein;

(4) unreasonable burdens or excessive liabilities shall have been imposed on the Borrower with respect to the operations of the Project Facilities, including, without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Indenture that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

(5) changes which the Borrower cannot reasonably control or overcome in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Project Facilities for the purposes contemplated by the Loan Agreement shall have occurred or technological changes that the Borrower cannot reasonably overcome shall have occurred that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

(6) legal curtailment of the Borrower's use and occupancy of all or substantially all of the Project Facilities for any reason other than that set forth in (ii) above, which curtailment shall, in the judgment of the Controlling Person, prevent the Borrower from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months; or

(7) the Loan Agreement is terminated prior to its expiration for any reason, including the occurrence of an Event of Default under the Loan Agreement.

(v) The Bonds are subject to mandatory redemption in whole at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture within forty-five (45) days after the occurrence of a Determination of Taxability; provided, however, if mandatory redemption on account of a Determination of Taxability of less than all the Bonds would result, in the opinion of Bond Counsel, in the interest on the Tax-Exempt Bonds Outstanding following such mandatory redemption being excludable from the gross income of the Holders of such Tax-Exempt Bonds Outstanding, then the Tax-Exempt Bonds are subject to mandatory redemption upon the occurrence of a Determination of Taxability in the amount specified in such opinion, provided that such redemption must be in an Authorized Denomination.

(vi) The Bonds are subject to mandatory redemption in whole on any Interest Payment Date specified by the Controlling Person on or after the First Put Date, if the Controlling Person directs redemption by providing notice to the Borrower, the Trustee and the City at least one hundred eighty (180) days prior to the Interest Payment Date specified in such notice on which the Bonds are to be redeemed at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to, but not including, the redemption date. The direction of the Controlling Person to redeem the Bonds shall be irrevocable and shall be binding on the Holders of all of the Bonds and on any transferee(s) of such Holders.

(vii) The Bonds are subject to mandatory prepayment in whole on the Stabilization Date, in the amount of the Mandatory Prepayment Amount, to the extent not previously redeemed pursuant to Section 3.4(a)(ii) at a redemption price equal to 100% of the principal amount of the Bonds to be prepaid, without premium or penalty, plus interest accrued thereon to, but not including, the redemption date.

(c) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory sinking fund redemption in part on each Principal Payment Date, from amounts paid by the Borrower to

the Trustee for deposit into the Redemption Fund pursuant to Sections 2.3(d) and 8.4 of the Loan Agreement (in the amount set forth on the Debt Service Schedule), at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(d) Selection of Bonds to be Redeemed. If less than all the Outstanding Bonds shall be called for redemption, the Trustee or, if the Bonds are held in the Book-Entry System, the Securities Depository shall select or arrange for the selection of Bonds to be redeemed pro rata or otherwise in accordance with the procedures of the Securities Depository pursuant to its rules and procedures, in Authorized Denominations, provided that any Bond or portion thereof remaining Outstanding shall be in an Authorized Denomination. If the Bonds are held in the Book-Entry System, the Securities Depository shall, acting pursuant to its rules and procedures, reflect in said system the partial redemption and the Trustee shall (i) either exchange the Bond or Bonds held by the Securities Depository for a new Bond or Bonds in the appropriate principal amount, if such Bond is presented to the Trustee by the Securities Depository, or (ii) obtain from the Securities Depository a written confirmation of the reduction in the principal amount of the Bonds held by such Securities Depository.

(e) Debt Service Schedule.

(i) [On the Issue Date] [On or before the Stabilization Date], the Controlling Person shall deliver to the Trustee and the Borrower a schedule of debt service payments providing for level debt service with respect to the Bonds calculated on the basis of the fixed Bond Coupon Rate and a 480-month amortization schedule each commencing on the [Issue Date] [Stabilization Date] with principal payments commencing on the First Principal Payment Date (with all remaining principal payable on the Maturity Date, if applicable). In the event of a partial redemption of Bonds other than pursuant to Section 3.4(c) hereof, the Debt Service Schedule shall be adjusted to provide for level debt service in respect of the Bonds remaining Outstanding after such partial redemption, on the basis of the number of months remaining in the original 480-month amortization schedule. The Controlling Person shall provide the Trustee and the Borrower with a new Debt Service Schedule reflecting such adjustment promptly following any such partial redemption.

(ii) The Controlling Person, with the prior written consent of the Borrower, may deliver a modified Debt Service Schedule from time to time hereafter for any other purpose agreed to by Controlling Person and Borrower. In connection with any such modified Debt Service Schedule, the Controlling Person may, at its election and at Borrower's expense, require a Favorable Opinion of Bond Counsel.

(f) Partial Redemption of Bonds. In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the operations office of the Trustee of such Bond by the Holder thereof or his attorney duly authorized in writing (with due endorsement for transfer or accompanied by written instrument of transfer in form satisfactory to the Trustee), the City shall execute and the Trustee shall authenticate and deliver to or upon the order of such Holder, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Holder, of any Authorized Denomination of like tenor, or if less than the minimum Authorized Denomination, an amount necessary to equal the unredeemed portion of the principal amount of the Bond; provided, however, such surrender of Bonds shall not be required for payment of the redemption price pursuant to Section 3.4(c) hereof. For all purposes of this Indenture (including exchange and transfer), the Bond so issued in less than a minimum Authorized Denomination shall be deemed to have been issued in an Authorized Denomination. Bonds so presented and surrendered shall be canceled in accordance with this Indenture.

(g) Right of Borrower to Purchase Bonds. Subject to delivery of a Favorable Opinion of Bond Counsel, provided that such opinion shall not be required if the Bonds are held by a Substantial User or Related Person to a Substantial User, the Borrower shall have the option, by written notice to the Trustee and the Controlling Person given not less than five (5) Business Days (forty-five (45) days in case of a redemption pursuant to Section 3.4(b)(vi) hereof), in advance of such redemption date, to cause purchase of the Bonds in whole, but not in part, in lieu of redemption on the redemption date. The purchase price of the Bonds so purchased in lieu of redemption shall be equal to the redemption price thereof, and shall be payable on the redemption date. Bonds so purchased in lieu of redemption shall be registered to or upon the direction of the Borrower.

**Section 3.5** Notice of Redemption. Notice of redemption shall be mailed by the Trustee by first-class mail, postage prepaid, at least thirty (30) days before the redemption date to each Holder of the Bonds to be redeemed in whole or in part at his/her last address appearing on the Register, with a copy to the Controlling Person, but no defect in or failure to give such notice of redemption to any person shall affect the validity of the redemption as to any other person; provided, however, that no notice of redemption shall be required for mandatory sinking fund redemption pursuant to Section 3.4(c) hereof. All Bonds properly called for redemption and for which monies for payment of the redemption price are held by the Trustee will cease to bear interest on the date fixed for redemption, and, thereafter, the Holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Trustee and a new Bond for any portion not redeemed. Notwithstanding the foregoing, with respect to any Bonds held under the Book-Entry System, notices of redemption shall be provided in accordance with the rules and procedures established by the Securities Depository, as more fully described in Section 2.11 hereof. Notwithstanding any other provision of this Indenture, if the Bonds are not held under the Book-Entry System but are instead held as physically certificated bonds, any notice of redemption requirement in this Indenture or the Bonds may be waived in writing by the registered owners of 100% of the principal amount of the Bonds.

**Section 3.6** Payments Due on Non-Business Days. In any case where the date of maturity of, interest on or premium, if any, or principal of the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and, in the case of such payment, no interest shall accrue for the period from and after such date.

## **ARTICLE IV FUNDS**

### **Section 4.1** Establishment of Funds and Accounts; Applications of Proceeds of the Bonds and Other Amounts.

- (a) The following are hereby created and established as special trust funds:
  - (i) the Project Fund, consisting of:
    - (A) the Bond Proceeds Account (containing a Tax-Exempt Subaccount and a Taxable Subaccount) ;
    - (B) the Costs of Issuance Account (containing a Tax-Exempt Subaccount, a Taxable Subaccount and an Equity Subaccount);
    - (C) the Equity Account;



(D) [the Capitalized Interest Account (containing a Tax-Exempt Subaccount, a Taxable Subaccount and an Equity Subaccount);]

(E) the Insurance and Condemnation Proceeds Account;

(F) the [Subordinate Debt Proceeds Account;]

(ii) the Replacement Reserve Fund;

(iii) the Tax and Insurance Escrow Fund;

(iv) the Rebate Fund;

(v) the Bond Fund;

(vi) the Surplus Fund;

(vii) the Redemption Fund;

(viii) the Operating Reserve Fund; and

(ix) the [Transition and IRP Reserve Fund;]

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

(c) The proceeds of the sale of the Bonds and other the sources shown therein will be applied in accordance with the Closing Memorandum. Following the disbursements set forth in the Closing Memorandum, the Trustee shall receive and deposit into the respective Accounts specified the amounts, if any, provided in the Closing Memorandum.

#### **Section 4.2 Bond Fund.**

(a) There is hereby separately created and established with the Trustee the Bond Fund. There shall be deposited in the Bond Fund (i) all Repayments specified in the Loan Agreement to be deposited in the Bond Fund, including all proceeds resulting from the enforcement of the Security or its realization as collateral, and (ii) all other moneys received by the Trustee under the Loan Agreement for deposit by it in the Bond Fund.

(b) Moneys in the Bond Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the payment of the interest on the Bonds, for the payment of principal of the Bonds upon maturity, whether stated or accelerated, or upon mandatory or optional redemption prior to the Maturity Date, and for the payment of the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

(c) After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of any amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Bond Fund shall be paid to the Borrower.

#### **Section 4.3 Project Fund.**

(a) The Trustee shall deposit all amounts specified in the Closing Memorandum into the specified accounts and subaccounts of the Project Fund. The Trustee will receive and deposit installments of the purchase price of the Bonds, as set forth in Section 3.2(e) hereof, into the specified subaccounts of the Bond Proceeds Account of the Project Fund. The Trustee will receive and deposit into the Equity Account amounts received as future installments of Required Equity Funds from the Investor Limited Partner and the General Partner, in accordance with the provisions of the Partnership Agreement and the Assignment of Capital Contributions. [The Trustee shall deposit into the Subordinate Debt Proceeds Account of the Project Fund all future installments of the proceeds of the Subordinate Debt.] The Trustee shall deposit any other amounts received, to the extent not otherwise directed herein, in such Accounts as directed by Controlling Person.

(b) The Trustee is hereby authorized and directed to use moneys in the Project Fund for payment or reimbursement to the Borrower upon the receipt of a fully executed Requisition approved in writing by the Controlling Person in accordance with the provisions of the Loan Agreement. Except as otherwise consented to in writing by the Controlling Person, through approval of a Requisition or otherwise, moneys in the Project Fund shall be applied for payment or reimbursement of Project Costs and at least 95% of moneys on deposit in the Tax-Exempt Subaccount of the Bond Proceeds Account of the Project Fund shall be applied to Qualified Project Costs. No later than the Stabilization Date, all Surplus Bond Proceeds remaining in the Bond Proceeds Account of the Project Fund shall either be transferred to the Surplus Fund, applied to the Mandatory Prepayment Amount, if any, or applied to another use, in each case as directed in writing by the Controlling Person. All remaining amounts in the Equity Account, and [the Subordinate Debt Proceeds Account] of the Project Fund upon Stabilization shall be paid to the Borrower upon receipt of the prior written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed.

(c) The Trustee shall and is hereby authorized to transfer funds from the Capitalized Interest Account to the Bond Fund to pay interest on the Bonds accruing up to and including: (i) the Completion Date with respect to amounts in the Tax-Exempt Subaccount of the Capitalized Interest Account; and (ii) achievement of Stabilization with respect to the Equity Subaccount without submission of any Requisition. With respect to any such transfer, the Trustee shall first transfer amounts from proceeds of the sale of the Bonds. Amounts on deposit in the Tax-Exempt Subaccount of the Capitalized Interest Account shall be used only to pay interest on Tax-Exempt Bonds.

(d) Amounts in the Costs of Issuance Account shall be disbursed by the Trustee on the Issue Date pursuant to the Closing Memorandum and thereafter only to pay costs of issuance pursuant to a Requisition signed by the Borrower and the Controlling Person identifying the amount to be paid and the payee. Amounts remaining in the Costs of Issuance Account (including investment proceeds) after the payment of all costs of issuance, and in any event not later than ninety (90) days following the Issue Date, shall be transferred to the Bond Proceeds Account or Equity Account of the Project Fund, as applicable.

(e) Moneys representing a Condemnation Award or Insurance Proceeds shall be deposited into the Insurance and Condemnation Proceeds Account of the Project Fund, and notice of such deposit thereof shall be given by the Trustee to the Controlling Person and the Majority Owner. To the extent there has been a determination pursuant to the Bond Documents to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be expended for such purposes in accordance with the provisions of the Bond Documents. In the event there is a determination pursuant to the Bond Documents not to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be either (i) transferred to the Bond Fund and applied to the redemption of Bonds in accordance with Section 3.4 hereof, or (ii) released to the Borrower if the Borrower obtains an Opinion of Bond Counsel that such release will not affect the excludability of the interest on the Tax-Exempt Bonds from gross income for federal income

tax purposes, all in accordance with direction of the Controlling Person to the Trustee and subject to the provisions of the Bond Documents.

(f) The Trustee shall transfer moneys between Accounts and subaccounts thereof as directed in writing by the Controlling Person and consented to by the Borrower, provided that no consent shall be required following the occurrence and during the continuance of a Default or Event of Default hereunder. Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Project Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine, after obtaining the advice of nationally-recognized bond counsel.

**Section 4.4     Surplus Fund.** The Surplus Fund shall receive all Surplus Bond Proceeds transferred thereto in accordance with the direction of the Controlling Person pursuant to Section 4.3(b) above. The deposit of Surplus Bond Proceeds in the Surplus Fund shall be deemed to be joint direction by the Borrower and the Controlling Person to the Trustee to redeem the greatest principal amount of the Bonds possible to be redeemed from such deposit pursuant to Section 3.4(b)(i) hereof on the earliest redemption date on which the Bonds may be redeemed, and on such redemption date (or, if such day is not a Business Day, the immediately preceding Business Day) an amount equal to the principal amount of Bonds to be redeemed plus interest accrued thereon to the redemption date shall be transferred from the Surplus Fund to the Bond Fund and used for such redemption. After such transfer, if and to the extent that there are moneys remaining in the Surplus Fund, such moneys in the Surplus Fund shall be transferred to the Bond Fund and shall be used for payment of interest on or principal of the Bonds. Surplus Bond Proceeds derived from the Tax-Exempt Bonds and the proceeds thereof shall be used to pay only principal, interest or redemption price of Tax-Exempt Bonds.

**Section 4.5     Use of Certain Additional Funds and Accounts.**

(a)     **Redemption Fund.**

(i) There shall be deposited in the Redemption Fund (a) all payments specified in Section 8.4 of the Loan Agreement to be deposited in the Redemption Fund, and (b) all other moneys received by the Trustee under the Loan Agreement or this Indenture for deposit by it in the Redemption Fund. Moneys in the Redemption Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the redemption of Bonds pursuant to Section 3.4 hereof. On each Principal Payment Date or redemption date and as otherwise required hereunder or at the written direction of the Controlling Person, the Trustee shall transfer such amounts from the Redemption Fund to the Bond Fund and call and redeem Bonds as provided in Section 3.4 hereof. After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and the payment of any amounts owing to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Redemption Fund shall be paid to the Borrower.

(ii) Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Redemption Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine, after obtaining the advice of nationally-recognized bond counsel.

(b) Tax and Insurance Escrow Fund. There shall be deposited in the Tax and Insurance Escrow Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to Section 8.2 of the Loan Agreement. Moneys in the Tax and Insurance Escrow Fund shall be applied to payment of Impositions and insurance premiums at the direction of the Controlling Person; provided, however, that upon the occurrence and continuation of an Event of Default hereunder, all money and investments held in the Tax and Insurance Escrow Fund may be disbursed at the direction of the Controlling Person to pay costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine. Upon the payment in full of the Bonds and the fees and expenses of the City and the Trustee, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower. If the Controlling Person determines that the Tax and Insurance Escrow Fund is over-funded for any reason, the Controlling Person may direct the Trustee to return all or a portion of the moneys in the Tax and Insurance Escrow Fund to the Borrower.

(c) Rebate Fund. The investment of the Bond proceeds will be at the written direction of the Borrower, and Borrower has covenanted to retain the services of a qualified rebate analyst to perform any and all calculations required to comply with the requirements of Section 148 of the Code as applicable to the Bonds. City will rely entirely on the covenant of the Borrower to ensure that the Bonds will not become “arbitrage bonds” within the meaning of Section 148 of the Code and the applicable regulations thereunder. There is hereby established with the Trustee a Rebate Fund. Any provisions in this Indenture to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien hereunder.

(d) Replacement Reserve Fund. There shall be deposited in the Replacement Reserve Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to the Replacement Reserve Agreement. Moneys in the Replacement Reserve Fund shall be disbursed by the Trustee upon receipt of a written request therefor executed by the Borrower and approved in writing by the Controlling Person, in accordance with the terms of the Replacement Reserve Agreement; provided that, upon the occurrence and continuation of an Event of Default hereunder, all moneys and investments in the Replacement Reserve Fund (other than moneys held to pay costs required to be paid but not yet payable) may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine. Upon the payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Replacement Reserve Fund shall be paid to the Borrower as soon as practicable. If the Controlling Person determines that the Replacement Reserve Fund is over-funded for any reason, the Controlling Person may direct the Trustee to return all or a portion of the moneys in the Replacement Reserve Fund to the Borrower.

(e) [Transition and IRP Reserve Fund. There shall be deposited in the Transition and IRP Reserve Fund all moneys received for such purpose pursuant to Section 4.1 hereof. Funds shall be disbursed from the Transition and IRP Reserve Fund, at the request of the Borrower, but only with the Controlling Person’s written consent, to fund any Expenses of the Borrower arising from any shortfall in revenues of the Project Facilities as a result of a non-appropriation of funding for housing assistance payments under the HAP Contract, as a result of the termination of the HAP Contract or the withholding, termination, delay or expiration of the payments due under the IRP Agreement, or as a result of any other

occurrence as approved in writing by the Controlling Person, such approval not to be unreasonably withheld. Upon receipt by the Trustee from the Borrower of a written request together with the written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed, the Trustee shall disburse funds from the Transition and IRP Reserve Fund in accordance with such written request. Upon the occurrence and continuation of an Event of Default, all moneys and investments in the Transition and IRP Reserve Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay any costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine. Upon payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Transition and IRP Reserve Fund shall be paid to the Borrower.]

(f) [Operating Reserve Fund]. [There shall be deposited in the Operating Reserve Fund all moneys received for such purpose pursuant to Section 8.5 of the Loan Agreement.] [Upon the occurrence of an Operating Reserve Trigger, there shall be deposited in the Operating Reserve Fund all moneys received for such purpose pursuant to Section 8.5 of the Loan Agreement; provided, however, prior to the occurrence of an Operating Reserve Trigger, the Operating Reserve Fund shall be established and maintained by the Borrower, and the funds therein shall be held and disbursed in accordance with Section 8.4 of the Loan Agreement.] [Upon the occurrence of an Operating Reserve Trigger,] Funds shall be disbursed from the Operating Reserve Fund, at the request of the Borrower, but only with the Controlling Person's written consent, to fund any operating deficits or expenses of the Borrower or for any other operating or capital needs of the Project Facilities. Upon receipt by the Trustee from the Borrower of a written request together with the written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed, the Trustee shall disburse funds from the Operating Reserve Fund in accordance with such written request. [Upon the occurrence of an Operating Reserve Trigger,] Upon the occurrence and continuation of an Event of Default [or for any payments deemed necessary before or upon Stabilization at the direction of the Controlling Person in its sole discretion], all moneys and investments in the Operating Reserve Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay any costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine. Interest earnings on amounts held in the Operating Reserve Fund shall be released not more frequently than annually to the Borrower upon its written request and with the prior written consent of the Controlling Person. Upon payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of amounts payable to the United States of America pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Operating Reserve Fund shall be paid to the Borrower.]

#### **Section 4.6     Records.**

(a)     The Trustee shall cause to be kept and maintained records pertaining to all funds and accounts maintained by the Trustee hereunder and all disbursements therefrom and shall periodically deliver to the Borrower, with a copy to Controlling Person, monthly statements of activity and statements indicating the investments made with moneys in all such funds during the applicable period. Upon written request, the Trustee shall provide the Borrower and the Controlling Person, within a reasonable period of time, with a report stating the principal amount of Bonds Outstanding and a list of the registered owners of the Bonds as of the date specified by the Borrower or the Controlling Person in its request.

(b)     The Trustee shall provide the Borrower and the Controlling Person with a written report, on a monthly basis through the calendar month in which the last obligation of the Bonds is retired, identifying the Permitted Investments in which the moneys held as part of the Accounts were invested during the preceding period and the dates of such investments, together with such other information as the Trustee ordinarily provides to Persons such as the Borrower and the Controlling Person in its regular monthly investment reports.

**Section 4.7     Investment of Funds.** Subject to the provisions of Section 4.8 hereof, moneys held as part of all Accounts hereunder shall be invested and reinvested in Permitted Investments as instructed by the Borrower with the prior written consent of the Controlling Person; provided, however, that any moneys held by the Trustee to pay the principal of or interest that has become payable with respect to the Bonds shall not be invested. All Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the fund and account which was used to purchase the same. The Trustee may act as principal or agent in the making or disposing of any investment and may utilize its investment department or that of its affiliate and charge its standard investment handling fees. All interest accruing thereon and any profit realized from Permitted Investments shall be credited to the respective fund or account and any loss resulting from Permitted Investments shall be similarly charged. The Trustee is authorized to cause to be sold and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any fund or account hereunder is or will be insufficient to make a requested or required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale, so long as the Trustee performs its obligations hereunder in accordance with the terms of this Indenture. Absent specific instructions from the Borrower approved by the Controlling Person to invest cash balances in Permitted Investments hereunder, the Trustee shall invest in Permitted Investments constituting obligations of the U.S. Treasury or its agencies having a term to maturity of not more than thirty (30) days or any money market fund or similar investment fund that purchases and holds exclusively obligations of the United States of America or its agencies that have a term to maturity of not more than thirty (30) days. Notwithstanding the foregoing, upon the written election of the Holders of all of the Outstanding Bonds, after providing written notice to the Borrower, the Trustee and the Servicer of such election, any or all Accounts established under this Indenture may be maintained on behalf of Holders at a Qualified Custodian and not by the Trustee and all payments required to be made by the Borrower with respect to such Accounts shall be paid directly to such Qualified Custodian.

**Section 4.8     Yield Restriction.** Funds in the [list appropriate funds/accounts] in excess of \$\_\_\_\_\_, the allowable minor portion, will not be invested at an overall yield in excess of the yield on the Bonds, which has been computed to be not greater than \_\_\_\_% per annum, unless the Borrower, the Trustee and the Controlling Person receive an Opinion of Bond Counsel that the investment of such funds at an overall yield in excess of such amount does not adversely affect the excludability of interest on the Bonds by the Holders thereof for federal income tax purposes.

**Section 4.9     Transfers Between Funds and Accounts; Use of Amounts in Funds and Accounts.** The Trustee shall transfer moneys between Accounts as directed in writing by the Controlling Person and consented to by the Borrower, provided that no consent shall be required following the occurrence and during the continuance of a Default or Event of Default hereunder. Upon the occurrence and continuation of an Event of Default hereunder, all money and investments hereunder may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine, after obtaining the advice of nationally-recognized bond counsel.

**Section 4.10     Guaranties.** Any amounts realized by the Trustee under the Guaranty of Completion, the Guaranty of Debt Service and Stabilization, the Guaranty of Recourse Obligations or the Environmental Indemnity shall be used or applied or invested by the Trustee as directed in writing by the Controlling Person.

## **ARTICLE V DISCHARGE OF LIEN**

**Section 5.1     Discharge of Lien and Security Interest.** Upon payment in full of all of the Bonds and all other amounts payable under the Loan Agreement and other Bond Documents, these presents and the Security Interests shall cease, determine and be discharged, and thereupon the Trustee shall, upon receipt by the Trustee of a Favorable Opinion of Bond Counsel and an opinion of Counsel stating that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with, (a) cancel and discharge this Indenture and the Security Interests; (b) execute and deliver to the City and the Borrower, at the Borrower's expense, such instruments in writing as shall be required to cancel and discharge this Indenture and the Security Interests and reconvey to the City and the Borrower the Security, and assign and deliver to the City and the Borrower so much of the Security as may be in its possession or subject to its control, except for moneys and Government Obligations held in the Bond Fund for the purpose of paying Bonds; and (c) mark as cancelled the Note and satisfy the Mortgage; provided, however, that the cancellation and discharge of this Indenture pursuant to this Section or Section 5.3 hereof shall not terminate the powers and rights granted to the Trustee, with respect to the payment, registration of transfer and exchange of the Bonds; provided, further, that the rights of the City and the Trustee to indemnify, non-liability and payment of all reasonable fees and expenses shall survive the cancellation and discharge of this Indenture pursuant to this Section or Section 5.3 hereof.

**Section 5.2     Provision for Payment of Bonds.** Bonds shall be deemed to have been paid within the meaning of Section 5.1 hereof if:

(a) there shall have been irrevocably deposited in the Bond Fund sufficient money or Government Obligations of such maturities and interest payment dates and bearing such interest as will, in the opinion of a nationally recognized firm of certified public accountants, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon (said earnings also to be held in trust), be sufficient for the payment at their respective maturities or redemption dates prior to maturity of the principal of the Bonds not later than the earliest redemption date possible under Section 3.4 (and any earlier partial redemption date required herein) and interest to accrue thereon, and redemption premium, if any, through such maturity or redemption dates, as the case may be;

(b) there shall have been paid or provision duly made for the payment of all fees and expenses of the City and the Trustee, due or to become due; and

(c) if any Bonds are to be redeemed on any date prior to their maturity, the Trustee shall have received in form satisfactory to it irrevocable instructions from the Borrower to redeem such Bonds on such date and either evidence satisfactory to the Trustee that all redemption notices required by this Indenture have been given or irrevocable power authorizing the Trustee to give such redemption notices has been granted to the Trustee.

(d) Limitations set forth elsewhere herein regarding the investment of moneys held by the Trustee in the Bond Fund shall not be construed to prevent the depositing and holding in the Bond Fund of the Government Obligations described in this Section 5.2 for the purpose of defeasing the lien of this Indenture as to Bonds which have not yet become due and payable. Notwithstanding any other provision of this Indenture to the contrary (but subject to Section 5.2(a) hereof), all funds deposited with the Trustee as provided in this Section may be invested and reinvested, at the direction of the Borrower, in Government Obligations (or in a money market fund that invests solely in Government Obligations and is rated no lower than the second highest category by one of Fitch, Moody's or S&P and, if more than one of such rating agencies then rates such money market fund, is rated no less than the second highest rating category by each of such rating agencies then rating such money market fund) maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations (or money market fund) in the hands of the Trustee pursuant to this Section which is not required for the payment of the Bonds and interest and redemption premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

**Section 5.3     Discharge of this Indenture.** Notwithstanding the fact that the lien of this Indenture upon the Security may have been discharged and cancelled in accordance with Section 5.1 hereof, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with the fact that the lien upon the Security may have been discharged and cancelled, shall nevertheless continue and subsist after payment in full of the Bonds or the deemed payment in full of the Bonds in accordance with Section 5.2 hereof until the Trustee shall have returned to the Borrower all funds held by the Trustee which the Borrower is entitled to receive pursuant to this Indenture after all Bonds have been paid at maturity or redeemed. Upon payment in full or defeasance of the Bonds, payment of amounts payable to the United States pursuant to any rebate requirement and payment of all other amounts owing hereunder and under the Loan Agreement, all remaining amounts held by the Trustee shall be paid to the Borrower.

## **ARTICLE VI DEFAULT PROVISIONS AND REMEDIES**

**Section 6.1     Events of Default.** Any one of the following shall constitute an Event of Default hereunder:

- (a) Failure to pay interest on any Bond when and as the same shall have become due;
- (b) Failure to pay the principal of or any premium on any Bond when and as the same shall become due, whether at the stated maturity or redemption date thereof or by acceleration;
- (c) Failure to observe or perform any other of the covenants, agreements or conditions on the part of the City included in this Indenture or in the Bonds and the continuance thereof for a period of thirty (30) days after written notice to the City and the Borrower has been given by the Trustee or by the Controlling Person (with a copy to the Trustee); or
- (d) The occurrence of an Event of Default under the Loan Agreement or the failure by the Borrower to perform or comply with any of the other terms or conditions contained in any other Bond



Documents to which the Borrower is a party and continuation of such failure beyond the expiration of any notice, grace or cure period provided in the Loan Agreement or the Bond Documents (as applicable).

**Section 6.2     Acceleration.**

(a) Upon the direction of the Controlling Person, the Trustee immediately shall, by notice in writing sent to the City, the Borrower, the Majority Owner and the Controlling Person, declare the principal of all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement and the Note to declare all Repayments to be immediately due and payable. In such event, there shall be due and payable on the Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon (including Default Interest, if any) and which will accrue thereon to the date of payment and all unpaid interest on the Bonds on the date of payment, and the acceleration premium described in Section 6.8 hereof (if applicable).

(b) Immediately following any such declaration of acceleration, the Trustee shall cause to be mailed notice of such declaration by first-class mail, postage prepaid, to each Holder of a Bond at his/her last address appearing on the Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

**Section 6.3     Other Remedies; Rights of Holders.**

(a) Upon the happening and continuance of an Event of Default hereunder, the Trustee may, with the prior written consent of the Controlling Person, and shall upon the direction of the Controlling Person, with or without taking action under Section 6.2 hereof, pursue any available remedy to enforce the performance of or compliance with any Bond Documents.

(b) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee, the Controlling Person, the Majority Owner or the Holders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee, the Majority Owner, the Controlling Person or to the Holders hereunder or now or hereafter existing.

(c) No delay or omission to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Default or Event of Default or acquiescence therein and every such right and power may be exercised from time to time and as often as may be deemed expedient.

(d) No waiver of any Default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereon.

(e) The Trustee, as the assignee of substantially all right, title and interest of the City in and to the Loan Agreement and the Note, shall be empowered to enforce each and every right granted to the City under the Loan Agreement and the Note other than Reserved Rights.

**Section 6.4     Right of Controlling Person to Direct Proceedings.**

(a) Anything in this Indenture to the contrary notwithstanding, the Controlling Person shall have the right at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

(b) No Holder shall have the right to institute any proceeding for the enforcement of this Indenture unless such Holder has given the Trustee and the Borrower written notice of an Event of Default, the Controlling Person shall have requested the Trustee in writing to institute such proceeding, the Trustee shall have been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, there shall have been offered to the Trustee indemnity satisfactory to it against the cost, expense and liability to be incurred in connection with such request and the Trustee shall have thereafter failed or refused to exercise such powers or to institute such proceeding within sixty (60) days after receipt of notice with no inconsistent direction given during such sixty (60) days by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding. Nothing in this Indenture shall affect or impair any right of enforcement conferred on any Holder by the Act or otherwise to enforce (i) the payment of the principal of, acceleration premium, if any, and interest on Bonds at and after the maturity thereof, or (ii) the obligation of the City to pay the principal of, acceleration premium, if any, and interest on Bonds to such Holder at the time, place, from the sources and in the manner as provided in this Indenture.

**Section 6.5     Discontinuance of Default Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the City and the Trustee shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the City and the Trustee shall continue as if no such proceedings had been taken subject to the limits of any adverse determination.

**Section 6.6     Waiver.** The Trustee, with the consent of the Controlling Person may, and shall upon the written direction of the Controlling Person, waive any Default or Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity of principal; provided, however, that there shall be no such waiver or rescission unless all principal of, acceleration premium, if any, and interest on the Bonds in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Bonds and all fees and expenses of the Trustee and the City shall have been paid or provided for.

**Section 6.7     Application of Moneys.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be deposited in the Bond Fund and, after payment (out of moneys derived from a source other than moneys held for the redemption of Bonds) of (i) the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, including reasonable attorneys' fees, and all other outstanding fees and expenses of the Trustee, and (ii) any sums due to the City under the Loan Agreement or the Land Use Restriction Agreements (other than Repayments), such moneys shall be applied in the order set forth below:

(a) Unless the principal of all Bonds shall have become or been declared due and payable, all such moneys shall be applied:

**First:** To the payment of all installments of interest then due on the Bonds in order of priority first to installments past due for the greatest period and, if the amount available shall not

be sufficient to pay in full any particular installment, then to the ratable payment of the amounts due on such installment;

**Second:** To the payment of the unpaid principal of and acceleration premium, if any, of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), with interest on such Bonds from the respective dates upon which they became due (at the rate borne by the Bonds, to the extent permitted by law) and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such acceleration premium, then to the ratable payment of the amounts due on such date;

**Third:** To the payment of the amounts required to reimburse the City and the Owners of the Bonds for any legal or other out-of-pocket costs incurred by them in connection with exercising their remedies hereunder; and

**Fourth:** The balance shall be paid to the Borrower (subject to any required deposits to the Rebate Fund).

(b) If the principal of all the Bonds shall have become or been declared due and payable, all such moneys shall be applied to the payment of the principal, acceleration premium, if any, and interest then due and unpaid upon the Bonds, without preference or priority as between principal, premium, interest, installments of interest or Bonds, ratably according to the amounts due respectively for principal, premium and interest to the persons entitled thereto.

(c) If the principal on all Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded under this Article then, subject to subsection (b) of this Section in the event that the principal of all the Bonds shall again become or be declared due and payable, the moneys shall be applied in accordance with subsection (a) of this Section.

(d) Notwithstanding anything contained herein to the contrary, the Controlling Person may, with express written consent of the Majority Owner, by written notice to the Trustee direct the application of funds other than in the manner set forth in Section 6.7(a) above, including, without limitation, the application of funds between the principal or acceleration premium of or interest on the Bonds.

(e) Whenever moneys are to be applied pursuant to this Section, the Trustee shall fix the date which shall be not more than seven (7) calendar days after such acceleration upon which such application is to be made and upon such date interest on the principal amount of Bonds to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

**Section 6.8 Default Interest and Acceleration Premium.** In the event that principal or interest payable on the Bonds is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate, to the extent permitted by law. This interest shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full. In the event there shall have occurred an acceleration of the Bonds or the Borrower's obligations under the Loan Agreement following an Event of Default on or before the First Optional Call Date, any tender of payment of any amount necessary to pay the Bonds in full shall include the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

## **ARTICLE VII THE TRUSTEE**

**Section 7.1     Appointment of Trustee.** The Trustee is hereby appointed and does hereby agree to act in such capacity, and to perform the duties of the Trustee under this Indenture, but only upon and subject to the following express terms and conditions (and no implied covenants or other obligations shall be read into this Indenture against the Trustee):

(a)     The Trustee may execute any of its trusts or powers hereunder and perform any of its duties by or through attorneys, agents, receivers or employees. The Trustee shall be entitled to advice of Counsel concerning all matters hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees. The Trustee may act upon the opinion or advice of Counsel, accountants, engineers or surveyors selected by it in the exercise of reasonable care or, if the same are selected by the City, approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b)     Except as provided in Section 7.8 hereof, the Trustee shall not be responsible for any recital herein or in the Bonds, or for the recording, re-recording, filing or re-filing of this Indenture, of any Financing Statements or continuation statements, or for insuring the Security or the Project Facilities or collecting any insurance moneys, or for the validity of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of or title to the Project Facilities or otherwise as to the maintenance of the Security. The Trustee shall not be liable to the Borrower, any Holder, any Beneficial Owner or any other Person for any loss suffered in connection with any investment of funds made by it in accordance with Section 4.7 hereof in good faith as instructed by the Borrower in accordance with the provisions of this Indenture, and with the prior written consent of the Controlling Person, as applicable. The Trustee shall have no duty or responsibility to examine or review and shall have no liability for the contents of any documents submitted to or delivered to any Holder in the nature of a preliminary or final placement memorandum, official statement, offering circular or similar disclosure document.

(c)     The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder after such Bonds shall have been delivered in accordance with instructions of the City or for the use by the Borrower of the proceeds of the Bonds advanced to the Borrower as provided in the Loan Agreement. The Trustee may become the owner of Bonds secured hereby with the same rights as any other Holder.

(d)     The Trustee shall be protected in acting upon opinions of Counsel and upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any notices, directions, consents, approvals or requests provided to the Trustee pursuant to the terms of this Indenture or any of the Bond Documents shall not be effective until provided in writing. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Holder of any Bond shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e)     The permissive right of the Trustee to do things enumerated in this Indenture or the Loan Agreement shall not be construed as duties. The Trustee shall only be responsible for the performance of the duties expressly set forth herein and shall not be answerable for other than its gross negligence, bad faith or willful misconduct in the performance of those express duties.

(f) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts, relating to the Project Facilities.

(g) The Trustee shall not be required to give any bond or surety in respect of the execution of said trust and powers or otherwise in respect of this Indenture.

(h) Before taking any action requested hereunder by the Holders which may require it to expend its own funds, the Trustee may require satisfactory security or indemnification for the reimbursement of all expenses to which it may be put by reason of any action so taken. The Trustee shall not be entitled to indemnification as a precondition to giving notices of default or taking other actions at the direction of the Majority Owner or the Controlling Person which do not require the Trustee to expend its own funds or for which funds have been advanced by the Majority Owner or the Controlling Person to the Trustee in advance of its taking such action.

(i) All moneys received by the Trustee, until used or applied or invested as herein provided, shall be held as special trust funds for the purposes specified in this Indenture and for the benefit and security of the Holders of the Bonds as herein provided. Such moneys need not be segregated from other funds except to the extent required by law or herein provided, and the Trustee shall not otherwise be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(j) The Trustee shall not be bound to ascertain or inquire as to the performance of the obligations of the Borrower or the City under the Loan Agreement or this Indenture, and shall not be deemed to have, or be required to take, notice of default under this Indenture (other than under Section 6.1(a) or (b), or Section 6.1(c) hereof if written notice thereof has been received by the Trustee) or the occurrence of a Determination of Taxability, except (i) in the event the Borrower fails to pay any Repayment when due, (ii) in the event of an insufficient amount in the Bond Fund (or any account therein) to make a principal or interest payment on the Bonds, (iii) in the event of written notification of a Determination of Taxability by the Holder of any Bonds, (iv) in the event of written notification of such Default by the Controlling Person, the Majority Owner or two or more Holders with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, or (v) in the event of receipt of an Opinion of Bond Counsel concluding that a Determination of Taxability has occurred, and in the absence of such notice the Trustee may conclusively presume there is no Determination of Taxability and no default except as aforesaid. The Trustee may nevertheless require the City and the Borrower to furnish information regarding performance of their obligations under the Loan Agreement and this Indenture, but is not obligated to do so.

(k) The Trustee shall, prior to any Event of Default and after the curing of all Events of Default which may have occurred, perform such duties and only such duties of the Trustee as are specifically set forth in this Indenture. The Trustee shall, during the existence of any Event of Default which has not been cured, exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his/her own affairs.

(l) In addition to the Trustee's other duties hereunder, the Trustee shall authenticate and cancel Bonds as provided herein, keep such books and records relating to such duties as shall be consistent with prudent industry practice and make such books and records available for inspection by the City and the Borrower at all reasonable times. All Bonds shall be made available for authentication, exchange and registration of transfer at the principal office of the Trustee.

(m) The Trustee shall have no duty to inspect or oversee the rehabilitation or completion of the Improvements or to verify the truthfulness or accuracy of the certifications made by the Borrower in any Requisition.

(n) Without limiting the duties of the Trustee expressly set forth herein, the Trustee shall have no obligation or responsibility whatsoever in connection with (i) any federal or state tax-exempt status of the Bonds or the interest thereon; (ii) the consequences of the investment or non-investment of any funds or accounts relating to the Bonds under Section 148 of the Code, or (iii) the calculation of any amount required to be rebated to the United States under Section 148 of the Code.

(o) No provision of this Indenture, the Loan Agreement or the Bonds shall require the Trustee 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.

(p) Whenever in the administration of this Indenture the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee may, in the absence of bad faith on its part and except as otherwise expressly set forth herein, rely upon a written certificate of the Controlling Person or the Majority Owner.

(q) In the absence of a direction from the Controlling Person, if the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders of the Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Indenture, the directions given by the group of Holders which holds the largest percentage of the principal amount of the Bonds shall be controlling and the Trustee shall follow such directions.

(r) The Trustee's immunities and protections from liability and its rights to indemnification in connection with the performance of its duties under this Indenture shall likewise extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and rights to indemnification, together with the Trustee's rights to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture and the final payment of the Bonds.

(s) The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold or deal in any of the Bonds and may join in any action that any Holder may be entitled to take with like effect as if it were not the Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Borrower and may act as depository, trustee or agent for any committee of Holders secured hereby or other obligations of the Borrower, as freely as if it were not the Trustee hereunder. The provisions of this paragraph shall extend to the affiliates of the Trustee.

(t) The Trustee shall have no responsibility or obligation to DTC Participants, to Indirect Participants, or to the Persons for whom they act as nominees with respect to the Bonds, or to any Beneficial Owner of Bonds in respect of the accuracy of any records maintained by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant, the payment by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any amount in respect of the principal of or interest on the Bonds, any notice which is permitted or required to be given under this Indenture, the selection by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any Person to receive payment in the event of a partial redemption of the Bonds, or any consent given or other action taken by the Securities Depository or the Securities Depository Nominee as Holder.

(u) Whether or not expressly so provided, each and every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Section.

**Section 7.2      Compensation and Indemnification of Trustee; Trustee's Prior Claim.**

(a) The Loan Agreement provides that the Borrower will pay the reasonable fees and expenses of the Trustee under this Indenture and all other amounts which may be payable to the Trustee under this Section, such fees and expenses to be paid when due and payable by the Borrower directly to the Trustee for its own account. Except as set forth in Section 6.7, the Trustee shall not have a lien on the Security for the payment of its fees or expenses and shall not be entitled to pay its fees and expenses from amounts held in the funds and accounts hereunder.

(b) The Borrower shall (i) pay the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), (ii) pay or reimburse the Trustee upon request for all reasonable expenses, disbursements and advances incurred or made, in accordance with any of the provisions of this Indenture and the Loan Agreement (including the reasonable compensation and the reasonable expenses and disbursements of its Counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its own gross negligence, willful misconduct or bad faith, and (iii) indemnify the Trustee for, and hold it harmless against, any loss, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of its duties hereunder or under the Loan Agreement, including the reasonable costs and expenses of defending itself against or investigating any claim of liability in the premises, except to the extent that any such loss, liability or expense was due to its own gross negligence, willful misconduct or bad faith. "Trustee," for purposes of this Section shall include any predecessor Trustee, but the gross negligence, willful misconduct or bad faith of any Trustee, shall not affect the indemnification of any other Person. The obligations of the Borrower under this Section shall survive the termination of this Indenture.

**Section 7.3      Intervention in Litigation.** In any judicial proceedings to which the City is a party, the Trustee may intervene on behalf of Holders, and shall intervene if requested in writing by the Controlling Person, the Majority Owner or the Holders of at least twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding.

**Section 7.4      Resignation; Successor Trustees.**

(a) The Trustee and any successor Trustee may resign only upon giving sixty (60) days prior written notice to the City, the Borrower, the Controlling Person and each Holder of Bonds then Outstanding as shown on the Register. Such resignation shall take effect only upon the appointment of a successor Trustee by the City with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. If no successor is appointed within sixty (60) days after the notice of resignation, the Controlling Person may appoint a Trustee or the resigning Trustee may appoint a successor or petition any court of competent jurisdiction to appoint a successor. Upon appointment of a successor Trustee, the resigning Trustee shall assign all of its right, title and interest in this Indenture and the Security to the successor Trustee. The successor Trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000. Any successor Trustee shall accept in writing its duties and responsibilities hereunder and such writing shall be filed with the City, the Controlling Person and the Borrower.

(b) Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, reorganization or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or any material part of the corporate trust business of the Trustee that includes this Indenture, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any Person, anything herein to the contrary notwithstanding, provided that such successor Trustee shall be eligible to serve as Trustee under the provisions of this Indenture. If the Trustee is not the successor corporation in any such merger or consolidation, the Trustee shall give notice of such event to the Borrower and shall take such action as may be required to effect a transfer of the trust included in this Indenture to such successor corporation.

**Section 7.5     Removal of Trustee.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee, the City, the Controlling Person and the Borrower and signed by the Majority Owner. During such time that no Event of Default has occurred and is continuing under this Indenture, the Trustee may also be removed by an instrument or concurrent instruments in writing delivered to the Trustee and the City and signed by the Controlling Person, with notice to the Borrower. Such removal shall take effect only upon the appointment of a successor Trustee by the City with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. Upon such removal, the Trustee shall assign to the successor Trustee all of its right, title and interest in this Indenture and the Security in the same manner as provided in Section 7.4 hereof.

**Section 7.6     Instruments of Holders.**

(a) Any instrument required by this Indenture to be executed by Holders may be in any number of writings of similar tenor and may be executed by Holders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds given in any of the following forms shall be sufficient for any of the purposes of this Indenture:

(i) A certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him/her the execution thereof; and

(ii) A certificate executed by any trust company or bank stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank, as the property of such party, the Bonds therein mentioned.

(b) The Trustee may rely on such an instrument of Holders unless and until the Trustee receives notice in the form specified in clauses (a) (i) or (ii) above that the original such instrument is no longer reliable. In the absence of direction from the Controlling Person, if the Trustee shall receive conflicting directions from two or more groups of Holders, each with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, the directions given by the group of Holders which holds the largest percentage of the principal amount of the Bonds shall be controlling and the Trustee shall follow such directions.

**Section 7.7     Power to Appoint Co-Trustees.**

(a) At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Project Facilities may at the time be located, the City and the Trustee shall have power to appoint and, upon the request of the Trustee or of the Holders of a majority of the aggregate principal amount of the Bonds then Outstanding, the City shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper



to appoint one or more persons approved by the Trustee and the Borrower either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the Project Facilities, or to act as separate trustee or separate co-trustees of all or any part of the Project Facilities, and to vest in such person or persons, in such capacity, such title to the Project Facilities or any part thereof, and such rights, powers, duties, trusts or obligations as the City and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section.

(b) Any co-trustee or separate trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000.

(c) The Trustee and co-trustee, if any, may by written instrument between them designate and assign either the Trustee or the co-trustee or both of them to perform all or any part of the responsibilities and duties of the Trustee under this Indenture.

(d) If the City shall not have joined in such appointment within thirty (30) days after the receipt by it of a written request to do so, or in case an Event of Default shall have occurred and be continuing, the Trustee and the Borrower shall have the power to make such appointment.

(e) The City shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

(f) Every co-trustee or separate trustee appointed pursuant to this Section 7.7, to the extent permitted by law or any applicable contract, shall be subject to the following terms, namely:

(i) This Indenture shall become effective at the time the Bonds shall be authenticated and delivered, and thereupon such co-trustee or separate trustee shall have all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of moneys, papers, securities and other personal property.

(ii) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees, or separate trustee or separate trustees, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(iii) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee.

(iv) Any co-trustee or separate trustee, to the extent permitted by law, may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(v) The Trustee at any time, by an instrument in writing, with the concurrence of the City, may accept the resignation of any co-trustee or separate trustee appointed under this Section, and, in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the

City. Upon the request of the Trustee, the City shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section.

(vi) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(vii) Any moneys, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

(g) Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with the security interest in the Security and with such rights, powers, duties, trusts or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as applicable law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee.

(h) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the security interest in the Security and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the same manner as provided for with respect to the appointment of a successor Trustee pursuant to Section 7.4 hereof.

**Section 7.8     Filing of Financing Statements.** [[The Trustee shall file or record or cause to be filed or recorded all Financing Statements that are required in order fully to protect and preserve the security interests and the priority thereof and the rights and powers of the Trustee in connection therewith, including without limitation all continuation statements for the purpose of continuing without lapse the effectiveness of (i) those Financing Statements which shall have been filed at or prior to the issuance of the Bonds in connection with the security for the Bonds pursuant to the authority of the U.C.C., and (ii) any previously filed continuation statements that shall have been filed as required herein. The Trustee shall also file the financing and continuation statements required under Section 3.2 of the Loan Agreement. The Borrower will pay all costs of filing the Financing Statements and all financing and continuation statements required hereunder and under Section 3.2 of the Loan Agreement.]]

**Section 7.9     Mandatory Contracting Provisions.** The Trustee covenants and agrees to comply with the City's mandatory contracting provisions set forth in Exhibit C to this Indenture, which is incorporated in and made a part of this Indenture by this reference

## **ARTICLE VIII AMENDMENTS, SUPPLEMENTAL INDENTURES**

### **Section 8.1     Supplemental Indentures.**

(a) The City and the Trustee, with the prior written consent of the Controlling Person, but without the consent of or notice to any Holders, may enter into an indenture or indentures supplemental to this Indenture that do not materially adversely affect the interest of the Holders for one or more of the following purposes:

(i) to grant to or confer upon the Trustee for the benefit of the Holders, any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders or the Trustee;

(ii) to grant or pledge to the Trustee for the benefit of Holders, any additional security other than that granted or pledged under this Indenture;

(iii) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939 or any similar federal statute then in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States;

(iv) to appoint a successor Trustee or co-trustees in the manner provided in Article VII hereof;

(v) to modify, amend or supplement this Indenture to permit a transfer of Bonds from one Securities Depository to another or the discontinuance of the Book-Entry System and issuance of replacement Bonds to the Beneficial Owners;

(vi) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture that may be defective or inconsistent with any provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which shall not materially adversely affect the interest of the Holders; or

(vii) to make any change herein necessary, in the opinion of Bond Counsel, to maintain the exclusion of the interest on any Outstanding Tax-Exempt Bonds from gross income of the Holders thereof for federal income tax purposes.

(b) When requested by the City, and if all conditions precedent under this Indenture have been met, and there shall have been delivered to the Trustee an opinion of Bond Counsel to the effect that such supplemental indenture is authorized or permitted by this Indenture and complies with its terms and will not adversely affect the excludability of interest on the Tax-Exempt Bonds from the gross income of the Holders thereof for federal income tax purposes, the Trustee will join the City in the execution of such supplemental indenture, but shall not be required to join the City in the execution of any such supplemental indenture unless it is reasonably compensated for additional obligations on the Trustee not initially contemplated and the indemnification rights of the Trustee cover any changes in the Trustee's rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower.

(c) The Trustee shall file copies of all such supplemental indentures with the Borrower. The Trustee shall cause notice of any supplemental indenture described above to be given by first-class mail, postage prepaid, to the Holders of the Outstanding Bonds then shown on the Register.

**Section 8.2 Amendments to Indenture; Consent of Majority Owner, Holders, and Borrower.**

(a) Exclusive of supplemental indentures covered by Section 8.1 hereof and subject to the terms and provisions contained in this Section 8.2 and not otherwise, anything contained in this Indenture to the contrary notwithstanding, no indenture or indentures supplemental hereto for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture shall be effective without delivery of a

Favorable Opinion of Bond Counsel, the written consent of the Majority Owner and execution and delivery by the Trustee (acting upon the direction of the Majority Owner) and the City; provided, however, that nothing contained in this Section shall permit, or be construed as permitting, without the prior written consent of the Holders of all Outstanding Bonds, (i) an extension of the maturity of the principal of, or the optional, extraordinary or mandatory redemption date of, or interest on, any Bond, (ii) a reduction in the principal amount of or the rate of interest on, any Bond, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) the creation of a lien on the Security prior to the lien of this Indenture, or (v) a reduction in the aggregate principal amount of the Bonds required for any consent to any supplemental indenture; provided further, however, that without the prior written consent of the Trustee, the Trustee shall not be required to join the City in the execution of any supplemental indenture unless it is reasonably compensated for additional obligations on the Trustee not initially contemplated and the indemnification rights of the Trustee covering any changes in the Trustee's rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower. The giving of notice to and consent of the Holders to any such proposed supplemental indenture shall be obtained pursuant to Section 8.5 hereof.

(b) Anything herein to the contrary notwithstanding, a supplemental indenture, amendment or other document described under this Article that affects any rights or obligations of the Borrower shall not become effective unless and until the Borrower shall have consented to the execution of such supplemental indenture, amendment or other document.

**Section 8.3      Amendments to the Loan Agreement or the Note Not Requiring Consent of Holders.**

(a) The City shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement or the Note without the prior written consent of the Trustee, the Borrower and the Controlling Person. The City may, with the consent of the Controlling Person and a Favorable Opinion of Bond Counsel, but without the consent of or notice to any other Holders, enter into or permit (and the Trustee shall consent to) any amendment of the Loan Agreement or the Note acceptable to the Borrower as may be required (i) for the purpose of curing any ambiguity or formal defect or omission that shall not adversely affect the interest of the Holders, (ii) to grant or pledge to the City or Trustee, for the benefit of the Holders any additional security, (iii) to make any change therein necessary, in the opinion of Bond Counsel, to maintain the exclusion of interest on any Outstanding Tax-Exempt Bonds from gross income of the Holders thereof for federal income tax purposes, or (iv) in connection with any other change therein which, in the judgment of the Trustee acting in reliance upon an opinion of Counsel, is not materially prejudicial to the interests of the Trustee and the Holders of the Bonds; provided, however, that without the written consent of the Trustee, the Trustee shall not be required to join in the execution of any such amendment that affects the rights, duties, obligations or immunities of the Trustee or that imposes additional obligations on the Trustee.

(b) The City and the Borrower shall file copies of any such amendments to the Loan Agreement or the Note with the Trustee and the Controlling Person.

**Section 8.4      Amendments to the Loan Agreement or the Note Requiring Consent of Holders.** Except as provided in Section 8.3 hereof, the City shall not enter into, and the Trustee shall not consent to, any other modification or amendment of the Loan Agreement or the Note, nor shall any such modification or amendment become effective, without delivery of a Favorable Opinion of Bond Counsel and the prior written consent of the Majority Owner, such consent to be obtained in accordance with Section 8.5 hereof. No such amendment may, without the consent of the Holders of all the Outstanding Bonds, reduce the amounts or delay the times of payment of Repayments under the Loan Agreement or the Note.

The City and the Borrower shall file copies of all such amendments to the Loan Agreement or the Note with the Trustee, the Controlling Person and the Majority Owner.

**Section 8.5      Notice to and Consent of Holders.** If consent of the Controlling Person, the Majority Owner or any other Holder is required under the terms of this Indenture for the amendment of this Indenture, the Loan Agreement, the Note or for any other similar purpose, the Trustee shall cause notice of the proposed execution of the amendment or supplemental indenture to be given by first-class mail, postage prepaid, to the Controlling Person, the Majority Owner or any other applicable Holder then shown on the Register. Such notice shall briefly set forth the nature of the proposed amendment, supplemental indenture or other action and shall state that copies of any such amendment, supplemental indenture or other document are on file at the principal office of the Trustee for inspection by all Holders. If, within forty five (45) days or such longer period as shall be prescribed by the Trustee following the mailing of such notice, the Controlling Person, the Majority Owner or the Holders of all, as the case may be, of the principal amount of the Bonds Outstanding by instruments filed with the Trustee shall have consented to the amendment, supplemental indenture or other proposed action, then the Trustee may execute such amendment, supplemental indenture or other document or take such proposed action and the consent of the Holders shall thereby be conclusively presumed.

## **ARTICLE IX CONTROLLING PERSON; SERVICING**

**Section 9.1      Majority Owner to Appoint Controlling Person [and Indexing Agent].** The Majority Owner may engage a Person, collaterally assign some or all of its rights hereunder to a Person, or otherwise provide for a Person, at the Majority Owner's sole cost and expense, to act on behalf of the Majority Owner under the Bond Documents as the "Controlling Person" [and "Indexing Agent"]. The Majority Owner may at any time and from time to time terminate or remove and replace any such Controlling Person [or Indexing Agent]. The Majority Owner shall give written notice to the Trustee, the City and the Borrower of its appointment, termination, removal or replacement of any Controlling Person [or Indexing Agent], and the parties may rely on any such notice until any subsequent notice is given. Subject to any written agreement between the Controlling Person [or Indexing Agent] and Trustee, the Controlling Person [and Indexing Agent] may resign at any time by written notice to the Purchaser, the City, the Trustee and the Borrower. Initially, the Majority Owner [will act as Indexing Agent and] has engaged [\_\_\_\_\_] to act as the "Controlling Person" hereunder and [\_\_\_\_\_] has accepted such engagement. The Majority Owner is under no obligation to appoint a Controlling Person [or an Indexing Agent]; if at any time a Controlling Person [or Indexing Agent] has not been designated by the Majority Owner, all references to the "Controlling Person" [or Indexing Agent] herein and in the other Bond Documents shall refer to the Majority Owner. Any opinion or certificate provided for herein, in the Loan Agreement or in any other Bond Document that is directed to the Controlling Person [or Indexing Agent] shall also be directed to, and may be relied upon by, the Majority Owner. The Majority Owner will have no liability to the City, the Borrower, the Trustee or any other Person for any act or omission of the Controlling Person [or Indexing Agent] unless the Controlling Person is the Majority Owner or such act or omission was expressly approved by the Majority Owner in each particular case.

### **Section 9.3      Servicing.**

(a) The Majority Owner has appointed the Controlling Person to be the servicer of the Loan and the Controlling Person has accepted such appointment. Satisfactory arrangements have previously been made for the payment of servicing fees and expenses in connection with the Controlling Person's servicing obligations hereunder, and the City, the Borrower, the Majority Owner and the Trustee have no obligation for such payments. Without limiting the foregoing, the Controlling Person shall have no right or claim to any transfer or assumption fees, late charges, acceleration premium or Default Interest

payable under this Indenture or the Bond Documents; provided, however that, to the extent permitted under the Bond Documents, the Controlling Person shall be entitled to collect from the Borrower its normal and customary incidental fees and charges for any requested review, approval or other action, including, without limitation, in connection with any proposed transfer, loan assumption, easement, subordinate financing, release of collateral, condemnation proceeding, non-disturbance agreement or other similar action, unless such review, approval or other action is performed solely by the Majority Owner.

(b) The Controlling Person shall be responsible for the performance of the following servicing duties:

(i) The Controlling Person shall perform the duties expressly given to the Controlling Person under the Bond Documents and this Indenture.

(ii) The Controlling Person shall prepare monthly bills to the Borrower in accordance with the Bond Documents for payments to the Trustee of principal and interest under the Loan and for deposits into the Tax and Insurance Escrow Fund and the Replacement Reserve Fund (but not the Trustee's Fee or the City's Fee). The Controlling Person shall notify the Borrower of the amount payable by the Borrower to the Trustee. Such notification may be delivered by electronic mail or by facsimile. The Controlling Person shall diligently attempt to collect all of the following, at the times they are due and payable under this Indenture and the Bond Documents, including without limitation Section 2.1(c) of the Loan Agreement:

- (1) The principal and interest due and payable on the Note;
- (2) The Trustee's Fee and City's Fee, as applicable;
- (3) Any monthly Replacement Reserve Fund deposit;
- (4) Any Monthly Tax and Insurance Amounts;
- (5) Any other escrow or reserve deposits required by this Indenture or Bond Documents;
- (6) Any assumption or transfer fee required by this Indenture or Bond Documents; and
- (7) Any acceleration premium.

(c) All payments received under this Indenture or Bond Documents shall be applied in the following order unless otherwise instructed by the Majority Owner or expressly set forth in this Indenture or the Bond Documents:

- (i) To the principal and interest due and payable on the Note;
- (ii) To the City's Fee and Trustee's Fee, as applicable;
- (iii) To the acceleration premium, if applicable;
- (iv) To required deposits to the Replacement Reserve Fund;
- (v) To required deposits in the Tax and Insurance Escrow Fund;

(vi) To other escrow or reserve deposits required by this Indenture or the other Bond Documents;

(vii) To Default Interest and any late fees; and

(viii) To other amounts due under the Bond Documents.

(d) Any payment received by the Controlling Person from or on behalf of the Borrower under this Indenture or the Bond Documents shall be remitted by the Controlling Person to the Trustee no later than the second (2nd) Business Day after receipt by the Controlling Person, or sooner if so required under this Indenture or Bond Documents. The Controlling Person shall make any remittance to the Trustee by wire transfer in accordance with the instructions received from the Trustee or to any other party entitled to such remittances pursuant this Indenture or the Bond Documents in accordance with the instructions received from the Majority Owner.

(e) The Controlling Person shall review the Tax and Insurance Escrow Fund and the Replacement Reserve Fund on an annual basis and adjust required monthly escrow invoices and payment in accordance with terms of Bond Documents.

(f) Upon request of the Majority Owner, the Controlling Person shall furnish to the Majority Owner monthly account statements received from the Trustee with respect to the Accounts under this Indenture, including disbursements from the Accounts under this Indenture, loan history schedules, outstanding loan balances and escrow balances.

(g) The Controlling Person shall provide immediate written notice to the Majority Owner of any Event of Default of which it receives notice or has actual knowledge, or any event which, with the giving of notice or the passage of time, or both, would constitute any Event of Default of which it receives notice or has actual knowledge.

(h) The Controlling Person shall refer to the Trustee all Borrower requests for a quote of a payoff amount for the Loan, shall request a copy of any such quote from the Trustee, and shall notify the Majority Owner of the Borrower's request. The Controlling Person shall prepare payoff letters and delinquency and default notices when necessary, as required by the Bond Documents or this Indenture or otherwise as directed by the Majority Owner.

(i) The Controlling Person shall use its best efforts to obtain financial statements and other reports from the Borrower at the times and to the extent required under the Bond Documents and deliver the same to the Majority Owner and, if requested, to the Trustee.

(j) The Controlling Person shall obtain, and shall provide to the Majority Owner a copy of the Borrower's certificates of compliance with the Land Use Restriction Agreements or other evidence of such compliance submitted by the Borrower to the City or the City's designee within thirty (30) days after the later of (i) the date it is required to be submitted to the City or the City's designee, or (ii) the date it is actually so submitted.

(k) The Controlling Person may perform additional duties with respect to the Loan during rehabilitation of the Project Facilities or during the period following an Event of Default at the request of the Majority Owner.

(l) [The Controlling Person consents to and directs the Trustee to enter into the Depository Agreement and to deposit the Accounts in the deposit accounts established pursuant to the Depository Agreement.]

## **ARTICLE X MISCELLANEOUS**

**Section 10.1 Right of Trustee to Pay Taxes and Other Charges.** If any tax, assessment or governmental or other charge upon any part of the Project Facilities is not paid as required, the Trustee may, subject to any indemnity required pursuant to Section 7.1(h) hereof, pay such tax, assessment or governmental or other charge, without prejudice, however, to any rights of the Trustee hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment until paid at the greater of the rate of interest borne by the Bonds or the per annum rate of interest announced from time to time by the bank serving as Trustee as its “prime rate” shall become so much additional indebtedness secured by this Indenture, shall be given a preference in payment over the Bonds, and shall be paid out of the Security.

**Section 10.2 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Holders, the Controlling Person and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions herein being intended to be and being for the sole and exclusive benefit of the parties hereto, the Holders, the Controlling Person and the Borrower as herein provided.

**Section 10.3 Severability.** If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections of this Indenture, shall not affect the remaining portions of this Indenture or any part thereof.

**Section 10.4 Notices.** Except as otherwise provided herein, all notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered if given or delivered by hand, overnight delivery service or electronic mail (with receipt personally confirmed in writing by the intended recipient and not by machine-generated reply) to the address or e-mail address set forth below and shall be deemed to have been given on the date deposited in the mail, if mailed, by first-class, registered or certified mail, postage prepaid, addressed as set forth below. Where required herein, notice shall be given by telephone, and promptly confirmed in writing, and shall be deemed given when given by telephone to the telephone numbers set forth below. The City, the Borrower, the Trustee, the Majority Owner, the Controlling Person and the Investor Limited Partner may, by written notice given hereunder, designate any different addresses, phone numbers and e-mail address to which subsequent notices, certificates, approvals, consents, requests or other communications shall be sent.



**To the City:**

City and County of San Francisco  
Mayor's Office of Housing and  
Community Development  
1 S. Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attention: Ryan VanZuylen  
E-mail: ryan.vanzuylen@sfgov.org

**With copies to (none of which shall not  
constitute notice to the City under this  
Indenture):**

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 316  
San Francisco, CA 94102  
Attention: City Controller  
Telecopier: 415-554-7466

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 140  
San Francisco, CA 94102  
Attention: City Treasurer  
Telecopier: 415-554-4672

City and County of San Francisco  
Mayor's Office of Housing and  
Community Development  
One South Van Ness, 5th Floor  
San Francisco, CA 94103  
Attention: Director  
Telecopier: 415-701-5501

Office of the City Attorney  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 234  
San Francisco, CA 94102  
Attention: Finance Team  
Telecopier: 415-554-4755

City and County of San Francisco  
Office of Public Finance  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 336  
San Francisco, CA 94102  
Attention: Finance Team  
Telecopier: 415-554-4864

**To the Borrower:**

MHDC South Park Properties, L.P.  
c/o Mission Housing Development  
Corporation  
474 Valencia Street, Suite 280  
San Francisco CA 94103  
Attention: John Lovell  
Telecopier: (415) \_\_\_\_\_

**With a copy to:**

Gubb & Barshay, LLP  
505 14th Street, Suite 300  
Oakland, CA 94612  
Attention: Sarah Perez, Esq.  
Telecopier: 415-781-6967

**To the Trustee:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**To the Majority Owner:**

At the address set forth on the Register  
maintained by the Trustee

**To the Controlling Person:**

Western Alliance Bank  
One East Washington Street, Suite 1400  
Phoenix, Arizona 85004  
Attention: Legal Department  
Telephone: (602) 386-5500

**With a copy to:**

Squire Patton Boggs (US) LLP  
1201 W. Peachtree St. NW, Suite 3150  
Atlanta, GA 30309  
Attention: Isaac Yilma

**Section 10.5 Binding Effect.** This instrument shall inure to the benefit of and shall be binding upon the City and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Indenture.

**Section 10.6 Captions.** The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

**Section 10.7 Governing Law; Venue.** This Indenture shall be governed by and interpreted in accordance with the laws of the State, without regard to conflict of laws principles. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding relating to the Bond Documents shall be brought solely in a federal or state court located in the City and (ii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of

such process to such party at its address (including without limitation the addresses of such party's counsel) provided under or pursuant to Section 10.1 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable legal requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Controlling Person and the Majority Owner to serve legal process in any other manner permitted by applicable Legal Requirements.

**Section 10.8 Limited Liability of City.** Notwithstanding anything herein or in any other document, agreement or instrument to the contrary, the following provisions of this paragraph shall apply to the Indenture, the Loan Agreement, the Bonds, the Bond Documents and any other document, agreement or instrument securing the same. Any liability for payment of money and any other liability or obligation which the City may incur under the Bonds, this Indenture, the Loan Agreement, or any other Bond Document shall not constitute a general obligation of the City but shall constitute limited obligations of the City payable solely from and enforced only against the Security.

**Section 10.9 Execution in Counterparts; Electronic Signatures.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law and except for the certificate of authentication on the Bonds (which must be manually signed by an authorized representative of the Trustee) and instruments of transfer of the Bonds, facsimile or electronically transmitted signatures shall constitute original signatures for all purposes under this Indenture.

**Section 10.10 Tax Covenants of the City.** In furtherance of the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds, the City hereby represents, warrants and agrees as follows:

(a) **Qualified Residential Rental Project Exempt Facility Bonds.** The City shall cause the Borrower to covenant to use or allocate the proceeds of the Tax-Exempt Bonds in a manner such that the Tax-Exempt Bonds will satisfy the requirements of section 142(d) of the Code relating to qualified residential rental projects.

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

(c) **Rebate Requirement.** The City shall cause the Borrower to covenant to 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 Tax-Exempt Bonds.

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

(e) **Maintenance of Tax-Exemption.** The City shall take all actions within its control and shall cause the Borrower to covenant to take all actions necessary to assure the exclusion of interest on the Tax-Exempt Bonds from the gross income of the owners of the Tax-Exempt Bonds to the same extent as such

interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Tax-Exempt Bonds.

(f) Private Activity Volume Cap. The Tax-Exempt Bonds upon issuance and delivery shall be considered “private activity bonds” within the meaning of the Code with respect to which the California Debt Limit Allocation Committee has transferred a portion of the State of California’s private activity bond allocation (within the meaning of section 146 of the Code) equal to the principal amount of the Tax-Exempt Bonds.

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

(h) Limitation of Expenditure of Proceeds. The City shall cause the Borrower to covenant that not less than 95 percent of the net proceeds of the Tax-Exempt Bonds (within the meaning of section 150(a)(3) of the Code) are paid for Qualified Project Costs.

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

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

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

(l) Income Targeting. The Issuer hereby elects to have the Project meet the requirements of section 142(d)(1)(B) of the Code in that forty percent (40%) or more of the residential units in the Project Facilities shall be occupied by persons or families whose Adjusted Income (as defined in the Land Use Restriction Agreement) is sixty percent (60%) or less of Median Income for the Area (as defined in the Land Use Restriction Agreement), adjusted for household size.

(m) Program Investment. The City shall cause the Borrower to covenant not to purchase, nor to permit any related party of the Borrower to purchase, the Tax-Exempt Bonds or any portion thereof in an amount related to the amount of the loan of the proceeds of the Tax-Exempt Bonds to the Borrower (the "Tax-Exempt Loan") or any other obligation acquired by the City in furtherance of the governmental program (the "Program") of the City to acquire investments to carry out the financing of qualified residential rental projects, being the governmental purposes of the Program. The City has not waived its right to treat the Tax-Exempt Loan or the Tax-Exempt Bonds as a "program investment" within the meaning of the Code.

(n) City shall cause the Borrower to covenant that all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Tax-Exempt Bonds (within the meaning of section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Indenture or the Code) at Fair Market Value.

(o) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code and (unless valuation is undertaken at least annually) investments in any reserve fund shall be valued at their present value (within the meaning of section 148 of the Code).p)

Enforcement. The City shall use good faith efforts to enforce the covenants of the Borrower described in this Section 10.10 but shall not be liable hereunder for any breach of such covenants by the Borrower.

**Section 10.11 Determinations by the City, the Majority Owner and Controlling Person.** Subject to specific provisions in this Indenture to the contrary, in any instance under this Indenture where the consent or approval of the City, the Controlling Person or the Majority Owner may be given or is required, or where any determination, judgment or decision is to be rendered by the City, the Controlling Person or the Majority Owner under this Indenture, 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 City, the Controlling Person or the Majority Owner (or its designated representative) at its sole and absolute discretion. The Trustee may, and shall at the written direction of the Holders of all Outstanding Bonds, by separate instrument delegate, assign, transfer and set over unto the Controlling Person any or all of the rights, remedies, duties and obligations of the Trustee under this Indenture and the other Bond Documents, in which event the Controlling Person shall have each of the rights, remedies, duties and obligations delegated to it as if specifically named herein and in the other Bond Documents, as applicable, and shall be entitled to act in its own name, but if necessary in the name and stead of the Trustee, to enforce each of the remedies provided to the Trustee hereunder or under the other Bond Documents. Any certification, acknowledgment, consent, approval, direction, determination, judgment or decision to be rendered by the City under this Indenture shall be made by an Authorized City Representative.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the City has caused this Indenture to be executed in its name and on its behalf by its authorized official and the Trustee has caused this Indenture to be executed, in its name by its duly authorized representative, all as of the day and year first above written.

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

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

Name:

Title:

**[TRUSTEE], as trustee**

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

Name:

Title:

**EXHIBIT A  
FORM OF BOND**

**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE BOND  
(SFHA SCATTERED SITES)  
SERIES 2022A-[ ] [(TAXABLE)]**

No. R-\_\_

<u>DATED DATE</u>	<u>MATURITY DATE</u>	<u>INTEREST RATE</u>	<u>CUSIP NO.</u>
		[Variable] [ ]% [until the Stabilization Date and ]% thereafter]	
_____, 20__	_____, 20__	[ ]%	[ ]

REGISTERED OWNER:

PRINCIPAL AMOUNT: \_\_\_\_\_ MILLION \_\_\_\_\_ HUNDRED THOUSAND DOLLARS  
(\$\_\_\_\_\_)

The City and County of San Francisco, California (the “City”), a municipal corporation organized and existing pursuant to its charter and the laws and the Constitution of the State of California, for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, and (B) interest thereon, at the Bond Coupon Rate (as defined in the Indenture), payable on the first Business Day of each month, commencing \_\_\_\_\_, 2022 to the person whose name appears on the registration books on the day before such day (whether or not a Business Day) (a “Record Date”) and to pay any other amounts as specified in the Indenture (hereinafter defined).

Principal of, and premium, if any, on this Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of \_\_\_\_\_, as trustee (the “Trustee”), or its successor.

[FIXED RATE TRANSACTIONS-Interest on this Bond shall be computed on the basis of a 360-day year, comprised of twelve 30 day months.] [VARIABLE RATE TRANSACTIONS-To but excluding the Stabilization Date, interest on this Bond shall be computed on the basis of a 360-day year, for actual days elapsed, and from and after the Stabilization Date, interest shall be computed on the basis of a 360-day year comprised of twelve 30 day months]. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee.

This Bond is one of an issue of duly authorized City and County of San Francisco, California, Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-1 and City and County of San Francisco, California, Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-2 (Taxable), issued in the aggregate principal amount of \$\_\_\_\_\_ (the “Bonds”), pursuant to the provisions of Section 9.107 of the Charter of the City, and Article I of Chapter 43 of the City’s Administrative Code and, to the extent applicable, Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the California Health and Safety Code (collectively, the “Act”).

This is a draw-down Bond. The principal amount of this Bond as of any given date shall be equal to (i) the total amount of principal advanced by the Purchaser, less (ii) any payment of principal on the Bonds received by the Holders thereof. Principal amounts advanced by the Purchaser shall be noted on the recordkeeping system maintained by the Trustee.

The proceeds from the Bonds are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of February 1, 2022 (as amended, modified or supplemented from time to time, the “Loan Agreement”), between the City and the Borrower, to finance the acquisition, rehabilitation and equipping of a multifamily residential facility located on five scattered sites in San Francisco, California, and known as “SFHA Scattered Sites” (the “Project Facilities”). The Borrower’s payment obligations under the Loan Agreement will be evidenced by the Note and secured by the Mortgage.

The Bonds are issued under and are equally and ratably secured by an Indenture of Trust, dated as of February 1, 2022 (as amended, modified or supplemented from time to time, the “Indenture”), between the City and the Trustee. All capitalized terms not defined herein shall have the meaning set forth in the Indenture.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the City and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

NONE OF THE CITY, THE MEMBERS OF ITS BOARD OF SUPERVISORS, THE OFFICERS, OFFICIALS, EMPLOYEES, ATTORNEYS OR AGENTS OF THE CITY, OR ANY PERSON EXECUTING THE BONDS IS LIABLE PERSONALLY ON THE BONDS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THEIR ISSUANCE. THE BONDS ARE LIMITED OBLIGATIONS OF THE CITY, PAYABLE ONLY AS PROVIDED IN THE INDENTURE, AND ARE NOT A GENERAL OBLIGATION, NOR ARE THEY SECURED BY A PLEDGE OF THE FAITH AND CREDIT, OF THE CITY OR THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER ARE THEY LIABLE ON THE BONDS, NOR ARE THE BONDS PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE CITY EXPRESSLY PLEDGED FOR THE PAYMENT THEREOF UNDER THE INDENTURE. THE BONDS DO NOT CONSTITUTE INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION. THE ISSUANCE OF THE BONDS



SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY OR THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATEVER THEREFOR OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT. THE CITY HAS NO POWER TO LEVY ANY TAX OR MAKE ANY APPROPRIATION TO REPAY THE BONDS.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT OR FUTURE OFFICER, OFFICIAL, DIRECTOR, EMPLOYEE, ATTORNEY AGENT, OR MEMBER OF THE BOARD OF SUPERVISORS OF THE CITY, OR OF ANY SUCCESSOR THERETO, AS SUCH, EITHER DIRECTLY OR THROUGH THE CITY OR ANY SUCCESSOR TO THE CITY, UNDER ANY RULE OF LAW OR EQUITY, STATUTE OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, OFFICIALS, DIRECTORS, EMPLOYEES, AGENTS OR MEMBERS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Controlling Person as provided in the Indenture and authorizes the Controlling Person to exercise such rights and remedies afforded to the Controlling Person on behalf of the Bondholder as provided in the Bond Documents.

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

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of an Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The City and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the City nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the State to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Neither the supervisors, officials, officers, agents, attorneys, employees or representatives of the City nor any person executing the Bonds shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and

waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until the Trustee shall have executed the Certificate of Authentication appearing hereon.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the City or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the City has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor as of the Dated Date hereof.

City and County of San Francisco, California

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

## **CERTIFICATE OF AUTHENTICATION**

This is to certify that this Bond is one of the Bonds referred to in the within mentioned Indenture.

Date of Authentication:

[TRUSTEE], as trustee

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

### ASSIGNMENT FOR TRANSFER

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto \_\_\_\_\_ (Tax Identification or Social Security No. \_\_\_\_\_) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within bond on the books kept for registration thereof, with full power or substitution in the premises.

\_\_\_\_\_  
Date:

Signature Guaranteed:

\_\_\_\_\_  
Signature

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

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

[Date]

City and County of San Francisco, California  
1 S. Van Ness Ave., 5th Floor  
San Francisco, California 94103

[Trustee]  
[Address]

Re: City and County of San Francisco, California, Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-1 and City and County of San Francisco, California, Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-2 (Taxable)

The undersigned, as purchaser (the “Purchaser”) of the above-referenced Bonds issued pursuant to the Indenture of Trust dated as of February 1, 2022 (the “Indenture”) between the City and County of San Francisco, California (the “City”) and [TRUSTEE], as trustee (the “Trustee”), hereby represents that:

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

2. The Purchaser is a “qualified institutional buyer” (a “Qualified Institutional Buyer”) under Rule 144A of the Securities Act of 1933, as amended (the “1933 Act”), or an “accredited investor,” as defined in Regulation D under the 1933 Act, and, as such, is an Approved Buyer, as defined in the Indenture, and therefore has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the Bonds.

3. The Bonds are being acquired by the Purchaser for its own account for investment purposes and not with a present view to or for resale thereof. The Purchaser understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible. Nothing in the prior sentences, however, shall limit the Purchaser’s right to sell and transfer the Bonds at any time subject to the terms of the Indenture.

4. Any disposition by the Purchaser at this time of all or any part of the Bonds shall be only to an institution or entity that is an Approved Buyer or that Purchaser reasonably believes is an Approved Buyer (or otherwise in accordance with the terms of paragraph 9 of this letter); provided, however, the Purchaser reserves the right to deposit such Bonds into a trust or custodial arrangement in which all of the beneficial ownership interests would be owned by one or more other Approved Buyers; it being understood and agreed that, under such circumstances, each such beneficial owner, in connection with its acquisition of an interest in such arrangement, would be required to represent to the relevant trustee or custodian that it was acquiring such interest for its own account and for investment purposes, and not with a present view to or for resale.

5. The Purchaser understands that the Bonds are not registered under the 1933 Act and that such registration is not legally required as of the date hereof; and further understands that the Bonds (a) are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of the Bonds by it, and further acknowledges that any current exemption from registration of the Bonds does not affect or diminish such requirements.

6. The Purchaser understands that (a) the Bonds are not secured by any pledge of any moneys received or to be received from taxation by the State of California, the City, or any other political subdivision thereof and that the City has no taxing power to repay the Bonds, (b) the Bonds do not and will not represent or constitute a general obligation or a pledge of the faith and credit of the City, the State of California or any political subdivision thereof; and (c) the liability of the City with respect to the Bonds is limited to the Security as set forth in the Indenture.

7. The Purchaser acknowledges that to its knowledge it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Purchaser has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower, the Project Facilities and the Bonds and the security therefor so that, as a reasonable investor, the Purchaser has been able to make its decision to purchase the Bonds.

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

9. The Purchaser acknowledges that it has the right to sell and transfer the Bonds in Authorized Denominations: (i) to an Affiliate of the Purchaser; (ii) to an institution or entity it reasonably believes is an Approved Buyer and subject to the delivery to the Trustee of a purchaser’s letter from the transferee to the same effect as this Purchaser’s Letter, with no revisions except as may be approved in writing by the City; or (iv) by deposit into a trust or custodial arrangement as described in paragraph 4 of this letter.

10. In entering into this transaction the Purchaser has not relied upon any representations or opinions made by the City other than representations and statements set forth in the documents and opinions delivered in connection with the issuance of the Bonds, nor has it looked to, nor expected, the City to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project Facilities (including the financing or management thereof), or any other matter pertaining to the merits or risks of the transaction, or the adequacy of the funds pledged to secure repayment of the Bonds.

11. The Purchaser is not now and has never been controlled by, or under common control with, the Borrower. The Borrower has never been and is not now controlled by the Purchaser. [The Purchaser has entered into no arrangements with the Borrower [or with any affiliate] in connection with the Bonds, other than as disclosed to the City.][TO BE CONFIRMED]

12. The Purchaser acknowledges that the sale of the Bonds to the Purchaser is made in reliance upon the certifications, representations and warranties herein by the addressees hereto.

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

\_\_\_\_\_, as

Purchaser

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

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

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



## EXHIBIT C

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

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

1. Nondiscrimination; Penalties.

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

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

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

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

4. Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require the Trustee to remove from, City facilities personnel of the Trustee who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

6. Sunshine Ordinance. The Trustee acknowledges that this Indenture and all records related to its formation, the Trustee's performance under this Indenture, and the City's payment are subject to the

California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

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

8. Requiring Minimum Compensation for Covered Employees. If Administrative Code Chapter 12P applies to this Indenture, the Trustee shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Trustee is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. The Trustee is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Indenture, the Trustee certifies that it complies with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. If Administrative Code Chapter 12Q applies to this Indenture, the Trustee shall comply with the requirements of Chapter 12Q. For each Covered Employee, the Trustee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Trustee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The Trustee is subject to the enforcement and penalty provisions in Chapter 12Q. Any subcontract entered into by the Trustee shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

11. Nondisclosure of Private, Proprietary or Confidential Information. If this Indenture requires the City to disclose "Private Information" to the Trustee within the meaning of San Francisco Administrative Code Chapter 12M, the Trustee shall use such information consistent with the restrictions

stated in Chapter 12M and in this Indenture and only as necessary in performing the services provided under this Indenture. The Trustee is subject to the enforcement and penalty provisions in Chapter 12M.

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

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

The requirements of Chapter 12T shall only apply to the Trustee's operations to the extent those operations are in furtherance of the performance of this Indenture, shall apply only to applicants and employees who would be or are performing work in furtherance of this Indenture, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes Airport property. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. Reserved

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

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

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

17. Distribution of Beverages and Water. The Trustee agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Indenture. The Trustee agrees that it shall not sell, provide or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Indenture.

18. Consideration of Salary History. The Trustee shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." The Trustee is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Indenture or in furtherance of this Indenture, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

19. Laws Incorporated by Reference. The full text of the laws listed in this Appendix A, including enforcement and penalty provisions, are incorporated into this Indenture by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Appendix A are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/)

20. First Source Hiring Program. The Trustee must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Indenture, and the Trustee is subject to the enforcement and penalty provisions in Chapter 83.

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

## **Schedule A**

### Schedule of Financial Terms

Project: SFHA Scattered Sites  
Apartments

Closing Date: \_\_\_\_\_, 2022

<b>Basic Loan Terms</b>	
Maximum Bond Amounts:	<p>\$_____ for Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-1</p> <p>\$_____ for Multifamily Housing Revenue Bonds (SFHA Scattered Sites), Series 2022A-2 (Taxable)</p>
Bond Funding Dates:	On a requisition basis
Bond Coupon Rate:	<p>[FIXED RATE TRANSACTIONS - ____% per annum]</p> <p>[STEPPED FIXED RATE TRANSACTIONS - ____% per annum to but excluding the Stabilization Date, and thereafter at ____% per annum]</p> <p>[VARIABLE TO FIXED TRANSACTIONS - the rate of interest accruing from the Issue Date to but excluding the Stabilization Date at a rate equal to the Current Index plus ____%, as reset on each Rate Determination Date, and the rate of interest accruing from and after the Stabilization Date to the Maturity Date at a fixed rate of ____% per annum.]</p>
Maturity Date:	<p>____ 1, 20__</p> <p>[For construction bonds, insert date two years following Outside Stabilization Date]</p>
First Interest Payment Date:	____ 1, 2022
First Principal Payment Date:	<p>[IF AMORTIZATION COMMENCES AT CLOSING- ____1, 20__ (Insert the first calendar day of the second month following the Issue Date)]</p> <p>[IF AMORTIZATION COMMENCES AT STABILIZATION-The first (1<sup>st</sup>) calendar day of the month following achievement of Stabilization.]</p>

First Optional Call Date:	____ 1, 20__
First Put Date:	____ 1, 20__
Mandatory Prepayment Amount:	\$_____
[Optional Redemption Premium]	[insert premium call dates and amounts]
<b>Other Terms:</b>	
Minimum Coverage:	1.____ to 1.0
Minimum Occupancy:	[90%]
Testing Period:	Three (3) Months
Operating Reserve Amount:	\$_____
Completion Date:	____ 1, 20__
Outside Stabilization Date:	____ 1, 20__
Underwritten Expenses:	\$_____ per annum (increased on an annual basis commencing January 1, 20__ by 3%) adjusted to reflect actual cost of utilities, insurance and Impositions (provided that for Impositions constituting real property taxes, if any, the cost shall be based on the full assessed value of the Project after taking into account completion of rehabilitation), plus all required deposits into the Replacement Reserve Account.
Underwritten Economic Vacancy	____%
Underwritten Management Fee	____%
Retainage	____%
Guarantor(s):	[Insert]
Guarantor Financial Covenants:	Minimum Liquidity: \$_____ Minimum Net Worth: \$_____
Subordinate Loan:	[Insert]
Subordinate Lender:	[Insert]
Origination Fee:	\$_____
Construction Monitoring Fee:	\$_____

Tax Abatement/Exemption:	<div data-bbox="704 191 1192 231">[Applicable. [Insert Authority Reference]]</div> <div data-bbox="704 258 789 298">[None]</div>
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**ASSIGNMENT OF DEED OF TRUST DOCUMENTS**

**from**

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

**to**

[\_\_\_\_\_], as trustee,

**with the consent of**

**MHDC NEW MAP, L.P.**

**Dated as of \_\_\_\_\_ 1, 2022**

**Relating to:**

**\$\_\_\_\_\_**

**City and County of San Francisco, California  
Multifamily Housing Revenue Bonds  
(SFHA Scattered Sites), Series 2022A-1**

**and**

**\$\_\_\_\_\_**

**City and County of San Francisco, California  
Multifamily Housing Revenue Bonds  
(SFHA Scattered Sites), Series 2022A-2 (Taxable)**

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This instrument prepared by and  
when recorded return to:

Squire Patton Boggs (US) LLP  
1201 W. Peachtree St. NW, Suite 3150  
Atlanta, GA 30309  
Attention: Isaac Yilma, Esq.



## ASSIGNMENT OF DEED OF TRUST DOCUMENTS

This **ASSIGNMENT OF DEED OF TRUST DOCUMENTS**, dated as of \_\_\_\_\_ 1, 2022 (as the same may be amended, modified or supplemented from time to time, "Assignment") from the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation duly organized and validly existing under its charter and the laws and Constitution of the State of California (together with its successors and assigns, the "Assignor"), to [\_\_\_\_\_, a \_\_\_\_\_], as trustee (together with any successor trustee under the Indenture described below and their respective successors and assigns, the "Assignee") under the Indenture of Trust dated as of \_\_\_\_\_ 1, 2022 (as the same may be amended, modified or supplemented from time to time, the "Indenture"), between the Assignor as Issuer and the Assignee as Trustee,

### WITNESSETH:

**WHEREAS**, MHDC New Map, L.P., a limited partnership duly organized and validly existing under the laws of the State of California (together with its permitted successors and assigns, the "Borrower") has:

(i) entered into a Loan Agreement with the Assignor dated as of \_\_\_\_\_ 1, 2022 (as the same may be amended, modified or supplemented from time to time, the "Loan Agreement"), evidencing indebtedness in the maximum aggregate principal amount of \$\_\_\_\_\_ (the "Loan"); and

(ii) executed and delivered to the Assignor the Promissory Note dated \_\_\_\_\_ 1, 2022 (as the same may be amended, modified or supplemented from time to time, the "Promissory Note") in the principal amount of \$\_\_\_\_\_ and made to the order of the Assignor, as payee, further evidencing the Loan; and

(iii) executed and delivered to the Assignor a Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of \_\_\_\_\_ 1, 2022 (as the same may be amended, modified or supplemented from time to time, the "Mortgage") made to a trustee for the benefit of the Assignor, securing the Promissory Note, recorded in the real property records of the City and County of San Francisco, California, and relating to the real estate described in Exhibit A hereto; and

**WHEREAS**, the Loan Agreement, the Promissory Note and the Mortgage, together with all financing and continuation statements to perfect the liens and security interests granted thereby, are collectively referred to herein as the "Security Documents"; and

**WHEREAS**, the Assignor desires to assign and transfer to the Assignee all its right, title and interest in and to the Security Documents, excluding the Reserved Rights (as defined in the Indenture) of the Assignor, and the Assignee desires to acquire Assignor's rights, title and interest as aforesaid under the Security Documents in accordance with the terms hereof, and the Assignee is joining in the execution of this Assignment in order to evidence its acceptance hereof; and

**WHEREAS**, the Borrower is joining in the execution of this Assignment in order to evidence its consent hereto and in order to agree that the Security Documents shall be effective to secure the obligations of the Borrower to the Assignee as more fully set forth therein and herein.

**NOW THEREFORE**, in consideration of issuance of the Bonds and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

Section 1. Definitions. All words and phrases defined in the Indenture have the same meanings in this Assignment, which definitions are incorporated herein by reference, unless a different definition is set forth in this Assignment.

Section 2. Assignment; Reserved Rights. The Assignor sells, assigns and sets over and transfers to the Assignee all the right, title and interest of the Assignor in, to and under the Security Documents, excluding the Reserved Rights of the Assignor. This Assignment is made and shall be without recourse, warranty or representation of the Assignor. The Trustee shall have the same rights, protections, immunities and indemnities hereunder as afforded to it under the Indenture and the Loan Agreement. With respect to the Reserved Rights, subject to the limitations set forth in this Assignment, the Trustee may:

a. Tax Covenants. (i) Seek (A) specific performance of, and enforce, the tax covenants in the Indenture, the Loan Agreement, the Tax Certificate and any related loan documents (collectively, the “Tax Covenants”), and (B) injunctive relief against acts which may be in violation of any of the Tax Covenants, and (ii) enforce the Borrower’s obligation to pay amounts for credit to any rebate fund; and

b. Reserved Rights. Take whatever action at law or in equity which appears necessary or desirable to enforce the other Reserved Rights, subject to the limitations contained in the Indenture.

Section 3. Miscellaneous. In case any one or more of the provisions contained in this Assignment are invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not be affected or impaired thereby.

Section 4. Counterparts; Electronic Signatures. This Assignment may be executed in any number of counterparts, each executed counterpart constituting an original, but all counterparts together constituting only one instrument. To the fullest extent permitted by applicable law, electronically transmitted or facsimile signatures shall constitute original signatures for all purposes under this Assignment.

Section 5. Governing Law. It is the intention of the parties hereto that this Assignment and the rights and obligations of the parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of California, without reference to its conflicts of laws and principles.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed by their duly authorized representatives as of the date first written above.

**ASSIGNOR:**

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

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

## ACKNOWLEDGMENT

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 San Francisco )

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_  
(insert name and title of the officer)

Notary Public, 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)

**ASSIGNEE:**

[\_\_\_\_\_], as trustee

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

Name:

Title:

**ACKNOWLEDGMENT**

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 San Francisco )

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_  
(insert name and title of the officer)

Notary Public, 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)

The undersigned, being the Borrower referred to in the foregoing Assignment, hereby acknowledges receipt and acceptance thereof and consents and agrees to the Assignment made therein and to the terms and provisions thereof to such Assignment.

**BORROWER:**

**MHDC NEW MAP, L.P.**, a California limited partnership

By: \_\_\_\_\_, a \_\_\_\_\_, its  
\_\_\_\_\_

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

**ACKNOWLEDGMENT**

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 San Francisco )

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_  
(insert name and title of the officer)

Notary Public, 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)

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**  
[TO BE PROVIDED]

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on Thursday, July 29, 2021, at 11:00 a.m., by telephone at (888) 808-6929, access code: 9193841, the City and County of San Francisco (the "City") will conduct a public hearing (the "Public Hearing") at which time the City will hear and consider information concerning the proposed sale and issuance by the City of multifamily affordable housing mortgage revenue bonds (the "Bonds") in an aggregate principal amount not to exceed Sixty Million Dollars (\$60,000,000.00). The proceeds of the Bonds will be loaned to an entity to be created by Mission Housing Development Corporation (or by an affiliate thereof or successor thereto) (such borrowing entity, the "Borrower"), pursuant to a loan agreement (the "Loan Agreement"). The proceeds of the Bonds loaned to the Borrower will be used to finance the acquisition and rehabilitation of approximately 69 units of residential rental housing located at various addresses indicated below, in San Francisco, California (the "Project"). The Project will be owned and operated by the Borrower.

<u>Max. Amount</u>	<u>Borrower/ Owner</u>	<u>General Partner</u>	<u>Type of Project</u>	<u>No. of Units</u>	<u>Street Addresses</u>
4101 Noriega Street, \$10,755,783	Entity to be Formed by Mission Housing Development Corporation	Mission Housing Development Corporation	Acquisition/ Rehab	8	4101 Noriega Street, San Francisco, CA 94122
363 Noe Street, \$10,333,101				21	363 Noe Street, San Francisco, CA 94114
200 Randolph & 409 Head Street, \$13,859,231				16	200 Randolph Street & 409 Head Street, San Francisco, CA 94132
2206-2268 Great Highway \$16,780,121				16	2206-2268 Great Highway & 2215-2263 48 <sup>th</sup> Avenue, San Francisco, CA 94116
1357-1371 Eddy Street, \$8,320,484				8	1357-1371 Eddy Street, San Francisco CA, 94115 (Also known as 1353-1367 Eddy Street)
Total: \$60,000,000				Total: 69	

The Bonds will be paid entirely by the Borrower from the revenues of the Project, in accordance with the Loan Agreement. Neither the full faith and credit nor the taxing power of the City, the State of California (the "State") or any other political corporation, subdivision or agency of the State is pledged to the payment of the principal, premium, if any, or interest on the Bonds, nor shall the City, the State or any other political corporation, subdivision or agency of the State be liable or obligated to pay the principal, premium, if any, or interest on the Bonds.

The Public Hearing is intended to comply with the public approval requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

All those interested in matters related to the issuance of the Bonds and to the financing of the Project are invited to attend and be heard at this hearing. Interested parties may call into the hearing at the time and number indicated above or submit written comments, which must be received prior to the Public Hearing, to the City, c/o Viviana Lopez, Mayor's Office of Housing and Community Development, 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103.

Date: July 16, 2021

CITY AND COUNTY OF SAN FRANCISCO  
Eric D. Shaw, Director  
Mayor's Office of Housing and Community  
Development



# CITY AND COUNT OF SAN FRANCISCO

Public Hearing as required by Section 147(f) of the Internal Revenue Code of 1986

4101 Noriega Street, San Francisco, CA 94122 3  
 363 Noe Street, San Francisco, CA 94114  
 200 Randolph & 409 Head Street  
 409 Head Street, San Francisco, CA 94132  
 2206-2268 Great Highway & 2215-2263 48th Avenue, San Francisco, CA 94116  
 1357-1371 Eddy Street, San Francisco CA, 94115 (Also known as 1353-1367 Eddy Street)

Date: July 29, 2021

Time: 11:00 AM

Location: Telephone (USA Toll Free: +1-888-808-6929, access code: 9193841#)

Present: See Exhibit A - Sign-In Sheet

The hearing was held to obtain public comment on the proposed issuance by the City and County of San Francisco of multifamily housing revenue bonds in an amount not to exceed \$60 million for the purpose of financing the acquisition and rehabilitation of approximately 69 units of residential rental housing development located at the street addresses listed below (the “Project”). The proceeds of the bonds will be loaned to an entity to be created by Mission Housing Development Corporation (MHDC) (or by an affiliate thereof or successor thereto), pursuant to a loan agreement.

<u>Max. Amount</u>	<u>Borrower/ Owner</u>	<u>General Partner</u>	<u>Type of Project</u>	<u>No. of Units</u>	<u>Street Addresses</u>
4101 Noriega Street, \$10,755,783	Entity to be Formed by Mission Housing Development Corporation	Mission Housing Development Corporation	Acquisition/ Rehab	8	4101 Noriega Street, San Francisco, CA 94122
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2206-2268 Great Highway \$16,780,121				16	2206-2268 Great Highway & 2215-2263 48 <sup>th</sup> Avenue, San Francisco, CA 94116
1357-1371 Eddy Street, \$8,320,484				8	1357-1371 Eddy Street, San Francisco CA, 94115 (Also known as 1353-1367 Eddy Street)
Total: \$60,000,000				Total: 69	

Joyce Slen from the San Francisco Mayor’s Office of Housing and Community Development (“MOHCD”) called the hearing to order at 11:00 a.m. John Lovell, Elizabeth Madrigal, and Marcia Contreras representatives of the Project Sponsor, MHDC, were also in attendance.

## **1. Explanation of the Purpose for the Hearing**

The Tax Equity and Fiscal Responsibility Act of 1982 (“TEFRA”) is a federal law requiring any issuer of tax-exempt bonds to provide a reasonable opportunity for interested individuals to express their views, either orally or in writing, on the issuance of the bonds and the nature of the improvements and projects for which the bond funds will be allocated. Thus, as the issuer of the tax-exempt bonds financing the subject Project, the City and County of San Francisco held the TEFRA hearing to provide those interested in discussing the Project the opportunity to comment and ask questions.

## **2. Comments and Questions from Interested Parties**

In addition to MOHCD and MHDC staff, four residents from 363 Noe Street attended the hearing to discuss the Project: Randall Glock, Maria Mora, Juanita Delgado (a.k.a. “Vicki”). Upon calling the hearing to order, Joyce asked the callers to introduce themselves for the record. The contact information of all the attendees is in the hearing’s sign-in sheet, which is also part of the record.

Joyce then solicited public comment and explained that MOHCD and the MHDC team were on the hearing to answer any questions. John from MHDC explained that the City will issue bonds to finance the acquisition and rehabilitation of the Project.

- Maria had questions around the relocation process, the length of off-site relocation, and if residents would be able to return to their unit. John explained MHDC hired a relocation consultant to help determine where residents will be temporarily relocated, but the move will not occur till closer to construction start in early 2022. Residents should reach out to the Project’s relocation consultant to explain their moving needs. John continued to explain that off-site relocation is expected to consist of 3 phases, each 4 months long, for the 363 Noe Street portion of the Project. Residents will have a right to return to their unit, with relocation costs to be paid through the development budget.
- John explained that the Project is on track to receive a bond allocation this August, so the Project will secure financing to start construction in early 2022. Formal community meetings will be held by MHDC in the next 6 weeks to answer Project questions.
- Randall asked John if residents had a say in how the \$10 million in issued bonds can repair the building. John clarified that the not to exceed amount will cover the Project’s acquisition cost and rehabilitation scope of work, which will bring the building up to code compliance and address deferred maintenance. John continued to explain that residents will be able to provide feedback on the design of the community room and bathroom finishes.

The hearing was adjourned at 11:30 AM.

Minutes prepared by:   
Joyce Slen

Date: July 29, 2021

**SFHA Scattered Sites  
TEFRA Hearing  
SIGN-IN SHEET  
Thursday, July 29, 2021 - 11:00 am**

[illegible]



## CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

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915 Capitol Mall, Room 311  
Sacramento, CA 95814  
p (916) 653-3255  
f (916) 653-6827  
cdlac@treasurer.ca.gov  
www.treasurer.ca.gov/cdlac

### MEMBERS

FIONA MA, CPA, CHAIR  
STATE TREASURER

GAVIN NEWSOM  
GOVERNOR

BETTY T. YEE  
STATE CONTROLLER

INTERIM EXECUTIVE DIRECTOR  
NANCEE ROBLES

August 11, 2021

Eric D. Shaw  
Director  
City and County of San Francisco  
1 South Van Ness Ave, 5th Floor  
San Francisco, CA 94103

### **RE: RESOLUTION ATTESTING TO THE TRANSFER OF PRIVATE ACTIVITY BOND ALLOCATION**

Dear Eric D. Shaw:

Enclosed is a copy of Resolution No. 21-178, adopted by the California Debt Limit Allocation Committee (the "Committee") on August 11, 2021, transferring \$40,776,000 of the 2021 State Ceiling on Qualified Private Activity Bonds to the City and County of San Francisco (the "Applicant") for SFHA Scattered Sites (the Project).

The Resolution establishes the terms and conditions under which the allocation has been granted. Please read it carefully and keep a copy in your permanent files. **You are advised to consult bond counsel regarding the making of a carryforward election pursuant to the rules of the Internal Revenue Service.**

The following is additional information pertaining to the use of the allocation for this Project:

1. **Performance Deposit:** Pursuant to Section 5050 of the Committee's Regulations, a performance deposit equal to one-half of one percent (0.5%) of the Allocation requested, not to exceed \$100,000, made payable to the Applicant, shall be evidenced within 20 calendar days following an award of an Allocation.

The performance deposit certified in support of this project (\$100,000) is to remain on deposit until you receive written authorization from the Committee that it may be released. This written release will be provided once the Committee receives: the "Report of Action Taken" template indicating that the allocation transferred was used for the Project's issuance of bonds, a copy of the conformed regulatory agreement, and the payment of the second installment of the CDLAC filing fee. A copy of the conformed regulatory agreement should be sent electronically to CDLAC@treasurer.ca.gov. The full amount of the deposit will be released upon the Executive Director's approval if at least 80% of the allocation to this project is used for the issuance of bonds. If an amount less than 80% of the allocation is used to issue bonds, a proportionate amount of the deposit will be subject to forfeiture.

2. **IRS Certification:** The IRS-required certification will be prepared and sent to bond counsel once the Committee receives the "Report of Action Taken" form.

3. **Second Installment of Filing Fee:** **Enclosed is an invoice for this Project.** The invoice attached herein should be considered final, due and payable upon the issuance of bonds.

4. **Compliance:** The Certification of Compliance II or equivalent form is to be submitted by the Project Sponsor to the Applicant by the Applicant's specified deadline, but no later than March 1st annually until the project's Certificate of Completion has been submitted to the Applicant. Following the submission of the Certificate of Completion or equivalent form to the Applicant, the Certification of Compliance II is to be submitted March 1st every three (3) years thereafter. In addition, an Annual Applicant Public Benefits and On-going Compliance Self-Certification (Self Certification) form must be submitted by the Applicant online every year until the Certificate of Completion has been submitted to the Applicant. After the completion of the project has been reported, the Self Certification will be required to be submitted March 1st every three years thereafter pursuant to Section 5144 of the CDLAC Regulations. Verification to CDLAC of income and rental information is not required in advance of the submission of the Certificate of Completion. A copy of the Certification of Compliance II and the Certificate of Completion forms may be found at this website location: <http://www.treasurer.ca.gov/cdlac>. Failure to submit Compliance may result in disqualification from future program participation.

Please consult the Committee's Regulations for a full explanation of the use of allocation. Do not hesitate to contact me should you have questions.

Sincerely,



Nancee Robles  
Interim Executive Director

Enclosures

cc: Joyce Slen, City and County of San Francisco  
Ronald E. Lee, Esq., Jones Hall, A Professional Law Corporation  
John Lovell, Mission Housing Development Corporation

**THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**

**RESOLUTION NO. 21-178**

**A RESOLUTION TRANSFERRING A PORTION OF THE 2021 STATE CEILING  
ON QUALIFIED PRIVATE ACTIVITY BONDS AND  
AUTHORIZING THE MAKING OF A CARRYFORWARD ELECTION FOR A  
QUALIFIED RESIDENTIAL RENTAL PROJECT**

**WHEREAS**, the California Debt Limit Allocation Committee ("Committee") has received an application ("Application") from the City and County of San Francisco ("Applicant") for the transfer to the Applicant of a portion of the 2021 State Ceiling on Qualified Private Activity Bonds under Section 146 of the Internal Revenue Code of 1986, as amended, for use by the Applicant to issue bonds or other obligations ("Bonds") for a Project as specifically described in Exhibit A ("Project") (capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Regulations of the Committee implementing the Allocation of the State Ceiling on Qualified Private Activity Bonds); and

**WHEREAS**, the Project Sponsor has represented and the Applicant has confirmed in the Application certain facts and information concerning the Project; and

**WHEREAS**, in evaluating the Project and allocating a portion of the State Ceiling on Qualified Private Activity Bonds to the Applicant for the benefit of the Project, the Committee has relied upon the written facts and information represented in the Application by the Project Sponsor and the Applicant; and

**WHEREAS**, it is appropriate for the Committee to make a transfer of a portion of the 2021 State Ceiling On Qualified Private Activity Bonds ("Allocation") in order to benefit such Project described in the Application; and

**WHEREAS**, the Committee has determined that it is appropriate to authorize the Applicant to make a carryforward Allocation to calendar year 2022 with respect to the Project described in the Application.

**NOW, THEREFORE**, the California Debt Limit Allocation Committee resolves as follows:

**Section 1.** There is hereby transferred to the Applicant authorization to use \$40,776,000 of the 2021 State Ceiling on Qualified Private Activity Bonds for the Project. Such Allocation may be used only by the Applicant and only for the issuance of Bonds for the Project, as specifically described in Exhibit A. All of the terms and conditions of Exhibit A are incorporated herein as though set forth in full (this resolution, together with Exhibit A are hereafter referred to collectively as this "Resolution").

**Section 2.** The terms and conditions of this Resolution shall be incorporated in appropriate documents relating to the Bonds. The Project Sponsor and the Applicant, and all of their respective successors and assignees, will be bound by such terms and conditions. The Applicant shall monitor the Project for compliance with the terms and conditions of this Resolution. In addition, the Project shall be subject to the monitoring provisions of the California Code of Regulations, Title 4, Section 10337(c) and Section 5220 of the Committee's Regulations.

**Section 3.** Any modification to the Project made prior to the issuance of the Bonds that impacts the resolution must be reported to the Executive Director and, if the Executive Director determines such modification to be material in light of the Committee's Regulations, shall require reconsideration by the Committee before the Allocation may be used for the Project. After Bonds are issued, the terms and conditions set forth in this Resolution shall be enforceable by the Committee through an action for specific performance or any other available remedy.

## RESOLUTION NO. 21-178

Page 2 of 3

In addition, after bonds are issued, changes to Items #1, #6, #7, #10 thru #12, #14 thru #16, #18 thru #26, and #37 of the Exhibit A require Committee or Executive Director approval for the term of commitment; changes to item #2, #13, #17, #27, and #39 thru #41 of the Exhibit A cannot be altered; changes to Items #3 thru #5 of the Exhibit A require no Committee or Executive Director approval but any alterations must be reported to CDLAC staff for the affordability period; changes to Items #8 and #9 of the Exhibit A require no CDLAC notification; and changes to Items #28 thru #36 and #38 of the Exhibit A require Committee or Executive Director approval only prior to the Project being Placed in Service by the CA Tax Credit Allocation Committee (TCAC).

**Section 4.** Any material changes in the structure of the bond sale prior to the issuance of the Bonds and not previously approved by the Committee shall require approval of the Committee Chair or the Executive Director.

**Section 5.** The transfer of proceeds from the sale of bonds to a project other than the Project subject to this Resolution is allowable only with the prior approval of the Executive Director in consultation with the Chair, except when the Project is unable to utilize any of its allocation and the Applicant is requesting the transfer of the entire Allocation to different project(s). In such case, prior approval of the Committee must be obtained. Any transfer made pursuant to this Section may only be made to another project of the same issuer that has been previously approved by the Committee.

**Section 6.** The Applicant is authorized to use the Allocation transferred hereby to make a carryforward election with respect to the Project. The Applicant is not authorized to transfer the Carryforward Allocation to any governmental unit in the State.

**Section 7.** If the allocation transferred herein to the Applicant has not issued bonds by the close of business on February 21, 2022, the issuer shall notify CDLAC and carryforward the Allocation to the next approved project to be awarded a bond allocation in accordance with § 5133 of the CDLAC Regulations.

**Section 8.** Prior to being submitted to the IRS, draft Carryforward Elections must be emailed to CDLAC at [cdlac@treasurer.ca.gov](mailto:cdlac@treasurer.ca.gov) no later than February 1, 2022 for CDLAC approval of election amounts.

**Section 9.** Within twenty-four (24) hours of using the Allocation to issue Qualified Private Activity Bonds, the Applicant shall notify the Committee at [CDLAC@treasurer.ca.gov](mailto:CDLAC@treasurer.ca.gov) that the Allocation has been used. This notice shall identify the Applicant, the Project or Program, the date the Allocation was used and the amount of Allocation used.

**Section 10.** Within fifteen (15) calendar days of the Bond closing, the Applicant or its counsel shall formally transmit to the Committee information regarding the issuance of the Bonds by submitting a completed Report of Action Taken in a template prescribed by and made available by the Committee.

**Section 11.** Any differences between the amount of Bonds issued and the amount of the Allocation granted in Section 1 of this Resolution shall be retained by the Applicant for the period allowed by Section 146(f)(3)(A) of the Internal Revenue Code regarding carryforward elections. Use of any Carryforward Allocation shall be in accordance with Section 5132 of the Committee's Regulations regarding carryforward elections.

**Section 12.** The staff of the Committee is authorized and directed to transmit a copy of this Resolution to the Applicant together with a request that the Applicant retain a copy of this Resolution in the Applicant's official records for the term of the Bonds under this Allocation or the term of the income and rental restrictions whichever is longer. The Committee staff is further directed to retain a copy of this Resolution in the files of the Committee (or any successor thereto) for the same period of time.

## RESOLUTION NO. 21-178

Page 3 of 3

**Section 13.** In consideration of the Allocation transferred to the Applicant and the Project Sponsor, the Applicant and the Project Sponsor shall comply with all of the terms and conditions contained in this Resolution and ensure that these terms and conditions are included in the documents related to the Bonds. Furthermore, the Applicant and the Project Sponsor expressly agree that the terms and conditions of this Resolution may be enforced by the Committee through an action for specific performance or any other available remedy, provided however, that the Committee agrees not to take such action or enforce any such remedy that would be materially adverse to the interests of Bondholders. In addition, the Applicant and the Project Sponsor shall ensure that the Bond documents, as appropriate, expressly provide that the Committee is a third party beneficiary of the terms and conditions set forth in this Resolution.

**Section 14.** The Certification of Compliance II document is to be submitted by the Project Sponsor to the Applicant by the Applicant's specified deadline, but no later than March 1st annually until the project's Certificate of Completion has been submitted by the Project Sponsor to the Applicant. An Annual Applicant Public Benefits and On-going Compliance Self-Certification must be submitted by the Applicant to CDLAC online every year until the Certificate of Completion document has been submitted by the Project Sponsor to the Applicant. Following the submission of the Certificate of Completion to the Applicant, the Certification of Compliance II is to be submitted by the Project Sponsor to the Applicant no later than March 1st, and no later than March 1st every three years thereafter pursuant to Section 5144 of the CDLAC Regulations. Verification to CDLAC of income and rental information is not required in advance of the submission of the Certificate of Completion. A copy of the Certification of Compliance II template may be found at this website location: <http://www.treasurer.ca.gov/cdlac/forms.asp>. Failure to submit compliance may result in disqualification from future program participation.

**Section 15.** The applicant may return the allocation to the Committee without assessment of negative points or forfeiture of the performance deposit if the formal written notification is received by the Committee no later than November 27, 2021 for this project.

**Section 16.** This Resolution shall take effect immediately upon its adoption.

\* \* \*

### **CERTIFICATION**

I, Nancee Robles, Interim Executive Director of the California Debt Limit Allocation Committee, hereby certify that the above is a full, true, and correct copy of the Resolution adopted at a meeting of the Committee held in the Jesse Unruh 915 Capitol Mall, Sacramento, California 95814, on August 11, 2021 with the following votes recorded:

AYES: State Treasurer Fiona Ma, CPA  
Teresa Calvert for Governor Gavin Newsom  
Anthony Sertich for State Controller Betty T. Yee

NOES: None  
ABSTENTIONS: None  
ABSENCES: None

  
\_\_\_\_\_  
Nancee Robles, Interim Executive Director

Date: August 11, 2021



**RESOLUTION NO. 21-178**

**QUALIFIED RESIDENTIAL RENTAL PROJECT**

**EXHIBIT A**

- |    |                                                 |                                                                                                                      |
|----|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| 1. | Applicant:                                      | City and County of San Francisco                                                                                     |
| 2. | Application No.:                                | 21-588                                                                                                               |
| 3. | Project Sponsor:                                | To-Be-Formed Limited Partnership (Mission Housing Development Corporation) (Mission Housing Development Corporation) |
| 4. | Property Management Co.:                        | Caritas Management Corporation                                                                                       |
| 5. | Project Name:                                   | SFHA Scattered Sites                                                                                                 |
| 6. | Location:                                       | San Francisco, CA                                                                                                    |
| 7. | Private Placement Purchaser:<br>Cash Flow Bond: | <b>Boston Private Bank</b><br><b>Not Applicable</b>                                                                  |

All units identified in the CDLAC resolution, including both the Federally Bond-Restricted Units and the Other Restricted Units, will be incorporated into the Bond Regulatory Agreement. Assumptions to be included in the Bond Regulatory Agreement regarding the Other Restricted Units will include the AMI as outlined in the CDLAC resolution, a limitation that tenants pay no more than 30% of their income and 1.5 persons per bedroom occupancy standard to determine the applicable rent.

**Applicable**

- |    |                                              |                                                |
|----|----------------------------------------------|------------------------------------------------|
| 8. | Public Sale:<br>Credit Enhancement Provider: | <b>Not Applicable</b><br><b>Not Applicable</b> |
|----|----------------------------------------------|------------------------------------------------|
9. Total Number of Units:           **66** plus    **3** unrestricted manager unit(s)
10. Total Number of Restricted Rental Units:           **66**
11. The term of the income and rental restrictions for the Project will be at least 55 years from the date 50% occupancy is achieved or when the project is otherwise placed in service.
12. The Regulatory Agreement shall not terminate prior to the end of the CDLAC Resolution affordability term in the event of foreclosure, exercise of power of sale, and/or transfer of title by deed in lieu of foreclosure in connection with a deed of trust directly or indirectly securing the repayment of Cash Flow Permanent Bonds.
13. The Project will utilize Gross Rents as defined in Section 5170 of the Committee's Regulations.  
**Applicable**

## RESOLUTION NO. 21-178

### Exhibit A

Page 2 of 5

#### 14. Income and Rental Restrictions

##### a. Federally Bond-Restricted Set-aside:

At least 40% of the total units will be restricted at 60% of the Area Median Income.

##### b. Other Restricted Units

For the entire term of the income and rental restrictions, the Project will have:

At least **64** Qualified Residential units rented or held vacant for rental for persons or families whose income is at or below 50% of the Area Median Income.

At least **2** Qualified Residential units rented or held vacant for rental for persons or families whose income is at 60% of the Area Median Income.

#### 15. Units restricted to households with incomes no greater than **50%** of the Area Median Income in accordance with Section 5191(a) will be distributed as follows:

##### **Not Applicable: Preservation Project**

Studios:	<b>0</b>
One-bedroom:	<b>0</b>
Two-bedroom:	<b>0</b>
Three-bedroom:	<b>0</b>
Four-bedroom:	<b>0</b>
Five-bedroom	<b>0</b>

#### 16. New Construction Pool Set-aside Requirements.

Homeless Set-aside: at least 25% of the Tax Credit Units are designated for homeless households as defined by TCAC Regulation Section 10315(b)(1) with affordable rents consistent with Section 10325(g)(3).

##### **Not Applicable**

Homeless Set-aside Priority: 100% of the Tax Credit Units are designated for homeless households as defined by TCAC Regulation Section 10315(b)(1) with affordable rents consistent with Section 10325(g)(3).

##### **Not Applicable**

Extremely Low Income/Very Low Income (ELI/VLI) Set-aside. The rent and income targeting restrictions must have an average of 50% area median income (AMI) or below.

##### **Not Applicable**

Mixed Income Set-aside. A Mixed Income Project is a New Construction Qualified Residential Rental Project which either (1) is not utilizing the Average Income test of Internal Revenue Code Section 42 (g)(1)(C) and which has 50% or fewer of its total units designated as Restricted Rental Units or; (2) is part of the California Housing Finance Agency Mixed-Income Program. In a Competitive Application Process, a Mixed Income Project may only apply for an allocation of tax-exempt bonds if the ratio of tax-exempt bonds, not including recycled bonds, to aggregate depreciable basis plus land basis is less than or equal to the ratio of units that will be restricted pursuant to a CTCAC regulatory agreement.

##### **Not Applicable**

#### 17. Minimum construction standards pursuant to CDLAC Regulation Section 5205 and Sections 10325(f)(7)(A) through (J) of the TCAC Regulations will be incorporated into the project design for all new construction and rehabilitation projects.

##### **Applicable**

## RESOLUTION NO. 21-178

### Exhibit A

Page 3 of 5

18. For all acquisition and rehabilitation projects, a minimum of \$15,000 in hard construction costs will be expended for each unit.  
**Applicable**
19. Other Rehabilitation Pool Requirements. The Project will comply with the requirement to complete rehabilitation work at a minimum of \$60,000 in hard construction cost per unit as defined in TCAC Regulation Section 10302(u), subject to the provisions of Internal Revenue Code Section 42(e)(3)(A)(ii)(I), expended only on immediate health and safety improvements, seismic and accessibility improvements and/or the replacement of major systems with a remaining useful life of less than ten years pursuant to CDLAC Regulation Section 5170.  
**Not Applicable**
20. The Project will comply with the Preservation and Other Rehabilitation Project Priorities of Section 5230(b). At a minimum, the Project must continue to meet the criteria sufficient to retain 20 points.  
**Applicable**
21. The Project will comply with the New Construction Density and Local Incentives of Section 5230(c). At a minimum, the Project must continue to meet the criteria sufficient to retain 0 points.  
**Not Applicable**
22. The Project will comply with the Exceeding Minimum Income Restrictions of Section 5230(d). At a minimum, the Project must continue to meet the criteria sufficient to retain 20 points.  
**Applicable**
23. The Project will comply with the Exceeding Minimum Rent Restrictions of Section 5230(e). At a minimum, the Project must continue to meet the criteria sufficient to retain 10 points.  
**Applicable**
24. The Project will comply with the General Partner Experience requirements of Section 5230(f)(1). At a minimum, the Project must continue to meet the criteria sufficient to retain 7 points.  
**Applicable**
25. The Project will comply with the Management Company Experience requirements of Section 5230(f)(2). At a minimum, the Project must continue to meet the criteria sufficient to retain 3 points.  
**Applicable**
26. The Project will comply with the New Construction Housing Type requirement of Section 5230(g). At a minimum, the Project must continue to meet the criteria sufficient to retain 0 points as a Non-Targeted housing type.  
**Not Applicable**
27. The Project will comply with the Leveraged Soft Resources requirements of Section 5230(h). At a minimum, the Project must continue to meet the criteria sufficient to retain 8 points.  
**Applicable**
28. The Project will comply with the Readiness to Proceed requirements of Sections 5152 and 5230(i). At a minimum, the Project must continue to meet the criteria sufficient to retain 10 points.  
**Applicable**

## RESOLUTION NO. 21-178

### Exhibit A

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29. The Project will comply with the Affirmatively Furthering Fair Housing requirements of Section 5230(j)(1)(A). At a minimum, the Project must continue to meet the criteria sufficient to retain 9 points.

**Applicable**

30. The Project will comply with the Affirmatively Furthering Fair Housing Site Amenity requirements of Section 5230(j)(1). At a minimum, the Project must continue to meet the criteria sufficient to retain 10 points.

**Applicable**

31. For a period of fifteen (15) years after the Project is placed in use, the Project will provide residents high speed internet service in each Project unit free of charge.

**Not Applicable**

- 32a. For a period of fifteen (15) years after the Project is placed in use, the Project will provide residents a Service Coordinator. Service Coordinator responsibilities must include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or other enrichment activities for tenants (such as holiday events, tenant council, etc.).

**Applicable**

**Hours per Year: 507**

- 32b. For a period of fifteen (15) years after the Project is placed in use, the Project will provide residents Health and Wellness Services and Programs. Such services and programs shall provide individualized support to tenants (not group classes) and need not be provided by licensed individuals or organizations. This includes, but is not limited to visiting nurses programs, intergenerational visiting programs, or senior companion programs. The application must describe in detail the services to be provided.

**Applicable**

**Hours per Year: 146**

- 33a. Special Needs projects:  
Additional Service Amenity Requirements.

**Not Applicable**

**Hours per Year: 0**

34. The Project will comply with the Cost Containment requirements of Section 5230(l). At a minimum, the Project must continue to meet the criteria sufficient to retain 0 points.

**Not Applicable**

35. As specified in Section 5144(b) of the Committee's Regulations, sponsors will be required to utilize TCAC's Compliance Manual specifically Section VI: Qualify Tenants for Low Income Housing Tax Credit Units, to verify tenant income in conjunction with initial occupancy. No less than every three (3) years after the project is completed, the Sponsor must collect and retain the following income and verification documentation related to all the Federally Bond-Restricted units identified in the Committee Resolution: TCAC Tax Income Calculation (TIC) or equivalent documentation, all associated source income documentation, evidence of the verifying income computation and unit lease.

**Applicable**

**RESOLUTION NO. 21-178**

**Exhibit A**

Page 5 of 5

36. As specified in Section 5144(c) of the Committee's Regulations, compliance with the income and rental requirements of the Federally Bond-Restricted Units identified in the Committee Resolution and the Bond Regulatory Agreement must be demonstrated by the Applicants initial review of 20% of all management files associated with the Federally Bond-Restricted units and subsequent review every three years of 20% of all management files associated with the Federally Bond-Restricted units.

**Applicable**

37. As specified in Section 5144(d) of the Committee's Regulations, applicants are required to ensure an onsite inspection as well as an on-site review of the 20% Federally Bond-Restricted units is performed every 3 years after the Qualified Project Period has commenced.

The following entity will conduct the site and file inspections:

**Not Applicable**

STATE OF CALIFORNIA  
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE  
ACCOUNTING SERVICES  
915 Capitol Mall, Room 311  
Sacramento, CA 95814  
(916) 653-3255

**FILING FEE INVOICE**

**PAYMENT IS DUE WITHIN 30 DAYS OF BOND CLOSING**

Date: August 11, 2021

Invoice No.: 21-178

Application No.: 21-588

Analyst Initials: NV

To: Joyce Slen  
Project Manager  
City and County of San Francisco  
1 South Van Ness Ave, 5th Floor  
San Francisco, CA 94103

---

***2nd Installment of fee levied pursuant to Section 8869.90 of the California Government Code:***

NAME OF ISSUER: City and County of San Francisco

NAME OF PROJECT: SFHA Scattered Sites

ALLOCATION AWARD DATE: August 11, 2021

ALLOCATION AWARD AMOUNT: \$40,776,000

<u>AMOUNT DUE:</u>	Allocation award x .00035	=	\$	14,271.60
	Less initial application fee	=	-\$	1,200.00
	<b>Amount Due</b>	=	<b>\$</b>	<b>13,071.60</b>

**Issuer or bond trustee to complete the following (please use ink):**

BOND ISSUANCE DATE:

PRINCIPAL AMOUNT OF BOND ISSUE: \$

AMOUNT OF BOND ALLOCATION USED: \$

The application fee is based on the amount of allocation used to issue bonds. Please complete the following ***only if*** the amount of allocation used is less than the amount of allocation awarded, and remit the ***revised*** amount due.

<u>REVISED AMOUNT DUE:</u>	Amount issued x .00035	=	\$	
	Less initial application fee	=	-\$	1,200.00
	<b>Revised Amount Due</b>	=	<b>\$</b>	

**PLEASE WRITE APPLICATION NUMBER ON YOUR CHECK, OR  
RETURN A COPY OF THIS INVOICE WITH YOUR PAYMENT.**

**From:** [Conine-Nakano, Susanna \(MYR\)](#)  
**To:** [BOS Legislation, \(BOS\)](#); [ROUX, KENNETH \(CAT\)](#)  
**Cc:** [Paulino, Tom \(MYR\)](#); [Ely, Lydia \(MYR\)](#); [Nickolopoulos, Sheila \(MYR\)](#)  
**Subject:** Mayor -- Resolution -- Scattered Sites Project Bond Issuance  
**Date:** Tuesday, January 4, 2022 4:11:17 PM  
**Attachments:** [Mayor--Resolution--Scattered Sites Project Bond Issuance.zip](#)

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Hello Clerks,

Attached for introduction to the Board of Supervisors is a Resolution authorizing the issuance and delivery of multifamily housing revenue bonds (tax-exempt) in an aggregate principal amount not to exceed \$40,776,000 and multifamily housing revenue bonds (taxable) in an aggregate principal amount not to exceed \$10,000,000 for the purpose of providing financing for the acquisition and rehabilitation of a 69-unit, affordable multifamily rental housing project known as "SFHA Scattered Sites" within the City; approving the form of and authorizing the execution of an indenture of trust providing the terms and conditions of the bonds; approving the form of and authorizing the execution of one or more regulatory agreements and declarations of restrictive covenants; approving the form of and authorizing the execution of one or more loan agreements providing the terms and conditions of the loan from the City to the borrower; approving the form of and authorizing the execution of an assignment of deed of trust documents; authorizing the collection of certain fees; approving modifications, changes and additions to the documents; ratifying and approving any action heretofore taken in connection with the bonds and the project; granting general authority to City officials to take actions necessary to implement this Resolution; and related matters.

[@ROUX, KENNETH \(CAT\)](#), can you please reply-all to confirm your approval?

Please let me know if you have any questions. Thank you.

Sincerely,  
Susanna

Susanna Conine-Nakano  
Office of Mayor London N. Breed  
City & County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 200  
San Francisco, CA 94102  
415-554-6147