

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
Jones Hall, A Professional Law Corporation
475 Sansome Street, Suite 1700
San Francisco, California 94111
Attention: Josh D. Anzel, Esq.**

**REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**

By and Among

**CITY OF SAN JOSE,
as City**

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

and

**MARKHAM PLAZA I, LP,
A California Limited Partnership**

Dated as of October 1, 2019

Relating to:

**\$ _____
CITY OF SAN JOSE
MULTIFAMILY HOUSING REVENUE BONDS
(MARKHAM PLAZA I)
SERIES 2019B-1**

and

**\$ _____
CITY OF SAN JOSE
MULTIFAMILY HOUSING REVENUE BONDS
(MARKHAM PLAZA I)
SUBORDINATE SERIES 2019B-2**

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EXHIBIT A	DESCRIPTION OF REAL PROPERTY
EXHIBIT B	FORM OF INCOME CERTIFICATION
EXHIBIT C	FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE
EXHIBIT D	CDLAC RESOLUTION
EXHIBIT E	CDLAC COMPLIANCE CERTIFICATE
EXHIBIT F	CDLAC COMPLETION CERTIFICATE

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (as supplemented and amended from time to time, this “**Regulatory Agreement**”) is made and entered into as of October 1, 2019, by and among the CITY OF SAN JOSE, CALIFORNIA, a municipal corporation and charter city organized and existing under its Charter and the laws of the State of California (together with any successor to its rights, duties and obligations, the “**City**”), U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (together with any successor thereto, the “**Trustee**”) under each Indenture (as hereinafter defined), and MARKHAM PLAZA I, LP, a California limited partnership (together with any successor to its rights, duties and obligations hereunder and as lessee of the Project identified herein, the “**Owner**”).

WITNESSETH:

WHEREAS, the City proposes to issue its (i) “City of San José Multifamily Housing Revenue Bonds (Markham Plaza I) Series 2019B-1” in the principal amount not to exceed \$_____ (the “**Senior Bonds**”) pursuant to Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended (the “**Act**”), and under an Indenture of Trust, dated as of October 1, 2019 (as supplemented and amended from time to time, the “**Senior Indenture**”), by and between the City and Trustee, and (ii) “City of San José Multifamily Housing Revenue Bonds (Markham Plaza I) Subordinate Series 2019B-2” in the principal amount not to exceed \$_____ (the “**Subordinate Bonds**” and, collectively with the Senior Bonds, the “**Bonds**”) pursuant to the Act, and under a Subordinate Indenture of Trust, dated as of October 1, 2019 (as supplemented and amended from time to time, the “**Subordinate Indenture**,” and together with the Senior Indenture, the “**Indentures**”), between the City and Trustee;

WHEREAS, the proceeds of the sale of the Senior Bonds will be used by the City to make a loan to the Owner (the “**Senior Loan**”) pursuant to a Loan Agreement, dated as of October 1, 2019 (as supplemented and amended from time to time, the “**Senior Loan Agreement**”), by and between the City and Owner, and the proceeds of the sale of the Subordinate Bonds will be used by the City to make a subordinate loan to the Owner (the “**Senior Loan**”) pursuant to a Subordinate Loan Agreement, dated as of October 1, 2019 (as supplemented and amended from time to time and together with the Senior Loan Agreement, the “**Loan Agreements**”), by and between the City and Owner, in order to enable the Owner to finance the acquisition and rehabilitation of a 153-unit (including a manager’s unit) multifamily rental housing project, known as Markham Plaza I and located on the real property described in Exhibit A hereto (as further described herein, the “**Project**”); and

WHEREAS, in order to assure the City and the owners of the Bonds that interest on the Bonds will be excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “**Code**”), to satisfy the public purposes for which the Bonds are authorized to be issued under the Act, and to satisfy the purposes of the City in determining to issue the Bonds, certain limits on the occupancy of units in the Project need to be established and certain other requirements need to be met;

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

Section 1. Definitions and Interpretation. Unless the context otherwise requires, the capitalized terms used herein shall have the respective meanings assigned to them in the preamble hereof, recitals hereto, in this Section 1, the Indentures or the Loan Agreements.

“Adjusted Income” means the adjusted income of a person (together with the adjusted income of all persons who intend to reside with such person in one residential unit) as calculated in the manner prescribed in the Code as of the Delivery Date.

“Administrator” means the City or any administrator or program monitor appointed by the City to administer this Regulatory Agreement, and any successor so appointed.

“Annual City Fee” has the meaning given to such term in Section 7(a) of this Regulatory Agreement.

“Area” means the San José Primary Metropolitan Statistical Area.

“CDLAC” means the California Debt Limit Allocation Committee or its successors.

“CDLAC Conditions” has the meaning given to such term in Section 31(a).

“CDLAC Resolution” means Resolution No. 19-059, attached hereto as Exhibit D, adopted by CDLAC on May 15, 2019, and relating to the Project, as such resolution may be modified or amended from time to time.

“Certificate of Continuing Program Compliance” means the Certificate to be filed by the Owner with the City, the Administrator (if other than the City) and the Trustee pursuant to Section 4(f) hereof, which shall be substantially in the form attached as Exhibit C hereto or in such other comparable form as may be provided by the City to the Owner.

“Compliance Period” means the period beginning on the first day of the Qualified Project Period and ending on the later of the end of the Qualified Project Period or such later date as set forth in Section 31(c) of this Regulatory Agreement.

“Delivery Date” means the date the Bonds are issued and delivered to the initial purchaser thereof.

“Event of Default” has the meaning given to it in Section 17 of this Regulatory Agreement.

“Housing Act” means the United States Housing Act of 1937, as amended, or its successor.

“Income Certification” means a Verification of Income and an Occupancy Certificate in the form attached as Exhibit B hereto or in such other comparable form as may be provided by the City to the Owner.

“Low Income Tenant” means any tenant (i) whose Adjusted Income does not exceed limits determined in a manner consistent with determinations of low income families under Section 8 of the Housing Act, provided that the percentage of median gross income that qualifies as low income shall not be greater than sixty percent (60%) of median gross income for the Area, with adjustments for family size, and (ii) whose income does not exceed the qualifying limits for low income families as established and amended from time to time pursuant to Section 8 of the Housing Act. If all the occupants of a unit are students (as defined under Section 151(e)(4) 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 be made by the Owner upon initial occupancy of a unit in the Project by such tenant, on the basis of an Income Certification executed by the tenant, and annually thereafter.

“Low Income Units” means the units in the Project required to be rented, or held available for occupancy, by Low Income Tenants pursuant to Sections 4(a) and 6(a) of this Regulatory Agreement.

“Project” means the 153-unit (including a manager’s unit) multifamily rental housing development known as Markham Plaza I and located on the real property site described in Exhibit A hereto, and consisting of those facilities, including leased real property, structures, buildings, fixtures or equipment situated thereon, as may at any time exist, the development of which facilities is to be financed, in whole or in part, from the proceeds of the sale of the Bonds, and any real property, structures, buildings, fixtures or equipment acquired in substitution for, as a renewal or replacement of, or a modification or improvement to, all or any part of such facilities.

“Qualified Project Costs” means the costs paid with respect to the Project that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Owner or but for a proper election by the Owner to deduct such costs) in accordance with general Federal income tax principles and in accordance with Regulations §1.103-8(a)(1), provided, however, that only such portion of interest accrued during rehabilitation or construction of the Project (in the case of rehabilitation, with respect to vacated units only) shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project costs; and provided further that interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed or rehabilitated by an Affiliate (whether as a general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out-of-pocket costs incurred by such Affiliate in constructing or rehabilitating the Project (or any portion thereof), (B) any reasonable fees for supervisory services actually rendered by the Affiliate, and (C) any overhead expenses incurred by the Affiliate that are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the rehabilitation or construction of the Project or payments received by such Affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of sixty (60) days prior to the date of a declaration of “official intent” to reimburse costs paid with respect to the Project (within the meaning of §1.150-2 of the Regulations) or the date of issue of the Bonds, and (iv) if the Project Costs were previously paid and are to be reimbursed with proceeds of the Bonds, such costs were (A) costs of issuance of the Bonds, (B) preliminary capital expenditures (within the meaning of Regulations §1.150-

2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition, construction or rehabilitation of the Project that do not exceed 20% of the issue price of the Bonds (as defined in Regulations §1.148-1), or (C) were capital expenditures with respect to the Project that are reimbursed no later than 18 months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid).

“Qualified Project Period” means the period beginning on the later of the first day on which at least 10% of the units in the Project are first occupied or the Delivery Date, and ending on the later of the following:

- (A) the date 15 years after the date on which at least 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; or
- (C) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

“Regulations” means the Income Tax Regulations of the Department of the Treasury applicable under the Code from time to time.

“Regulatory Agreement” means this Regulatory Agreement, as it may be supplemented and amended from time to time.

“State” means the State of California.

“Tax-Exempt” means with respect to interest on any obligations of a state or local government, including the Bonds, that such interest is excluded from gross income for federal income tax purposes; provided, however, that such interest may be includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating other tax liabilities, including any alternative minimum tax under the Code.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of any gender 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 titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, 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.

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

Section 2. Representations, Covenants and Warranties of the Owner.

(a) The Owner hereby incorporates herein, as if set forth in full herein, each of the representations, covenants and warranties of the Owner contained in the Tax Certificate and the Loan Agreements relating to the Project.

(b) The Owner hereby represents and warrants that the Project is located entirely within the City of San José, California.

(c) The Owner acknowledges, represents and warrants that it understands the nature and structure of the transactions contemplated by this Regulatory Agreement; that it is familiar with the provisions of all of the documents and instruments relating to the Bonds to which it is a party or of which it is a beneficiary; that it understands the financial and legal risks inherent in such transactions; 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 assist the Owner in acquiring and rehabilitating the Project.

Section 3. Qualified Residential Rental Project. The Owner hereby acknowledges and agrees with the City and the Trustee that the Project is to be owned, managed and operated as a “qualified residential rental project” (within the meaning of Section 142(d) of the Code) for a term equal to the Compliance Period. To that end, and for the term of this Regulatory Agreement, the Owner hereby represents, covenants, warrants and agrees with the City and the Trustee as follows:

(a) The Project will be acquired, rehabilitated and operated for the purpose of providing multifamily rental housing for Low Income Tenants. The Owner will own, manage and operate the Project to provide multifamily rental housing 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 Section 142(d) of the Code, Section 1.103-8(b) of the Regulations and the provisions of the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the dwelling units in the Project will be similarly rehabilitated units, and each dwelling unit in the Project will contain complete and separate 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, refrigerator and sink.

(c) None of the dwelling units in the Project will at any time be utilized on a transient basis (and the parties hereto specifically acknowledge that a tenant’s periodic hosting of guests in such tenant’s leased unit is not “transient” for this purpose) or rented for a period of less than 30 consecutive days, or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park.

(d) No part of the Project will at any time during the Compliance Period be owned by a cooperative housing corporation, nor shall the Owner take any steps in connection with a conversion to such ownership or use, and the Owner will not take any steps in connection with a conversion of the Project to condominium ownership during the Compliance Period (except that the Owner may obtain final map approval and the Final Subdivision Public Report from the California Department of Real Estate and may file a condominium plan with the City).

(e) All of the dwelling units in the Project will be available for rental during the Compliance Period on a continuous, first-come first-served basis to members of the general public, and the Owner will not give preference to any particular class or group in renting the dwelling units in the Project, except (i) units that may be set aside for resident managers or other administrative purposes pursuant to Section 3(g), (ii) to the extent that dwelling units are required to be leased or rented to Low Income Tenants in accordance with the requirements of this Regulatory Agreement, or (iii) to the extent required under any housing assistance payment contract for the Project under Section 8 of the Housing Act.

(f) The Project consists of a parcel or parcels that are contiguous except for the interposition of a road, street or stream, and all of the facilities of the Project 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 dwelling unit in the Project shall be occupied by the Owner except for units set aside for resident managers or maintenance personnel.

(h) The Owner will not sell dwelling units within the Project.

(i) Should involuntary noncompliance with the provisions of Section 1.103-8(b) of the Regulations be caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the Delivery Date that prevents the City from enforcing the requirements of the Code, or condemnation or similar event, the Owner covenants that, within a "reasonable period" determined in accordance with the Code, the Owner will either prepay the Bonds or, if permitted under the provisions of the Loan Agreements, apply any proceeds received as a result of any of the preceding events to reconstruct the Project to meet the requirements of Section 142(d) of the Code and the applicable Regulations.

The City hereby elects to have the Project meet the requirements of Section 142(d)(1)(B) of the Code.

Section 4. Low Income Tenants; Reporting Requirements. Pursuant to the requirements of the Code, the Owner hereby represents, warrants and covenants as follows:

(a) During the Compliance Period, no less than 40% of the total number of completed units in the Project shall at all times be rented to and occupied by Low Income Tenants. For the purposes of this paragraph (a), a vacant unit that was most recently occupied by a Low Income Tenant is treated as rented and occupied by a Low Income Tenant until reoccupied, other than for a temporary period of not more than 31 days, at which time the character of such unit shall be re-determined.

(b) No tenant qualifying as a Low Income Tenant upon initial occupancy shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's Adjusted Income increases to exceed the qualifying limit for Low Income Tenants. However, should a Low Income Tenant's Adjusted Income, as of the most recent determination thereof, exceed 140% of the applicable income limit for a Low Income Tenant of the same family size, such Low Income Tenant who has ceased to qualify shall be deemed to continue to be a Low Income Tenant for purposes of the occupancy requirement of Section 4(a) hereof until a new

Low Income Tenant occupies the unit, as required by Section 7(g) of this Regulatory Agreement.

(c) For the Compliance Period, the Owner will obtain, complete and maintain on file Income Certifications for each Low Income Tenant, including (i) an Income Certification dated immediately prior to the initial occupancy of such Low Income Tenant in the Project, and (ii) thereafter, an annual Income Certification with respect to each Low Income Tenant. The Owner will provide such additional information as may be required in the future by the Code, the State or the City, 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, Regulations 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 Tax-Exempt obligations. A copy of the most recent Income Certifications for Low Income Tenants commencing or continuing occupation of a Low Income Unit shall be attached to each report to be filed annually with the City pursuant to paragraph (f) of this Section 4.

(d) The Owner shall make a good faith effort to verify that the income information provided by an applicant in an Income Certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) obtain a credit report or conduct a similar type credit search, (4) obtain an income verification from the applicant's current employer, (5) obtain an income verification from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies, or (6) if the applicant is unemployed and does not have an income tax return, obtain another form of independent verification reasonably acceptable to the City.

(e) The Owner will maintain complete and accurate records pertaining to the Low Income Units, and will permit any duly authorized representative of 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 at reasonable times and upon reasonable notice, including those records pertaining to the occupancy of the Low Income Units.

(f) The Owner will prepare and submit to the City, the Administrator (if other than the City) and the Trustee, on or before March 31 of each year, for the prior calendar year (or, at City's request, at the end of each calendar quarter) until the end of the Compliance Period, a Certificate of Continuing Program Compliance executed by the Owner. On or before each February 1 during the Compliance Period, the Owner will submit to the City a draft of the completed Internal Revenue Code Form 8703 or such other annual certification as required by the Code with respect to the Project, which form shall be submitted to the Secretary of the Treasury on or before March 31 of each year (or such other date as may be required by the Code); provided that at any point when no tax-exempt private activity bonds are Outstanding with regards to the Project, but before the end of the Compliance Period, the Owner may submit to the City (in the same manner specified above) such other annual certification as the City may reasonably require.

(g) As of the Delivery Date, at least 50% of the dwelling units in the Project are occupied.

(h) For the Compliance Period, all tenant leases or rental agreements shall be subordinate to this Regulatory Agreement. All leases pertaining to Low Income Units shall contain clauses, among others, wherein each tenant who occupies a Low Income Unit: (i)

certifies the accuracy of the statements made in the Income Certification; (ii) 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, the Trustee, the City or the Administrator on behalf of the City, and that the failure to provide accurate information in the Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the tenancy of such tenant; (iii) acknowledges that the Owner has relied on the Income Certification and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease or rental agreement; and (iv) agrees that the tenant's income is subject to annual certification in accordance with Section 4(c) and that if upon any such certification such tenant's Adjusted Income exceeds the applicable income limit under Section 4(b), such tenant may cease to qualify as a Low Income Tenant and such unit's rent is subject to increase.

For purposes of this Section 4, no unit occupied by a resident manager shall be treated as a rental unit during the time of such occupation.

Section 5. Tax-Exempt Status of Bonds. The Owner and the City, as applicable, each hereby represents, warrants and agrees as follows:

(a) It 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 nature of the interest on the Bonds, and if either of them 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.

(b) It will file of record such documents and take such other steps as are necessary, in the written opinion of Bond Counsel filed with the City, the Owner and the Trustee, in order to ensure that the requirements and restrictions of this Regulatory Agreement will be binding upon all owners of the Project, including, but not limited to, the execution and recordation of this Regulatory Agreement in the real property records of the County of Santa Clara, California.

(c) The Owner shall use the proceeds of the Bonds in a manner such that the Bonds will satisfy the requirements of section 142(d) of the Code relating to qualified residential rental projects.

(d) The Owner shall not take any action or permit or 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.

(e) The Owner shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Bonds.

(f) The Owner shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds that, 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 of the Code.

(g) The Owner shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Bonds.

(h) The Bonds upon issuance and delivery shall be considered “private activity bonds” within the meaning of the Code with respect to which CDLAC has transferred a portion of the State of California’s private activity bond allocation (within the meaning of section 146 of the Code) equal to the principal amount of the Bonds.

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

(j) The Owner covenants that not less than 95% of the net proceeds of the Bonds (within the meaning of section 150(a)(3) of the Code) are paid for Qualified Project Costs.

(k) The Owner covenants that less than 25% of the proceeds of the Bonds shall be used, directly or indirectly, for the acquisition of land.

(l) The Owner covenants that no proceeds of the Bonds shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in section 147(d)(3) of the Code) with respect to such building equal or exceed 15% of the portion of the cost of acquiring such building (and equipment) financed with proceeds of the Bonds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100% of the portion of the cost of acquiring such structure financed with the proceeds of the Bonds.

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

(n) The proceeds of the Bonds will be allocated to expenses actually paid with proceeds of the Bonds unless, prior to the date that is the later of 18 months (i) after the expenditure is paid, or (ii) after the Project is placed in service, the Owner makes a different allocation of such expenditures to Qualified Project Costs. In any event, such alternative allocation must occur no later than 60 days after the fifth anniversary of the Delivery Date (or 60 days after the retirement of the Bonds, if earlier).

(o) The Owner agrees that neither it nor any related party (as used in section 1.148-1(b) of the Regulations) will acquire any of the Bonds so long as the Owner is the obligor on the Bonds.

Section 6. Additional Requirements of the Act. The Owner hereby further agrees that it shall comply with each of the requirements of Section 52080 of the Act, including (but not limited to) the following:

(a) Not less than 40% of the total number of units in the Project shall be available for occupancy on a priority basis to Low Income Tenants. The units made available to meet this requirement shall be of comparable quality (including comparable amenities, furnishings and appliances) and offer a range of sizes and numbers of bedrooms comparable to the units that are available to other tenants in the Project.

(b) The rental payments for the Low Income Units paid by the tenants thereof (excluding any supplemental rental assistance from the State, the federal government or any other public agency to those tenants or on behalf of those units) shall not exceed 30% of an amount equal to 60% of the median adjusted gross income for the Area.

(c) 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. The Owner shall not permit any selection criteria to be applied to Section 8 certificate or voucher holders that are more burdensome than the criteria applied to all other prospective tenants.

(d) The units reserved for occupancy as required by subsection (a) of this Section shall remain available on a priority basis for occupancy at all times during the Compliance Period.

(e) During the three (3) years prior to the expiration of the Compliance Period, the Owner shall continue to make available to eligible households Low Income Units that have been vacated to the same extent that non-reserved units are made available to noneligible households.

(f) Following the expiration or termination of the Compliance Period, except in the event of foreclosure and redemption of the Bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units reserved for occupancy as required by subsection (a) of this Section shall remain available to any eligible tenant occupying a reserved unit at the date of such expiration or termination, at the rent determined by subsection (b) of this Section, until the earliest of (1) the household's income exceeds 140% of the maximum eligible income specified above, (2) the household voluntarily moves or is evicted for good cause (as defined in the Act), (3) 30 years after the date of the commencement of the Compliance Period, or (4) the Owner pays the relocation assistance and benefits to households as provided in Section 7264(b) of the California Government Code.

Section 7. Additional Requirements of the City. In addition to the requirements set forth above and to the extent not prohibited thereby, the Owner hereby agrees to comply with each of the requirements of the City set forth in this Section 7, as follows:

(a) The Owner shall pay or cause to be paid to the City on the Delivery Date, the "Initial City Fee" in an amount equal to \$_____ [0.5% OF FIRST \$10,000,000 OF

AGGREGATE BOND PRINCIPAL PLUS 0.25% ANY ADDITIONAL AMOUNT]; and thereafter, without demand or notice, the Owner shall pay or cause to be paid to the City (or other Administrator designated in writing by the City) an annual monitoring fee (the “**Annual City Fee**”). The Annual City Fee shall be in an amount equal to \$_____ **[0.125% OF ORIGINAL AGGREGATE BOND PRINCIPAL]**. The Annual City Fee shall be payable annually, in advance, on each October 1, commencing on the Delivery Date. The Annual City Fee shall be paid on parity with Senior Bond debt service and trustee fees, and during the term of this Regulatory Agreement, the Borrower shall not otherwise restrict contractually its obligation hereunder to pay the Annual City Fee.

Under no circumstances shall the Annual City Fee exceed any limitation under Section 148 of the Code. In the event that both series of the Bonds are redeemed in full and both Indentures discharged prior to the termination of this Regulatory Agreement (other than by reason of the issuance of refunding bonds), the City may, at its option, require the prepayment of the Annual City Fee (a “**Fee Prepayment**”) at such time as the last existing series of Bonds is redeemed in full and the last remaining Indenture discharged. The amount due upon a Fee Prepayment will be a lump sum amount calculated by the City as the present value of the Annual City Fees due from the date of the Fee Prepayment through the end of the Compliance Period (the “**Forgone Fees**”), using a discount rate equal to the most recent Local Agency Investment Fund (LAIF) Quarterly Apportionment Rate published by the Office of the California State Treasurer. For clarity and consistency, the Forgone Fees will be calculated assuming that there are no changes to the definition of Compliance Period.

(b) All tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City (including the Administrator).

(c) The Owner shall submit to the City, within 15 days after receipt of a request therefor, any information, records or completed forms requested by the City in order to comply with reporting requirements of the Internal Revenue Service or the State with respect to the Project.

(d) The Owner shall not discriminate on the basis of race, creed, color, religion, sex, sexual orientation, gender identity, marital status, national origin, ancestry or handicap in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the rehabilitation, operation or management of the Project, and will not discriminate on the basis of household size as long as the tenants meet the household size standards of Section 8 of the Housing Act. Further, the Owner shall not permit occupancy in any unit in the Project by more persons than is permissible under the Section 8 household size standards.

(e) The Owner acknowledges that the City may appoint an Administrator other than the City to administer this Regulatory Agreement and to monitor performance by the Owner of the terms, provisions and requirements hereof. In such event, the Owner shall comply with any reasonable request by the City to deliver to any such 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 by the Administrator as an agent of the City.

(f) To the extent permitted by law (including any laws applicable to federal tax credits for the Project), and subject to the limitations and restrictions set forth in any housing assistance payment contract for the Project under Section 8 of the Housing Act, the Owner will make the units reserved pursuant to Section 4(a) and Section 6(a) available on a priority basis to households comprised of Low Income Tenants whom (i) the City has informed the Owner have been displaced by the City or its political subdivisions from other developments located within the City of San José or (ii) are currently living or working in the City of San José or who can demonstrate they previously resided in the City of San José. The Owner shall not discriminate against tenant applicants on the basis of source of income (i.e., TANF or SSI), and the Owner shall consider a prospective tenant's previous rent history of at least one year as evidence of such tenant's ability to pay the applicable rent for the unit to be occupied (ability to pay shall be demonstrated if the tenant can show that the tenant has paid on time the same percentage or more of the tenant's income for rent as the tenant would be required to pay for the rent applicable to the unit to be occupied); provided that such tenant paid the same percentage or more of such tenant's income for rent as such tenant will be paying under the proposed lease. The Owner may consider such factors as it deems important when reviewing and approving a tenant's application for occupancy and an existing tenant's continued occupancy.

(g) If a Low Income Tenant's Adjusted Income, as of the most recent determination thereof, exceeds 140% of the applicable income limit for a Low Income Tenant of the same family size, the unit's rent may be subject to increase and the tenancy of such Low Income Tenant shall, to the extent permitted by law (including any laws applicable to federal tax credits for the Project), be terminated as soon as legally possible and the available unit shall within a reasonable time be rented to (or held vacant and available for immediate occupancy by) a Low Income Tenant.

(h) Each of the requirements of Sections 3, 4 and 6 hereof is hereby incorporated as a specific requirement of the City, whether or not required by California or federal law, and shall be in force for the term of this Regulatory Agreement.

(i) The Owner agrees to maintain the Project, or cause the Project to be maintained, during the term of this Regulatory Agreement (i) in a safe condition and (ii) in good repair and 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 is in good repair and operating condition.

(j) The Owner will pay the City all of the amounts required by Section 7(a) hereof and the Loan Agreements (and that have not otherwise been assigned to the Trustee under any Indenture) and will indemnify the City and the Trustee as provided in Section 9 hereof and in the Loan Agreements.

(k) The requirements of this Section 7 of this Regulatory Agreement shall be in effect for the term of this Regulatory Agreement; provided that any requirements of Section 7 of this Regulatory Agreement may be expressly waived by the City, at its sole discretion, in writing, but (i) no waiver by the City 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 to the effect that any such other provision is not required by the Act and may be waived without adversely affecting the exclusion from gross income of interest on the Bonds for federal income tax purposes; 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 applicable State or federal law.

Section 8. Modification of Covenants. The Owner, the Trustee and the City hereby agree as follows:

(a) 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, retroactively impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement, and if such requirements are applicable to the Project, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements.

(b) To the extent that the Act, the Regulations or the Code, or any amendments thereto, 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 less restrictive than imposed by this Regulatory Agreement, this Regulatory Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the City, at its sole and absolute discretion, the Trustee and the Owner, and only upon receipt by the City of the written opinion of Bond Counsel to the effect that such amendment will not adversely affect the Tax-Exempt status of interest on the Bonds or violate the requirements of the Act, and otherwise in accordance with Section 22 hereof.

(c) The Owner, the City and, if applicable, the Trustee, shall execute, deliver and, if applicable, file of record any and all documents and instruments necessary to effectuate the intent of this Section 8, and each of the Owner and the City hereby appoints the Trustee as its true and lawful attorney-in-fact (jointly or individually) to execute, deliver and, if applicable, file of record on behalf of the Owner or the City, as applicable, any such document or instrument (in such form as may be approved in writing by Bond Counsel) if either the Owner or the City defaults in the performance of its obligations under this subsection (c); provided, however, that unless directed in writing by the City or the Owner, the Trustee shall not take any action under this subsection (c) without first notifying the Owner or the City, or both of them, as is applicable, and a Bondowner, and without first providing the Owner or the City, or both, as is applicable, an opportunity to comply with the requirements of this Section 8. Nothing in this subsection (c) shall be construed to allow the Trustee to execute an amendment to this Regulatory Agreement on behalf of the City.

Section 9. Indemnification; Other Payments. The Owner hereby covenants and agrees that it shall indemnify and hold harmless the City and the Trustee and their respective officers, members, directors, officials, employees and agents as set forth in the Loan Agreements.

In addition thereto, the Owner will pay upon demand all of the fees and expenses paid or incurred by the Trustee and/or the City in enforcing the provisions of this Regulatory Agreement.

The provisions of this Section 9 shall survive the term of the Bonds and this Regulatory Agreement; provided, however, the provisions of this Section shall, in the case of the Trustee, survive the term of this Regulatory Agreement or the resignation or removal of the Trustee, but only as to claims arising from events occurring during the term of this Regulatory Agreement or the Trustee's tenure as Trustee under the Indentures, and shall, in the case of the City, survive

the term of this Regulatory Agreement, but only as to claims arising from events occurring during the term of this Regulatory Agreement.

The City agrees that no owner of the Project subsequent to the Owner will be liable for, assume or take title to the Project subject to:

(a) any failure of any prior owner of the Project to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under this Regulatory Agreement; and

(b) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Project under this Regulatory Agreement.

The Owner and each subsequent owner of the Project shall be responsible under this Regulatory Agreement for its own acts and omissions occurring during the period of its ownership of the Project. All such liability and obligations shall be and remain personal to such person even after such person ceases to be the owner of the Project.

Inasmuch as the covenants, reservations and restrictions of this Regulatory Agreement run with the land, the indemnification obligations of the Owner contained in this Regulatory Agreement will be deemed applicable to any successor in interest to the Owner

Section 10. Consideration. The City has agreed to issue the Bonds to provide funds to lend to the Owner to finance the Project, all for the purpose, among others, of inducing the Owner to acquire and operate the Project. In consideration of the issuance of the Bonds by the City, the Owner has entered into this Regulatory Agreement and has agreed to restrict the uses to which this Project can be put on the terms and conditions set forth herein.

Section 11. Reliance. The City and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds, in the exemption from California personal income taxation of interest on the Bonds and in the Tax-Exempt status of the interest on the Bonds. In performing their duties and obligations hereunder, the City, the Administrator and the Trustee may rely upon statements and certificates of the Low Income Tenants, and upon audits of the books and records of the Owner pertaining to the Project. In addition, the City and the Trustee 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 or the Trustee hereunder in good faith and in conformity with such opinion. In determining whether any default or lack of compliance by the Owner exists under this Regulatory Agreement, the Trustee shall not be required to conduct any investigation into or review of the operations or records of the Owner and may rely solely on any written notice or certificate delivered to the Trustee by the Owner or the City with respect to the occurrence or absence of a default unless it knows that the notice or certificate is erroneous or misleading.

Section 12. Sale or Transfer of the Project. For the Compliance Period, the Owner shall not, except as provided below, sell, transfer or otherwise voluntarily dispose of the Project, in whole or in part, without the prior written consent of the City and the Trustee, which consent shall not be unreasonably withheld or delayed if the following conditions are satisfied:

(A) the City and the Trustee have received evidence, reasonably acceptable to the City and the Trustee, that

(1) the Owner is not in default hereunder or under the Loan Agreements (which may be evidenced by a Certificate of Continuing Program Compliance) or the purchaser or assignee undertakes to cure any defaults of the Owner to the reasonable satisfaction of the City;

(2) the continued operation of the Project complies with the provisions of this Regulatory Agreement;

(3) either (a) the purchaser or assignee or its property manager has at least three years' experience in the ownership, operation and management of similar size rental housing projects, and at least one year's experience in the ownership, operation and management of rental housing projects containing below-market-rate units, without any record of material violations of discrimination restrictions or other State or federal laws or regulations or local governmental requirements applicable to such projects, or (b) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subclause (a) above, or (c) the transferring Owner or its management company will continue to manage the Project for at least one year following such transfer and during such period will provide training to the transferee and its manager in the responsibilities relating to the Low Income Units; and

(4) the person or entity that is to acquire the Project does not have pending against it, and does not have a history of significant and material building code violations or complaints concerning the maintenance, upkeep, operation, and regulatory agreement compliance of any of its projects as identified by any local, State or federal regulatory agencies;

(B) the execution by the purchaser or assignee of any document reasonably requested by the City or the Trustee with respect to the assumption of the Owner's obligations under this Regulatory Agreement and, if the Bonds are outstanding at the time of transfer, the Loan Agreements, including without limitation an instrument of assumption hereof and thereof, and delivery to the City of an opinion of such purchaser or assignee's counsel to the effect that each such document and this Regulatory Agreement are valid, binding and enforceable obligations of such purchaser or assignee, subject to bankruptcy and other standard limitations affecting creditor's rights;

(C) receipt by the City of an opinion of Bond Counsel to the effect that any such sale, transfer or other disposition will not adversely affect the Tax-Exempt status of interest on the Bonds;

(D) receipt by the City and Trustee of all fees and/or expenses then currently due and payable to the City and Trustee; and

(E) receipt by the City of evidence of satisfaction of compliance with the provisions of Section 31(d)(i) related to notice to CDLAC of transfer of the Project.

It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 12, other than pursuant to a foreclosure or deed in lieu of foreclosure following a default under the Loan Agreements, shall be null, void and without effect, cause a reversion of title to the Owner, and be ineffective to relieve the Owner of its obligations under this Regulatory Agreement. Nothing in this Section shall affect any provision of any other

document or instrument between the Owner and any other party that requires the Owner to obtain the prior written consent of such other party in order to sell, transfer or otherwise dispose of the Project.

The written consent of the City to any transfer of the Project shall constitute conclusive evidence that the transfer is not in violation of this Section 12. Upon any sale or other transfer that complies with this Regulatory Agreement, the Owner shall be fully released from its obligations hereunder to the extent such obligations have been fully assumed in writing by the transferee of the Project. Except as otherwise provided herein, any transfer of the Project to any entity, whether or not affiliated with the Owner, shall be subject to the provisions of this Section 12, except as provided immediately below.

Interests in the Owner may not be transferred without the prior written consent of the City (which consent will not be unreasonably withheld), except as follows:

(i) transfers of the respective interests of the Owner's limited partner(s) to any entity that is either (A) an affiliate of any limited partner, (B) controlled by, or under common control with, the Investor Limited Partner or any affiliate thereof, or (C) the general partner of the Owner or an affiliate of the general partner of the Owner, provided that in the event of a transfer to the general partner of the Owner or an affiliate of the general partner of the Owner, the Owner provides evidence satisfactory to the City that the transfer of such interest or interests will not have a material adverse effect on the operation or finances of the Project;

(ii) transfers of interests among the Owner's limited partners;

(iii) the pledge and encumbrance of the interest of Owner's limited partners to or for the benefit of any financial institution that enables the limited partner(s) to make capital contributions to the Owner; or

(iv) the removal, or withdrawal in lieu of removal, of a general partner of Owner by a limited partner for cause, provided that the City shall have the right to approve or disapprove any new general partner within 90 days after replacement of the existing general partner (with such approval not being unreasonably withheld).

The Owner acknowledges that a sale or exchange of 50% or more of the capital and profits interests in the Owner in any twelve-month period will be treated for federal tax purposes as a change in ownership of the Project at the time the 50% transfer occurs. The Owner further acknowledges that there is a possibility of some or all of the Bonds being reissued at various points in the financing, including in connection with any remarketing, and that a change in ownership of the Project within six months of a reissuance or refunding of the Bonds will cause the interest paid on the reissued or refunding bonds not to be excluded from gross income for federal tax purposes.

Restrictions on sale or transfer of the Project or of any interest in the Owner, consents of the City or the Trustee, transfer agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to a Bondowner or a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loans or to any subsequent transfer by a Bondowner following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loans. Except as provided in Section 13, no such transfer of the Project shall operate to release the Owner from its obligations under this Regulatory Agreement.

For the Compliance Period, the Owner shall not: (1) encumber any 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 pursuant or subordinate to the provisions of this Regulatory Agreement, and upon receipt by the Owner of an opinion of Bond Counsel to the effect that such action will not adversely affect the Tax-Exempt status of interest on the Bonds, or except upon a sale, transfer or other disposition of the Project in accordance with the terms of this Regulatory Agreement; (2) demolish any part of the Project or substantially subtract from any real or personal property of the Project, except to the extent that what is removed is replaced with comparable property; or (3) permit the use of the dwelling accommodations of the Project for any purpose except rental residences.

Section 13. Term. This Regulatory Agreement and all and several of the terms hereof shall become effective upon its execution and delivery, and shall remain in full force and effect for the period provided herein and shall terminate as to any provision not otherwise provided with a specific termination date and shall terminate in its entirety at the end of the Compliance Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds and discharge of the Indentures and the Loan Agreements.

The terms of this Regulatory Agreement to the contrary notwithstanding, the requirements of this Regulatory Agreement shall terminate and be of no further force and effect (i) in the event of 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 Delivery Date that prevents the City and the Trustee from enforcing such provisions, or condemnation or (ii) foreclosure, transfer of title by deed in lieu of foreclosure (whereby a third party shall take possession of the Project), or a similar event, but only if, in the case of either (i) or (ii), within a reasonable period, either the Bonds are retired 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 or the delivery of a deed in lieu of foreclosure or a similar event, the Owner or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Owner hereby agrees that, following any foreclosure, transfer of title by deed in lieu of foreclosure or similar event, neither the Owner nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes. Notwithstanding any other provision of this Regulatory Agreement, this Regulatory Agreement may be terminated upon agreement by the City, the Trustee and the Owner, upon receipt by the City and the Trustee of an opinion of Bond Counsel to the effect that such termination will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes. 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.

Section 14. Covenants to Run with the Land. Notwithstanding Section 1461 of the California Civil Code, 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 without the necessity of further action. 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.

Section 15. Burden and Benefit. The City and the Owner hereby declare their understanding and intent that the burdens 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 benefits of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Low Income Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Bonds were issued.

Section 16. 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 of the site on which the Project is located.

Section 17. Default; Enforcement. (a) 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 60 days after written notice thereof shall have been given by the City or the Trustee to the Owner and to the Owner's limited partners at the addresses set forth in Section 11.06 of the Senior Indenture and Section 10.04 of the Subordinate Indenture, or for a period of 60 days from the date the Owner should, with reasonable diligence, have discovered such default, then the City or the Trustee (as directed by the City, subject to the provisions of the Indentures) acting on its own behalf or on behalf of the City, shall declare an "**Event of Default**" to have occurred hereunder; provided, however, that if the default is of such a nature that it cannot be corrected within 60 days, such default shall not constitute an Event of Default hereunder so long as (i) the Owner or the Owner's limited partner institutes corrective action within said 60 days and diligently pursues such action until the default is corrected, and (ii) in the opinion of Bond Counsel, the failure to cure said default within 60 days will not adversely affect the Tax-Exempt status of interest on the Bonds. The City and the Trustee shall have the right to enforce the obligations of the Owner under this Regulatory Agreement within shorter periods of time than are otherwise provided herein if necessary to ensure compliance with the Act or the Code.

Notwithstanding anything to the contrary contained herein, the City and Trustee hereby agree that any cure of any default made or tendered by one or more of Owner's limited partners shall be accepted or rejected on the same basis as if made or tendered by Owner.

(b) Following the declaration of an Event of Default hereunder, the City or the Trustee, at the direction of the City, subject to the provisions of the Indentures and paragraphs (f) and (h) of this Section 17, may take any one or more of the following steps, in addition to all other remedies provided by law or equity:

(i) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Owner to perform its obligations and covenants

hereunder or enjoin any acts or things that may be unlawful or in violation of the rights of the City or the Trustee hereunder;

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

(iii) require the Owner to pay to the City an amount equal to the excess rent or other amounts received by the Owner for any units in the Project that were in violation of this Regulatory Agreement during the period such violation continued (which payment shall not reduce the amount due under the Loans);

(iv) declare a default under the Loan Agreements and proceed with any remedies provided therein; and

(v) 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.

The Owner hereby agrees that specific enforcement of the Owner's agreements contained herein is the only means by which the City may fully obtain the benefits of such agreements made by the Owner herein, and the Owner therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Owner hereunder.

(c) The Trustee shall have the right, in accordance with this Section and the provisions of the Indentures, without the consent or approval of the City, to exercise any or all of the rights or remedies of the City hereunder; provided that prior to taking any such action, that Trustee shall give the City and the Bondowners written notice of its intended action. After the Indentures have been discharged, the City may act on its own behalf to declare an Event of Default to have occurred and to take any one or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Trustee. The Trustee shall not be deemed to have knowledge of any default hereunder unless the Trustee shall have been specifically notified in writing of such default by the City, the Administrator, or either Bondowner.

(d) All reasonable fees, costs and expenses of the Trustee and the City incurred in taking any action pursuant to this Section shall be the sole responsibility of the Owner.

(e) Promptly upon determining that a violation of this Regulatory Agreement has occurred, the Trustee shall, by written notice, inform the City and the Bondowners that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable.

(f) Notwithstanding anything contained in this Regulatory Agreement to the contrary:

(i) The occurrence of an event of default under this Regulatory Agreement shall not under any circumstances whatsoever, be or be deemed to be a default under the Loan Documents, except as may be otherwise specified in the Loan Documents.

(ii) neither the City nor the Trustee may, upon the occurrence of an event of default under this Regulatory Agreement, seek, in any manner, to (a) cause or direct acceleration of the Loans, (b) cause the Trustee to redeem the Bonds or to declare the principal of the Bonds and the interest accrued on the Bonds to be immediately due and

payable or (c) cause the Trustee to take any other action under any of the Loan Documents, any of the Bond Documents or any other documents which action would or could have the effect of achieving any one or more of the actions, events or results described in the preceding clauses (a) and (b); and

(g) Subject to the provisions of the Loan Agreements, under no circumstances shall the City or the Trustee:

(i) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Owner to timely pay the principal of, interest on, or other amounts due and payable under, the Loans; or

(ii) upon the occurrence of an event of default under the Loan Documents, take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Loan Documents.

The foregoing prohibitions and limitations are not intended to limit the rights of the City or the Trustee to specifically enforce this Regulatory Agreement or to seek injunctive relief in order to provide for the operation of the Project in accordance with the requirements of the Act, the Code and other applicable State law. Accordingly, upon any default by the Owner, the City or the Trustee may seek specific performance of this Regulatory Agreement or to enjoin acts that may be in violation of this Regulatory Agreement or that otherwise are unlawful, so long as the Loans have not been repaid in full, no obligation of the Owner under this Regulatory Agreement, including, without limitation, any indemnification obligation, any other obligation for the payment of money, any claim and any judgment for monetary damages against the Owner, occasioned by breach or alleged breach by the Owner of its obligations under this Regulatory Agreement or otherwise, shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the City, the Trustee or any other person, and all such obligations (except as specified in Section 7 of this Regulatory Agreement) shall be, and by this Regulatory Agreement are, subordinate in priority, in right to payment and in all other respects to the obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Loan Documents. Accordingly, so long as the Loans have not been repaid in full, neither the City nor the Trustee shall have the right to enforce any monetary obligation other than directly against the Owner, without recourse to the Project. In addition, so long as the Loans have not been repaid in full, any such enforcement must not cause the Owner to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Owner under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

Section 18. The Trustee. The Trustee shall act as specifically provided herein and in the Indentures and may exercise such additional powers as are reasonably incidental hereto and thereto. The Trustee shall have no duty to act with respect to enforcement of the Owner's performance hereunder as described in Section 17 unless it shall have actual knowledge of any such default as provided in Section 17. The Trustee may act as the agent of and on behalf of the City, and any act required to be performed by the City as herein provided shall be deemed taken if such act is performed by the Trustee. In connection with any such performance, the Trustee is acting solely as Trustee under the Indentures and not in its individual capacity, and except as expressly provided herein, all provisions of the Indentures relating to the rights, privileges, powers and protections of the Trustee, including without limitation those set forth in Article XI thereof, shall apply with equal force and effect to all actions taken (or omitted to be taken) by the Trustee in connection with this Regulatory Agreement. Neither the Trustee nor

any of its officers, directors or employees shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith except for its or their own negligence or willful misconduct.

The Trustee shall not be responsible for the monitoring of the Owner's compliance with the terms of this Regulatory Agreement.

After the date on which no Bonds remains outstanding, as provided in the Indentures, the Trustee shall no longer have any rights, duties or responsibilities under this Regulatory Agreement, and all references to the Trustee in this Regulatory Agreement shall be deemed references to the City.

Section 19. Recording and Filing.

(a) 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 County of Santa Clara, California, and in such other places as the City or the Trustee may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording.

(b) The Owner and the City will file of record such other documents and take such other steps as are reasonably necessary, in the opinion of Bond Counsel, in order to insure that the requirements and restrictions of this Regulatory Agreement will be binding upon all owners of the Project.

(c) The Owner hereby covenants to include or reference the requirements and restrictions contained in this Regulatory Agreement in any documents executed and delivered in connection with a voluntary transfer of any interest in the Project to another person to the end that such transferee has notice of, and is bound by, such restrictions and to obtain the agreement from any transferee to abide by all requirements and restrictions of this Regulatory Agreement.

Section 20. Payment of Fees. Notwithstanding any prepayment of the Loans or the discharge of the Indentures, the Owner shall continue to pay to the Trustee reasonable compensation for any services rendered by it hereunder and reimbursement for all expenses reasonably incurred by it in connection therewith, and shall continue to pay (or, to the extent allowed under the Code, shall prepay) the Annual City Fee and related expenses as provided in Section 7(a) and Section 9 of this Regulatory Agreement.

Neither Bondowner shall be liable for the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by the Owner or any subsequent owner of the Project hereunder prior to the date of acquisition of the Project by such Bondowner, whether such acquisition is by foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loans.

Section 21. Governing Law. This Regulatory Agreement shall be governed by the laws of the State, and any legal action brought hereunder must be instituted in a court located within the County of Santa Clara, California.

Section 22. Amendments; Waivers.

(a) Except as provided in Section 8(a) hereof, this Regulatory Agreement may 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 County of Santa Clara, California, and only upon receipt by the City of an opinion from Bond Counsel to the effect that such amendment will not adversely affect the Tax-Exempt status of interest on the Bonds and is not contrary to the provisions of the Act.

(b) Anything to the contrary contained herein notwithstanding, the City, the Trustee and the Owner hereby agree to amend this Regulatory Agreement to the extent required, in the opinion of Bond Counsel, in order that interest on the Bonds remain Tax-Exempt. The parties requesting such amendment shall notify the other parties to this Regulatory Agreement of the proposed amendment, with a copy of such requested amendment to Bond Counsel and a request that Bond Counsel render to the City an opinion as to the effect of such proposed amendment upon the Tax-Exempt status of interest on the Bonds. This provision shall not be subject to any provision of any other agreement requiring any party hereto to obtain the consent of any other person in order to amend this Regulatory Agreement.

(c) Any waiver of, or consent to, any condition under this Regulatory Agreement must be expressly made in writing.

Section 23. Notices. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, overnight delivery, certified or registered mail, postage prepaid, return receipt requested, or by telecopy, in each case at the respective addresses specified in the Indentures, at such other addresses as may be specified in writing by the parties hereto or, in the case of CDLAC, at the following address:

California Debt Limit Allocation Committee
915 Capitol Mall, Room 311
Sacramento, California 95814
Attention: Executive Director

A copy of each notice sent by or to the Owner shall also be sent to the manager of the Project at such address as provided by the Owner to the Administrator; but such copies shall not constitute a notice to the Owner, nor shall any failure to send such copies constitute a breach of this Regulatory Agreement or a failure of or defect in notice to the Owner. The City, the Administrator, the Trustee and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Notice shall be deemed given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission; provided that any telecopy or other electronic transmission received by any party after 4:00 p.m., local time of the receiving party, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day. A copy of each notice of default provided to the Owner shall also be provided to the Investor Limited Partner at the address set forth in Section 11.06 of the Senior Indenture and Section 10.04 of the Subordinate Indenture.

Section 24. 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.

Section 25. Multiple Counterparts. This Regulatory Agreement may be simultaneously 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.

Section 26. Limitation on Liability. Notwithstanding any other provision or obligation to the contrary contained in this Regulatory Agreement, (i) the liability of the Owner under this Regulatory Agreement to any person or entity, including, but not limited to, the Trustee or the City and their successors and assigns, is limited to the Owner's interest in the Project, the Pledged Revenues, including the amounts held in the funds and accounts created under the Indentures, or any rights of the Owner under any guarantees relating to the Project, and such persons and entities shall look exclusively thereto, or to such other security as may from time to time be given for the payment of obligations arising out of this Regulatory Agreement or any other agreement securing the obligations of the Owner under this Regulatory Agreement; and (ii) from and after the date of this Regulatory Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Regulatory Agreement, any agreement pertaining to any Project or any other agreement securing the Owner's obligations under this Regulatory Agreement), shall be rendered against the Owner, the assets of the Owner (other than the Owner's interest in the Project, this Regulatory Agreement, amounts held in the funds and accounts created under the Indentures, any rights of the Owner under the Indentures or any other documents relating to the Bonds or any rights of the Owner under any guarantees relating to the Project), its partners, members, successors, transferees or assigns and each their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Regulatory Agreement and the Indentures or any agreement securing the obligations of the Owner under this Regulatory Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding.

The obligations of the Owner and any subsequent owner of the Project shall not be secured by or constitute a lien on, or security interest in, the Project.

Section 27. Third-Party Beneficiary. CDLAC and the Trustee are each intended to be and shall be a third-party beneficiary of this Regulatory Agreement. CDLAC shall have the right (but not the obligation) to enforce the CDLAC Conditions and to pursue an action for specific performance or other available remedy at law or in equity in accordance with Section 17 hereof; provided that any such action or remedy undertaken by CDLAC shall not materially adversely affect the interests and rights of the City or the Trustee.

The parties to this Regulatory Agreement recognize and agree that the terms of this Regulatory Agreement and the enforcement of such terms are essential to the security of the Bondowners and are entered into for the benefit of various parties, including the Bondowners. The Bondowners shall accordingly have contractual rights in this Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Trustee, or to cause the Trustee to enforce, the terms of this Regulatory Agreement.

Section 28. No Limitations on Actions of City in Exercise of Its Governmental Powers. Nothing in this Regulatory Agreement is intended, nor shall it be construed, to in any way limit the actions of the City in the exercise of its governmental powers, as contrasted with any contractual rights or powers. It is the express intention of the parties hereto that the City shall retain the full right and ability to exercise its governmental powers with respect to the Owner, the Project, the Trustee, the Bondowners and the transactions contemplated by this Regulatory Agreement to the same extent as if it were not a party to this Regulatory Agreement

or the transactions contemplated thereby, and in no event shall the City have any liability in contract arising under this Regulatory Agreement by virtue of any exercise of its governmental powers.

Section 29. Limited Liability of City. All obligations of the City hereunder shall be limited obligations, payable solely from proceeds of the Bonds and other amounts derived by the City from the Loans or otherwise under the Loan Agreements.

Section 30. Conflict with Other Affordability Agreements. In the event of any conflict between the provisions of this Regulatory Agreement and any agreement in connection with Section 3(e)(ii) hereof, the provisions providing for the most affordable units, with the most affordability, in the Project shall prevail, so long as at all times the requirements of Sections 2, 3, 4, 5, 6 and 7 of this Regulatory Agreement are in any event satisfied. Notwithstanding the foregoing, a breach or default under any agreement in connection with Section 3(e)(ii) hereof shall not, in itself, constitute a breach or a default under this Regulatory Agreement.

Section 31. CDLAC Requirements . In addition to other requirements set forth herein and to the extent not prohibited by the requirements set forth in Sections 4 and 5 hereof, the Owner hereby agrees to comply with each of the requirements of CDLAC set forth in this Section 31, as follows:

(a) The Owner shall comply with the CDLAC Resolution and the CDLAC Conditions set forth in Exhibit A thereto (collectively, the “**CDLAC Conditions**”), which conditions are incorporated herein by reference and made a part hereof. The Owner will prepare and submit to the City:

(i) not later than February 1 of each year, until the Project is completed, and on February 1 every three years thereafter (such that the next succeeding year shall be the beginning of each such three-year period) until the end of the Compliance Period, a Certification of Compliance II for Qualified Residential Rental Projects, in substantially the form attached hereto as Exhibit E or otherwise required or provided by CDLAC from time to time after the date hereof (“**CDLAC Compliance Certificate**”), executed by an authorized representative of the Owner; such CDLAC Compliance Certificate shall be prepared pursuant to the terms of the CDLAC Conditions;

(ii) a Certificate of Completion, in substantially the form attached hereto as Exhibit F or otherwise required or provided by CDLAC from time to time after the date hereof, executed by an authorized representative of the Owner certifying among other things to the substantial completion of the Project; and

(iii) not later than February 1 of every third year following the submission of the Certificate of Completion, until the later of the end of the Compliance Period or the period described in paragraph (c), below, a project status report, as required or provided by the California Tax Credit Allocation Committee or equivalent documentation required or otherwise provided by CDLAC from time to time after the date hereof, executed by an authorized representative of the Owner.

Compliance with the terms of the CDLAC Conditions not contained within this Regulatory Agreement, but referred to in the CDLAC Conditions, are the responsibility of the Owner to report to the City.

(b) The Owner acknowledges that the City shall monitor the Owner's compliance with the terms of the CDLAC Conditions. The Owner acknowledges that the City will prepare and submit to CDLAC, not later than March 1 of each year, until the Project is completed, and on March 1 every three years thereafter (such that the next succeeding year shall be the beginning of each such three-year period) until the end of the Compliance Period, a Self-Certification Certificate in the form provided by CDLAC. The Owner will cooperate fully with the City in connection with such monitoring and reporting requirements.

(c) Except as otherwise provided in Section 13 of this Regulatory Agreement, this Regulatory Agreement shall terminate on the date 55 years after the commencement of the Qualified Project Period.

(d) The Owner shall notify CDLAC in writing of: (i) any change in ownership of the Project; (ii) any change in the issuer of the Bonds; (iii) any change in the name of the Project or the property manager; (iv) any default under the Indentures, the Loan Agreements 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 requirements as provided in Sections 4 and 5 hereof and the CDLAC Conditions; 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 Delivery Date, at any time, that are not more restrictive than the original CDLAC Conditions; provided however, that, with the prior written consent of the Bondowners, which will not be unreasonably withheld: (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 Santa Clara of a regulatory agreement between the Owner and the California Tax Credit Allocation Committee ("**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 the Owner and approved by CDLAC. The City may, in its sole and absolute discretion, require the Owner to enter into an amendment to this Regulatory Agreement reflecting the revised CDLAC Conditions, which amendment shall be executed by the parties hereto or their successor in title and duly recorded in the official real estate records of the County of Santa Clara. The Owner shall pay any costs and expenses in connection therewith and 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 31 may be expressly waived by CDLAC, in its sole discretion, in writing, but (i) no waiver by CDLAC of any requirement of this Section 31 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 exclusion from gross income of interest on the Bonds for federal income tax purposes; and (ii) any requirement of this Section 31 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.

Section 32. Annual Reporting Covenant . No later than January 31 of each calendar year (commencing January 31, 2021), the Borrower, on behalf of the City, agrees to provide to the California Debt and Investment Advisory Commission, by any method approved by the California Debt and Investment Advisory Commission, with a copy to the City, the annual report information required by Section 8855(k)(1) of the California Government Code. This covenant shall remain in effect until the later of the date (i) the Bonds are no longer Outstanding or (ii) the proceeds of the Bonds have been fully spent.

IN WITNESS WHEREOF, the City, the Trustee and the Owner have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

CITY OF SAN JOSE

By: _____
Jacky Morales-Ferrand
Director of Housing

By: _____
Julia H. Cooper
Director of Finance

Approved as to form:

Senior Deputy City Attorney

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Officer

MARKHAM PLAZA I, LP,
a California limited partnership

By: EAH Markham I, LLC,
a California limited liability company,
its Managing General Partner

By: EAH Inc.,
a California non-profit public benefit
corporation,
its Member

By: _____
Laura Hall, President

By: CORE Markham I, LLC,
a California limited liability company,
its Co-General Partner

By: _____
Christopher Neale, Manager

EXHIBIT A

DESCRIPTION OF REAL PROPERTY RELATING TO THE PROJECT

All that certain real property situated in the County of Santa Clara, State of California, described as follows:

[TO COME]

EXHIBIT B
FORM OF INCOME CERTIFICATION

EXHIBIT C

FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

MULTIFAMILY HOUSING REVENUE BOND PROJECTS

Certificate of Continuing Program Compliance

Reporting Period: January 1, 20__ to December 31, 20__

Project Name: Markham Plaza I

Project Address: 2000 Monterey Road, San José, CA 95112

Project Owner: Markham Plaza I, LP, a California limited partnership

The undersigned, who is fully authorized to execute this certificate on behalf of the Project Owner, having borrowed certain funds from the City of San José (the "City") for the purpose of financing acquisition and rehabilitation of the multifamily rental housing development listed above (the "Project"), does hereby certify the following for this reporting period:

1. The Project was continually in compliance with the Regulatory Agreement executed in connection with such loan from the City;
2. The Project, its units, and its services comply with all requirements set forth in Exhibit A to the CDLAC Resolution No. _____;
3. The Project met its requirement to provide ___ units for Very Low Income residents and ___ units for Low Income residents;
4. The submitted Rent Roll for (date) _____ is accurate to the best knowledge of the Owner, and the Project's occupancy as of the final day of this compliance period is:

Total Units in Project: _____

Total occupied Very Low-Income Units: _____

Total occupied Low-Income Units: _____

Total Units Held Vacant for Low-Income residents: _____

5. That, as set forth below, the Low Income tenants who commenced or terminated occupancy during the preceding month are as follows:

Commenced Occupancy		Terminated Occupancy	
Unit #	Residents	Unit #	Residents

6. The Project Owner, or an entity acting on its behalf, has completed an annual Tenant Income Certification for each unit and has received sufficient documentation to support that certification, both at the resident's initial occupancy and on the anniversary of the occupancy;
7. The Owner understands that transfer of ownership, in part or whole, requires City's prior written consent and the provision of all required documents per the City's Regulatory Agreement;
8. That, if it has changed since the previous reporting period, the Project's new property management contact information is provided below:

Property Management Firm:	
Contact name:	
Address:	
Phone:	
Fax:	
Phone number:	

9. No unremediated default has occurred under the Regulatory Agreement or the Loan Agreements. **[OR CHOOSE** A default under the Regulatory Agreement or the Loan Agreements has occurred. The nature of the default and the measures being taken to remedy such default are as follows:]

This certification, along with the submitted Rent Rolls, is herewith attested to be true and accurate information to the best of the undersigned's knowledge and belief.

Submitted
by:

Signature:

Title:

Date:

2502337.1

EXHIBIT D
CDLAC RESOLUTION

EXHIBIT E

CDLAC COMPLIANCE CERTIFICATE

CERTIFICATION of COMPLIANCE II
for QUALIFIED RESIDENTIAL RENTAL PROJECT

Project Name: Markham Plaza I

Name of Bond Issuer: City of San José

1. Project Name Change: No____ Yes____
(If project name has changed since the award of allocation please note the original project name as well as the new project name.)

If yes provide old and new Project Name _____

2. CDLAC Application No.: 19-459

3. Bond Issuer Change: No____ Yes____
(If Bond Issuer has changed since the award as a result of refinance or refunding of an allocation please note the original Issuer as well as the new Issuer.)

If yes provide the Name of existing and New Issuer _____
Contact Information _____

4. Change in Owner No____ Yes____
(If Owner has changed since the award affecting the CDLAC resolution please note the original Owner as well as the new Owner.)

If yes provide the Name of the existing and New Owner _____
Contact Information _____

5. Change in Management Company No____ Yes____
If yes provide the Name of 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____ Already Submitted Certification
If yes please submit Completion Certification (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 proper noticing occurred?

No _____ Yes _____

If so, please describe and explain?

10.	Federally Bond Restricted Units (Reflected in PSR) _____ at 50% AMI _____ at 60% AMI	Other Restrictions (Reflected in PSR) _____ at 50% AMI _____ at 60% AMI	Total (Reported in CDLAC Resolution) _____ at 50% AMI _____ at 60% AMI
-----	--	--	--

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 providing 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

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 _____

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. 19-059 (the "Resolution"), adopted by the California Debt Limit Allocation Committee (the "Committee") on May 15, 2019, I, _____, an Officer of the Owner, 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 CDLAC Resolution, which specifies that once the Bonds are issued, the terms and conditions set forth in the Resolution Exhibit A, 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

Printed Name of Officer

Title of Officer

Date

EXHIBIT F

CDLAC COMPLETION CERTIFICATE

CERTIFICATE of COMPLETION
for QUALIFIED RESIDENTIAL RENTAL PROJECTS

- 1) Project Name: Markham Plaza I
(If project name has changed since the award of allocation please note the original project name as well as the new project name.)
- 2) CDLAC Application No.: 19-459
- 3) Name of Bond Issuer: City of San José
- 4) Name of Owner: Markham Plaza I, LP, a California limited partnership
(If the Owner has changed name since the award please note the original Owner as well as the new Owner.)
- 5) The undersigned hereby certifies that all work on the Project was substantially completed as of _____, 20__

The undersigned hereby further certifies that:

- (a) the aggregate amount disbursed on the Loans to date is \$ _____
 - (b) all amounts disbursed from proceeds of the Bonds have been applied to pay or reimburse the undersigned for the payment of Project Costs, and none of the amounts disbursed from the proceeds of the Bonds have been applied to pay or reimburse any party for the payment of costs or expenses other than Project Costs; and
 - (c) at least 95 percent of the amounts disbursed from the proceeds of the Bonds has been applied to pay or reimburse the Owner for the payment of Qualified Project Costs (as that term is used in the Regulatory Agreement), and less than 25 percent of the amounts disbursed from the proceeds of the Bonds, exclusive of amounts applied to pay the costs of issuing the Bonds, has been applied to pay or reimburse the Owner for the cost of acquiring land.
 - (d) the cost of the bond issuance was equal to or less than 2% of the bond proceeds issued.
- 6) The undersigned hereby certifies the project meets the general federal rule for a Qualified Project Period.
No _____ Yes _____

- (a) 10% of the dwelling units in the project financed in part from the proceeds of the captioned Bonds were first occupied on _____ , 20__ and
 - (b) 50% of the dwelling units in the project financed in part from the proceeds of the captioned Bonds were first occupied on _____ , 20__ .
- 7) If no to 6) the undersigned hereby certifies the project meets the special federal rule for a Qualified Project Period.
 No_____ Yes_____

(Project qualifies if it is an acquisition/rehabilitation where no more than 90% of the units were not available for occupancy within 60 days of the earlier of the project acquisition or the Bonds Issuance Date.)

- (a) Bonds were issued on _____ , 20__
- (b) Property was acquired on _____ 20__
- (c) The date 10% of the units were available to occupy (within 60 days of the earlier of the acquisition or bond issuance) _____ , 20__

 Signature of Officer

 Printed Name of Officer

 Title of Officer

 Phone Number