
LOAN AGREEMENT

among the

CITY OF SAN JOSE, CALIFORNIA

**JPMORGAN CHASE BANK, N.A.,
as initial Bondowner Representative**

and

**CATALONIA TWO, L.P.,
a California limited partnership, as Borrower**

dated as of October 1, 2017

relating to:

\$_____

**City of San Jose
Multifamily Housing Revenue Bond
(Catalonia Apartments), 2017 Series C**

The interests of the City in this Agreement and the Note, excluding the Reserved Rights, have been assigned to Wilmington Trust, National Association, as trustee, pursuant to an Assignment of Deed of Trust and Loan Documents dated as of October 1, 2017 by the City for the benefit of Wilmington Trust, National Association, as trustee.

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LOAN AGREEMENT

THIS LOAN AGREEMENT (this “Agreement”) is made and entered into as of October 1, 2017, by and among the **CITY OF SAN JOSE, CALIFORNIA** a charter city and municipal corporation, duly organized and existing under its charter and the laws of the State of California (together with any successors and assigns, as issuer of the Bond referred to below, the “City”); **JPMORGAN CHASE BANK, N.A.**, a national banking association organized and existing under the laws of the United States of America, and its successors and assigns (“Bondowner Representative”), and **CATALONIA TWO, L.P.**, a California limited partnership (“Borrower”).

RECITALS:

WHEREAS, pursuant to Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the Health and Safety Code of the State of California (the “Act”), the City is empowered to issue its revenue bonds to finance the acquisition, rehabilitation and equipping of multifamily rental housing; and

WHEREAS, the Borrower has requested City to issue its Multifamily Housing Revenue Bond (Catalonia Apartments), 2017 Series C in the original principal amount of up to \$_____ (the “Bond”) for the purpose of making a loan (the “Loan”) to finance, in part, the acquisition and rehabilitation of a 50-unit multifamily rental housing project known as Catalonia Apartments, located at 2036 Evans Lane, San Jose, California, located on land which is more particularly described on Exhibit A hereto (the “Land”) which Land, together with the improvements to be rehabilitated thereon (the “Improvements”) is collectively referred to as the “Property” or the “Project;” and the Bond shall be issued pursuant to an Indenture of Trust dated as of October 1, 2017 by and among City, Wilmington Trust, National Association, as trustee (“Trustee”) and Bondowner Representative (the “Indenture”); and

WHEREAS, City deems it desirable and in keeping with its purpose to issue the Bond and lend the proceeds thereof to Borrower for the purposes described above under the terms and conditions contained in this Agreement; and

WHEREAS, to evidence the Loan, Borrower is executing in favor of City, that certain promissory note payable to the order of City in the original maximum principal amount of \$_____ (the “Note”), which Note provides for the repayment of the Loan in amounts sufficient to pay, when due, the principal of, premium, if any, and interest on the Bond, and Borrower has executed or caused to be executed and delivered to City the Construction and Permanent Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the “Deed of Trust”) with respect to the Project, which Deed of Trust shall be assigned without recourse by City to Trustee as trustee pursuant to that certain Assignment of Deed of Trust and Loan Documents (the “Assignment of Deed of Trust”), dated as of even date herewith, to secure, among other things, the payments due under the Note and this Agreement; and

WHEREAS, Eden Housing, Inc., a California nonprofit public benefit corporation (the "Guarantor") has agreed to guarantee the repayment of the Loan by execution and delivery to Bondowner Representative of a Payment and Performance Guaranty (the "Payment and Performance Guaranty"); and

WHEREAS, in order to secure additional financing for the Project, Borrower has obtained loans from Eden Housing, Inc., Catalonia Associates, a California limited partnership, and the City (in addition to the Loan); and

WHEREAS, the disbursement of the Loan and the potential conversion of the Loan from the Construction Term to the Permanent Term is governed by, and as such capitalized terms are defined in, the Construction and Permanent Loan Agreement, dated as of October 1, 2017, between the Borrower and the Bondowner Representative, among other documents; and

WHEREAS, the execution and delivery of this Agreement by the City, and the issuance of the Bond by the City, have been duly and validly authorized by City.

A G R E E M E N T :

NOW, THEREFORE, City, Borrower and Bondowner Representative, each in consideration of the representations, covenants and agreements of the other as set forth herein, mutually represent, covenant and agree as follows:

ARTICLE I{tc "ARTICLE I" \1 1 \n}

DEFINITIONS{tc "DEFINITIONS" \1 1 \n}

Section 1.01. Defined Terms{tc "Section 1.01. Defined Terms" \1 2}. Capitalized terms used in this Agreement and not otherwise defined have the meanings set forth for those terms in the Indenture.

"Affiliate" means any person or entity directly or indirectly controlling, controlled by, or under direct or indirect common control with, another identified person or entity. A person or entity will be deemed to control a corporation or other entity if such person or entity possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation or other entity, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Loan Agreement, as originally executed and as it may be amended or supplemented in accordance with its terms.

"Assignment of Deed of Trust" has the meaning set forth in the recitals to this Agreement.

"Bond" has the meaning set forth in the recitals to this Agreement.

“Bondowner Representative” means (a) JPMorgan Chase Bank, N.A., a national banking association, prior to the Conversion Date, (b) on and after the Conversion Date, CCRC, its successors and assigns, and (c) as otherwise defined in Section 1.01 of the Indenture.

“Borrower’s Governing Agreement” means a [First Amended and Restated Agreement of Limited Partnership] under which Tax Credit Investor is admitted as a limited partner of Borrower, which agreement is to be executed and delivered substantially concurrently with the execution and delivery of this Agreement.

“Collateral Assignment” means, collectively, that Collateral Assignment of Rights to Tax Credits and Partnership Interest by the Borrower, the General Partner and the Bondowner Representative and that Collateral Assignment and Pledge of Developer Fees and Security Agreement by Developer in favor of Bondowner Representative.

“Construction Loan” means the Loan before Conversion.

“Conversion” means the commencement of the Permanent Loan upon satisfaction of the Conversion Conditions.

“Conversion Conditions” has the meaning set forth in the Bond Purchase Agreement. *“Conversion Date”* has the meaning set forth in the Bond Purchase Agreement. *“Deed of Trust”* has the meaning set forth in the recitals to this Agreement. *“Default”* has the meaning set forth in Section 6.01.

“Default Rate” means the Default Rate set forth in the Note and, if more than one Default Rate is set forth in the Note, the highest thereof, but in no event higher than the *“Default Rate”* as defined in the Indenture.

“Developer” means Eden Housing, Inc., a California nonprofit public benefit corporation, and its successor and assigns.

“Developer Fee” has the meaning set forth in Section 3.02. *“Disbursement Account”* has the meaning set forth in Exhibit B.

“Disbursements” means disbursements of funds by Bondowner Representative to pay Total Project Costs, which disbursements are made from proceeds of the Loan or other funds held by Bondowner Representative in Pledged Accounts that are available for that purpose.

“Draw Request” has the meaning set forth in the Supplemental Loan Agreement. *“Event of Default”* has the meaning set forth in Section 6.01.

“General Partner” means Catalonia Two, LLC, a California limited liability company.

“Guarantor” has the meaning specified in the recitals to this Agreement.

“Improvements” has the meaning set forth in the recitals to this Agreement.

“Indemnified Costs” means all liabilities, claims, actions, causes of action, judgments, orders, damages, costs, expenses, fines, penalties and losses (including sums paid in settlement of claims and all consultant, expert and legal expenses), but excluding any Costs (as defined in the Indemnity Agreement), which Costs are subject to payment as provided in the Indemnity Agreement.

“Indemnified Parties” means the Trustee, the City and their respective Councilmembers, officers, officials, employees, counsel, attorneys, accountants, financial advisors, staff and agents, past, present and future, and their respective successors and assigns, as well as the Bondowner Representative, its parents, subsidiaries and other Affiliates, assignees of the Bondowner Representative’s interest in the Bond or the Loan, owners of participation or other interests in the Loan, and the officers, directors, employees, attorneys and agents of each of them.

“Indemnity Agreement” means an unsecured Environmental Indemnity Agreement executed by the Borrower and the Guarantor to induce the Bondowner Representative to purchase the Bond.

“Indenture” has the meaning set forth in the recitals to this Agreement.

“Land” has the meaning set forth in the recitals to this Agreement.

“Loan” has the meaning set forth in the recitals to this Agreement.

“Loan Closing” means the issuance of the Bond and the recording of the Deed of Trust.

“Loan Documents” means, collectively, this Agreement, the Supplemental Loan Agreement, the Note, the Deed of Trust, the Regulatory Agreement, the Collateral Assignment, the other Security Documents and all other documents that evidence, guarantee or secure the Loan (but specifically excluding the Indemnity Agreement), including without limitation, from and after the Conversion Date, the Permanent Period Replacement Reserve Agreement. The term *“Loan Documents”* does not include the Indemnity Agreement.

“Loan Proceeds” means the proceeds of the Loan in the maximum principal amount set forth in this Agreement.

“Note” has the meaning set forth in the recitals to this Agreement.

“Permanent Period Replacement Reserve Agreement” means that certain Replacement Reserve Agreement, dated as of October 1, 2017, by and between the Borrower and CCRC.

“Pledged Accounts” has the meaning set forth in Exhibit B hereto.

“Project” has the meaning set forth in the recitals to this Agreement.

“Property” has the meaning set forth in the recitals to this Agreement.

“*Securities Act*” means the United States Securities Act of 1933, as amended.

“*Security Documents*” means the Deed of Trust, the Collateral Assignment, such assignments of the Project Contracts (as defined in the _____) as Bondowner Representative may require and such other security documents as Bondowner Representative may require as security for the repayment of the Loan, the Note and related obligations.

“*State*” has the meaning set forth in the recitals to this Agreement.

“*Supplemental Loan Agreement*” has the meaning set forth in the Indenture.

“*Tax Credit Investor*” has the meaning set forth in the Supplemental Loan Agreement.

“*Treasury Regulations*” means Title 26 of the Code of Federal Regulations.

“*Trustee*” has the meaning set forth in the recitals to this Agreement.

“*Trustee Ongoing Fee*” means that ongoing fee of ____% of: (i) prior to the Conversion Date, the maximum principal amount of the Bond issuable under the Indenture; and following the Conversion Date, the outstanding principal amount of the Bond, with an annual minimum fee of \$1,200.00, payable semi-annually in arrears on each April 1 and October commencing April 1, 2018.

DEFINITIONS{tc "DEFINITIONS" \11 \n}

ISSUANCE OF BOND; PAYMENT OF ISSUANCE AND OTHER COSTS; ASSIGNMENTS BY CITY{tc "ISSUANCE OF BOND; PAYMENT OF ISSUANCE AND OTHER COSTS; ASSIGNMENTS BY CITY" \11 \n}

Section 2.01. Issuance of Bond{tc "Section 2.01. Issuance of Bond" \12}. Upon execution of this Agreement, the other Loan Documents, the Indenture and the occurrence of all conditions precedent to issuance of the Bond, or as soon thereafter as practicable, City will execute the Bond and Trustee will authenticate and deliver the Bond to Bondowner Representative, or to its order, upon payment of the initial installation of the purchase price of the Bond and filing with Bondowner Representative of the opinion of Bond Counsel as to the legality of the Bond and the furnishing of all other documents required to be furnished by the Indenture before such delivery. The proceeds of the Bond will be deposited with the Trustee and disbursed in accordance with the Indenture and this Agreement.

Section 2.02. NO WARRANTY BY CITY{tc "Section 2.02. NO WARRANTY BY CITY" \12}. BORROWER AGREES THAT, BECAUSE THE PROJECT IS TO BE ACQUIRED AND REHABILITATED BY THE BORROWER, THE CITY HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE QUALITY OF THE

MATERIAL OR WORKMANSHIP THEREIN, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, CITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION 2.02 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY CITY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT. IN ADDITION, 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 OR CITY IS A PARTY OR OF WHICH IT IS A BENEFICIARY; 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 CITY FOR ANY GUIDANCE OR EXPERTISE IN ANALYZING THE FINANCIAL OR OTHER CONSEQUENCES OF SUCH FINANCING TRANSACTIONS OR OTHERWISE RELIED ON CITY IN ANY MANNER EXCEPT TO ISSUE THE BOND IN ORDER TO PROVIDE FUNDS FOR THE LOAN.

Section 2.03. Payment of Costs of Issuance by Borrower{tc "Section 2.03. Payment of Costs of Issuance by Borrower" \1 2}. Borrower agrees that it will provide any and all funds required for the prompt and full payment of all costs of issuance of the Bond not otherwise paid from proceeds of the Bond, including, but not limited to, the following items:

- (a) all legal fees (including fees and expenses of Bond Counsel and counsel to Borrower, City, Trustee and Bondowner Representative), abstractors', title insurance, financial, engineering, environmental, construction services, survey, appraisal and accounting fees and expenses, administrative fees, printing and engraving costs and other expenses incurred and to be incurred by Borrower, City and Bondowner Representative on or before, or in connection with, the issuance of the Bond;
- (b) premiums on all insurance required to be secured and maintained by Borrower during the term of this Agreement and Supplemental Loan Agreement;
- (c) all recording fees and other taxes, charges, assessments, license or registration fees of every nature whatsoever incurred and to be incurred in connection with this financing (other than a tax on the income of City or Bondowner Representative);
- (d) all reasonable initial fees and expenses of Bondowner Representative, City and Trustee (including, without limitation, Issuer's Closing Fee and the initial Ongoing Issuer Fee referred to in Section 7(a) of the Regulatory Agreement);

(e) the fees payable to Bondowner Representative pursuant to the Supplemental Loan Agreement; and

(f) fees payable to the California Debt Limit Allocation Committee and the California Debt and Investment Advisory Commission with respect to the Bond and the financing of the Project; and other reasonable costs of issuance of the Bond.

Section 2.04. Assignment of Certain Rights{tc "Section 2.04. Assignment of Certain Rights" \1 2}. Pursuant to the Indenture and the Assignment of Deed of Trust, the City has assigned the Revenues and has assigned, without recourse or liability, to the Trustee, certain of the City's rights under this Agreement and the Note, including the right to receive certain payments hereunder (but excluding the Reserved Rights, among them the City's rights to payments under Sections 2.05, 2.06, 4.01 and 8.08 of this Agreement, which have not been assigned), and hereby directs Borrower to make payments required herein or under the Note to be made to City, to the Trustee. Borrower assents to such assignment and will make such payments under this Agreement directly to the Trustee or as otherwise directed by Bondowner Representative without defense or set off by reason of any dispute between Borrower, and City, Trustee, or Bondowner Representative.

Section 2.05. City Fees{tc "Section 2.05. City Fees" \1 2}. Borrower shall timely pay the fees payable to the City pursuant to Sections 7(a) and (m) of the Regulatory Agreement as and when due, without the need for any invoice with respect to amounts due under Section 7(a) of the Regulatory Agreement, or as billed by the City or the Trustee with respect to any other amounts due to the City.

Section 2.06. Payment of Other Amounts by Borrower{tc "Section 2.06. Payment of Other Amounts by Borrower" \1 2}. Borrower shall promptly and timely pay all other amounts due to City, Trustee (including, but not limited to the Trustee Ongoing Fee), Rebate Analyst, Bondowner Representative or any of them under the Indenture, the Note, Supplemental Loan Agreement, Regulatory Agreement and any other of the Loan Documents or the Indemnity Agreement.

ARTICLE III{tc "ARTICLE III" \1 1 \n}

DISBURSEMENT{tc "DISBURSEMENT" \1 1 \n}

Section 3.01. Disbursement by Bondowner Representative{tc "Section 3.01. Disbursement by Bondowner Representative" \1 2}. Bondowner Representative shall make and authorize disbursements of the Loan pursuant to the Supplemental Loan Agreement.

Section 3.02. Developer Fee{tc "Section 3.02. Developer Fee" \1 2}. Notwithstanding anything to the contrary contained in Borrower's Governing Agreement or any other document, except to the extent otherwise set forth below, Borrower will not pay any developer fee, developer overhead, developer profit or similar amount (collectively, "Developer Fee") to any Affiliate of Borrower prior to the Conversion Date, except as permitted under that Collateral Assignment and Pledge of Developer Fees and Security Agreement, dated as of October 1, 2017, by Developer in favor of the Bondowner Representative.

Section 3.03. Limitations on Disbursements{tc "Section 3.03. Limitations on Disbursements" \1 2}. Notwithstanding recording of the Deed of Trust or anything contained in this Agreement, Bondowner Representative will not be required to make any Disbursements unless and until Borrower has satisfied all applicable conditions to such Disbursements set forth in the Supplemental Loan Agreement. No Disbursements of the Loan shall be made after earlier of the Conversion Date or October 1, 2020, notwithstanding anything to the contrary contained in any construction contract or any other document.

ARTICLE IV{tc "ARTICLE IV" \1 1 \n}

COVENANTS OF BORROWER{tc "COVENANTS OF BORROWER" \1 1 \n}

Borrower will keep and perform each of the covenants set forth below, except with respect to the covenant in Section 4.02 to the extent that Bondowner Representative hereafter specifically waives compliance with Section 4.02 in writing, which waiver may be given or withheld by Bondowner Representative in its sole discretion.

Section 4.01. Indemnity{tc "Section 4.01. Indemnity" \1 2}. Borrower releases City, Trustee and their respective Councilmembers, officers, directors, agents, officials, employees, attorneys and agents, past, present and future and any person who controls City or Trustee within the meaning of the Securities Act, from, and covenants and agrees, without limiting the indemnity provided in the Regulatory Agreement, to indemnify, hold harmless and defend City, Trustee and their respective Councilmembers, officers, directors, officials and employees, attorneys and agents, past present and future of each of them and any person who controls such party within the meaning of the Securities Act and employees and each of them (each an "Indemnified Party") from and against, any and all losses, claims, damages, demands, liabilities and expenses (including attorney's fees and expenses), taxes (other than income taxes payable by any party as a result of any fees payable to such parties in connection with the transaction contemplated hereby), causes of action, suits, claims, demands and judgments of any nature, joint or several, by or on behalf of any person arising out of:

- (a) the transaction provided for in the Loan Documents or the Indenture or otherwise in connection with the Project, the Bond, the Loan or the execution and delivery or amendment of any other document entered into in connection with the transactions provided for in the Indenture or the Loan Documents (provided no indemnity shall be required for claims due to nonpayment of the Note);
- (b) the approval of the financing for the Project or the making of the Loan;
- (c) the issuance and sale of the Bond or any certifications or representations made by any person other than the party seeking indemnification;
- (d) any and all claims arising in connection with the interpretation, performance, enforcement, breach, default or amendment of the Indenture, the Loan Documents or any other documents relating to the Project or the Bond or in connection with any federal or state tax audit or any questions or other matters arising under such

documents (provided no indemnity shall be required for claims due to nonpayment of the Note);

(e) the carrying out by Borrower of the transaction provided for in the Indenture or the Loan Documents;

(f) the Trustee's acceptance or administration of the trust created by the Indenture or the exercise of its powers or duties under the Indenture or under this Agreement, the Regulatory Agreement or any other agreements to which it is a party or otherwise in connection with the transactions provided for in the Indenture or the Loan Documents except for claims arising from Trustee's administration where such is a result of actions contrary to Trustee's duties and obligations;

(g) any and all claims arising in connection with the issuance and sale of the Bond or any certifications or representations made by any person other than the Indemnified Party seeking indemnification, including, without limitation, any statement or information made by Borrower with respect to Borrower or the Project in any offering document or materials regarding the initial offering of the Bond (in connection with its issuance under the Indenture), the Project or Borrower or the Tax Certificate executed by Borrower or any other certificate executed by Borrower which, at the time made, is misleading, untrue or incorrect in any material respect and any untrue statement or alleged untrue statement of a material fact by the Borrower relating to Borrower or the Project contained in any offering material relating to the initial offering of the Bond, as from time to time amended or supplemented with information provided by Borrower, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact relating to Borrower or the Project required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading, or failure to properly register or otherwise qualify the sale of the Bond or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bond could be sold and the carrying out by Borrower of any of the transactions contemplated by the Indenture or the Loan Documents;

(h) Borrower's failure to comply with any requirement of this Agreement or the Regulatory Agreement (provided no indemnity shall be required for claims due to nonpayment of the Note);

(i) any act or omission of Borrower or any of its agents, servants, employees or licensees in connection with the Loan or the Project, including violation of any law, ordinance, court order or regulation affecting the Project or any part of it or the ownership, occupancy or use of it (provided no indemnity shall be required for claims due to nonpayment of the Note);

(j) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Project or arising out of any action or inaction of Borrower, whether or not related to the Project, or resulting from or in any way connected with the acquisition and rehabilitation or management of the Project, the

issuance of the Bond or otherwise in connection with the transaction contemplated or otherwise in connection with the Project, the Bond or the execution or amendment of any document relating to the Project or the Bond;

(k) any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project; and

(l) any and all claims arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or supervision of work done in or about, or from the planning, design, acquisition, rehabilitation, repair or equipping of, the Project or any part of it, including, but not limited to, the Americans with Disabilities Act, if applicable (as evidenced by an architect's certificate to such effect).

This indemnification shall extend to and include, without limitation, all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought with respect to such claim, except:

(i) in the case of the foregoing indemnification of Trustee or any of its related Indemnified Parties to the extent such damages are caused by the negligence or willful misconduct of such Person; and

(ii) in the case of the foregoing indemnification of City or any of its related Indemnified Parties, to the extent such damages are caused by 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 under this Agreement, Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense of the action or proceeding, including the employment of counsel selected by Borrower, subject to the approval of the Indemnified Party, which approval shall not be unreasonably withheld, and shall assume the payment of all expenses related to the action or proceeding, with full power to litigate, compromise or settle the same in its sole discretion, provided that City, and Trustee, as appropriate, shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense of the action or proceeding, and Borrower shall be obligated to pay the fees and expenses of such separate counsel if (A) the Indemnified Party, upon the advice of counsel, determines that a conflict of interest exists between the interests of the Indemnified Party and the interests of Borrower or (B) such separate counsel is employed with the approval of Borrower, which approval shall not be unreasonably withheld, conditioned or delayed.

Borrower understands and agrees that the foregoing release includes all claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, and Borrower has read and understands, and hereby waives the benefits of, Section 1542 of the California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

Borrower acknowledges that it may hereafter discover facts different from or in addition to those which it now knows or believes to be true with respect to the foregoing release by Borrower and agree that the foregoing release shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery thereof.

Nothing in this Section 4.01 shall in any way limit the Borrower’s indemnification and other payment obligations set forth in the Regulatory Agreement.

Section 4.02. Sale of Bond in Secondary Market{tc "Section 4.02. Sale of Bond in Secondary Market" \1 2}. Borrower acknowledges the intention of Bondowner Representative to facilitate the marketability of the Bond to a purchaser in the secondary market as permitted by the Indenture, and Borrower agrees to execute such other documents as are required to effectuate such resale of the Bond by Bondowner Representative, provided that the same do not change the economic terms of the transactions described herein or expand the liabilities of the Borrower hereunder.

ARTICLE V

{tc "ARTICLE V" \1 1 \n}

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

{tc "REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER" \1 1 \n}

Borrower promises that each and every representation and warranty set forth below is true, accurate and correct as of the date of this Agreement. Each Draw Request is hereby deemed to be a reaffirmation, as of the date such Draw Request is submitted to Bondowner Representative, of each and every representation and warranty made by Borrower in this Agreement. Borrower represents and warrants to City and Bondowner Representative as follows:

Section 5.01. Tax Status of Bond{tc "Section 5.01. Tax Status of Bond" \1 2}. Borrower hereby covenants, represents and agrees as follows: (a) that Borrower will not take or permit any action to be taken that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bond (except during any period while the Bond is held by a “substantial user” of the facilities financed by the Bond or a “related person” within the meaning of Section 147(a) of the Code) and, if it should take or permit any such action, Borrower will take all lawful actions to rescind such action promptly upon having knowledge thereof; and (b) that Borrower will take such action or actions, including amending the Loan, the Regulatory Agreement and this Agreement, as determined reasonably necessary in the opinion of Bond Counsel to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service under the Code. Borrower further covenants and agrees that it will direct all investments in compliance with the Code. Borrower covenants and agrees to cause to be calculated by a Rebate Analyst and pay to the Trustee any

amounts owing to the United States as rebatable arbitrage in accordance with the procedures set forth in Section 6.07 of the Indenture.

Section 5.02. Incorporation of Tax Certificate [tc "Section 5.02. Incorporation of Tax Certificate" \1 2]. The covenants, representations, warranties and agreements of Borrower set forth in the Tax Certificate are incorporated by reference herein as if fully set forth herein.

Section 5.03. Tax Covenants [tc "Section 5.03. Tax Covenants" \1 2]. Borrower shall comply with the requirements and conditions of the Tax Certificate and the Regulatory Agreement. Without limiting the foregoing and notwithstanding anything to the contrary in this Agreement, Borrower will not take, or permit to be taken on its behalf, any action which would cause interest on the Bond to be included in gross income for federal income tax purposes (except during any period while the Bond is held by a "substantial user" of the facilities financed by the Bond or a "related person" within the meaning of Section 147(a) of the Code) and will take such reasonable action as may be necessary to continue such exclusion from gross income, including:

(a) Borrower will not use the proceeds of the Bond, or any other funds which may be deemed to be proceeds of the Bond pursuant to Section 148 of the Code, in the manner which will cause the Bond to be an "arbitrage bond" within the meaning of such section, and will comply with the requirements of such Section throughout the term of the Bond;

(b) Borrower will prepare and file any statements required to be filed by it in order to maintain such exclusion;

(c) Borrower will pay to the United States any amount required to be paid by City or Borrower pursuant to Section 148(f) of the Code, at the times, in the amounts and at the places required in order to maintain the exclusion of interest on the Bond from gross income for federal income tax purposes (except during any period while the Bond is held by a "substantial user" of the facilities financed by the Bond or a "related person" within the meaning of Section 147(a) of the Code), and Borrower shall compute, or cause to be computed, such amounts annually until the earlier of (i) the date required by the Code, or (ii) the date on which the Bond is no longer outstanding;

(d) The Borrower shall comply with all provisions of the Tax Certificate;

(e) in order to satisfy the requirements set forth in subpart (4) of the definition of "program investment" that appears in Section 1.148-1(b) of the Treasury Regulations (which requirements must be met in order for the Loan to qualify as a program investment within the meaning of that section), neither Borrower nor any related person will purchase the Bond in an amount related to the amount of the Loan;

(f) no changes will be made to the Project, no actions will be taken by Borrower, and Borrower will not omit to take any actions, which will in any way adversely affect the tax exempt status of the interest on the Bond (except during any

period while the Bond is held by a “substantial user” of the facilities financed by the Bond or a “related person” within the meaning of Section 147(a) of the Code);

(g) if Borrower becomes aware of any circumstance, event or condition which would result in the interest payable on the Bond becoming includable in gross income for federal income tax purposes (except during any period while the Bond is held by a “substantial user” of the facilities financed by the Bond or a “related person” within the meaning of Section 147(a) of the Code), Borrower will promptly give written notice of such circumstance, event or condition to City and Bondowner Representative;

(h) the full amount of each disbursement from the Loan will be applied to pay or to reimburse the Borrower for the payment of Project Costs and, after taking into account any proposed disbursement, (i) at least ninety seven percent (97%) of the net proceeds (as defined in Section 150 of the Code) of the Bond will be used to pay Qualified Project Costs to provide a qualified residential rental project (as defined in Section 42(d) of the Code), (ii) less than twenty-five percent (25%) of the net proceeds of the Bond will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land, (iii) not more than two percent (2%) of the proceeds of the Bond will have been used for Issuance Costs, and (iv) none of the proceeds (as defined for purposes of Section 147(g) of the Code) of the Bond will be disbursed to provide working capital;

(i) Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies applicable requirements of the Act, the Code and the Regulatory Agreement;

(j) all leases for the Project will comply with all applicable laws and, as applicable for units rented to low income tenants, as provided in the Regulatory Agreement;

(k) in connection with any lease or grant by Borrower of the use of the Project, Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Agreement or the Regulatory Agreement;

(l) 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 Loan shall be used for an office unless (i) the office is located on the premises of the facilities constituting the Project and (ii) not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project; and

(m) no proceeds of the Bond will be used, for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property was pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if

construction expenditures (as defined in the Code) with respect to such building equal or exceed fifteen percent (15%) of the portion of the cost of acquiring such building (and equipment) financed with proceeds of the Bond; and provided, further, that this limitation shall not apply with respect to any structure other than a building if construction expenditures with respect to such structure equal or exceed one hundred percent (100%) of the portion of the cost of acquiring such structure financed with the proceeds of the Bond.

In any matter relating to the exclusion of interest on the Bond from gross income for federal income tax purposes, the terms and provisions of the Tax Certificate and the Regulatory Agreement shall control in the event of any conflict between this Agreement and the Tax Certificate or Regulatory Agreement, as applicable.

ARTICLE VI{tc "ARTICLE VI" \1 1 \n}

DEFAULT AND REMEDIES{tc "DEFAULT AND REMEDIES" \1 1 \n}

Section 6.01. Events of Default{tc "Section 6.01. Events of Default" \1 2}. Any of the following, without limitation, shall constitute an “Event of Default” (and the term “Default” shall mean any of the following, whether or not any requirement for notice or lapse of time has been satisfied); provided, that any of Borrower’s partners may, but are not obligated to, cure a Default and such cure shall be accepted by Bondowner Representative as if made by Borrower:

(a) Any representation or warranty made by Borrower to or for the benefit of Bondowner Representative herein or elsewhere in connection with the Loan, including but not limited to any representation in connection with the security therefor, shall prove to have been incorrect or misleading in any material respect when made; or

(b) Borrower shall fail to pay any sum when due under this Agreement, the Deed of Trust, the Note or any other Loan Document or the Indemnity Agreement which is not cured within any notice and cure period set forth in the Supplemental Loan Agreement, or

(c) Other than a failure described in (b) above, Borrower or any other party thereto (other than City, Trustee or Bondowner Representative) shall fail to perform its obligations under any other covenant or agreement contained in this Agreement, the Deed of Trust, the Note, any other Loan Document or the Indemnity Agreement, which is not cured within any notice and cure period set forth in the Supplemental Loan Agreement or such other applicable document.

Section 6.02. Remedies{tc "Section 6.02. Remedies" \1 2}.

(a) **Withholding of Disbursements.** After the occurrence and during the continuance of an Event of Default, Bondowner Representative’s obligation to lend or disburse funds under the Loan Documents will automatically terminate, and Bondowner Representative in its sole discretion may withhold any one or more Disbursements. Bondowner Representative may also withhold any one or more Disbursements after the occurrence and during the continuance of a

Default unless and until Borrower cures such Default prior to the occurrence of an Event of Default. No Disbursement by Bondowner Representative will constitute a waiver of any Default unless Bondowner Representative agrees otherwise in writing in each instance.

(b) Acceleration. After the occurrence and during the continuance of an Event of Default, all of Borrower's obligations under the Loan Documents will become immediately due and payable at the option of Bondowner Representative and in Bondowner Representative's sole discretion without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind (except that Bondowner Representative shall provide notice of any such acceleration to the City).

(c) Pledged Accounts, Etc. After the occurrence and during the continuance of an Event of Default, Bondowner Representative in its sole discretion, may apply the funds in the Pledged Accounts and the Disbursement Account (as defined in the Supplemental Loan Agreement), and any other cash or cash equivalents of Borrower or Guarantor held by or subject to the control of Bondowner Representative (including but not limited to funds drawn under any letter of credit provided to Bondowner Representative in connection with the Loan and funds in the Construction Fund referred to in the Supplemental Loan Agreement), or any portion thereof to payment of Borrower's obligations under the Loan Documents; provided, however, that such application of funds will not cure or be deemed to cure any Event of Default. Nothing in this Agreement will obligate Bondowner Representative to apply all or any portion of any such funds on account of any Event of Default or to repayment of such obligations. Borrower further agrees, and expressly acknowledges the reliance of Bondowner Representative hereon, that any and all application of the funds in any Pledged Account or the Disbursement Account or the Construction Fund to or upon any of such obligations will be, and will be irrevocably deemed to be, a realization upon and foreclosure of the security interests and liens granted Bondowner Representative in such funds and will not be, or be deemed to be, the exercise of a right of set-off.

(d) Continuation of Construction, Etc. After the occurrence and during the continuance of any Event of Default, Bondowner Representative will have the right in its sole discretion to enter and take possession of the Property, whether in person, by agent or by court-appointed receiver, and to take any and all actions that Bondowner Representative in its sole discretion may consider necessary or appropriate to preserve and protect the Property or to complete the rehabilitation of the Project, including making changes in plans, specifications, work or materials and entering into, modifying or terminating any contractual arrangements, all subject to Bondowner Representative's right at any time to discontinue any work without liability. In addition, with or without taking possession of the Property, Bondowner Representative will have the right but not the obligation to cure any and all defaults by Borrower under any of the applicable government requirements, the Project Contracts (as defined in the Supplemental Loan Agreement) or other contracts relating to the Property. If Bondowner Representative chooses to complete the Improvements or to cure any of such defaults, Bondowner Representative shall provide notice thereof to the City, and Bondowner Representative will not assume any liability to Borrower or any other person or entity for completing the Project, or for the manner or quality of their construction, or for curing any such defaults, and Borrower expressly waives any such liability. If Bondowner Representative exercises any of the rights or remedies provided in this subsection, that exercise will not make

Bondowner Representative, or cause Bondowner Representative to be deemed to be, a partner or joint venturer of Borrower or a mortgagee in possession. Bondowner Representative in its sole discretion may choose to complete the rehabilitation of the Project in its own name. All sums expended by Bondowner Representative in completing the rehabilitation of the Project or curing Borrower's defaults will be considered to have been an additional Disbursement to Borrower bearing interest at the Default Rate and will be secured by the Loan Documents. For these purposes Bondowner Representative, in its sole discretion, may reallocate any line item or cost category of the Budget contained (and as such term is defined in) in the Supplemental Loan Agreement, and may make use of any available Borrower's sources of funds.

(e) Other Remedies; Cumulative Remedies. After the occurrence and during the continuance of an Event of Default, Bondowner Representative may exercise any and all other rights and remedies available to it under any of the Loan Documents or under applicable law. All rights and remedies available to Bondowner Representative will be cumulative and not exclusive.

(f) Delegation of Enforcement Rights. City hereby delegates to Bondowner Representative the exercise of all the rights and remedies exercisable by either City or Trustee under the Loan Documents (except for the Reserved Rights), including, without limitation, approval rights under the Loan Documents and the Indemnity Agreement, and all rights and remedies under the Loan Documents arising from a Default or Event of Default (and under the Indemnity Agreement following a violation thereof), including those rights and remedies set forth Sections 2.2.3, 2.2.4 and Sections 5.2 through and including 5.6 of the Deed of Trust, and as otherwise provided in the Note.

Section 6.03. Waiver of the Right of Setoff{tc "Section 6.03. Waiver of the Right of Setoff" \1 2}. Borrower will make all payments provided for under the terms of this Agreement, the Note and the other Loan Documents without offset or deduction. In the event of any litigation by Bondowner Representative, Trustee or City to enforce the terms of the Loan Documents, Borrower will not assert any counterclaim against Bondowner Representative, Trustee or City therein (other than compulsory counterclaims), but will assert the same only by means of a separate action.

ARTICLE VII

{tc "ARTICLE VII" \1 1 \n}

PLEGDED ACCOUNTS; RESERVE ACCOUNTS

{tc "PLEGDED ACCOUNTS; RESERVE ACCOUNTS" \1 1 \n}

Section 7.01. Grant of Security Interest{tc "Section 7.01. Grant of Security Interest" \1 2}. Borrower hereby pledges and assigns to Bondowner Representative, and grants Bondowner Representative a security interest in and lien upon each of the Pledged Accounts and all funds from time to time on deposit therein to secure all of Borrower's obligations under the Note, this Agreement and the other Loan Documents. All income taxes payable with respect to income on each Pledged Account, if any, will be paid by Borrower. The tax identification number associated with each Pledged Account will be that of Borrower. Borrower shall execute Bondowner Representative's form of Assignment of Deposit Account (as defined in the Supplemental Loan Agreement) with respect to each of the Pledged Accounts.

Section 7.02. Operating Reserve [tc "Section 7.02. Operating Reserve" \1 2]. At Conversion, Borrower shall have set aside and shall maintain a specific operating reserve fund with respect to the Property (the "Operating Reserve") in accordance with the terms of the Supplemental Loan Agreement which shall be a Pledged Account meeting the following requirements as well as the requirements set forth in Exhibit B.

(a) The Operating Reserve shall be maintained by the Borrower in one or more accounts (collectively, the "Operating Reserve Account") with JPMorgan Chase Bank, N.A. with disbursements approved by the Tax Credit Investor or its successors and assigns.

(b) Pursuant to the terms of the Borrower's Governing Agreement, Borrower shall be entitled to use funds in the Operating Reserve Account only to meet operating deficits in connection with the management and/or maintenance of the Property. If Borrower shall at any time draw upon the Operating Reserve to pay such operating deficits, Borrower shall promptly replenish the Operating Reserve from available cash flow from the Property after payment of the Tax Credit Investor's asset management fee (the "Management Fee"), and the replenishment of the Operating Reserve shall be paid prior to the payment of any partnership or developer fees (other than the Management Fee).

(c) All of Borrower's interest in the Operating Reserve, any interest accrued or accruing thereon, and the account(s) in which those funds are held, shall be pledged to Bondowner Representative as collateral or security for the Loan pursuant to the Deed of Trust and/or any other pledge agreement or other documentation required by (and acceptable to) Bondowner Representative. If a Default or Event of Default shall occur and be continuing, and the Tax Credit Investor has not affected cure within any notice cure period afforded to it under the applicable documents, Bondowner Representative shall be entitled to draw upon and utilize all or any portion of the Operating Reserve.

(d) Initially, the Operating Reserve shall be audited by Bondowner Representative or its delegee six months following the Conversion Date, and the Operating Reserve shall be audited by Bondowner Representative or its delegee annually thereafter to confirm, among other things, that (i) Borrower has used Operating Reserve funds only for appropriate purposes, and (ii) the Operating Reserve contains no less than the greater of the minimum amount required by the terms of the Borrower's Governing Agreement or in connection with any loan secured by the Property other than the Loan. Borrower shall cooperate with Bondowner Representative's audits of the Operating Reserve.

Section 7.03. Reserve Accounts and Disbursement Account [tc "Section 7.03. Reserve Accounts and Disbursement Account" \1 2]. If Borrower, as a matter of convenience, deposits or causes to be deposited with Bondowner Representative in the Disbursement Account, any operating and reserve accounts for the Project, or any of them that do not constitute Pledged Accounts, Bondowner Representative will not have a security interest in any such account unless such a security interest is created by a writing that specifically grants to Bondowner

Representative a security interest in the account in question as security for the Loan. Nothing herein constitutes a waiver by Bondowner Representative of any right of setoff against any such account.

ARTICLE VIII{tc "ARTICLE VIII" \11 \n}

MISCELLANEOUS{tc "MISCELLANEOUS" \11 \n}

Section 8.01. No Waiver; Consents{tc "Section 8.01. No Waiver; Consents" \1 2}. Each consent or waiver by Bondowner Representative of any of its rights or remedies under this Agreement or the other Loan Documents must be in writing and executed by Bondowner Representative, and no waiver will be construed as a continuing waiver. No waiver will be implied from Bondowner Representative's delay in exercising or failure to exercise any right or remedy against Borrower or any security. Consent by Bondowner Representative to any act or omission by Borrower will not be construed as a consent to any other or subsequent act or omission or as a waiver of the requirement for Bondowner Representative's consent to be obtained in any future or other instance.

Section 8.02. Purpose and Effect of Bondowner Representative's Approval{tc "Section 8.02. Purpose and Effect of Bondowner Representative's Approval" \1 2}. Bondowner Representative's approval of any matter in connection with the Loan will be for the sole purpose of protecting Bondowner Representative's security and rights. In no event will Bondowner Representative's approval be a representation of any kind with regard to the matter being approved. Without limiting the generality of the preceding sentence, Borrower acknowledges that Bondowner Representative has no duty to Borrower or any third party regarding compliance with laws or regulations affecting low income housing tax credits or any other tax matter with respect to the Loan or the Project.

Section 8.03. Singular and Plural{tc "Section 8.03. Singular and Plural" \1 2}. As used in this Agreement and the other Loan Documents, singular terms include the plural and vice versa as the context may require.

Section 8.04. No Third Parties Benefited{tc "Section 8.04. No Third Parties Benefited" \1 2}. This Agreement is made and entered into for the sole protection and benefit of City, Bondowner Representative, Trustee, Borrower, and their permitted successors and assigns. No trust fund is created by this Agreement and no other persons or entities will have any right of action under this Agreement or any right to the Loan Proceeds. Bondowner Representative will not be obligated to provide any assurances, commitments, obligations or agreements to or for the benefit of any person or entity other than Borrower, except to the City as explicitly set forth herein.

Section 8.05. Notices{tc "Section 8.05. Notices" \1 2}. All notices given under this Agreement must be in writing and given as provided in the Indenture with respect to the giving of notices thereunder.

Section 8.06. Authority to File Notices{tc "Section 8.06. Authority to File Notices" \1 2}. Borrower irrevocably appoints Bondowner Representative as its attorney-in-fact, with full power of substitution, to file for record, at Borrower's cost and expense and in Borrower's

name, any notices of commencement or completion, notices of cessation of labor, or any other notices that Bondowner Representative in its sole discretion may consider necessary or desirable to protect its security for the Loan, if Borrower fails to do so.

Section 8.07. Actions{tc "Section 8.07. Actions" \1 2}. City, Trustee and Bondowner Representative will have the right, but not the obligation, to commence, appear in, and defend any action or proceeding that might affect its respective security or its respective rights, duties or liabilities relating to the Loan, the Property or any of the Loan Documents. Borrower will pay promptly on demand all of City's, Trustee's and Bondowner Representative's out-of-pocket costs, expenses, and attorneys' fees and all expenses of City's, Trustee's and Bondowner Representative's respective counsel incurred in those actions or proceedings.

Section 8.08. Legal and Other Expenses{tc "Section 8.08. Legal and Other Expenses" \1 2}. Borrower will reimburse City, Trustee and Bondowner Representative within five days after written demand for all costs and expenses incurred by City, Trustee, Bondowner Representative or any of them in connection with the administration, interpretation enforcement or performance of the Loan Documents. Without limiting the generality of the foregoing in the event of any Default, or in the event that any dispute arises relating to the interpretation, enforcement or performance of any of the Loan Documents, City, Trustee and Bondowner Representative will be entitled to collect from Borrower on demand all fees and expenses incurred in connection therewith, including but not limited to fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, Borrower will pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of Borrower or other party liable for any of the obligations of this Agreement or the other Loan Documents or any party having any interest in any security for any of those obligations; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Agreement; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing. Whenever Borrower is obligated to pay or reimburse City, Trustee or Bondowner Representative for any attorneys' fees, those fees will include the allocated costs, as determined by City, Trustee or Bondowner Representative, as the case may be, for services of in-house counsel.

Section 8.09. Applicable Law{tc "Section 8.09. Applicable Law" \1 2}. This Agreement will be governed by the laws of the State, without regard to any provisions or principles thereof relating to choice of law or conflict-of-laws, except as may be preempted by federal law.

Section 8.10. Time of Essence{tc "Section 8.10. Time of Essence" \1 2}. Time is of the essence in the performance of this Agreement and each and every term hereof.

Section 8.11. Force Majeure{tc "Section 8.11. Force Majeure" \1 2}. If the rehabilitation of the Improvements is directly affected and delayed by fire, earthquake or other acts of God, inclement weather that could not reasonably be anticipated by Borrower, strike, lockout, acts of public enemy, riot, insurrection, terrorism, or governmental regulation of the sale or

transportation of materials, supplies or labor, Borrower must notify Bondowner Representative and City in writing within 10 business days after the event occurs that causes the delay. So long as no Event of Default has occurred and is continuing and such notice is given in a timely manner, Bondowner Representative will extend the Conversion Date (as defined in the Indenture) by a period of time equal to the period of the delay provided that the aggregate time extension for all delays will not exceed a total of 90 days, and provided further that (i) no extension will be given for any delay caused by an event, occurrence or condition that is within the reasonable control or anticipation of Borrower, Contractor (as defined in the Supplemental Loan Agreement), or any subcontractor, and (ii) Borrower will undertake all reasonable efforts to resolve the delay and to minimize the effects of the delay on the work and progress of construction. No such extension will affect the time for performance of, or otherwise modify, any of Borrower's other obligations under the Loan Documents or the Indemnity Agreement or the maturity of the Note.

Section 8.12. Integration and Amendments; Conflicts{tc "Section 8.12. Integration and Amendments; Conflicts" \1 2}. The Loan Documents and the Indemnity Agreement (a) integrate all the terms and conditions mentioned in or incidental to this Agreement, (b) supersede all oral negotiations and prior writings with respect to their subject matter including, but not limited to, any loan commitment by Bondowner Representative, and (c) are intended by the parties as the final expression of the entire agreement with respect to the Loan and as the complete and exclusive statement of the terms and conditions agreed to by the parties. No representation, understanding, promise or condition will be enforceable against any party unless it is contained in the Loan Documents or the Indemnity Agreement. Except as otherwise provided in Section 5.03, if there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including any other Loan Document, the terms, conditions and provisions of this Agreement will control. This Agreement may not be modified or amended except by a written agreement signed by the parties hereto.

Section 8.13. Binding Effect; Successors and Assigns; Disclosure{tc "Section 8.13. Binding Effect; Successors and Assigns; Disclosure" \1 2}. This Agreement will become effective only when it has been executed by Borrower, the City and Bondowner Representative and thereafter will be binding upon and inure to the benefit of Borrower, the City and Bondowner Representative and their respective successors and assigns, except that Borrower will not have the right to assign its rights hereunder or any interest herein without the prior written consent of Bondowner Representative, which may be granted or withheld in Bondowner Representative's sole discretion and otherwise subject to the provisions of Section 12 of the Regulatory Agreement. Bondowner Representative may sell, assign or grant participations in all or any part of its rights and obligations under this Agreement and the other Loan Documents, but only in accordance with the terms of the Indenture. Bondowner Representative may disclose information about the Loan, Borrower, Guarantor, the Property and other relevant matters to Bondowner Representative's Affiliates, potential purchasers of, assignees of, and participants in, the Loan or the Bond, and to derivative counterparties and rating agencies.

Section 8.14. Captions{tc "Section 8.14. Captions" \1 2}. All captions or headings to sections, subsections and other divisions of this Agreement and the addenda and exhibits to this

Agreement are only for the convenience of the parties and will not be construed to have any effect or meaning with respect to the other content thereof.

Section 8.15. Incorporation{tc "Section 8.15. Incorporation" \1 2}. The recitals, exhibits and addenda of and to this Agreement are incorporated herein and all provisions thereof will be deemed to be binding provisions of this Agreement.

Section 8.16. Relationship of Parties; No Fiduciary Duty{tc "Section 8.16. Relationship of Parties; No Fiduciary Duty" \1 2}. Borrower acknowledges that neither City nor Bondowner Representative has any fiduciary relationship with, or fiduciary duty to, Borrower or any other person or entity arising out of or in connection with this Agreement, any of the other Loan Documents or the Indemnity Agreement, and the relationship between City and Bondowner Representative and Borrower in connection herewith and therewith is solely that of creditor and debtor. None of this Agreement, the other Loan Documents or the Indemnity Agreement create a joint venture among the parties.

Section 8.17. Limitation on City's Liability{tc "Section 8.17. Limitation on City's Liability" \1 2}. City shall not be obligated to pay the principal of, premium, if any, or interest on the Bond, except from Revenues. Any obligation or liability of the City created by or arising out of this Agreement (including without limitation any liability created by or arising out of the representations, warranties or covenants set forth herein or otherwise) shall not impose a debt or pecuniary liability upon the City or a charge upon its general credit, but shall be payable solely out of Revenues. Neither the issuance of the Bond nor the delivery of this Agreement shall, directly or indirectly or contingently, obligate the City to make any appropriation for payment of the Bond. Nothing in the Bond or this Agreement or the proceedings of the City authorizing the Bond or in the Act or in any other related document shall be construed to authorize the City to create a debt of the City within the meaning of any constitutional or statutory provision of the State. No breach of any pledge, obligation or agreement of the City hereunder may impose any pecuniary liability upon the City or any charge upon its general credit.

THE BOND IS ISSUED PURSUANT TO THE ACT AND IS A LIMITED OBLIGATION OF THE CITY. NEITHER THE CITY COUNCIL OF THE CITY NOR ANY OFFICIAL OR EMPLOYEE OF THE CITY NOR ANY PERSON EXECUTING THE BOND SHALL BE LIABLE PERSONALLY ON THE BOND OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF ITS ISSUANCE. THE BOND AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE CITY, PAYABLE SOLELY FROM THE REVENUES, FUNDS AND ASSETS PLEDGED UNDER THE INDENTURE AND NOT FROM ANY OTHER REVENUES, FUNDS OR ASSETS OF THE CITY. NEITHER THE CITY, NOR THE STATE OR ANY OTHER POLITICAL SUBDIVISION THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THE BOND OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEY PLEDGED THEREFOR. THE BOND AND THE INTEREST THEREON DO NOT AND SHALL NEVER CONSTITUTE A DEBT OF INDEBTEDNESS OR A GENERAL OBLIGATION OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF NOR THE FAITH AND

CREDIT OR TAXING POWER OF THE CITY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BOND OR OTHER COSTS INCIDENT THERETO. THE BOND IS NOT A DEBT OF THE UNITED STATES OF AMERICA.

No recourse under or upon any obligation, covenant, warranty or agreement contained in the Indenture, this Agreement, the other Loan Documents or in the Bond, or under any judgment obtained against City, or the enforcement of any assessment, or any legal or equitable proceedings by virtue of any constitution or statute or otherwise, or under any circumstances under or independent of the Indenture, this Agreement or any of the other Loan Documents, shall be had against the Mayor, the City Council or any of the officers, agents or employees of the City, as such, past, present or future of the City, either directly or through the City or otherwise, for the payment for or to the City or any receiver of the City, or for or to the owner of the Bond, or otherwise, of any sum that may be due and unpaid by the City upon the Bond. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of the Mayor, the City Council or of any such officer, agent or employee, as such, by reason of any act of omission on his or her part or otherwise, for the payment for or to the owners of the Bond or otherwise of any sum that may remain due and unpaid upon the Bond secured by the Indenture or any of them is, by the acceptance of the Bond, expressly waived and released as a condition of and in consideration for the execution of the Indenture and this Agreement and the issuance of the Bond.

Anything in the Indenture or any of the Loan Documents to the contrary notwithstanding, it is expressly understood by the parties to this Agreement that (a) the City may rely exclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the City by the Trustee, the Borrower, the Bondowner Representative or any owner of the Bond as to the existence of any fact or state of affairs, (b) the City shall not be under any obligation under the Indenture or any of the Loan Documents to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or caused to be performed by the Trustee, the Bondowner Representative or by any owner of the Bond and (c) none of the provisions of the Indenture, this Agreement, the Regulatory Agreement or any other Loan Document shall require the City to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under the Indenture, this Agreement, the Regulatory Agreement and any other Loan Document unless it shall first have been adequately indemnified to its satisfaction against any costs, expenses and liability which it may incur as a result of taking such action. It is recognized that notwithstanding any other provision of this Agreement, neither the Borrower nor any owner of the Bond shall look to the City or the members of its City Council, officers, attorneys, accountants, financial advisors, agents or staff for damages suffered by the Borrower or such owner of the Bond as a result of the failure of the City to perform any covenant, undertaking or obligation under this Agreement, the Bond, the Regulatory Agreement, any of the other Loan Documents or any of the other documents referred to herein or therein, or as a result of the incorrectness of any representation made by the City in any of such documents, nor for any other reason.

No recourse for the payment of any part of the principal of, premium, if any, or interest on the Bond or for the satisfaction of any liability arising from, founded upon or existing by

reason of the issuance, purchase or ownership of the Bond shall be had against the Mayor, the City Council or any officer, agent or employee of the City, as such, all such liability being expressly released and waived as a condition of and as a part of the consideration for the execution of the Indenture and this Agreement and the issuance of the Bond. No covenant, stipulation, obligation or agreement of the City contained in the Indenture, this Agreement, the Regulatory Agreement or any other Loan Document shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future Councilmember, officer, agent or employee of the City in other than that person's official capacity. No Councilmember, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal or redemption price of or interest on the Bond or be subject to any personal liability or accountability by reason of the issuance of the Bond.

Section 8.18. Counterparts{tc "Section 8.18. Counterparts" \1 2}. This Agreement may be executed in counterparts, each of which will be an original, and all of which together will constitute but one and the same instrument.

Section 8.19. Waiver of Jury Trial; Judicial Reference{tc "Section 8.19. Waiver of Jury Trial; Judicial Reference" \1 2}. The following provisions of this Section shall not apply to the City.

EACH OF BORROWER AND BONDOWNER REPRESENTATIVE (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE BORROWER AND THE BONDOWNER REPRESENTATIVE (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER BY THE BORROWER AND BONDOWNER REPRESENTATIVE AND ACKNOWLEDGES THAT THE BORROWER AND THE BONDOWNER REPRESENTATIVE HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

FROM THE DATE OF LOAN CLOSING TO THE CONVERSION DATE, BORROWER AND BONDOWNER REPRESENTATIVE AGREE THAT, IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, ANY CLAIM WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE BORROWER AND THE BONDOWNER REPRESENTATIVE INTEND THIS GENERAL REFERENCE AGREEMENT TO

BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638. EXCEPT AS OTHERWISE PROVIDED IN THE LOAN DOCUMENTS, VENUE FOR THE REFERENCE PROCEEDING WILL BE IN THE STATE OR FEDERAL COURT IN THE COUNTY OR DISTRICT WHERE VENUE IS OTHERWISE APPROPRIATE UNDER APPLICABLE LAW.

THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING, WITHOUT LIMITATION, SET-OFF), (C) APPOINTMENT OF A RECEIVER AND (D) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING, WITHOUT LIMITATION, WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT.

UPON THE WRITTEN REQUEST OF BORROWER OR BONDOWNER REPRESENTATIVE, BORROWER AND BONDOWNER REPRESENTATIVE SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, THE BORROWER OR THE BONDOWNER REPRESENTATIVE MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN THE BORROWER OR THE BONDOWNER REPRESENTATIVE SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. BORROWER AND BONDOWNER REPRESENTATIVE SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR

SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

BORROWER AND BONDOWNER REPRESENTATIVE RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THIS SECTION AND ANY OTHER PROVISION OF THE LOAN DOCUMENTS, THIS SECTION WILL CONTROL.

Section 8.20. Supplemental Loan Agreement{tc "Section 8.20. Supplemental Loan Agreement" \1 2}. The parties hereto acknowledge that upon satisfaction of the "Conversion Conditions" set forth in the Supplemental Loan Agreement and CCRC's purchase of the Bond on the Conversion Date, CCRC shall become the Bondowner Representative. Notwithstanding anything to the contrary contained herein, upon the Conversion Date, the Supplemental Loan Agreement is hereby deemed to supplement and modify the terms of this Agreement. In the event of any conflict between the terms of this Loan Agreement and the Supplemental Loan Agreement, the terms of the Supplemental Loan Agreement shall govern and control.

ARTICLE IX{tc "ARTICLE IX" \1 1 \n}

WAIVER OF SPECIAL DAMAGES{tc "WAIVER OF SPECIAL DAMAGES" \1 1 \n}

TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST BONDOWNER REPRESENTATIVE, CITY, TRUSTEE OR ANY OF THEM ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, OR THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

ARTICLE X{tc "ARTICLE X" \1 1 \n}

USA PATRIOT ACT NOTIFICATION{tc "USA PATRIOT ACT NOTIFICATION" \1 1 \n}

Bondowner Representative hereby notifies Borrower that pursuant to the requirements of Section 326 of the USA Patriot Act of 2001 31 U.S.C. Section 5318 (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Borrower Representative to identify the Borrower in accordance with the Patriot Act.

[Remainder of Page Intentionally Left Blank]

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

CITY OF SAN JOSE, CALIFORNIA

By: _____

Its: _____

Approved as to form:

By: _____

Its: Senior Deputy City Attorney

CATALONIA TWO, L.P.,
a California limited partnership

By: Catalonia Two LLC,
a California limited liability company,
its general partner

By: Eden Investments, Inc.
a California nonprofit public benefit
corporation,
its sole member/manager

By: _____

Its: _____

JPMORGAN CHASE BANK, N.A.,
a national banking association

By: _____

Name: _____

Title: Authorized Officer

19021.18:J14772

[Signature Page for Catalonia Apartments Loan Agreement]

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL ONE, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF LOTS 5 AND 6, AS SHOWN ON THAT CERTAIN MAP ENTITLED 'MAP OF THE CANOAS GARDEN TRACT', RECORDED IN BOOK 'N' OF MAPS, PAGES 85, RECORDED ON FEBRUARY 19, 1912, SANTA CLARA COUNTY RECORDS," FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 12, 1995 IN BOOK 664 OF MAPS, AT PAGES 18 AND 19.

EXCEPTING THEREFROM THE UNDERGROUND WATER OR RIGHTS THERETO WITH NO RIGHTS OF SURFACE ENTRY, AS QUITCLAIMED TO SAN JOSE WATER WORKS, A CALIFORNIA CORPORATION, RECORDED ON MARCH 31, 1995 IN BOOK N806 OF OFFICIAL RECORDS, PAGES 2213.

APN: 455-31-051

EXHIBIT B

ACCOUNTS

1. Disbursement Account. Borrower will maintain an account with Bondowner Representative (the “Disbursement Account”) into which Disbursements may be deposited by Bondowner Representative as provided in Article III of this Agreement except for any portion of any Disbursement which is to be disbursed by the Trustee from the Construction Fund pursuant to Section 3.03 of the Indenture. The Disbursement Account must be an account of a type satisfactory to Bondowner Representative. Borrower may write checks on the Disbursement Account to pay Hard Costs and Soft Costs (as such capitalized terms are defined in the Supplemental Loan Agreement), as provided in this Agreement. Alternatively, Borrower may establish the Disbursement Account with another federally insured depository institution reasonably acceptable to Bondowner Representative.

2. Required Pledged Accounts. Borrower will maintain each of the following deposit accounts (the “Pledged Accounts”) with Bondowner Representative until the date that all funds therein have been released therefrom and no provisions exist for further deposits thereto.

(a) Borrower’s Funds Account. An account (the “Borrower’s Funds Account”) into which Borrower’s funds are to be deposited as required by Bondowner Representative pursuant to the terms of the Supplemental Loan Agreement in order to maintain the Loan In Balance. The Borrower’s Funds Account will be established only if and when needed.

(b) [reserved].

(c) Operating Reserve Account.

(d) Replacement Reserve Account.

3. Interest on Accounts. The Disbursement Account will not bear interest. The Pledged Accounts will bear interest at a rate or rates applicable to the type of account used therefor as generally offered to the public by Bondowner Representative, except that the Borrower’s Funds Account will not bear interest.

4. Release of Funds From Accounts During Construction Term. During the Construction Term (as defined in the Supplemental Agreement), Bondowner Representative will permit funds to be released from the Pledged Accounts as follows, provided that after the occurrence and during the continuance of an Event of Default, Bondowner Representative may apply any or all funds in the Pledged Accounts to repayment of amounts owing to Bondowner Representative under the Note and the other Loan Documents:

(a) Borrower's Funds Account. Bondowner Representative will make Disbursements from the Borrower's Funds Account to pay Hard Costs and Soft Costs in accordance with the Budget contained in the Supplemental Loan Agreement.

(b) [reserved].

5. Release of Funds From Accounts During Permanent Term. On and after the Conversion Date, Bondowner Representative will permit funds to be released from the Pledged Accounts and the Disbursement Account as follows, provided that after the occurrence and during the continuance of an Event of Default Bondowner Representative may apply any or all funds in the Pledged Accounts and the Disbursement Account to repayment of amounts owing to Bondowner Representative under the Note and the other Loan Documents:

(a) Operating Reserve Account. Bondowner Representative will release and disburse funds from the Operating Reserve Account as provided in the Borrower's Governing Agreement and the Supplemental Loan Agreement.

(b) Replacement Reserve Account. Bondowner Representative will release and disburse funds from the Replacement Reserve Account as provided in the Permanent Period Replacement Reserve Agreement.

(c) Other Accounts. Except as otherwise set forth in the Supplemental Loan Agreement or the other Loan Documents, Bondowner Representative will release any funds remaining in the other Pledged Accounts, as well as the Disbursement Account, promptly after Borrower's request made on or after Conversion.