

SUBORDINATE INDENTURE OF TRUST

between

**CITY OF SAN JOSE,
as Issuer**

and

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

Relating to

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

Dated as of October 1, 2019

TABLE OF CONTENTS

ARTICLE I DEFINITIONS

Section 1.01	Definitions	3
Section 1.02	Interpretation.....	11

ARTICLE II THE SUBORDINATE BONDS

Section 2.01	The Subordinate Bonds	11
Section 2.02	Limited Obligations	12
Section 2.03	Indenture Constitutes Contract.....	13
Section 2.04	Form and Execution	13
Section 2.05	Authentication	14
Section 2.06	Mutilated, Lost, Stolen or Destroyed Subordinate Bonds	14
Section 2.07	Transfer and Exchange of Subordinate Bonds; Persons Treated as Owners; Restrictions on Transfer	14
Section 2.08	Delivery of Subordinate Bonds.....	15
Section 2.09	Establishment of Subordinate Loan Fund; Application of Bond Proceeds and Other Money; Assignment of Subordinate Loan to Trustee	16
Section 2.10	Subordination.....	16
Section 2.11	City Administrative Fee	16

ARTICLE III REDEMPTION OF SUBORDINATE BONDS PRIOR TO MATURITY

Section 3.01	Redemption of Subordinate Bonds Prior to Maturity.....	18
Section 3.02	Notice of Redemption	19
Section 3.03	Effect of Notice of Redemption.....	19

ARTICLE IV REVENUES AND FUNDS

Section 4.01	Pledge of Revenues and Assets; Establishment of Funds	20
Section 4.02	Subordinate Loan Fund.....	20
Section 4.03	Application of Revenues	20
Section 4.04	Application of Subordinate Bond Fund.....	21
Section 4.05	Investment of Funds	21
Section 4.06	Money Held for Particular Subordinate Bonds; Funds Held in Trust.....	22
Section 4.07	Accounting Records	22
Section 4.08	Amounts Remaining in Funds	22

ARTICLE V GENERAL COVENANTS AND REPRESENTATIONS

Section 5.01	Payment of Principal and Interest	22
Section 5.02	Performance of Covenants	22
Section 5.03	Representations and Warranties of the Issuer	22
Section 5.04	Inspection of Project Books.....	23
Section 5.05	Damage, Destruction or Condemnation	23
Section 5.06	Tax Covenants.....	23

TABLE OF CONTENTS
(continued)

ARTICLE VI
DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND SUBORDINATE
BONDHOLDERS

Section 6.01	Events of Default.....	25
Section 6.02	Acceleration; Other Remedies Upon Event of Default.....	25
Section 6.03	Rights of Subordinate Bondholders.....	27
Section 6.04	Waiver by Issuer	27
Section 6.05	Application of Money After Default	27
Section 6.06	Remedies Vested in Trustee	28
Section 6.07	Remedies of Subordinate Bondholders.....	28
Section 6.08	Termination of Proceedings	29
Section 6.09	Waivers of Events of Default.....	29
Section 6.10	Notice to Subordinate Bondholders if Default Occurs.....	29

ARTICLE VII
CONCERNING THE TRUSTEE

Section 7.01	Standard of Care.....	30
Section 7.02	Reliance Upon Documents	31
Section 7.03	Use of Proceeds	33
Section 7.04	Trustee May Hold Subordinate Bonds.....	33
Section 7.05	Trust Imposed.....	33
Section 7.06	Compensation of Trustee	33
Section 7.07	Qualifications of Trustee	34
Section 7.08	Merger of Trustee	35
Section 7.09	Resignation by the Trustee	35
Section 7.10	Removal of the Trustee.....	35
Section 7.11	Appointment of Successor Trustee	35
Section 7.12	Concerning Any Successor Trustee	36
Section 7.13	Successor Trustee as Trustee, Paying Agent and Subordinate Bond Registrar	36
Section 7.14	Appointment of Co-Trustee or Separate Trustee.....	36
Section 7.15	Notice of Certain Events	38
Section 7.16	Filing of Financing Statements.....	38

ARTICLE VIII
SUPPLEMENTAL INDENTURES AND AMENDMENTS OF CERTAIN DOCUMENTS

Section 8.01	Supplemental Indentures Not Requiring Consent of Subordinate Bondholders.....	39
Section 8.02	Supplemental Indentures Requiring Consent of Subordinate Bondholders.....	39
Section 8.03	Amendments to Subordinate Loan Agreement Not Requiring Consent of Subordinate Bondholders.....	41
Section 8.04	Amendments to Subordinate Loan Agreement Requiring Consent of Subordinate Bondholders.....	41
Section 8.05	Consent of Senior Bondowner	41
Section 8.06	Opinion of Bond Counsel Required	41

TABLE OF CONTENTS
(continued)

ARTICLE IX
SATISFACTION AND DISCHARGE OF INDENTURE

Section 9.01	Discharge of Lien	42
Section 9.02	Discharge of Liability on Subordinate Bonds	43
Section 9.03	Payment of Subordinate Bonds After Discharge of Indenture	43
Section 9.04	Deposit of Money or Securities With Trustee	43

ARTICLE X
MISCELLANEOUS

Section 10.01	Consents and Other Instruments of Subordinate Bondholders	44
Section 10.02	Limitation of Rights	44
Section 10.03	Severability	44
Section 10.04	Notices	45
Section 10.05	Trustee as Paying Agent and Subordinate Bond Registrar	47
Section 10.06	Payments Due on Non-Business Days	47
Section 10.07	Counterparts	47
Section 10.08	Laws Governing Indenture and Administration of Trust	47
Section 10.09	No Recourse	48

EXHIBIT A	FORM OF SUBORDINATE BOND	A-1
EXHIBIT B	FORM OF PURCHASER'S LETTER	B-1

SUBORDINATE INDENTURE OF TRUST

THIS SUBORDINATE INDENTURE OF TRUST (this “**Indenture**”), made and entered into and dated as of October 1, 2019, by and between the CITY OF SAN JOSE (together with any successor to its rights, duties and obligations, the “**Issuer**”), a municipal corporation and chartered city duly organized and existing pursuant to its charter and the laws and constitution of the State of California (the “**State**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under and by virtue of the laws of the United States of America, qualified to accept and administer the trusts hereby created (together with any successor trustee hereunder and their respective successors and assigns, the “**Trustee**”);

WITNESSETH:

WHEREAS, the Issuer is authorized by Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California, as amended (the “**Act**”), to issue one or more series of its revenue bonds and loan the proceeds thereof to finance, among other things, the construction, acquisition, rehabilitation and equipping of multifamily rental housing for persons and families of low or moderate income;

WHEREAS, pursuant to the Act and this Subordinate Indenture, the Issuer proposes to issue its City of San José Multifamily Housing Revenue Bonds (Markham Plaza I) Subordinate Series 2019B-2, in the original aggregate principal amount of \$_____ (the “**Subordinate Bonds**”) to finance a portion of the acquisition, rehabilitation and equipping of a 153-unit (including one manager’s unit) multifamily rental housing development to be located within the City of San José, California known as “Markham Plaza I” (as more particularly described herein, the “**Project**”);

WHEREAS, pursuant to a Subordinate Loan Agreement, dated as of October 1, 2019 (the “**Subordinate Loan Agreement**”), among the Issuer, Markham Plaza I, LP, a California limited partnership (the “**Borrower**”) and Trustee, the Issuer will apply the proceeds of the Subordinate Bonds to make a subordinate loan in the original aggregate principal amount of \$_____ (the “**Subordinate Loan**”) to the Borrower for the financing of the Project, evidenced by a Subordinate Promissory Note (the “**Subordinate Note**”), endorsed by the Issuer to the Trustee pursuant to this Subordinate Indenture;

WHEREAS, to secure the Borrower’s obligations under the Subordinate Note, the Borrower will execute and deliver to the Issuer a Subordinate Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Tax-Exempt Bonds) dated as of even date herewith (the “**Subordinate Mortgage**”) with respect to the Project, which Subordinate Mortgage will be assigned to the Trustee;

WHEREAS, in order to provide a portion of the funds necessary to finance the Project, the Issuer has also entered into an Indenture of Trust, dated as of October 1, 2019 (the “**Senior Indenture**”), with U.S. BANK NATIONAL ASSOCIATION, as trustee (the “**Senior Trustee**”), pursuant to which the Issuer will issue its City of San José Multifamily Housing Revenue Bonds (Markham Plaza I) Series 2019B-1 in the original aggregate principal amount of \$_____ (the “**Senior Bonds**”) and loan the proceeds thereof to the Borrower to finance a portion of the acquisition, rehabilitation and equipping of the Project;

WHEREAS, to provide for the authentication and delivery of the Subordinate Bonds, to establish and declare the terms and conditions upon which the Subordinate Bonds are to be issued and secured and to secure the payment of the principal thereof and of the interest thereon, the Issuer has authorized the execution and delivery of this Subordinate Indenture;

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

WHEREAS, the Trustee has trust powers and the power and authority to enter into this Subordinate Indenture, to accept trusts generally and to accept and execute the trust created by this Subordinate Indenture; the Trustee has accepted the trust so created and, to evidence such acceptance, has joined in the execution of this Subordinate Indenture.

NOW, THEREFORE, the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Subordinate Bonds by the holders and owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, to secure the payment of the principal of, and interest on the Subordinate Bonds according to their tenor and effect, and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Subordinate Bonds, does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Trustee, and its successors in trust and its and their assigns in and to the following (said property being herein referred to as the “**Subordinate Trust Estate**”), to wit:

GRANTING CLAUSE FIRST

All right, title and interest of the Issuer in and to all Revenues.

GRANTING CLAUSE SECOND

All right, title and interest of the Issuer in and to the Subordinate Loan Agreement, the Subordinate Note and the Subordinate Mortgage (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards subject to the interests of the holders of the Senior Obligations (as defined herein)), whether payable under the above-referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer or any other Person is or may become entitled to do under said documents.

GRANTING CLAUSE THIRD

All funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Subordinate Bonds by the Issuer or by anyone on its behalf or with its written consent to

the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said trust and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all Holders of the Subordinate Bonds issued under and secured by this Subordinate Indenture without privilege, priority or distinction as to lien or otherwise of any of the Subordinate Bonds over any of the other Subordinate Bonds, except as set forth in this Subordinate Indenture;

PROVIDED, HOWEVER, that if the Issuer or its successors or assigns shall pay or cause to be paid to the Holders of the Subordinate Bonds the principal, interest and, to become due thereon at the times and in the manner provided in Article IX hereof, and if the Issuer shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Issuer, cease, terminate and be void, and thereupon the Trustee shall cancel and discharge the lien of this Subordinate Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.06 and 4.08 hereof and Article IX hereof, reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any property at the time subject to the lien of this Subordinate Indenture which may then be in its possession; otherwise this Subordinate Indenture to be and remain in full force and effect and upon the trusts and subject to the covenants and conditions hereinafter set forth.

AND IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto, that the terms and provisions upon which the Subordinate Bonds are to be issued, executed, authenticated, delivered and secured, and the trusts and conditions upon which the Subordinate Trust Estate is to be held and disposed of, which said trusts and conditions the said Trustee hereby accepts and agrees to discharge, are as follows (except that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money shall not be a general obligation of the Issuer nor a debt or pledge of the faith and credit of the Issuer or the State, but shall be payable solely from the revenues and funds pledged for its payment in accordance with this Subordinate Indenture):

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. The terms used in this Subordinate Indenture (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Subordinate Indenture and of any indenture supplemental hereto shall have the respective meanings specified below:

“Act” means Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California, as amended, as now in effect and as it may from time to time hereafter be amended and supplemented.

“Authorized Officer” means (a) when used with respect to the Issuer, an “Authorized Officer” (as defined in the Bond Resolution) or any other person designated to act in such capacity by a Certificate of the Issuer containing the specimen signature of any of such persons which certificate may designate an alternate or alternates, (b) when used with respect to the Borrower, any general partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, and (c) when used with respect to the Trustee, any authorized signatory of the Trustee, or any Person who is authorized in writing to take the action in question on behalf of the Trustee.

“Bond Counsel” means (i) on the Closing Date, the law firm delivering the approving opinion(s) with respect to the Subordinate Bonds, or (ii) any other firm of attorneys selected by the Issuer that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer’s Municipal Marketplace.

“Bond Loan Documents” has the meaning given to it within the definition of “Senior Loan Documents.”

“Bond Resolution” means the resolution adopted by the Issuer authorizing the issuance of the Subordinate Bonds.

“Borrower” means Markham Plaza I, LP, a limited partnership duly organized and existing under the laws of the State of California, or any of its permitted successors or assigns, as owner of the Project.

“Business Day” means any day other than (a) a Saturday, (b) a Sunday, (c) a day on which the Federal Reserve Bank of New York is authorized or obligated by law or executive order to remain closed, (d) a day on which the Principal Office of the Subordinate Bondholder Representative is closed, or (e) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Trustee or the Subordinate Bondholder Representative is located are authorized or obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

“Certificate of the Issuer” and *“Request of the Issuer”* mean, respectively, a written certificate or request signed in the name of the Issuer by an Authorized Officer of the Issuer or such other Person as may be designated and authorized to sign for the Issuer. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“Closing Date” means _____, 2019, the date of issuance of the Subordinate Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Conversion Date” means the date on which the Senior Loan is repaid in full.

“Default Rate” shall mean a rate per annum equal to the lesser of (i) the maximum interest rate that may be paid on the Bonds under State law or (ii) the Base Rate plus five (5) percentage points, and shall compound monthly.

“Determination of Taxability” shall mean, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Issuer and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation or (e) receipt by Trustee or Subordinate Bondholder Representative, at the request of Issuer, Borrower, Trustee or Subordinate Bondholder Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Subordinate Bonds is includable in gross income for federal income tax purposes of any bondholder or any former bondholder, other than a bondholder who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Issuer (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Issuer or the Borrower, as the case may be, or (iii) unless otherwise agreed to by the Subordinate Bondholder Representative in its sole and reasonable discretion, one year from the date of initial determination.

“Electronic Notice” means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 10.04 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 10.04 hereof.

“Event of Default” or *“event of default”* means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

“Extraordinary Services” means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Trustee in respect of or to prevent default under this Subordinate Indenture or the Subordinate Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Subordinate Loan Agreement, and other actions taken and carried out by the Trustee that are not expressly set forth in this Subordinate Indenture or the Subordinate Loan Documents.

“Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Obligation-State and Local Government Series that is acquired in accordance with applicable regulations of the United States Department of the Treasury, Bureau of Public Debt, or (d) the investment is the Local Agency Investment Fund of the State of California, but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States.

“Indenture” means this Subordinate Indenture of Trust, as the same may be amended, modified or supplemented from time to time.

“Investor Limited Partner” means the Borrower’s tax credit investor limited partner.

“Investor Services Fee” means the Investor Services Fee (as defined in the Partnership Agreement) payable out of Cash Flow in accordance with the terms of the Partnership Agreement.

“Issuer” means the City of San José, a municipal corporation and chartered city duly organized and existing pursuant to its charter and the laws and constitution of the State of California, and its successors and assigns.

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

- (a) direct and general obligations of the United States of America;
- (b) obligations of any agency or instrumentality of the United States of America the timely payment of the principal of and interest on which are fully unconditionally guaranteed by the full faith and credit of the United States of America;
- (c) senior debt obligations of the Federal Home Loan Mortgage Corporation, a shareholder owned government sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns;
- (d) senior debt obligations of the Federal National Mortgage Association, a shareholder owned government sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns;
- (e) demand deposits or time deposits with, or certificates of deposit issued by, the Trustee or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Trustee or such other institution has been rated at least “VMIG 1”/“A 1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency;
- (f) shares or units in any money market mutual fund rated “Aaa”/“AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the applicable rating agency (i.e., Moody’s or S&P) for that general category of security) (including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor) registered under the Investment Company Act of 1940,

as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax-exempt obligations;

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

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

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

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

"*Maturity Date*" means September __, [2064].

"*Net Proceeds*", when used with respect to any insurance proceeds or condemnation award with respect to the Project, shall mean the amount remaining (i) after deducting from the gross proceeds thereof all expenses (including attorneys' fees) incurred in the collection of such proceeds or award and (ii) after applying such amounts as set forth in the Senior Loan Documents.

"*Outstanding*" when used with respect to the Subordinate Bonds or "Subordinate Bonds Outstanding" means, as of any date, all Subordinate Bonds that have been duly authenticated and delivered by the Trustee under this Subordinate Indenture, except:

(a) Subordinate Bonds surrendered and replaced upon exchange or transfer, or cancelled because of payment or redemption, at or prior to such date;

(b) Subordinate Bonds for the payment, redemption or purchase for cancellation of which sufficient money has been deposited prior to such date with the Trustee (whether upon or prior to the maturity, amortization or redemption date of any such Subordinate Bonds), or which are deemed to have been paid and discharged pursuant to the provisions of Section 9.01 hereof; provided that if such Subordinate Bonds are to be redeemed prior to the maturity thereof, other than by scheduled amortization, notice of such redemption shall have

been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee shall have been filed with the Trustee; and

(c) Subordinate Bonds in lieu of which others have been authenticated (or payment, when due, of which is made without replacement) under Section 2.05 hereof.

“Partnership Agreement” means the First Amended and Restated Agreement of Limited Partnership of the Borrower, dated as of _____, 2019.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

“Principal Office of the Trustee” means the office of the Trustee referenced in Section 10.04(a) hereof, or such other office or offices as the Trustee may designate in writing from time to time, or the office of any successor Trustee where it principally conducts its business of serving as trustee under indentures pursuant to which municipal or governmental obligations are issued.

“Project” means, collectively, the land and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as Markham Plaza I located in City of San José, California, including the real estate described in the Subordinate Mortgage.

“Record Date” means the 15th day of the month preceding the month in which any Subordinate Bond Payment Date falls.

“Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants dated as of October 1, 2019, by and among the Issuer, Borrower and U.S. Bank National Association, as trustee for the Senior Bonds and Subordinate Bonds, with respect to the Project.

“Responsible Officer” means any officer of the Trustee employed within or otherwise having regular responsibility in connection with the corporate trust department of the Trustee and the trusts created hereunder.

“Revenue Fund” means the Revenue Fund established by the Trustee pursuant to Section 4.01 hereof.

“Revenues” means (a) all payments made with respect to the Loan pursuant to the Subordinate Loan Agreement, the Subordinate Note or the Subordinate Mortgage, including all casualty or other insurance benefits and condemnation awards paid in connection therewith and (b) all money and securities held by the Trustee in the funds and accounts established pursuant to this Subordinate Indenture, together with all investment earnings thereon.

“Senior Bondowner” means “Bondowner” as that term is defined in the Senior Indenture.

“Senior Bonds” has the meaning given to it in the recitals hereof.

“Senior Indenture” has the meaning given to it in the recitals hereof.

“*Senior Loan*” means (i) prior to the Conversion Date, the loan made to the Borrower pursuant to the Senior Borrower Loan Agreement; and (ii) commencing on the Conversion Date, the loan to the Borrower in the original principal amount of \$5,000,000 to be made by the County of Santa Clara.

“*Senior Loan Agreement*” means (i) prior to the Conversion Date, that certain Loan Agreement, by and between the Issuer and the Borrower, dated as of October 1, 2019, as amended and supplemented from time to time and (ii) commencing on the Conversion Date, that certain [**COUNTY LOAN AGREEMENT**].

“*Senior Loan Documents*” means (i) prior the Conversion Date, the “Loan Documents” as that term is defined in the Senior Loan Agreement (also referred to herein as the “Bond Loan Documents”), and (ii) commencing upon the Conversion Date, the [**LOAN DOCUMENTS REFERENCED IN THE COUNTY LOAN DOCUMENTS**].

“*Senior Mortgage*” means (i) prior to the Conversion Date, the “Deed of Trust” as that term is defined in the Senior Indenture and (ii) commencing upon the Conversion Date, the [**DOT REFERENCED IN COUNTY DOCUMENTS**].

“*Senior Obligations*” means, collectively, the Senior Bonds (prior to the Conversion Date) and the Senior Note.

“*Senior Note*” means (i) prior to the Conversion Date, the “Note” as such term is defined in the Senior Indenture, and (ii) commencing upon the Conversion Date, the [**COUNTY NOTE**].

“*Senior Trustee*” has the meaning given to it in the recitals hereof.

“*Servicer*” means the servicer appointed by the Subordinate Bondholder to service and administer the Subordinate Loan and act as Subordinate Bondholder’s agent with respect to its interests, rights and obligations as set forth in the Subordinate Loan Documents and with respect to the Subordinate Bonds. .

“*Sophisticated Investor*” means (1) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “Securities Act”); (2) an “accredited investor” as defined in Sections 501(a)(1) through (3) of Regulation D promulgated under the Securities Act; (3) an entity that is directly or indirectly wholly owned or controlled by or under common control with the holder of the Subordinate Bonds; (4) an entity all of the investors in which are described in (1), (2) or (3) above; or (5) a custodian or trustee for a party described in (1), (2) or (3) above.

“*Subordinate Bond Documents*” shall mean (a) the Subordinate Loan Documents, (b) this Subordinate Indenture, (c) the Regulatory Agreement, (d) the Tax Certificate, (e) UCC financing statements, (f) such assignments of management agreements, contracts and other rights as may be reasonably required, (g) all other documents evidencing, securing, governing or otherwise pertaining to the Subordinate Bonds or any other Subordinate Bond Documents, and (i) all amendments, modifications, renewals and substitutions of any of the foregoing.

“*Subordinate Bond Fund*” means the Subordinate Bond Fund established by the Trustee pursuant to Section 4.01 hereof.

“Subordinate Bond Payment Date” means (i) the first Business Day of each month until the Maturity Date, (ii) any date on which the Subordinate Bonds are subject to mandatory redemption pursuant to the provisions hereof, and (iii) the Maturity Date.

“Subordinate Bond Rate” the lesser of (i) _____% per annum compounded annually, or (ii) the maximum interest rate allowable on the Subordinate Bonds under State law, from the Closing Date to the Maturity Date.

“Subordinate Bond Register” means the books or other records maintained by the Subordinate Bond Registrar setting forth the registered Holders from time to time of the Subordinate Bonds.

“Subordinate Bond Registrar” means the Trustee acting as such, and any other bond registrar appointed pursuant to this Subordinate Indenture.

“Subordinate Bondholder” or *“Holder”* or *“Owner”* means any Person who shall be the registered owner of any Outstanding Subordinate Bond or Subordinate Bonds.

“Subordinate Bondholder Representative” means any Person appointed to such position by written instrument signed by 100% of the Holders of the Outstanding Subordinate Bonds. If there is no appointed Subordinate Bondholder Representative, the Holder of a majority or plurality of the Outstanding Subordinate Bonds shall be deemed to be the Subordinate Bondholder Representative. The initial Subordinate Bondholder Representative is Tully Gardens, L.P., a California limited partnership.

“Subordinate Bonds” means the City of San José Multifamily Housing Revenue Bonds (Markham Plaza I) Subordinate Series 2019B-2 issued pursuant to the provisions of this Subordinate Indenture.

“Subordinate Loan” means the loan made by the Issuer to the Borrower in the original principal amount of \$_____ pursuant to the Subordinate Loan Agreement.

“Subordinate Loan Agreement” means the Subordinate Loan Agreement dated as of the date hereof among the Borrower, the Issuer and the Trustee, as such Subordinate Loan Agreement may from time to time be amended or supplemented.

“Subordinate Loan Documents” means, collectively, this Subordinate Indenture, the Subordinate Loan Agreement, the Subordinate Note, the Subordinate Mortgage, and all other documents securing the Subordinate Loan.

“Subordinate Mortgage” means the Subordinate Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Tax-Exempt Bonds) dated as of the date hereof, together with all riders and addenda thereto, granting a second priority mortgage and security interest in the Project to the Issuer to secure the repayment of the Subordinate Loan which Subordinate Mortgage has been assigned by the Issuer to the Trustee as the same may be amended, supplemented or restated.

“Subordinate Note” means the Subordinate Promissory Note dated the Closing Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower's obligation to repay the Subordinate Loan, as the same may be amended, supplemented or

restated from time to time, which Subordinate Promissory Note will be delivered to the Issuer and endorsed by the Issuer to the Trustee.

“*Subordinate Trust Estate*” shall have the meaning given to that term in the Granting Clauses.

“*Subordination Agreement*” means the Subordination Agreement, dated as of October 1, 2019, by and between the Trustee and the Senior Bondowner.

“*State*” means the State of California.

“*Tax Certificate*” means, collectively, the Certificate as to Arbitrage and the Borrower’s Certificate Regarding Use of Proceeds, each delivered on the Closing Date.

“*Trustee*” means U.S. Bank National Association and its successors in trust hereunder.

“*Unassigned Rights*” means all of the rights of the Issuer and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be paid its fees and expenses, to give or withhold consent to amendments, changes, modifications and alterations, to receive notices and the right to enforce such rights.

Section 1.02 Interpretation. The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Subordinate Indenture as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. References to Articles, Sections, and other subdivisions of this Subordinate Indenture are to the designated Articles, Sections and other subdivisions of this Subordinate Indenture as originally executed. The headings of this Subordinate Indenture are for convenience only and shall not define or limit the provisions hereof.

ARTICLE II

THE SUBORDINATE BONDS

Section 2.01 The Subordinate Bonds.

(a) The Subordinate Bonds are hereby authorized to be issued hereunder as revenue bonds of the Issuer in accordance with the Bond Resolution. The Subordinate Bonds are hereby authorized to be designated “City of San José Multifamily Housing Revenue Bonds (Markham Plaza I) Subordinate Series 2019B-2” in the original aggregate principal amount of \$_____. The Subordinate Bonds shall be fully registered as to principal and interest, without coupons, and shall be numbered by series, if any, in the manner and with any additional designation as the Trustee, as Subordinate Bond Registrar, deems necessary for the purpose of identification. All of the Subordinate Bonds are equally and ratably secured. Subordinate Bonds issued on the Closing Date shall be dated such date; Subordinate Bonds issued after the Closing Date shall be dated the date they are authenticated by the Trustee. The Subordinate Bonds shall be due and payable in full on the Maturity Date.

(b) The Subordinate Bonds shall be issued as one bond in the principal amount of \$_____ and shall bear interest only at the Subordinate Bond Rate. Interest shall accrue on the Subordinate Bonds at the Subordinate Bonds Rate, but no payment on the Subordinate Bonds shall be made prior to the Conversion Date. On each Subordinate Bond Payment Date following the Conversion Date until the earlier of the Maturity Date or the date on which no principal of or interest on the Subordinate Bonds remains outstanding, payment of interest shall be payable on each on each Subordinate Bond Payment Date, solely from available Revenues received by the Trustee pursuant to the provisions of the Subordinate Note and the Subordinate Loan Agreement. The Subordinate Bonds shall also be subject to mandatory redemption on each Subordinate Bond Payment Date, solely from available Revenues received by the Trustee pursuant to the provisions of the Subordinate Note and the Subordinate Loan Agreement which remain after the payment of interest on the Subordinate Bonds on such Subordinate Bond Payment Date. Unpaid interest on the Subordinate Bonds, and other unpaid amounts under this Subordinate Indenture, shall accrue interest at the Subordinate Bond Rate.

(i) Interest on the Subordinate Bonds shall be computed on the basis of a 360-day year of twelve months. Interest on the Subordinate Bonds shall be payable on each Subordinate Bond Payment Date, in each case from the Subordinate Bond Payment Date next preceding the date of authentication thereof to which interest has been paid or duly provided for, unless the date of authentication is an Subordinate Bond Payment Date to which interest has been paid or duly provided for, in which case from the date of authentication of the Subordinate Bond, or unless no interest has been paid or duly provided for on the Subordinate Bonds, in which case from the Closing Date, until payment of the principal of the Subordinate Bond has been made or duly provided for. Notwithstanding the foregoing, if a Subordinate Bond is authenticated after a Record Date and before the following Subordinate Bond Payment Date, such Subordinate Bond shall bear interest from such Subordinate Bond Payment Date; provided, however, that if there shall be a default in the payment of interest due on such Subordinate Bond Payment Date, then the Subordinate Bonds shall bear interest from the next preceding Subordinate Bond Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for on the Subordinate Bonds, from the Closing Date.

(c) The Person in whose name any Subordinate Bond is registered on the Record Date with respect to an Subordinate Bond Payment Date shall be entitled to receive the interest paid on such Subordinate Bond Payment Date (unless such Subordinate Bond has been called for redemption on a redemption date which is prior to such Subordinate Bond Payment Date) notwithstanding the cancellation of such Subordinate Bond upon any registration of transfer or exchange thereof subsequent to such Record Date and prior to such Subordinate Bond Payment Date.

(d) No Subordinate Bonds may be issued under the provisions of this Subordinate Indenture except in accordance with this Article. The total principal amount of Subordinate Bonds that may be issued hereunder, or in substitution for other Subordinate Bonds pursuant to Section 2.06 hereof, is expressly limited to \$_____.

Section 2.02 Limited Obligations. The Subordinate Bonds are limited obligations of the Issuer, payable solely from the Revenues and other funds and money pledged and assigned hereunder. None of the Issuer, the State of California (the "State"), or any political subdivision thereof (except the Issuer, to the limited extent set forth herein) or any public agency shall in any event be liable for the payment of the principal of, or interest on the Subordinate Bonds or

for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and none of the Subordinate Bonds or any of the Issuer's agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever.

No recourse shall be had for the payment of the principal of, or interest on any Subordinate Bond or for any claim based thereon or upon any obligation, covenant or agreement in this Subordinate Indenture contained, against, the Issuer, any past, present or future member of its governing body, its officers, attorneys, accountants, financial advisors, agents or staff or the officers, attorneys, accountants, financial advisors, agents or staff of any successor public entity, as such, either directly or through the Issuer or any successor public entity, under any rule of law or penalty or otherwise, and all such liability of the Issuer, any member of its governing body and its officers, attorneys, accountants, financial advisors, agents and staff is hereby, and by the acceptance of the Subordinate Bonds, expressly waived and released as a condition of, and in consideration for, the execution of this Subordinate Indenture and the issuance of the Subordinate Bonds.

It is recognized that notwithstanding any other provision of this Subordinate Indenture, none of the Borrower, the Trustee or any Subordinate Bondholder shall look to the Issuer for damages suffered by the Borrower, the Trustee or such Subordinate Bondholder as a result of the failure of the Issuer to perform any covenant, undertaking or obligation under this Subordinate Indenture, the Subordinate Loan Agreement, the Subordinate Bonds or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Issuer in any of such documents, nor for any other reason. Although this Subordinate Indenture recognizes that such documents shall not give rise to any pecuniary liability of the Issuer, nothing contained in this Subordinate Indenture shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Issuer) in any court or before any governmental body, agency or instrumentality or otherwise against the Issuer or any of its officers or employees to enforce the provisions of any of such documents that the Issuer is obligated to perform and the performance of which the Issuer has not assigned to the Trustee or any other person; provided, however, that as a condition precedent to the Issuer proceeding pursuant to this Section 2.02, the Issuer shall have received satisfactory indemnification.

Section 2.03 Indenture Constitutes Contract. In consideration of the purchase and acceptance of the Subordinate Bonds issued hereunder by those who shall hold them from time to time, the provisions of this Subordinate Indenture shall be part of the contract of the Issuer with the Holders of the Subordinate Bonds and shall be deemed to be a contract between the Issuer and the Holders of the Subordinate Bonds from time to time.

Section 2.04 Form and Execution. The Subordinate Bonds shall be in substantially the form attached as Exhibit A, with necessary and appropriate variations, omissions and insertions as are customary, permitted or required by this Subordinate Indenture. The Subordinate Bonds shall be signed in the name and on behalf of the City with the manual or facsimile signature of an Authorized Officer (as that term is defined in the Bond Resolution) and attested by the manual or facsimile signature of the City Clerk. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Subordinate Bonds. Any reproduction of the official seal of the Issuer on the Subordinate Bonds shall have the same force and effect as if the official seal of the Issuer had been impressed on the Subordinate Bonds.

In case any officer of the Issuer whose manual or facsimile signature shall appear on any Subordinate Bond shall cease to be such officer before the delivery of such Subordinate Bond such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery, and also any Subordinate Bond may bear the facsimile signatures of, or may be signed by, such Persons as at the actual time of the execution of such Subordinate Bond shall be the proper officers to sign such Subordinate Bond although at the date of such Subordinate Bond such Persons may not have been such officers.

Section 2.05 Authentication. No Subordinate Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Subordinate Indenture unless a certificate of authentication on such Subordinate Bond, substantially in the form set forth in Exhibit A, shall have been duly executed by an Authorized Officer of the Trustee; and such executed certificate of authentication upon any such Subordinate Bond shall be conclusive evidence that such Subordinate Bond has been duly executed, registered, authenticated and delivered under this Subordinate Indenture. It shall not be necessary that the same Person sign the certificate of authentication on all of the Subordinate Bonds.

Section 2.06 Mutilated, Lost, Stolen or Destroyed Subordinate Bonds. In the event any Subordinate Bond is mutilated, lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate a new Subordinate Bond of like interest rate, series, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Subordinate Bond or in lieu of and in substitution for such lost, stolen or destroyed Subordinate Bond, upon payment by the Owner thereof of any applicable tax or governmental charge and the reasonable expenses and charges of the Issuer and the Trustee in connection therewith, and in the case of a Subordinate Bond lost, stolen or destroyed, the filing with the Trustee of evidence satisfactory to it that such Subordinate Bond was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Issuer and the Trustee with indemnity satisfactory to each of them. In the event any such Subordinate Bond shall have matured, instead of issuing a duplicate Subordinate Bond or Subordinate Bonds the Issuer may pay the same without surrender thereof.

Section 2.07 Transfer and Exchange of Subordinate Bonds; Persons Treated as Owners; Restrictions on Transfer. The Trustee as Subordinate Bond Registrar shall cause a Subordinate Bond Register to be kept for the registration of transfers of Subordinate Bonds. Any Subordinate Bond may be transferred only upon an assignment duly executed by the registered Owner or such registered Owner's duly authorized representative in such form as shall be satisfactory to the Subordinate Bond Registrar and upon surrender of such Subordinate Bond to the Trustee for cancellation. Whenever any Subordinate Bond or Subordinate Bonds shall be surrendered for transfer, the Issuer shall execute and the Trustee shall authenticate and deliver to the transferee a replacement fully registered Subordinate Bond for the amount of such Subordinate Bond so surrendered.

In all cases in which Subordinate Bonds shall be transferred or exchanged hereunder, the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange. The cost of printing Subordinate Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer or exchange shall be paid by the Borrower.

The Person in whose name any Subordinate Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of

the principal of and interest on any such Subordinate Bond shall be made only to or upon the order of the registered Owner thereof, or such registered Owner's legal representative, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Subordinate Bond to the extent of the sum or sums to be paid.

Neither the Issuer nor the Trustee shall be required to make any such exchange, registration or transfer of Subordinate Bonds during the period of fifteen (15) days immediately preceding an Subordinate Bond Payment Date or, in the case of any proposed redemption of Subordinate Bonds, during the period of fifteen (15) days immediately preceding the selection of Subordinate Bonds for such redemption and after the giving of notice of redemption, the Trustee is not required to transfer or exchange any Subordinate Bond or portion thereof which has been called for redemption.

Restrictions on Transfer. The following shall apply to all sales and transfers of the Subordinate Bonds after the applicable initial sale and delivery of the Subordinate Bonds:

(a) The Subordinate Bonds, including participation interests therein, in the form attached hereto as Exhibit A, shall be physical certificated instruments, and shall not be held in a book-entry only system unless approved in advance by the Issuer;

(b) The Subordinate Bonds shall be sold only in whole to a Sophisticated Investor;

(c) The Trustee shall not authenticate or register a Subordinate Bond unless it has received a certificate from the Issuer stating that the conditions of this Section 2.07 have been satisfied and there shall have been delivered to the Trustee a purchaser's letter in the form and substance attached as Exhibit B hereto executed by the transferee of the Subordinate Bonds;

Section 2.08 Delivery of Subordinate Bonds. Upon the execution and delivery of this Subordinate Indenture, the Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate the Subordinate Bonds and deliver them to or upon the order of the Issuer upon receipt by the Trustee of the following:

(a) executed counterparts of this Subordinate Indenture, the Subordinate Loan Agreement, the Regulatory Agreement, and the Tax Certificate;

(b) an opinion of Bond Counsel to the effect that the Subordinate Bonds are valid and binding special obligations of the Issuer;

(c) evidence satisfactory to the Trustee of the Subordinate Loan and Subordinate Note (representing the purchase price of the Subordinate Bonds);

(d) a copy of the Subordinate Mortgage;

(e) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the agreements described herein to which it is a party, that its execution and delivery of and performance of its

covenants in such agreements do not contravene law or any provision of any other agreement to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their respective terms;

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

(g) a certified copy of the Bond Resolution; and

(h) the written request and authorization to the Trustee by the Issuer to authenticate and deliver the Subordinate Bonds in accordance with the provisions of this Subordinate Indenture.

Section 2.09 Establishment of Subordinate Loan Fund; Application of Bond Proceeds and Other Money; Assignment of Subordinate Loan to Trustee.

(a) The Trustee shall establish, maintain and hold in trust and there is hereby established with the Trustee a Subordinate Loan Fund. No amount shall be charged against the Subordinate Loan Fund except as expressly provided in this Section 2.09 and Section 4.02.

(b) On the Closing Date, the Bonds shall be issued to the Bondholder in exchange for its transfer to the Borrower of a portion of the real property constituting the Project.

(c) Upon the transfer to the Borrower of a portion of the real property constituting the Project, the Issuer shall originate the Subordinate Loan pursuant to the Subordinate Loan Agreement.

Section 2.10 Subordination. This Subordinate Indenture and the Subordinate Loan Agreement are and at all times shall be subject and subordinate in all respects to the terms, provisions, conditions, covenants, liens and security interests of the Senior Loan Documents. Correspondingly, payment of the indebtedness evidenced by the Subordinate Bonds is and shall be subject and subordinate in all respects to the prior payment in full of all amounts due and payable in respect of the Senior Obligations and the Senior Loan Documents, and otherwise under the Senior Loan Documents. Accordingly, the Subordinate Bondholders expressly subject and subordinate all of their right, title and interest in and to the Subordinate Bonds in all respects to (i) the payment in full of the Senior Obligations, (ii) the payment in full of the Senior Loan, (iii) the lien of the “Revenues” (as defined in the Senior Indenture) pledged under the Senior Indenture and of the Senior Mortgage and (iv) the payment in full of all amounts owed to the Senior Bondowner under the Bond Loan Documents. In addition, notwithstanding anything contained in this Subordinate Indenture, the Subordinate Loan Agreement, the Subordinate Note or the Subordinate Mortgage to the contrary, the Issuer and the Trustee agree, and the Subordinate Bondholders by their acceptance of the Subordinate Bonds agree, that:

(a) the sole source of funds available to the Issuer for the purpose of paying the principal of, and interest on, the Subordinate Bonds shall be the Revenues, if and to the extent available;

(b) the Subordinate Note is payable solely from, and only to the extent of, the Revenues, if and to the extent available; provided, however, nothing herein shall prohibit Borrower from making payments on the Subordinate Note from Borrower funds other than Revenues;

(c) payments of the principal of, and interest on, the Subordinate Note shall be made only after all current and past due Senior Obligations have been paid in full and shall be subject to the terms and conditions of the Subordination Agreement;

(d) the security for the Subordinate Loan and the Subordinate Note shall be the Subordinate Mortgage, which shall be wholly subordinate to the Senior Mortgage encumbering the same Project;

(e) the obligation of the Borrower to repay the Subordinate Loan is and shall be subject and subordinate in all respects to the obligations of the Borrower to pay all amounts due in respect of the Senior Obligations, whether under the Senior Loan Documents or otherwise;

(f) so long as any amounts are currently due and owing in respect of the Senior Obligations, whether under the Senior Loan Documents or otherwise, the Trustee shall not be entitled accelerate the Subordinate Note or to foreclose on the Subordinate Mortgage notwithstanding (1) any arrearages in the payments of any amounts due and owing under or with respect to the Subordinate Bonds or (2) any default in respect of the Subordinate Bonds, the Subordinate Note, the Subordinate Mortgage or the Subordinate Loan except as consented to in writing by the Senior Bondowner;

(g) unpaid principal and interest on the Subordinate Bonds resulting from insufficient Revenues will accrue and shall be payable solely from, and only to the extent of, Revenues, provided further that payment of principal and interest is and shall remain subject and subordinate to the Senior Obligations; and

(h) unpaid principal and interest on the Subordinate Bonds shall be payable at maturity, subject to mandatory redemption, and shall remain subject and subordinate to the Senior Obligations.

Failure to make any payment in respect of the Subordinate Bonds or otherwise under this Subordinate Indenture shall not constitute an Event of Default under (and as defined in) this Subordinate Indenture. The Trustee shall not, after the Trustee receives a notice of default or otherwise acquires knowledge of a default or an Event of Default by the Borrower with respect to the Senior Obligations, the Senior Loan or under any Senior Loan Document, make any payments in respect of the Subordinate Bonds unless and until such default or Event of Default or potential default has been cured or waived by the Subordinate Bondholder Representative.

The parties to this Subordinate Indenture acknowledge that the terms of this Subordinate Indenture are in all respects subject to the Senior Loan Documents.

Section 2.11 City Administrative Fee. Upon the retirement of the Senior Obligations and discharge of the Senior Indenture, the Trustee shall collect the City's annual administrative fee described in Section 7(a) of the Regulatory Agreement and promptly upon receipt remit it to the City. The Trustee may establish a fund or account in its records to deposit and disburse the amounts collected by it for payment of the City's annual administrative fee.

ARTICLE III

REDEMPTION OF SUBORDINATE BONDS PRIOR TO MATURITY

Section 3.01 Redemption of Subordinate Bonds Prior to Maturity. The Subordinate Bonds are subject to redemption upon the circumstances, on the dates and at the prices set forth as follows:

(a) The Subordinate Bonds shall be subject to mandatory redemption in whole or in part, after satisfaction of all requirements of the Senior Loan Documents, on the next Subordinate Bond Payment Date for which notice of redemption can timely be given, at a redemption price equal to the principal amount of Subordinate Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption upon prepayment of the Subordinate Loan in whole or in part following a casualty to or condemnation of the Project (unless the Borrower has elected to repair and restore the Project in accordance with the terms of the Subordinate Bond Documents); such mandatory redemption shall be in an amount as nearly equal as possible to, but not exceeding, the amount of any Net Proceeds of insurance or condemnation awards not used to repair or replace the Project.

(b) The Subordinate Bonds shall be subject to mandatory redemption in whole on the next date for which notice of redemption can timely be given at a redemption price equal to the principal amount of the Subordinate Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption upon acceleration of the Subordinate Loan in whole following an Event of Default under Article VII of the Subordinate Loan Agreement, except as otherwise provided in Article VI of this Indenture.

(c) Except as otherwise provided in this Article III the Subordinate Bonds are subject to optional redemption in whole or in part on any Business Day for which notice of redemption can timely be given, in the event and to the extent that the Subordinate Loan is prepaid pursuant to the Subordinate Note as set forth in Section 4.3 of the Subordinate Loan Agreement, at a redemption price equal to the principal amount of Subordinate Bonds to be redeemed, plus accrued interest to the date fixed for redemption. Any optional redemption of the Subordinate Bonds are subject to the approval rights of (i) the Investor Limited Partner as set forth in the Partnership Agreement, and (ii) the Senior Bondowner as set forth in the Bond Loan Documents.

(d) The Subordinate Bonds are subject to mandatory redemption in whole or in part on any Business Day for which notice of redemption can timely be given, in the event and to the extent the Subordinate Bondholder Representative notifies the Trustee in writing that, subject to and in accordance with the terms and conditions of the Partnership Agreement, there are net proceeds available from (i) a sale or exchange of any assets of the Borrower, (ii) any financing or refinancing of the Project, (iii) the liquidation of the Borrower, or (iv) any other transaction where the proceeds are deemed attributable to capital under generally accepted accounting principles.

(e) The Subordinate Bonds are subject to mandatory redemption upon in whole or part on each Subordinate Bond Payment Date, without notice, solely from available Revenues received by the Trustee pursuant to the provisions of the Subordinate Note and the Subordinate Loan Agreement that remain after the payment of interest on the Subordinate Bonds on such Subordinate Bond Payment Date.

Section 3.02 Notice of Redemption. Notice of the intended redemption of each Subordinate Bond shall be given by the Trustee by first class mail, postage prepaid, or by facsimile transmission, to the registered Owner at the address of such Owner shown on the Subordinate Bond Register. All such redemption notices shall be given not less than ten (10) days prior to the date fixed for redemption. The Trustee may provide a conditional notice of redemption.

Notices of redemption shall state the redemption date and the redemption price, the place or places where amounts due upon such redemption will be payable, and, if less than all of the then Outstanding Subordinate Bonds are called for redemption, shall state (i) the numbers of the Subordinate Bonds to be redeemed by giving the individual certificate number of each Subordinate Bond to be redeemed or shall state that all Subordinate Bonds between two stated certificate numbers, both inclusive, are to be redeemed or that all of the Subordinate Bonds of one or more maturities have been called for redemption only if bonds cease to be book entry-bonds; (ii) the Maturity Date of each Subordinate Bond being redeemed; (iii) the conditions, if any, which must be satisfied in order for the redemption to take place on the scheduled date of redemption, and (iv) any other descriptive information needed to identify accurately the Subordinate Bonds being redeemed.

Failure to give notice by mailing to the registered Owner of any Subordinate Bond designated for redemption or to any depository or information service shall not affect the validity of the proceedings for the redemption of any other Subordinate Bond if notice of such redemption shall have been mailed as herein provided.

Notwithstanding anything to the contrary set forth in Sections 3.01(c), so long as either (1) the Bond Purchaser remains the sole Owner of 100% of the Subordinate Bonds Outstanding, or (2) any successor Owner of the Subordinate Bonds has provided written waiver of such notice, the Trustee shall not provide notice of optional or mandatory redemption made pursuant to Sections 3.01(c), 3.01(d), 3.01(e) or 3.01(f) hereof.

Section 3.03 Effect of Notice of Redemption. If a conditional notice of redemption has been provided pursuant to the terms of this Subordinate Indenture and the conditions are not satisfied, such notice of redemption shall be of no force and effect and the Subordinate Bondholders shall be restored to their former positions as though no such notice of redemption had been delivered. Notice of redemption having been given in the manner provided in this Article III and if either there were no conditions to such redemption or the conditions have been satisfied (or in the event no such notice is required under Section 3.02), and money for the redemption being held by the Trustee for that purpose, thereupon the Subordinate Bonds so called for redemption shall become due and payable on the redemption date, and interest thereon shall cease to accrue on such date; and such Subordinate Bonds shall thereafter no longer be entitled to any security or benefit under this Subordinate Indenture except to receive payment of the redemption price thereof.

ARTICLE IV

REVENUES AND FUNDS

Section 4.01 Pledge of Revenues and Assets; Establishment of Funds. The pledge and assignment of and the security interest granted in the Subordinate Trust Estate pursuant to the Granting Clauses hereof shall attach, be perfected and be valid and binding from and after the time of the delivery of the Subordinate Bonds by the Trustee or by any Person authorized by the Trustee to deliver the Subordinate Bonds. The Subordinate Trust Estate so pledged and then or thereafter received by the Trustee shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Issuer irrespective of whether such parties have notice thereof.

In addition to the Subordinate Loan Fund established therein pursuant to Section 2.09 hereof, the Trustee shall establish, maintain and hold in trust the Revenue Fund, which fund is hereby established and which shall be disbursed and applied only as herein authorized.

The funds and accounts established pursuant to this Section 4.01 shall be maintained in the corporate trust department of the Trustee as segregated trust accounts, separate and identifiable from all other funds held by the Trustee. The funds and accounts established hereunder shall bear a designation clearly indicating that the funds deposited therein are held for the benefit of the Holders of the Subordinate Bonds, respecting the Revenue Fund and the Subordinate Bond Fund. The Trustee shall, at the written direction of an Authorized Officer of the Issuer, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Issuer or the Trustee may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Subordinate Indenture with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

Section 4.02 Subordinate Loan Fund. The Trustee shall deposit the proceeds of the Bonds as provided in Section 2.09 and disburse amounts deposited in the Subordinate Loan Fund immediately upon receipt to the Borrower in funding of the Subordinate Loan. No amounts shall be invested or retained in the Subordinate Loan Fund.

Section 4.03 Application of Revenues.

(a) All Revenues, if any, shall be deposited by the Trustee, promptly upon receipt thereof, to the Revenue Fund, except (i) with respect to investment earnings to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (ii) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) On each Subordinate Bond Payment Date or any other date on which payment of principal of or interest on the Subordinate Bonds becomes due and payable, the Trustee shall credit from the Revenue Fund to the Subordinate Bond Fund an amount equal to

the principal of and interest payable from Revenues to such period on the Subordinate Bonds on such date.

(c) Promptly upon receipt, the Trustee shall deposit directly to the Subordinate Bond Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Subordinate Loan, after reimbursement of any and all amounts owed to the Subordinate Bondholder Representative (and subject to the Borrower's right to repair and restore the Property as set forth in the Subordinate Loan Documents) and (ii) amounts paid to the Trustee to be applied to the redemption of all or a portion of the Subordinate Bonds pursuant to Article III hereof.

(d) Should the amount in the Subordinate Bond Fund be insufficient to pay the amount due on the Subordinate Bonds on any given Subordinate Bond Payment Date or other payment date, the Trustee shall credit to the Subordinate Bond Fund the amount of such deficiency by charging the Revenue Fund; provided, however, in no event shall the amount due on the Subordinate Bonds exceed the Revenues, if any, for such applicable period.

Section 4.04 Application of Subordinate Bond Fund. The Trustee shall charge the Subordinate Bond Fund, on each Subordinate Bond Payment Date, an amount equal to available Revenues, if any, for such period, which shall be applied to interest due on the Subordinate Bonds on such Subordinate Bond Payment Date, and shall cause the same to be applied to the payment of such interest when due.

Income realized from the investment or deposit of money in the Subordinate Bond Fund shall be deposited by the Trustee upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Subordinate Bond Fund except as expressly provided in this Article IV and in Section 6.05.

Section 4.05 Investment of Funds. The money held by the Trustee shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Trustee, at the written direction of the Borrower in Investment Securities. The Trustee may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Trustee shall be entitled to assume, absent receipt by the Trustee of written notice to the contrary, that any investment that at the time of purchase is an Investment Security remains as Investment Security thereafter.

Investment Securities representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Trustee shall not be liable or responsible for any loss resulting from any investment made in accordance herewith.

The Issuer acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Issuer the right to receive brokerage confirmations of the security transactions as they occur. To the extent permitted by law, the Issuer specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Trustee hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur.

Section 4.06 Money Held for Particular Subordinate Bonds; Funds Held in Trust.

The amounts held by the Trustee for the payment of the interest, principal or redemption price due on any date with respect to particular Subordinate Bonds pending such payment, shall be set aside and held in trust by it for the Holders of the Subordinate Bonds entitled thereto, and for the purposes hereof such interest, principal or redemption price, after the due date thereof, shall no longer be considered to be unpaid.

All money held by the Trustee for such purpose at any time pursuant to the terms of this Subordinate Indenture shall be and hereby are assigned, transferred and set over unto the Trustee in trust for the purposes and under the terms and conditions of this Subordinate Indenture.

Section 4.07 Accounting Records. The Trustee shall maintain accurate books and records for all funds and accounts established hereunder and provide monthly statements (or other electronic access as agreed to by the parties) of such funds and accounts to the Issuer and the Borrower upon request.

Section 4.08 Amounts Remaining in Funds. After full payment of the Subordinate Bonds (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Issuer and the Trustee and other amounts required to be paid hereunder or under any Subordinate Loan Document, any amounts remaining in any fund or account hereunder shall be paid to the Borrower.

ARTICLE V

GENERAL COVENANTS AND REPRESENTATIONS

Section 5.01 Payment of Principal and Interest. The Issuer covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, and interest on the Subordinate Bonds at the place, on the dates and in the manner provided herein and in the Subordinate Bonds, according to the true intent and meaning thereof.

Section 5.02 Performance of Covenants. The Issuer covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Subordinate Indenture, in any and every Subordinate Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto.

Section 5.03 Representations and Warranties of the Issuer. The Issuer hereby represents and warrants as follows:

(a) The Issuer is a municipal corporation and chartered city duly organized and existing pursuant to its charter and the laws and constitution of the State of California.

(b) The Issuer has all necessary power and authority to issue the Subordinate Bonds and to execute and deliver this Subordinate Indenture, the Subordinate Loan Agreement and the other Subordinate Bond Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) Except with respect to the Senior Obligations, the revenues and assets pledged for the repayment of the Subordinate Bonds are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Subordinate Indenture, and all action on the part of the Issuer to that end has been duly and validly taken.

(d) The Subordinate Bond Documents to which the Issuer is a party have been validly authorized, executed and delivered by the Issuer, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

Section 5.04 Inspection of Project Books. The Issuer covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Trustee or the Subordinate Bondholder Representative may from time to time reasonably designate.

Section 5.05 Damage, Destruction or Condemnation. Net Proceeds resulting from casualty to or condemnation of the Project shall be applied, after satisfaction of all payment requirements under the Senior Loan Documents, as provided in the Subordinate Loan Documents.

Section 5.06 Tax Covenants.

(a) Issuer's Covenants. The Issuer covenants to and for the benefit of the Holders of the Subordinate Bonds that it will:

(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Subordinate Bonds or the money and investments held in the funds and accounts in any manner which would cause the Subordinate Bonds to be arbitrage bonds under Section 148 of the Code and the Regulations issued under Section 148 of the Code (the "Regulations") or which would otherwise cause the interest payable on the Subordinate Bonds to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all obligations of the Borrower under the Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Subordinate Bonds to be includable in gross income for federal income tax purposes;

(iv) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Issuer on the Subordinate

Bonds will be excluded from the gross income for federal income tax purposes, of the Subordinate Bondholders pursuant to the Code, except in the event where any such owner of Subordinate Bonds is a “substantial user” of the facilities financed with the Subordinate Bonds or a “related person” within the meaning of the Code; and

(v) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Subordinate Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations.

In furtherance of the covenants in this Section 5.06, the Issuer and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Subordinate Indenture and made a part of this Subordinate Indenture as if set forth in this Subordinate Indenture in full, and by its acceptance of this Subordinate Indenture the Trustee acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Subordinate Indenture by this reference and agrees to comply with the terms specifically applicable to it. In the event of a conflict between the terms of this Subordinate Indenture and the Tax Certificate, the terms of the Tax Certificate shall control.

(b) Trustee's Covenants. The Trustee agrees that it will invest funds held under this Subordinate Indenture in accordance with the covenants and terms of this Subordinate Indenture and the Tax Certificate (this covenant shall extend through the term of the Subordinate Bonds, to all funds and accounts created under this Subordinate Indenture and all money on deposit to the credit of any such fund or account). The Trustee covenants to and for the benefit of the Subordinate Bondholders that, notwithstanding any other provisions of this Subordinate Indenture or of any other Loan Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Subordinate Bonds to be classified as “arbitrage bonds” within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Subordinate Bonds to be includable in gross income for federal income tax purposes; provided that the Trustee shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower or the Issuer. This covenant shall extend, throughout the term of the Subordinate Bonds, to all funds created under this Subordinate Indenture and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Subordinate Indenture, the Trustee obligates itself to comply throughout the term of the issue of the Subordinate Bonds with the requirements of Sections 103(b) and 148 of the Code; provided that the Trustee shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower or the Issuer. The Trustee further covenants that should the Issuer or the Borrower file with the Trustee (it being understood that neither the Issuer nor the Borrower has an obligation to so file), or should the Trustee receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Subordinate Bonds would cause the Subordinate Bonds to become “arbitrage bonds,” then the Trustee will comply with any written instructions of the Issuer, the Borrower or Bond Counsel regarding such investment (which shall, in any event, be an Investment Security) or use so as to prevent the Subordinate Bonds from becoming “arbitrage bonds,” and the Trustee will bear no liability to the Issuer, the Borrower or the Subordinate Bondholders for investments made in accordance with such instructions.

ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND SUBORDINATE BONDHOLDERS

Section 6.01 Events of Default. Subject to applicable notice and cure rights, each of the following shall be an event of default with respect to the Subordinate Bonds (an “Event of Default”) under this Subordinate Indenture:

(a) failure to pay the principal of, or interest on any Subordinate Bond when due, to the extent sufficient Revenues are available therefor;

(b) failure by the Issuer or the Trustee to perform or observe any other of the covenants, agreements or conditions on its part in this Subordinate Indenture or in the Subordinate Bonds contained, and the continuation of such failure for a period of thirty (30) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Issuer or the Trustee by the Borrower, the Trustee or the Issuer, as applicable, or by the holders of not less than a majority in aggregate principal amount of the Subordinate Bonds at the time Outstanding; or if the breach is not reasonably capable of being cured, the Issuer or the Trustee does not commence to cure, correct or remedy such breach within thirty (30) days after receipt of a written notice specifying such breach and does not thereafter prosecute such cure, correction or remedy with diligence to completion; or

(c) the occurrence of any Event of Default under the Subordinate Loan Agreement upon written notice thereof, specifying such default and requiring the same to be remedied, delivered to the Issuer or the Trustee by the Borrower, the Trustee or the Issuer, as applicable, or by the holders of not less than a majority in aggregate principal amount of the Subordinate Bonds at the time Outstanding.

Prior to the Maturity Date, the Trustee and the Issuer agree that a failure to pay any amounts required to be paid under this Subordinate Indenture as a result of a deficiency of available Revenues shall not constitute an Event of Default hereunder.

Notwithstanding anything to the contrary contained herein, the Borrower’s Investor Limited Partner shall have the right, but not the obligation, to cure an Event of Default hereunder. Any cure of any default made or tendered by Investor Limited Partner shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

Section 6.02 Acceleration; Other Remedies Upon Event of Default.

(a) Upon the occurrence of an Event of Default under Section 6.01(b) hereof, the Trustee shall, upon the written direction of the Subordinate Bondholder Representative, and the consent of the Senior Bondowner, if required, and receipt of indemnity satisfactory to it, by notice in writing delivered to the Issuer, declare the principal of all Subordinate Bonds then Outstanding and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

(b) Upon the occurrence of an Event of Default (other than an Event of Default under Section 6.01(b) hereof), the Trustee shall, but only upon the written direction of the Subordinate Bondholder Representative, by notice in writing delivered to the Issuer, declare

the principal of all Subordinate Bonds then Outstanding and the interest accrued thereon immediately due and payable and interest on the Subordinate Bonds shall cease to accrue, anything contained in this Subordinate Indenture or in the Subordinate Bonds to the contrary notwithstanding.

If at any time after the Subordinate Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Issuer or the Borrower shall pay to or deposit with the Trustee a sum sufficient to pay all principal of the Subordinate Bonds then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) upon all the Subordinate Bonds then due, with interest at the rate borne by the Subordinate Bonds on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Trustee (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor (collectively, the "Cure Amount")) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Subordinate Bondholder Representative, then and in every case, the Trustee on behalf of the Holders of all the Outstanding Subordinate Bonds shall rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Holders of all Subordinate Bonds with respect to which such an Event of Default has occurred (if no Event of Default has occurred and is continuing under Section 6.01(b)), may also proceed to protect and enforce any rights of the Trustee and, to the full extent that the Holders of such Subordinate Bonds themselves might do, the rights of such Subordinate Bondholders under the laws of the State or under this Subordinate Indenture by such of the following remedies as the Trustee shall deem most effectual to protect and enforce such rights:

(i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of or interest on the Subordinate Bonds then Outstanding and to require the Issuer to carry out any covenants or agreements with or for the benefit of the Subordinate Bondholders and to perform its duties under the Act, this Subordinate Indenture, the Subordinate Loan Agreement or the Regulatory Agreement to the extent permitted under the applicable provisions thereof;

(ii) by pursuing any available remedies under the Subordinate Loan Agreement or any Subordinate Loan Document or the Regulatory Agreement;

(iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Holders of the Subordinate Bonds and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Subordinate Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Subordinate Indenture conferred upon or reserved to the Trustee or to the Subordinate Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee, the Subordinate Bondholders hereunder or under the Subordinate Loan Agreement or any other Subordinate Loan Document or the Regulatory Agreement, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Trustee or the Subordinate Bondholders, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

Section 6.03 Rights of Subordinate Bondholders. If an Event of Default under Section 6.01(b) hereof shall have occurred and is then continuing, and if requested in writing so to do by the Holder of 100% of the aggregate principal amount of the Subordinate Bonds then Outstanding with respect to which there is a default, and if indemnified to its satisfaction, the Trustee shall exercise one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel or a committee of Responsible Officers, shall deem to be in the best interest of the affected Subordinate Bondholders. If an Event of Default under Section 6.01(b) hereof shall have occurred and is then continuing, the Holder of 100% of the aggregate principal amount of the Subordinate Bonds then Outstanding with respect to which an Event of Default has occurred shall have the right at any time, subject to the provisions of Section 6.07 hereof, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Subordinate Indenture, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Subordinate Indenture.

Section 6.04 Waiver by Issuer. Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Issuer nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Subordinate Indenture; and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and redemption to which it may be entitled under the laws of the State and the United States.

Section 6.05 Application of Money After Default. All money collected by the Trustee at any time pursuant to this Article VI shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Trustee to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund and the Subordinate Bond Fund available for the payment of interest or principal then due with respect to the Subordinate Bonds shall be insufficient for such payment, such money (other than money held for the payment or redemption of particular Subordinate Bonds as provided in Section 4.08 hereof) shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Trustee incurred in performance of its duties under this Subordinate Indenture, including, without limitation, the payment of all reasonable fees and expenses of the Trustee incurred in exercising any remedies under this Subordinate Indenture;

(b) Unless the principal of all Subordinate Bonds shall have become or have been declared due and payable:

FIRST: to the payment to the Persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available is not sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or preference; and

SECOND: to the payment to the Persons entitled thereto of the unpaid principal of and, on any Subordinate Bonds which shall have become due, whether at maturity or by call for redemption, in the order in which they became due and payable, and, if the amount available is not sufficient to pay in full all the principal of and, on the Subordinate Bonds so due on any date, then to the payment of principal ratably, according to the amounts due on such date, to the Persons entitled thereto, without any discrimination or preference, and then to the payment of any premium (if any) due on the Subordinate Bonds, ratably, according to the amounts due on such date, to the Persons entitled thereto, without any discrimination or preference.

(c) If the principal of all of the Subordinate Bonds shall have become or have been declared due and payable, to the payment of the principal of, and interest then due and unpaid upon the Subordinate Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Subordinate Bond over any other Subordinate Bond, ratably, according to the amounts due, respectively, for principal and interest, to the Persons entitled thereto without any discrimination or preference except as to any differences in the respective rates of interest specified in the Subordinate Bonds.

Section 6.06 Remedies Vested in Trustee. All rights of action, including the right to file proof of claims, under this Subordinate Indenture or under any of the Subordinate Bonds may be enforced by the Trustee without the possession of any of the Subordinate Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Subordinate Bonds, and any recovery or judgment shall be for the mutual benefit as provided herein of all of the Holders of the Outstanding Subordinate Bonds.

Section 6.07 Remedies of Subordinate Bondholders. No Holder of any Subordinate Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Subordinate Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default shall have occurred of which the Trustee shall have been notified as provided herein; (b) such default shall have become an Event of Default under Section 6.01(b) hereof; (c) the Holder of 100% of the aggregate principal amount of the Subordinate Bonds then Outstanding with respect to which there is such an Event of Default shall have made written request to the Trustee and shall have offered reasonable opportunity to the Trustee either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (d) such

Holders shall have offered to the Trustee indemnity as provided in this Subordinate Indenture; and (e) the Trustee shall within sixty (60) days thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding; it being understood and intended that no one or more Holders of the Subordinate Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Subordinate Indenture or the rights of any other Holders of Subordinate Bonds or to obtain priority or preference over any other Holders or to enforce any right under this Subordinate Indenture, except in the manner herein provided with respect to the equal and ratable benefit of all Holders of Subordinate Bonds with respect to which there is a default. Nothing contained in this Subordinate Indenture shall, however, affect or impair the right of any Subordinate Bondholder to enforce the payment of the principal of and interest on any Subordinate Bond at the maturity thereof or the obligation of the Issuer to pay the principal of, and interest on the Subordinate Bonds issued hereunder to the respective holders thereof, at the time, in the place, from the sources and in the manner expressed herein and in said Subordinate Bonds.

Section 6.08 Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Subordinate Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee, the Subordinate Bondholder Representative, the Borrower and the Subordinate Bondholders shall be restored to their former positions and rights hereunder with respect to the Subordinate Trust Estate herein conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 6.09 Waivers of Events of Default. So long as no Event of Default has occurred and is then continuing under Section 6.01(b) or Section 6.01(c) hereof, the Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of, and interest on the Subordinate Bonds only upon the written direction of the Subordinate Bondholder Representative. If there shall have occurred and is then continuing an Event of Default under Section 6.01(b) or Section 6.01(c) hereof, the Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of, and interest on the Subordinate Bonds upon the written request of the Holders of 100% of the Subordinate Bonds then Outstanding with respect to which there is a default; provided, however, that there shall not be waived (a) any Event of Default in the payment of the principal of any Subordinate Bonds at the date of maturity specified therein, or upon proceedings for mandatory redemption of any Subordinate Bonds, (b) any default in the payment when due of the interest on any such Subordinate Bonds, unless prior to such waiver or rescission all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Subordinate Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal or when due (whether at the stated maturity thereof or upon proceedings for mandatory redemption) as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee, and the Subordinate Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

Section 6.10 Notice to Subordinate Bondholders if Default Occurs. Upon the occurrence of an Event of Default, or if an event occurs which could lead to an Event of Default

with the passage of time and of which the Trustee is required to take notice pursuant to Section 7.02(k) hereof, the Trustee shall, within thirty (30) days, give written notice thereof by first class mail to the registered Owners of all Subordinate Bonds then Outstanding. Notwithstanding the foregoing, except in the case of an Event of Default with respect to the payment of principal of or and interest on the Subordinate Bonds, the Trustee shall be protected in withholding such notice if and so long as the board of directors of the Trustee, the executive committee, or a trust committee of directors or officers of the Trustee in good faith determines that the withholding of such notice is in the best interests of the Holders of the Subordinate Bonds.

ARTICLE VII

CONCERNING THE TRUSTEE

Section 7.01 Standard of Care. The Trustee, prior to an Event of Default as defined in Section 6.01 and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Subordinate Indenture. The Trustee, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Subordinate Indenture and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs.

No provision of this Subordinate Indenture shall be construed to relieve the Trustee from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Subordinate Indenture, and the Trustee shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Subordinate Indenture; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Trustee by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Trustee shall not be liable for any error of judgment made in good faith by an officer or employee of the Trustee except for willful misconduct or negligence by the officer or employee of the Trustee as the case may be; and

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Subordinate Bondholder Representative or the Holder of 100% of the aggregate principal amount of the Subordinate Bonds then Outstanding (or such lesser or greater percentage as is specifically required or permitted by this Subordinate Indenture) relating to the time, method and place of

conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Subordinate Indenture.

Section 7.02 Reliance Upon Documents. Except as otherwise provided in Section 7.01:

(a) the Trustee may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document of the proper party or parties, including any facsimile transmission as permitted hereunder or under the Subordinate Loan Agreement;

(b) any notice, request, direction, election, order or demand of the Issuer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Issuer by an Authorized Officer of the Issuer (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Issuer may be evidenced to the Trustee by a copy of such resolution duly certified by an Authorized Officer of the Issuer;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Trustee by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, direction, election, order or demand of the Subordinate Bondholder Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Subordinate Bondholder Representative by any Authorized Officer of the Subordinate Bondholder Representative (unless other evidence in respect thereof be herein specifically prescribed);

(e) in the administration of the trusts of this Subordinate Indenture, the Trustee may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys, and the Trustee may consult with counsel and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(f) whenever in the administration of the trusts of this Subordinate Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Issuer or the Borrower and such certificate shall in the absence of bad faith on the part of the Trustee be full warrant to the Trustee for any action taken or permitted by it under the provisions of this Subordinate Indenture, but in its discretion the Trustee may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(g) the recitals herein and in the Subordinate Bonds (except the Trustee's certificate of authentication thereon) shall be taken as the statements of the Issuer and the Borrower and shall not be considered as made by or imposing any obligation or liability upon the Trustee. The Trustee makes no representations as to the value or condition of the Subordinate Trust Estate or any part thereof, or as to the title of the Issuer or the Borrower to the Subordinate Trust Estate, or as to the security of this Subordinate Indenture, or of the Subordinate Bonds issued hereunder, and the Trustee shall incur no liability or responsibility in respect of any of such matters;

(h) the Trustee shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Subordinate Trust Estate except for its own willful misconduct or negligence; and every provision of this Subordinate Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.02(h);

(i) the Trustee shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Trustee) herein or in any contracts or securities assigned or conveyed to or pledged with the Trustee hereunder, except Events of Default that are evident under Section 6.01(a) or Section 6.01(b) hereof. The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) or Section 6.01(b) hereof) unless the Trustee shall receive from the Issuer, the Subordinate Bondholder Representative or the Holder of 100% of the aggregate principal amount of the Subordinate Bonds then Outstanding written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Trustee may conclusively assume that there is not such default. Every provision contained in this Subordinate Indenture or related instruments or in any such contract or security wherein the duty of the Trustee depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(k);

(j) the Trustee shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Trustee, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Holder of any Subordinate Bond; and

(k) the Trustee shall be under no obligation to exercise those rights or powers vested in it by this Subordinate Indenture, other than such rights and powers which it shall be obliged to exercise in the ordinary course of its trusteeship under the terms and provisions of this Subordinate Indenture and as required by law, at the request or direction of any of the Subordinate Bondholders pursuant to Sections 6.03 and 6.07 of this Subordinate Indenture, unless such Subordinate Bondholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Subordinate Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Trustee is authorized and directed to execute in its capacity as Trustee the Subordinate Loan Agreement, the Subordination Agreement and the Regulatory Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Subordinate Bonds.

The Trustee or any of its affiliates may act as advisor or sponsor with respect to any Investment Securities.

The Trustee agrees to accept and act upon facsimile transmission or Electronic Notice of written instructions and/or directions pursuant to this Subordinate Indenture provided, however, that: (a) subsequent to such facsimile transmission or Electronic Notice of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, (b) such originally executed instructions and/or directions shall be signed by such Person as may be designated and authorized to sign for the party signing such instructions and/or directions, and (c) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated Person.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Trustee pursuant to this Section 7.02 shall remain in effect until the Trustee receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Trustee shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.16 hereof.

Section 7.03 Use of Proceeds. The Trustee shall not be accountable for the use or application of any of the Subordinate Bonds authenticated or delivered hereunder or of the proceeds of the Subordinate Bonds except as provided herein.

Section 7.04 Trustee May Hold Subordinate Bonds. The Trustee and its officers and directors may acquire and hold, or become pledgees of Subordinate Bonds and otherwise may deal with the Issuer and the Borrower in the same manner and to the same extent and with like effect as though it were not Trustee hereunder.

Section 7.05 Trust Imposed. All money received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received.

Section 7.06 Compensation of Trustee. The Trustee shall be entitled to its acceptance fee and its annual administration fee, payable by the Borrower pursuant to the Subordinate Loan Agreement, in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Trustee hereunder. The Trustee shall be entitled to extraordinary fees and expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Subordinate Loan Documents; provided the Trustee shall not incur any extraordinary fees and expenses without the consent of the Subordinate Bondholder Representative (except that no consent shall be required if an Event of Default under 6.01(b) has occurred and is continuing). If any property, other than cash, shall at any time be held by the Trustee subject to this Subordinate Indenture, or any supplemental indenture, as security for the Subordinate Bonds, the Trustee, if and to the extent authorized by a receivership,

bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Subordinate Indenture as such security for the Subordinate Bonds, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Trustee for its services and reimbursement to the Trustee for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Subordinate Loan Agreement and in Sections 4.08 and 6.05 hereof. The Issuer shall have no liability for Trustee's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Trustee agrees that it shall continue to perform its duties hereunder (including, but not limited to, its duties as Paying Agent and Subordinate Bond Registrar) and under the Subordinate Loan Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Trustee's fees and expenses as required by the Subordinate Loan Agreement.

The Borrower shall indemnify and hold harmless the Trustee and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any Person arising from any cause whatsoever in connection with this Subordinate Indenture or transactions contemplated hereby, the Project, or the issuance of the Subordinate Bonds; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the issuance of the Subordinate Bonds; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any Person for damages caused by the negligence, willful misconduct or unlawful acts of such Person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Trustee, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section shall survive the termination of this Subordinate Indenture.

Section 7.07 Qualifications of Trustee. There shall at all times be a Trustee hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Trustee shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.11. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section and another association or corporation is eligible, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.09.

Section 7.08 Merger of Trustee. Any association or corporation into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Trustee hereunder and vested with all the title to the whole property or Subordinate Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Trustee in respect of the beneficial interest of the Trustee in the Subordinate Loan.

Section 7.09 Resignation by the Trustee. The Trustee may at any time resign from the trusts hereby created by giving written notice to the Issuer, the Borrower and the Subordinate Bondholder Representative, and by giving notice by certified mail or overnight delivery service to each Holder of the Subordinate Bonds then Outstanding. Such notice to the Issuer, the Borrower and the Subordinate Bondholder Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Trustee shall not be effective until a successor Trustee has been appointed as provided herein and such successor Trustee shall have agreed in writing to be bound by the duties and obligations of the Trustee hereunder.

Section 7.10 Removal of the Trustee. The Trustee may be removed at any time, either with or without cause, with the consent of the Subordinate Bondholder Representative (which consent of the Subordinate Bondholder Representative shall not be unreasonably withheld and which approval shall be deemed given after fifteen (15) days if the Subordinate Bondholder Representative has not responded to a written request for such approval) by a written instrument signed by the Issuer and delivered to the Trustee and the Borrower, and if an Event of Default shall have occurred and be continuing, other than an Event of Default under Section 6.01(b), by a written instrument signed by the Subordinate Bondholder Representative and delivered to the Trustee, the Issuer and the Borrower. The Trustee may also be removed, if an Event of Default under Section 6.01(b) shall have occurred and be continuing, by a written instrument or concurrent instruments signed by the Holder of 100% of the aggregate principal amount of the Subordinate Bonds then Outstanding and delivered to the Trustee, the Issuer, the Borrower and the Subordinate Bondholder Representative. The Trustee may also be removed by the Subordinate Bondholder Representative following notice to the Issuer and after a thirty (30) day period during which the Issuer may attempt to cause the Trustee to discharge its duties in a manner acceptable to Subordinate Bondholder Representative, and in each case written notice of such removal shall be given to the Servicer, the Borrower and to each registered Owner of Subordinate Bonds then Outstanding as shown on the Subordinate Bond Registrar. Any such removal shall take effect on the day specified in such written instrument(s), but the Trustee shall not be discharged from the trusts hereby created until a successor Trustee has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Trustee hereunder.

Section 7.11 Appointment of Successor Trustee.

(a) In case at any time the Trustee shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Trustee or of its property shall be appointed, or if a public supervisory office shall take charge or control of

the Trustee or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Trustee hereunder, and the Issuer, with the written consent of the Subordinate Bondholder Representative (which consent shall not be unreasonably withheld and which consent shall be deemed given after fifteen (15) days if the applicable party has not responded to a written request from the Issuer for such consent), shall promptly appoint a successor Trustee. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Issuer.

(b) If, in a proper case, no appointment of a successor Trustee shall be made pursuant to subsection (a) of this Section 7.11 within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 or of removal of the Trustee pursuant to Section 7.10, the retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Section 7.12 Concerning Any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer a written instrument accepting such appointment hereunder, accepting assignment of the beneficial interest in the Subordinate Mortgage, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Subordinate Trust Estate and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, the Borrower or the Subordinate Bondholder Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Trustee all the Subordinate Trust Estate and the rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and money held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by a successor Trustee for more fully and certainly vesting in such successor the Subordinate Trust Estate and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Trustee in each recording office where this Subordinate Indenture shall have been filed and/or recorded. Each successor Trustee shall mail notice by first class mail, postage prepaid, at least once within 30 days of such appointment, to the Owners of all Subordinate Bonds Outstanding at their addresses on the Subordinate Bond Register.

Section 7.13 Successor Trustee as Trustee, Paying Agent and Subordinate Bond Registrar. In the event of a change in the office of Trustee, the predecessor Trustee which shall have resigned or shall have been removed shall cease to be trustee and paying agent on the Subordinate Bonds and Subordinate Bond Registrar, and the successor Trustee shall become such Trustee, Paying Agent and Subordinate Bond Registrar.

Section 7.14 Appointment of Co-Trustee or Separate Trustee. It is the intent of the Issuer and the Trustee that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in case of litigation under or connected with this Subordinate Indenture, the Subordinate Loan Agreement or any of the other Subordinate Loan Documents, and, in particular, in case of the enforcement

of any remedies on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Trustee or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee, with the consent of the Issuer, appoint an additional individual or institution as a co-trustee or separate trustee.

In the event that the Trustee appoints an additional individual or institution as a co-trustee or separate trustee, in the event of the incapacity or lack of authority of the Trustee, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Trustee herein or to hold title to the Subordinate Trust Estate or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Subordinate Indenture to be imposed upon, exercised by or vested in or conveyed to the Trustee with respect thereto shall be imposed upon, exercisable by and vest in such separate trustee or co-trustee, but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-trustee or separate trustee shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Issuer and the Trustee.

Should any instrument in writing from the Issuer be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer, the Trustee and the Borrower. If the Issuer shall fail to deliver the same within thirty (30) days of such request, the Trustee is hereby appointed attorney-in-fact for the Issuer to execute, acknowledge and deliver such instruments in the Issuer's name and stead. In case any co-trustee or separate trustee, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such co-trustee or separate trustee.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) The Subordinate Bonds shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Subordinate Indenture conferred upon the Trustee in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Trustee;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon or exercised or performed by the Trustee, or by the Trustee and such co-trustee, or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or separate trustee;

(c) any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co-trustee or separate trustee;

(d) any co-trustee or separate trustee to the extent permitted by law shall delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Trustee at any time by an instrument in writing with the concurrence of the Issuer evidenced by a certified resolution may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section and in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of or remove any such co-trustee or separate trustee without the concurrence of the Issuer, and upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section;

(f) no Trustee or co-trustee hereunder shall be personally liable by reason of any act or omission of any other Trustee hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Subordinate Bondholders and delivered to the Trustee shall be deemed to have been delivered to each such co-trustee or separate trustee; and

(h) any money, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

The total compensation of the Trustee and co-trustee or separate trustee shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

Section 7.15 Notice of Certain Events. The Trustee shall give written notice to the Issuer, the Servicer and the Subordinate Bondholder Representative of any failure by the Borrower to comply with the terms of the Regulatory Agreement of which a Responsible Officer has actual knowledge.

Section 7.16 Filing of Financing Statements. The Trustee shall, at the expense of the Borrower, file or record or cause to be filed or recorded all UCC continuation statements for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Closing Date in connection with the security for the Subordinate Bonds pursuant to the authority of the UCC. Upon the filing of any such continuation statement the Trustee shall immediately notify the Issuer, the Borrower, the Subordinate Bondholder Representative and the Servicer that the same has been done. If direction is given by the Servicer or the Subordinate Bondholder Representative, the Trustee shall file all continuation statements in accordance with such directions.

ARTICLE VIII

SUPPLEMENTAL INDENTURES AND AMENDMENTS OF CERTAIN DOCUMENTS

Section 8.01 Supplemental Indentures Not Requiring Consent of Subordinate Bondholders. The Issuer and the Trustee may from time to time and at any time, without the consent of, or notice to, any of the Subordinate Bondholders, but with the prior written consent of the Subordinate Bondholder Representative, enter into an indenture or indentures supplemental to this Subordinate Indenture for any one or more of the following purposes:

(a) to cure any formal defect, omission, inconsistency or ambiguity herein in a manner not materially adverse to the Holder of any Subordinate Bond to be Outstanding after the effective date of the change;

(b) to grant to or confer upon the Trustee for the benefit of the Holders of the Subordinate Bonds any additional rights, remedies, powers or authority that may lawfully be granted or conferred and that are not contrary to or inconsistent with this Subordinate Indenture or the rights of the Trustee hereunder as theretofore in effect;

(c) to subject to the lien and pledge of this Subordinate Indenture additional revenues, properties or collateral;

(d) to modify, amend or supplement this Subordinate Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or to permit the qualification of the Subordinate Bonds for sale under any state blue sky laws;

(e) to make such additions, deletions or modifications as may be, in the opinion of Bond Counsel delivered to the Issuer and the Trustee, necessary to maintain the exclusion from gross income for federal income tax purposes of interest on the Subordinate Bonds; or

(f) to modify, amend or supplement this Subordinate Indenture in any other respect which is not materially adverse to the Holders of the Subordinate Bonds to be Outstanding after the effective date of the change and which does not involve a change described in Section 8.02.

Section 8.02 Supplemental Indentures Requiring Consent of Subordinate Bondholders. With the prior written consent of the Subordinate Bondholder Representative, the Holders of 100% of the aggregate principal amount of the Subordinate Bonds then Outstanding shall have the right, from time to time, to consent to and approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Subordinate Indenture; provided, however, that nothing in this Section contained shall permit, or be construed as permitting, (a) an extension of the time for payment of, or an extension of the stated maturity or reduction in the principal amount or reduction in the rate of interest on or extension of the time of payment, of interest on, or reduction of any premium (if any) payable on the redemption of, any Subordinate Bonds, or a reduction in the Borrower's obligation on the

Subordinate Note, without the consent of the Holders of all of the Subordinate Bonds then Outstanding, (b) the creation of any lien prior to or on a parity with the lien of this Subordinate Indenture, (c) a reduction in the aforesaid percentage of the principal amount of Subordinate Bonds which is required in connection with the giving of consent to any such supplemental indenture, without the consent of the Holders of all of the Subordinate Bonds then Outstanding, (d) the modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, (e) a privilege or priority of any Subordinate Bond over any other Subordinate Bonds, or (f) any action that results in the interest on the Subordinate Bonds becoming included in gross income for federal income tax purposes.

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed, postage prepaid, to all registered Subordinate Bondholders and to the Subordinate Bondholder Representative. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Subordinate Bondholders.

Thirty (30) days after the date of the mailing of such notice, the Issuer and the Trustee may enter into such supplemental indenture substantially in the form described in such notice, but only if there shall have first been or is simultaneously delivered to the Trustee the required consents, in writing, of the Subordinate Bondholder Representative and the Holders of not less than the percentage of Subordinate Bonds required by this Section 8.02. If the Holders of not less than the percentage of Subordinate Bonds required by this Section 8.02 shall have consented to and approved the execution and delivery of a supplemental indenture as provided herein, no Holder of any Subordinate Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section 8.02 permitted and provided, this Subordinate Indenture shall be and be deemed to be modified and amended in accordance therewith. The Trustee may rely upon an opinion of counsel as conclusive evidence that execution and delivery of a supplemental indenture has been effected in compliance with the provisions of this Article VIII.

Anything in this Article VIII to the contrary notwithstanding, unless the Borrower shall then be in default of any of its obligations under the Subordinate Loan Agreement, the Regulatory Agreement, the Subordinate Note or the Subordinate Mortgage, a supplemental indenture under this Article VIII which affects any rights of the Borrower shall not become effective unless and until the Borrower shall have expressly consented in writing to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture to be mailed by certified or registered mail to the Borrower or the Borrower's attorney at least fifteen (15) days prior to the proposed date of execution and delivery of any supplemental indenture.

Notwithstanding any other provision of this Subordinate Indenture, the Issuer and the Trustee may consent to any supplemental indenture upon receipt of the consent of the Subordinate Bondholder Representative, the Holders of all Subordinate Bonds then Outstanding and, as applicable, the Borrower.

Section 8.03 Amendments to Subordinate Loan Agreement Not Requiring Consent of Subordinate Bondholders. The Trustee shall, without the consent of, or notice to, the Subordinate Bondholders, but with the consent of the Borrower and the Subordinate Bondholder Representative, consent to any amendment, change or modification of the Subordinate Loan Agreement as follows:

(a) as may be required by the provisions of Subordinate Loan Agreement or this Subordinate Indenture;

(b) to cure any formal defect, omission, inconsistency or ambiguity in the Subordinate Loan Agreement in a manner not materially adverse to the Holder of any Subordinate Bond to be Outstanding after the effective date of the change;

(c) to make such additions, deletions or modifications as may be necessary, in the opinion of Bond Counsel delivered to the Issuer and the Trustee, to maintain the exclusion from gross income for federal income tax purposes of interest on the Subordinate Bonds; or

(d) to modify, amend or supplement the Subordinate Loan Agreement in any other respect which is not materially adverse to the Trustee or Holders of the Subordinate Bonds to be Outstanding after the effective date of the change and which does not involve a change described in Section 8.04.

Section 8.04 Amendments to Subordinate Loan Agreement Requiring Consent of Subordinate Bondholders. Except for the amendments, changes or modifications of the Subordinate Loan Agreement as provided in Section 8.03 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Subordinate Loan Agreement without the consent of the Subordinate Bondholder Representative, and the Borrower and without the giving of notice and the written approval or consent of the Holder of 100% of the aggregate principal amount of the Subordinate Bonds then Outstanding given and procured in accordance with the procedure set forth in Section 8.02 hereof; provided, however, that nothing contained in this Section 8.04 shall permit, or be construed as permitting, any amendment, change or modification of the Borrower's obligation to make the payments required under the Subordinate Loan Agreement without the consent of the Holders of all of the Subordinate Bonds then Outstanding. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of the Subordinate Loan Agreement, the Trustee shall cause notice of such proposed amendment, change or modification to be given in the same manner as provided in Section 8.02 hereof. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Trustee for inspection by Subordinate Bondholders.

Section 8.05 Consent of Senior Bondowner. So long as the Senior Obligations remain outstanding, no supplement or amendment to the Subordinate Loan Agreement or this Subordinate Indenture, as described in this Article VIII, shall be effective except upon receipt by the Trustee of the written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, thereto of the Senior Bondowner.

Section 8.06 Opinion of Bond Counsel Required. No supplement or amendment to the Subordinate Loan Agreement or this Subordinate Indenture, as described in this Article VIII, shall be effective until the Issuer, the Trustee and the Subordinate Bondholder Representative

shall have received an opinion of Bond Counsel to the effect that such supplement or amendment is authorized or permitted by this Subordinate Indenture and, upon execution and delivery thereof, will be valid and binding upon the Issuer in accordance with its terms and will not cause interest on the Subordinate Bonds to be includable in gross income of the Holders thereof for federal income tax purposes. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it as conclusive evidence that (i) any proposed supplemental indenture or amendment permitted by this Article VIII complies with the provisions of this Subordinate Indenture, (ii) it is proper for the Trustee to join in the execution of that supplemental indenture or amendment under the provisions of this Article VIII, and (iii) if applicable, such proposed supplemental indenture or amendment is not materially adverse to the interests of the Subordinate Bondholders.

ARTICLE IX

SATISFACTION AND DISCHARGE OF INDENTURE

Section 9.01 Discharge of Lien. If the Issuer shall pay or cause to be paid to the Holders of the Subordinate Bonds the principal and interest to become due thereon at the times and in the manner stipulated therein and herein, in any one or more of the following ways:

(a) by the payment of the principal of and interest on all Subordinate Bonds Outstanding; or

(b) by the deposit or credit to the account of the Trustee, in trust, of money or securities in the necessary amount (as provided in Section 9.04) to pay the principal, redemption price and interest to the date established for redemption whether by redemption or otherwise; or

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

and shall have paid all amounts due and owing to the Subordinate Bondholder Representative hereunder, and shall have paid all fees and expenses of and any other amounts due to the Trustee, and if the Issuer shall keep, perform and observe all and singular the covenants and promises in the Subordinate Bonds and in this Subordinate Indenture expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Trustee shall cancel and discharge the lien of this Subordinate Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any interest in property at the time subject to the lien of this Subordinate Indenture which may then be in its possession, except amounts held by the Trustee for the payment of principal of, interest, on the Subordinate Bonds.

Any Outstanding Subordinate Bond shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 if, under circumstances that do not cause interest on the Subordinate Bonds to become includable in the Holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) in case such Subordinate Bond is to be redeemed on any date prior to its maturity, the Trustee shall have given to the Subordinate Bondholder irrevocable notice of redemption of such Subordinate Bond on said

date; (b) there shall be on deposit with the Trustee, pursuant to Section 9.04 hereof, either money or direct obligations of the United States of America in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal or redemption price, if applicable, and interest due and to become due on such Subordinate Bond on the redemption date or Maturity Date thereof, as the case may be; and (c) in the case of Subordinate Bonds which do not mature or will not be redeemed within Sixty (60) days of such deposit, the Trustee shall have received a verification report of a firm of certified public accountants reasonably acceptable to the Trustee as to the adequacy of the amounts so deposited to fully pay the Subordinate Bonds deemed to be paid.

The Trustee shall in no event cause the Subordinate Bonds to be optionally redeemed from money deposited pursuant to this Article IX unless the requirements of Article III have been met with respect to such redemption.

Section 9.02 Discharge of Liability on Subordinate Bonds. Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01) to pay or redeem Outstanding Subordinate Bonds (whether upon or prior to their maturity or the redemption date of such Subordinate Bonds) and, if such Subordinate Bonds are to be redeemed prior to the maturity thereof, upon the giving of notice of such redemption in accordance with Article III (or provision satisfactory to the Trustee having been made for the giving of such notice), all liability of the Issuer in respect of such Subordinate Bonds shall cease, terminate and be completely discharged, except only that thereafter the holders thereof shall be entitled to payment by the Issuer, and the Issuer shall remain liable for such payment, but only out of the money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 9.04.

Section 9.03 Payment of Subordinate Bonds After Discharge of Indenture. Notwithstanding any provisions of this Subordinate Indenture, and subject to applicable unclaimed property laws of the State, any money deposited with the Trustee or any paying agent in trust for the payment of the principal of, interest on the Subordinate Bonds remaining unclaimed for two (2) years after the payment thereof, to the extent permitted by applicable law, shall be paid to the Borrower, whereupon all liability of the Issuer and the Trustee with respect to such money shall cease, and the holders of the Subordinate Bonds shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Trustee and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

Section 9.04 Deposit of Money or Securities With Trustee. Whenever in this Subordinate Indenture it is provided or permitted that there be deposited with or credited to the account of or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Subordinate Bonds, the money or securities so to be deposited or held shall consist of:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Subordinate Bonds and all unpaid interest thereon to maturity, except that, in the case of Subordinate Bonds which are to be redeemed prior to maturity and in respect of which there shall have been furnished to the Trustee proof satisfactory to it that notice of such redemption on a specified redemption date has been duly given or provision satisfactory to the Trustee shall be made for such notice, the amount so to be deposited or held shall be the principal amount of such Subordinate Bonds and interest thereon to the redemption date; or

(b) noncallable and nonprepayable direct obligations of the United States of America or noncallable and nonprepayable obligations which as to principal and interest constitute full faith and credit obligations of the United States of America, in such amounts and maturing at such times that the proceeds of said obligations received upon their respective maturities and interest payment dates, without further reinvestment, will provide funds sufficient, in the opinion of a nationally recognized firm of certified public accountants, to pay the principal, and interest to maturity, or to the redemption date, as the case may be, with respect to all of the Subordinate Bonds to be paid or redeemed, as such principal, and interest become due; provided that the Trustee shall have been irrevocably instructed by the Issuer to apply the proceeds of said obligations to the payment of said principal, and interest with respect to such Subordinate Bonds.

ARTICLE X

MISCELLANEOUS

Section 10.01 Consents and Other Instruments of Subordinate Bondholders. Any consent, request, direction, approval, waiver, objection, appointment or other instrument required by this Subordinate Indenture to be signed and executed by the Subordinate Bondholders may be signed and executed in any number of concurrent writings of similar tenor and may be signed or executed by such Subordinate Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument, if made in the following manner, shall be sufficient for any of the purposes of this Subordinate Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such instrument, namely:

(a) the fact and date of the execution by any Person of any such instrument may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the Person signing such instrument acknowledged the execution thereof. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such affidavit or certificate shall also constitute sufficient proof of such authority;

(b) the ownership of registered Subordinate Bonds shall be proved by the Subordinate Bond Register; and

(c) any request, consent or vote of the Holder of any Subordinate Bond shall bind every future Holder of the same Subordinate Bond and the Holder of every Subordinate Bond issued in exchange therefor or in lieu thereof, in respect of anything done or permitted to be done by the Trustee or the Issuer in pursuance of such request, consent or vote.

Section 10.02 Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Subordinate Indenture or the Subordinate Bonds is intended or shall be construed to give to any Person other than the Parties hereto, the Subordinate Bondholder Representative, the Borrower and the Holders of the Subordinate Bonds, any legal or equitable right, remedy or claim under or in respect to this Subordinate Indenture or any covenants, conditions and provisions hereof.

Section 10.03 Severability. If any provision of this Subordinate Indenture shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular

case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Subordinate Indenture contained, shall not affect the remaining portions of this Subordinate Indenture, or any part thereof.

Section 10.04 Notices.

(a) Any provision of this Subordinate Indenture relating to the mailing of notice or other communication to Subordinate Bondholders shall be deemed fully complied with if such notice or other communication is mailed, by first class mail, postage prepaid, to each registered Owner of any Subordinate Bonds then Outstanding at the address of such registered Owner as it appears on the Subordinate Bond Register. Whenever in this Subordinate Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Issuer, the Trustee, the Subordinate Bondholder Representative, or the Borrower shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Subordinate Indenture by Electronic Notice or by a facsimile transmission for which a confirmation of receipt has been delivered. The Issuer, the Trustee, the Subordinate Bondholder Representative, or the Borrower may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Trustee:

U.S. Bank National Association
One California Street, Suite 1000
San Francisco, California 94111
Attention: Global Corporate Trust Services
Facsimile: (415) 677-3769

The City:

City of San José
Finance Department
200 East Santa Clara Street, 13th Floor Tower
San José, California 95113-1905
Attention: Debt Management
Facsimile: (408) 292-6482

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

City of San José
Department of Housing
200 East Santa Clara Street, 12th Floor Tower
San José, California 95113-1905
Attention: Director of Housing
Facsimile: (408) 998-3183

San José City Attorney's Office
200 E. Santa Clara Street, 16th Floor Tower
San José, California 95113
Attention: City Attorney
Facsimile: (408) 998-3131

Jones Hall, A Professional Law Corporation
475 Sansome Street, Suite 1700
San Francisco, California 94111
Attention: Josh Anzel, Esq.
Facsimile: (415) 276-2088

The Subordinate Bondholder
Representative:

Tully Gardens, L.P.
c/o CORE Affordable Housing LLC
470 S. Market Street
San José, California 95113
Attn: Chris Neale

The Borrower:

Markham Plaza I, LP
c/o Core Development
470 S. Market Street
San José, California 95113
Attn: Chris Neale
Facsimile: (408) 292-0339

with a copy to:

EAH, Inc.
22 Pelican Way
San Rafael, California 94901
Attn: Laura Hall
Facsimile: (415) 453-4927

with a copy to:

Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, California 94111
Attn: Steve Ryan, Esq.

and a copy to:

Wincopin Circle LLLP
c/o Enterprise Community Asset
Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044
Telephone: (410) 964-0552
Facsimile: (410) 772-2630
Attention: Asset Management
(which copy shall not constitute notice to
Borrower

with a copy to:

Gallagher Evelius & Jones LLP
218 N. Charles Street, Suite 400
Baltimore, Maryland 21201
Attention: Kenneth S. Gross, Esq.

The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions pursuant to this Subordinate Indenture, provided, however, that subsequent to such facsimile transmission of written instructions, the originally executed instructions and/or directions shall be provided to the Trustee in a timely manner.

(b) The Trustee shall provide to the Subordinate Bondholder Representative (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Trustee hereunder within ten (10) Business Days of receiving a written request from the Subordinate Bondholder Representative for any such information or other communication.

Section 10.05 Trustee as Paying Agent and Subordinate Bond Registrar. The Trustee is hereby designated and agrees to act as Paying Agent and Subordinate Bond Registrar for and in respect to the Subordinate Bonds. When acting in either such capacity, the Trustee will receive the same rights, protections and indemnifications afforded to the Trustee hereunder.

Section 10.06 Payments Due on Non-Business Days. In any case where a date of payment with respect to any Subordinate Bonds shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period from and after such date providing that payment is made on such next succeeding Business Day.

Section 10.07 Counterparts. This Subordinate Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.08 Laws Governing Indenture and Administration of Trust. The effect and meanings of this Subordinate Indenture and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State without regard to conflicts of laws principles.

Section 10.09 No Recourse. No recourse under or upon any obligation, covenant or agreement contained in this Subordinate Indenture or in any Subordinate Bond shall be had against any city councilmember, officer, commissioner, director or employee (past, present or future) of the Issuer, either directly or through the Issuer or its governing body or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Holder of any Subordinate Bond issued hereunder, or otherwise, of any sum that may be due and unpaid by the Issuer or its governing body upon any such Subordinate Bond. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such city councilmember, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Holder of any Subordinate Bond issued hereunder or otherwise of any sum that may remain due and unpaid upon any Subordinate Bond hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Subordinate Indenture and the issuance of the Subordinate Bonds.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Subordinate Indenture to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

CITY OF SAN JOSE

By: _____
Julia H. Cooper,
Director of Finance

ATTEST:

By: _____
Toni J. Taber CMC,
City Clerk

Approved as to form:

By: _____
Shasta Greene,
Senior Deputy City Attorney

[Signature page – Subordinate Indenture of Trust – Markham Plaza I]

U.S. BANK NATIONAL ASSOCIATION, as
Subordinate Trustee

By: _____
Authorized Signatory

[Signature page – Subordinate Indenture of Trust – Markham Plaza I]

EXHIBIT A
FORM OF SUBORDINATE BOND

\$ _____

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

THIS SUBORDINATE BOND MAY ONLY BE TRANSFERRED IN WHOLE UPON SATISFACTION OF THE REQUIREMENTS IN THE INDENTURE, INCLUDING THE DELIVERY TO THE TRUSTEE OF THE DOCUMENTS REQUIRED THEREIN IN CONNECTION WITH ANY TRANSFER OF THIS SUBORDINATE BOND. ANY TRANSFER OF THIS SUBORDINATE BOND IN VIOLATION OF THE TRANSFER RESTRICTIONS CONTAINED IN THE INDENTURE SHALL BE VOID AND OF NO EFFECT.

MATURITY DATE

DATED DATE

INTEREST RATE

Subordinate Bond Rate

Registered Owner:

Principal Amount:

The City of San José, a municipal corporation and chartered city duly organized and existing pursuant to its charter and the laws and constitution of the State of California (the "Issuer"), for value received, hereby promises to pay (but only out of Revenues as hereinafter provided) to the registered owner identified above or registered assigns, on the Maturity Date set forth above, the principal sum set forth above and to pay (but only out of Revenues as hereinafter provided) interest on the balance of said principal amount from time to time remaining unpaid from and including the date hereof until payment of said principal amount has been made or duly provided for, at the rates and on the dates determined as described herein and in the Indenture (as hereinafter defined). The principal of and, interest on this Subordinate Bond are payable at final maturity, acceleration or redemption in lawful money of the United States of America upon surrender hereof at the principal corporate trust office of U.S. Bank National Association, as Trustee, or its successor in trust (the "Trustee"). Payment of the interest on any Subordinate Bond and the principal amount of the Subordinate Bond shall be made on each Subordinate Bond Payment Date (as hereinafter defined) (but only out of Revenues) to the Person appearing on the bond registration books of the Subordinate Bond Registrar as the Owner thereof on the Record Date, such interest and principal, if applicable, to be paid by the Paying Agent (i) to such Owner by check or draft mailed on the Subordinate Bond Payment Date, to such Owner's address as it appears on the registration books or at such other address as has been furnished to the Subordinate Bond Registrar as provided below, in writing by such Owner not later than the Record Date or (ii) upon written request, at least three Business Days prior to the applicable Record Date, to the Owner of Subordinate Bonds aggregating not less than \$1,000,000 in principal amount, by wire transfer in immediately available funds at an account maintained in the United States at such wire address as such

Owner shall specify in its written notice; except, in each case, that, if and to the extent that there shall be a default in the payment of the interest due on such Subordinate Bond Payment Date, such defaulted interest shall be paid to the Owner in whose name any such Subordinate Bonds are registered at the close of business on the fifth to last Business Day next preceding the date of payment of such defaulted interest.

The Subordinate Bonds are authorized to be issued pursuant to Act and are designated as the “City of San José Multifamily Housing Revenue Bonds (Markham Plaza I) Subordinate Series 2019B-2”, limited in aggregate principal amount of \$_____. The Subordinate Bonds are limited obligations of the Issuer and, as and to the extent set forth in the Indenture, are payable solely from, and secured by a pledge of and lien on, the Revenues. Proceeds from the sale of the Subordinate Bonds will be loaned by the Issuer to Markham Plaza I, LP, a California limited partnership (the “Borrower”) under the terms of a Subordinate Loan Agreement, dated as of October 1, 2019 (the “Agreement”), among the Issuer, the Borrower and the Trustee. The Subordinate Bonds are all issued under and secured by and entitled to the benefits of a Subordinate Indenture of Trust, dated as of October 1, 2019 (the “Indenture”) between the Issuer and the Trustee. No holder of this Subordinate Bond shall ever have the right to compel the exercise of the taxing power the State or any political subdivision of the State to pay the principal of this Subordinate Bond or the interest on it or any other cost incident to this Subordinate Bond, or to enforce payment of this Subordinate Bond against any property of the Issuer, the Governing Body of the Issuer, the State or any political subdivision of the State.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights thereunder of the registered owners of the Subordinate Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Issuer thereunder, to all of the provisions of the Indenture and of the Subordinate Loan Agreement the holder of this Subordinate Bond, by acceptance hereof, assents and agrees.

The Subordinate Bonds are issued simultaneously with the issuance of the Issuer’s Senior Obligations (as defined in the Indenture). ***As set forth in the Indenture, the Subordinate Bonds are subordinate in all respects to the Senior Obligations.***

All terms not herein defined shall have the meanings ascribed to them in the Indenture.

The Subordinate Bonds are issuable as one fully registered bond. Subject to the limitations and upon payment of the charges, if any, provided in the Indenture, Subordinate Bonds may be exchanged in whole at the Principal Corporate Trust Office of the Trustee and the Subordinate Bond Registrar.

The Subordinate Bonds may only be held by, or transferred to, a Sophisticated Investor (as defined in the Indenture) that is not a “related party” of the Borrower, as such term is used in section 1.148-1(b) of the regulations issued under section 148 of the Code, with such Sophisticated Investor executing and delivering a purchaser’s letter in the form and substance attached as Exhibit B to the Indenture.

This Subordinate Bond is transferable by the registered owner hereof, in person, or by its attorney duly authorized in writing, at the Principal Corporate Trust Office of the Trustee and the Subordinate Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Subordinate Bond. Upon such transfer a new fully registered Subordinate Bond, for the same

aggregate principal amount, will be issued to the transferee in exchange therefor. The Issuer, the Trustee and the Subordinate Bond Registrar may treat the registered owner hereof as the absolute owner hereof for all purposes, and the Issuer, the Trustee and the Subordinate Bond Registrar shall not be affected by any notice to the contrary.

Interest on the Subordinate Bonds

Subordinate Bond Payment Date has the meaning set forth in the Indenture.

Interest on the Subordinate Bonds is due on each Subordinate Bonds Payment Date, to the extent there are available Revenues therefor, as set forth in the Indenture.

Record Date means the 15th day of the month prior to a Subordinate Bond Payment Date.

Redemption of Subordinate Bonds

The Subordinate Bonds are subject to optional, mandatory and extraordinary redemption as set forth in the Indenture.

General Matters

The holder of this Subordinate Bond shall have no right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon the Indenture, except as provided in the Indenture.

No recourse shall be had for the payment of the principal of, or interest on any of the Subordinate Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Indenture contained, against any past, present or future city councilmember, director, officer, employee or agent of the Issuer, or through the Issuer, or any successor to the Issuer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such city councilmember, director, officer, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of the Indenture and the issuance of any of the Subordinate Bonds.

Except as otherwise provided in the Subordinate Promissory Note, no recourse shall be had for the payment of the principal of, or interest on any of the Subordinate Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Indenture contained, against any past, present or future partner, member, director, officer, employee or agent of the Borrower, or through the Borrower, or any successor to the Borrower under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such partner, member, director, officer, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of the Indenture and the issuance of any of the Subordinate Bonds.

Amendments Permitted

The Indenture contains provisions permitting the Issuer and the Trustee to execute supplemental indentures with the written consent of the Subordinate Bondholder Representative

and the Owners of 100% in aggregate principal amount of Subordinate Bonds at the time Outstanding, subject to certain conditions as set forth in the Indenture.

The Indenture also contains provisions permitting the Issuer and the Trustee to execute supplemental indentures without consent of the Owners of the Subordinate Bonds, subject to certain conditions as set forth in the Indenture.

The Indenture prescribes the manner in which it may be discharged and after which the Subordinate Bonds shall no longer be secured by or entitled to the benefits of the Indenture, except for the purposes of transfer and exchange of Subordinate Bonds and of payment of the principal of and interest on the Subordinate Bonds as the same become due and payable, including a provision that under certain circumstances the Subordinate Bonds shall be deemed to be paid if certain securities, as defined therein, maturing as to principal and interest in such amounts and at such times as to ensure the availability of sufficient moneys to pay the principal of, and interest on the Subordinate Bonds and all necessary and proper fees, compensation and expenses of the Trustee shall have been deposited with the Trustee.

No city councilmember or officer of the Issuer, nor any Person executing this Subordinate Bond, shall in any event be subject to any personal liability or accountability by reason of the issuance of the Subordinate Bonds.

It is hereby certified that all of the conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Subordinate Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of California.

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

In the event of any inconsistency between the provisions of this Subordinate Bond and the provisions of the Indenture, the provisions of the Indenture shall control.

IN WITNESS WHEREOF, the City of San Jose has caused this Bond to be executed in its name and on its behalf all as of the Closing Date.

CITY OF SAN JOSE

By: _____
Julia H. Cooper,
Director of Finance

ATTEST:

By: _____
Toni J. Taber CMC,
City Clerk

CERTIFICATE OF AUTHENTICATION

This Subordinate Bond is one of the Subordinate Bonds issued under the provisions of and described in the within-mentioned Indenture.

Date of Authentication: _____

U.S. Bank National Association, as Trustee

By _____
Authorized Officer

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

(Please insert Social Security Number or other identifying number of assignee)

(Please Print or Typewrite Name and Address of Assignee)

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Subordinate Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____.

Signature Guaranteed

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

Signature

NOTICE: The Signature to this assignment must correspond with the name as it appears upon the face of the within Subordinate Bond in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B
FORM OF PURCHASER'S LETTER

[To be prepared on letterhead of Purchaser]

[Date]

City of San José

U.S. Bank National Association

Re: City of San José
Multifamily Housing Revenue Bonds
(Markham Plaza I)
Subordinate Series 2019B-2

Ladies and Gentlemen:

The undersigned (the "Purchaser") hereby acknowledges receipt as transferee, from the previous owner thereof, of the above-referenced bonds (the "Subordinate Bonds") in fully registered form and in the original aggregate principal amount of \$_____, constituting all of the Subordinate Bonds currently outstanding. The Subordinate Bonds have been checked, inspected and approved by the Purchaser.

The undersigned acknowledges that the Subordinate Bonds were issued for the purpose of making a loan to assist in financing a multifamily rental housing development known as Markham Plaza I located in the City of San José, California (the "Project"), as more particularly described in that certain Subordinate Loan Agreement dated as of October 1, 2019, as may be amended and supplemented from time to time (the "Subordinate Loan Agreement"), by and among the City of San José (the "Issuer"), Markham Plaza I, LP, a limited partnership duly organized and existing under the laws of the State of California (the "Borrower"), and U.S. Bank National Association (the "Trustee"). The undersigned further acknowledges that the Subordinate Bonds are secured by a certain Subordinate Indenture of Trust dated as of October 1, 2019, as amended and supplemented (the "Indenture"), between the Issuer and the Trustee, which creates a security interest in loan repayments made pursuant to the Subordinate Loan Agreement for the benefit of the holders and Owners of the Subordinate Bonds, and by a Subordinate Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Tax-Exempt Bonds) with respect to the Project (the "Subordinate Mortgage"), which creates a security interest in the Project, subject to permitted encumbrances, as provided therein. Terms not otherwise defined herein shall have the meanings assigned thereto in the Indenture.

In connection with the sale of the Subordinate Bonds to the Purchaser, the Purchaser hereby makes the following representations upon which you may rely:

1. The Purchaser hereby certifies that it is (1) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “Securities Act”); (2) an “accredited investor” as defined in Sections 501(a)(1) through (3) of Regulation D promulgated under the Securities Act; (3) an entity that is directly or indirectly wholly owned or controlled by or under common control with the holder of the Subordinate Bonds; (4) an entity all of the investors in which are described in (1), (2) or (3) above; or (5) a custodian or trustee for a party described in (1), (2) or (3) above.

2. The Subordinate Bonds are being acquired by the Purchaser for its own account and for investment and not with a view to, or for resale in connection with, any public distribution of the Subordinate Bonds. The Purchaser understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible due to unmarketability of the Subordinate Bonds; provided, however, the Purchaser acknowledges and agrees that it may transfer the Subordinate Bonds in whole only and in accordance with the Indenture and this letter.

3. The Purchaser understands that the Subordinate Bonds have not been registered under the Act.

4. The Purchaser acknowledges that it is familiar with the conditions, financial and otherwise, of the Borrower and understands that the Borrower has no significant assets other than the Project. To the extent deemed appropriate in making its investment decision, the Purchaser has discussed the Borrower’s financial condition and the Borrower’s current and proposed business activities with the Borrower. The Purchaser further acknowledges that it has such knowledge and experience in business matters that it is fully capable of evaluating the merits and risks of this investment and it is able to bear the economic risk of the investment. The Subordinate Bonds are a security of the kind the Purchaser wishes to purchase and hold for investment, and the nature and amount of the Subordinate Bonds are consistent with the Purchaser’s investment program. The Purchaser has been furnished such information and such documents as the Purchaser deems necessary to make a decision to purchase the Subordinate Bonds, including copies or forms of the Indenture, the Subordinate Loan Agreement, the Subordinate Mortgage and the Regulatory Agreement (as defined in the Indenture), and certain other documents relating to the Subordinate Bonds and the Project, all of which documents the Purchaser has reviewed. Specifically, but without limitation, the Purchaser has reviewed information about the Project, project cashflow and the property manager for the Project, if any, as well as information about the investment risks relating to the Subordinate Bonds, and the Purchaser understands that the Subordinate Bonds involve a high degree of risk. SPECIFICALLY, AND WITHOUT IN ANY MANNER LIMITING THE FOREGOING, THE PURCHASER UNDERSTANDS AND ACKNOWLEDGES THAT, AMONG OTHER RISKS, THE SUBORDINATE BONDS ARE INTEREST ONLY AND PAYABLE SOLELY FROM REVENUES (AS DEFINED IN THE INDENTURE) DERIVED FROM THE PROJECT, THAT THE SUBORDINATE BONDS ARE NOT ENTITLED TO THE BENEFIT OF ANY CREDIT FACILITY, THAT THE SUBORDINATE BONDS ARE NOT RATED BY ANY RATING AGENCY AND THAT. THE PURCHASER ALSO UNDERSTANDS THAT (A) THE SUBORDINATE BONDS ARE NOT SECURED BY ANY PLEDGE OF ANY MONEYS RECEIVED OR TO BE RECEIVED FROM TAXATION BY THE CITY OF SAN JOSE, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF, NOR ARE THE SUBORDINATE BONDS SECURED BY ANY REVENUES OR FUNDS OF ANY KIND OF THE CITY OF SAN JOSE, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF, (B) THE SUBORDINATE BONDS DO NOT AND WILL NOT REPRESENT OR CONSTITUTE A GENERAL OBLIGATION OR A PLEDGE OF THE FAITH AND CREDIT OF THE ISSUER, THE STATE OF CALIFORNIA

OR ANY POLITICAL SUBDIVISION THEREOF; AND (C) THE LIABILITY OF THE ISSUER WITH RESPECT TO THE BONDS IS LIMITED TO THE TRUST ESTATE AS SET FORTH IN THE INDENTURE. THE PURCHASER UNDERSTANDS THAT THE SUBORDINATE BONDS ARE NONRECOURSE TO THE BORROWER. The Purchaser has made such inquiry with respect to all of the foregoing as it believed to be desirable for its purposes.

5. The Purchaser has received from the Issuer no formal or informal offering or disclosure document relating to the Subordinate Bonds and has concluded that the receipt of one prior to the purchase of the Subordinate Bonds is not required. It is acknowledged that no written information has been provided by the Issuer, and that any written information furnished by any other party to the transaction does not purport to fully disclose all information pertinent to the Subordinate Bonds.

6. Except as disclosed to the Issuer, the Purchaser is not now and has never been controlled by, or under common control with, the Borrower. Except as disclosed to the Issuer, the Borrower has never been and is not now controlled by the Purchaser. THE PURCHASER HAS ENTERED INTO NO ARRANGEMENTS WITH THE BORROWER OR WITH ANY AFFILIATE OF THE BORROWER IN CONNECTION WITH THE SUBORDINATE BONDS, OTHER THAN AS DISCLOSED TO THE ISSUER. The Purchaser hereby agrees to deliver to the Issuer a copy of any agreement between the Purchaser and the Borrower or any affiliate of the Borrower relating to the Subordinate Bonds.

7. The Purchaser has authority to purchase the Subordinate Bonds and to execute this letter and any other instruments and documents required to be executed by the Purchaser in connection with the purchase of the Subordinate Bonds.

8. In entering into this transaction the Purchaser has not relied upon any representations or opinions made by the Issuer relating to the legal consequences or other aspects of the transactions, nor has it looked to, nor expected, the Issuer to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the refinancing, operation or management thereof), or any other matter pertaining to the merits or risks of the transaction, or the adequacy of any collateral pledged to the Trustee to secure repayment of the Subordinate Bonds.

9. The Purchaser understands that the Subordinate Bonds are not secured by any pledge of any money received or to be received from taxation by the State of California or any political subdivision or taxing district thereof, including, without limitation, the Issuer; that the Subordinate Bonds will never represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the State of California or any political subdivision thereof; that no right will exist to have taxes levied by the Issuer, the State of California or any political subdivision thereof for the payment of principal, and interest on the Subordinate Bonds; and that the liability of the Issuer with respect to the Subordinate Bonds is subject to further limitations as set forth in the Subordinate Bonds and the Indenture.

10. The Purchaser has been informed that the Subordinate Bonds have not been and will not be registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any jurisdiction, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

11. The Purchaser has obtained, from representatives of the Borrower and others, all information regarding the Subordinate Bonds that it has deemed relevant. The Purchaser has asked of the Borrower and all other relevant parties all the questions to which the Purchaser desired answers, and has had those questions satisfactorily answered. Neither the Borrower nor the Issuer nor any other relevant party has refused to disclose any information that Purchaser deems necessary or appropriate to its decision to purchase the Subordinate Bonds.

12. The Purchaser may not become a “related party” of the Borrower, as such term is used in section 1.148-1(b) of the regulations issued under section 148 of the Code.

13. Although the Purchaser does not intend at this time to dispose of the Subordinate Bonds, the Purchaser acknowledges that it has the right to sell and transfer the Subordinate Bonds, subject to the following requirements:

(a) The Purchaser may not dispose of the Subordinate Bonds to a Person or entity other than as described in Section 1 without the prior written consent of the Issuer;

(b) The Purchaser will only sell or otherwise transfer the Subordinate Bonds in whole, except with the prior written approval of the Issuer;

(c) Prior to any transfer of the Subordinate Bonds, the Purchaser shall deliver to the Issuer and the Trustee a certificate identifying any and all documents that have been executed by the Purchaser and the Borrower or any affiliate of the Borrower with respect to the Subordinate Bonds; and

(d) The Purchaser will not sell or otherwise transfer the Subordinate Bonds without requiring the transferee to deliver to the Issuer and to the Trustee an investor's letter to the same effect as this Purchaser's Letter, including this paragraph 13, with no revisions except as may be approved in writing by the Issuer.

TULLY GARDENS, L.P.,
a California limited partnership

By: Core Development, Inc.,
a California corporation,
its General Partner

By: _____
Christopher Neale, Vice President