

File No. 171162

Committee Item No. 3

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

**COMMITTEE/BOARD OF SUPERVISORS**  
AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date November 9, 2017

Board of Supervisors Meeting

Date \_\_\_\_\_

**Cmte Board**

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| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
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Completed by: Linda Wong Date November 3, 2017

Completed by: Linda Wong Date \_\_\_\_\_

1 [Multifamily Housing Revenue Bonds - 1150-3rd Street Apartments (also known as Mission  
2 Bay South Block 3 East) - Not to Exceed \$51,000,000]

3 **Resolution authorizing the issuance, sale and delivery of multifamily housing revenue**  
4 **bonds in an aggregate principal amount not to exceed \$51,000,000 for the purpose of**  
5 **providing financing for the construction of a 119-unit multifamily rental housing project**  
6 **known as 1150-3rd Street Apartments; approving the form of and authorizing the**  
7 **execution of an indenture of trust providing the terms and conditions of the bonds;**  
8 **approving the form of and authorizing the execution of a regulatory agreement and**  
9 **declaration of restrictive covenants; approving the form of and authorizing the**  
10 **execution of a loan agreement; authorizing the collection of certain fees; approving**  
11 **modifications, changes and additions to the documents; ratifying and approving any**  
12 **action heretofore taken in connection with the bonds and the project; and granting**  
13 **general authority to City officials to take actions necessary to implement this**  
14 **Resolution, and related matters, as defined herein.**

15  
16  
17 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
18 "Board") desires to provide for a portion of the costs of the construction by MB3E, L.P., a  
19 California limited partnership (the "Borrower"), of a 119-unit (including one manager's unit)  
20 residential rental development located at 1150 3rd Street, San Francisco, California 94158,  
21 known as "1150 3rd Street Apartments" (also known as Mission Bay South Block 3 East) (the  
22 "Project"), to provide housing for persons and families of very low income through the  
23 issuance of multifamily housing revenue bonds; and

24 WHEREAS, The City and County of San Francisco (the "City") is authorized to issue  
25 revenue bonds for such purpose pursuant to the Charter of the City, Article I of Chapter 43 of

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

5 WHEREAS, On July 19, 2017, the California Debt Limit Allocation Committee in its  
6 Resolution No. 17-69 allocated \$51,000,000 in qualified private activity bonds to the Project  
7 (the "CDLAC Resolution"); and

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

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

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

17 WHEREAS, The Bonds will be a limited obligation of the City, the sole source of  
18 repayment of which shall be payments made by the Borrower under the Loan Agreement  
19 (hereinafter defined), together with investment income of certain funds and accounts held  
20 under the Indenture (hereinafter defined); and

21 WHEREAS, The City has engaged Stradling Yocca Carlson & Rauth, P.C. and Amira  
22 Jackmon, Attorney at Law, as co-bond counsel with respect to the Bonds ("Co-Bond  
23 Counsel"); and

24 WHEREAS, Wells Fargo Bank, National Association, has expressed its intention to  
25 purchase, or cause an affiliate to purchase, the Bonds authorized hereby; now, therefore, be it

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

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

5 Section 2. In accordance with the Act and the Indenture (hereinafter defined), the City  
6 is hereby authorized to issue and deliver revenue bonds of the City, such bonds to be issued  
7 in one or more series and subseries, and designated as "City and County of San Francisco  
8 Multifamily Housing Revenue Bonds (1150 3rd Street Apartments), Series 2017F," or such  
9 other designation as may be necessary or appropriate to distinguish such series from every  
10 other series of bonds, in an aggregate principal amount not to exceed \$51,000,000 (the  
11 "Bonds"), with a fixed and/or variable interest rate not to exceed twelve percent (12%) per  
12 annum for the Bonds, and which shall have a final maturity date not later than forty (40) years  
13 from the date of issuance of the Bonds. The Bonds shall be in the form set forth in and  
14 otherwise in accordance with the Indenture and shall be executed by the manual or facsimile  
15 signature of the Mayor of the City (the "Mayor").

16 Section 3. The Indenture of Trust (the "Indenture") in the form presented to the Board,  
17 a copy of which is on file with the Clerk of the Board, is hereby approved. The Indenture shall  
18 be entered into by and between the City and a trust company, a state banking corporation or a  
19 national banking association with the authority to accept trusts in the State of California  
20 selected by the Director of the Mayor's Office of Housing and Community Development (the  
21 "Director") and otherwise meeting the requirements of the Indenture (the "Trustee"). Each of  
22 the Mayor, the Director of the Mayor's Office of Housing and Community Development and  
23 the Housing Development Director of the Mayor's Office of Housing and Community  
24 Development (collectively, the "Authorized Representatives" and each, an "Authorized  
25 Representative"), or a designee thereof, is hereby authorized to execute the Indenture,

1 approved as to form by the City Attorney of the City (the "City Attorney"), in substantially said  
2 form, together with such additions thereto and changes therein as the City Attorney and Co-  
3 Bond Counsel may approve or recommend in accordance with Section 7 hereof.

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

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

17 Section 6. The City, acting through the Mayor's Office of Housing and Community  
18 Development, shall charge a fee for the administrative costs associated with issuing the  
19 Bonds in an amount not to exceed 0.25% of the aggregate principal amount of the Bonds.  
20 Such fee shall be payable at bond closing and may be contingent on the bond sale. The City  
21 shall also charge an annual fee for monitoring the restricted units in an amount not to exceed  
22 0.125% of the outstanding aggregate principal amount of the Bonds, but no less than \$2,500  
23 annually, for the term of the Regulatory Agreement. The initial monitoring fee shall be  
24 payable at and contingent upon bond closing. The Board hereby authorizes the Mayor's  
25

1 Office of Housing and Community Development to charge and collect the fees described in  
2 this section.

3 Section 7. Any Authorized Representative, or designee thereof, executing the  
4 Indenture, the Regulatory Agreement or the Loan Agreement (collectively, the "City  
5 Agreements"), in consultation with the City Attorney and Co-Bond Counsel, is hereby  
6 authorized to approve and make such modifications, changes or additions to the City  
7 Agreements as may be necessary or advisable, provided that such modification does not  
8 authorize an aggregate principal amount of Bonds in excess of \$51,000,000, provide for a  
9 final maturity on the Bonds later than forty (40) years, or provide for the Bonds to bear interest  
10 at a rate in excess of twelve percent (12%) per annum. The approval of any modification,  
11 addition or change to any of the aforementioned documents shall be evidenced conclusively  
12 by the execution and delivery of the document in question.

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

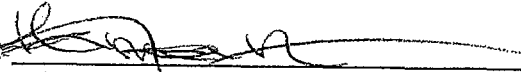
15 Section 9. The proper officers of the City are hereby authorized and directed, for and  
16 in the name and on behalf of the City, to do any and all things and take any and all actions  
17 and execute and deliver any and all certificates, agreements and other documents, including  
18 but not limited to those documents described in the Indenture, the Loan Agreement, and the  
19 Regulatory Agreement, which they, or any of them, may deem necessary or advisable in order  
20 to consummate the lawful issuance and delivery of the Bonds and to effectuate the purposes  
21 thereof and of the documents herein approved in accordance with this Resolution. Any such  
22 actions are solely intended to further the purposes of this Resolution, and are subject in all  
23 respects to the terms of the Resolution. No such actions shall increase the risk to the City or  
24 require the City to spend any resources not otherwise granted herein. Final versions of such  
25

1 documents shall be provided to the Clerk of the Board for inclusion in the official file within 30  
2 days of execution by all parties.

3 Section 10. All documents referenced herein as being on file with the Clerk of the  
4 Board are located in File No. 171162, which is hereby declared to be a part of this  
5 Resolution as if set forth fully herein.

6 Section 11. This Resolution shall take effect from and after its adoption by the Board  
7 and approval by the Mayor.

8  
9 APPROVED AS TO FORM:  
10 DENNIS J. HERRERA  
11 City Attorney

12 By:   
13 HEIDI J. GEWERTZ  
14 Deputy City Attorney  
15 n:\financ\as2017\1800102\01230358.docx

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**INDENTURE OF TRUST**

**by and between the**

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

**and**

**[ ]  
as Trustee**

**dated as of December 1, 2017**

**relating to:**

**§ \_\_\_\_\_  
City and County of San Francisco, California  
Multifamily Housing Revenue Bonds  
(1150 3rd Street Apartments), Series 2017F**

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## INDENTURE OF TRUST

This INDENTURE OF TRUST, dated as of December 1, 2017 (this "Indenture"), is by and between the City and County of San Francisco, a municipal corporation duly organized and existing pursuant to its charter and the laws and constitution of the State of California (herein called the "City"), and [\_\_\_\_\_], a national banking association organized and existing under the laws of the United States of America, as Trustee hereunder (herein called the "Trustee").

### *RECITALS:*

**WHEREAS**, pursuant to Sections 1.101 and 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"), the City proposes to issue its City and County of San Francisco, California Multifamily Housing Revenue Bonds (1150 3rd Street Apartments), Series 2017F (the "Bonds"); and

**WHEREAS**, the proceeds of the Bonds will be used to fund a loan to MB3E, L.P., a California limited partnership (the "Borrower") pursuant to the Loan Agreement, dated as of December 1, 2017 (the "Loan Agreement"), between the City and the Borrower, and as provided in the Construction and Permanent Funding Agreement, dated as of December 1, 2017 (the "Construction and Permanent Funding Agreement"), between the Borrower and the owner of the Bonds, all in order to provide financing for a portion of the cost of the acquisition, construction, and equipping of a mixed-used, multifamily residential rental and commercial project known as "1150 3rd Street Apartments," consisting of 119 housing units (which includes one unrestricted manager's unit), to be located at 1150 3rd Street in the City (the "Project"); and

**WHEREAS**, in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof and of the interest and premium, if any, thereon, the City has authorized the execution and delivery of this Indenture; and

**WHEREAS**, all conditions, things and acts required by the Act, and by all other laws of the State of California, to exist, have happened and have been performed in satisfaction of conditions precedent to and in connection with the issuance of the Bonds exist, have happened, and have been performed in due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to issue the Bonds for the purpose, in the manner and upon the terms herein provided; and

**WHEREAS**, all acts and proceedings required by law necessary to make the Bonds, when executed by the City, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal limited obligations of the City, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth, in accordance with its terms, have been done and taken; and the execution and delivery of this Indenture have been in all respects duly authorized.

### *AGREEMENT:*

**NOW, THEREFORE, THIS INDENTURE WITNESSETH**, that in order to secure the payment of the principal of, and the interest and premium, if any, on, all Bonds at any time issued

and Outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and for and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the owners thereof, and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the City covenants and agrees with the Trustee, for the equal and proportionate benefit of the respective registered owner or owners from time to time of the Bonds, as follows:

## ARTICLE I

### DEFINITIONS AND GENERAL PROVISIONS

**Section 1.01 Definitions.** Unless the context otherwise requires, the terms defined in this Section 1.01 shall, for all purposes of this Indenture and of any indenture supplemental hereto or agreement supplemental thereto, have the meanings herein specified, as follows:

The term “Act” shall mean, collectively, Sections 1.101 and 9.107 of the Charter of the City, Article I of Chapter 43 of the San Francisco Administrative Code of the City and County of San Francisco, and, to the extent applicable, Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the California Health and Safety Code.

The term “Administrator” shall mean the City, or any substitute or replacement administrator appointed by the City as agent of the City in the administration of the Regulatory Agreement.

The term “Agreement” or “Loan Agreement” shall mean the Loan Agreement, dated as of December 1, 2017, between the City and the Borrower, pursuant to which the City agrees to lend the proceeds of the Bonds to the Borrower, as originally executed or as it may from time to time be supplemented or amended in accordance with its terms.

The term “Authorized Amount” shall mean \$ \_\_\_\_\_, the authorized maximum principal amount of the Bonds.

The term “Authorized Borrower Representative” shall mean any person who at the time and from time to time may be designated as such, by written certificate furnished to the City, the Bondowner and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by any officer of the manager of the general partner of the Borrower, as applicable, which certificate may designate an alternate or alternates.

The term “Authorized City Representative” shall mean the Mayor of the City, the Director or the Deputy Director of the Mayor’s Office of Housing and Community Development, or any other person designated to act in such capacity by a Certificate of the City containing the specimen signature of any of such persons which certificate may designate an alternate or alternates.

The term “Bond Counsel” shall mean any attorney at law or other firm of attorneys selected by the City, of nationally recognized standing in matters pertaining to the federal tax status of interest on bonds issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America, but shall not include counsel for the Borrower.

The term "Bond Fund" shall mean the fund by that name established pursuant to Section 5.02 hereof.

The term "Bonds" shall mean the City and County of San Francisco, California Multifamily Housing Revenue Bonds (1150 3rd Street Apartments), Series 2017F issued and Outstanding hereunder.

The term "Bondowner," "Holder," "holder," "Bondholder," "Owner of the Bonds," or "owner of the Bonds" shall mean the person in whose name the Bonds are registered in the Bond register maintained by the Trustee under Section 2.06.

The term "Bond Purchase Agreement" shall mean the Bond Purchase Agreement dated as of December 1, 2017, among the Borrower, the Bondowner and California Community Reinvestment Corporation, pursuant to which and subject to the terms and conditions therein, California Community Reinvestment Corporation has agreed to purchase up to \$\_\_\_\_\_ principal amount of the Bonds upon Conversion (as defined in the Construction and Permanent Funding Agreement).

The term "Borrower" shall mean MB3E, L.P., a California limited partnership, and its successors and assigns under the provisions of Section 6.2 of the Loan Agreement and under the applicable provisions of the Construction and Permanent Funding Agreement.

The term "Business Day" means a day of the week (but not a Saturday, Sunday, or holiday) on which the offices of Trustee are open to the public for carrying on substantially all of Trustee's business functions.

The term "CCRC" means (a) California Community Reinvestment Corporation or (b) one of the following entities, pursuant to an assignment by California Community Reinvestment Corporation of its rights under the Bond Purchase Agreement: (1) Fannie Mae or Freddie Mac, (2) a member bank of California Community Reinvestment Corporation or (3) a fund established and managed by California Community Reinvestment Corporation (or by a single member limited liability company in which California Community Reinvestment Corporation is the sole member) and in which all of the investors in such fund are banks, insurance companies or other financial institutions (or affiliates of such entities) and each of which is a Sophisticated Investor with net assets of not less than \$5 billion.

The term "Certificate of the City" shall mean a certificate of the City signed by an Authorized City Representative.

The term "Certified Resolution" shall mean a copy of a resolution of the City, certified by the Clerk of the Board of Supervisors of the City, to have been duly adopted by the City and to be in full force and effect on the date of such certification.

The term "City" shall mean the City and County of San Francisco, California, a municipal corporation, duly organized and existing under its charter and the laws and constitution of the State of California, the issuer of the Bonds hereunder, and its successors and assigns.

The term "Closing Date" shall mean December \_\_, 2017, the date of initial delivery of the Bonds and funding of the Initial Disbursement.

The term “Code” or “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, and with respect to a specific section thereof, such reference shall be deemed to include (a) the regulations promulgated by the United States Department of the Treasury under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code, and (d) the regulations promulgated under the provisions described in (b) and (c).

The term “Construction and Permanent Funding Agreement” shall mean the Construction and Permanent Funding Agreement, dated as of December 1, 2017, between the Bondowner and the Borrower, as originally executed or as it may from time to time be supplemented or amended in accordance with its terms.

The term “Construction Fund” shall mean the fund by that name established pursuant to Section 3.03 hereof.

The term “Conversion” shall have the meaning given such term in the Construction and Permanent Funding Agreement.

The term “Conversion Date” means the date on which the registered owner of the Outstanding Bonds becomes CCRC by reason of its purchase of all of the Bonds that remain Outstanding on such date pursuant to the Bond Purchase Agreement.

The term “Debt Service” means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

The term “Deed of Trust” shall mean the Construction and Permanent Leasehold Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, executed by the Borrower in favor of the City, for the purpose of securing the obligations of the Borrower under the Loan Documents, as such deed of trust may be originally executed or as from time to time supplemented or amended.

The term “Default Rate” means the interest rate then in effect on the Bonds plus five percent (5%), not to exceed the maximum rate permitted by law.

The term “Disbursed Amount” means the portion of the Bonds funded and Outstanding from time to time, as indicated on the Bonds and in the records of the Trustee.

The term “Event of Default” as used herein other than with respect to defaults under the Loan Agreement shall have the meaning specified in Section 7.01 hereof, and as used in the Loan Agreement shall have the meaning specified in Section 7.1 thereof.

The term “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 (a) the investment is a certificate of deposit that is acquired in accordance with

applicable regulations under the Code, (b) 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, (c) the investment is a United States Treasury Obligation-State and Local Government Series that is acquired in accordance with applicable regulations of the United States Department of the Treasury, Bureau of Public Debt, or (d) the investment is the Local Agency Investment Fund of the State of California, but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States.

The term “Indenture” shall mean this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any supplemental indenture entered into pursuant to the provisions hereof.

The term “Initial Bondowner” means Wells Fargo Bank, National Association, as the initial registered owner of the Bonds.

The term “Initial Disbursement” means the initial advance of the proceeds of the Bonds on the Closing Date, in the amount specified in a Receipt for Promissory Note and Acknowledgement of Funding of Bonds executed by the Trustee on the Closing Date.

The term “Interest Payment Date” shall mean the first day of each month, commencing [January 1, 2018].

The term “Investment Securities” shall mean any of the following (including any funds comprised of the following, which may be funds maintained or managed by the Trustee and its affiliates), but only to the extent that the same are acquired at Fair Market Value:

- (a) direct and general obligations of the United States of America;
- (b) obligations of any agency or instrumentality of the United States of America the timely payment of the principal of and interest on which are fully unconditionally guaranteed by the full faith and credit of the United States of America;
- (c) senior debt obligations of the Federal Home Loan Mortgage Corporation, a shareholder owned government sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns;
- (d) senior debt obligations of the Federal National Mortgage Association, a shareholder owned government sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns;
- (e) demand deposits or time deposits with, or certificates of deposit issued by, the Trustee or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Trustee or such other institution has been rated at least “VMIG 1”/”A 1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency;



(f) shares or units in any money market mutual fund rated "Aaa"/"AAA" by Moody's or S&P (or if a new rating scale is implemented, the equivalent rating category given by the applicable rating agency (i.e., Moody's or S&P) for that general category of security) (including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax-exempt obligations;

(g) (i) tax exempt obligations rated in the highest short-term rating category by Moody's or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of "Aaa"/"AAA" by Moody's or S&P (or if a new rating scale is implemented, the equivalent rating category given by the applicable rating agency (i.e., Moody's or S&P) for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Trustee or its affiliates receive a fee for investment advisory or other services to the fund;

(h) the Pooled Investment Fund of the City; or

(i) any other investments approved in writing by the Bondowner with the written consent of the City.

For purposes of this definition of "Investment Securities", the "highest rating" shall mean a rating of at least "VMIG 1"/"A 1+" for obligations with less than one year maturity; at least "Aaa"/"VMIG 1"/"AAA"/"A 1+" for obligations with a maturity of one year or greater but less than three years; and at least "Aaa"/"AAA" for obligations with a maturity of three years or greater. Investment Securities must be limited to instruments that have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

The term "Issuance Costs" means all costs and expenses of issuance of the Bonds, including, but not limited to: (a) purchaser's discount and fees; (b) counsel fees, including bond counsel and Borrower's counsel, as well as any other specialized counsel fees incurred in connection with the issuance of the Bonds or the Loan; (c) the City's fees and expenses incurred in connection with the issuance of the Bonds, including fees of any counsel or advisor to the City, and the City administrative fee for processing the request of the Borrower to issue the Bonds; (d) fees of the Bondowner and its counsel; (e) Trustee's fees and Trustee's counsel fees; (f) paying agent's and certifying and authenticating agent's fees related to issuance of the Bonds; (g) accountant's fees related to issuance of the Bonds; (h) publication costs associated with the financing proceedings; and (i) costs of engineering and feasibility studies necessary to the issuance of the Bonds.

The term "Loan" shall mean the loan of the proceeds of the Bonds made by the City to the Borrower pursuant to the Loan Agreement and the Construction and Permanent Funding Agreement for the purpose of financing the construction by the Borrower of the Project.

The term "Loan Agreement" shall mean the Agreement, as defined herein.

The term "Loan Documents" shall have the meaning given such term in the Loan Agreement.

The term "Maturity Date" means \_\_\_\_ 1, 20\_\_.

The term "Moody's" means Moody's Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

The term "Note" means the promissory note evidencing the obligation of the Borrower to repay the Loan, in the form required by the Construction and Permanent Funding Agreement, as amended or supplemented from time to time.

The term "Opinion of Counsel" shall mean a written opinion of counsel, who may be counsel for the City, Bond Counsel, counsel for the Trustee or counsel for the Bondowner.

The term "Outstanding," when used as of any particular time with reference to Bonds, shall, subject to the provisions of Section 11.08(e), mean all Bonds theretofore authenticated and delivered by the Trustee under this Indenture except:

(a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;

(b) Bonds for the payment or redemption of which moneys or securities in the necessary amount (as provided in Section 10.01) shall have theretofore been deposited with the Trustee (whether upon or prior to the maturity or the redemption date of such Bonds); and

(c) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the terms of Section 2.05.

The term "person" shall mean an individual, a limited liability company, a corporation, a partnership, a limited partnership, a limited liability partnership, a trust, an unincorporated organization or a government or any agency or political subdivision thereof.

The term "Principal Office" shall mean the office of the Trustee located at the address set forth in Section 11.06 hereof, or at such other place as the Trustee shall designate by notice given under said Section 11.06.

The term "Principal Payment Date" shall mean any date on which principal of the Loan is due and payable under the Note.

The term "Project" has the meaning set forth in the Recitals.

The term "Project Costs" has the meaning given such term in the Regulatory Agreement.

The term "Qualified Project Costs" shall have the meaning given such term in the Regulatory Agreement.

The term "Record Date" means, with respect to any Interest Payment Date or date for payment of the Bonds upon the redemption thereof, the calendar day of the month immediately

preceding such Interest Payment Date or date of redemption, respectively, whether or not such day is a Business Day.

The term "Redemption Date" shall mean any date designated as a date upon which Bonds are to be redeemed pursuant to this Indenture.

The term "Regulations" means the Income Tax Regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any predecessor statute to the Code.

The term "Regulatory Agreement" shall mean the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, by and between the City and the Borrower, as in effect on the Closing Date and as thereafter amended in accordance with its terms.

The term "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, 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 specifically reserved by the City under Section 5.04 of this Indenture.

The term "Responsible Officer" of the Trustee shall mean any officer of the Trustee assigned to administer its duties hereunder.

The term "Revenues" means all amounts pledged hereunder to the payment of principal of and premium, if any, and interest on the Bonds, consisting of any repayments of the Loan required or permitted to be made by the Borrower pursuant to Section 5.1(a) of the Loan Agreement and the provisions of the Note; but such term shall not include payments to the United States, the City or the Administrator pursuant to Sections 2.3, 2.4, 5.1(d), 5.1(e), 5.1(f), 6.7, 6.14(i) or 7.4 of the Loan Agreement, Sections 6.07 or 8.06 hereof or Sections 2, 8 or 18 of the Regulatory Agreement.

The term "S&P" shall mean S&P Global Ratings, a Standard & Poor's Financial Services LLC business.

The term "Sophisticated Investor" means a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, or an "accredited investor" as defined in Rule 501 promulgated under the Securities Act of 1933, as amended.

The term "supplemental indenture" or "indenture supplemental hereto" shall mean any indenture hereafter duly authorized and entered into between the City and the Trustee in accordance with the provisions of this Indenture.

The term "Tax Certificate" means the Tax Certificate and Agreement, by and among the City, the Borrower and the Trustee, delivered on the Closing Date.

The term “Trustee” means (a) [\_\_\_\_\_], a national banking association organized under the laws of the United States of America, or (b) any successor Trustee under the provisions of Section 8.08 or 8.09 hereof.

The term “Variable Rate” means the rate of interest on the Note, as in effect from time to time, in accordance with the terms of the Note.

The terms “Written Consent,” “Written Demand,” “Written Direction,” “Written Election,” “Written Notice,” “Written Order,” “Written Request” and “Written Requisition” of the City or the Borrower shall mean, respectively, a written consent, demand, direction, election, notice, order, request or requisition signed on behalf of the City by an Authorized City Representative, or on behalf of the Borrower by an Authorized Borrower Representative.

#### **Section 1.02 Rules of Construction.**

(a) The singular form of any word used herein, including the terms defined in Section 1.01, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders.

(b) All references herein to “Articles,” “Sections” and other subdivisions hereof are to the corresponding Articles, Sections or subdivisions of this Indenture as originally executed; and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Indenture.

## **ARTICLE II**

### **THE BONDS**

**Section 2.01 Authorization.** There are hereby authorized to be issued bonds of the City designated as “City and County of San Francisco, California Multifamily Housing Revenue Bonds (1150 3rd Street Apartments), Series 2017F” in the aggregate principal amount of up to the Authorized Amount subject to funding over time, as provided herein. No Bonds may be issued hereunder except in accordance with this Article II. The maximum aggregate principal amount of Bonds which may be issued and Outstanding under this Indenture shall not exceed the Authorized Amount.

**Section 2.02 Terms of Bonds.** The Bonds shall be substantially in the form set forth in Exhibit A hereto with necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture, including any supplemental indenture.

The Bonds shall be issuable only as fully registered Bonds, without coupons, in the form of a single Bond in the principal amount equal to the aggregate of the purchase price of the Bonds advanced from time to time by the owners of the Bonds (which principal amount shall be, on the Closing Date, equal to the amount of the Initial Disbursement). The Bonds shall be dated the Closing

Date, shall mature on the Maturity Date, and shall be subject to redemption prior to maturity as provided in Article IV.

The Bonds shall bear interest at the same rate of interest as that of the Note. In furtherance of the foregoing, prior to the Conversion Date, the Bonds shall bear interest at the same rate as the Note which rate will be as described in, and determined under the conditions of and in accordance with Section A.2.2 of the Note. After the Conversion Date, the Bonds shall bear interest at the same rate as the Note which rate will be as described in, and determined under the conditions of and in accordance with Section B.1.2 of the Note. Notwithstanding the foregoing, upon the occurrence of an Event of Default hereunder or under the Loan Agreement, or the occurrence of an event of default under any of the other Loan Documents, the Bonds shall bear interest at the Default Rate. Interest on the Bonds shall be computed on the basis of a 360-day year and actual days elapsed prior to the Conversion Date, and a 360-day year consisting of twelve 30-day months on and after the Conversion Date.

The Bonds shall bear interest from the date to which interest has been paid on the Bonds next preceding the date of its authentication, unless it is authenticated as of an Interest Payment Date for which interest has been paid, in which event it shall bear interest from such Interest Payment Date, or unless it is authenticated on or before the first Interest Payment Date, in which event it shall bear interest from the Closing Date.

**Section 2.03 Payment of Bonds.** Payment of the principal of and interest on any Bond shall be made in lawful money of the United States to the person appearing on the Bond registration books of the Trustee as the registered owner thereof on the Record Date immediately preceding such Interest Payment Date or other date for payment of the Bonds upon the redemption thereof, such principal and interest to be paid by check mailed on the Interest Payment Date by first class mail, postage prepaid, to the registered owner at its address as it appears on such registration books, except that the Trustee may, at the request of any registered owner of Bonds, make payments of principal and interest on such Bonds by wire transfer to the account within the United States designated by such owner to the Trustee in writing, any such designation to remain in effect until withdrawn in writing.

**Section 2.04 Execution of Bonds.** The Bonds shall be signed in the name and on behalf of the City with the manual or facsimile signature of its Mayor. The Bonds shall then be delivered to the Trustee for authentication by the Trustee. In case any officer who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the City, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issuance, shall be as binding upon the City as though the officer(s) who signed the same had continued to be such officer(s) of the City. Also, any Bond may be signed on behalf of the City by such person(s) as on the actual date of the execution of such Bond shall be the proper officer(s) although on the nominal date of such Bond any such person shall not have been such officer.

Only such of the Bonds as shall bear thereon a certificate of authentication in the form set forth in Exhibit A, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

## **Section 2.05 Transfer of Bonds.**

(a) Any Bond may, in accordance with the terms of this Indenture but in any event subject to the provisions of Section 2.05(b) hereof, be transferred upon the books of the Trustee required to be kept pursuant to the provisions of Section 2.06, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Principal Office of the Trustee, accompanied by a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Bond shall be surrendered for transfer, the City shall execute and the Trustee shall authenticate and deliver a new, fully registered Bond.

(b) The following shall apply to all transfers of the Bonds after the initial delivery of the Bonds:

(i) the Bonds, in the form attached hereto as Exhibit A, shall be physical certificated instruments, and shall not be held in a book-entry only system unless approved in advance in writing by the City in its sole discretion; and

(ii) the Bonds shall be transferred only in whole and may only be transferred: (A) while the Bonds are held by the Initial Bondowner: (1) to an affiliate thereof or a fund established by Wells Fargo Bank in which all of the investors are banks, insurance companies or other financial institutions or affiliates of such entities, each of which is a Sophisticated Investor and has net assets of not less than \$5 billion; (2) to CCRC; or (3) to a bank or financial institution with net assets of not less than \$5 billion; or (B) to CCRC or an entity that is a Sophisticated Investor, provided that in the case of any transfer under this subparagraph (ii), the transferee must execute and deliver the Investor's Letter in the form attached hereto as Exhibit B-1.

The Trustee shall not authenticate or register a Bond unless the foregoing conditions of this Section 2.05(b) have been satisfied. Failure to comply with this Section 2.05(b) shall cause any purported transfer to be null and void.

(c) The Trustee shall require the payment by the Bondholder requesting any such transfer of any tax, fee or other governmental charge required to be paid with respect to such transfer, but any such transfer shall otherwise be made without charge to the Bondholder requesting the same. The cost of printing any Bonds and any services rendered or any expenses incurred by the Trustee in connection therewith shall be paid by the Borrower.

(d) The Trustee shall not transfer the Bonds without prior written notice to the City (which may be in the form of transmittal of the executed Investor's Letter to the City, together with an indication of the date of the proposed transfer).

**Section 2.06 Bond Register.** The City hereby appoints the Trustee as registrar and authenticating agent for the Bonds. The Trustee will keep or cause to be kept at its Principal Office sufficient books for the transfer of the Bonds, which shall at all reasonable times upon reasonable notice be open to inspection by the City and the Borrower; and, upon presentation for such purpose, the Trustee as registrar shall, under such reasonable regulations as it may prescribe, transfer or cause to be transferred, on said books, Bonds as hereinbefore provided.

The ownership of registered Bonds shall be proved by the bond registration books held by the Trustee. The Trustee and the City may conclusively assume that such ownership continues until

written notice to the contrary is served upon the Trustee. The fact and the date of execution of any request, consent or other instrument and the amount and distinguishing numbers of Bonds held by the person so executing such request, consent or other instrument may also be proved in any other manner which the Trustee may deem sufficient. The Trustee may nevertheless, in its discretion, require further proof in cases where it may deem further proof desirable.

Any request, consent, or other instrument or writing of the Holder of any Bond shall bind every future Holder of the same Bond and the Holder of every Bond issued in exchange thereof or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the City in accordance therewith or reliance thereon.

### ARTICLE III

#### ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

**Section 3.01 Authentication and Delivery of the Bonds.** Upon the execution and delivery of this Indenture, the City shall execute the Bonds and deliver them to the Trustee. Upon payment of the initial issuance fee described in Section 18 of the Regulatory Agreement and satisfaction of the conditions set forth in this Section 3.01, and without any further action on the part of the City, the Trustee shall authenticate the Bonds in an aggregate principal amount not exceeding the Authorized Amount, and shall deliver them pursuant to the Written Order of the City hereinafter mentioned. Prior to the authentication and delivery of any of the Bonds by the Trustee, there shall have been delivered to the Trustee each of the following:

(a) the original executed Note, and executed original counterparts of this Indenture, the other documents to be executed and delivered by the City, and each of the other Loan Documents;

(b) the Construction and Permanent Funding Agreement, as executed by the parties thereto, and all conditions to the purchase of the Bonds provided therein shall have been satisfied as evidenced by the advancement by the Bondowner of the Initial Disbursement;

(c) the Certified Resolution;

(d) evidence of the payment of the initial installment of the purchase price of the Bonds and deposit of the Borrower funds required pursuant to this Indenture, if any;

(e) an opinion of Bond Counsel substantially to the effect that the Bonds constitute legal, valid and binding obligations of the City and that under existing statutes, regulations, rulings and court decisions, the interest on the Bonds is not includable in gross income of the owners of the Bonds (other than a bondowner who is a "substantial user" of the Project or a "related person" to a "substantial user," as defined in Section 147(a) of the Code) for federal income tax purposes;

(f) an opinion of counsel to the Borrower addressed to the City, the Bondowner and the Trustee, in form and substance satisfactory to the City and the Bondowner, regarding the enforceability against the Borrower of each of the documents to which the Borrower is a party; and

(g) an original investor letter executed by the initial purchaser(s) of the Bonds, in substantially the form set forth in Exhibit B-1 hereto.

**Section 3.02 Application of Proceeds of Bonds.** The Initial Disbursement and subsequent disbursements of the proceeds received from the sale of the Bonds shall be disbursed in accordance with Section 3.03 of this Indenture. The Bondowner will fund the purchase price of the Bonds from time to time by advancing funds to the Trustee, which amounts so advanced shall be deposited by the Trustee into the Construction Fund in accordance with Section 3.03(a) of this Indenture. The Trustee shall note such amount in its records, and the Trustee (if it holds the Bonds) or the Bondowner (if it holds the Bonds) shall note such amount on the Schedule of Drawings attached to the Bond. Such amounts shall constitute the Disbursed Amount, and shall begin to accrue interest only upon disbursement by the Bondowner to the Trustee for deposit in the Construction Fund. The Trustee, or the Bondowner, as applicable, shall note on the Schedule of Drawings attached to the Bond the date and amount of each advance by the Bondowner. Notwithstanding anything herein to the contrary, the aggregate purchase price of the Bonds funded by the Bondowner may not exceed the Authorized Amount (and the Trustee, if it holds the Bonds, or the Bondowner, if it holds the Bonds, shall make no notation on the Schedule of Drawings attached to the Bonds evidencing a principal amount of the Bonds exceeding such amount) and no additional advances of the purchase price of the Bonds may be funded on or after the first to occur of (i) the Conversion Date (as defined in the Loan Agreement), or (ii) [December \_\_, 2020].

**Section 3.03 Disbursement of Bond Proceeds; Establishment of Construction Fund.** There is hereby created and established with the Trustee a separate fund which shall be designated the "Construction Fund," and within such Construction Fund a Bond Proceeds Account and a Borrower Equity Account, which fund and accounts shall be applied only as provided in this Section 3.03. The Initial Disbursement on the Closing Date shall be deposited by the Trustee in the Bond Proceeds Account of the Construction Fund for payment to or upon the order of the Borrower of Project Costs.

(a) The Bondowner shall advance the purchase price of the Bonds from time to time, provided the date and amount of such advance is duly noted by the Trustee (if it holds the Bonds) or the Bondowner (if it holds the Bonds) on the Schedule of Payments set forth as Exhibit A to the Bonds. The Trustee shall deposit the proceeds of each advance of the purchase price of the Bonds into the Bond Proceeds Account of the Construction Fund. Funds on deposit in the Bond Proceeds Account of the Construction Fund, and any interest earnings thereon, shall be transferred by the Trustee to the Borrower for the payment of Project Costs as described in Section 3.03(b) below. The Trustee shall deposit all other amounts received (if any) into the Borrower Equity Account of the Construction Fund. Funds on deposit in the Borrower Equity Account of the Construction Fund, and any interest earnings thereon, shall be transferred and applied by the Trustee to the payment of Issuance Costs as described in Section 3.03(c) below.

(b) The City hereby authorizes and directs the disbursement by the Trustee of amounts in the Bond Proceeds Account of the Construction Fund in accordance with this Indenture to or upon the order of the Borrower from time to time upon receipt by the Trustee of a written request of the Borrower, in the form attached hereto as Exhibit C-1, accompanied by a determination of the Bondowner (evidenced by its approval of the written request of the Borrower) that the conditions to disbursement contained in the Construction and Permanent Funding Agreement have been satisfied or waived.

(c) The City hereby authorizes and directs the disbursement by the Trustee of amounts in the Borrower Equity Account of the Construction Fund in accordance with this Indenture to or upon the order of the Borrower from time to time upon receipt by the Trustee of a written



request of the Borrower, consented to by the Bondowner, in the form attached hereto as Exhibit C-2. Any interest earnings on amounts on deposit in the Borrower Equity Account of the Construction Fund shall remain in such account. Any moneys remaining in the Borrower Equity Account of the Construction Fund (including investment proceeds) after the earlier of (i) the payment of all Issuance Costs as certified in writing to the Trustee by the Borrower or (ii) a period of six (6) months after the Closing Date, shall be paid to or at the direction of the Borrower and the Borrower Equity Account of the Construction Fund shall be closed.

(d) The Trustee shall maintain, or cause to be maintained, complete and accurate records regarding the disbursement of the proceeds of the Bonds in accordance with Section 3.02 hereof, and shall provide copies thereof to the City and the Borrower upon their written request. Additionally, the Trustee shall provide the City with a monthly statement regarding activity in each of the funds and accounts created under this Indenture, including the Construction Fund and the Bond Fund in the immediately preceding month.

(e) None of the Trustee, the Bondowner or the City shall be responsible for the application by the Borrower of monies disbursed to the Borrower in accordance with this Section 3.03.

If an Event of Default under and as defined in the Loan Agreement occurs and the maturity of the Bonds is accelerated in accordance with Section 4.01(b) hereof, the Trustee will, to the extent necessary, use moneys in the Construction Fund and Bond Fund to make payments on the Bonds.

**Section 3.04 City Administrative Fee.** The Trustee shall collect the City's annual administrative fee described in clause (ii) of the second paragraph of Section 18 of the Regulatory Agreement (and referred to in Section 5.1(d) of the Loan Agreement) and promptly upon receipt remit it to the City. The Trustee may establish a fund or account in its records to deposit and disburse the amounts collected by it for payment of the City's annual administrative fee.

#### ARTICLE IV

#### REDEMPTION OF BONDS

**Section 4.01 Circumstances of Redemption.** The Bonds are subject to redemption upon the circumstances, on the dates and at the prices set forth as follows:

(a) The Bonds shall be subject to redemption in whole or in part on any date, at a price equal to the principal amount of Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption, plus a premium equal in amount to any premium payable pursuant to the Note or the Construction and Permanent Funding Agreement in connection with the voluntary prepayment of the Note in whole or in part by the Borrower, as permitted therein; provided, however, that any other charges then due and payable pursuant to the Note or the Loan Agreement shall be paid in full (or, in connection with a partial redemption of the Bonds, paid in proportion to the amount of Bonds being so redeemed) on the redemption date.

(b) The Bonds shall be subject to mandatory redemption in whole upon the occurrence of an Event of Default under and as defined in the Loan Agreement or the occurrence of an event of default under any other of the Loan Documents (subject to all applicable notice and cure provisions contained therein), but only at the written direction of the Bondowner, at a redemption

price equal to the principal amount of all of the Bonds then Outstanding, plus accrued interest thereon to the date of redemption, plus any applicable prepayment premium, as may be provided in the Note or the Construction and Permanent Funding Agreement.

(c) The Bonds shall be subject to mandatory redemption, at the direction of the Bondowner (given in accordance with the Loan Agreement or the Deed of Trust), in whole or in part on any date, from insurance proceeds received in connection with a partial or total casualty loss of the Project or a condemnation award in connection with a partial or complete taking of the Project, but only to the extent such proceeds or award are not used to repair, replace or restore the Project, at a price equal to the principal amount of Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption.

(d) The Bonds shall be subject to redemption without notice to the extent of any principal payments received under the Note on or prior to the Conversion Date in connection with the Conversion (as defined in the Construction and Permanent Funding Agreement), and from and after the Conversion Date pursuant to Section B.1.5 of the Note representing the principal portion of each required amortization payment under the Note.

The Bondowner is hereby authorized and directed, and hereby agrees, by written notice to the Trustee, the Borrower and the City, to fix the date for any such redemption, and, if Revenues are available, the Trustee shall redeem the Bonds so called on the date so fixed by the Bondowner. If for any reason there is more than one Bondowner as of any date of redemption, Bonds shall be redeemed pro rata among the Bondowners. So long as there is only one Bondowner, the Bondowner need not surrender its Bond in connection with any redemption of Bonds unless the Bonds are redeemed in whole.

**Section 4.02 No Notice of Redemption.** No notice of redemption of the Bonds need be given to the Bondowner by the Trustee, but the Bondowner shall give notice of any redemption under Section 4.01 to the City and the Borrower at the same time such notice is given to the Trustee.

**Section 4.03 Effect of Redemption.** If moneys for payment of the redemption price of the Bonds are being held by the Trustee, the Bonds so called for redemption shall, on the redemption date selected by the Bondowner, become due and payable at the redemption price specified herein, interest on the Bonds so called for redemption shall cease to accrue, said Bonds shall cease to be entitled to any lien, benefit or security under this Indenture, and the holders of the Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

**Section 4.04 Assignment of Loan and Tender of Bonds.**

(a) The outstanding Bonds shall be subject to mandatory tender, in whole and not in part, by the Bondowner on the Conversion Date upon CCRC's exercise of the Loan Purchase Option (as defined in the Bond Purchase Agreement) and delivery of notice to the City, Bondowner, Trustee and Borrower as set forth in [Section 1.7] of the Bond Purchase Agreement.

(b) Upon tender of the outstanding Bonds, the Bonds (but not the Note, the Deed of Trust or the other Loan Documents), shall be deemed paid in full and retired and shall be deemed cancelled on the books of the Trustee, whether or not the Bondowner has delivered the Bonds (or Bond certificate or certificates) to the Trustee. On the Conversion Date, the Bondowner shall direct and cause the Bondowner's representative to transfer and assign all of its right, title and interest in, to

and under the Note, the Deed of Trust and the other Loan Documents to CCRC in connection with CCRC's purchase of the Loan; provided, that such instrument of assignment and assumption (which instrument may be substantially in the form of the "Assignment and Assumption" (as defined in the Bond Purchase Agreement) attached to the Bond Purchase Agreement as Exhibit A thereto), shall include the City as a consent party and signatory thereto and further shall include, *inter alia*, the following terms and conditions:

(i) the clear expression of agreement among the parties thereto, including the City, that: (A) the Regulatory Agreement shall continue in full force and effect, notwithstanding the consummation of the Loan Purchase Option and cancellation of the Bonds; (B) the City has not assigned any of its rights under the Regulatory Agreement to any party; and (C) for purposes of computing the annual administrative fee due and payable by the Borrower pursuant to Section 18 of the Regulatory Agreement, from and after the date of the consummation of the Loan Purchase Option and cancellation of the Bonds, the computation specified therein shall be based on the outstanding principal amount of the Loan rather than the outstanding principal amount of the Bonds;

(ii) as a condition to the execution of such Assignment and Assumption, including the consent of the City, that: (A) CCRC has executed and delivered an Investor Letter substantially in the form of Exhibit B-2 hereto; and (C) the parties to such Assignment and Assumption shall expressly agree that, effective contemporaneously with, and as a condition to consummation of the Loan Purchase Option: (I) all accounts held by the Trustee under the Indenture have been closed and any balances have been transferred pursuant to the terms of the Indenture and the Loan Agreement, (II) any and all fees and expenses accrued and payable under the Indenture as of the date of such Assignment and Assumption have been paid or provided for; (III) the Indenture is thereby terminated, except for such provisions, including provisions relating to indemnification and rebate (including retention of records), as expressly survive pursuant to the Indenture's terms; and (IV) the Reserved Rights (as defined in this Indenture) of the City shall continue in full force and effect for the benefit of the City, notwithstanding the assignment of the Loan Documents under such Assignment and Assumption and the termination of the Indenture; and

(iii) the fees and expenses of the City and the Trustee, including fees and expenses of counsel to either of them, incurred in connection with the consummation of the Loan Purchase Option and the transactions contemplated by such Assignment and Assumption, have been paid in full as of the effective date thereof by the Borrower or CCRC.

(c) Upon such purchase and transfer, the City and the Trustee shall have no further interest in the Loan or the Loan Documents, and this Indenture shall be terminated in accordance with Section 10.01 (subject to any indemnification or other rights expressly intended to survive termination, as set forth in this Indenture, the Loan Agreement or the Regulatory Agreement). The City and the Trustee shall execute and deliver any additional documents or take such other actions as may be reasonably required in order to effect the cancellation of the Bonds and transfer of the Loan to CCRC as contemplated hereunder on the Conversion Date; provided that the provisions of Section 4.04(b)(iii) hereof shall also apply to any such documents and actions.

## ARTICLE V

### REVENUES

**Section 5.01 Pledge of Revenues.** All of the Revenues are hereby irrevocably pledged to the punctual payment of the principal of, premium, if any, and interest on the Bonds. The City also hereby transfers in trust, grants a security interest in and assigns to the Trustee, for the benefit of the Bondowner, all of its right, title and interest in (a) the Revenues, but excluding any amounts calculated as excess investment earnings under Section 6.07 hereof, (b) all amounts on deposit in any fund or account created hereunder and held by the Trustee, but excluding any amounts calculated as excess investment earnings under Section 6.07 hereof, (c) the Loan Agreement (except for the Reserved Rights), (d) the Note, and (e) any other amounts or agreements referenced in the Loan Agreement as security for the repayment of the Bonds (except for the Reserved Rights).

All Revenues received by the Trustee and all amounts on deposit in the funds and accounts created hereunder and held by the Trustee shall be held in trust for the benefit of the holders from time to time of the Bonds, but shall nevertheless be disbursed, allocated and applied solely for the uses and purposes hereinafter set forth in this Article V.

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.

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.

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 5.02 Bond Fund.** There is hereby created and established with the Trustee a separate fund which shall be designated the "Bond Fund," which fund shall be applied only as provided in this Section 5.02.

The Trustee shall credit to the Bond Fund from time to time, upon receipt thereof, all Revenues, including (i) income received from the investment of moneys on deposit in the Bond Fund, and (ii) any other Revenues, including insurance proceeds, condemnation awards and other Loan payments or prepayments received from or for the account of the Borrower.

Except as provided in Section 10.02, moneys in the Bond Fund shall be used solely for the payment of the principal of and premium, if any, and interest on the Bonds as the same shall become due, whether at maturity or upon redemption or acceleration or otherwise.

On each date on which principal of, premium, if any, or interest on the Bonds is due and payable, the Trustee shall pay such amount from the Bond Fund.

**Section 5.03 Investment of Moneys.** Except as otherwise provided in this Section 5.03, any moneys in any of the funds and accounts to be established by the Trustee pursuant to this Indenture shall be invested by the Trustee in Investment Securities selected and directed in a Written Request executed by an Authorized Borrower Representative, with respect to which payments of principal thereof and interest thereon are scheduled or otherwise payable not later than one day prior to the date on which it is estimated that such moneys will be required by the Trustee. In the absence of such a Written Request, the Trustee shall invest such moneys in the Investment Securities described in clause (f) of the definition of such term. The Trustee shall have no liability or responsibility for any loss resulting from any investment made in accordance with this Section 5.03.

Except as otherwise provided in the next sentence, all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of Section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Indenture or the Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code shall be valued at their present value (within the meaning of Section 148 of the Code). The Trustee shall have no duty to determine Fair Market Value or present value hereunder.

For the purpose of determining the amount in any fund or account, all Investment Securities credited to such fund or account shall be valued at the lower of cost or par (which shall be measured exclusive of accrued interest) after the first payment of interest following purchase.

Any interest, profit or loss on such investment of moneys in any fund or account shall be credited or charged to the respective funds or accounts from which such investments are made. Subject to the requirements of the Tax Certificate, the Trustee may sell or present for redemption any obligations so purchased whenever it shall be necessary in order to provide moneys to meet any payment, and the Trustee shall not be liable or responsible for any loss resulting from such sale or redemption.

The Trustee may make any and all investments permitted under this Section 5.03 through its own trust or banking department or any affiliate and may pay said department reasonable, customary fees for placing such investments. The Trustee and its affiliates may act as principal, agent, sponsor, advisor or depository with respect to Investment Securities under this Section 5.03.

The City (and the Borrower by its execution of the Loan Agreement) acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant

the City or the Borrower the right to receive brokerage confirmations of security transactions as they occur, the City and the Borrower will not receive such confirmations to the extent permitted by law. The Trustee will furnish the Borrower and the City (to the extent requested by it) periodic cash transaction statements which include detail for all investment transactions, if any, made by the Trustee hereunder.

**Section 5.04 Assignment to Trustee; Enforcement of Obligations.** The City hereby transfers, assigns and sets over to the Trustee, for the benefit of the Bondowner, and the Trustee hereby accepts, all of the Revenues, all moneys at any time held in the funds and accounts established hereunder and any and all rights and privileges the City has under the Loan Agreement, the Deed of Trust and the other Loan Documents (except for the City's rights under Sections 2.3, 2.4, 4.1, 5.1(d), 5.1(e), 6.2, 6.3, 6.5, 6.6, 6.7, 6.14, 7.4, 8.2 and 8.3 of the Loan Agreement and except for amounts payable to the United States of America pursuant to Section 6.14(i) of the Loan Agreement); and any Revenues which are collected or received by the City shall be deemed to be held, and to have been collected or received, by the City as the agent of the Trustee, and shall forthwith be paid by the City to the Trustee.

Upon the occurrence of an Event of Default, the Bondowner shall be entitled in its sole discretion to take all steps, actions and proceedings: (a) to enforce the terms, covenants and conditions of, and preserve and protect the priority of its interest in and under, the Loan Agreement, the Construction and Permanent Funding Agreement, the Regulatory Agreement, the Deed of Trust and any other Loan Documents, and (b) to request compliance with all covenants, agreements and conditions on the part of the City contained in this Indenture with respect to the Revenues.

## ARTICLE VI

### COVENANTS OF THE CITY

**Section 6.01 Payment of Principal and Interest.** The City shall punctually pay, but only out of Revenues as herein provided, the principal and the interest (and premium, if any) to become due in respect of the Bonds issued hereunder at the times and places and in the manner provided herein and in the Bonds, according to the true intent and meaning thereof. When and as paid in full, the Bonds shall be delivered to the Trustee and shall forthwith be destroyed.

**Section 6.02 Preservation of Revenues; Amendment of Documents.** The City shall not take any action to interfere with or impair the pledge and assignment hereunder of Revenues and the assignment to the Trustee of rights of the City under the Loan Agreement and the Deed of Trust and other collateral documents, or the Bondowner's enforcement of any rights hereunder or thereunder, shall not take any action to impair the validity or enforceability of the Loan Agreement, the Deed of Trust or the other Loan Documents, and shall not waive any of its rights under or any other provision of or permit any amendment of the Loan Agreement, the Deed of Trust or the other Loan Documents, without the prior written consent of the Bondowner.

**Section 6.03 Compliance with Indenture.** The City shall not issue, or permit to be issued, any Bonds secured or payable in any manner out of Revenues other than in accordance with the provisions of this Indenture; it being understood that the City reserves the right to issue obligations payable from and secured by sources other than the Revenues and the assets assigned herein. The City shall faithfully observe and perform all the covenants, conditions and requirements

hereof. So long as any Bonds are Outstanding, the City shall not create any pledge, lien or charge of any type whatsoever upon all or any part of the Revenues, other than the lien of this Indenture.

**Section 6.04 Further Assurances.** Whenever and so often as requested so to do by the Trustee, the City, at the expense of the Borrower, shall promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and promptly do or cause to be done all such other and further things, as may be necessary or reasonably required in order to further and more fully vest in the Trustee and the Bondholders all of the rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred upon them by this Indenture and to perfect and maintain as perfected such rights, interests, powers, benefits, privileges and advantages.

**Section 6.05 No Arbitrage.** The City shall not take, nor knowingly permit nor suffer to be taken by the Trustee or otherwise, any action with respect to the gross proceeds of the Bonds which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of the issuance of the Bonds would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code and Regulations promulgated thereunder.

**Section 6.06 Limitation of Expenditure of Proceeds.** To the best knowledge of the City, not less than ninety-seven percent (97%) of the amount advanced as the purchase price of the Bonds, plus premium (if any) paid on the purchase of the Bonds by the original purchaser thereof from the City, less original issue discount, will be used for Qualified Project Costs and less than twenty-five percent (25%) of such amount will be used for land or an interest in land.

**Section 6.07 Rebate of Excess Investment Earnings to United States.** The City hereby covenants to cause the Borrower (solely by the inclusion of Section 6.14(i) in the Loan Agreement and Section 2(g) in the Regulatory Agreement) to calculate or cause to be calculated excess investment earnings to the extent required by Section 148(f) of the Code and the Borrower shall cause payment of an amount equal to excess investment earnings to the United States in accordance with the Regulations, all at the sole expense of the Borrower.

**Section 6.08 Limitation on Issuance Costs.** To the best knowledge of the City, an amount not in excess of two percent (2%) of the amount advanced as the purchase price of the Bonds will be used to pay for, or provide for the payment of, Issuance Costs.

**Section 6.09 Federal Guarantee Prohibition.** The City shall take no action if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of the Code.

**Section 6.10 Prohibited Facilities.** To the best knowledge of the City, no portion of the proceeds of the Bonds will be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises. To the best knowledge of the City, no portion of the proceeds of the Bonds will be used for an office unless the office is located on the premises of the facilities constituting the Project and unless not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

**Section 6.11 Use Covenant.** The City shall not use any proceeds of Bonds or any other funds of the City, directly or indirectly, in any manner, and shall not take any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 142(d) of the Code by reason of such Bond not meeting the requirements of Section 142(d) of the Code.

**Section 6.12 Immunities and Limitations of Responsibility of City.**

(a) The City shall be entitled to the advice of counsel (who, except as otherwise provided, may be counsel for any Bondholder), and the City shall be wholly protected as to action taken or omitted in good faith in reliance on such advice. The City may rely conclusively on any communication or other document furnished to it hereunder and reasonably believed by it to be genuine. The City shall not be liable for any action (a) taken by it in good faith and reasonably believed by it to be within its discretion or powers hereunder, or (b) in good faith omitted to be taken by it because such action was reasonably believed to be beyond its discretion or powers hereunder, or (c) taken by it pursuant to any direction or instruction by which it is governed hereunder, or (d) omitted to be taken by it by reason of the lack of any direction or instruction required hereby for such action; nor shall it be responsible for the consequences of any error of judgment reasonably made by it. The City shall in no event be liable for the application or misapplication of funds or for other acts or defaults by any person, except its own officers and employees. When any payment or consent or other action by it is called for hereby, it may defer such action pending receipt of such evidence (if any) as it may require in support thereof. The City shall not be required to take any remedial action (other than the giving of notice) unless indemnity in a form acceptable to the City is furnished for any expense or liability to be incurred in connection with such remedial action, other than liability for failure to meet the standards set forth in this Section 6.12. The City shall be entitled to reimbursement from the Borrower for its expenses reasonably incurred or advances reasonably made, with interest at the rate of interest on the Bonds, in the exercise of its rights or the performance of its obligations hereunder, to the extent that it acts without previously obtaining indemnity. No permissive right or power to act which the City may have shall be construed as a requirement to act; and no delay in the exercise of a right or power shall affect its subsequent exercise of the right or power.

(b) In furtherance of the covenants in Sections 6.05, 6.06, 6.07, 6.08, 6.09, 6.10 and 6.11 hereof, the City, the Trustee and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into this Indenture and made a part of this Indenture as if set forth in this Indenture in full. In the event of a conflict between the terms of this Indenture and the Tax Certificate, the terms of the Tax Certificate shall control. In making the representations and agreements set forth in Sections 6.05, 6.06, 6.08, 6.09, 6.10 and 6.11, the City is relying solely upon the representations and warranties of the Borrower in the Loan Agreement, in the Regulatory Agreement and in the Tax Certificate. A default by the Borrower in any of its covenants, representations and agreements in the Loan Agreement, Regulatory Agreement or Tax Certificate upon which the City is relying in the various sections of this Article VI shall not be considered a default hereunder by the City.

(c) The Borrower has agreed to indemnify the City, the Trustee and the Bondowner against certain acts and events as set forth in Section 8 of the Regulatory Agreement. Such indemnity shall survive payment of the Bonds and discharge of the Indenture.



## ARTICLE VII

### DEFAULT

**Section 7.01 Events of Default; Acceleration; Waiver of Default.** Each of the following events shall constitute an "Event of Default" hereunder:

- (a) failure to pay interest on the Bonds when due;
- (b) failure to pay the principal of the Bonds on the date fixed for payment thereof, whether upon the maturity thereof or pursuant to Section 4.01 hereof; and
- (c) failure by the City to perform or observe any other of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, and the continuation of such failure for a period of thirty (30) calendar days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the City, the Borrower and the Trustee by the Bondowner.

No default specified in (c) above shall constitute an Event of Default unless the City or the Borrower shall have failed to correct such default within the applicable period; provided, however, that if the default shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the City or the Borrower within the applicable period and diligently pursued until the default is corrected; and provided, further, that the time elapsed until completion of corrective action shall not exceed sixty (60) calendar days without the consent of the Bondowner, which consent shall not be unreasonably withheld. With regard to any alleged default concerning which notice is given to the Borrower under the provisions of (c) above, the City hereby grants the Borrower full authority for the account of the City to perform any covenant or obligation the non-performance of which is alleged in said notice to constitute a default in the name and stead of the City with full power to do any and all things and acts to the same extent that the City could do and perform any such things and acts and with power of substitution.

The Investor Limited Partner (as defined in the Borrower's partnership agreement) shall be entitled (but not obligated) to cure any Event of Default hereunder within the time frame provided to the Borrower hereunder. The City and the Trustee agree that cure of any default or Event of Default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

Following the occurrence of an Event of Default, the Bondowner may (i) by notice in writing to the Trustee, the City and the Borrower, declare the principal of all the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding, and/or (ii) pursue such other remedies as are permitted under applicable law. Upon any such declaration of acceleration, the Trustee, at the direction of the Bondowner, shall fix a date for payment of the Bonds.

The preceding paragraph, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, there shall have been deposited with the Trustee a sum sufficient to pay all the principal of

the Bonds matured or required to be redeemed prior to such declaration and all matured installments of interest (if any) upon all the Bonds, with interest on such overdue installments of principal, and the reasonable fees and expenses of the Trustee, its agents and counsel, and any and all other defaults actually known to a Responsible Officer of the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Bondowner to be adequate shall have been made therefor, then the Bondowner, by written notice to the City and the Trustee, may rescind and annul such declaration and its consequences and waive such default; but no such rescission, annulment or waiver shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

**Section 7.02 Institution of Legal Proceedings by Bondowner Representative.** If one or more of the Events of Default shall occur, the Bondowner in its discretion may proceed to protect or enforce its rights as owner of the Bonds under the Act or under this Indenture, the Note and/or the Loan Agreement, by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained herein or therein, or in aid of the execution of any power herein or therein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Bondowner shall deem most effectual in support of any of its rights or duties hereunder.

**Section 7.03 Application of Moneys Collected by Bondowner or Trustee.** Any moneys collected by the Bondowner pursuant to Section 7.02 or the Trustee pursuant to Section 7.01 shall be deposited with the Trustee and applied in the order following, at the date or dates fixed by the Bondowner with written notice to the Trustee and, in the case of distribution of such moneys on account of principal (or premium, if any) or interest, upon presentation of the Bonds and stamping thereon the payment, if only partially paid, and upon surrender thereof to the Trustee, if fully paid:

First: For payment of all amounts due to the Trustee under Section 8.06.

Second: For deposit in the Bond Fund to be applied to payment of the principal of all Bonds then due and unpaid and interest thereon with application as between principal and interest as the Bondowner shall determine in its sole discretion.

Third: For payment of all other amounts due from the Borrower to any person hereunder or under the Loan Agreement.

Fourth: To the Borrower.

**Section 7.04 Effect of Delay or Omission to Pursue Remedy.** No delay or omission of the Trustee or of any owner of the Bonds to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every power and remedy given by this Article VII to the Trustee or to any owner of the Bonds may be exercised from time to time and as often as shall be deemed by the Bondowner to be expedient. In case the Bondowner shall have proceeded to enforce any right under this Indenture, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely to the Bondowner, then and in every such case the City, the Trustee and the owner of the Bonds, severally and respectively, shall be restored to their former positions and rights hereunder in respect to the trust estate; and all remedies,

rights and powers of the City, the Trustee and the owner of the Bonds shall continue as though no such proceedings had been taken.

**Section 7.05 Remedies Cumulative.** No remedy herein conferred upon or reserved to the Trustee or to any owner of the Bonds hereunder is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

**Section 7.06 Covenant to Pay Bonds in Event of Default.** The City covenants that, upon the happening of any Event of Default, the City will pay to the Trustee upon demand, but only out of Revenues, for the benefit of the holders of the Bonds, the whole amount then due and payable thereon (by declaration or otherwise) for interest or for principal, or both, as the case may be, and all other sums which may be due hereunder or secured hereby, including reasonable compensation to the Trustee, its agents and counsel, and any expenses or liabilities incurred by the Trustee or the Bondowner hereunder. In case the City shall fail to pay the same forthwith upon such demand, the Trustee, at the written direction of the Bondowner, as trustee of an express trust, and upon being indemnified by the Bondowner to its satisfaction, shall be entitled to institute proceedings at law or in equity in any court of competent jurisdiction to recover judgment for the whole amount due and unpaid, together with costs and reasonable attorneys' fees, subject, however, to the condition that such judgment, if any, shall be limited to, and payable solely out of Revenues and any other assets pledged, transferred or assigned to the Trustee under Section 5.04 as herein provided and not otherwise. The Bondowner shall be entitled to recover such judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of this Indenture, and the right of the Bondowner to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture.

**Section 7.07 Appointment of Servicer.** The City and the Trustee acknowledge and agree that Bondowner shall have the right to appoint a servicer (the "Servicer") to service and administer the Loan and act as Bondowner's agent with respect to its interests, rights and obligations as set forth in the Construction and Permanent Funding Agreement and other Loan Documents and with respect to the Bonds. The Bondowner shall deliver written notice of any such appointment to the City, the Trustee and the Borrower, together with notice of any and all rights and duties assigned and delegated by the Bondowner to the Servicer in connection therewith. The Bondowner may, in its sole discretion, terminate or replace the Servicer and shall deliver notice thereof to the City, the Trustee and the Borrower. Neither the City nor the Trustee shall be responsible for monitoring the performance of the Servicer or for any acts or omissions of the Servicer.

**Section 7.08 Power of Bondowner to Control Proceedings.** Notwithstanding any other provision of this Indenture, the Bondowner shall have exclusive control of the remedies set forth herein upon an Event of Default by the Borrower or the City. In the event that the Bondowner, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, it shall have full power, in the exercise of its sole discretion for the best interests of the holders of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action.

**Section 7.09 Limitation on Trustee's Right to Sue.** The Trustee shall not have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, except upon the written consent or direction of the Bondowner. The right of the owner of the Bonds to receive payment of the principal of (and premium, if any) and interest on such Bond out

of Revenues, as herein and therein provided, on and after the respective due dates expressed in such Bond shall not be impaired or affected without the consent of the Bondowner, notwithstanding the foregoing or any other provision of this Indenture.

**Section 7.10 Limitation of Liability to Revenues.** Notwithstanding anything herein or in any other instrument to the contrary, the City shall not be required to advance any moneys derived from the proceeds of taxes collected by the City, by the State of California or by any political subdivision thereof or from any source of income of any of the foregoing other than the Revenues for any of the purposes mentioned in this Indenture, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. The Bonds are limited obligations of the City, and are payable from and secured by the Revenues only.

## ARTICLE VIII

### THE TRUSTEE AND AGENTS

**Section 8.01 Duties, Immunities and Liabilities of Trustee.** In consideration of the recitals hereinabove set forth and for other valuable consideration, the City hereby agrees to employ the Trustee to receive, hold, invest and disburse the moneys received pursuant to the Loan Agreement for credit to the various funds and accounts established by this Indenture; to execute, deliver and transfer the Bonds; and to apply and disburse the payments received from the Borrower pursuant to the Loan Agreement to the Owners of Bonds; and to perform certain other functions; all as herein provided and subject to the terms and conditions of this Indenture. The Trustee shall perform such duties and only such duties as are specifically set forth in this Indenture and no additional covenants or duties of the Trustee shall be implied in this Indenture.

The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), 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 reasonable persons familiar with such matters would exercise or use under similar circumstances in the conduct of their own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action or its own negligent failure to act, except that:

(a) The duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Trustee conforming to the requirements of this Indenture;

(b) At all times (1) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or officers or by any agent or attorney of the Trustee appointed with due care unless (except as otherwise provided in Section 8.02(e)) the Trustee was negligent in ascertaining the pertinent facts; and (2) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the City, accompanied by an opinion of Bond Counsel as provided herein or in accordance with the directions of the holders of not less than a majority, or such other percentage as may be required hereunder, in

aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture;

(c) The Trustee shall not be required to take notice or be deemed to have notice of (i) any default hereunder or under the Loan Agreement, except defaults under Section 7.01(a) or (b) hereof, unless a Responsible Officer of the Trustee shall be specifically notified in writing of such default by the City or the owners of at least a majority in aggregate principal amount of all Bonds then Outstanding, or (ii) any default under the Regulatory Agreement unless a Responsible Officer of the Trustee shall be specifically notified in writing of such default by the City;

(d) Before taking any action under Article VII hereof or this Section 8.01 at the request or direction of the Bondholders, the Trustee may require that a satisfactory indemnity bond be furnished by the Bondholders, for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken;

(e) Upon any application or request by the City or the Bondowner to the Trustee to take any action under any provision of this Indenture, the City or Bondowner, as applicable, shall furnish to the Trustee a certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished;

(f) The Trustee may execute any of the powers hereunder or perform any duties hereunder either directly or through agents or attorneys;

(g) Neither the City nor the Borrower shall be deemed to be agents of the Trustee for any purpose, and the Trustee shall not be liable for any noncompliance of any of them in connection with their respective duties hereunder or in connection with the transactions contemplated hereby;

(h) The Trustee shall be entitled to rely upon telephonic notice for all purposes whatsoever so long as the Trustee reasonably believes such telephonic notice has been given by a person authorized to give such notice;

(i) The immunities extended to the Trustee also extend to its directors, officers and employees;

(j) Under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Bonds, it being the sole obligation of the Trustee to administer, for the benefit of the Bondholders, the various funds and accounts established hereunder;

(k) No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy;

(l) The Trustee shall not be liable for any action taken or not taken by it in accordance with the direction of the Bondowner related to the exercise of any right, power or remedy available to the Trustee; and

(m) The Trustee shall have no duty to review any financial statements or budgets filed with it by the Borrower under the Loan Agreement.

(n) The Trustee acknowledges that Borrower has an obligation to pay certain fees to the City pursuant to Section 18 of the Regulatory Agreement. The Trustee further acknowledges that in order to preserve the tax-exempt status of the Bonds, the Borrower must comply with requirements for rebate of excess investment earnings to the federal government to the extent applicable. The Trustee agrees to send the Borrower a notification or reminder of: (1) its payment obligations under clause (ii) of the second paragraph of Section 18 of the Regulatory Agreement by May 1 of each year, commencing May 1, 2017, and ending on the earlier of the date on which the Bonds are paid or redeemed in full, and (2) the Borrower's obligation to rebate excess investment earnings by the date which is sixty (60) days after the earlier of the Bond maturity date or date the Bonds are paid in full, said notice to be given by the Trustee on the earlier of the maturity date or date of payment in full of the Bonds. However, in no event shall the Trustee be liable to the City, the Bondowner or the Borrower for the failure to so notify or remind the Borrower.

(o) Without limiting the duties of the Trustee expressly set forth in this Indenture, 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 investment or non-investment of any funds or accounts relating to the Bonds under Section 148 of the Code; (iii) the calculation of any amount required to be rebated to the United States under Section 148 of the Code; or (iv) compliance by the City or the Borrower with the provisions of the Tax Certificate.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties as Trustee or in the exercise of any of its rights or powers as Trustee. Whether or not therein expressly so provided, every provision of this Indenture, the Loan Agreement, the Regulatory Agreement or any other document relating to the conduct, powers or duties of, or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Article VIII.

**Section 8.02 Right of Trustee to Rely Upon Documents, Etc.** Except as otherwise provided in Section 8.01:

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

(b) Any consent, demand, direction, election, notice, order or request of the City mentioned herein shall be sufficiently evidenced by a Written Consent, Written Demand, Written Direction, Written Election, Written Notice, Written Order or Written Request of the City, and any resolution of the City may be evidenced to the Trustee by a Certified Resolution;

(c) The Trustee may consult with counsel (who may be counsel for the City, counsel for the Trustee or Bond Counsel) and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel;

(d) Whenever in the administration of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the City; and such Certificate of the City shall, in the absence of negligence or bad faith on the part of the Trustee, be full warrant to the Trustee for any action taken or suffered by it under the provisions of this Indenture upon the faith thereof; and

(e) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

**Section 8.03 Trustee Not Responsible for Recitals.** The recitals contained herein and in the Bonds shall be taken as the statements of the City, and the Trustee assumes no responsibility for the correctness of the same or for the correctness of the recitals in the Loan Agreement or the Regulatory Agreement. The Trustee shall have no responsibility with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the Bonds. The Trustee makes no representations as to the value or condition of any assets pledged or assigned as security for the Bonds, or as to the right, title or interest of the City therein, or as to the security provided thereby or by this Indenture, the Loan Agreement, the Deed of Trust or the other Loan Documents, or as to the compliance of the Project with the Act, or as to the tax-exempt status of the Bonds, or as to the technical or financial feasibility of the Project, or as to the validity or sufficiency of this Indenture as an instrument of the City or of the Bonds as obligations of the City. The Trustee shall not be accountable for the use or application by the City of any of the Bonds authenticated or delivered hereunder or of the use or application of the proceeds of such Bonds by the City or the Borrower or their agents.

**Section 8.04 Intervention by Trustee.** The Trustee may intervene on behalf of the owners of the Bonds in any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of owners of the Bonds and, subject to the provisions of Section 8.01(d), but shall do so only if requested in writing by the Bondowners.

**Section 8.05 Moneys Received by Trustee to be Held in Trust.** All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law or as otherwise provided herein. The Trustee shall be under no liability for interest on any moneys received by it hereunder except such as it may agree with the City to pay thereon.

**Section 8.06 Compensation and Indemnification of Trustee and Agents.**

(a) The Trustee shall be entitled to receive compensation from the Borrower for its services as Trustee, as provided in Section 5.1(f) of the Loan Agreement, and shall be indemnified by the Borrower as provided in Section 8 of the Regulatory Agreement. The Trustee acknowledges and agrees that, unless otherwise specifically agreed to in writing by the City (in the City's sole and absolute discretion), the City shall not be responsible for the fees and expenses of the Trustee, and is providing no indemnification to the Trustee.

(b) If any property, other than cash, shall at any time be held by the Trustee subject to this Indenture, or any supplemental indenture, as security for the Bonds, the Trustee, if and to the extent authorized by a receivership, bankruptcy or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Indenture as such security for the Bonds, shall be entitled to but not obligated to make advances for the purpose of preserving such property or of discharging tax liens or other prior liens or encumbrances thereon. The rights of the Trustee to compensation for services and to payment or reimbursement for expenses, disbursements, liabilities and advances shall have and is hereby granted a lien and a security interest prior to the Bonds in respect of all property and funds held or collected by the Trustee as such, except funds held in trust by the Trustee in the Bond Fund, which amounts shall be held solely for the benefit of the Bondholders and used only for the payment of principal of and premium, if any, and interest on the Bonds. The Trustee's rights to immunities, indemnities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive the Trustee's resignation or removal and final payment of the Bonds.

**Section 8.07 Qualifications of Trustee.** There shall at all times be a trustee hereunder, which shall be a corporation, banking association or trust company, in each case having trust powers, doing business and having a corporate trust office in California and shall

(a) either (i) have a combined capital and surplus of at least \$100,000,000 and be subject to supervision or examination by federal or state authority, or (ii) be a wholly-owned subsidiary of a bank, trust company or bank holding company meeting on an aggregate basis the tests set out in clause (i); and

(b) be able to comply with the terms and conditions of this Indenture, including, without limitation, Section 8.11 and Exhibit D, and to comply with the terms of the Loan Agreement applicable thereto.

If such corporation, banking association, or trust company publishes reports of conditions at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 8.07 the combined capital and surplus of such corporation, banking association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 8.07, the Trustee shall resign immediately in the manner and with the effect specified in Section 8.08(b) below.

**Section 8.08 Removal, Resignation and Appointment of Successor Trustee.**

(a) Removal of Trustee. The City may remove the Trustee at any time unless an Event of Default occurs and is then continuing, and shall remove the Trustee if at any time requested



to do so by an instrument or concurrent instruments in writing signed by the Bondowner (or its attorney duly authorized in writing) or if at any time the Trustee shall cease to be eligible in accordance with Section 8.07 hereof, or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or any substantial portion thereof or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee and thereupon the City shall appoint a successor Trustee by an instrument in writing. Any successor Trustee appointed by the City under Section 8.08(c) of this Indenture shall be subject to the approval of the Bondowner, which approval shall not unreasonably be withheld or delayed.

(b) Resignation of Trustee. The Trustee may at any time resign by giving written notice of such resignation by first class mail, postage prepaid, to the City and to the Bondowner. Upon receiving such notice of resignation, the City shall appoint a successor Trustee by an instrument in writing. The Trustee shall not be relieved of its duties until such successor Trustee has accepted appointment, other than pursuant to court order.

(c) Appointment of Successor Trustee. Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon the acceptance of appointment of the successor Trustee; provided, however, that under any circumstances the successor Trustee shall be qualified as provided in subsection (a) of this Section 8.08. If no qualified successor Trustee shall have been appointed and have accepted appointment within forty-five (45) calendar days following giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or the Bondholder may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the City and its predecessor Trustee a written acceptance thereof, and to the predecessor Trustee an instrument indemnifying the predecessor Trustee for any costs or claims arising during the time the successor Trustee serves as Trustee hereunder, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the written request of the City or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance, including a quitclaim deed, and further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trust and conditions herein set forth. Upon request of the successor Trustee, the City shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee moneys, estates, properties, rights, powers; trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the successor Trustee shall mail, by first class mail, postage prepaid, a notice of the succession of such Trustee to the trusts hereunder to the Bondholders at the addresses shown on the registration books.

**Section 8.09 Merger or Consolidation of Trustee.** Any corporation or association into which the Trustee may be merged or with which it may be consolidated, or any corporation or association resulting from any merger or consolidation to which the Trustee shall be a party, or any corporation or association succeeding to the corporate trust business of the Trustee, 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 of the parties hereto, anything herein to the contrary notwithstanding, provided that such successor Trustee shall be eligible under the provisions of the first sentence of Section 8.07.

**Section 8.10 Paying Agents.** The Trustee, with the written approval of the City and the Bondowner, may appoint and at all times have one or more paying agents in such place or places as the Trustee may designate, for the payment of the principal of, and the interest (and premium, if any) on, the Bonds. It shall be the duty of the Trustee to make such arrangements with any such paying agent as may be necessary and feasible to assure, to the extent of the moneys held by the Trustee for such payment, the availability of funds for the prompt payment of the principal of and interest and premium, if any, on the Bonds presented at either place of payment. The paying agent initially appointed hereunder is the Trustee.

**Section 8.11 City Contracting Provisions.** The Trustee covenants and agrees to comply with the provisions set forth in Exhibit D to this Indenture.

## ARTICLE IX

### MODIFICATION OF INDENTURE

**Section 9.01 Modification of Indenture.** The City and the Trustee, with the prior written consent of the Bondowner, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture. Upon receipt of the consent of the Bondowner thereto, the City and the Trustee may execute any such supplemental indenture, unless such supplemental indenture affects the rights or obligations of the Borrower or any general partner or limited partner of the Borrower hereunder or under the Loan Agreement or any other document, in which case the City and the Trustee may enter into such supplemental indenture only if they have received the Borrower's, or such general partner's or limited partner's, as applicable, written consent thereto.

Notwithstanding the foregoing, the City and the Trustee may make amendments to Exhibit D hereto at any time, without any requirement for the consent of the Bondowner thereto.

**Section 9.02 Effect of Supplemental Indenture.** Upon the execution of any supplemental indenture pursuant to the provisions of this Article IX, this Indenture shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the City, the Trustee, and all owners of Outstanding Bonds shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be part of the terms and conditions of this Indenture for any and all purposes.

**Section 9.03 Opinion of Counsel as to Supplemental Indenture.** Subject to the provisions of Section 8.01, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to the provisions of this Article IX is authorized and permitted by this Indenture.

**Section 9.04 Notation of Modification on Bonds; Preparation of New Bonds.** Bonds authenticated and delivered after the execution of any supplemental indenture pursuant to the

provisions of this Article IX may bear a notation, in form approved by the City as to any matter provided for in such supplemental indenture, and if such supplemental indenture shall so provide, new Bonds, so modified as to conform, in the opinion of the City, to any modification of this Indenture contained in any such supplemental indenture, may be prepared and executed by the City and authenticated by the Trustee and delivered without cost to the holders of the Bonds then Outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

## ARTICLE X

### DEFEASANCE

**Section 10.01 Discharge of Indenture.** If the entire indebtedness on all Bonds Outstanding shall be paid and discharged in any one or more of the following ways:

(a) by the payment of the principal of (including redemption premium, if any) and interest on all Bonds Outstanding; or

(b) by the delivery to the Trustee, for cancellation by it, of all Bonds Outstanding;

and if all other sums payable hereunder by the City shall be paid and discharged, then and in that case this Indenture shall cease, terminate and become null and void, and the Trustee shall forthwith execute proper instruments acknowledging satisfaction of and discharging this Indenture. The fees, expenses and charges of the Trustee (including reasonable counsel fees) must be paid in order to effect such discharge. The satisfaction and discharge of this Indenture shall be without prejudice to the rights of the Trustee to charge and be reimbursed by the Borrower for any expenditures which it may thereafter incur in connection herewith.

The City or the Borrower may at any time surrender to the Trustee for cancellation by it any Bonds previously authenticated and delivered which the City or the Borrower lawfully may have acquired in any manner whatsoever, and such Bonds upon such surrender and cancellation shall be deemed to be paid and retired.

**Section 10.02 Payment of Bonds after Discharge of Indenture.** Notwithstanding any provisions of this Indenture, any moneys deposited with the Trustee or any paying agent in trust for the payment of the principal of, or interest or premium on, any Bonds remaining unclaimed for two (2) years after the principal of all the Outstanding Bonds has become due and payable (whether at maturity or upon call for redemption or by declaration as provided in this Indenture), shall then be paid to the City, and the holders of such Bonds shall thereafter be entitled to look only to the City for payment thereof, and only to the extent of the amount so paid to the City, and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease. In the event of the payment of any such moneys to the City as aforesaid, the holders of the Bonds in respect of which such moneys were deposited shall thereafter be deemed to be unsecured creditors of the City for amounts equivalent to the respective amounts deposited for the payment of such Bonds and so paid to the City (without interest thereon).

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01 Successors of City.** All the covenants, stipulations, promises and agreements contained in this Indenture, by or on behalf of the City, shall bind and inure to the benefit of its successors and assigns, whether so expressed or not. If any of the powers or duties of the City shall hereafter be transferred by any law of the State of California, and if such transfer shall relate to any matter or thing permitted or required to be done under this Indenture by the City, then the body or official who shall succeed to such powers or duties shall act and be obligated in the place and stead of the City as in this Indenture provided.

**Section 11.02 Limitation of Rights to Parties and Bondholders.** Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the City, the Trustee, the Borrower and the Bondowner any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the City, the Trustee, the Borrower and the Bondowner. The Bondowner is an intended third party beneficiary of this Indenture.

**Section 11.03 Waiver of Notice.** Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**Section 11.04 Destruction of Bonds.** Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the City of any Bonds, the Trustee may, in lieu of such cancellation and delivery, destroy such Bonds and deliver a certificate of such destruction to the City.

**Section 11.05 Separability of Invalid Provisions.** In case any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, but this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

**Section 11.06 Notices.** It shall be sufficient service of any notice, request, demand or other paper on the City, the Trustee, the Bondowner or the Borrower if the same shall, except as otherwise provided herein, be duly mailed by first class mail, postage prepaid, or given by telephone or telecopier and confirmed by such mail, and to the other parties and addressed as follows:

The City:	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
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with copies to (none of which copies shall constitute notice to the City):

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

The Bondowner prior to the Conversion Date (provided, however, if the Bonds have been transferred by such entity in accordance with Section 2.05, to the address of the then registered owner of the Bonds):

Wells Fargo Bank, National Association  
Community Lending and Investment  
MAC #A0119-177  
333 Market Street, 18th Floor  
San Francisco, CA 94105  
Telecopier: 415-371-6954

The Bondowner on and after the Conversion Date:

California Community Reinvestment Corporation  
100 West Broadway, Suite 1000  
Glendale, California 91210  
Attention: President  
Telecopier: 818-550-9806

The Trustee: [ ]

Attention: Global Corporate Trust Services  
Telecopier:

The Borrower: MB3E, L.P.  
c/o Chinatown Community Development Center  
1515 Vallejo Street, 4<sup>th</sup> Floor  
San Francisco, CA 94109  
Attention: Executive Director  
Telecopier:

with a copy to: Gubb & Barshay, LLP  
505 14th Street, Suite 300  
Oakland, CA 94612  
Attention: Scott Barshay, Esq.  
Telecopier: 415-781-6967

with a copy to: Swords-MB3E LLC  
Swords to Plowshares  
1060 Howard Street  
San Francisco, CA 94103  
Attention: Executive Director  
Telecopier:

The Investor Limited Partner: Wells Fargo Affordable Housing  
Community Development Corporation  
MAC: D1053-170  
301 South College Street  
Charlotte, NC 28288  
Attention: Director of Tax Credit Asset Management

with a copy to: Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603  
Attention: Philip Spahn  
Telecopier: 312-853-7015

The City, the Trustee, the Bondowner, the Borrower and the Investor Limited Partner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Copies of all notices provided to Borrower under the Loan Documents shall also be provided to the Investor Limited Partner at the address provided in this Section 11.06.

**Section 11.07 Authorized Representatives.** Whenever under the provisions of this Indenture the approval of the City or the Borrower is required for any action, and whenever the City or the Borrower is required to deliver any notice or other writing, such approval or such notice or other writing shall be given, respectively, on behalf of the City by the Authorized City

Representative or on behalf of the Borrower by the Authorized Borrower Representative, and the City, the Trustee and the Borrower shall be authorized to act on any such approval or notice or other writing and neither party hereto nor the Borrower shall have any complaint against the others as a result of any such action taken.

**Section 11.08 Evidence of Rights of Bondholders.**

(a) Any request, consent or other instrument required by this Indenture to be signed and executed by Bondholders may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Bondholders in person or by agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the ownership of any Bonds, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the City if made in the manner provided in this Section 11.08.

(b) The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument or writing acknowledged to him the execution thereof.

(c) The ownership of the Bonds shall be proved by the Bond register maintained pursuant to Section 2.06 hereof. The fact and the date of execution of any request, consent or other instrument and the amount and distinguishing numbers of Bonds held by the person so executing such request, consent or other instrument may also be proved in any other manner which the Trustee may deem sufficient. The Trustee may nevertheless, in its discretion, require further proof in cases where it may deem further proof desirable.

(d) Any request, consent or vote of the holder of any Bond shall bind every future holder of the same Bond and the holder of any Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the City in pursuance of such request, consent or vote.

(e) In determining whether the holders of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned by the City or by any other direct or indirect obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the City or any other direct or indirect obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided that, for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver, only Bonds which the Trustee, as applicable, knows to be so owned shall be disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this subsection (d) if the pledgee shall establish to the satisfaction of the Trustee and the City the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the City or any other direct or indirect obligor on the Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Solely for purposes of the limitation expressed in this paragraph (d), the Borrower shall be deemed to be an indirect obligor on the Bonds.

(f) In lieu of obtaining any demand, request, direction, consent or waiver in writing, the Trustee may call and hold a meeting of the Bondholders upon such notice and in accordance with such rules and regulations as the Trustee considers fair and reasonable for the purpose of obtaining any such action.

**Section 11.09 Waiver of Personal Liability.** No officer, official, agent, member of the Board of Supervisors or employee of the City, and no officer, official, agent or employee of the State of California or any department, board or agency of any of the foregoing, shall be individually or personally liable for the payment of the principal of or premium or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such person from the performance of any official duty provided by law or by this Indenture.

**Section 11.10 Holidays.** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the date provided therefor in this Indenture and, in the case of any payment, no interest shall accrue for the period from and after such date.

**Section 11.11 Execution in Several Counterparts.** This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same instrument.

**Section 11.12 Governing Law, Venue.** The formation, interpretation and performance of this Indenture shall be governed by the laws of the State of California. Venue for all litigation arising from or in connection with the Bonds or this Indenture shall be in San Francisco, California.

**Section 11.13 Successors.** Whenever in this Indenture either the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 11.14 Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**Section 11.15 Assignment or Delegation by Trustee.** The services to be performed by Trustee are personal in character and neither this Indenture nor any duties or obligations of the Trustee hereunder may be assigned or delegated by the Trustee unless first approved by City by written instrument executed and approved in the same manner as this Indenture.

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IN WITNESS WHEREOF, the CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA has caused this Indenture to be signed in its name and [\_\_\_\_], in token of its acceptance of the duties of the Trustee hereunder has caused this Indenture to be signed in its name, all as of the day and year first above written.

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Kate Hartley,  
*Acting Director, Mayor's Office of Housing and  
Community Development*

Approved as to form:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Heidi J. Gewertz,  
*Deputy City Attorney*

[\_\_\_\_], as Trustee

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

[Signature Page to Indenture of Trust – 626 Mission Bay Boulevard North]

**EXHIBIT A**  
**FORM OF BOND**

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THIS BOND MAY BE OWNED ONLY BY A SOPHISTICATED INVESTOR IN ACCORDANCE WITH THE TERMS OF THE INDENTURE, AND THE HOLDER HEREOF, BY THE ACCEPTANCE OF THIS BOND (A) REPRESENTS THAT IT IS A SOPHISTICATED INVESTOR AND (B) ACKNOWLEDGES THAT IT CAN ONLY TRANSFER THIS BOND TO ANOTHER SOPHISTICATED INVESTOR IN ACCORDANCE WITH THE TERMS OF THE INDENTURE.

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE BOND  
(1150 3rd Street Apartments), SERIES 2017F

REGISTERED OWNER: WELLS FARGO BANK, NATIONAL ASSOCIATION

PRINCIPAL SUM: UP TO \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

The City and County of San Francisco, a municipal corporation and chartered city and county of the State of California, duly organized and existing under its charter and the laws of the State of California (herein called the "City"), for value received, hereby promises to pay (but only out of Revenues as hereinafter provided) to the Registered Owner identified above or registered assigns, on September 1, 2056 (subject to prior redemption as provided in the Indenture) the sum of up to \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in lawful money of the United States, with interest thereon from the date of disbursement from time to time of the purchase price hereof until paid at the rates described below. The actual unpaid principal hereof shall be equal to the funds advanced by the owners of the Bonds in respect of the purchase price thereof, less any portion of the principal hereof paid or redeemed pursuant to the Indenture. Capitalized terms used in this Bond and not defined herein shall have the meanings given such terms in the Indenture referenced below, or in the Note, dated as of December 1, 2017, made by MB3E, L.P., a California limited partnership (the "Borrower"), to the order of the City.

The Bonds shall bear interest, payable on each Interest Payment Date, at the same rate of interest as that of the Note (as such term and the other capitalized terms used in the following sentences of this paragraph are defined in the Indenture). In furtherance of the foregoing, prior to the Conversion Date, the Bonds shall bear interest at the same rate as the Note which rate will be as described in, and determined under the conditions of and in accordance with Section A.2.2 of the Note. After the Conversion Date, the Bonds shall bear interest at the same rate as the Note which rate will be as described in, and determined under the conditions of and in accordance with Section B.1.2 of the Note. Notwithstanding the foregoing, upon the occurrence of an Event of Default hereunder or under the Loan Agreement, or the occurrence of an event of default under any of the other Loan Documents, the Bonds shall bear interest at the Default Rate (as defined below). Interest on the Bonds shall be computed, on the basis of a 360-day year and actual days elapsed prior to the Conversion Date, and a 360-day year consisting of 12 30-day months on and after the Conversion Date.

This Bond shall bear interest from the date to which interest has been paid on this Bond next preceding the date of authentication hereof, unless this Bond is authenticated as of an Interest Payment Date for which interest has been paid, in which event it shall bear interest from such Interest Payment Date, or unless it is authenticated on or before the first Interest Payment Date, in which event it shall bear interest from the Closing Date.

In the event the City fails to make the timely payment of any monthly payment, the City shall pay interest on the then Outstanding Balance at a default rate (the "Default Rate") equal to the interest rate then in effect under this Bond plus five percent (5%); provided, however, that such rate shall under no circumstances exceed the lesser of 12% per annum or such other maximum rate permitted by law.

This Bond is one of a duly authorized issue of bonds of the City designated as "City and County of San Francisco, California Multifamily Housing Revenue Bonds (1150 3rd Street Apartments), Series 2017F" (the "Bonds"), in the aggregate principal amount of up to \$ \_\_\_\_\_, authorized to be issued pursuant to and in accordance with Sections 1.101 and 9.107 of the Charter of the City, Article I of Chapter 43 of the San Francisco Administrative Code of the City and, to the extent applicable, Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code (collectively, the "Act"), and issued under and secured by an Indenture of Trust, dated as of December 1, 2017 (the "Indenture"), between the City and [ \_\_\_\_\_ ], as trustee (the "Trustee"). Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights thereunder of the owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities the Trustee, and of the rights and obligations of the City thereunder, to all of the provisions of which Indenture the holder of this Bond, by acceptance hereof, assents and agrees. The proceeds of the Bonds will be used to make a loan to the Borrower pursuant to a Loan Agreement, dated as of December 1, 2017 (the "Loan Agreement") between the City and the Borrower, and under the terms of a Construction and Permanent Funding Agreement, dated as of December 1, 2017, between the Borrower and the owner of the Bonds, all in order to finance the construction of a residential rental project in the City.

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.

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, 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 Bonds are limited obligations of the City and, as and to the extent set forth in the Indenture, are payable solely from, and secured by a pledge of and lien on, the Revenues (as that term is defined in the Indenture), consisting primarily of amounts paid by the Borrower pursuant to the Loan Agreement.

The Bonds shall be subject to redemption prior to maturity, at a price and upon such terms as are provided in the Indenture. No notice of redemption of Bonds need be given to the registered owners of the Bonds, and the owner of this Bond, by acceptance hereof, expressly waives any requirement for any notice of redemption.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture.

This Bond is transferable by the registered owner hereof, in person, or by its attorney duly authorized in writing, at the Principal Office of the Trustee, but only in the manner, subject to the limitations (including those contained in Section 2.05(b) of the Indenture) and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new fully registered Bond will be issued to the transferee in exchange therefor. The City and the Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, and the City and the Trustee shall not be affected by any notice to the contrary.

The schedule of drawings attached as Exhibit A hereto shall be used by the Trustee to record the payment of the purchase price of the Bonds from time to time (such purchase price to be paid from time to time by the owners of the Bonds as provided in the Indenture), which shall evidence the principal amount of the Bonds purchased by the owners of the Bonds from time to time. The Trustee shall credit any advanced funds toward the purchase price of the Bonds on the schedule of drawings attached hereto as Exhibit A. The total amount outstanding under the Bonds may not exceed \$\_\_\_\_\_ at any time and no portion of the purchase price therefor shall be accepted after the first to occur of (i) the Conversion Date (as defined in the Loan Agreement), or (ii) [December \_\_, 2020].

The Indenture contains provisions permitting the City and the Trustee to execute supplemental indentures adding provisions to, or changing or eliminating any of the provisions of, the Indenture, subject to the limitations set forth in the Indenture.

The City hereby certifies that all of the conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have

happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of California (including the Act).

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

In the event of any conflict between the terms of this Bond and the terms of the Indenture, the terms of the Indenture shall control.

IN WITNESS WHEREOF, the City and County of San Francisco has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor as of the Closing Date.

CITY AND COUNTY OF SAN FRANCISCO

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

FORM OF CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture and has been authenticated and registered on \_\_\_\_\_.

[\_\_\_\_\_] , as Trustee

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

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

FORM OF ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

\_\_\_\_\_  
\_\_\_\_\_

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and do(es) hereby irrevocably constitute and appoint

\_\_\_\_\_, attorney,  
to transfer the same on the registration books of the Trustee, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor.

NOTICE: The signature on this assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

**SCHEDULE OF DRAWINGS**

*Purchase Amount      Purchase Date      Outstanding Principal      Signature of Trustee*



**EXHIBIT B-1**

**FORM OF INVESTOR'S LETTER (BONDS)**

[Date]

City and County of San Francisco  
San Francisco, California

[\_\_\_\_\_] , as Trustee  
[San Francisco, California]

\$ \_\_\_\_\_  
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE BONDS  
(1150 3rd Street Apartments), SERIES 2017F

Ladies and Gentlemen:

The undersigned (the "Investor") hereby represents and warrants to you as follows:

1. The Investor proposes to purchase the above-captioned bonds (the "Bonds") issued pursuant to that certain Indenture of Trust, dated as of December 1, 2017 (the "Indenture"), by and between the City and County of San Francisco, California (the "City") and [\_\_\_\_\_] , as Trustee (the "Trustee"). The Investor understands that the Bonds are not rated by any securities rating agency, and will only be sold to the Investor with the above-addressed parties relying upon the representations and warranties of the Investor set forth herein. The Investor acknowledges that no offering document has been prepared in connection with the issuance and sale of the Bonds. The Investor has requested and received all materials which the Investor has deemed relevant in connection with its purchase of the Bonds (the "Offering Information"). The Investor has reviewed the documents executed in conjunction with the issuance of the Bonds, including, without limitation, the Indenture and the Loan Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Indenture.

2. The Investor hereby waives the requirement of any "due diligence investigation or inquiry" by the City, by each official of the City, by each employee of the City, by each member of the Board of Supervisors of the City, and by counsel to the City, the Trustee, counsel to the Trustee and Bond Counsel in connection with the authorization, execution and delivery of the Bonds and Investor's purchase of the Bonds. The Investor recognizes and agrees that the City, by each official of the City, each employee of the City, each member of the Board of Supervisors of the City, counsel to the City, the Trustee, counsel to the Trustee and Bond Counsel have made no representations or statements (expressed or implied) with respect to the accuracy or completeness of any of the materials reviewed by the Investor in connection with the Investor's purchase of the Bonds. In making an investment decision, the Investor is relying upon its own examination of the City, the Borrower, the Project and the terms of the offering.

3. The Investor has been provided an opportunity to ask questions of, and the Investor has received answers from, representatives of the City and the Borrower regarding the terms and

conditions of the Bonds, and the Investor has obtained all additional information requested by it in connection with the Bonds.

4. The Investor has sufficient knowledge and experience in business and financial matters in general, and investments such as the Bonds in particular, and is capable of evaluating the merits and risks involved in an investment in the Bonds. The Investor is able to bear the economic risk of, and an entire loss of, an investment in the Bonds.

5. The Investor is purchasing the Bonds solely for its own account for investment purposes and has no present intention to resell or distribute the Bonds, except to CCRC pursuant to the Bond Purchase Agreement, provided that the Investor reserves the right to transfer or dispose of the Bonds, at any time, and from time to time, in its complete and sole discretion, subject, however, to the restrictions described in paragraphs 6 through 8 of this Letter. The Investor hereby agrees that the Bonds may only be transferred in whole in accordance with the Indenture, including Article II thereof, to an investor who must execute and deliver to the parties addressed above a form of this Investor's Letter.

6. The Investor agrees that it will only offer, sell, pledge, transfer or exchange the Bonds (or any legal or beneficial interest therein) (i) in accordance with an available exemption from the registration requirements of Section 5 of the Securities Act of 1933, as amended (the "1933 Act"), (ii) in accordance with any applicable state securities laws, and (iii) in accordance with the transfer restrictions set forth in the Bonds and the Indenture. The Investor further agrees that the Bonds will not be transferred to or held in a pool, trust or similar arrangement and that it will not sell any participating interest in the Bonds without the prior written consent of the City.

7. The Investor is a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act of 1933 ("Rule 144A") or an "accredited investor" as defined in Rule 501 promulgated under the Securities Act of 1933 as amended ("Rule 501"); the Investor is a permitted transferee described in Section 2.05(b)(ii) of the Indenture; and the Investor understands that the Bonds may be offered, resold, pledged or transferred only to a person who is a permitted transferee described in Section 2.05(b)(ii) of the Indenture and in compliance with the terms of the Indenture and this Investor Letter.

8. If the Investor sells the Bonds (or any legal or beneficial interest therein), the Investor or its agent will obtain for the benefit of each of you from any subsequent purchaser an Investor Letter in the form of this Letter or such other materials as are required by the Bonds and the Indenture to effect such sale and purchase. The Investor understands and agrees that the Trustee is not authorized to register any transfer of the Bonds prior to receipt of such Investor Letter.

9. None of the Trustee, Bond Counsel, counsel to the City, the City, its Board of Supervisors, or any of its employees or agents will have any responsibility to the Investor for the accuracy or completeness of information obtained by the Purchaser from any source regarding the Project, the City, the Borrower or their financial conditions or regarding the Bonds, the provisions for payment thereof, or the sufficiency of any security therefor, including, without limitation, any information specifically provided by any of such parties contained in the Offering Information. The Investor acknowledges that, as between Investor and all of such parties: (a) the Investor has assumed responsibility for obtaining such information and making such review as the Investor has deemed necessary or desirable in connection with its decision to purchase the Bonds and (b) the Offering Information and any additional information specifically requested from the City or the Borrower and

provided to the Investor prior to closing constitute all the information and review, with the investigation made by Investor (including specifically the Investor's investigation of the City, the Project and the Borrower) prior to its purchase of the Bonds, that Investor has deemed necessary or desirable in connection with its decision to purchase the Bonds.

10. The Investor understands that (a) the Bonds have not been registered with any federal or state securities agency or commission, and (b) no credit rating has been sought or obtained with respect to the Bonds, and the Investor acknowledges that the Bonds are a speculative investment and that there is a high degree of risk in such investment.

11. The Investor acknowledges that the Bonds are a limited obligation of the City, payable solely from the revenues or other amounts provided by or at the direction of the Borrower, and is not an obligation payable from the general revenues or other funds of the City, the State of California or any political subdivision of the State of California. The Investor acknowledges that the City is issuing the Bonds on a conduit, nonrecourse basis, and has no continuing obligations with respect thereto except as expressly set forth in the Indenture.

12. The Investor has the authority to purchase the Bonds and to execute this letter and other documents and instruments required to be executed by the Investor in connection with its purchase of the Bonds. The individual who is executing this letter on behalf of the undersigned is a duly appointed, qualified and acting officer of the Investor and authorized to cause the Investor to make the certifications, representations and warranties contained herein by the execution of this letter on behalf of the Investor.

13. The Investor acknowledges that no offering document has been produced in connection with the issuance or sale of the Bonds.

14. The Investor agrees to indemnify and hold harmless the City, the City's officials, officers, employees and agents, and the members of the governing board of the City with respect to any claim asserted against any of them that is based upon the Investor's sale, transfer or other disposition of its interests in the Bonds in violation of the provisions hereof or of the Indenture or any inaccuracy in any statement made by the Investor in this letter.

15. The Investor acknowledges that interest on a Bond is not excludable from gross income of the owner thereof for federal income tax purposes for any period during which such Bond is owned by a person who is a substantial user of the facilities financed by the Bonds or any person considered to be related to such substantial user (within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended).

The Investor acknowledges that the sale of the Bonds to the Investor is made in reliance upon the certifications, representations and warranties herein by the addressees hereto.

Very truly yours,

[PURCHASER]

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

B-1-3

**EXHIBIT B-2**

**FORM OF INVESTOR'S LETTER (LOAN)**

[Loan Purchase Date]

City and County of San Francisco  
San Francisco, California

[\_\_\_\_\_] , as Trustee  
[San Francisco, California]

Re: Exercise of Loan Purchase Option with respect to the Loan by the City and County of San Francisco of the proceeds \$ \_\_\_\_\_ Maximum Principal Amount City and County of San Francisco, California Multifamily Housing Revenue Bonds (1150 3rd Street Apartments), Series 2017F

Ladies and Gentlemen:

Pursuant to that certain Indenture of Trust (the "Indenture") dated as of December 1, 2017 and executed by the City and County of San Francisco, California (the "City") and [\_\_\_\_\_] , as trustee (the "Trustee"), the City has issued its \$ \_\_\_\_\_ City and County of San Francisco, California Multifamily Housing Revenue Bonds (1150 3rd Street Apartments), Series 2017F (the "Bonds"). Pursuant to that certain Loan Agreement (the "Loan Agreement") dated as of December 1, 2017, and executed by and between MB3E, L.P. (the "Borrower") and the City, the City has made a loan in the principal amount of \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_) (the "Loan") to the Borrower of the proceeds of the sale of the Bonds. The Loan is evidenced by the Note (as defined below) executed by Borrower in favor of the City in the aggregate principal amount of the Loan, and is further evidenced by the documents described in the Loan Agreement as the "Loan Documents." The Note is secured by, among other things, the Deed of Trust (as defined below), encumbering the Borrower's interest in the Property. Pursuant to the Assignment of Deed of Trust (as defined below), the rights of the City in and to the Loan Agreement, the Note and the Deed of Trust (except for the Reserved Rights) have been assigned by the City to the Trustee.

Pursuant to [Section 1.7] of that certain Bond Purchase Agreement dated as of December 1, 2017 by and among Wells Fargo Bank, National Association, a national banking association organized and existing under the laws of the United States of America ("Bank"), California Community Reinvestment Corporation, a California nonprofit public benefit corporation ("CCRC") ("Bond Purchase Agreement") and subject to the terms and conditions set forth therein and in the Indenture, CCRC has elected to purchase the Loan in lieu of the Bonds. As a condition to the execution of an Assignment and Assumption of Deed of Trust and Loan Documents, of even date herewith (the "Loan Assignment"), by the Trustee, in favor of CCRC, as assignee thereunder (for purposes of this letter, the "Investor"), with the consent of the City, the Borrower, and the Bank, the undersigned is delivering this Investor Letter and hereby acknowledges receipt of the Purchased Documents (as defined in the Loan Assignment).

In connection with the purchase of the Loan by the Investor, the Investor makes the following representations upon which you may rely:

1. The Investor has all requisite authority to purchase the Loan and to execute this letter and any other instruments and documents required to be executed by the Investor in connection with the purchase of the Loan.

2. The Investor is (i) an "accredited investor" (as defined in Rule 501(a)(1), (2), (3), (7) or (8) of Regulation D promulgated under the Securities Act of 1933, as amended) or an entity in which all of the equity owners are "accredited investors" as so defined (the foregoing collectively, "Accredited Investors") or a "qualified institutional buyer" (as defined in Rule 144A promulgated under the Securities Act of 1933, as amended); or (ii) a bank, savings institution or insurance company (whether acting in a trustee or custodial capacity for any Accredited Investor or "qualified institutional buyer," each as defined in clause (i) above, or on its own behalf).

3. The Loan is being acquired by the Investor for investment and not with a view to, or for resale in connection with, any distribution of the Loan, and the Investor intends to hold the Loan for its own account and for an indefinite period of time. The Investor understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible.

4. The Investor understands that the Loan (a) is not registered under the Securities Act of 1933 nor is it being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state and that any exemption from federal or state securities registration requirements for which the Bonds were eligible may not extend to the Loan or the Note; (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which is not be readily marketable. The Investor acknowledges and agrees that the City is not the issuer of the Loan, and that the Investor is solely responsible for compliance with applicable securities laws relative to its purchase of the Loan and any subsequent transfer of the Loan pursuant to the terms of the Loan Agreement and the Note.

5. The Investor understands that (a) the Loan is not secured by any pledge of any moneys received or to be received from taxation by the City, the State of California or any political subdivision thereof, (b) the Loan does not and will not represent or constitute any debt, obligation or pledge of the faith and credit of the Issuer, the State of California or any political subdivision thereof; and (c) the City has no liability with respect to the Loan, which is solely an obligation and liability of the Borrower. The Investor acknowledges and agrees that interest on the Loan or the Note is not exempt from federal or state income taxes and that any opinions issued with respect to the Bonds relative to the status of interest on the Bonds do not extend to the status of interest on the Loan or the Note, about which Bond Counsel has expressed no opinion.

6. The Investor has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Investor has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower, the Project and the Loan. The Investor has not relied upon the City for any information in connection with its purchase of the Loan.

7. The Investor acknowledges that neither the City nor the Borrower has prepared an offering document with respect to the Loan.

8. The Investor has made its own inquiry and analysis with respect to the Loan and the security therefor, and other material factors affecting the security and payment of the Loan. The Investor is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Loan.

9. The Investor acknowledges and agrees that, as provided in the Loan Agreement and the Note, it may sell or transfer the Loan only to a single investor. The Investor acknowledges and agrees that the Loan may only be transferred in its entirety, and none of the Loan Documents may be transferred independently of any other Loan Document.

10. The Investor agrees to indemnify and hold harmless the City with respect to any claim asserted against the City that is based upon the sale, transfer or disposition of the Loan by the Investor other than as permitted herein pursuant to the Loan Agreement and the Note.

Very truly yours,

[PURCHASER]

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

EXHIBIT C-1

FORM OF REQUISITION CERTIFICATE – BOND PROCEEDS ACCOUNT

\$ \_\_\_\_\_  
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE BONDS  
(1150 3rd Street Apartments), SERIES 2017F

Requisition No.: \_\_\_\_\_

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

REQUISITION CERTIFICATE

TO: [ \_\_\_\_\_ ], AS TRUSTEE UNDER THE INDENTURE OF TRUST, DATED AS OF DECEMBER 1, 2017, BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, AS ISSUER, AND THE TRUSTEE WITH RESPECT TO THE CAPTIONED BONDS

MB3E, L.P., a California limited partnership (the "Borrower"), hereby requests that the following amounts be paid from the Bond Proceeds Account of the Construction Fund to the following payees for the following purposes:

<i>Amount</i>	<i>Payee and Address</i>	<i>Purpose</i>
---------------	--------------------------	----------------

Less Retainage \$ \_\_\_\_\_

The Borrower hereby certifies that:

(1) obligations in the stated amounts have been incurred and performed at the Project and are presently due and payable and that each item thereof is a Project Cost and is proper charge against the Bond Proceeds Account of the Construction Fund and has not been the subject of a previous withdrawal from the Construction Fund,

(2) to the best of the undersigned's knowledge there has not been filed with or served upon the Issuer or the Borrower notice of any lien, right or attachment upon, or claim affecting the right of any such persons, firms or corporations to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation,

(3) (A) obligations as stated on the requisition have been properly incurred, (B) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Project, (C) if contested, bond has been made by the Borrower and (D) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of the requisition,

(4) all rights, title and interest to any and all personal property acquired with the proceeds of the requisition is vested in the Borrower,

(5) the Borrower is in compliance with all of the Borrower's covenants contained in the Loan Agreement and the Tax Certificate,

(6) such disbursement when added to all other disbursements made to date results in at least ninety-five percent (95%) of the proceeds of the Bonds, including investment earnings, having been used for Qualified Project Costs, and

(7) all representations and warranties of the Borrower contained in the Loan Agreement are on the date hereof true and accurate.

**MB3E, L.P.**,  
a California limited partnership

By: CCDC-MB3E LLC, a California limited liability  
company  
its managing general partner

By: Chinatown Community Development Center,  
Inc., a California nonprofit public benefit  
corporation  
its sole member/manager

By: \_\_\_\_\_  
Norman Fong, Executive Director

By: Swords-MB3E LLC, a California limited  
liability  
company  
its managing general partner

By: Swords to Plowshares: Veterans Rights  
Organization, a California nonprofit public  
benefit corporation  
its sole member/manager

By: \_\_\_\_\_  
Michael Blecker, Executive Director



Approved:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Bondowner

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

**EXHIBIT C-2**

**REQUISITION CERTIFICATE – BORROWER EQUITY ACCOUNT**

**\$ \_\_\_\_\_  
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE BOND,  
(1150 3rd Street Apartments), SERIES 2017F**

Requisition No.: \_\_\_\_\_

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

**REQUISITION CERTIFICATE**

TO: [ \_\_\_\_\_ ], AS TRUSTEE UNDER THE INDENTURE OF TRUST, DATED AS OF DECEMBER 1, 2017, BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, AS ISSUER, AND THE TRUSTEE WITH RESPECT TO THE CAPTIONED BONDS

1. You are requested to disburse funds from the Borrower Equity Account of the Construction Fund pursuant to Section 3.03 of the Indenture in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference. An invoice or other appropriate evidence of the obligations described on Schedule I is attached hereto. All payments will be made by check or wire transfer in accordance with the payment instructions set forth on Schedule I (or on the attached invoice) and the Trustee shall have no obligation to authenticate such payment instructions or the authority under which they were given.

2. The undersigned certifies that as of the date hereof no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under the Loan Agreement, and the Borrower is in compliance with all of the Borrower's covenants contained in the Loan Agreement and the Tax Certificate.

[remainder of page left intentionally blank]

**MB3E, L.P.,**  
a California limited partnership

By: CCDC-MB3E LLC, a California limited liability  
company  
its managing general partner

By: Chinatown Community Development Center,  
Inc., a California nonprofit public benefit  
corporation  
its sole member/manager

By: \_\_\_\_\_  
Norman Fong, Executive Director

By: Swords-MB3E LLC, a California limited  
liability  
company  
its managing general partner

By: Swords to Plowshares: Veterans Rights  
Organization, a California nonprofit public  
benefit corporation  
its sole member/manager

By: \_\_\_\_\_  
Michael Blecker, Executive Director

Approved as of the date first above written.

**WELLS FARGO BANK, NATIONAL ASSOCIATION**  
as Bondowner

By: \_\_\_\_\_  
Jeff Bennett  
Senior Vice President

**Schedule I**

**Payment Instructions**

<i>Payee</i>	<i>Purpose</i>	<i>Amount of Payment</i>
California Debt and Investment Advisory Commission	CDIAC fee	\$_,000.00

## EXHIBIT D

### CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

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

**1. Conflict of Interest.** Through its execution of this Agreement, Owner acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**2. Proprietary or Confidential Information of City.** Owner understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Owner may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Owner agrees that all information disclosed by City to Owner shall be held in confidence and used only in performance of the Agreement. Owner shall exercise the same standard of care to protect such information as a reasonably prudent Owner would use to protect its own proprietary data.

**3. Local Business Enterprise Utilization; Liquidated Damages.**

a. The LBE Ordinance. Owner shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Owner's obligations or liabilities, or materially diminish Owner's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Owner's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Owner's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Owner shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Enforcement. If Owner willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Owner shall be liable for liquidated damages in an amount equal to Owner's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the

“Director of CMD”) may also impose other sanctions against Owner authorized in the LBE Ordinance, including declaring the Owner to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Owner’s LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Owner acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Owner further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Owner on any contract with City. Owner agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

#### 4. **Nondiscrimination; Penalties.**

a. Owner Shall Not Discriminate. In the performance of this Agreement, Owner agrees not to discriminate against any employee, City and County employee working with such Owner or Subcontractor, applicant for employment with such Owner or Subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts. Owner shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all Subcontractors to comply with such provisions. Owner’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. Owner does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

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

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Owner

shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Owner understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Owner and/or deducted from any payments due Owner.

**5. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Owner acknowledges and agrees that he or she has read and understood this section.

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

**7. Drug-Free Workplace Policy.** Owner acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Owner agrees that any violation of this prohibition by Owner, its employees, agents or assigns will be deemed a material breach of this Agreement.

**8. Resource Conservation.** Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Owner to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

**9. Compliance with Americans with Disabilities Act.** Owner acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through an Owner, must be accessible to the disabled public. Owner shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Owner agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Owner, its employees, agents or assigns will constitute a material breach of this Agreement.

**10. Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, Owners’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**11. Limitations on Contributions.** Through execution of this Agreement, Owner acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Owner acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Owner further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Owner's board of directors; Owner's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Owner; any Subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Owner. Additionally, Owner acknowledges that Owner must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Owner further agrees to provide to City the names of each person, entity or committee described above.

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

a. Owner agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Owner's obligations under the MCO is set forth in this Section. Owner is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Owner to pay Owner's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Owner is obligated to keep informed of the then-current requirements. Any subcontract entered into by Owner shall require the Subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Owner's obligation to ensure that any Subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any Subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Owner.

c. Owner shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.



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

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

f. Owner's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Owner fails to comply with these requirements. Owner agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Owner's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Owner understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Owner fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Owner fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Owner represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

**13. Requiring Health Benefits for Covered Employees.** Owner agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Owner shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Owner chooses to offer the health plan option,

such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Owner is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Owner's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Owner if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Owner fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Owner fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Owner shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Owner shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Owner shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Owner based on the Subcontractor's failure to comply, provided that City has first provided Owner with notice and an opportunity to obtain a cure of the violation.

e. Owner shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Owner's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Owner represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Owner shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

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

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

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

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

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

m. If Owner is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Owner later enters into an agreement or agreements that cause Owner's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Owner and the City to be equal to or greater than \$75,000 in the fiscal year.

**14. Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Owner may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Owner agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Owner violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Owner from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Owner's use of profit as a violation of this section.

**15. Preservative-treated Wood Containing Arsenic.** Owner may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Owner may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Owner from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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

**17. Protection of Private Information.** Owner has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Owner agrees that any failure of Owner to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may

terminate the Contract, bring a false claim action against the Owner pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Owner.

**18. Food Service Waste Reduction Requirements.** Owner agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Owner agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Owner agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Owner's failure to comply with this provision

**19. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any Owner, Subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A Owner, Subcontractor or consultant will be deemed to have submitted a false claim to the City if the Owner, 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.

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**LOAN AGREEMENT**

**by and between the**

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

**and**

**MB3E, L.P.,**

**a California limited partnership**

**dated as of December 1, 2017**

**relating to:**

**\$ \_\_\_\_\_  
City and County of San Francisco, California  
Multifamily Housing Revenue Bonds  
(1150 3rd Street Apartments), Series 2017F**

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EXHIBIT A CITY AND COUNTY OF SAN FRANCISCO CONTRACTING PROVISIONS

## LOAN AGREEMENT

THIS LOAN AGREEMENT (as supplemented and amended from time to time, the "Loan Agreement"), dated as of December 1, 2017, is by and between the 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 (the "City"), and MB3E, L.P., a California limited partnership (the "Borrower").

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS AND INTERPRETATION

**Section 1.1 Definitions.** Capitalized terms used in this Loan Agreement and not otherwise defined herein have the meanings given to such terms in the Indenture of Trust, dated as of December 1, 2017, between the City and [\_\_\_\_], as trustee. In addition, the following capitalized terms as used in this Agreement have the following meanings unless the context or use otherwise requires:

"Act of Bankruptcy" means the filing of a petition in bankruptcy (or other commencement of a bankruptcy or similar proceeding) by or against the Borrower, or any guarantor of the Borrower, under any applicable bankruptcy, insolvency or similar law now or hereafter in effect.

"Adjusted Income" has the meaning given to such term in the Regulatory Agreement.

"Affiliated Party" has the meaning given to such term in the Regulatory Agreement.

"Area" has the meaning given to such term in the Regulatory Agreement.

"Area Median Gross Income" has the meaning given to the term "Median Income for the Area" in the Regulatory Agreement.

"Certificate of Continuing Program Compliance" means the document in the form attached to the Regulatory Agreement as Exhibit D.

"County" means the City and County of San Francisco, California.

"Event of Default" means any of the events described as an event of default in Section 7.1 hereof.

"Inducement Date" has the meaning given to such term in the Regulatory Agreement.

"Issuance Costs" has the meaning given to the term in the Indenture.



“Loan” means the mortgage loan originated hereunder by the City to the Borrower in an amount up to forty seven million, four hundred ninety seven thousand, nine hundred thirty five dollars (\$ \_\_\_\_\_), for the purpose of financing the construction by the Borrower of the Project.

“Loan Agreement” means this Loan Agreement, as amended and supplemented from time to time in accordance with the terms of this Loan Agreement.

“Loan Documents” means this Loan Agreement, the Construction and Permanent Funding Agreement, the Indenture, the Regulatory Agreement, the Note, the Deed of Trust and any other documents that are “Loan Documents” as such term is defined in the Construction and Permanent Funding Agreement.

“Low Income Tenants” has the meaning given to such term in the Regulatory Agreement.

“Project Costs” has the meaning given to such term in the Regulatory Agreement.

“Qualified Project Costs” has the meaning given to such term in the Regulatory Agreement.

“Qualified Project Period” has the meaning given to such term in the Regulatory Agreement.

“State” means the State of California.

“Very Low Income Tenants” has the meaning given to such term in the Regulatory Agreement.

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

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

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**Section 2.1 Representations and Warranties of the City.** The City represents, warrants and covenants that:

(a) The City is a municipal corporation, duly organized and validly existing under its charter and the constitution and laws of the State. Under the provisions of the Act, the City

has the power to enter into the transactions on its part contemplated by this Loan Agreement, the Indenture and the Regulatory Agreement (collectively, the "City Documents") and to carry out its obligations hereunder and thereunder. The financing of the Project constitutes and will constitute a permissible public purpose under the Act. By proper action, the City has authorized the execution, delivery and due performance of its obligations under the City Documents.

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

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

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

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

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

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

**Section 2.2 Representations, Warranties and Covenants of the Borrower.** The Borrower represents, warrants and covenants that:

(a) The Borrower is a California limited partnership, organized and existing under the laws of the State, is in good standing in the State, and has full legal right, power and authority under the laws of the United States of America and the State (i) to enter into this Loan Agreement and the other Loan Documents to which it is a party; (ii) to perform its obligations hereunder and thereunder; and (iii) to consummate the transactions on its part contemplated by the Loan Documents.

(b) Upon the execution and delivery thereof by the parties thereto, each of the Loan Documents to which it is a party will constitute valid and binding obligations of the Borrower, enforceable upon the Borrower in accordance with its respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting creditors' rights generally and by judicial discretion in the exercise of equitable remedies.

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

(d) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against the Borrower which (i) affects or seeks to prohibit, restrain or enjoin the loaning of the amounts set forth herein to the Borrower or the execution and delivery of this Loan Agreement or the other Loan Documents, (ii) affects or questions the validity or enforceability of this Loan Agreement or the other Loan Documents, (iii) questions the power or authority of the Borrower to carry out the transactions on its part contemplated by, or to perform its obligations under, this Loan Agreement and the other Loan Documents to which it is a party, or the powers of the Borrower to own, construct, equip or operate the Project.

(e) The Borrower is not in default under any document, instrument or commitment to which the Borrower is a party or to which it or any of its property is subject which default would or could affect the ability of the Borrower to carry out its obligations under this Loan Agreement and the other Loan Documents.

(f) Any certificate signed by an Authorized Borrower Representative and delivered pursuant to this Loan Agreement or the other Loan Documents shall be deemed a representation and warranty by the Borrower as to the statements made therein.

(g) The Project is located wholly within the City.

(h) The Borrower will obtain all necessary certificates, approvals, permits and authorizations with respect to the construction and operation of the Project from applicable local governmental agencies and agencies of the State and the federal government.

(i) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income of the owners thereof for federal income tax purposes of the interest on the Bonds (other than a "substantial user" of the Project or a "related person," as such terms are used in Section 147(a) of the Code). The Borrower intends to utilize all of the residential units that comprise the Project as multifamily rental housing during the Qualified Project Period.

(j) Not in excess of two percent (2%) of the proceeds of the Bonds will be used to pay Issuance Costs.

(k) The construction and operation of the Project in the manner presently contemplated and as described herein, in the Construction and Permanent Funding Agreement and in the Regulatory Agreement will not conflict with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto. The Borrower will cause the Project to be operated in all material respects in accordance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.

(l) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the Project; that it is familiar with the provisions of all of the documents and instruments relating to the financing of the Project to which it is a party; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the City for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the City in any manner except to issue the Bonds in order to provide funds to make the Loan.

(m) The Borrower intends to hold the Project for its own account; has no current plans to sell and has not entered into any agreement to sell any of the units that comprise the Project. It is hereby acknowledged, however, that the Borrower's partnership agreement does refer to certain rights of one or more of its partners to acquire the Project, and for the possible acquisition of the Project following the fifteen year tax credit compliance period as referenced in the Borrower's partnership agreement, and those provisions shall not result in a breach of this Section 2.2(m).

(n) In the event the Loan proceeds are not sufficient to complete the construction and equipping of the Project and the payment of all Issuance Costs, the Borrower will furnish any additional moneys necessary to complete the acquisition, construction and equipping of the Project and pay all Issuance Costs.

(o) All of the proceeds from the Loan plus the income from the investment of the proceeds of the Loan will be used to pay or reimburse the Borrower for Project Costs, and at least ninety-seven percent (97%) of the proceeds of the Loan will be used to pay or reimburse the Borrower for Qualified Project Costs and less than twenty-five percent (25%) of such amount will be used to pay or reimburse the Borrower for the cost of land or any interest therein. The Borrower shall assure that the proceeds of the Loan are expended so as to cause the Bonds to constitute "qualified residential rental bonds" within the meaning of Section 142(d) of the Code.

(p) The estimated total cost of the financing of the construction of the Project is equal to or in excess of the principal amount of the Loan.

(q) The Borrower has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on any of the Bonds to be included in the gross income of the owners thereof for purposes of federal income taxation (other than a "substantial user" of the Project or a "related person," as such terms are used in Section 147(a) of the Code).

(r) The Borrower covenants that it shall not take, or knowingly permit or suffer to be taken by the Trustee, any action with respect to the proceeds of the Bonds which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken,

on the date of issuance of the Bonds would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

**Section 2.3 Hazardous Waste Covenant.** In addition to and without limitation of any other representations, warranties and covenants made by the Borrower under this Loan Agreement and under the other Loan Documents, the Borrower further represents, warrants and covenants that the Borrower will not use or permit Hazardous Materials (as defined hereinafter) on, from, or affecting the Project (a) in any manner which violates federal, state or local laws, ordinances, rules, or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, or (b) in a manner that would create a material adverse effect on the Project. Without limiting the foregoing, the Borrower shall not cause or permit the Project or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Borrower cause or knowingly permit, as a result of any intentional or unintentional act or omission on the part of the Borrower or any tenant or subtenant, a release of Hazardous Materials on to the Project or on to any other property in a manner which violates federal, state, or local laws, ordinances, rules or regulations or in a manner that would create a material adverse effect on the Project. The Borrower shall comply with and require compliance by all tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, and shall obtain and comply with, and require that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Borrower shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other action required by a governmental authority under an applicable statute or regulation to clean up and remove all Hazardous Materials, on, from, or affecting the Project in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations.

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

For the purposes of this Section 2.3 and Section 2.4, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 9601 *et seq.*), and in the regulations promulgated pursuant thereto, or any other federal, state or local environmental laws,

ordinances, rules, or regulations. The provisions of this Section 2.3: (a) shall not apply to substances routinely used in the ordinary course of business, (b) shall be in addition to any and all other obligations and liabilities the Borrower may have to the City at common law, and (c) with respect to any liability or cost arising as a result of acts or omissions of the Borrower during the term of this Loan Agreement, shall survive the termination of this Loan Agreement. This Section 2.3 shall not obligate the Borrower in any way with respect to any acts or omissions of any entity that succeeds the Borrower as owner of the Project.

The indemnifications and protections set forth in this Section 2.3 (i) shall be extended, with respect to the City, to the members of its Board of Supervisors, officers, employees, agents and servants and persons under the City's control or supervision, and (ii) shall be for the full and equal benefit of the Trustee, as assignee of the City under the Indenture.

Anything to the contrary in this Loan Agreement notwithstanding, the covenants of the Borrower contained in this Section 2.3 shall remain in full force and effect after the termination of this Loan Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought, and (ii) payment in full or the satisfaction of such claim or cause of action and of all expense and charges incurred by the City relating to the enforcement of the provisions herein specified.

For the purposes of this Section 2.3, the Borrower shall not be deemed an employee, agent or servant of the City or person under City's control or supervision.

#### **Section 2.4 Additional Environmental Matters.**

(a) The Borrower shall require in any management agreement for the Project that the management company shall operate and maintain the Project in material compliance with all applicable federal, state, regional, county or local laws, statutes, rules, regulations or ordinances, concerning the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601 *et seq.*, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901 *et seq.*, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 *et seq.*, and the Clean Air Act of 1970, 42 U.S.C. Section 4321, and all rules, regulations and guidance documents promulgated or published thereunder, and any state, regional, county or local statute, law, rule, regulation or ordinance relating (i) to releases, discharges, emissions or disposal of Hazardous Materials to air, water, land or ground water, (ii) to the withdrawal or use of ground water, (iii) to the use, handling or disposal of polychlorinated biphenyls ("PCBs"), asbestos or urea formaldehyde, (iv) to the treatment, storage, disposal or management of hazardous substances (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof) and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the Project or the property adjacent to or surrounding the Project, (v) to the exposure of persons to toxic, hazardous or other controlled, prohibited or regulated substances or (vi) to the transportation, storage, disposal, management or release of gaseous or liquid substances and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder.

(b) The Borrower shall keep the Project free and clear of any liens or encumbrances securing payment of the costs of any response, removal or remedial action or cleanup of Hazardous Materials (as defined in Section 2.3).

(c) The Borrower covenants and agrees that it will not knowingly conduct or allow to be conducted any business, operations or activity on the Project, or employ or use the Project to manufacture, treat, store (except with respect to storage in the ordinary operation of the Project), or dispose of any Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof), or any other substance the disposal of which is prohibited, controlled or regulated under applicable law, or which poses a threat or nuisance to safety, health or the environment, including, without limitation, any business, operation or activity which would violate the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901 *et seq.*, or cause or knowingly allow to be caused, a release or threat of release, of a non-diminimis quantity of hazardous substances on the Project as defined by, and within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601 *et seq.*, or any similar state, county, regional or local statute providing for financial responsibility for cleanup for the release or threatened release of substances provided for thereunder.

(d) The Borrower covenants and agrees that it shall take all appropriate response action, including any removal and remedial action, in the event of a release, emission, discharge or disposal of Hazardous Materials in, on, under or about the Project for which the Borrower is liable under state, federal or local environmental rules or regulations.

(e) The Borrower shall, as soon as practicable and in any event within fifteen (15) days of its receipt thereof, notify the City and the Bondowner of any notice, letter, citation, order, warning, complaint, claim or demand that (i) the Borrower or any tenant has violated, or is about to violate, any federal, state, regional, county or local environmental, health or safety statute, law, rule, regulation, ordinance, judgment or order; (ii) there has been a release, or there is a threat of release, of Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof) from the Project; (iii) the Borrower or any tenant may be or is liable, in whole or in part, for the costs of cleaning up, remediating, removing or responding to a release of Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof); or (iv) the Project is subject to a lien in favor of any governmental entity for any environmental law, rule or regulation arising from or costs incurred by such governmental entity in response to a release of a Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof).

(f) During the period in which this Loan Agreement is in effect, the Borrower hereby grants the City and the Trustee, and their respective agents, attorneys, employees, consultants and contractors, an irrevocable license and authorization upon reasonable notice of not less than twenty-four (24) hours to enter upon and inspect the Project and perform such tests, including, without limitation, subsurface testing, soils and ground water testing, and other tests which may physically invade the Project, as the City or the Trustee, in their respective reasonable discretion, determine are necessary to protect the lien created by the Deed of Trust. The provisions of this Section 2.4 shall be for the full and equal benefit of the City, and of the Trustee as assignee of the City under the Indenture.

## ARTICLE III

### THE LOAN

**Section 3.1 Closing of the Loan.** The closing of the Loan shall not occur until the following conditions are met:

(a) the City shall have received an original executed counterpart of this Loan Agreement, the Note, the Tax Certificate, the Regulatory Agreement and the Deed of Trust, together with evidence satisfactory to the City of the recordation of the Regulatory Agreement and the Deed of Trust in the official records of the County Recorder of the County, which may be by telephonic notice from a title company (or that such documents have been delivered to an authorized agent of the title company for recordation under binding recording instructions from Bondowner's counsel or such other counsel as may be acceptable to the City and Bondowner);

(b) no Event of Default nor any event which with the passage of time and/or the giving of notice would constitute an Event of Default under this Loan Agreement shall have occurred and the Borrower shall have so certified in writing;

(c) all legal matters incident to the transactions contemplated by this Loan Agreement shall be concluded to the reasonable satisfaction of counsel to the City;

(d) counsel to the Borrower shall have delivered an opinion in form satisfactory to counsel to the City, Bond Counsel and counsel to the Bondowner regarding the enforceability against the Borrower of each of the documents to which the Borrower is a party;

(e) delivery to the Trustee or into escrow with the title company (or separate escrow company, if applicable) of all amounts required to be paid in connection with the origination of the Loan and any underlying real estate transfers or transactions, as specified in written instructions delivered to the title company by counsel to the Bondowner (or such other counsel as may be acceptable to the Bondowner) and/or as specified in a closing memorandum of the Bondowner; and

(f) the Construction and Permanent Funding Agreement shall have been executed by the parties thereto, and all conditions to the purchase of the Bonds provided therein shall have been satisfied as evidenced by the advancement by the Bondowner of the Initial Disbursement.

**Section 3.2 Commitment to Execute the Note.** The Borrower agrees to execute and deliver the Note, the Construction and Permanent Funding Agreement, the Regulatory Agreement, the Tax Certificate and the Deed of Trust simultaneously with the execution of this Loan Agreement.

**Section 3.3 Making of the Loan.** The City hereby makes to the Borrower and agrees to fund, and the Borrower hereby accepts from the City, upon the terms and conditions set forth herein and in the Construction and Permanent Funding Agreement, the Loan and agrees to have the proceeds of the Loan applied and disbursed in accordance with the provisions of this Loan Agreement and the Construction and Permanent Funding Agreement.



**Section 3.4 Disbursement of Loan Proceeds.**

(a) The City hereby authorizes and directs the first funding and disbursement of the Loan on the Closing Date in an amount equal to the Initial Disbursement, subject to the conditions set forth in Section 3.1 above and the conditions set forth in the Construction and Permanent Funding Agreement. Subject to the foregoing, the Borrower hereby authorizes the City to disburse on the date of execution and delivery of the Note, the Initial Disbursement representing the first advance of the principal amount of Loan to be transferred to or for the benefit of the Borrower to be used to pay Qualified Project Costs.

(b) The Trustee shall make disbursements of the remaining principal amount of the Loan directly to or for the benefit of the Borrower subject to Section 3.03 of the Indenture, and on the terms and subject to the conditions set forth in the Construction and Permanent Funding Agreement.

**ARTICLE IV**

**LIMITED LIABILITY**

**Section 4.1 Limited Liability.** Notwithstanding anything herein or in any other instrument to the contrary, the City shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Loan Agreement, the Bonds or any of the other Loan Documents, except only to the extent amounts are received for the payment thereof from the Borrower under this Loan Agreement. All obligations and any liability of the City shall be further limited as provided in Sections 5.01, 6.12, 7.10 and 11.09 of the Indenture.

**ARTICLE V**

**REPAYMENT OF THE LOAN**

**Section 5.1 Loan Repayment.**

(a) The obligations of the Borrower for repayment of the principal of the Loan and for payment of interest thereon and premium with respect thereto shall be evidenced by the Note which shall be executed by the Borrower in the form required by the Construction and Permanent Funding Agreement. The Borrower agrees to pay to the Trustee, the principal of, interest on and premium with respect to the Loan at the times, in the manner, in the amount and at the rate or rates of interest provided in the Note and in the other Loan Documents; provided that at all times the repayment of the Loan shall be in time and amount sufficient to make timely payments of amounts due on the Bonds.

(b) The Borrower further agrees to pay all taxes and assessments, general or special, including, without limitation, all *ad valorem* taxes, concerning or in any way related to the Project, or any part thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments with respect thereto; provided, however, that the Borrower reserves the right to contest in good faith the legality of any tax

or governmental charge concerning or in any way related to the Project. In addition, the Borrower agrees to pay any loan fee, processing fee and all title, escrow, recording and closing costs and expenses, any appraisal costs and all other reasonable fees and costs associated with or required in connection with the Bonds, the Regulatory Agreement and Indenture; including but not limited to any such amounts described in Section 8.06 of the Indenture.

(c) The Borrower hereby acknowledges and consents to the assignment by the City to the Trustee and the Bondowner of the Issuer's rights under the Note, the Deed of Trust, this Loan Agreement and the other Loan Documents (excepting only the Reserved Rights), and the appointment of the Trustee as agent of the City to collect the payments on the Loan, all as set forth in the Indenture.

(d) The Borrower hereby agrees to pay the City fees and expenses described in Section 18 of the Regulatory Agreement.

(e) The Borrower agrees to pay to the City within fifteen (15) days after receipt of request for payment thereof, all expenses of the City (including salaries and wages of City employees) related to the Project and the financing thereof that are not otherwise required to be paid by the Borrower under the terms of this Loan Agreement and are not paid from disbursements of the Loan, including, without limitation, legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bonds.

(f) The Borrower agrees to pay to the Trustee, immediately upon demand for payment thereof, its fees and all reasonable out-of-pocket expenses of the Trustee in connection with its serving as Trustee under the Indenture that are not otherwise required to be paid by the Borrower under the terms of this Loan Agreement, including, without limitation, legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bonds.

**Section 5.2 Nature of the Borrower's Obligations.** The Borrower shall repay the Loan pursuant to the terms of the Note and the Construction and Permanent Funding Agreement irrespective of any rights of set-off, recoupment or counterclaim the Borrower might otherwise have against the City or any other person. The Borrower will not suspend, discontinue or reduce any such payment or (except as expressly provided herein) terminate this Loan Agreement for any cause, including, without limiting the generality of the foregoing, (i) any delay or interruption in the construction or operation of the Project; (ii) the failure to obtain any permit, order or action of any kind from any governmental agency relating to the Loan or the Project; (iii) any event constituting force majeure; (iv) any acts or circumstances that may constitute commercial frustration of purpose; (v) any change in the laws of the United States of America, the State or any political subdivision thereof; or (vi) any failure of the City or the Borrower to perform or observe any covenant whether expressed or implied, or to discharge any duty, liability or obligation arising out of or connected with the Note; it being the intention of the parties that, as long as the Note or any portion thereof remains outstanding and unpaid, the obligation of the Borrower to repay the Loan and provide such moneys shall continue in all events. This Section 5.2 shall not be construed to release the Borrower from any of its obligations hereunder, or, except as provided in this Section 5.2, to prevent or restrict the Borrower from asserting any rights which it may have against the City under the Note or the Deed of Trust or under any provision of law or to prevent or restrict the Borrower, at its own cost and

expense, from prosecuting or defending any action or proceeding by or against the City, the Bondowner or the Trustee or taking any other action to protect or secure its rights.

Notwithstanding the foregoing but subject to the provisions of the Construction and Permanent Funding Agreement and Section 5.4 below, if the Conversion Date occurs, then at all times following the Conversion Date neither the Borrower nor the partners, officers or employees of the Borrower shall be personally liable for the amounts owing under the Note or the Deed of Trust; and the City's remedies in the event of a default under the Loan following the Conversion Date shall be limited to those remedies set forth in Section 7.2 hereof and the commencement of foreclosure under the Deed of Trust and the exercise of the power of sale or other rights granted thereunder. Notwithstanding the Indenture, no assignment by the City of its rights hereunder shall preclude the City from proceeding directly against the Borrower in connection with the obligation of the Borrower to indemnify the City under Section 8 of the Regulatory Agreement or to make any payment to the City required to be paid by the Borrower pursuant to the provisions of Sections 2.3, 2.4, 5.1(d), 5.1(e) or 7.4 hereof.

**Section 5.3 No Encumbrances.** The Borrower shall not create, permit, file or record against the Project without the prior written consent of the Bondowner any deed of trust lien or other lien, inferior or superior to the lien of the Deed of Trust, other than Permitted Encumbrances (as defined in the Construction and Permanent Funding Agreement) and any lien created under any of the Subordinate Loan Documents (as defined in the Construction and Permanent Funding Agreement).

**Section 5.4 Exceptions to Non-Recourse Liability.** Notwithstanding Section 5.2 or any other provision of this Agreement, the City (and the Trustee, as assignee of the City) shall have the right to recover from the Borrower and any general partner of Borrower (each individually, or on a joint and several basis if more than one), the following:

(a) any loss, damage or cost (including but not limited to attorneys' fees) resulting from fraud or intentional misrepresentation by the Borrower, the Borrower's agents or employees or any general partner of the Borrower in connection with obtaining the Loan evidenced by this Agreement, the Note, or in complying with any of Borrower's obligations under the Loan Documents;

(b) insurance proceeds, condemnation awards, security deposits from tenants or other sums or payments received by or on behalf of Borrower in its capacity as owner of the Project and not applied in accordance with the provisions of the Deed of Trust and the Construction and Permanent Funding Agreement;

(c) all rents not applied, first, to the payment of the reasonable operating expenses as such operating expenses become due and payable, and then, to the payment of principal and interest then due and payable under this Loan Agreement, the Note and any other sums due under the Deed of Trust and all other Loan Documents (including but not limited to deposits or reserves payable under any Loan Documents);

(d) transfer fees and charges due under the Deed of Trust;

(e) all rents and profits, and security deposits received by the Borrower after an Event of Default under this Agreement or the Construction and Permanent Funding Agreement;

(f) any loss, damage or cost (including but not limited to attorneys' fees) resulting from the commission of material waste by the Borrower (or any partner, officer, director or agent of the Borrower or any guarantor or owner of any collateral) or failure by the Borrower to perform its obligations to maintain the Project;

(g) any loss, damage or cost (including but not limited to attorneys' fees) resulting from the presence or release of any "Hazardous Materials" (as defined in Section 2.3) on, in or under the Project;

(h) all sums owing by the Borrower under all indemnities contained in this Loan Agreement, the Regulatory Agreement and the Construction and Permanent Funding Agreement; and

(i) any loss, damage or cost (including but not limited to attorneys' fees) resulting from failure by the Borrower to pay taxes and charges that may become a lien on the Project, to maintain and pay premiums for insurance required pursuant to this Loan Agreement, the Construction and Permanent Funding Agreement or the Deed of Trust, or to repay any sums advanced by the City or Trustee for any such purpose.

The exceptions to non-recourse liability contained in this Section 5.4 shall not limit the rights of the City (or the Trustee, as assignee of the City) to:

(i) name the Borrower or any general partner in the Borrower as a party defendant in any action, proceeding or arbitration, subject to the limitations of this Section 5.4 as to personal liability; or

(ii) assert any unpaid amounts on the Loan as a defense or offset to or against any claim or cause of action made or alleged against the City or Trustee by the Borrower or any of its partners or any guarantor or indemnitor with respect to the Loan; or

(iii) exercise self-help remedies such as set-off or non-judicial foreclosure against, or sale of, any real or personal property collateral security; or

(iv) enforce the Borrower's obligations to complete acquisition and construction of the Project as required by this Loan Agreement and the Construction and Permanent Funding Agreement, including obligations to repay any sums advanced by the City or Trustee for such purpose.

The limitation of liability set forth in this Section 5.4 will be deemed void and have no force or effect if the Borrower or any partner in the Borrower attempts to materially delay any foreclosure of the Deed of Trust or any other collateral security for the Loan, or if the Borrower or any partner in the Borrower claims that this Loan Agreement, the Construction and Permanent Funding Agreement or any of the other instruments or documents executed in connection with the Loan are invalid or unenforceable to any extent that would preclude foreclosure.

No provision of this Section 5.4 shall (i) affect any guaranty or similar agreement executed in connection with the debt evidenced by the Note or this Loan Agreement, (ii) release or reduce the debt evidenced by the Note or this Agreement, (iii) impair the right of the Bondowner Representative to enforce any provisions of the Deed of Trust or any other collateral security for the repayment of the Loan, (iv) impair the lien of the Deed of Trust or any other collateral security for the repayment

of the Loan, or (v) impair the right of the Bondowner to enforce the provisions of any Loan Document. Nothing herein shall directly or indirectly limit the right of the Bondowner to collect or recover any collateral from Borrower or any person holding or receiving the same without the written consent of the Bondowner, including any partner, shareholder or affiliate who receives the rents and profits assigned to the City, the Trustee or the Bondowner after the same become payable by the Borrower or under circumstances where the same are recoverable by the City, the Trustee or the Bondowner under applicable law or by contract. Furthermore, nothing in any other provision of the Note, this Loan Agreement or the other Loan Documents shall be deemed to limit the rights of the City, the Trustee or the Bondowner to enforce collection from Borrower (or any other person liable therefor) of all reasonable attorneys' fees, costs, expenses, indemnity liabilities and other amounts payable by the Borrower apart from principal or interest owing under the Note.

Nothing in this Section 5.4 shall be interpreted to subordinate any obligation or liability of Borrower to the City, the Trustee or the Bondowner to any operating expenses, and upon an Event of Default the Bondowner may apply Revenues to any secured or unsecured obligation owing to the Bondowner, in any order.

Notwithstanding anything herein to the contrary, no limited partner of Borrower (to the extent it continues to act solely in the capacity of a limited partner of Borrower) shall have any personal liability regarding the Note or the Deed of Trust.

## ARTICLE VI

### FURTHER AGREEMENTS

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

**Section 6.2 Borrower Not to Dispose of Assets; Conditions Under Which Exceptions Permitted.** The Borrower agrees that during the term of this Loan Agreement it will not dispose of all or substantially all of its assets nor consolidate with nor merge into any entity unless (i) the disposition is permitted under the applicable provisions of the Construction and Permanent Funding Agreement, (ii) the City and the Bondowner shall consent in writing to the disposition, consolidation or merger, (iii) the acquirer of its assets or the entity with which it shall consolidate or into which it shall merge shall be an individual or a corporation, partnership or other legal entity organized and existing under the laws of the United States of America or one of the states of the United States of America and shall be qualified and admitted to do business in the State; and (iv) such acquiring or remaining entity shall assume in writing all of the obligations of the Borrower under this Loan Agreement and the other Loan Documents to which the Borrower is a party.

**Section 6.3 Cooperation in Enforcement of Regulatory Agreement.** In order to maintain the exclusion from gross income of the owners of the Bonds under federal tax law of interest on the Bonds (other than any owner which a "substantial user" of the Project or a "related person," as such terms are used in Section 147(a) of the Code) and to assure compliance with the laws of the State (including the Act), the Borrower hereby agrees that it shall, concurrently with or before the execution and delivery of the Bonds, execute and deliver the Regulatory Agreement and

cause it to be recorded in the County Recorder's office. The Borrower hereby covenants and agrees as follows:

- (a) to comply with all provisions of the Regulatory Agreement;
- (b) to advise the City in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of the Borrower set forth in the Regulatory Agreement;
- (c) upon written direction by the City, to cooperate fully and promptly with the City in enforcing the terms and provisions of the Regulatory Agreement; and
- (d) to file in accordance with the time limits established by the Regulatory Agreement all reports and certificates required thereunder, and the Certification to the Secretary of the Treasury required by Section 4(f) of the Regulatory Agreement.

Subject to any applicable laws, including privacy laws, the books and records of the Borrower pertaining to the incomes of Low Income Tenants and Very Low Income Tenants residing in the Project shall be open to inspection by any authorized representative of the City and the Bondowner, including any Income Certification Forms (as defined in the Regulatory Agreement) obtained from tenants.

The City shall not incur any liability in the event of any breach or violation of the Regulatory Agreement by the Borrower, and the Borrower agrees to indemnify the City from any claim or liability for such breach pursuant to Section 8 of the Regulatory Agreement.

**Section 6.4 Additional Instruments.** The Borrower hereby covenants to execute and deliver such additional instruments and to perform such additional acts as may be necessary, in the opinion of the City, to carry out the intent of the Loan Documents or to perfect or give further assurances of any of the rights granted or provided for in the Loan Documents and the Note.

**Section 6.5 Books and Records.** The Borrower hereby covenants to permit the City, the Trustee and the Bondowner or their duly authorized representatives access during normal business hours to the books and records of the Borrower pertaining to the Loan and the Project, and to make such books and records available for audit and inspection, at reasonable times and under reasonable conditions to the City, the Bondowner, the Trustee and their duly authorized representatives and at the sole expense of the Borrower.

**Section 6.6 Notice of Certain Events.** The Borrower hereby covenants to advise the City and the Bondowner promptly in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. In addition, the Borrower hereby covenants to advise the City and the Bondowner promptly in writing of the occurrence of any Act of Bankruptcy.

**Section 6.7 Indemnification of the City and Trustee.** The Borrower agrees to indemnify the City and the Trustee as provided in Section 8 of the Regulatory Agreement. The rights of any persons to indemnity thereunder and rights to payment of fees and reimbursement of expenses pursuant to Sections 5.1 and 7.4 hereof shall survive the final payment or defeasance of the Bonds

and in the case of the Trustee any resignation or removal. The provisions of this Section 6.7 shall survive the termination of this Loan Agreement.

**Section 6.8 Consent to Assignment.** The City has made an assignment to the Trustee under the Indenture of all rights and interest of the City in and to this Loan Agreement (except its Reserved Rights), the Note, the Deed of Trust and the other Loan Documents and the Trustee is authorized to collect the payments due and payable by the Borrower on the Loan; and the Borrower hereby consents to all such assignments and such appointment.

**Section 6.9 Compliance with Usury Laws.** Notwithstanding any other provision of this Loan Agreement, it is agreed and understood that in no event shall this Loan Agreement, with respect to the Note or other instrument of indebtedness, be construed as requiring the Borrower or any other person to pay interest and other costs or considerations that constitute interest under any applicable law which are contracted for, charged or received pursuant to this Loan Agreement in an amount in excess of the maximum amount of interest allowed under any applicable law.

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

The provisions of this Section 6.9 prevail over any other provision of this Loan Agreement.

**Section 6.10 Leasehold Interest in the Project Site.** The Borrower shall concurrently with the closing of the Loan have a leasehold interest in the Project site free and clear of any lien or encumbrance except for (i) liens for non-delinquent assessments and taxes not yet due; (ii) the Deed of Trust; (iii) the Regulatory Agreement; and (iv) any other encumbrances approved in writing by the Bondowner. Concurrently with the closing of the Loan, the Borrower shall cause to be delivered to the Bondowner one or more title policies, naming the Bondowner as the insured, as its interests may appear, with endorsements specified in the Bondowner's escrow instructions.

**Section 6.11 Payment of Taxes.** The Borrower has filed or caused to be filed all federal, state and local tax returns or information returns which are required to be filed with respect to the Project and of which Borrower has knowledge, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due and payable.

**Section 6.12 No Untrue Statements.** Neither this Loan Agreement nor any other document, certificate or statement furnished to the City, the Trustee or the Bondowner by or on behalf of the Borrower, contains to the best of the Borrower's knowledge any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading or incomplete as of the date hereof. It is specifically understood by Borrower that all such statements, representations and warranties shall be deemed to have been relied upon by the City as an inducement to make the Loan, and by the Bondowner as an inducement to buy the Bonds, and that if any such statements, representations and warranties were materially incorrect at the time they were made, the City may consider any such misrepresentation or breach an Event of Default.

**Section 6.13 Insurance.** The Borrower shall provide policies of property damage (fire, extended coverage, vandalism and malicious mischief), loss of rent, public liability and worker's compensation insurance with respect to the Project and the operation thereof as required under the Deed of Trust and the Construction and Permanent Funding Agreement.

**Section 6.14 Tax Exempt Status of the Bonds.**

(a) It is the intention of the City and the Borrower that interest on the Bonds shall be and remain excludable from gross income of the owners thereof for federal income taxation purposes (other than a "substantial user" of the Project or a "related person," as such terms are used in Section 147(a) of the Code), and to that end the covenants and agreements of the Borrower in this Section 6.14 are for the benefit of the Bondowner and the City.

(b) The Borrower covenants and agrees that it will not (i) use or permit the use of any of the funds provided by the City hereunder or any other funds of the Borrower, directly or indirectly, in such manner as would, or (ii) take or omit to take any other action that would, in each case cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

(c) In the event that at any time the Borrower is of the opinion or becomes otherwise aware that for purposes of this Section 6.14 it is necessary to restrict or to limit the yield on the investment of any moneys held under the Indenture or under the Construction and Permanent Funding Agreement, or otherwise by the Bondowner, the Borrower shall determine the limitations and so instruct the Trustee or Bondowner, as applicable, in writing and cause the Trustee or the Bondowner, as applicable, to comply with those limitations under the Indenture or the Construction and Permanent Funding Agreement, respectively.

(d) The Borrower will take such action or actions as may be reasonably necessary in the opinion of Bond Counsel, or of which it otherwise becomes aware, to fully comply with Section 148 of the Code as applicable to the Bonds.

(e) The Borrower further agrees that it shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g. AFDC, SSI), physical disability, national origin or marital status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, to the extent required by applicable State or federal law.

(f) The Borrower further warrants and covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with provisions contradictory to, or in opposition to, the provisions, of this Loan Agreement and of the Regulatory Agreement, and that in any event, the requirements of this Loan Agreement and the Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.

(g) The Borrower will use due diligence to complete the construction of all of the units comprising the Project and reasonably expects to fully expend the entire \$\_\_\_\_\_ authorized principal amount of the Loan by \_\_\_\_\_, 20\_\_.

(h) The Borrower will take such action or actions as necessary to ensure compliance with Sections 2.2(j), (o), (p), (q) and (r) hereof.



(i) The Borrower will make timely payment of any rebate amount due to the federal government by reason of Section 148(f) of the Code, as applicable to the Bonds.

**Section 6.15 Recordation of Amendments to Regulatory Agreement.** The Borrower agrees to cause any amendments to the Regulatory Agreement to be recorded in the appropriate official public records of the County.

**Section 6.16 Useful Life.** The Borrower hereby represents and warrants that, within the meaning of Section 147(a)(14) of the Code, the average maturity of the Bonds does not exceed one hundred and twenty percent (120%) of the average reasonably expected economic life of the facilities being financed with the proceeds of the Bonds.

**Section 6.17 Federal Guarantee Prohibition.** The Borrower shall take no action, nor permit nor suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

**Section 6.18 Prohibited Facilities.** The Borrower represents and warrants that no portion of the proceeds of the Loan shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises, and no portion of the proceeds of the Note shall be used for an office unless (i) the office is located on the premises of facilities constituting a portion of 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.

**Section 6.19 Election of Applicable Income Limit.** The City 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 comprising the Project (as such term is used in the Regulatory Agreement) shall be occupied by persons or families whose Adjusted Income does not exceed sixty percent (60%) of the Median Income for the Area (as such term is defined in the Regulatory Agreement).

**Section 6.20 City Contracting Requirements.** The Borrower covenants and agrees to comply with the provisions set forth in Exhibit A to this Loan Agreement, which is incorporated in and made a part of this Loan Agreement by this reference.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.1 Events of Default.** The occurrence of any one or more of the following events or conditions shall constitute an "Event of Default" under this Loan Agreement:

(a) Any failure by the Borrower to pay any amounts required to be paid on the Note when due;

(b) Any failure by the Borrower to pay as and when due and payable any other sums required to be paid by the Borrower under this Loan Agreement and the continuation of such failure for a period of five (5) calendar days after the same are due; or

(c) Any failure of any representation or warranty made in this Loan Agreement, the Construction and Permanent Funding Agreement or any requisition requesting disbursement of Loan proceeds to be true and correct; or

(d) Any failure by the Borrower to observe and perform any covenant or agreement on its part to be observed or performed hereunder or under any of the other Loan Documents, other than as referred to in subsections (a) or (b) of this Section 7.1, for a period of thirty (30) calendar days after written notice specifying such breach or failure and requesting that it be remedied, given to the Borrower by the City or the Bondowner; provided, however, that in the event such breach or failure be such that it can be corrected but cannot be corrected within said 30-day period, the same shall not constitute an Event of Default hereunder if corrective action is instituted by the Borrower or on behalf of the Borrower within said 30-day period, is diligently pursued to completion thereafter and in any event is cured within ninety (90) calendar days after the initial notice of such failure is given to Borrower (provided, however, that, notwithstanding the foregoing, to the extent that a lesser or greater cure period is set forth in any Loan Document, the foregoing 30-day cure period shall not apply and such lesser or greater cure period shall govern and control with respect to defaults occurring thereunder); or

(e) Any Event of Default (as defined or otherwise set forth in the Indenture or any of the other Loan Documents) shall have occurred and shall remain uncured beyond any applicable cure period provided in the applicable document; or

(f) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Borrower occurs, or any sale, transfer or other disposition of the Project or of all or substantially all of the assets of Borrower occurs; or

(g) Any failure by the Borrower to obtain any governmental approvals as required in order to proceed with the construction of the Project so as to complete the same by the Completion Date (as defined in the Construction and Permanent Funding Agreement), or the revocation or other invalidation of any such approvals previously obtained; or

(h) Any change in the legal or beneficial ownership of the Borrower other than as expressly permitted by Section 11 of the Regulatory Agreement, by the terms hereof or by reason of the death of the owner of such interests; or

(i) Any failure by the Borrower to pay at maturity, or within any applicable period of grace, any Indebtedness, or any failure to observe or perform any material term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing any Indebtedness, for such period of time as would permit (assuming the giving of appropriate notice if required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof; or

(j) The Borrower or its general partner (each an "Obligor" and collectively the "Obligors") shall file a voluntary petition in bankruptcy under Title 11 of the United States Code, or an order for relief shall be issued against any such Obligor in any involuntary petition in bankruptcy under Title 11 of the United States Code, or any such Obligor shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief of debtors, or such Obligor shall seek or

consent to or acquiesce in the appointment of any custodian, trustee, receiver, conservator or liquidator of such Obligor, or of all or any substantial part of its respective property, or such Obligor shall make an assignment for the benefit of creditors, or such Obligor shall give notice to any governmental authority or body of insolvency or pending insolvency or suspension of operation; or

(k) An involuntary petition in bankruptcy under Title 11 of the United States Code shall be filed against any Obligor and such petition shall not be dismissed within sixty (60) calendar days of the filing thereof; or

(l) A court of competent jurisdiction shall enter any order, judgment or decree approving a petition filed against any Obligor seeking any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or appointing any custodian, trustee, receiver, conservator or liquidator of all or any substantial part of its property; or

(m) Any of the events described in Section (j) or (k) occurs with respect to the Investor Limited Partner (as defined in the Borrower's partnership agreement) prior to funding by the Investor Limited Partner of all of the capital contributions required in order to permit the timely occurrence of the Conversion Date; or

(n) Any of the Loan Documents shall be canceled, terminated, revoked or rescinded otherwise than in accordance with the terms thereof or with the express prior written consent of the Bondowner (in its sole and absolute discretion), or any action at law, suit in equity or other legal proceeding to cancel, revoke or rescind any of the Loan Documents shall be commenced by or on behalf of any Obligor which is a party thereto, or any of their respective stockholders, partners or beneficiaries, or any court or any other governmental or regulatory authority or agency of competent jurisdiction shall make a determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents is illegal, invalid or unenforceable in accordance with the terms thereof.

## **Section 7.2 Remedies on Default.**

(a) Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred, any obligation of the Bondowner to approve further disbursements of the Loan shall be terminated, and the Bondowner shall have the right (but not the obligation) to exercise any one and/or more of the following rights and remedies:

(i) by notice in writing to the Borrower, declare the entire unpaid indebtedness under the Note and the other Loan Documents to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable; and

(ii) take whatever action at law or in equity or under any of the Loan Documents, as may appear necessary or desirable to Bondowner to collect the payments and other amounts then due and thereafter to become due hereunder or under the Note, and/or to exercise any right or remedy or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement, the Note or any other Loan Document.

(b) Any amounts collected pursuant to action taken under this Section 7.2 (other than amounts collected by the City pursuant to the Reserved Rights) shall, after the payment of the

costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the City, the Trustee or the Bondowner and their respective counsel, be paid into the Bond Fund (unless otherwise provided in this Loan Agreement) and applied in accordance with the provisions of the Indenture. No action taken pursuant to this Section 7.2 shall relieve the Borrower from the Borrower's obligations pursuant to Section 6.14 hereof.

**Section 7.3 No Remedy Exclusive.** No remedy conferred herein or in any other Loan Document upon or reserved to the City or Bondowner is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement and each other Loan Document, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City or the Bondowner to exercise any remedy reserved to it herein or in any other Loan Document, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

**Section 7.4 Attorneys' Fees and Expenses.** If an Event of Default occurs and if the City, the Trustee or the Bondowner should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the Borrower contained herein, the Borrower on demand will pay to the City, the Trustee and/or the Bondowner the reasonable fees of such attorneys and the reasonable expenses so incurred, including court appeals.

**Section 7.5 City Exercise of Remedies.** Notwithstanding anything to the contrary contained herein, Bondowner shall have the sole and exclusive right to exercise, and direct the exercise of, all rights and remedies available to City, the Trustee or Bondowner; provided, however, that the City may enforce its Reserved Rights under the Loan Documents and exercise the permitted remedies with respect thereto against the Borrower; provided that the City shall not commence or direct the Trustee or the Bondowner to commence any action (a) to declare the outstanding balance of the Bonds or the Loan to be due, (b) to foreclose or to take similar action under the Deed of Trust or otherwise in respect of any liens upon or security interests in the Project or other property pledged to secure the Borrower's obligations under the Loan Documents, (c) to appoint a receiver, (d) to enforce any similar remedy against the Project or other property pledged to secure the Borrower's obligations under the Loan Documents; or (e) to enforce any other remedy which would cause any liens or security interests granted under the Loan Documents to be discharged or materially impaired thereby.

**Section 7.6 No Additional Waiver Implied by One Waiver.** In the event any agreement or covenant contained in this Loan Agreement should be breached by the Borrower and thereafter waived by the City or the Bondowner, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder including any other breach of the same agreement or covenant.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.1 Entire Agreement.** This Loan Agreement, the Construction and Permanent Funding Agreement, the Note, the Regulatory Agreement, the Deed of Trust and the other Loan Documents constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the City and the Borrower with respect to the subject matter hereof.

**Section 8.2 Notices.** All notices, certificates or other communications by the Borrower or the City under this Agreement shall be provided at the address and as otherwise set forth in Section 11.06 of the Indenture.

**Section 8.3 Assignments.** This Loan Agreement may not be assigned by any party without the prior written consent of the other, except that the City shall assign its rights under this Loan Agreement pursuant to the Indenture, and except also that the Borrower may assign to any transferee its rights under this Loan Agreement as provided by Section 6.2.

**Section 8.4 Severability.** If any provision of this Loan Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

**Section 8.5 Execution of Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 8.6 Amendments, Changes and Modifications.** Except as otherwise provided in this Loan Agreement, subsequent to the issuance of the Note and prior to its payment in full (or provision for payment thereof having been made in accordance with the provisions of the Indenture), this Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto and the written consent of the Bondowner.

**Section 8.7 Governing Law.** This Loan Agreement shall be governed exclusively by and construed in accordance with the laws of the State applicable to contracts made and performed in the State.

**Section 8.8 Term of Agreement.** This Loan Agreement shall be in full force and effect from the date of execution and delivery hereof by the City and the Borrower until such time as the Note shall have been fully paid or provision made for such payment. Time is of the essence in this Loan Agreement.

**Section 8.9 Survival of Agreement.** All agreements, representations and warranties made herein shall survive the making of the Loan.

**Section 8.10 Conflicts.** If any term or condition of this Loan Agreement conflicts with any term or condition of any other Loan Document, the term or condition which imposes any greater or stricter duties or obligations upon Borrower, or grants or affords City or Bondowner any greater rights or remedies, shall prevail.

**Section 8.11 Binding Effect; Third Party Beneficiaries.** This Loan Agreement shall inure to the benefit of and shall be binding upon the City, the Borrower and their respective successors and assigns. The Bondowner and the Trustee are intended third party beneficiaries of this Loan Agreement.

[Remainder of page intentionally left blank]

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

CITY AND COUNTY OF SAN FRANCISCO,  
CALIFORNIA

By: \_\_\_\_\_  
Kate Hartley,  
*Acting Director, Mayor's Office of Housing and  
Community Development*

Approved as to form:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Heidi J. Gewertz,  
*Deputy City Attorney*

MB3E, L.P.,  
a California limited partnership

By: CCDC-MB3E LLC, a California limited liability  
company  
its managing general partner

By: Chinatown Community Development Center,  
Inc., a California nonprofit public benefit  
corporation  
its sole member/manager

By: \_\_\_\_\_  
Norman Fong, Executive Director

By: Swords-MB3E LLC, a California limited  
liability  
company  
its managing general partner

By: Swords to Plowshares: Veterans Rights  
Organization, a California nonprofit public  
benefit corporation  
its sole member/manager

By: \_\_\_\_\_  
Michael Blecker, Executive Director



## EXHIBIT A

### CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

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

1. **Conflict of Interest.** Through its execution of this Agreement, Owner acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

2. **Proprietary or Confidential Information of City.** Owner understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Owner may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Owner agrees that all information disclosed by City to Owner shall be held in confidence and used only in performance of the Agreement. Owner shall exercise the same standard of care to protect such information as a reasonably prudent Owner would use to protect its own proprietary data.

3. **Local Business Enterprise Utilization; Liquidated Damages.**

a. **The LBE Ordinance.** Owner shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Owner's obligations or liabilities, or materially diminish Owner's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Owner's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Owner's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Owner shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. **Enforcement.** If Owner willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Owner shall be liable for liquidated damages in an amount equal to Owner's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the

“Director of CMD”) may also impose other sanctions against Owner authorized in the LBE Ordinance, including declaring the Owner to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Owner’s LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Owner acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Owner further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Owner on any contract with City. Owner agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

#### 4. **Nondiscrimination; Penalties.**

a. Owner Shall Not Discriminate. In the performance of this Agreement, Owner agrees not to discriminate against any employee, City and County employee working with such Owner or Subcontractor, applicant for employment with such Owner or Subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts. Owner shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all Subcontractors to comply with such provisions. Owner’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. Owner does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

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

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Owner

shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Owner understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Owner and/or deducted from any payments due Owner.

**5. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Owner acknowledges and agrees that he or she has read and understood this section.

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

**7. Drug-Free Workplace Policy.** Owner acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Owner agrees that any violation of this prohibition by Owner, its employees, agents or assigns will be deemed a material breach of this Agreement.

**8. Resource Conservation.** Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Owner to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

**9. Compliance with Americans with Disabilities Act.** Owner acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Owner, must be accessible to the disabled public. Owner shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Owner agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Owner, its employees, agents or assigns will constitute a material breach of this Agreement.

**10. Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, Owners’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**11. Limitations on Contributions.** Through execution of this Agreement, Owner acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Owner acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Owner further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Owner's board of directors; Owner's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Owner; any Subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Owner. Additionally, Owner acknowledges that Owner must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Owner further agrees to provide to City the names of each person, entity or committee described above.

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

a. Owner agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Owner's obligations under the MCO is set forth in this Section. Owner is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Owner to pay Owner's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Owner is obligated to keep informed of the then-current requirements. Any subcontract entered into by Owner shall require the Subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Owner's obligation to ensure that any Subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any Subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Owner.

c. Owner shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

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

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

f. Owner's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Owner fails to comply with these requirements. Owner agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Owner's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Owner understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Owner fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Owner fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Owner represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

**13. Requiring Health Benefits for Covered Employees.** Owner agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Owner shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Owner chooses to offer the health plan option,

such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Owner is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Owner's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Owner if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Owner fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Owner fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Owner shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Owner shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Owner shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Owner based on the Subcontractor's failure to comply, provided that City has first provided Owner with notice and an opportunity to obtain a cure of the violation.

e. Owner shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Owner's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Owner represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Owner shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

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

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

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

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

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

m. If Owner is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Owner later enters into an agreement or agreements that cause Owner's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Owner and the City to be equal to or greater than \$75,000 in the fiscal year.

**14. Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Owner may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Owner agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Owner violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Owner from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Owner's use of profit as a violation of this section.

**15. Preservative-treated Wood Containing Arsenic.** Owner may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Owner may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Owner from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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

**17. Protection of Private Information.** Owner has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Owner agrees that any failure of Owner to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may

terminate the Contract, bring a false claim action against the Owner pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Owner.

**18. Food Service Waste Reduction Requirements.** Owner agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Owner agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Owner agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Owner's failure to comply with this provision

**19. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any Owner, Subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A Owner, Subcontractor or consultant will be deemed to have submitted a false claim to the City if the Owner, 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.



RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Bradley R. Neal  
Stradling Yocca Carlson & Rauth, P.C.  
660 Newport Center Drive, Suite 1600  
Newport Beach, CA 92660

---

APN: 8711/026

Property Address: 1150 3rd Street, San Francisco, California 94158

REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

MB3E, L.P.,  
a California limited partnership

Dated as of December 1, 2017

Relating to:

City and County of San Francisco, California  
Multifamily Housing Revenue Bonds  
(1150 3rd Street Apartments), Series 2017F

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## REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Regulatory Agreement") is made and entered into as of December 1, 2017, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation and chartered city and county, duly organized and validly existing under the laws of the State of California (together with any successor to its rights, duties and obligations, the "City"), and MB3E, L.P., a California limited partnership (the "Owner"), owner of a leasehold interest in the land described in Exhibit A attached hereto.

### RECITALS

A. WHEREAS, pursuant to the Charter of the City, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as now in effect and as may be amended or supplemented (collectively, the "Act"), the City is authorized to issue revenue bonds to make loans to any person in order to finance the acquisition, construction and development of multifamily rental housing; and

B. WHEREAS, the Board of Supervisors of the City has authorized the issuance of multifamily mortgage revenue bonds under the Act in connection with the construction of a multifamily residential affordable rental housing development located on the site described in Exhibit A hereto and to be known as 1150 3rd Street Apartments (the "Project"), which Project shall be subject to the terms and provisions hereof; and

C. WHEREAS, in furtherance of the purposes of the Act and as a part of the City's plan of financing affordable housing, the City is issuing its multifamily mortgage revenue bonds designated "City and County of San Francisco Multifamily Housing Revenue Bonds (1150 3rd Street Apartments), Series 2017F" (the "Bonds"), pursuant to the terms of an Indenture of Trust of even date herewith (the "Indenture"), between the City and [TRUSTEE], as trustee (the "Trustee"), the proceeds of which Bonds are to be loaned to the Owner (the "Loan") pursuant to a Loan Agreement, of even date herewith (the "Loan Agreement"), between the City and the Owner; and

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

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

## AGREEMENT

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

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

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

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

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

“Area” – The HUD Metro Fair Market Rent Area (HMFA) according to the Metropolitan Statistical Area (San Francisco-Oakland-Hayward), or successor area determined by the Census Bureau or the United States Department of Commerce, in which the Project is located.

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

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

“Bond Counsel” – An attorney or a firm of attorneys of nationally recognized standing in matters pertaining to the tax status of interest on bonds issued by states and their political subdivisions, who is selected by the City and duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Bondowner” – Wells Fargo Bank, National Association and its successors and assigns.

“Bonds” – City and County of San Francisco Multifamily Housing Revenue Bonds (1150 3rd Street Apartments), Series 2017F, issued pursuant to the Indenture.

“CDLAC” – The California Debt Limit Allocation Committee.

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

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

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

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

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

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

“Closing Date” – The date of the issuance of the Bonds, being December \_\_, 2017.

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

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

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

“CTCAC” – The California Tax Credit Allocation Committee.

“Declaration of Restrictions-Gap Loan” – The Declaration of Restrictions (Mission Bay South Block 3 East) related to the Project and the Gap Loan Agreement, executed by the Owner and OCII.

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

“Gap Loan Agreement” – The Amended and Restated Loan Agreement (sf.citi/Hamilton Family Foundation Donation, Redevelopment Property Tax Trust Funds, 1180 4th Street Excess Proceeds, Mission Bay Block 1 Developer Fees, and SB107 Bond Proceeds), entered into as of \_\_\_\_\_, 2017, between OCII and Owner.

“General Partner” – Collectively (i) CCDC-MB3E LLC, a California limited liability company, as the general partner; (ii) Swords-MB3E LLC, a California limited liability company and/or (iii) any other Person that the partners of Owner, with the prior written approval of the Bondowner (to the extent required pursuant to the Loan Agreement), have selected to be a general partner of Owner, and any successor general partner of the Owner, in each case to the extent permitted under the Loan Agreement and hereunder.

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

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

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

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

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

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

“Inducement Date” – April 17, 2017, the effective date of the Inducement Resolution.

“Inducement Resolution” – Resolution No. 172-17, adopted by the Board of Supervisors of the City and approved by the Mayor of the City on the Inducement Date, indicating its intention to issue Tax-Exempt obligations to finance a portion of the Project.

“Investor Limited Partner” – Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation, or its affiliate(s), that has been admitted as a limited partner in Owner in accordance with the Partnership Agreement, together with its successors and assigns.

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

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

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

“Low Income Tenant” – Any Tenant whose Adjusted Income does not exceed sixty percent (60%) of the lower of City Median Income or Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code; such occupants shall not qualify as Low-Income Tenants. The determination of a Tenant’s status as a Low-Income Tenant shall initially be made by the Owner on the basis of an Income Certification Form executed by the Tenant upon such Tenant’s occupancy of a unit in the Project and upon annual recertification thereafter.

“Median Income for the Area” – The median gross income for the Area, as determined in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act and Section 3009a of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat 2654) or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act, including adjustments for household size.

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

“OCII” – The Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State of California (including any successors or assigns).

“Owner” – MB3E, L.P., a California limited partnership, and its permitted successors and assigns.

“Partnership Agreement” – The [Amended and Restated] Agreement of Limited Partnership of Owner, by and among the General Partner and the Investor Limited Partner.

“Permitted Encumbrances” – Has the definition given to it in the Construction and Permanent Funding Agreement.

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

“Project” – The Facilities and the Site.

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

“Qualified Project Costs” – The Project Costs incurred after the date which is sixty (60) days prior to the Inducement Date and that are chargeable to a capital account with respect to the Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Owner or but for the proper election by the Owner to deduct those amounts, within the meaning of Treasury Regulations Section 1.103-8(a)(1); provided, however, that only such portion of the interest accrued during construction of the Project shall constitute a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs, and provided further that such interest shall cease to be a Qualified Project Cost on the Completion Date, and provided still further that if any portion of the Project is being constructed by an Affiliated Party (whether as a general contractor or a subcontractor), “Qualified Project Costs” shall include only (a) the actual out-of-pocket costs incurred by such Affiliated Party in constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Affiliated Party, and (c) any overhead expenses incurred by the Affiliated Party which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such Affiliated Party due to early completion of the Project (or any portion thereof).

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

(a) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied;

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

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

(d) the date that is the later of (i) seventy-five (75) years from the Closing Date or (ii) the end of the Life of the Project; or



(e) such later date as may be provided in Section 5 or Section 7 hereof.

“Regulations” – The income tax regulations promulgated by the Internal Revenue Service or the United States Department of the Treasury pursuant to the Code from time to time.

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

“Restricted Unit” – A Very Low-Income Unit or a Low-Income Unit.

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

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

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

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

“State” – The State of California.

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

“TANF” – The Temporary Assistance for Needy Families program administered pursuant to 42 U.S.C. §§ 601-687.

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

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

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

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

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

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

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

(a) The Owner has incurred, or will incur within six (6) months after the Closing Date, a substantial binding obligation to a third party to expend at least the lesser of (i) two and a half percent (2½%) of the aggregate principal amount of the Note or (ii) \$100,000 for the payment of Qualified Project Costs.

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

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

(d) The Owner shall prepare and submit to the City a final allocation of the proceeds of the Bonds to the payment of Qualified Project Costs, which allocation shall be consistent with the Cost Certification (as defined in the Partnership Agreement), within sixty (60) days after the Completion Date, but in any event no later than the earlier of (1) eighteen (18) months from the placed in service date for the Project, (2) the Maturity Date (as defined in the Indenture) or (3) the fifth anniversary of the Closing Date.

(e) No later than ten (10) days after the Completion Date, the Owner will submit to the City and the Bondowner a duly executed and completed Completion Certificate.

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

(g) Money on deposit in any fund or account in connection with the Bonds, whether or not such money was derived from other sources, shall not be used by or under the direction of the Owner in a manner which would cause the Bonds to be "arbitrage bonds" within the meaning of

Section 148 of the Code, and the Owner specifically agrees that the investment of money in any such fund shall be restricted as may be necessary to prevent the Bonds from being "arbitrage bonds" under the Code.

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

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

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

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

(l) The Owner will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the Tax-Exempt status of interest on the Bonds (other than with respect to interest on any portion thereof for a period during which such portion is held by a "substantial user" of any facility financed with the proceeds of the Bonds or a "related person," as such terms are used in Section 147(a) of the Code), and, if it should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

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

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

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

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

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

(d) No part of the Project will at any time be owned as a condominium or by a cooperative housing corporation, nor shall the Owner take any steps in connection with a conversion to such ownership or uses. Other than obtaining a final subdivision map on the Project and a Final Subdivision Public Report from the California Department of Real Estate, the Owner shall not take any steps in connection with a conversion of the Project to a condominium ownership except with the prior written opinion of Bond Counsel that the interest on the Bonds will not become taxable thereby under Section 103 of the Code.

(e) All of the residential dwelling units in the Project will be available for rental on a continuous basis to members of the general public and the Owner will not give preference to any particular class or group in renting the residential dwelling units in the Project, except to the extent required by (i) this Regulatory Agreement, (ii) any regulatory or restrictive use agreement to which the Project is subject pursuant to Section 142 of the Code, (iii) the Gap Loan Agreement and the Declaration of Restrictions-Gap Loan, (iv) any additional tenant income and rent restrictions imposed by any other federal, State or local governmental agencies, and (v) any other legal or contractual requirement not excepted by clauses (i) through (iii) of this paragraph, upon receipt by the Owner, the Trustee and the City of an opinion of Bond Counsel to the effect that compliance with such other requirement will not adversely affect the Tax-Exempt status of interest on the Bonds.

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

(g) No residential dwelling unit in the Project shall be occupied by the Owner. Notwithstanding the foregoing, if the Project contains five (5) or more residential dwelling units, this Section shall not be construed to prohibit occupancy of residential dwelling units by one or more resident managers or maintenance personnel any of whom may be the Owner; provided that the number of such managers or maintenance personnel is not unreasonable given industry standards in the area for the number of residential dwelling units in the Project.

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

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

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

(k) The Project will have one hundred nineteen (119) residential dwelling units, one of which will be a manager's unit.

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

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

(a) Income and Rent Restrictions. In addition to the requirements of Section 5, hereof, the Owner shall comply with the income and rent restrictions of this Section 4(a), and any conflict or overlap between any two or more of such provisions shall be resolved in favor of the most restrictive of such provisions, that is, in favor of the lowest income and rent restrictions.

(i) Very Low-Income Units. [Reserved]

(ii) Low-Income Units. All of the units in the Project (excluding the manager's unit referenced in Section 3(k)) shall be rented to and continuously occupied by households who qualify as Low-Income Tenants, sixty-two (62) of which units shall be set-aside for formerly homeless veterans earning thirty percent (30%) of City Median Income or less, as shown in the following chart:

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Unit Type	Number of Units	Max % AMI	Target AMI
Studio	2*	60%	30%
Studio	10*	60%	30%
1BR	5*	60%	30%
1BR	45*	60%	30%
1BR	3	60%	50%
1BR	2	60%	60%
2BR	19	60%	50%
2BR	11	60%	60%
2BR	1	-	-
3BR	11	60%	50%
3BR	10	60%	60%
<u>Total Units</u>	119		

\* Set aside for formerly homeless veterans.

The monthly rent charged for all the Low-Income Units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 60% of the lower of City Median Income or Median Income for the Area.

(iii) Income Restrictions Pursuant to the Code. Pursuant to the requirements of Section 142(d)(1)(b) of the Code, for the Qualified Project Period, not less than forty percent (40%) of the total number of completed units in the Project (excluding the manager's unit), or forty-eight (48) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed sixty percent (60%) of the Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not be qualified Tenants pursuant to this sentence. The Owner shall satisfy the requirements of this Section 4(a)(iii) by complying with the requirements of Section 4(a)(i), to the extent such compliance meets the requirements of Section 142(d)(1)(B) of the Code.

(iv) Income and Rent Restrictions Pursuant to the Act. Pursuant to the requirements of Section 52080(a)(1)(B) of the Housing Law, for the Qualified Project Period, not less than forty percent (40%) of the total number of completed units in the Project (excluding the manager's unit), or forty-eight (48) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed the lower of sixty percent (60%) of the Median Income for the Area; provided, however that, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not be qualified Tenants pursuant to this sentence. Pursuant to the

requirements of Section 52080(a)(1)(B) of the Housing Law, the monthly rent charged for such units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 60% of the Median Income for the Area. The Owner shall satisfy the requirements of this Section 4(a)(iv) by complying with the requirements of Section 4(a)(i), to the extent such compliance meets the requirements of Section 52080(a)(1)(B) of the Housing Law.

(v) CDLAC Requirements. To the extent the income and rent restrictions contained in the CDLAC Requirements are more restrictive than any of the foregoing requirements, the Owner shall comply with the CDLAC Requirements.

(b) Over-Income Tenants. Notwithstanding the foregoing provisions of Section 4(a), no Tenant who satisfies the applicable income limit for a Restricted Unit, upon initial occupancy shall be denied continued occupancy of a Restricted Unit in the Project because, after admission, the aggregate Adjusted Income of all Tenants in the Restricted Unit increases to exceed the qualifying limit for such Restricted Unit.

However, should the aggregate Adjusted Income of Tenants in a Restricted Unit, as of the most recent determination thereof, exceed one hundred forty percent (140%) of the applicable income limit for such Restricted Unit occupied by the same number of Tenants, the next available unit of comparable or smaller size must be rented to (or held vacant and available for immediate occupancy by) a Tenant satisfying the applicable income limit for such Restricted Unit. The unit occupied by such Tenants whose aggregate Adjusted Income exceeds such applicable income limit shall continue to be treated as occupied by a Tenant who satisfies the applicable income limit for such Restricted Unit for purposes of the requirements of Section 4(a) hereof unless and until an Available Unit of comparable or smaller size is rented to persons other than Tenants satisfying the applicable income limit for such Restricted Unit. Moreover, a unit previously occupied by a Tenant who satisfies the applicable income limit for such Restricted Unit and then vacated shall be considered occupied by a Tenant who satisfies the applicable income limit for such Restricted Unit until reoccupied, other than a reoccupation for a temporary period, at which time the character of the unit shall be re-determined. In no event shall such temporary period exceed thirty-one (31) days. The parties agree that this paragraph shall have no practical effect because, except as otherwise provided in Section 4(a), one hundred percent (100%) of the units in the Project (except the manager's unit) are required to be Restricted Units pursuant to Section 4(a).

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

(d) Certificate of Continuing Program Compliance. Upon the commencement of the Qualified Project Period, and on each February 1st thereafter (or such other date as shall be requested in writing by the City or the Program Administrator) during the term of this Regulatory

Agreement, the Owner shall advise the Program Administrator of the status of the occupancy of the Project by delivering to the Program Administrator (with a copy to the Trustee) a Certificate of Continuing Program Compliance (a form of which is attached hereto as Exhibit D). The Owner shall also timely provide to the City such information as is requested by the City to comply with any reporting requirements applicable to it with respect to the Bonds or the Project under any federal or State law or regulation, including without limitation, CDLAC regulations.

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

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

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

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

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



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

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

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

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

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

5. Additional Requirements of the City.

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

(b) Limitation on Rent Increases. Annual rent increases on a Restricted Unit shall be limited to the percentage of the annual increase in the lower of the applicable City Median Income or Median Income for the Area for that Restricted Unit or as otherwise permitted pursuant to the Gap Loan Agreement and the Declaration of Restrictions-Gap Loan. Rent increases which are permitted but not made in a given year may not be carried forward and made in any subsequent year.

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

(d) Management Agent. The Owner shall not enter into any agreement providing for the management or operation of the Project with any party other than Tenderloin Housing Neighborhood Corporation, a California nonprofit corporation without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

(e) Certificate of Preference Program. To the fullest extent permitted by law, the Owner shall comply with the City's Certificate of Preference Program pursuant to San Francisco Administrative Code Section 24.8, to the extent such compliance is not in conflict with any other requirements imposed on the Project pursuant to Section 42 and Section 142(d) of the Code, the Act, the CDLAC Resolution, or CTCAC.

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

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

(h) Consideration for Restrictions. It is hereby acknowledged and agreed that any restrictions imposed on the operation of the Project herein and which are in addition to those imposed

pursuant to Section 142(d) of the Code or the Act are at the request of the Owner, and that the Owner has voluntarily agreed to such additional restrictions in order to obtain financial assistance from the City and an allocation of private activity bond volume cap from CDLAC.

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

(j) Extension of Qualified Project Period. Notwithstanding any other provision herein, the Qualified Project Period shall not expire earlier than, and the requirements of this Section 5 shall be in effect until, the date that is the later of (i) seventy-five (75) years from the Closing Date or or (ii) the end of the Life of the Project; provided that certain provisions shall survive and remain in full force and effect following the end of the Qualified Project Period, as specified in Section 12 hereof.

(k) Marketing Plan. Owner will market the Restricted Units in accordance with the Marketing Plan approved by the City pursuant to the Gap Loan Agreement.

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

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

(b) Availability on Priority Basis. The Restricted Units shall remain available on a priority basis for occupancy at all times by Very Low-Income Tenants, as applicable.

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

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

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

the foregoing, the parties agree that this Section 6(e) shall have no practical effect because one hundred percent (100%) of the units (excluding the manager's unit) in the Project are required to be Restricted Units pursuant to Section 4(a).

(f) Availability Following Expiration of Qualified Project Period. Following the expiration or termination of the Qualified Project Period, except in the event of foreclosure and redemption of the Bonds, assignment of the leasehold interest in the Project in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units reserved for occupancy as required by Section 4(a)(iv) shall remain available to any eligible Tenant occupying a Restricted Unit at the date of such expiration or termination, at the rent determined by Section 4(a)(iv), until the earliest of (1) the household's income exceeds one hundred forty percent (140%) of the maximum eligible income specified therein, except as specified in Section 5(g), (2) the household voluntarily moves or is evicted for good cause, as defined in the Housing Law, (3) thirty (30) years after the date of the commencement of the Qualified Project Period, and (4) the Owner pays the relocation assistance and benefits to households if required by, and as provided in, Section 7264(b) of the California Government Code.

(g) Availability Preceding Expiration of Qualified Project Period. During the three (3) years prior to the expiration of the Qualified Project Period, the Owner shall continue to make available Restricted Units to eligible households that have been vacated to the same extent that non-Restricted Units, if any, are made available to non-eligible households.

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

(i) Syndication of the Project. As provided in Section 52080(e) of the Housing Law, the City hereby approves the syndication of tax credits with respect to the Project, pursuant to Section 42 of the Code, to the Investor Limited Partner, or any affiliate thereof or successor thereto, pursuant to the terms of the Partnership Agreement. Any syndication of tax credits with respect to the Project to an affiliate of the Investor Limited Partner shall not require the prior written approval of the City if the Partnership Agreement will not be amended, modified or supplemented in connection with such syndication except to reflect such transfer of limited partner interests; provided, however, that the Owner shall provide to the City, at least five (5) Business Days prior to the effective date of any such syndication, written notice of such syndication certifying that no amendment, modification or supplement to the Partnership Agreement will be effected in connection with such syndication except to the extent necessary to reflect such syndication, together with copies of any assignments of limited partnership interests and any other syndication documents. Any other syndication of the Project shall be subject to the prior written approval of the Director of the Mayor's Office of Housing and Community Development of the City, which approval shall be granted only after the City determines that the terms and conditions of such syndication (1) shall not reduce or limit any of the requirements of the Act or regulations adopted or documents executed pursuant to the Act, (2) shall not cause any of the requirements of the City set forth in this Section 6 hereof to be subordinated to the syndication agreement, and (3) shall not result in the provision of fewer Restricted Units, or the reduction of any benefits or services, than were in existence prior to the proposed syndication.

7. CDLAC Requirements. In addition to the other requirements set forth herein and to the extent not prohibited by the requirements set forth in Sections 2 through 6 hereof, the Owner hereby agrees to comply with the requirements of CDLAC set forth in this Section 7, as follows:

(a) The Owner shall comply with CDLAC Resolution No. 17-69 adopted on July 19, 2017, attached hereto as Exhibit F (the "CDLAC Resolution") and the CDLAC conditions set forth in Exhibit A thereto (collectively the "CDLAC Requirements"), which conditions are incorporated herein by reference and made a part hereof.

(b) The Owner acknowledges that the City shall monitor the Owner's compliance with the CDLAC Requirements. The Owner will cooperate fully with the City in connection with such monitoring and reporting requirements as provided herein. Compliance with the CDLAC Requirements not contained within this Regulatory Agreement, but referred to in the CDLAC Requirements are the responsibility of the Owner to report to the City.

(i) Within thirty (30) days following the completion of the Project, the Owner will prepare and submit to the City, CDLAC and the Trustee, a Completion Certificate, executed by an Authorized Owner Representative, certifying, among other things, to the substantial completion of the Project.

(ii) Not later than February 1 of each year, until the Owner has submitted to the City and CDLAC a Completion Certificate, and on February 1 every three (3) years thereafter until the end of the Qualified Project Period, the Owner shall prepare and submit to the City, a Certificate of CDLAC Compliance in substantially the form attached hereto as Exhibit G, executed by an Authorized Owner Representative.

(c) Except as otherwise provided in Section 12 of this Regulatory Agreement, this Regulatory Agreement shall terminate on the date 55 years after the date on which at least 50% of the units in the Project are first occupied or such later date as the Qualified Project Period shall begin, as required by the CDLAC Requirements.

(d) The Owner shall notify CDLAC in writing of: (i) any change in ownership of the Project, (ii) any change in the name of the Project or the Project manager, (iii) any default under the Indenture, the Loan Agreement or this Regulatory Agreement, including, but not limited to, such defaults associated with the Tax Exempt status of the Bonds and the income and rental restrictions as provided in this Regulatory Agreement and the CDLAC Requirements; or (v) termination of this Regulatory Agreement.

(e) CDLAC shall have the right, but not the obligation, to deliver revised CDLAC Conditions to the Owner after the Closing Date, at any time, that are not more restrictive than the original CDLAC Conditions; provided however, that: (i) any changes in the terms and conditions of the CDLAC Conditions prior to the recordation against the Project in the real property records of the County of a regulatory agreement between Owner and the CTCAC (the "TCAC Regulatory Agreement") shall be limited to such changes as are necessary to correct any factual errors or to otherwise conform the CDLAC Conditions to any change in facts or circumstances applicable to the Owner or the Project; and (ii) after recordation of the TCAC Regulatory Agreement, any changes in the terms and conditions of the CDLAC Conditions shall be limited to such changes as are necessary to conform [Items 1, 6, 7, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26 and/or 37] of Exhibit A to the CDLAC Conditions to any change in terms and

conditions requested by Owner and approved by CDLAC. The Owner shall record or cause to be recorded in the real property records of the County an amendment to this Regulatory Agreement containing such revised CDLAC Conditions, executed by the parties hereto or their successor in title and pay any expenses in connection therewith. The Owner shall provide CDLAC with a copy of that recorded amendment reflecting the revised CDLAC Conditions.

Any of the foregoing requirements of the CDLAC Conditions contained in this Section 7 may be expressly waived by CDLAC, in its sole discretion, in writing, but (i) no waiver by CDLAC of any requirement of this Section 7 shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement except to the extent the City has received an opinion of Bond Counsel that any such provision is not required by the Act and may be waived without adversely affecting the Tax-Exempt status of the Bonds; and (ii) any requirement of this Section 7 shall be void and of no force and effect if the City and the Owner receive a written opinion of Bond Counsel to the effect that compliance with any such requirement would cause interest on the Bonds to cease to be Tax-Exempt or to the effect that compliance with such requirement would be in conflict with the Act or any other state or federal law.

8. Indemnification. The Owner hereby releases the City, the Trustee, the Bondowner and their respective officers, members, directors, officials and employees from, and covenants and agrees to indemnify, hold harmless and defend the City, the Trustee and the Bondowner and the officers, members, directors, officials, agents and employees of each of them (collectively, the "Indemnified Parties," and each an "Indemnified Party") from and against any and all claims, losses, costs, damages, demands, expenses, taxes, suits, judgments, actions and liabilities of whatever nature, joint and several (including, without limitation, costs of investigation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments), directly or indirectly: (a) by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated hereby or otherwise in connection with the Project, the Loan or use of the Bonds, or the execution or amendment of any document relating thereto; (b) arising from any cause whatsoever in connection with the approval of financing for the Project or the making of the Loan or otherwise, including without limitation, any advances of the Loan, or any failure by the Bondowner to make any advance thereunder; (c) arising from any act or omission of the Owner or any of its agents, servants, employees or licensees, in connection with the Loan or the Project; (d) arising in connection with the issuance and sale, resale or reissuance of any bonds, including any secondary market transaction with respect thereto, or any certifications or representations made by any person other than the City or the party seeking indemnification in connection therewith and the carrying out by the Owner of any of the transactions contemplated by the Indenture, the Loan Agreement and this Regulatory Agreement; (e) arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, or construction of, the Project or any part thereof; and (f) arising out of or in connection with the exercise by the Bondowner, the Trustee or the Servicer of their powers or duties under the Indenture, the Loan Agreement, this Regulatory Agreement or any other agreements in connection therewith to which either of them is a party; provided, however, that this provision shall not require the Owner to indemnify (i) the Bondowner or the Trustee from any claims, costs, fees, expenses or liabilities arising from the negligence or willful misconduct of the Bondowner, or (ii) the City for any claims, costs, fees, expenses or liabilities arising solely from the willful misconduct of the City. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the engagement of counsel approved by the Indemnified Party; and the Owner shall assume the payment

of all reasonable fees and expenses related thereto (provided that if the Indemnified Party is the City, the selection of counsel rests in the sole discretion of the City Attorney and the Owner shall assume the payment of all attorneys' fees and expenses related thereto), with full power to litigate, compromise or settle the same in its discretion provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Notwithstanding the foregoing, no indemnification obligation shall give rise to an obligation to pay principal and interest on the Loan, which is not otherwise set forth in the Indenture, the Loan Agreement, the Bonds or any other agreement relating to the Bonds.

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

If a potential conflict exists between the Owner's defense and the interests of an Indemnified Party, then such Indemnified Party shall have the right to engage separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Owner shall pay the reasonable fees and expenses of such separate counsel.

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

The provisions of this Section 8 shall survive the term of the Bonds and this Regulatory Agreement, including the termination of this Regulatory Agreement pursuant to the second paragraph of Section 12 hereof.

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

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

9. Consideration. The City has issued the Bonds and made the Loan to provide funds for the purpose of financing the Project, all for the purpose, among others, of inducing the Owner to

acquire, construct, equip and operate the Project. In consideration of the making of the Loan by the City, the Owner has entered into this Regulatory Agreement and has agreed to restrict the use of the Project on the terms and conditions set forth herein.

10. Reliance. The City and the Owner hereby recognize and agree that the representations, warranties, covenants and agreements set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds, and in the Tax-Exempt status of the interest on the Bonds. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner, the Very Low-Income Tenants and the Low Income Tenants, and upon audits of the books and records of the Owner pertaining to the Project. In addition, the City may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the City hereunder in good faith and in conformity with such opinion.

11. Sale or Transfer of the Project. The Owner intends to hold the Project for its own account, has no current plans to sell, transfer or otherwise dispose of the Project (except in accordance with the option described in the Partnership Agreement), and, except as otherwise provided herein, hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof (other than for individual tenant use as contemplated hereunder and/or pursuant to the aforementioned option) or interest therein, including any interest in the Owner, without obtaining the prior written consent of the City, which consent shall not be unreasonably withheld, and receipt by the City of (i) evidence satisfactory to the City that the Owner's purchaser or transferee has assumed in writing and in full, the Owner's duties and obligations under this Regulatory Agreement, (ii) an opinion of counsel of the transferee that the transferee has duly assumed the obligations of the Owner under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee, (iii) evidence acceptable to the City that either (A) the purchaser or assignee has experience in the ownership, operation and management of rental housing projects in the City such as the Project without any record of material violations of discrimination restrictions or other state or federal laws or regulations applicable to such projects, or (B) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subparagraph (A) above or (C) if the purchaser or assignee does not have management experience, the City may cause the Program Administrator to provide on-site training in program compliance if the City determines such training is necessary, (iv) evidence satisfactory to the City that no event of default exists under this Regulatory Agreement, the Loan Agreement or any document related to the Loan, and payment of all fees and expenses of the City and the Trustee due under any of such documents is current, and (v) an opinion of Bond Counsel to the effect that such transfer will not, in itself, cause interest on the Bonds to become includable in the gross income of the recipients thereof for federal income tax purposes, except to the extent held by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 11 shall be null, void and without effect, shall cause a reversion of title to the Owner, and shall be ineffective to relieve the Owner of its obligations under this Regulatory Agreement. Nothing in this Section 11 shall affect any provision of any other document or instrument between the Owner and any other party which requires the Owner to obtain the prior written consent of such other party in order to sell, transfer or otherwise dispose of the Project. Not less than sixty (60) days prior to consummating any sale, transfer or disposition of any interest in the Project, the Owner shall deliver to the City a notice in writing explaining the nature of the proposed transfer. Notwithstanding the foregoing, the provisions of this Section 11 shall not apply to the transfer of all or any portion of (a) the limited partner interest of the Investor Limited Partner in the Owner (which is instead subject to paragraph (i) of Section 6), (b) the General Partner interest to an affiliate of the General Partner or an affiliate of the Investor Limited Partner, and (c) the transfer of any



ownership interest in the Investor Limited Partner, so long as such transfer does not result in a change of control of the Investor Limited Partner.

12. Term. Subject to the following paragraph of this Section 12, Section 8 hereof and to any other provision expressly agreed herein to survive the termination of this Regulatory Agreement, this Regulatory Agreement and all of the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for the longer of (a) the Qualified Project Period or (b) fifty-five (55) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied.

The terms of this Regulatory Agreement to the contrary notwithstanding, except for the provisions of Section 8 hereof, shall terminate and be of no further force and effect in the event of (i) involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency after the Closing Date, which prevents the City from enforcing such provisions, or (ii) foreclosure, exercise of power of sale, transfer of title by assignment of the leasehold interest in the Project in lieu of foreclosure, or condemnation or a similar event, but only if, in case of the events described in either clause (i) or (ii) above, within a reasonable period, either the Bonds are paid in full or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, exercise of power of sale, or the delivery of an assignment of the leasehold interest in the Project in lieu of foreclosure or a similar event, the Owner or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Owner hereby agrees that, following any foreclosure, exercise of power of sale, transfer of title by assignment of the leasehold interest in the Project in lieu of foreclosure or similar event, neither the Owner nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes. Notwithstanding any other provisions of this Regulatory Agreement to the contrary, this entire Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the City and the Owner subject to compliance with any of the provisions contained in this Regulatory Agreement only if there shall have been received by the City an opinion of Bond Counsel that such termination will not adversely affect the Tax-Exempt status of the interest on the Bonds or the exemption from State personal income taxation of the interest on the Bonds. The Owner shall provide written notice to the City in the event of the occurrence of any of the events described in clause (i) above.

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

13. Covenants to Run With the Land. The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Project; provided, however, that on the termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants,

reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. No breach of any of the provisions of this Regulatory Agreement shall defeat or render invalid the lien of a mortgage made in good faith and for value encumbering the Site.

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

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

16. Enforcement. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days (the "cure period") after written notice thereof shall have been given by the City to the Owner and the Investor Limited Partner (and a copy of such notice shall also be given to the Bondowner, provided however that the failure of the City to provide such copy to the Bondowner shall have no effect on the sufficiency of the notice to the Owner). The City may, at its sole option, extend the cure period if the default is of the nature which would reasonably require more than sixty (60) days to cure and if the Owner provides the City, if requested by the City, with an opinion of Bond Counsel to the effect that such extension will not adversely affect the Tax-Exempt status of interest on the Bonds. Upon the expiration of such cure period, as they same may be extended as aforesaid, then the City may declare an "event of default" to have occurred hereunder, and, subject to the provisions of the Indenture, may take any one or more of the following steps:

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

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

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder, subject to those limits on exercising remedies set forth in Section 7.2 of the Loan Agreement.

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

Notwithstanding anything contained in this Regulatory Agreement to the contrary, the City agrees that any cure of any default made or tendered by the Investor Limited Partner shall be deemed

to be a cure by the Owner and shall be accepted or rejected on the same basis as if made or tendered by the Owner.

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

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

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

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

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

20. Amendments. To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Bond Counsel filed with the City, the Trustee and the Owner, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement which must be complied with in order to maintain the Tax-Exempt status of interest on the Bonds, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements. Otherwise, this Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the City and County of San Francisco, California, provided that any amendment to the CDLAC Requirements shall also be subject to the consent of CDLAC, and provided further, that any amendment to Sections 3 and 4 hereof shall require an opinion of Bond Counsel filed with the City, the Trustee, the Bondowner and the Owner, to the effect that such amendment will not adversely affect the Tax-Exempt status of interest on the Bonds.

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

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

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

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

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

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

If to the Owner: MB3E, L.P.  
1515 Vallejo Street, 4th Floor  
San Francisco, California 94109  
Attention: Director of Housing Development

With a copy to: Gubb & Barshay  
505 14<sup>th</sup> Street, Suite 1050  
Oakland, CA 94612  
Attention: Evan Gross, Esq.

If to the Investor Limited Partner: Wells Fargo Affordable Housing  
Community Development Corporation  
MAC D1053-170  
301 South College Street  
Charlotte, NC 28288  
Attention: Director of Tax Credit Asset Management

With a copy to: Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603  
Attention: Philip C. Spahn

If to the Bondowner  
(before the Conversion Date):

Wells Fargo Bank, N.A.  
Community Lending & Investment  
333 Market Street, 18<sup>th</sup> Floor  
MAC #A0119-183  
San Francisco, CA 94105

If to the Bondowner  
(on or after the Conversion Date):

California Community Reinvestment Corporation  
100 West Broadway, Suite 1000  
Glendale, CA 91210  
Attention: Mark Rasmussen  
Telecopier: 818-550-9806

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

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

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

25. Third-Party Beneficiaries. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are entered into for the benefit of various parties. The parties hereto acknowledge that CDLAC and the Bondowner are third party beneficiaries of this Regulatory Agreement. CDLAC shall accordingly have contractual rights in this Regulatory Agreement and shall be entitled (but not obligated) to enforce, in accordance with Section 16 hereof, the terms hereof and the terms of the CDLAC Resolution. In addition, CDLAC is intended to be and shall be a third-party beneficiary of this Regulatory Agreement. Notwithstanding the above, CDLAC shall be entitled solely to enforce the terms of the CDLAC Resolution, and any enforcement of the terms and provisions of the CDLAC Resolution by CDLAC shall not adversely affect the interests of the Bondowner, and shall otherwise be subject to the terms, conditions and limitations otherwise applicable to the enforcement of remedies under this Regulatory Agreement. Pursuant to Section 52080(k) of the Housing Law, the provisions of Section 4(a)(iv) and Section 6 hereof may be enforced either in law or in equity by any resident, local agency, entity, or by any other person adversely affected by the Owner's failure to comply with that Section.

[Signatures appear on next page]

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

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Kate Hartley, Acting Director  
Mayor's Office of Housing and  
Community Development

Approved as to Form:

DENNIS J. HERRERA  
City Attorney

By \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

[Signatures continue on following page.]

OWNER:

**MB3E, L.P.,**  
a California limited partnership

By: CCDC-MB3E LLC, a California limited liability  
company  
its managing general partner

By: Chinatown Community Development Center,  
Inc., a California nonprofit public benefit  
corporation  
its sole member/manager

By: \_\_\_\_\_  
Norman Fong, Executive Director

By: Swords-MB3E LLC, a California limited  
liability company  
its managing general partner

By: Swords to Plowshares: Veterans Rights  
Organization, a California nonprofit public  
benefit corporation  
its sole member/manager

By: \_\_\_\_\_  
Michael Blecker, Executive Director

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

STATE OF CALIFORNIA )  
 )  
 COUNTY OF \_\_\_\_\_ ) ss.  
 )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
 (Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_

\_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

\_\_\_\_\_  
 Title Or Type Of Document

\_\_\_\_\_  
 Number Of Pages

\_\_\_\_\_  
 Date Of Documents

\_\_\_\_\_  
 Signer(s) Other Than Named Above



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

STATE OF CALIFORNIA )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
 (Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

<b>CAPACITY CLAIMED BY SIGNER</b>	<b>DESCRIPTION OF ATTACHED DOCUMENT</b>
<input type="checkbox"/> Individual <input type="checkbox"/> Corporate Officer  _____ Title(s)	_____ Title Or Type Of Document
<input type="checkbox"/> Partner(s) <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney-In-Fact <input type="checkbox"/> Trustee(s) <input type="checkbox"/> Guardian/Conservator <input type="checkbox"/> Other: _____	_____ Number Of Pages
Signer is representing: Name Of Person(s) Or Entity(ies) _____ _____	_____ Date Of Documents
	_____ Signer(s) Other Than Named Above

**EXHIBIT A**

**LEGAL DESCRIPTION OF SITE**

The land referred to herein is situated in the State of California, City and County of San Francisco, and is described as follows:

**EXHIBIT B**

**INCOME CERTIFICATION FORM**

**A current version of the CTCAC form may be downloaded from the State Treasurer's website at the following link: <http://www.treasurer.ca.gov/ctcac/compliance/tic.pdf>.**

**EXHIBIT C**

**COMPLETION CERTIFICATE**

CITY AND COUNTY OF SAN FRANCISCO  
Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103

The undersigned (the "Owner") hereby certifies that all aspects of the construction of the Project (as that term is used in the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 1, 2017, by and between the City and County of San Francisco and the Owner (the "Regulatory Agreement") were substantially completed and available for occupancy by tenants in the Project as of \_\_\_\_\_.

1. The undersigned hereby certifies that:

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

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

[Signatures appear on next page]

OWNER:

**MB3E, L.P.**,  
a California limited partnership

By: CCDC-MB3E LLC, a California limited liability  
company  
its managing general partner

By: Chinatown Community Development Center,  
Inc., a California nonprofit public benefit  
corporation  
its sole member/manager

By: \_\_\_\_\_  
Norman Fong, Executive Director

By: Swords-MB3E LLC, a California limited  
liability  
company  
its managing general partner

By: Swords to Plowshares: Veterans Rights  
Organization, a California nonprofit public  
benefit corporation  
its sole member/manager

By: \_\_\_\_\_  
Michael Blecker, Executive Director

**EXHIBIT D**

**FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

Project Name: 1150 3<sup>rd</sup> Street Apartments

CDLAC Application Number(s): 17-358

CDLAC Resolution Number(s): 17-69

Property Address: 1150 3rd Street, San Francisco, California 94158

Project Completion Date (if completed, otherwise mark N/A):

Name of Obligation: City and County of San Francisco Multifamily Housing Revenue Bonds (1150 3rd Street Apartments), Series 2017F

The undersigned, being the authorized representatives of MB3E, L.P., a California limited partnership (the "Owner"), hereby certifies that he/she has read and is thoroughly familiar with the provisions of the various documents associated with the Owner's participation in the City and County of San Francisco (the "City") Multifamily Housing Program, such documents including:

1. the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 1, 2017 (the "Regulatory Agreement"), between the Owner and the City; and
2. the Loan Agreement, dated as of December 1, 2017, between the City and the Owner.

The undersigned further certifies that:

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

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

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

B. During the preceding twelve-months (i) such Project was continually in compliance with the Regulatory Agreement executed in connection with such loan from the City and (ii) 142 of the units in the Project were occupied by Very Low-Income Tenants, plus one manager's unit.

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

Occupied by Very Low-Income Tenants:

1 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

2 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

3 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

4 bedroom units: \_\_\_\_\_ Unit Nos. \_\_\_\_\_

Total percentage occupied by Very Low-Income Tenants: \_\_\_\_\_

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

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

Vacant Units:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

Vacant Units:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

It hereby is confirmed that each tenant currently residing in a unit in the Project has completed an Income Certification Form in the form approved by the City and that since commencement of the Qualified Project Period (as such term is defined in the Regulatory Agreement), not less than all of the occupied units (excluding the manager's unit) in the Project have been rented to (or are vacant and last occupied by) Very Low Income Tenants, except as permitted by Section 4 of the Regulatory Agreement. The undersigned hereby certifies that the Owner is not in default under any of the terms and provisions of the above documents.

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

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

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

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

[Describe any requirements not satisfied: \_\_\_\_\_]

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

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

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

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

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

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

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



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

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

**MB3E, L.P.**,  
a California limited partnership

By: CCDC-MB3E LLC, a California limited liability  
company  
its managing general partner

By: Chinatown Community Development Center,  
Inc., a California nonprofit public benefit  
corporation  
its sole member/manager

By: \_\_\_\_\_  
Norman Fong, Executive Director

By: Swords-MB3E LLC, a California limited  
liability  
company  
its managing general partner

By: Swords to Plowshares: Veterans Rights  
Organization, a California nonprofit public  
benefit corporation  
its sole member/manager

By: \_\_\_\_\_  
Michael Blecker, Executive Director

**EXHIBIT E**

**CERTIFICATE AS TO COMMENCEMENT OF QUALIFIED PROJECT PERIOD**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

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

\$ \_\_\_\_\_  
City and County of San Francisco  
Multifamily Housing Revenue Bonds  
(1150 3rd Street Apartments), Series 2017F

The undersigned, being the authorized representative(s) of MB3E, L.P., a California limited partnership, hereby certifies that: (complete blank information):

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

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

DATED:

OWNER:

**MB3E, L.P.**,  
a California limited partnership

By: CCDC-MB3E LLC, a California limited liability  
company  
its managing general partner

By: Chinatown Community Development Center,  
Inc., a California nonprofit public benefit  
corporation  
its sole member/manager

By: \_\_\_\_\_  
Norman Fong, Executive Director

By: Swords-MB3E LLC, a California limited  
liability  
company  
its managing general partner

By: Swords to Plowshares: Veterans Rights  
Organization, a California nonprofit public  
benefit corporation  
its sole member/manager

By: \_\_\_\_\_  
Michael Blecker, Executive Director

Acknowledged:

City and County of San Francisco

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

**EXHIBIT F**  
**CDLAC RESOLUTION**

**EXHIBIT G**

**CDLAC CERTIFICATION OF COMPLIANCE II**

1. Project Name: 1150 3rd Street Apartments

*(If Project name has changed since the award of allocation, please note the original Project name as well as the new Project name and request a change in the CDLAC Resolution.)*

2. CDLAC Application No.: 17-358

3. Issuer of the Bonds: City and County of San Francisco

*(If the issuer of the Bonds has changed since the award of allocation as a result of a refinance or refunding of an allocation, please note the original issuer of the Bonds as well as the new Issuer.)*

4. Borrower: MB3E, L.P.

*(If the Borrower has changed since the award affecting the CDLAC Resolution please note the original Borrower as well as the new Borrower.)*

5. Management Company: [management company]

*(If the management company has changed since the award of allocation, please note the original management company as well as the new management company.)*

6. Has the Qualified Project Period commenced? No \_\_\_\_\_ Yes \_\_\_\_\_  
No \_\_\_\_\_ Yes \_\_\_\_\_ Already submitted certification

If yes, please submit the Certificate of Qualified Project Period (one time only)

7. Has the Project been completed and placed in service? No \_\_\_\_\_ Yes \_\_\_\_\_  
No \_\_\_\_\_ Yes \_\_\_\_\_ Already submitted certificate

If yes, please submit Completion Certificate (one time only)

8. Have any of the following events occurred associated with the bond allocation, including, but not limited to: defaults associated with rents and income requirements, Bond Default, or a Qualified Bond Default?

No \_\_\_\_\_ Yes \_\_\_\_\_

If so, please describe and explain:

9. Has a termination of the Regulatory Agreement occurred or is a termination planned in the next year? Has the proper noticing occurred?

No \_\_\_\_\_ Yes \_\_\_\_\_

If so, please describe and explain:

10.

Federally Bond Restricted Units (Reflected in PSR)	Other Restrictions (Reflected in PSR)	Total (Reported in CDLAC Resolution)
_____ at 50% AMI	_____ at 50% AMI	_____ at 50% AMI
_____ at 60% AMI	_____ at 60% AMI	_____ at 60% AMI
Total _____	Total _____	Total _____

11. Please indicate the distribution of the CDLAC restricted 10% of the 50% AMI units:

Bedroom Type	# of Units in PSR	# of Units in CDLAC Resolution
1 Bedroom	_____	_____
2 Bedroom	_____	_____
3 Bedroom	_____	_____

12. If the Project has committed to and is currently provided the service amenities for a term as specified in the CDLAC Resolution, please verify the services are being provided on a regular and ongoing basis, which are provided free of charge, and all hour requirements are being met:

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

If applicable, is the service being offered on an ongoing basis and provided free of charge (childcare excepted)?

No \_\_\_\_\_ Yes \_\_\_\_\_

Are all hour requirements being met?

No \_\_\_\_\_ Yes \_\_\_\_\_

If applicable, attach evidence demonstrating that the above listed services are being provided and have met the requirements in the CDLAC Resolution, including, but not limited to, MOUs and/or contracts associated with the services rendered, a 12-month schedule (current reporting year) of the services offered, flyers, sign-up sheets, etc.

Pursuant to Section 13 of Resolution No. 17-69 (the "Resolution"), adopted by the California Debt Limit Allocation Committee (the "Committee") on July 19, 2017, I, \_\_\_\_\_, an Officer of the Borrower, hereby certify under penalty of perjury that, as of the date of this Certification, the above-mentioned Project is in compliance with the terms and conditions set forth in the Resolution as outlined above.

I further certify that I have read and understand the Resolution, which specifies that once the Note is executed and delivered, the terms and conditions set forth in the Resolution and Exhibit A thereto shall be enforceable by the Committee through an action for specific performance, negative points, withholding future allocation or any other available remedy.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Officer

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Title of Officer

## EXHIBIT H

### CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

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

**1. Conflict of Interest.** Through its execution of this Agreement, Owner acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**2. Proprietary or Confidential Information of City.** Owner understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Owner may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Owner agrees that all information disclosed by City to Owner shall be held in confidence and used only in performance of the Agreement. Owner shall exercise the same standard of care to protect such information as a reasonably prudent Owner would use to protect its own proprietary data.

**3. Local Business Enterprise Utilization; Liquidated Damages.**

a. **The LBE Ordinance.** Owner shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Owner's obligations or liabilities, or materially diminish Owner's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Owner's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Owner's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Owner shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. **Enforcement.** If Owner willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Owner shall be liable for liquidated damages in an amount equal to Owner's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of CMD") may also impose other sanctions against Owner authorized in the LBE Ordinance, including declaring the Owner to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Owner's LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative



Code §14B.17. By entering into this Agreement, Owner acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Owner further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Owner on any contract with City. Owner agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

#### 4. **Nondiscrimination; Penalties.**

a. **Owner Shall Not Discriminate.** In the performance of this Agreement, Owner agrees not to discriminate against any employee, City and County employee working with such Owner or Subcontractor, applicant for employment with such Owner or Subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Owner shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all Subcontractors to comply with such provisions. Owner's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Owner does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

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

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Owner shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Owner understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Owner and/or deducted from any payments due Owner.

**5. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Owner acknowledges and agrees that he or she has read and understood this section.

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

**7. Drug-Free Workplace Policy.** Owner acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Owner agrees that any violation of this prohibition by Owner, its employees, agents or assigns will be deemed a material breach of this Agreement.

**8. Resource Conservation.** Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Owner to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

**9. Compliance with Americans with Disabilities Act.** Owner acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Owner, must be accessible to the disabled public. Owner shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Owner agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Owner, its employees, agents or assigns will constitute a material breach of this Agreement.

**10. Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, Owners’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**11. Limitations on Contributions.** Through execution of this Agreement, Owner acknowledges that it is familiar with section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Owner acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual

value of \$50,000 or more. Owner further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Owner's board of directors; Owner's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Owner; any Subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Owner. Additionally, Owner acknowledges that Owner must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Owner further agrees to provide to City the names of each person, entity or committee described above.

## **12. Requiring Minimum Compensation for Covered Employees.**

a. Owner agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Owner's obligations under the MCO is set forth in this Section. Owner is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Owner to pay Owner's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Owner is obligated to keep informed of the then-current requirements. Any subcontract entered into by Owner shall require the Subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Owner's obligation to ensure that any Subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any Subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Owner.

c. Owner shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

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

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

f. Owner's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Owner fails to comply with these requirements. Owner agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Owner's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Owner understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P

(including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Owner fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Owner fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Owner represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

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

Owner agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

b. Notwithstanding the above, if the Owner is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Owner's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Owner if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Owner fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Owner fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Owner shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Owner shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Owner shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set

forth in this Section against Owner based on the Subcontractor's failure to comply, provided that City has first provided Owner with notice and an opportunity to obtain a cure of the violation.

e. Owner shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Owner's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Owner represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Owner shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

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

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

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

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

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

m. If Owner is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Owner later enters into an agreement or agreements that cause Owner's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Owner and the City to be equal to or greater than \$75,000 in the fiscal year.

**14. Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Owner may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Owner agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Owner violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Owner from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Owner's use of profit as a violation of this section.

**15. Preservative-treated Wood Containing Arsenic.** Owner may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental

arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Owner may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Owner from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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

**17. Protection of Private Information.** Owner has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Owner agrees that any failure of Owner to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Owner pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Owner.


**18. Food Service Waste Reduction Requirements.** Owner agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Owner agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Owner agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Owner's failure to comply with this provision

**19. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any Owner, Subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A Owner, Subcontractor or consultant will be deemed to have submitted a false claim to the City if the Owner, 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.

OFFICE OF THE MAYOR  
SAN FRANCISCO



EDWIN M. LEE

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: *Ed* Mayor Edwin M. Lee   
RE: Multifamily Housing Revenue Bonds – 1150 3rd Street Apartments (also known as Mission Bay South Block 3 East)  
DATE: October 31, 2017

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Attached for introduction to the Board of Supervisors is a resolution authorizing the issuance, sale and delivery of multifamily housing revenue bonds in an aggregate principal amount not to exceed \$51,000,000 for the purpose of providing financing for the construction of a 119-unit multifamily rental housing project known as 1150 3rd Street Apartments; approving the form of and authorizing the execution of an indenture of trust providing the terms and conditions of the bonds; approving the form of and authorizing the execution of a regulatory agreement and declaration of restrictive covenants; approving the form of and authorizing the execution of a loan agreement; authorizing the collection of certain fees; approving modifications, changes and additions to the documents; ratifying and approving any action heretofore taken in connection with the bonds and the project; granting general authority to City officials to take actions necessary to implement this Resolution; and related matters.

Please note that this legislation is co-sponsored by Supervisor Kim.

I respectfully request that this item be calendared in Budget & Finance on November 2, 2017.

Should you have any questions, please contact Mawuli Tugbenyoh (415) 554-5168.

2017 OCT 31 PM 2:12  
AK

**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s):	City elective office(s) held:
Members, Board of Supervisors	Members, Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>
Name of contractor: MB3E, L.P., a California Limited Partnership
<p><i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i></p> <p>The borrowing entity for 1150 3rd Street Apartments (also known as Mission Bay South Block 3 East) is MB3E, L.P., a California Limited Partnership. MB3E, L.P. has no employees, and decisions are made by its co-general partners, (1) CCDC-MB3E LLC, a California limited liability company, with sole member/manager Chinatown Community Development Center, Inc., a California nonprofit public benefit corporation ("Chinatown CDC"), and (2) Swords-MB3E LLC, a California limited liability company, with sole member/manager Swords to Plowshares: Veterans Rights Organization, a California nonprofit public benefit corporation ("STP").</p> <p>Please see the below Board list to comply with request #1. Additionally, the contractor's chief executive officer, chief financial officer and chief operating officers are Chinatown CDC's and STP's governing officers as the result of MB3E, L.P.'s relationship to Chinatown CDC and STP.</p> <p>Chinatown CDC Board of Directors:</p> <ul style="list-style-type: none"> <li>Philip C. Chin</li> <li>Michael Louie</li> <li>Amy Chung</li> <li>Gregory Chin</li> <li>Pamela Calloway</li> <li>Cathy Craig</li> <li>Fay Darmawi</li> <li>Theo Ellington</li> <li>Mark Fong</li> <li>Benjamin Folvin</li> <li>Jessica Kyo</li> <li>Joanne Lee</li> <li>Winston Lee</li> <li>Tommy Lim</li> <li>Dr. James McCray</li> <li>Ben Ng</li> <li>Irma Poe</li> <li>Nils Rosenquest</li> <li>Santiago Ruiz</li> <li>Marc Slutzkin</li> <li>Nigel Brian Tse</li> <li>Janet Lee Tse</li> <li>Eddy Zheng</li> </ul>



STP Board of Directors: Julie Cane Paul Cox Michael Deksheniaks Erik Edwards Michael Fassler Rick Houlberg Kristina Lawson Yaniv Newman Stephen Plath Deleano 'Del' Seymour Stephen M. Snyder Stacey Sprenkel Michael Thiel Robert Trevorrow	
Chief Executive Officers: Norman Fong (Chinatown CDC), Michael Blecker (STP)	
Chief Financial Officers: Karen Gansen (Chinatown CDC), John Beem (STP)	
Chief Operating Officer: Leon Winston (STP)	
Items #3-5 do not apply to MB3E, L.P.	
Contractor address: MB3E, L.P., 1515 Vallejo Street, 4th Floor, San Francisco, California 94109	
Date that contract was approved:	Amount of contract: Not to exceed \$51,000,000
Describe the nature of the contract that was approved: Tax-exempt financing for 1150 3rd Street Apartments, a 119-unit residential rental development for persons and families of very low income	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors  
 Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> (Please print clearly.)	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

\_\_\_\_\_  
 Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
 Date Signed

\_\_\_\_\_  
 Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
 Date Signed

