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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="706 191 1190 226">[Applicable. [Insert Authority Reference]]</div> <div data-bbox="706 258 789 294">[None]</div>
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