

CITY OF SAN JOSE

and

BERRYESSA AFFORDABLE HOUSING, L.P.

LOAN AGREEMENT

Relating to

[\$82,584,672]
City of San José
Multifamily Housing Revenue Bonds, Series 2026A
(Berryessa TOD)

Dated as of [April] 1, 2026

The interest of the City of San José (the “Issuer”) in this Agreement has been assigned pursuant to the Trust Indenture (the “Indenture”) (except for “Unassigned Issuer’s Rights” defined in the Indenture) dated as of the date hereof from the Issuer to UMB Bank, National Association, as trustee (the “Trustee”), and is subject to the security interest of the Trustee thereunder.

(This Table of Contents is not a part of the Loan Agreement and is only for convenience of reference.)

ARTICLE I
DEFINITIONS

Section 1.01 Use of Defined Terms..... 3
Section 1.02 Interpretation..... 3
Section 1.03 Captions and Headings. 3

ARTICLE II
REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.01 Representations of the Issuer. 3
Section 2.02 Representations, Covenants and Warranties of the Borrower. 4
Section 2.03 Special Covenants of the Borrower. 9
Section 2.04 Compliance with Tax Laws. 10
Section 2.05 Notice of Determination of Taxability..... 15
Section 2.06 Conversion. 15

ARTICLE III
PLAN OF FINANCING

Section 3.01 Issuance of Bonds; Application of Proceeds. 15
Section 3.02 The Loan. 16
Section 3.03 Disbursements from the Project Fund..... 16
Section 3.04 Furnishing Documents to the Trustee..... 16
Section 3.05 Construction, Installation and Equipment..... 16
Section 3.06 Plans and Specifications. 17
Section 3.07 [Reserved]..... 17
Section 3.08 Borrower Required to Pay in the Event Project Fund Is Insufficient. 17
Section 3.09 Special Arbitrage Certifications..... 18
Section 3.10 Rebate Calculations and Payments. 18
Section 3.11 Rebate Analyst..... 18

ARTICLE IV
LOAN PAYMENTS; ADDITIONAL PAYMENTS AND OBLIGATIONS

Section 4.01 Loan Repayment; Delivery of Note..... 19
Section 4.02 Additional Payments..... 20
Section 4.03 Place of Payments. 22
Section 4.04 Obligations of the Borrower Unconditional. 22
Section 4.05 Remarketing of Bonds. 23
Section 4.06 Construction Loan to Borrower. 23
Section 4.07 Assignment of Agreement and Revenues; Trustee is Third Party
Beneficiary..... 23

ARTICLE V
SPECIAL COVENANTS

Section 5.01	No Warranty of Condition or Suitability by Issuer.....	24
Section 5.02	Access to the Project.....	24
Section 5.03	Further Assurances and Corrective Instruments.....	24
Section 5.04	Issuer and Borrower Representatives.....	24
Section 5.05	Financing Statements.....	25
Section 5.06	Borrower Receipt of Insurance or Condemnation Proceeds.....	25
Section 5.07	Borrower’s Obligations Upon Tender of Bonds.....	25
Section 5.08	Option to Terminate.....	25
Section 5.09	Foreign Account Tax Compliance Act.....	26
Section 5.10	Affirmative Covenants.....	26
Section 5.11	Other Indebtedness.....	28
Section 5.12	Nature of Business.....	28
Section 5.13	Continuing Disclosure.....	29

ARTICLE VI
RESTRICTION ON TRANSFER; ASSIGNMENT, SELLING, LEASING;
INDEMNIFICATION

Section 6.01	Restriction on Transfer; Removal of General Partner.....	29
Section 6.02	Indemnification of the Issuer and the Trustee.....	31
Section 6.03	Defense of Claims.....	33

ARTICLE VII
DEFAULTS AND REMEDIES

Section 7.01	Defaults Defined.....	33
Section 7.02	Remedies on Default.....	35
Section 7.03	No Remedy Exclusive.....	35
Section 7.04	Agreement to Pay Attorneys’ Fees and Expenses.....	35
Section 7.05	No Additional Waiver Implied by One Waiver.....	36
Section 7.06	Right to Cure.....	36

ARTICLE VIII
MISCELLANEOUS

Section 8.01	Term of Agreement.....	36
Section 8.02	Notices.....	36
Section 8.03	Extent of Covenants of the Issuer.....	37
Section 8.04	Limited Liability of the Issuer.....	37
Section 8.05	[Reserved].....	38
Section 8.06	[Reserved].....	38
Section 8.07	Binding Effect.....	38
Section 8.08	Severability.....	38
Section 8.09	Amounts Remaining in Funds.....	38

Section 8.10	Amendments, Changes and Modifications.	39
Section 8.11	Execution in Counterparts.....	39
Section 8.12	Applicable Law.....	39
Section 8.13	Captions.	40
Section 8.14	Construction Loan Documents Independent.....	40
Section 8.15	Trustee Rights.	40

EXHIBIT A – PROJECT DESCRIPTION
EXHIBIT B – FORM OF PROMISSORY NOTE
EXHIBIT C – SOURCES AND USES

LOAN AGREEMENT

THIS LOAN AGREEMENT (“Agreement” or “Loan Agreement”) is entered into as of [April] 1, 2026, between the CITY OF SAN JOSE (the “Issuer”), a municipal corporation and charter city, organized and existing under the laws of the State of California (the “State”), and BERRYESSA AFFORDABLE HOUSING, L.P., a California limited partnership (the “Borrower”).

RECITALS

A. By virtue of the authority of the laws of the State, and particularly the provisions of the Act (as defined in the Indenture) the Issuer is authorized to issue revenue bonds for the purpose of, among other things, financing the acquisition, construction and development of multifamily rental housing and for the provision of capital improvements in connection therewith and determined to be necessary thereto.

B. Pursuant to the Act, the Issuer has determined to issue and sell its Multifamily Housing Revenue Bonds, Series 2026A (Berryessa TOD) (the “Bonds”) in the principal amount of \$[82,584,672] and to loan the proceeds to be derived from the sale thereof to the Borrower (as defined below) to assist in the financing of the Project (as defined below) to be undertaken by the Borrower.

C. The Borrower and the Issuer each have full right and lawful authority to enter into this Agreement and to perform and observe the provisions hereof on their respective parts to be performed and observed.

D. Pursuant to, and in accordance with the Act and a resolution of the Issuer adopted on [April 14, 2026] (the “Bond Resolution”), the Issuer has determined to issue and sell the Bonds pursuant to a Trust Indenture (the “Indenture”), dated as of [April] 1, 2026, between the Issuer and UMB Bank, National Association, as trustee (the “Trustee”) and use the proceeds thereof to make a loan in the same principal amount to the Borrower (the “Loan”) for the purpose of financing the construction and development of a multifamily rental housing facility for low-income households, very low-income households and extremely low-income households to be located at 1565 Mabury Road, San José, California 95133 (the “Project”), and more fully described in this Agreement.

E. The obligations of the Borrower to make payments to the Issuer under this Agreement will be evidenced by a Note dated [April __], 2026 (the “Note”) in the principal amount of \$[82,584,672].

F. The Issuer will assign its interest in this Agreement and the Note (excluding certain Unassigned Issuer’s Rights) to the Trustee as part of the Trust Estate established under the Indenture. From the Closing Date through the Mandatory Tender Date, the Bonds will be cash-collateralized, and no mortgage lien with respect to the Project will secure the Bonds or the Loan.

G. Deutsche Bank AG, New York Branch (the “Construction Lender”) has agreed to provide a separate construction loan (the “Construction Loan”) to the Borrower, the proceeds of which shall be advanced pursuant to the Construction Loan Documents and used directly or indirectly (including to cash collateralize the Bonds through deposits to the Collateral Fund) to

finance the costs of the construction and development of the Project. The Construction Lender will administer the Construction Loan in accordance with the Construction Loan Documents.

H. Deutsche Bank Securities Inc. (the “Funding Lender”) has agreed, subject to the satisfaction of the Conditions to Forward Delivery (or Conditions to Interim Forward Delivery, as applicable) set forth in the Forward Commitment Agreement, dated April [], 2026, by and among the Construction Lender, the Funding Lender, and the Borrower (the “Forward Commitment Agreement”), to facilitate the financing of the Project in the permanent phase or the Interim Phase (as may be applicable) (the “Funding Loan”).

I. [Subject to the satisfaction of the Conditions to Forward Delivery (or Conditions to Interim Forward Delivery, as applicable) set forth in the Forward Commitment Agreement, Conversion of the Bonds shall occur on a Mandatory Tender Date, and on such Mandatory Tender Date, (i) the Bonds shall be subject to mandatory tender in accordance with Section 3.01 hereof, (ii) the purchase price of the Bonds shall be paid with amounts on deposit in the Collateral Fund (and other Eligible Funds hereunder), (iii) the Bonds shall be removed from the Book-Entry System, (iv) if all requirements for Stabilization have been met on the Mandatory Tender Date, the Bonds will be converted to one physical Governmental Note of the Issuer (in the form attached to the Funding Loan Agreement) which shall be purchased by the Funding Lender; provided, however, that if all requirements for Stabilization have not been met on the Mandatory Tender Date, the Bonds will be converted into two physical Governmental Notes of the Issuer (in the form attached to the Funding Loan Agreement) which shall be purchased by the Funding Lender, in each case, as set forth in the Funding Loan Agreement and the Borrower Loan Agreement, (v) the Funding Loan Agreement attached to the Indenture as APPENDIX D and the Borrower Loan Agreement attached to the Indenture as APPENDIX E shall be executed and delivered by the respective parties and become effective and shall supersede the Indenture and this Loan Agreement, respectively, (vi) the proceeds of the Funding Lender Purchase Price, along with any other funds of the Borrower (including equity funds), shall be deposited into the Construction Loan Prepayment Fund, and the Construction Loan shall be paid in like amount on deposit therein, and (vii) if all requirements for Stabilization have been met on the Mandatory Tender Date, the Borrower shall execute one Borrower Note; provided, however, that if all requirements for Stabilization have not been met on the Mandatory Tender Date, the Borrower shall execute two Borrower Notes, in either case, in order to evidence its obligations under the Borrower Loan Agreement and a new (or amended and restated) security instrument with respect to the Project to secure its obligations under the Borrower Loan Agreement, which Borrower Note(s) and security instrument will be assigned to and held by the Fiscal Agent under the Funding Loan Agreement to secure the Governmental Note(s) of the Issuer, in each case, as further set forth in the Funding Loan Agreement and the Borrower Loan Agreement].

AGREEMENTS

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, the Issuer and the Borrower agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement shall never constitute a general debt of the Issuer or give rise to any pecuniary liability of the Issuer but shall be payable solely out of Revenues).

ARTICLE I DEFINITIONS

Section 1.01 *Use of Defined Terms.*

In addition to the words and terms defined elsewhere in this Agreement, the words and terms in this Agreement shall have the meanings set forth in the Trust Indenture (the “Indenture”), dated as of the date of this Agreement between the Issuer and the Trustee.

Section 1.02 *Interpretation.*

Any reference herein to the Issuer or to any member or officer of the Issuer includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of State law or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee or the Borrower under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of the Bonds. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.03 *Captions and Headings.*

The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.01 *Representations of the Issuer.*

The Issuer makes the following representations, warranties and covenants:

- (a) **Authority.** The Issuer is a chartered city and municipal corporation of the State, duly organized, validly existing and in good standing under the laws of the State, is authorized and empowered by the provisions of the Act and the Bond Resolution to enter into the transactions contemplated by this Agreement and the Indenture and to carry out its obligations hereunder and thereunder, and by proper action of its governing body has been duly authorized to execute and deliver this Agreement, the Indenture and the Tax Certificate, and this Agreement, the

Indenture and the Tax Certificate have been duly executed and delivered by the Issuer and are valid and binding obligations of the Issuer enforceable in accordance with their terms.

(b) **Pledge.** The Bonds are to be issued and secured by the Indenture, pursuant to which certain of the Issuer's interests in this Agreement and the Indenture, and the revenues and income to be derived by the Issuer pursuant to this Agreement and the Indenture, will be pledged and assigned to the Trustee as security for payment of the principal, premium, if any, and interest on the Bonds. The Issuer covenants that it has not and will not pledge or assign its interest in the Indenture or this Agreement, or the revenues and income derived pursuant to this Agreement or the Indenture, excepting the Unassigned Issuer's Rights of the Issuer, other than to the Trustee under the Indenture to secure the Bonds. The Issuer will comply with all provisions of the Act (and the rules promulgated thereunder) applicable to the Bonds and the transactions contemplated by this Agreement and the Indenture.

(c) **Conflicts.** To the best knowledge of the Issuer, neither the execution and delivery of this Agreement, the Indenture and the Tax Certificate, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, the Indenture or the Tax Certificate conflicts with or results in a breach of the terms, conditions or provisions of any material restriction, agreement or instrument to which the Issuer is a party, or by which it or any of its property is bound, or constitutes a default under any of the foregoing.

It is expressly acknowledged that the Issuer makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Bonds, or as to the correctness, completeness or accuracy of such statements. Nothing in this Agreement shall be construed as requiring the Issuer to provide any financing for the Project other than the proceeds of the Bonds or to provide sufficient moneys for all of the cost of financing the Project.

Section 2.02 *Representations, Covenants and Warranties of the Borrower.*

The Borrower represents, covenants and warrants that:

(a) Good Standing; Single-Purpose Covenants.

The Borrower (i) is a California limited partnership duly organized and existing in good standing under the laws of the State, (ii) has the power to own its property and to carry on its business as now being conducted and as contemplated by this Agreement and the Tax Certificate, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State. The Borrower's

business and purpose shall consist solely of the ownership, development, operation and management of the Project and such other lawful activities as are incidental, necessary or appropriate thereto. The Borrower shall not incur any indebtedness other than the indebtedness approved by the Issuer as part of the Project's plan of financing as provided in Section 3.06 hereof, unsecured loans made in accordance with the Borrower's Partnership Agreement and normal trade accounts payable in the ordinary course of the Borrower's business. The Borrower shall not assume or guaranty any other person's indebtedness or obligations. The Borrower shall not dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey, transfer or lease its property and assets substantially as an entirety to any entity. The Borrower shall not institute or consent to any bankruptcy, insolvency or reorganization proceedings with respect to it, consent to the appointment of a receiver or similar official with respect to it, make any assignment for the benefit of its creditors or admit in writing its inability to pay its debts generally as they become due.

The Borrower shall: maintain books and records and bank accounts separate from those of any other person; conduct its business in its own name and use separate stationery, invoices and checks; maintain its assets in such a manner that it is not costly or difficult to segregate and identify such assets; observe all organizational formalities and hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; prepare separate tax returns and financial statements, or if part of a consolidated group, then be shown thereon as a separate member of such group; allocate and charge fairly and reasonably any common employee or overhead shared with affiliates; and transact all business with affiliates on an arm's-length basis and pursuant to enforceable agreements. The Borrower shall not commingle its assets or funds with those of any other person.

(b) Authority. The Borrower has full power and authority to (i) execute and deliver the Borrower Documents and Construction Loan Documents to which it is a party and (ii) incur the obligations provided for herein and therein, all of which have been duly authorized by all proper and necessary corporate action. All consents or approvals of any public authority which are required as a condition to the validity of this Agreement, the Tax Certificate, the Note, the Bond Purchase Agreement, and the Regulatory Agreement have been obtained.

(c) Binding Agreements. The Borrower Documents and Construction Loan Documents to which it is a party have been properly executed and duly authorized by the Borrower and constitute valid and legally binding obligations of the Borrower, and are fully enforceable against the Borrower in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors' rights generally, and with respect to certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose.

(d) Litigation. There is no litigation or proceeding pending or, to the knowledge of the Borrower, threatened against the Borrower or the Project before any court or administrative agency which, if determined adversely to the Borrower, will materially adversely affect the Borrower or the Project, or the authority of the Borrower to enter

into or perform under the Borrower Documents and Construction Loan Documents to which it is a party.

(e) Conflicts; Defaults. There is (i) no provision of the Borrower's organizational documents or resolutions of the Borrower and no provision of any existing mortgage, indenture, contract or agreement binding on the Borrower or affecting any of the Borrower's property and (ii) to the Borrower's knowledge, no provision of law applicable to Borrower, or order of court binding upon the Borrower or affecting any of the Borrower's property, in either case which would conflict with or in any way prevent the execution, delivery, or performance of the terms of the Borrower Documents and Construction Loan Documents to which it is a party, or which would be in default or violated as a result of such execution, delivery or performance. The Borrower is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party.

(f) Title to Project. The Borrower has or will have on the Closing Date good and marketable leasehold interest in the land constituting the site of the Project and [fee interest in the improvements comprising the Project,] free and clear of any liens or encumbrances, other than the Permitted Encumbrances. The Borrower possesses or will timely obtain and possess in due course and will at all times thereafter possess, all franchises, patents, copyrights, trademarks, trade names, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of its business substantially as now conducted or as it is intended to be conducted with respect to the Project, without known conflict with any rights of others.

(g) [Reserved].

(h) Events Affecting Tax Exemption. The Borrower has not taken or permitted to be taken any action that would impair the exclusion from gross income for federal income tax purposes of the interest payable on the Bonds, and the Borrower has never been advised that the interest is or will be subject to inclusion in gross income. As of the Closing Date, the Borrower is in compliance with all requirements contained in the Tax Certificate, and the representations of the Borrower set forth in the Tax Certificate pertaining to the Borrower and the Project are true and accurate in all material respects. The Borrower has complied and intends to comply with its obligations, covenants and representations under the Bond Documents to the extent such obligations affect the tax-exempt status of the Bonds, including without limitation those referenced in Section 2.04 hereof. Notwithstanding the above, if the Borrower becomes aware of any situation, event or condition which would result in the interest on the Bonds being included in gross income for federal income tax purposes (except as a result of the Bonds being held by a substantial user or related person, each as defined in the Code), the Borrower shall promptly give written notice thereof to the Issuer and the Trustee.

(i) Compliance with Laws. The Project is of the type authorized and permitted by the Act and will, from the Closing Date forward, be operated in compliance with the provisions of the Act and the provisions of the Code applicable thereto. The Borrower will use due diligence to cause the Project to be operated in accordance with

the Act and all other applicable laws, rulings, regulations and ordinances of the State and the departments, agencies and political subdivisions thereof. The Borrower has obtained or will cause to be timely obtained all requisite approvals of the State and of other federal and local governmental bodies required for the operation of the Project.

(j) No Material Misstatements. The representations and warranties of the Borrower contained in the Borrower Documents and Construction Loan Documents (including, without limitation, any information furnished by the Borrower in connection with the preparation of any materials related to the issuance or delivery of the Bonds on the Closing Date), contain no material misstatement of fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. The representations and warranties of the Borrower and the statements, information and descriptions contained in the Official Statement and in the Borrower's closing certificates, as of the Closing Date, are true, correct and complete in all material respects, do not contain any untrue statement or misleading statement of material fact made by the Borrower or its affiliates, and do not omit to state a material fact necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in light of the circumstances under which they were made, not misleading. The estimates and assumptions contained in this Agreement and in any certificate of the Borrower delivered as of the Closing Date are reasonable and based on the most accurate information available to the Borrower.

(k) Interest of Issuer. To the knowledge of the Borrower, none of the Issuer's officers or employees or members of its governing body or agents has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other persons, in the loan of the bond proceeds, the Bonds, the Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Documents.

(l) Arbitrage Bonds. No money on deposit or to be deposited in any fund or account in connection with the Bonds, whether or not such money was or is to be derived from other sources, has been or will be used by or under the direction of the Borrower in any manner which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

(m) Tax Returns. The Borrower has filed or caused to be filed, or will timely file or cause to be filed, all required federal, state and local tax returns and has paid all taxes as shown on such returns as such taxes have become due. No claims have been assessed and are unpaid with respect to such taxes.

(n) No Reliance on Issuer. The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Issuer

for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner except to issue the Bonds.

(o) Fees. The Borrower shall pay all fees and expenses, including those of the Issuer and of the Trustee, as provided under the Indenture, the Note, this Agreement and the Regulatory Agreement.

(p) Place of Business of Borrower. The Borrower has a place of business in the State.

(q) Governmental Requirements. To the Borrower's knowledge, no violation of any Governmental Requirement exists with respect to the Project, the Borrower, or any other asset of the Borrower, the Project conforms in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of Governmental Authorities having jurisdiction over the Project, all necessary utilities are or will be available to the Project, and the Borrower has obtained or will obtain all requisite zoning approvals necessary with respect to the Project.

(r) Condemnation. No condemnation, eminent domain or similar proceeding is pending, or to the knowledge of the Borrower, threatened, with respect to the Project or any portion thereof.

(s) Governmental Approvals. The Borrower has obtained, or will obtain and has maintained as currently in full force and effect, or will be in full force and effect, all consents, and permits, licenses, accreditations, certifications and other approvals (governmental or otherwise) that:

(i) would constitute a condition precedent to, or the absence of which would materially adversely affect, the enforceability of and the performance by the Borrower of its obligations hereunder; and

(ii) are necessary for the acquisition, construction, financing and operation of the Project.

(t) Income and Age Limits. The Borrower intends to cause the Project to continue to be available for occupancy to persons and families on a basis which satisfies the income and age limits imposed on the Borrower by the Act and the Regulatory Agreement.

(u) Disclosure. The information contained in the Official Statement, insofar as such information relates to the Borrower and the Project, is accurate in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact pertaining to the Borrower and the Project necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(v) No Discrimination. The Project will continue to be available for occupancy in compliance with the Act and the Regulatory Agreement and without regard to race,

creed, color, religion, sex, sexual orientation, gender identity, age, marital status, national origin, ancestry or handicap.

(w) [Reserved].

(x) Participation in Drafting. The Indenture has been submitted to the Borrower for examination, and the Borrower, by execution of this Agreement, acknowledges and agrees that it has participated in the drafting of the Indenture and that it is bound by, shall adhere to the provisions of, and shall have the rights set forth by the applicable terms and conditions of the Indenture.

The Borrower acknowledges that the representations and covenants herein and in the Regulatory Agreement made by the Borrower have been expressly and specifically relied upon by the Issuer in determining to make the Loan to the Borrower and the Loan would not have been made but for such representations and covenants.

Section 2.03 *Special Covenants of the Borrower.*

The Borrower hereby covenants with the Issuer and the Trustee that the Project will at all times meet the requirements of the Act and further covenants and agrees as follows:

(a) Except to the extent otherwise allowed by the Act, all the units of the Project shall be offered for rental or occupancy subject to the requirements of the Act, the Regulatory Agreement and the Code.

(b) The Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code. All leases will comply with all applicable laws, including the Act, and the Regulatory Agreement.

(c) As a condition to occupancy, any individual or family intended to satisfy the requirements of the Act and/or the Regulatory Agreement shall sign and deliver to the Borrower such certificates and such other documentation as from time to time may be required by the Issuer or the Regulatory Agreement, as applicable. In addition, the Borrower shall use its best efforts to cause such individual to provide whatever other information deemed necessary by the Issuer to substantiate compliance with the Act and/or the Regulatory Agreement, as applicable

(d) The Borrower shall maintain on file at the Project such documents and certificates as may be required by the Issuer, the Act, the Regulatory Agreement and/or the Code, for such period as the Issuer may require, and the Borrower will, promptly upon request by the Issuer or Trustee, file a copy thereof with the Issuer and the Trustee.

(e) The Borrower will timely submit to the Issuer and the Trustee (if required by the Regulatory Agreement) such certificates and reports required to evidence compliance with the requirements of the Act, the Regulatory Agreement and/or the Code, as applicable, each executed by the Borrower on such forms as may be specified by the Issuer from time to time.

(f) Except as expressly provided herein, during such time as any of the Bonds shall remain Outstanding, the Borrower will not sell, transfer or otherwise dispose of the Project except as provided in the Regulatory Agreement, and the Borrower hereby further agrees that any sale, transfer or other disposition of the Project in violation hereof shall be null, void and without effect, shall cause a reversion of title to the Borrower and shall be ineffective to relieve the Borrower of its obligations under this Agreement.

(g) The Borrower shall not, in the selection of individuals or families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, creed, color, religion, sex, sexual orientation, gender identity, age (except if or unless the Project is specifically designated for elderly occupants), marital status, national origin, ancestry or handicap except as provided by law. The Borrower shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, as amended, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, the Americans with Disabilities Act, the California Fair Employment and Housing Act (California Government Code §§12900–12996) and Unruh Civil Rights Act (California Civil Code §51).

Section 2.04 *Compliance with Tax Laws.*

The Issuer, to the extent of Section 2.04(a) hereof only, and the Borrower hereby covenants and agrees that:

(a) Neither the Borrower nor the Issuer shall use, permit the use of, or omit to use proceeds of the Bonds or any other amounts (or any property acquired, constructed, or improved with proceeds of the Bonds) in a manner which, if made or omitted, respectively, would cause interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owners thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Issuer shall have received an Opinion of Bond Counsel to the effect that failure to comply with such covenant will not adversely affect any exclusion from federal income tax of interest on any Bond, the Borrower shall comply with each of the specific covenants in this Section 2.04.

(b) All the proceeds of the Bonds will be used and invested as described in the Tax Certificate of the Borrower and the Issuer. However, in the event that any original or investment proceeds of the Bonds remain unspent after application of such proceeds in accordance with said Tax Certificate, the Borrower covenants and agrees that all such unspent proceeds, to the extent in excess of one percent of the sale proceeds of the Bonds, will be used to redeem the largest principal portion of the Bonds callable under the terms of the Indenture without premium or penalty that does not exceed the amount of such unspent proceeds, and that amounts not in excess of one percent of the sale proceeds of the Bonds shall be deposited in the Bond Fund and used as soon as practicable to pay regularly scheduled debt service on the Bonds. Pending any such redemption, the Borrower covenants and agrees that any such unspent proceeds will be deposited in escrow and invested to produce a yield no greater than the yield on the

applicable issue of Bonds. All property to be financed or refinanced by the net proceeds of the Bonds is to be owned by the Borrower.

(c) The weighted average maturity of the Bonds will not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the property financed or refinanced with proceeds of the Bonds, as calculated pursuant to Code § 147(b).

(d) Substantially all (at least 95%) of the sale proceeds of the Bonds (the face amount thereof, less original issue discount, plus original issue premium, less a reasonably required reserve fund funded with Bond proceeds), and all investment earnings on Bond proceeds, will be used to provide a qualified residential rental project described in Section 142(d) of the Code, subject to the right of the Borrower and the Issuer to reallocate the use of all proceeds of the Bonds disbursed hereunder in the manner permitted by Treasury Regulation Section 1.148-6(d) and the Tax Certificate. Each project to be financed with proceeds of the Bonds (for purposes of this Section 2.04, the “Project”) will consist of a building or structure, or buildings or structures, together with any functionally related and subordinate facilities, containing one or more similarly constructed units which are used on other than a transient basis. To the extent the Project financed with proceeds of the Bonds contains multiple buildings or structures, such buildings or structures (a) will be located upon a single tract of land (a “tract” is any parcel or parcels of land which are contiguous except for the interposition of a road, street, stream, or similar property; otherwise, parcels are contiguous if their boundaries meet at one or more points), (b) will have similarly constructed units, (c) will be owned by the Borrower for federal tax purposes, and (d) will all be financed with proceeds of the Bonds. Functionally related facilities of the Project include facilities for use by the tenants (e.g., swimming pools, other recreational facilities, and parking areas) and other facilities which are reasonably required for the Project (e.g., heating and cooling equipment, trash disposal equipment, or units for residential managers or maintenance personnel). Any laundry, day care, recreation or health club facilities in the Project are available to residents of the Project and their guests only for free or at cost but not at a profit. The parking facility to be used by residents of the Project is commensurate with the needs of such residents. Each unit of the Project will consist of an accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation. No unit will be occupied by an owner of such unit. Substantially all of the proceeds of the Bonds will be used or deemed to be used to finance costs of the Project which consisted of amounts chargeable to a capital account or which would have been so chargeable either with a proper election or but for a proper election.

(e) All the Bond proceeds from the sale of the Bonds will be expended on the Project to be owned by the Borrower except for proceeds used for the payment of costs of issuing the Bonds, as described in the Tax Certificate. Substantially all of the proceeds of the Bonds will be used for the construction and development of land or property of a character subject to the allowance for depreciation. No costs of the Project for which Bond proceeds will be used were paid for or incurred more than 60 days prior to official action taken by the Issuer on [May 19, 2025].

(f) The Borrower covenants to cause the Project to be operated as a qualified residential rental project as provided in Code § 142(d) at all times during the qualified project period (as defined below). Not less than 40% of the residential units in the Project are or will be occupied by individuals whose income is 60% or less of the income limit for Multifamily Tax Subsidy Projects as determined by HUD with respect to projects financed pursuant to Section 142(d) of the Internal Revenue Code of 1986, as amended by the Housing and Economic Recovery Act of 2008 (P.L. 110-289) and adjusted for family size. For purposes of the Borrower satisfying the foregoing requirements, the income of individuals and families and median gross income shall be determined in a manner consistent with determinations of lower income families and median gross income under Section 8 of the United States Housing Act of 1937, as amended (with adjustments for family size), except that the percentage of median gross income which qualifies as low or moderate income shall be sixty percent (60%). The determination of whether the income of an individual or a family is of low or moderate income shall be made at least annually on the basis of the current income of the resident(s), except as provided in Code §§ 142(d)(3), (4), and (5). A tenant whose income met the foregoing requirements at the beginning of such tenant's occupancy of a unit in the Project shall cease to be treated as meeting such requirement if such tenant's income exceeds one hundred forty percent (140%) of such requirement and after such event any vacant unit of comparable or smaller size in the Project is rented to another tenant whose income does not meet the requirements set forth above. The "qualified project period" begins on the first day on which at least ten percent of the units in the Project are occupied, and ends on the later of (a) the date which is fifteen years after the date on which at least fifty percent of the residential units in the Project are occupied, (b) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, and (c) the date on which any assistance with respect to the Project under Section 8 of the United States Housing Act terminates.

(g) The Borrower will ensure that the Project is operated as a qualified residential rental project on a continuous basis beginning on the date the Borrower receives a certificate of occupancy or similar governmental approval permitting occupancy of the units within the Project, through the longer of the remaining term of the Bonds or the qualified project period (as defined in the preceding paragraph). Moreover, the Borrower will make the units in the Project available to persons of the general public on a nondiscriminatory basis during this period. The Borrower will comply with the provisions of Code § 142(d)(7) with respect to annual certifications as to whether the Project meets the requirements of this Section 2.04.

(h) The Borrower confirms its understanding that a failure to comply with the requirements of this Section 2.04 may cause the interest on the Bonds to be included in the gross income of the holders thereof for federal income tax purposes retroactively to their date of issue, unless corrected within a reasonable period. A reasonable period is at least sixty (60) days after noncompliance is first discovered or would have been discovered by the exercise of due diligence. The Borrower agrees to maintain records adequate to determine compliance with the requirements of this Section 2.04, and to make such records available to the Issuer upon its written request.

(i) Except with respect to the requirements set forth in the Regulatory Agreement, the Borrower need no longer comply with the requirements of this Section 2.04 as they relate to the Project in the event of involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the date of issue of the Bonds which prevents the Issuer from enforcing such provisions, or in the event of condemnation or similar event, but only if, within a reasonable period of time, either the Bonds are retired or amounts received as a consequence of such event are used to provide a project which meets such requirements and the other applicable requirements of this Section 2.04, and such amounts are not invested at a yield in excess of the yield on the Bonds pending such use. The foregoing sentence shall not apply to a project subject to foreclosure, transfer of title by deed in lieu of foreclosure or similar event if, at any time during the qualified project period subsequent to such event, the Borrower or a related person (as defined in Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in such project for federal tax purposes.

(j) The Borrower will not pay or enter into a transaction that reduces the arbitrage rebate to be paid to the United States because the transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been “at arm’s length” and had the yield on the Bonds not been relevant to either party.

(k) No portion of the proceeds of the Bonds will be used to provide any airplane, skybox or other private luxury box, any health club facility, any facility primarily used for gambling or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, as prohibited by Code § 147(b).

(l) Less than twenty-five percent (25%) of the proceeds of the Bonds will be used directly or indirectly for the acquisition of land used for other than farming purposes, and no portion of the proceeds of the Bonds will be used directly or indirectly for the acquisition of land used for farming purposes, as prohibited by Code § 147(c).

(m) No portion of the proceeds of the Bonds will be used for the acquisition of any property (or an interest therein), the first use of which property was not pursuant to such acquisition unless the rehabilitation expenditures with respect to such property equals or exceeds fifteen percent (15%) of the portion of the cost of acquiring such property financed with the proceeds of the Bonds, if such property constituted a building (and the equipment thereof), or equals or exceeds 100 percent of the portion of the cost of acquiring such property financed with the proceeds of the Bonds, if such property constituted a structure other than a building (and the equipment thereof), all as provided in Code § 147(d)(2).

(n) Except as permitted by Code §149(b), the Bonds are not federally guaranteed; specifically, the Bonds are not issued as part of an issue five percent (5%) or more of the proceeds of which are to be invested directly or indirectly in federally insured deposits or accounts.

(o) The Borrower represents that there were and are no tax-exempt obligations sold or to be sold, delivered or to be delivered, within fifteen (15) days of the date of

sale or closing of the Bonds, the security for which tax exempt obligations is common or pooled with the security for the Bonds.

(p) The Borrower covenants that, pursuant to the requirement of Section 1.148-1(b) of the Treasury Regulations, it (or any related person contemplated by such Regulations) will not purchase the Bonds in an amount related to the amount of the Loan.

(q) The Borrower warrants that at least 85% of the spendable proceeds of the Bonds are to be used to provide a residential rental project within three years of the date of issue of such Bonds.

(r) The Borrower does not presently intend to sell or dispose of any of the facilities or property financed with the proceeds of the Bonds.

(s) Internal Revenue Service Form 8038, delivered in connection with the issuance of the Bonds, is, to the best of the Borrower's information and belief, true, accurate and complete.

(t) The Borrower hereby covenants that for so long as the Bonds are outstanding, it will take all steps within its control to maintain the tax-exempt status of the Bonds, and will take no action within its control which would impair the tax-exempt status of the Bonds, including, but not limited to, following all subsequent legislation and pronouncements of the Internal Revenue Service or the United States Department of Treasury which are necessary to preserve the tax-exempt status of the Bonds. The Borrower covenants that it will follow the procedures and requirements of this Section 2.04, and the requirements of its Tax Certificate, for so long as the Bonds are outstanding or as may otherwise be necessary to preserve the tax-exempt status of the Bonds. The Borrower acknowledges that Bond Counsel's opinion and the Attorney General's opinion assume that the Borrower will comply with such procedures and requirements and that deviation from such requirements and procedures is at the risk of the Borrower. Notwithstanding the foregoing, the foregoing procedures and requirements need not be observed if (a) subsequent legislation or pronouncements of the Internal Revenue Service or the United States Department of Treasury would permit such deviation without impairing the tax-exempt status of the Bonds or (b) the Borrower receives an Opinion of Bond Counsel, in a form reasonably acceptable to the Issuer, that the failure to meet such requirements or procedures will not impair the tax-exempt status of the Bonds.

(u) The costs of issuance financed by the Bonds will not exceed 2% of the proceeds of the Bonds (within the meaning of Section 147(g) of the Code), and the Borrower will not request or authorize any disbursement pursuant to Section 4.07 of the Indenture or otherwise, which, if paid, would result in more than 2% of the proceeds of the Bonds being so used.

(v) The proceeds of the Bonds shall be used or deemed used exclusively to pay costs that (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent

prohibited in Section 147(d) of the Code, and (ii) are made exclusively with respect to a “qualified residential rental project” within the meaning of Section 142(d) of the Code and that for the greatest number of buildings the proceeds of the Bonds shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code; provided, however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its members and neither the Trustee nor the Issuer shall have any obligation to enforce this covenant nor shall they incur any liability to any person, including without limitation, the Borrower, the members of the Borrower, any other affiliate of the Borrower or the holders of the Bonds for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided, further, failure to comply with this representation, covenant and warranty shall not constitute a default or event of default under this Agreement or the Indenture.

(w) The Borrower is the owner of the Project and the Borrower is a California limited partnership.

Section 2.05 *Notice of Determination of Taxability.*

Promptly after the Borrower first becomes aware of any investigation relating to the tax status of the Bonds, or a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer and the Trustee at the address of each party listed in ARTICLE I of the Indenture.

Section 2.06 *Conversion.*

The Borrower acknowledges and agrees that the Loan is subject Conversion as provided for in Section 2.12 of the Indenture.

**ARTICLE III
PLAN OF FINANCING**

Section 3.01 *Issuance of Bonds; Application of Proceeds.*

To provide funds to make the Loan for purposes of assisting the Borrower in paying Costs of the Project, the Issuer shall simultaneously with the execution and delivery hereof proceed with the issuance and delivery of the Bonds to the Underwriter upon receipt by the Trustee of the items listed in Section 2.05 of the Indenture. The Issuer agrees to deposit the proceeds of sale of the Bonds in accordance with the Indenture.

The Bonds will be issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature and will be subject to redemption, mandatory tender, conversion and remarketing as set forth therein. As evidenced by the Borrower’s executed Consent and Agreement of Borrower, the Borrower has approved the terms and conditions of the Indenture and the Bonds, and the terms and conditions under which the Bonds will be issued, sold and delivered and will comply with those provisions of the Indenture that contemplate action by the Borrower, all as if the Borrower were a party to the Indenture.

Pending disbursement pursuant to Section 3.03 hereof, the proceeds of the Bonds deposited in the Project Fund shall constitute a part of the Revenues assigned by the Issuer to the Trustee as security for the payment of the Bond Debt Service Charges as provided in the Indenture.

Section 3.02 *The Loan.*

The Issuer agrees, upon the terms and conditions herein, to make the Loan to the Borrower with the proceeds received by the Issuer from the sale of the Bonds by causing such proceeds to be deposited with the Trustee for disposition as provided in the Indenture. The obligation of the Issuer to fund the Loan shall be deemed fully discharged, and the principal amount of the Bonds shall be deemed fully advanced to the Borrower under the Note, upon the deposit in full of the proceeds of the Bonds with the Trustee. The Loan shall be evidenced by the Note as assigned by the Issuer and made payable to the Trustee.

Section 3.03 *Disbursements from the Project Fund.*

In the Indenture, the Issuer has authorized and directed the Trustee to make disbursements from the Project Fund to pay Costs of the Project upon satisfaction of the requirements of the Indenture. The Trustee is directed in the Indenture to make disbursements from the Project Fund as provided in the Indenture, and pursuant to the receipt of a Requisition in substantially the form attached to the Indenture as APPENDIX B.

The Borrower's right to request disbursements from the Project Fund is limited to the principal amount of the Loan and conditioned upon the deposit of Eligible Funds into the Collateral Fund as set forth in the Indenture.

Any disbursement for any item that is not described in, or the cost for which item is other than as described in, the information statement filed by the Issuer in connection with the issuance of the Bonds as required by Section 149(e) of the Code and in the Notice of Public Hearing pertaining to the Bonds, shall be accompanied by an Opinion of Bond Counsel to the effect that such disbursement will not cause the interest on the Bonds to be included in the gross income of the Holders for federal income tax purposes.

Section 3.04 *Furnishing Documents to the Trustee.*

The Borrower agrees to cause Requisitions to be delivered to the Trustee as may be necessary to effect payments out of the Project Fund in accordance with Section 3.03 hereof and Section 4.07 of the Indenture.

Section 3.05 *Construction, Installation and Equipment.*

The Borrower (a) has acquired the land, and shall construct and develop the Project with all reasonable dispatch and in accordance with the Plans and Specifications, (b) shall pay when due all fees, costs and expenses incurred in connection with that construction, installation and equipment from funds made available therefor in accordance with this Agreement or otherwise, except to the extent being contested in good faith, and (c) shall ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable under the terms of any contract, order, receipt, writing and instruction in connection with the construction and development of the Project, and shall enforce the provisions

of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is that of the Borrower and any contracts made by the Borrower with respect thereto, whether acquisition contracts, construction contracts or otherwise, or any work to be done by the Borrower on the Project are made or done by the Borrower in its own behalf and not as agent or contractor for the Issuer and each such contract shall so state. The Borrower agrees that it will compensate, or cause its general contractor to compensate, all workers employed in the construction and development of the Project as required by law.

Section 3.06 *Plans and Specifications.*

The Plans and Specifications have been or shall be filed with the Issuer and, if requested by the Trustee, with the Trustee. The Borrower may revise the Plans and Specifications from time to time, provided that no revision shall be made that would change the purpose of the Project to other than purposes permitted by the Act and the Regulatory Agreement; and provided further that no material revision of the Plans and Specifications shall be made unless the Borrower has first delivered to the Issuer and the Trustee a narrative description of the proposed revision accompanied by a certificate of the Authorized Borrower Representative certifying or a modified budget evidencing the change in Project Costs resulting from the revision and supporting that the moneys then on deposit in the Project Fund together with investment earnings thereon at the rate of return stated in the certificate and with other identified available moneys will be sufficient to pay in full the Project Costs including the change in Project Costs resulting from such revision. For purposes of this section, a material revision of the Plans and Specifications is any change resulting in a Project Cost increase of \$500,000 or more.

The sources and uses contemplated by the plan of financing for the Project are set forth in EXHIBIT C hereto, and at or prior to the execution and delivery of this Agreement, the Borrower shall provide to the Issuer evidence acceptable to the Issuer, in its sole discretion, of the availability of all financing contemplated by the plan of financing for the Project including, without limitation (and without regard to whether the immediate availability of such financing is a condition to undertaking the Project), the anticipated equity portion of the financing and all other public and private financing and any interim or bridge financing to be provided in anticipation of the closing of any of the foregoing aspects of the financing therefor. Copies of all documents evidencing that financing, and the security therefor, all in form reasonably acceptable to the Issuer, shall have been provided to the Issuer.

Section 3.07 *[Reserved].*

Section 3.08 *Borrower Required to Pay in the Event Project Fund Is Insufficient.*

In the event the moneys in the Project Fund are not sufficient to pay the Costs of the Project in full, the Borrower agrees to complete the Project in accordance with the Plans and Specifications and to pay from its own funds or from other funds available to the Borrower that portion of the Costs of the Project in excess of the moneys available therefore in the Project Fund. The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Costs of the Project will be sufficient to pay all of the Costs of the Project. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Costs of the Project pursuant to the provisions of this Section, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, the

Trustee or the Holders of any of the Bonds, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement.

Section 3.09 *Special Arbitrage Certifications.*

The Borrower covenants (i) not to take any action or fail to take any action which would cause the interest on any of the Bonds to be or become includable in the gross income of the Holders for federal income tax purposes and (ii) not to cause or direct any moneys on deposit in any fund or account to be used in a manner that would cause the Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code. The Borrower certifies and covenants to and for the benefit of the Issuer and the Holders of the Bonds that so long as there are any Bonds Outstanding, moneys on deposit in any fund or account in connection with the Bonds, whether such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner that will cause the Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code.

Section 3.10 *Rebate Calculations and Payments.*

Within thirty (30) days after the end of each Bond Year and within twenty (20) days after payment in full of the Bonds, if necessary, the Borrower shall cause the Rebate Analyst to calculate the Rebate Amount as of the end of that Bond Year or the date of such payment and the Rebate Analyst shall notify the Trustee, the Borrower and the Investor Limited Partner of that amount. If the amount then on deposit in the Rebate Fund created under the Indenture is less than the Rebate Amount (taking into account the amount or amounts, if any, previously paid to the United States), the Borrower shall, within thirty (30) days after the date of the aforesaid calculation, deposit or cause to be deposited to the credit of the Rebate Fund an amount sufficient to cause the Rebate Fund to contain an amount equal to the Rebate Amount. The obligation of the Borrower to make or cause to be made such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture or the termination of this Agreement. The Borrower shall obtain such records of the computations made pursuant to this Section as are required under Section 148(f) of the Code and shall retain such records for at least six (6) years after the maturity or retirement of the Bonds.

Section 3.11 *Rebate Analyst.*

In accordance with Section 3.10 hereof, the Rebate Analyst shall perform any calculations required under Section 4.06 of the Indenture at the sole expense of the Borrower. In the event the Issuer does not select a Rebate Analyst when any such calculation is required, the Borrower, with the consent of the Issuer, shall appoint a Rebate Analyst, the expense of which shall be borne by the Borrower, and the Borrower shall give prompt notice in writing to the Trustee of such appointment. The Borrower further covenants that, during the term of the Bonds, in the event the Borrower sells or otherwise disposes of the Project, it will require that the transferee execute a covenant similar to that in this Section in the sale or other documents concerning the disposition and will require such transferee to include such a covenant in future transfer documents. The special covenants of the Borrower in this Section shall survive the defeasance or payment in full of the Bonds notwithstanding any other provision of this Agreement until the requirements for payment of any Rebate Amount has been fully satisfied.

ARTICLE IV LOAN PAYMENTS; ADDITIONAL PAYMENTS AND OBLIGATIONS

Section 4.01 *Loan Repayment; Delivery of Note.*

In consideration of and in repayment of the Loan, the Borrower shall deliver or cause to be delivered to the Trustee on or before each Bond Payment Date, Loan Payments, equal to the amount necessary to pay interest on and principal of the Bonds due on the next Bond Payment Date. All such Loan Payments shall be paid to the Trustee in accordance with the terms of the Note for the account of the Issuer and shall be held and disbursed in accordance with the provisions of the Indenture and this Agreement.

The Borrower shall be entitled to a credit against the Loan Payments required to be made with respect to the Bonds on any date equal to the available money in the Bond Fund or transferred thereto from the Collateral Fund or the Project Fund for the payment of the Bond Debt Service Charges on that date.

To secure the Borrower's performance of its obligations under this Agreement, the Borrower shall execute and deliver, concurrently with the issuance and delivery of the Bonds, the Note and the Regulatory Agreement.

The Note shall secure equally and ratably all Outstanding Bonds, except that, so long as no Event of Default has occurred and is subsisting hereunder, payments by the Borrower on the Note shall be used by the Trustee to make a like payment of the Bond Debt Service Charges and shall constitute Loan Payments.

Upon payment in full, in accordance with the Indenture, of the Bond Debt Service Charges on any or all Bonds, whether at maturity or otherwise, or upon provision for the payment thereof having been made in accordance with the provisions of the Indenture, (a) the Note shall be deemed fully paid, the obligations of the Borrower thereunder shall be terminated, and the Note shall be surrendered by the Trustee to the Borrower, and shall be canceled by the Borrower, or (b) an appropriate notation shall be endorsed thereon evidencing the date and amount of the principal payment (or prepayment) equal to the Bonds so paid, or with respect to which provision for payment has been made, and that Note shall be surrendered by the Trustee to the Borrower for cancellation if all Bonds shall have been paid (or provision made therefor) and canceled as

aforesaid. Unless the Borrower is entitled to a credit under express terms of this Agreement or the Note, all payments on the Note shall be in the full amount required thereunder.

Notwithstanding anything herein to the contrary, in any action or proceeding brought on any instrument evidencing or securing the Loan or the indebtedness evidenced thereby, no deficiency or other money judgment shall be enforced against the Borrower or any member, officer or director of the Borrower personally, or any successor or assignee of the Borrower, except that foreclosure actions (or similar proceedings) may be maintained, but any such judgment obtained shall be enforced only against the security for the Loan or the indebtedness evidenced hereby, and not against the Borrower or any member, officer or director of the Borrower, or any successor or assignee of the Borrower, it being understood that nothing herein shall be construed in any way so as to affect or impair the lien of any instrument heretofore or hereafter given as security for the payment of the indebtedness evidenced by the Note, or to affect or impair the right to foreclose thereon by judgment against the Borrower or otherwise, as provided by law, or otherwise to limit or restrict any of the Unassigned Issuer's Rights or any of the rights and remedies of the Issuer in any proceeding or other enforcement of payment of the indebtedness evidenced by the Note out of and from the security given therefor, subject only to the aforesaid limitation upon enforcement of any judgment against the Borrower, any member, officer, director or member of the Borrower, any successor or assignee of the Borrower; and, provided, further, that nothing contained in this Section 4.01 shall:

- (i) affect either the Issuer's or the Trustee's right to payment of fees or expenses payable to the Issuer or to the Trustee pursuant to the Indenture, to the extent of the assets of the Project and the funds and accounts established under the Indenture;
- (ii) affect the right of the Issuer or the Trustee to enforce and recover upon the indemnifications of the Borrower set forth in this Agreement;
- (iii) limit or be construed to limit the personal liability and obligations of the Borrower and each of its members, officers or directors under any of the documents evidencing and/or securing the Loan to which the Borrower is a party in the event that any warranty or representation of the Borrower contained herein and therein proves to be untrue in any material respect as of the date hereof;
- (iv) limit or be construed to limit the personal liability and obligations of the Borrower and each of its members, officers or directors under the Regulatory Agreement;
- (v) be deemed to be a waiver by either the Issuer or the Trustee of any rights available to the Issuer or the Trustee under the United States Bankruptcy Code; or
- (vi) affect the rights of the Issuer or the Trustee to obtain indemnification for any and all claims, losses, liabilities, actions, suits, judgments, damages, costs, taxes or expenses (including, without limitation, fees and expenses of attorneys, consultants, auditors and reasonable costs of investigations) of any nature arising out of, or relating to, Hazardous Substances, Asbestos or Relevant Environmental Laws present at or in any way affecting the Project or any Person with respect to the Project.

Section 4.02 *Additional Payments.*

The Borrower shall pay as Additional Payments hereunder the following:

(a) To the Issuer or the Trustee, as the case may be, whether or not an Event of Default has occurred hereunder, as payment for or reimbursement or prepayment of any and all costs, fees, expenses, and liabilities (including counsel fees, costs and expenses) (i) incurred or paid by the Issuer or the Trustee, as the case may be, in satisfaction of any obligations of the Borrower hereunder not performed by the Borrower in accordance with the provisions hereof, or (ii) incurred as a result of a request by the Borrower or of a requirement of this Agreement or the Indenture and not otherwise required to be paid by the Borrower under this Agreement, or (iii) incurred in the defense of any action or proceeding with respect to the Project or this Agreement, or in enforcing this Agreement, or arising out of or based upon any other document related to the issuance of the Bonds.

(b) All Extension Payments and other sums required under Section 3.03 of the Indenture in order to revise or extend the Mandatory Tender Date or remarket the Bonds, and the Borrower further agrees to execute any and all certificates required by the Issuer, the Trustee or the Remarketing Agent in order to effectuate such revision, extension or remarketing.

(c) To the Trustee, the fees and expenses of the Trustee to the extent that the funds available in the Expense Fund for the payment thereof are not sufficient and available therefor.

(d) To the Issuer, the Issuer Fees and Expenses, and the reasonable fees and expenses of the Issuer or any agents, attorneys, accountants, consultants and financial service providers selected by the Issuer to act on its behalf in connection with the Documents or the Bonds, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds or in connection with any litigation which may at any time be instituted involving the Documents or the Bonds or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing.

(e) All costs of printing any replacement Bonds required to be issued under the Indenture to the extent such costs are not paid by the Holders.

(f) To the extent not paid by the Trustee from the Expense Fund, all of the fees and expenses of the Rebate Analyst (including, but not limited to, the Rebate Analyst Fee) and any other necessary consultant employed by the Borrower, the Trustee or the Issuer in connection with any of the requirements imposed by Section 4.06 of the Indenture and the Tax Certificate to the extent that the funds available under the Indenture for the payment thereof are not sufficient and available therefor. The Borrower shall provide or cause to be provided all information and money (including money necessary to make deposits to the Rebate Fund required by the Indenture and the Tax Certificate and the fees and expenses of the Rebate Analyst to the extent available money in the Bond Fund under the Indenture are inadequate to pay such amounts) to the Trustee and the Rebate Analyst to enable the Trustee and the Rebate Analyst to comply with the Indenture and the Tax Certificate.

(g) To the Dissemination Agent, the Dissemination Agent Fee to the extent the funds available in the Expense Fund are not sufficient and available therefore, as well as any other costs and expenses in order to provide for compliance with the terms of the Continuing Disclosure Agreement.

(h) To the Remarketing Agent, the Remarketing Agent's Fee and any Remarketing Expenses.

In the event the Borrower is in default under any provision of any of the Borrower Documents, the Borrower shall be liable to, and upon demand shall pay to, the Issuer and the Trustee all reasonable fees, expenses and disbursements of such persons and their agents (including attorneys' fees and expenses) which are reasonably connected therewith or incidental thereto except to the extent such fees, expenses and disbursements are paid from money available therefor under the Indenture.

To provide certainty of the anticipated Additional Payments, the Borrower agrees to cause to be deposited with the Trustee the Expense Fund Deposit and the Costs of Issuance Deposit as required under the Indenture, and authorizes the Trustee to pay, from money on deposit in the Costs of Issuance Fund and the Expense Fund, the amounts provided to be paid from the Costs of Issuance Fund or the Expense Fund in accordance with Sections 4.07 and 4.09, respectively, of the Indenture. All such amounts shall be paid directly to the parties entitled thereto for their own account as and when such amounts become due and payable.

Upon the payment, prepayment, or incurrence of any such cost, expense, or liability described in this Section by any such party, the Additional Payments in respect thereof shall be payable upon written demand to the Borrower, which demand shall be accompanied by invoices or other appropriate documentation concerning the nature, amount and incurrence of such cost, expense or liability. If the Additional Payments payable under this Section are not paid within a reasonable timeframe following receipt of such demand, such Additional Payments shall bear interest from the date of such demand at the Interest Rate until the amount due shall have been fully paid. The Borrower shall not make Additional Payments from any amounts on deposit in the Project Fund or the Collateral Fund.

The Borrower also covenants and agrees to pay any additional interest, taxes or penalties that may be due as a result of a Determination of Taxability.

The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents, including the Regulatory Agreement.

Section 4.03 *Place of Payments.*

The Borrower shall make all Loan Payments directly to the Trustee at its Designated Office. Additional Payments shall be made by the Borrower directly to the person or entity to whom or to which they are due.

Section 4.04 *Obligations of the Borrower Unconditional.*

The obligations of the Borrower to make the Loan Payments, Additional Payments and any other payments required under this Agreement or the Indenture, and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any right of notice, setoff, recoupment or counterclaim it might otherwise have against the Issuer, the Trustee or any other person. Subject to termination as provided herein, the Borrower (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for under this Agreement, (ii) will perform and observe all of its other agreements contained in this Agreement and (iii) will not terminate this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, or change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State or any political subdivision of either, any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, whether express or implied, or any failure of the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture, whether express or implied.

Section 4.05 *Remarketing of Bonds.*

Contemporaneously with the issuance of the Bonds, the Borrower shall obtain the Construction Loan from the Construction Lender. The Borrower is hereby granted the right to (i) request a remarketing of the Bonds in the manner and to the extent set forth in Section 3.03 of the Indenture and (ii) with the written consent of the Remarketing Agent (which consent shall not be unreasonably withheld), designate the length of the Remarketing Period and the related Mandatory Tender Date in the manner and to the extent set forth in Sections 3.01 and 3.03 of the Indenture. Notice of any such Remarketing Period and the related Mandatory Tender Date also shall be delivered to the Issuer, Bond Counsel, the Investor Limited Partner, the Construction Lender and the Trustee not later than fifteen (15) days prior to the Mandatory Tender Date.

Section 4.06 *Construction Loan to Borrower.*

Contemporaneously with the issuance of the Bonds, the Borrower shall obtain the Construction Loan from the Construction Lender.

The Borrower shall cause the Construction Lender, from time to time to deliver Eligible Funds to the Trustee for deposit into the Collateral Fund to enable the Trustee to disburse an equal amount of Bond proceeds from the Project Fund as approved by the Construction Lender pursuant to completed and fully executed Requisition, in substantially the form attached to the Indenture as APPENDIX B.

Section 4.07 *Assignment of Agreement and Revenues; Trustee is Third Party Beneficiary.*

To secure the payment of the Bond Debt Service Charges, the Issuer shall assign to the Trustee, by the Indenture, its rights under and interest in this Agreement (except for the Unassigned Issuer's Rights). The Borrower hereby agrees and consents to those assignments. The Issuer shall not attempt to further assign, transfer or convey its interest in the Revenues or this Agreement or create any pledge or lien of any form or nature with respect to the Revenues hereunder.

The Trustee shall be a third-party beneficiary to this Agreement.

ARTICLE V SPECIAL COVENANTS

Section 5.01 *No Warranty of Condition or Suitability by Issuer.*

The Borrower recognizes that, because the components of the Project have been and are to be designated and selected by it, THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OF THE STATE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

Section 5.02 *Access to the Project.*

The Borrower agrees that the Issuer, the Trustee and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect the Project and the construction and development thereof at all reasonable times. The Borrower acknowledges that the Issuer has the right to monitor the construction and development of the Project. The Issuer, the Trustee and their duly authorized agents shall also be permitted, at all reasonable times, to examine the books, accounts, contracts, documents, and other papers of the Borrower with respect to the Project which shall all be maintained by the Borrower in reasonable condition and for audit.

Section 5.03 *Further Assurances and Corrective Instruments.*

The Borrower agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

Section 5.04 *Issuer and Borrower Representatives.*

Whenever under the provisions of this Agreement the approval of the Issuer or the Borrower is required or the Issuer or the Borrower is required to take some action at the request of the other, such approval or such request shall be given in writing both for the Issuer by a duly

authorized representative of the Issuer and for the Borrower by an Authorized Borrower Representative. The Trustee shall be authorized to act on any such approval or request pursuant to the Indenture.

Section 5.05 *Financing Statements.*

The Borrower shall execute and file, or shall cause to be executed and filed any and all financing statements, or any amendments thereof or continuation statements thereto, to perfect the security interests granted in the Indenture, in the manner prescribed in the Indenture. The Borrower shall pay all costs of filing such instruments and any reasonable fees and expenses (including reasonable attorney's fees and expenses) associated therewith.

Section 5.06 *Borrower Receipt of Insurance or Condemnation Proceeds.*

In the event the Borrower receives any proceeds of insurance or any condemnation awards with respect to the Project, the Borrower shall promptly upon receipt remit all such insurance proceeds or condemnation awards to the Construction Lender to the extent required by the Construction Loan Documents. Such proceeds shall be used to either reduce the indebtedness evidenced by the Construction Loan Documents or to repair or restore the loss caused to the Project pursuant to the terms and conditions of the Construction Loan Documents.

Section 5.07 *Borrower's Obligations Upon Tender of Bonds*

The Borrower shall have the option to cancel or terminate this Agreement at any time when (a) the Indenture shall have been released in accordance with its provisions, (b) sufficient money or security acceptable to the Issuer and the Trustee are on deposit with the Trustee or the Issuer, or both, to meet all Loan Payments, Additional Payments and other amounts due or to become due through the date on which the last of the Bonds is then scheduled to be retired or redeemed and (c) the Construction Loan shall be repaid in full. Such option shall be exercised by the Borrower, with approval of the Investor Limited Partner (not to be unreasonably withheld, conditioned or delayed), giving the Issuer and the Trustee five (5) days' notice in writing of such cancellation or termination, and such cancellation or termination shall become effective at the end of such notice period. The provisions of this Section shall not be deemed to permit a prepayment of the Note other than in accordance with its terms.

Section 5.08 *Option to Terminate.*

The Borrower shall have the option to cancel or terminate this Agreement at any time when (a) the Indenture shall have been released in accordance with its provisions, (b) sufficient money or security acceptable to the Issuer and the Trustee are on deposit with the Trustee or the Issuer, or both, to meet all Loan Payments, Additional Payments and other amounts due or to become due through the date on which the last of the Bonds is then scheduled to be retired or redeemed and (c) the Construction Loan shall be repaid in full. Such option shall be exercised by the Borrower, with approval of the Investor Limited Partner (not to be unreasonably withheld, conditioned or delayed), giving the Issuer and the Trustee five (5) days' notice in writing of such cancellation or termination, and such cancellation or termination shall become effective at the end of such notice period. The provisions of this Section shall not be deemed to permit a prepayment of the Note other than in accordance with its terms.

Section 5.09 *Foreign Account Tax Compliance Act.*

The Borrower acknowledges that, under the provisions of the Foreign Account Tax Compliance Act, the Trustee is obligated to withhold a percentage of the proceeds from any disbursement to a payee that has not delivered to the Trustee a tax identification number on a correctly completed IRS Form W-9. If requested by the Trustee, the Borrower shall provide the Trustee with a copy of any such completed Form W-9 form for the initial disbursement to any payee pursuant to any provision hereof.

Section 5.10 *Affirmative Covenants.*

(a) Maintenance of Project. The Borrower shall maintain and preserve the Project in good working order and condition, ordinary wear and tear excepted, and shall from time to time make all necessary repairs, renewals, replacements, additions and improvements to the Project. All damage to apartment units shall be repaired promptly and apartment units shall be maintained so as to be available at all times for habitation.

(b) Keeping of Records and Books of Account. The Borrower shall keep adequate records and books of account in which complete entries will be made, reflecting all financial transactions.

(c) Payment of Taxes, Etc. The Borrower shall promptly pay and discharge: all taxes, assessments, fees, and other governmental charges or levies or imposed upon it or upon any of its properties, income or profits, before the same shall become delinquent; all lawful claims of materialmen, mechanics, carriers, warehousemen, landlords and other similar Persons for labor, materials, supplies and rentals, which if unpaid might by law become a lien upon its properties; any indebtedness heretofore or hereafter incurred by it when due, and discharge, perform and observe covenants, provisions and conditions to be discharged, performed and observed by it in connection therewith, or in connection with any agreement or other instrument relating thereto or in connection with any lien existing at any time upon any of its properties; provided, however, that the Borrower shall not be required to pay any of the foregoing if (a) the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings, (b) the Borrower shall have set aside on its books adequate reserves with respect thereto and (c) the title of the Borrower to, and its right to use, its properties is not materially and adversely affected thereby. The Borrower hereby agrees that, in the event it fails to pay or cause to be paid taxes, assessments, fees and other governmental charges or levies or the premium on any required

insurance, the Trustee may make such payment, but is not obligated to do so, and the Trustee shall be reimbursed by the Borrower therefor with interest on the amount so advanced.

(d) Insurance.

The Borrower shall at all times:

(i) Maintain or cause to be maintained insurance of such types and in such amounts (including without limitation, builder's risk insurance or similar coverage as appropriate and necessary, and insurance against loss by fire, hazards included within the term "extended coverage," and such other hazards, contingencies or casualties and liabilities on the Project, liability insurance with respect to the Project, and flood insurance on any portion of the Project which lies in a federally identified flood hazard zone) upon its property with responsible and reputable insurers of such character, with respect to such risks, as are usually maintained by Persons engaged in a like business under similar circumstances, and, with respect to casualty insurance on the Project, equal to the original amount of the Loan and with an insurer qualified to write such insurance in the State, subject to ordinary and reasonable deductibles.

(ii) Furnish to the Trustee, upon request, certified copies of its insurance policies or certificates of insurance showing its insurance coverage. The Trustee shall have no obligation to monitor the existence or adequacy of any such insurance policies.

(iii) Require each policy of insurance covering the Project to contain a provision whereby it cannot be canceled or substantially modified except after not less than 30 days' written notice to the Trustee.

(e) Notice of Material Litigation. The Borrower shall promptly notify the Trustee and the Issuer in writing of any litigation, arbitration proceeding or administrative investigation, inquiry or other proceeding to which it may hereafter become a party or be subject to which may involve any material risk of any material judgment or liability (unless fully covered by insurance) or which may otherwise result in any material adverse change in the business or assets or in the condition, financial or otherwise, of the Borrower or which may materially impair the ability of the Borrower to perform this Agreement, the Regulatory Agreement or the Note, or any other agreement or instrument herein or therein contemplated.

(f) Notice of Default. In the event that any Event of Default occurs, the Borrower shall give prompt notice in writing of such happening to the Trustee, Issuer, Investor Limited Partner and the Construction Lender.

(g) Performance of Contracts, Etc. Except to the extent contested in good faith, the Borrower shall perform according to and shall comply with all of its contractual obligations and all requirements of law if nonperformance thereof would materially and adversely affect the business or credit of the Borrower on an individual basis or would materially impair the ability of the Borrower to perform this Agreement and the Regulatory Agreement or the Note or any other agreement or instrument herein or therein contemplated.

(h) [Reserved].

(i) Cooperation in Perfecting Security Interests, Etc. The Borrower shall promptly perform such acts as may be necessary or advisable to perfect and maintain any security interest provided for in this Agreement or in any agreement or document contemplated herein or therein, or otherwise to carry out the intent of this Agreement. The Borrower shall promptly execute, deliver, file and perform or cause to be done, executed, delivered, filed and performed all such documents, instruments, agreements, things and acts, including, without limitation, financing statements, continuation statements and mortgages as may be necessary or advisable to perfect and maintain a security interest on any and all assets or rights owned by the Borrower, or any interest of the Borrower therein, and the Trustee and its officers, employees and authorized agents, or any of them, are hereby irrevocably appointed the attorneys in fact of the Borrower to do all acts and things which are necessary or advisable to preserve, perfect and continue perfected any security interest in favor of the Trustee. The Trustee shall not be responsible for the initial filing of financial statements.

(j) Environmental Matters. The Borrower will take and continue to take prompt action to remedy, as legally required, all environmental pollution and contamination, hazardous waste disposal and other environmental cleanup problems, if any, with respect to the Project, whether or not such cleanup problems have resulted from the order or request of a municipal, state, federal, administrative or judicial authority, or otherwise. The foregoing covenant shall not constitute or create a waiver of any rights the Borrower may have to pursue any legal rights or remedies against any third party for any environmental claims.

(k) Non-discrimination. The Borrower will not and will require each contractor, subcontractor and commercial tenant of the Project to covenant that it will not discriminate by reason of race, creed, color, handicap, national origin or sex in the employment of any Person employed by it in connection with the Project or working in or on the Project. The Borrower will require each manager of the Project to covenant that in the leasing of the Project it will not discriminate by reason of race, creed, color, handicap, national origin or sex.

Section 5.11 *Other Indebtedness.*

So long as no Event of Default or Default hereunder shall have occurred and be continuing, the Borrower shall be permitted to incur any indebtedness for any Costs of the Project or other obligation or payment due under this Agreement, the Indenture and the Regulatory Agreement.

In addition, without the consent or approval of the Issuer or the Trustee, the Borrower shall be permitted to incur unsecured loans made in accordance with the Borrower's Partnership Agreement and normal trade accounts payable in the ordinary course of the Borrower's business.

The Borrower shall not create, assume, incur or permit to exist or to be created, assumed or incurred, directly or indirectly, any Lien on any of the properties or assets of the Borrower whether now owned or hereafter acquired, except Permitted Encumbrances.

Section 5.12 *Nature of Business.*

The Borrower will not change the general character of its business as conducted at the date hereof, or engage in any type of business not reasonably related to its business as normally conducted.

Section 5.13 *Continuing Disclosure.*

The Borrower hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Agreement or the Indenture, failure of the Borrower to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default hereunder or under the Indenture. The Borrower will provide to the Trustee and the Issuer, if requested, copies of the annual financial statements of the Project and notices of material events provided pursuant to the Continuing Disclosure Agreement.

**ARTICLE VI
RESTRICTION ON TRANSFER; ASSIGNMENT, SELLING, LEASING;
INDEMNIFICATION**

Section 6.01 *Restriction on Transfer; Removal of General Partner.*

(a) Except for Permitted Encumbrances and except as contemplated by the Construction Loan Documents, Regulatory Agreement, and as otherwise provided for herein, the Borrower will not, directly or indirectly, by operation of law or otherwise, sell, assign, grant a deed of trust, pledge, hypothecate, transfer or otherwise dispose of the Project or any interest in the Project, and will not encumber, alienate, hypothecate, grant a security interest in or grant any other ownership or control interest whatsoever in the Project, in the leases or in the rents, issues and profits therefrom.

(b) Except as otherwise set forth in this Loan Agreement, no ownership interest in the Borrower may be sold, conveyed, transferred, assigned, pledged or otherwise transferred, in whole or in part, directly or indirectly, by operation of law or otherwise other than the transfer of partnership interests pursuant to the Partnership Agreement and the pledge and transfer of partnership interests pursuant to the Construction Loan Documents.

(c) Subject to any applicable provisions of the Construction Loan Documents, the Tax Certificate and the Regulatory Agreement, and subject to the prior approval of the Issuer, the following shall be permitted and shall not require the prior written approval of the Trustee: (a) the transfer by the Investor Limited Partner of its interest in the Borrower in accordance with the terms of the Partnership Agreement, (b) the removal of the General Partner in accordance with the Partnership Agreement and the replacement thereof in accordance with the Partnership Agreement, (c) the transfer of direct ownership interests in the Investor Limited Partner, (d) upon the expiration of the tax credit compliance period, the transfer of the interests of the Investor Limited Partner in the Borrower to the General Partner or any of its Affiliates, (e) the pledge and collateral assignment by the General Partner of its ownership interests in the Borrower to the Construction Lender as security for the Construction Loan and the transfer of General Partner's ownership interest to Construction Lender pursuant to the Construction Loan Documents, (f) the pledge and collateral assignment by the General Partner of its ownership interests in the Borrower to the Borrower and/or the Investor Limited Partner and the transfer of General Partner's ownership interest

pursuant to such pledge, (g) the admission of the Investor Limited Partner to the Borrower as partners therein pursuant to the Partnership Agreement, (h) any amendment to the Partnership Agreement, the Borrower Documents or the Construction Loan Documents to memorialize the transfers or removal described above and (i) any removal of the General Partner and replacement thereof in accordance with the Construction Loan Documents.

(d) The Borrower will not become a party to any merger or consolidation, or agree to effect any asset acquisition or stock acquisition.

(e) The Borrower will not convert the ownership of the Project into condominium or cooperative housing corporation form of ownership other than a limited equity cooperative that is a qualified cooperative housing corporation as defined in Section 143(k)(9) of the Code.

(f) The Borrower will not seek the dissolution or winding up, in whole or in part, of the Borrower or voluntarily file, or consent to the filing of, a petition for bankruptcy, reorganization, or assignment for the benefit of creditors or similar proceedings.

(g) The Borrower will not enter into any arrangement, directly or indirectly, whereby the Borrower shall sell or transfer any property owned by it in order then or thereafter to lease such property or lease other property that the Borrower intends to use for substantially the same purpose as the property being sold or transferred without the prior written consent of the Issuer in its sole and absolute discretion.

(h) The Borrower will not take any action that would adversely affect the exclusion of interest on the Bonds from gross income, for purposes of federal income taxation nor omit or fail to take any action required to maintain the exclusion of interest on the Bonds from gross income, for purposes of federal income taxation.

(i) This Agreement may only be assigned, sold, transferred or otherwise disposed of by the Borrower with the prior written consent of the Issuer, subject to each of the following conditions:

(i) No such assignment will relieve the Borrower from primary liability for any of its obligations hereunder (unless the Issuer agrees in writing to release the Borrower) and in the event of any such assignment, the Borrower will continue to remain primarily liable for payment of its obligations hereunder and for performance and observance of the other covenants and agreements on its part herein provided.

(ii) No such assignment will, in the opinion of Bond Counsel (all such expenses related to such opinion shall be paid by the Borrower), impair the excludability of interest on the Bonds from gross income for purposes of federal income taxation.

(iii) The assignee will assume in writing the obligations of the Borrower hereunder to the extent of the interest assigned in a form acceptable to the Issuer (the "Assumption Agreement").

(iv) Prior to any such assignment, the Borrower will, furnish or cause to be furnished to the Issuer and the Trustee an executed original of the Assumption Agreement.

(j) The Borrower shall maintain its existence, not dissolve or sell, transfer or otherwise dispose of all or substantially all of its assets and not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; *provided* that it may do so if the surviving, resulting or transferee entity is other than the Borrower, it assumes in writing all of the obligations of the Borrower under the Borrower Documents and Construction Loan Documents and it has a net worth equal to or greater than that of the Borrower immediately prior to such consolidation, merger, sale or transfer. The Borrower shall not permit one or more other entities to consolidate with or merge into it; or take any action or allow any action to be taken to terminate the existence of the Borrower except as provided herein. No sale, assignment or transfer of title to the Project, except as may be otherwise required by the Construction Lender, shall be made unless (a) the Construction Lender consents to such assignment or transfer, (b) the transferee or assignee, as the case may be, assumes all the duties of the Borrower under the Borrower Documents and Construction Loan Documents, *provided* that such assumption may contain an exculpation of the assignee from personal liability with respect to any obligation hereunder, except the Borrower's obligation to indemnify the Issuer and the Trustee and reimburse the Issuer and the Trustee for the fees and expenses of the Issuer and the Trustee, and (c) no Event of Default as certified in writing to the Issuer and the Trustee by the Borrower shall have occurred and be continuing under the Indenture or this Agreement. The Borrower shall be permitted to make any such assignment or transfer, subject to the prior approval of the Issuer and in accordance with the restrictions set forth in the Regulatory Agreement, if (i) the Construction Lender notifies it in writing that the aforesaid condition (a) is satisfied, (ii) the Issuer and the Trustee receive an Opinion of Bond Counsel to the effect that such transfer or assignment would not adversely affect the federal tax status of the Bonds, and (iii) the Trustee receives written confirmation from the Rating Agency that such transfer or assignment will not result in a withdrawal or reduction in any rating on the Outstanding Bonds by the Rating Agency (if the Bonds are then rated by the Rating Agency). Upon the assumption of the duties of the Borrower by an assignee as provided herein, the outgoing Borrower shall be released from all executory obligations so assumed; *provided, however,* the Borrower shall not be released from its obligation to pay or reimburse the fees and expenses of the Issuer and the Trustee and to indemnify the Trustee and the Issuer without the express written consent of the Trustee and the Issuer, as applicable, which consent shall not be unreasonably withheld. Nothing contained in this Section shall be construed to supersede any provisions regarding assignment and transfer of the Project contained in the Regulatory Agreement and Construction Loan Documents.

Section 6.02 *Indemnification of the Issuer and the Trustee.* The Borrower covenants and agrees to indemnify, hold harmless and defend the Issuer, the Trustee and their respective officers, members, directors, officials, agents and employees and each of them (collectively, the “Indemnified Parties” and each an “Indemnified Party”) from and against any and all losses, claims, damages, demands, liabilities and expenses (including attorney’s fees, costs and expenses), taxes, causes of action, suits, claims, demands and judgments of any nature, joint or several, by or on behalf of any person (collectively, the “Claims”) arising out of: (a) the transactions provided for in the Documents and the Construction Loan Documents; (b) the execution and delivery or amendment of any document entered into or approved by the Borrower in connection with the transactions provided for in the Documents and the Construction Loan Documents including any certifications or representations made by any person other than the party seeking indemnification; (c) the approval of the financing for the Project; (d) any and all Claims arising in connection with the interpretation, performance, enforcement, breach, default or amendment of the Documents and the Construction Loan Documents, or any other documents relating to the Project, the Bonds, the

Construction Loan or the Funding Loan or in connection with any federal or state tax audit, or any questions or other matters arising under such documents; (e) the Trustee's acceptance or administration of the trusts created by the Indenture or the exercise of its powers or duties under the Indenture, this Agreement, the Regulatory Agreement or any other agreements to which it is a party or otherwise in connection with the transactions provided for in the Documents and the Construction Loan Documents; (f) any and all Claims arising in connection with (i) the issuance and sale of any Bonds or any certifications or representations made by Borrower or Borrower's member, including any (1) statement or information made by the Borrower with respect to the Borrower, the Project, the Construction Loan or the Funding Loan in any materials regarding the Bonds, the Project, the Construction Loan or the Funding Loan or the Borrower or in the Tax Certificate of the Borrower or in any other certificate executed by the Borrower which, at the time made, is misleading, untrue or incorrect in any material respect, (2) untrue statement or alleged untrue statement of a material fact relating to the Borrower, the Project, the Construction Loan or the Funding Loan contained in any material relating to the Bonds, the Project, the Construction Loan or the Funding Loan, or based upon the omission or alleged omission to state in any material relating to the Bonds, the Project, the Construction Loan or the Funding Loan a material fact relating to the Borrower or the Project required to be stated in such material or necessary in order to make the statements in such material not misleading, (3) failure to properly register or otherwise qualify the sale of the Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bonds could be sold, and (ii) the carrying out by the Borrower of any of the transactions provided for in the Documents and the Construction Loan Documents; (g) the Borrower's failure to comply with any requirement of the Documents or the Construction Loan Documents; (h) any act or omission of the Borrower or any of its agents, servants, employees or licensees in connection with the Project, including violation of any law, ordinance, court order or regulation affecting the Project or any part of it or the ownership, occupancy or use of it, including particularly any and all Claims in connection with or liabilities related to failure to comply with prevailing wage rules; (i) any damage or injury, actual or claimed, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Project or arising out of any action or inaction of the Borrower, whether or not related to the Project, or resulting from or in any way connected with the development, construction, equipping or management of the Project, the issuance of the Bonds, the making of the Construction Loan or the Funding Loan or otherwise in connection with transactions provided for in the Documents and the Construction Loan Documents or otherwise in connection with the Project, the Construction Loan, the Funding Loan or the Bonds or the execution or amendment of any document relating to the Project, the Construction Loan, the Funding Loan or the Bonds; (j) any violation of any Environmental Laws applicable to, or the release of any toxic substance from, the Project; (k) any and all Claims arising in connection with the operation of the Project, or the conditions, occupancy, use, possession, conduct or supervision of work done in or about, or from the planning, design, development, construction, repair or equipping of, the Project or any part of it, including the Americans with Disabilities Act; or (l) any Internal Revenue Service audit or proceeding, or any Securities and Exchange Commission investigative proceeding, or any inquiry or any other federal, state or local regulatory action, investigation or proceeding in connection with or related to the Bonds, the Project or the Construction Loan.

This indemnification shall extend to and include all reasonable costs, counsel fees, costs, expenses or liabilities incurred in connection with any such Claim, or proceeding brought with respect to such Claim, except (i) in the case of the foregoing indemnification of the Trustee or any of its Indemnified Parties, to the extent losses, claims, damages, demands, liabilities and expenses

are directly caused by the gross negligence or willful misconduct of that Person, subject to a final determination on a non-appealable basis by a court of competent jurisdiction and (ii) in the case of the foregoing indemnification of the Issuer or any of its Indemnified Parties, to the extent the claims are caused by the willful misconduct of that Person.

The indemnifications contained in the Construction Loan Documents and any other Documents shall be in addition to and not in lieu of the indemnities contained in this Section.

As to the Trustee, the indemnification provisions set forth in this Section shall survive the termination of this Agreement and the Indenture, and the resignation or removal of the Trustee and the payment in full of the Bonds.

Section 6.03 *Defense of Claims.* In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought under this Agreement, the Borrower, upon written notice from the Indemnified Party and subject to Section 6.02, shall assume the investigation and defense of the action or proceeding, including the engagement of counsel selected by the Borrower, subject to the approval of the Indemnified Party in such party's sole discretion, and shall assume the payment of all expenses related to the action or proceeding, with full power to litigate, compromise or settle the same, provided that the Issuer and the Trustee, as appropriate, shall have the right to review and approve or disapprove in their sole discretion any such compromise or settlement. Each Indemnified Party shall have the right to engage separate counsel in any such action or proceeding and participate in the investigation and defense of the action or proceeding and the Borrower shall be obligated to pay the reasonable fees and expenses of such separate counsel only if (a) the Indemnified Party determines that a conflict of interest or a potential conflict of interest exists between the interests of the Indemnified Party and the interests of the Borrower or (b) such separate counsel is engaged with the approval of the Borrower, which approval shall not be unreasonably withheld, conditioned or delayed.

Notwithstanding the foregoing, the Issuer shall choose its own counsel in accordance with applicable law for selection of counsel to governmental entities such as the Issuer to litigate, compromise or settle any such Claims (and such counsel may, to the extent permitted by applicable law, also be Borrower's counsel, as long as Borrower's counsel is acceptable to the Issuer). If counsel for the Issuer is not the same as Borrower's counsel, Borrower shall also assume the payment of all Issuer counsel's legal fees and expenses related to the Claim, or proceeding against the Issuer. Further, any settlement or compromise of any claim against the Issuer shall be subject to the requirements of applicable law regarding settlements of claims against governmental entities such as the Issuer.

ARTICLE VII DEFAULTS AND REMEDIES

Section 7.01 *Defaults Defined.*

The following shall be "Defaults" under this Agreement and the term "Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

- (a) Failure by the Borrower to pay any amount required to be paid under Section 4.01 or 4.02 hereof when due.

(b) Failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed herein other than as referred to in subsection (a) of this Section or failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed in any other Borrower Document, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, will have been given to the Borrower, the Construction Lender and the Investor Limited Partner by the Issuer or the Trustee; *provided*, with respect to any such failure covered by this subsection (b), no Event of Default will be deemed to have occurred so long as a course of action adequate to remedy such failure will have been commenced within such 60-day period and will thereafter be diligently prosecuted to completion and the failure will be remedied thereby within one hundred eighty (180) days from the provision of such notice.

(c) The dissolution or liquidation of the Borrower, or the voluntary initiation by the Borrower of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Borrower of any such proceeding which shall remain undismissed for ninety (90) days, or failure by the Borrower to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of the Borrower to carry on its operations at the Project, or assignment by the Borrower for the benefit of creditors, or the entry by the Borrower into an agreement of composition with its creditors or the failure generally by the Borrower to pay its debts as they become due.

(d) Any representation or warranty made by the Borrower herein or any statement in any report, certificate, financial statement or other instrument furnished in connection with this Agreement or with the purchase of the Bonds shall at any time prove to have been false or misleading in any adverse material respect when made or given.

(e) The occurrence of an “Event of Default” under the Indenture (other than under Section 9.01(d) of the Indenture) or any event of default beyond any applicable notice or cure period under the Regulatory Agreement.

The provisions of subsection (b) of this Section are subject to the following limitation: if by reason of *force majeure* it is impossible for the Borrower in whole or in part, despite its commercially reasonable efforts, to carry out any of its agreements contained herein (other than its obligations contained in ARTICLE IV hereof), the Borrower shall not be deemed in Default under Section 7.01(b) hereof during the continuance of such inability. Such *force majeure* event does not affect any obligations of the Borrower other than the timing of performance of such obligations. The term “*force majeure*” as used herein shall mean, without limitation, the following: acts of God; strikes or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies or officials, or of any civil or military authority; insurrections; riots; terrorism; landslides; earthquakes; fires; storms; droughts; floods; explosions; and events not reasonably within the control of the Borrower. The Borrower agrees, however, to use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement. The settlement of strikes and other

industrial disturbances shall be entirely within the discretion of the Borrower and the Borrower shall not be required to settle strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Borrower unfavorable to the Borrower.

Section 7.02 *Remedies on Default.*

Whenever any Default referred to in Section 7.01 hereof shall have happened and be continuing beyond the expiration of any applicable cure period, the Trustee, or the Issuer (in the event the Trustee fails to act), shall be entitled (but not obligated) to take one or any combination of the following remedial steps:

(a) If the Trustee has declared the Bonds immediately due and payable pursuant to Section 9.01 of the Indenture, by written notice to the Borrower, declare all Loan Payments and all other amounts due hereunder and under the Note to be immediately due and payable, whereupon the same shall become immediately due and payable; and

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the Note and the Regulatory Agreement or any other Document in the event of default thereunder.

Any amounts collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

Section 7.03 *No Remedy Exclusive.*

Subject to Section 9.01 of the Indenture, no remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement and the Regulatory Agreement or the Note, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power nor shall it be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required by law or for which express provision is made in this Article. Such rights and remedies as are given the Issuer hereunder shall also extend to the Trustee, and the Trustee and the Holders of the Bonds shall be entitled to the benefit of all covenants and agreements herein contained, subject to the provisions of the Indenture, including, but not limited to the Unassigned Issuer's Rights.

Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.*

In the event the Borrower should cause an Event of Default to occur under any of the provisions of this Agreement or under the Note, and the Issuer and/or the Trustee should employ attorneys or incur other fees, costs or expenses for the collection of payments required hereunder or under the Note, or the enforcement of performance or observance of any obligation or agreement

on the part of the Borrower contained herein or in the Note, the Borrower agrees that it will on demand therefor pay to the Issuer and the Trustee, as the case may be, the fees, costs and expenses of such attorneys and such other fees or expenses so incurred by the Issuer and/or the Trustee. This Section 7.04 will continue in full force and effect notwithstanding the full payment of the obligations under the Agreement, the resignation or removal of the Trustee, or the termination of this Agreement for any reason.

Section 7.05 *No Additional Waiver Implied by One Waiver.*

In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.06 *Right to Cure.*

Notwithstanding anything herein to the contrary, if the Borrower shall, for whatever reason, at any time fail to pay any amount or perform any act which it is obligated to pay or perform and, as a result a Default or Event of Default occurs or may occur, the Investor Limited Partner and Construction Lender shall have the right, but not the obligation, to elect to cure such Default to the extent the Borrower is provided a cure right for the same, and is otherwise subject to the same terms and conditions and within the same period provided to the Borrower, and such cure shall be accepted by the Issuer, the Trustee and any other applicable Person.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.01 *Term of Agreement.*

Subject to Sections 2.12(b), 11.07 and 11.10 of the Indenture, this Agreement shall remain in full force and effect from the date hereof until such time as all of the Bonds and all amounts payable hereunder and under the Indenture shall have been fully paid or provision made for such payments, whichever is later, *provided* that all representations and certificates of the Borrower as to matters affecting the tax-exempt status of the Bonds, and the provisions of Sections 3.10, 4.02, 6.02 and 7.04 hereof shall survive termination of this Agreement.

Section 8.02 *Notices.*

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, addressed to each party's Notice Address. The Issuer, the Borrower, the Investor Limited Partner, the Construction Lender and the Trustee may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

With regard to copies of all notices which are sent to the Borrower under the terms of this Agreement or the Indenture, the Issuer and the Trustee shall send a courtesy copy to the Investor Limited Partner and Construction Lender at its respective Notice Address set forth in the Indenture, *provided, however*, that any failure to give a duplicate copy of any such communication shall not invalidate any notice given hereunder.

Section 8.03 *Extent of Covenants of the Issuer.*

All covenants, obligations and agreements of the Issuer contained in this Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any of its officers or employees or members of its governing body, past, present or future, in his or her individual capacity, and no recourse shall be had for any claim based on this Agreement or any other documents relating to the Bonds against any such member, officer, employee or agent of the Issuer, past present or future, or any natural person executing the Agreement.

Section 8.04 *Limited Liability of the Issuer.*

(a) ***Reliance by Issuer on Facts or Certificates.*** Anything in this Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer.

(b) ***Waiver of Personal Liability.*** No past, present or future member, official, officer, director, employee, counsel, accountant, agent or consultant of the Issuer shall be individually or personally liable for the payment of any principal of, premium, if any, or interest on the Bonds or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement; but nothing herein contained shall relieve any such member, official, officer, director, employee, counsel, accountant, agent or consultant from the performance of any official duty provided by law or by this Agreement.

(c) ***Non-Liability of Issuer.*** The Issuer shall not be obligated to pay the principal of, or interest on, the Bonds, except from the Trust Estate. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Issuer or any member is pledged to the payment of the principal of, premium, if any, or interest on the Bonds. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under this Agreement.

The Borrower hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the Trust Estate, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal of, premium, if any, and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal of, premium, if any, or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrower, the Issuer or any third party,

subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor. None of the provisions of this Agreement shall require the Issuer to expend or risk its own funds (apart from the proceeds of Bonds issued under the Indenture) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred thereby.

(d) **Expenses.** The Borrower shall pay and indemnify the Issuer and the Trustee against all reasonable fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith (and with respect to the Trustee, without negligence) and arising out of or in connection with the Bonds, the Documents, the Borrower Documents and the Construction Loan Documents. These obligations and those in Section 6.02 hereof shall survive the termination of this Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents, including the Regulatory Agreement.

(e) **Record Keeping.** The Issuer shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Trustee or the Borrower.

Section 8.05 [Reserved].

Section 8.06 [Reserved].

Section 8.07 Binding Effect.

This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee, the Holders of Bonds and their respective successors and assigns.

Section 8.08 Severability.

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 8.09 Amounts Remaining in Funds.

Subject to the provisions of Section 4.06 and 4.11 of the Indenture, it is agreed by the parties hereto that any amounts remaining in any account of the Bond Fund, the Project Fund, the Collateral Fund or any other fund (other than the Rebate Fund) created under the Indenture upon expiration or earlier termination of this Agreement, as provided in this Agreement, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and the fees and expenses of the Trustee and the Issuer in accordance with the Indenture, shall belong to and be paid to the Borrower by the Trustee so long as those remaining amounts do not constitute Bond Proceeds. Notwithstanding the foregoing, if the Bonds are subject to mandatory redemption or acceleration prior to the [Mandatory Tender Date][Conversion], then to the extent any moneys remain in the Project Fund, the Bond Fund or

the Collateral Fund after there are no Bonds Outstanding and payment in full, or provision for payment, of the final Rebate Amount and any remaining fees or expenses or other amounts owed to the Issuer or Trustee, such moneys will be paid directly to the Construction Lender and applied first to the payment of the outstanding balance of the Construction Loan to the extent such funds are not proceeds of the Bonds or otherwise restricted funds. In the absence of any such written request from the Borrower, the Trustee shall from time to time deliver such unclaimed funds to or as directed by pertinent escheat authority, as identified by the Trustee in its sole discretion, pursuant to and in accordance with applicable unclaimed property laws, rules or regulations. Any such delivery shall be in accordance with the customary practices and procedures of the Trustee and the escheat authority. Any money held by the Trustee pursuant to this section shall be held uninvested and without any liability for interest.

Section 8.10 *Amendments, Changes and Modifications.*

Except as otherwise expressly provided in this Agreement or the Indenture, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Indenture for release of the Indenture having been met, this Loan Agreement, the Regulatory Agreement and the Note may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of ARTICLE XI of the Indenture, as applicable.

Section 8.11 *Execution in Counterparts.*

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute but one and the same instrument, and the words “executed,” “signed,” “signature,” and words of like import as used above and elsewhere in the Agreement or in any other certificate, agreement, bond, note or document related to this transaction shall include, in addition to manually executed signatures, images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, “pdf”, “tif” or “jpg”) and other electronic signatures (including, without limitation, any electronic sound, symbol or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) with respect to this Agreement shall be of the same legal effect, validity, enforceability and admissibility as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code. The parties hereto also agree that this Agreement may be signed with a signature stamp. The parties hereto agree that any signatures made with a signature stamp appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility. If this Agreement is originally executed via electronic signature, the Issuer may nevertheless subsequently request the parties’ exchange of original manual signatures at any future date.

Section 8.12 *Applicable Law.*

This Agreement and Note shall be construed in accordance with and governed by the laws of the State applicable to contracts made and performed in the State. This Agreement and Note

shall be enforceable in the State, and any action arising under this Agreement and Note shall (unless waived by the Issuer in writing) be filed and maintained in the County of Santa Clara, California.

Section 8.13 *Captions.*

The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

Section 8.14 *Construction Loan Documents Independent.*

To the extent not otherwise set forth above in this Section, the provisions of Section 12.09 of the Indenture are incorporated herein by reference to the same extent as if set forth herein in full.

Section 8.15 *Trustee Rights.*

Trustee shall enjoy all the rights, protections, benefits, immunities, power, privileges and indemnities afforded to it under the Indenture and the other Documents. All rights of the Trustee to compensation and indemnification hereunder shall survive the termination of this Agreement and the Indenture, the resignation or removal of the Trustee, and the payment in full of the Bonds.

[Signature Pages Follow]

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

CITY OF SAN JOSE, as Issuer

By: _____
Maria Öberg
Director of Finance

Approved as to form

By: _____
Hana Hardy Gunther
Senior Deputy City Attorney

[Signature Page to Loan Agreement – Berryessa TOD 2026]

BERRYESSA AFFORDABLE HOUSING L.P.,
a California limited partnership

By: AHG Berryessa, LLC,
a California limited liability company,
its Administrative General Partner

By: Affirmed Housing Group, Inc.
a Delaware Corporation
its Manager

By: _____
James P. Silverwood, President

By: CFAH Housing LLC,
a California limited liability company,
its Managing General Partner

By: Compass for Affordable Housing,
a California nonprofit public benefit corporation
its Manager

By: _____
Robin Martinez, Executive Director

[Signature Page to Loan Agreement – Berryessa TOD 2026]

EXHIBIT A

PROJECT DESCRIPTION

[Multifamily rental housing facility to be located at 1565 Mabury Road, San José, California 95133, currently known as Berryessa TOD, which, upon completion, is expected to contain 195 units (including two unrestricted manager units) and which may include such ancillary uses as parking, community space, and other functionally related and subordinate uses.]

APPENDIX B

FORM OF PROMISSORY NOTE

PROMISSORY NOTE

This Note has not been registered under the Securities Act of 1933. Its transferability is restricted by the Indenture and the Loan Agreement referred to herein.

[\$_____]

[April __] 2026

Berryessa Affordable Housing, L.P., a California limited partnership (the “Borrower”), for value received, promises to pay in installments to the City of San José (the “Issuer”), the principal amount of

[_____] DOLLARS (\$[_____])

and to pay interest on the unpaid balance of such principal sum from and after the date hereof at the rate or rates set forth in the Bonds (as defined below), until the payment of such principal sum has been made or provided for, and to pay the other amounts owing from time to time hereunder, all as set forth below. The principal amount stated above shall be paid on or before [____] 1, 20[___]. Interest shall be calculated on the basis of a 360-day year of 12 equal months. Interest on this Note shall be paid in any coin or currency of the United States of America on each Interest Payment Date set forth in the Bonds.

This Note has been executed and delivered by the Borrower to UMB Bank, National Association, as Trustee (the “Trustee”) under the Indenture hereinafter referred to pursuant to a certain Loan Agreement (the “Loan Agreement”) dated as of [April] 1, 2026, between the Issuer and the Borrower. Terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement and the Indenture.

Under the Loan Agreement, the Issuer has loaned the Borrower the principal proceeds received from the sale of the Issuer’s \$[82,584,672] Multifamily Housing Revenue Bonds, Series 2026A (Berryessa TOD) (the “Bonds”) to assist in the financing of the Project, and the Borrower has agreed to repay such loan by making payments (“Loan Payments”) at the times and in the amounts set forth in this Note for application to the payment of the Bond Debt Service Charges on the Bonds as and when due. The Bonds have been issued, concurrently with the execution and delivery of this Note, pursuant to, and are secured by, the Trust Indenture (the “Indenture”), dated as of [April] 1, 2026, between the Issuer and the Trustee.

To provide funds to pay the principal of and interest on the Bonds as and when due as specified herein, the Borrower hereby agrees to and shall make Loan Payments in Federal Reserve funds on each Interest Payment Date in an amount equal to the Bond Debt Service Charges on the Bonds payable on such Bond Payment Date. In addition, to provide funds to pay the Bond Debt Service Charges on the Bonds as and when due at any other time, the Borrower hereby agrees to and shall make Loan Payments in Federal Reserve funds on any other date on which any Bond Debt Service Charges on the Bonds shall be due and payable, whether at maturity, mandatory

redemption, mandatory tender, upon acceleration or otherwise, in an amount equal to those Bond Debt Service Charges.

If payment or provision for payment in accordance with the Indenture is made in respect of the Bond Debt Service Charges on the Bonds from money other than Loan Payments, this Note shall be deemed paid to the extent such payments or provision for payment of Bonds has been made. Consistent with the provisions of the immediately preceding sentence, the Borrower shall have credited against its obligation to make Loan Payments any amounts transferred from the Project Fund or the Collateral Fund to the Bond Fund. Subject to the foregoing, all Loan Payments shall be in the full amount required hereunder.

All Loan Payments shall be made to the Trustee at its Designated Office for the account of the Issuer and deposited in the Bond Fund created by the Indenture. Except as otherwise provided in the Indenture, the Loan Payments shall be used by the Trustee to pay the Bond Debt Service Charges on the Bonds as and when due.

In addition to the principal and interest payments required under the Loan Agreement, the Borrower shall also pay rebate calculations and payments under Section 3.10 of the Loan Agreement, Additional Payments under Section 4.02 of the Loan Agreement, indemnification-related payments under Section 6.02 of the Loan Agreement, other fees and expenses under Section 7.04 of the Loan Agreement, as well as any other amounts owed under the Loan Agreement, when due and in accordance with the terms and provisions and subject to the limitations set forth therein.

The obligation of the Borrower to make the payments required hereunder shall be absolute and unconditional and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Trustee or any other person. The Borrower hereby waives the right to presentment, demand, protest, and notice of demand and protest.

This Note is subject to prepayment, in whole or in part, upon the terms and conditions set forth in the Loan Agreement. Any prepayment is subject to satisfaction of any applicable notice, deposit or other requirements set forth in the Loan Agreement or the Indenture.

Whenever an Event of Default under Section 9.01 of the Indenture shall have occurred and, as a result thereof, the principal of and any premium on all Bonds then Outstanding, and interest accrued thereon, shall have been declared to be immediately due and payable pursuant to Section 9.01 of the Indenture, the unpaid principal amount of and any premium and accrued interest on this Note shall also be due and payable in Federal Reserve funds on the date on which the principal of and premium and interest on the Bonds shall have been declared due and payable; provided that the annulment of a declaration of acceleration with respect to the Bonds shall also constitute an annulment of any corresponding declaration with respect to this Note.

[Signature Page Follows]

IN WITNESS WHEREOF, the Borrower has caused this Note and accompanying Warrant of Attorney to be executed and delivered on its behalf on the date first written above.

BERRYESSA AFFORDABLE HOUSING L.P.,
a California limited partnership

By: AHG Berryessa, LLC,
a California limited liability company,
its Administrative General Partner

By: Affirmed Housing Group, Inc.
a Delaware Corporation
its Manager

By: _____
James P. Silverwood, President

By: CFAH Housing LLC,
a California limited liability company,
its Managing General Partner

By: Compass for Affordable Housing,
a California nonprofit public benefit corporation
its Manager

By: _____
Robin Martinez, Executive Director

ENDORSEMENT

Pay to the order of UMB Bank, National Association, without recourse, as Trustee under the Indenture referred to in the within mentioned Note, as security for the Bonds issued under the Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

CITY OF SAN JOSE, as Issuer

By: _____
Maria Öberg
Director of Finance

Approved as to form

By: _____
Hana Hardy Gunther
Senior Deputy City Attorney

EXHIBIT C

SOURCES AND USES

See Exhibit [] to Tax Certificate

