



# REPORT TO THE HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

**DATE ISSUED:** September 8, 2021

**REPORT NO:** HAR21-018

**ATTENTION:** Chair and Members of the San Diego Housing Commission  
For the Agenda of October 5, 2021

**SUBJECT:** Final Note and Bond Authorization for Aquila Apartments (Formerly 3Roots)

**COUNCIL DISTRICT:** 6

## **REQUESTED ACTION**

Authorize the issuance of tax-exempt Housing Authority of the City of San Diego Multifamily Housing Revenue Note and Bonds, in the aggregate amount not to exceed \$40,000,000 and a taxable Housing Authority of the City of San Diego Multifamily Housing Revenue Note in an amount not to exceed \$30,000,000, to fund 3Roots CIC L.P.'s construction of Aquila Apartments, a new affordable rental housing development to be located at 9900 Camino Santa Fe, San Diego, in the Mira Mesa neighborhood, which will consist of 180 units: 178 units that will remain affordable for 55 years for individuals and families earning between 30 percent and 60 percent of the San Diego Area Median Income (AMI), and two managers' units affordable to households with income up to 65 percent of AMI.

## **STAFF RECOMMENDATION**

That the Housing Authority of the City of San Diego (Housing Authority) authorize the issuance of tax-exempt Multifamily Housing Revenue Note and Bond in an aggregate amount not to exceed \$40,000,000 and a taxable Housing Authority Multifamily Housing Revenue Note in an amount not to exceed \$30,000,000 to fund 3Roots CIC L.P.'s construction of Aquila Apartments, a new affordable rental housing development to be located at 9900 Camino Santa Fe, San Diego, in the Mira Mesa neighborhood, which will consist of 180 units: 178 units that will remain affordable for 55 years for individuals and families earning between 30 percent and 60 percent of the San Diego Area Median Income (AMI), including two managers' units affordable to households with income up to 65 percent of AMI.

## **SUMMARY**

A Development Summary is at Attachment 1.

**Table 1 –Development Details**

Address	9900 Camino Santa Fe, San Diego
Council District	6
Community Plan Area	Mira Mesa Planning Committee
Developer	Chelsea Investment Corporation (Chelsea)
Development Type	New construction
Construction Type	Type V (four stories)

Parking Type	232 parking spaces
Housing Type	Multifamily
Lot Size	One parcel totaling 3.96 acres, 172,498 square feet
Units	180 (180 units restricted/affordable)
Density	45.45 dwelling units per acre (180 units ÷ 3.96 acres)
Unit Mix	178affordable rental units: 24 one-bedrooms, 79 two-bedrooms, 77 three-bedrooms, and two restricted managers' units.
Gross Building Area	172,840 square feet.
Net Rentable Area	148,730 square feet.

### Background

On January 14, 2021, and on January 26, 2021, the San Diego Housing Commission (Housing Commission) (Report No. HCR21-003) and the Housing Authority (Report No. HAR 21-002; Resolution No. HA-1895), respectively, approved taking certain preliminary steps to authorize the issuance of up to \$58,000,000 of tax-exempt Multifamily Housing Revenue Bonds, to finance the new construction of Aquila Apartments (previously known as 3Roots Apartments).

Also on January 26, 2021, the San Diego City Council (City Council) held a Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing and unanimously approved Resolution No. R-313421 that, pursuant to Section 147(f) of the Internal Revenue Code of 1986, approved the issuance of up to \$58,000,000 of Multifamily Housing Revenue Bonds, by the Housing Authority to fund the development of Aquila Apartments.

On April 28, 2021, the California Debt Limit Allocation Committee (CDLAC) approved a \$40,000,000 tax-exempt bonds allocation, and the California Tax Credit Allocation Committee (CTCAC) approved a 4 percent tax credits allocation. The CTCAC award letter requires construction to commence by October 25, 2021.

### The Development

Aquila Apartments will be a 180-unit, new construction, affordable housing development, including two rent-restricted managers' units. The Aquila development will be located on a 3.96-acre parcel at the southern end of Lennar's 3Roots master-planned community, which will consist of 1,800 residential units to be developed in the Mira Mesa community, with a current address of 9900 Camino Santa Fe (Attachment 2 –Site Map). Most of Lennar's 3Roots residential units will be single-family, market-rate homes, estimated to range in price from the mid-\$700,000s to low-\$1,300,000s.

Aquila will consist of 24 one-bedroom units (612 square feet), 79 two-bedroom units (814 square feet), and 77 three-bedroom units (1,070 square feet) within one four-story building. The development will provide: 18 units rent-restricted to households with income up to 30 percent of San Diego's Area Median Income (AMI), 18 units rent-restricted to households with income up to 50 percent of AMI, 142 units rent-restricted to households with income up to 60 percent of AMI, and two managers' units restricted at 65 percent of AMI.

The development will include: a community building with a kitchenette, a computer room and a leasing office. There will be 232 surface parking spaces for tenants and guests. Unit amenities will include Energy Star-rated efficient appliances (stove/oven, microwave, dishwasher, garbage disposal and

refrigerator); dual-glazed windows coated for limited solar heat gain; low-energy lighting; HVAC systems that utilize energy-efficient heat pumps; use of Low Volatile Organic Compound (VOC) paints and stains for interior surfaces; private patio/balconies with storage closets; blinds; and vinyl-flooring.

#### The Property

Situated north of interstate 8, Mesa is a neighborhood in northwestern San Diego, California. The Aquila site lies on a mesa north of Carroll Canyon Road, east of Interstate 805, west of Parkdale Avenue, and south of Lopez Canyon. Mira Mesa is included in the Mira Mesa Community Planning Area.

The 3Roots master-planned community will be a new neighborhood in Mira Mesa with 1,800 homes and a 23-acre public park. A central shopping area will be built on the 413-acre site of the former Hanson quarry, where mining operations ceased in 2016. It is bounded by Camino Santa Fe to the west, Rattlesnake Canyon and a single-family neighborhood to the north, and an industrial park to the south. The east side is Carroll Canyon Road, the Carroll Canyon Business Park, and an active rock quarry. The 3Roots community will feature five separate neighborhoods with varying densities of housing, allowing people with a range of incomes to live in the master-planned community. The community also will include approximately 160,000 square feet of retail and commercial development in a mixed-use central area called the “Roots Collective.”

#### Transit Information

Bus service is located one-half mile from Aquila at Camino Santa Fe and Flanders Drive. The new Mid-Coast Trolley extension (to University Towne Center [UTC]) may be available in late 2021. That UTC new trolley stop will be approximately five miles from the Aquila site. The planned community’s “mobility hub” will have ride-share parking spaces, meeting spots for private shuttles, and on-demand transportation, as well as bike repair, lockers and connections to the planned bus rapid transit system on Carroll Canyon Road.

#### Prevailing Wages

The proposed development is not subject to payment of California State nor federal prevailing wages.

#### Relocation

The property is vacant. No relocation is necessary.

#### Accessibility

CTCAC requires wheelchair accessibility in 10 percent of the units, and an additional 4 percent of the units are required to have communication features for residents with visual and/or hearing impairment. The same units can satisfy both of these accessibility requirements. The Aquila units will be accessible in accordance with the Americans with Disabilities Act.

#### Project Sustainability

Aquila will be built as Green Point Rated with an anticipated Gold Rating standard. Aquila will comply with the CTCAC minimum energy-efficiency construction standards for new construction. The roof design is focused on optimizing square footage to allow maximum area to install the Solar Photovoltaic system. The Solar Photovoltaic system will be intended to offset the house load, including all or part of domestic hot water. Water conservation will be promoted via low-water-use fixtures in

kitchens and bathrooms, low-flow toilets, and low-water-use, native-plants landscaping with water-efficient irrigation controls.

#### Development Team

The development team will be led by Chelsea Investment Corporation (Chelsea), an award-winning, for-profit corporation headquartered in Carlsbad, California. Since 1995, Chelsea and its affiliates have developed more than 11,000 rental units under ownership in three states in 90 Chelsea-owned developments. Chelsea has substantial development experience in a wide range of housing developments. Along with its affiliates, Chelsea provides financial, engineering, development, asset management, construction and property management services. Chelsea has developed multiple affordable rental housing developments in San Diego using Housing Commission loan funds. Chelsea is in full compliance on its previous Housing Commission-funded loans. Based upon the developer's past experience and performance, Housing Commission staff determined that the developer has the capacity to successfully complete the proposed Aquila project.

The proposed borrower will be 3Roots CIC L.P., which will include Pacific Southwest Community Development Corporation as its Managing General Partner, CIC 3Roots LLC as the Administrative General Partner, and US Bancorp Community Development Corporation (USBCDC) as the tax credit investor limited partner (Attachment 3 – Organization Chart).

**Table 2 Development Team Summary**

<b>ROLE</b>	<b>FIRM/CONTACT</b>
Developer	Chelsea
Owner/Borrower	3Roots CIC L.P.
Managing General Partner	Pacific Southwest Community Development Corporation
Tax Credit Investor Limited Partner	USBCDC
Architect	Bassenian Lagoni Architects (Newport Beach)
General Contractor	Emmerson Construction (a Chelsea affiliate, Carlsbad)
Property Management	ConAm Management Corporation
Tenant Services Provider	Pacific Southwest Community Development Corporation
Construction/Permanent Lender	Citibank N.A.

#### Property Management

Aquila will be managed by ConAm Management Corporation (ConAm). Established in 1975, ConAm is a nationwide management company, based in San Diego, with a management portfolio of approximately 53,000 units in more than 26 metropolitan areas. It is experienced in property management, marketing, maintenance, renovations and tax credit developments. ConAm manages 34 developments for Chelsea. Chelsea's Asset Management Department will oversee ConAm.

#### **FINANCING STRUCTURE**

Aquila has an estimated total development cost of \$81,971,778 (\$455,399 per unit). Financing will include a combination of sources as described in Table 3. The developer's pro forma is included as Attachment 4 and summarized below. No Housing Commission cash loan funds are proposed for Aquila.

**Table 3 – Aquila Estimated Permanent Sources and Uses**

<b>Permanent Financing Sources</b>	<b>Amounts</b>	<b>Permanent Financing Uses</b>	<b>Amounts</b>	<b>Per Unit</b>
Senior tax-exempt permanent Note	\$32,340,000	Property	\$1	\$0.006
Junior tax-exempt Bond	2,300,000	Construction costs	\$47,818,135	
		Site and Offsite work	8,468,580	
		Design assist	626,168	
		Contingency	+3,947,284	
		Total construction	\$60,860,167	60,860,167 \$338,112
Accrued interest on Junior Bond	450,000	Financing costs	6,285,375	34,919
Seller Note	6,000,000	Local permits and fees	4,508,400	25,047
Land donation	1	Other soft costs	2,301,900	12,788
State of CA Tax Credits	1,219,953	Architect and engineering	1,171,832	6,510
4 percent (CTCAC) tax credit equity	36,337,172	Reserves	694,225	3,857
Deferred developer fee	3,324,652	Developer fee	6,149,878	34,166
<b>Total Development Cost</b>	<b>\$81,971,778</b>	<b>Total Development Cost (TDC)</b>	<b>\$81,971,778</b>	<b>\$455,399</b>

#### Developer Fee

\$6,149,878 – Gross developer fee

- 3,324,652 – Minus deferred developer fee

\$2,825,226– Net cash developer fee (to be paid from development sources)

On April 25, 2017, the Housing Authority approved the “Request for Approval of Updated Developer Fees” (Report No. HAR17-011; Resolution No. HA-1727). That report approved certain developer fee guidelines for multifamily loans and bonds issuances. Attachment 1 to that report stated: “Developer Fee [for] 4% tax credits, in project costs: 15% eligible basis....” The proposed developer fee, complies with the HAR17-011 “Request for Approval of Updated Developer Fees” guidelines approved by the Housing Authority on April 25, 2017.

#### Development Cost Key Performance Indicators

Housing Commission staff has identified development cost performance indicators that were used to evaluate the proposed development and make a funding recommendation. The key performance indicators listed in Table 4 are commonly used by industry professionals and affordable housing developers.

**Table 4 - Key Performance Indicators**

Development Cost Per Unit	$\$81,971,778 \div 180 \text{ units} =$	\$455,399
Housing Commission Subsidy Per Unit	$\$0 \div 180 \text{ units} =$	\$0
Land Cost Per Unit	$\$1 \div 180 \text{ units} =$	\$0.01
Gross Building Square Foot Hard Cost	$\$60,860,167 \div 172,840 \text{ sq. ft.} =$	\$352
Net Rentable Square Foot Hard Cost	$\$60,860,167 \div 148,730 \text{ sq. ft.} =$	\$409

#### Project Comparison Chart

Multiple factors and variables influence the cost of developing multifamily affordable housing, including but not limited to project location, site conditions, environmental factors, land use approval process, community involvement, construction type, design requirements/constraints, economies of scale, City fees, developer experience and capacity, and the mission and goals of the organization developing the project.

Similar construction-type developments (completed or approved) over the previous two years are listed in Table 5. These developments are similar in terms of new construction, target population and construction type, and are provided as a comparison to Aquila.

**Table 5 - Comparable Development Projects**

New Construction Project Name	Year	Unit Mix Construction	Units	Total Development Cost	Cost Per Unit	HC Subsidy Per Unit	Gross Hard Cost Per Sq. Ft.
<b>Proposed Subject – Aquila</b>	<b>2021</b>	<b>24 ones, 77 twos, 77 threes, + 2 managers</b>	<b>180</b>	<b>\$81,971,778 (w/o prevailing wage)</b>	<b>\$455,399</b>	<b>\$0</b>	<b>\$352</b>
Cortez Hill	2021	79 ones, 8 twos, + 1 manager	88	\$43,647,979 (with prev. wage)	\$496,000	\$56,818	\$526
Southwest Village	2021	30 ones, 29 twos, 21 threes, +1 mgr	81	\$40,314,147 (with prev. wage)	\$497,706	\$0	\$367
Levant Senior Cottages	2021	108 studios, 18 ones, + 1 manager	127	\$51,642,254 (with prev. wage)	\$406,632	\$47,244	\$739
Nestor Senior Village	2021	73 studios, + 1 manager	74	\$31,510,305 (with prev. wage)	\$425,815	\$45,000	\$363

## **TAX EXEMPT AND TAXABLE MULTIFAMILY HOUSING REVENUE BONDS**

### **Proposed Housing Bonds Financing**

The Housing Commission utilizes the Housing Authority’s tax-exempt borrowing status to pass on lower interest rate financing (and make 4 percent low-income housing tax credits available) to developers of affordable rental housing. The Housing Authority’s ability to issue Bonds is limited under the U.S. Internal Revenue Code. To issue bonds for a development, the Housing Authority must first submit an application to the California Debt Limit Allocation Committee (CDLAC) for a bond allocation. On January 14, 2021, prior to submitting applications to CDLAC, the proposed development was presented to the Housing Commission. A bond inducement resolution was obtained prior to the application submittal to CDLAC. On February 4, 2021, an application was submitted to CDLAC for a bond allocation of up to \$40,000,000. On April 28, 2021, CDLAC approved the \$40,000,000 bond allocation, and CTCAC approved an allocation of 4 percent tax credits. The developer proposes that the bonds be issued through a tax-exempt private placement bond issuance. The bonds will meet all requirements of the Housing Commission’s Multifamily Housing Revenue Bond Program policy and will fully comply with the City of San Diego’s (City) ordinance on bonds disclosure. In addition, the developer proposes that the Housing Authority issue up to \$30,000,000 in taxable obligations, which do not require an allocation from CDLAC.

The financing amount that will ultimately be set will be based upon development costs, revenues and interest rates prevailing at the time of the bonds issuance. The financing proceeds will be used for both construction financing and permanent financing. Attachment 5 provides a general description of the Multifamily Housing Revenue Bond Program and the actions that must be taken by the Housing Authority and by the City Council to initiate and finalize proposed financings.

### **Public Disclosure and Bond Authorization**

The tax-exempt debt, will be issued in two series. The first series will be in the form of a Note (issuance Series C-1) and will be sold through a direct purchase by Citi N.A. (Citi). The second series will be in

the form of a Bond (issuance Series C-2), which will be purchased by CIC Opportunities Fund (CIC Fund), an entity created by the developer. The taxable debt will be in the form of a Note (issuance Series C-3) which will also be purchased by Citi.

Citi and CIC Fund are “qualified institutional buyers” within the meaning of the U.S. securities laws. At closing, Citi and CIC Fund will each sign an “Investor’s Letter” certifying, among other things, that they are buying each of the Notes and Bonds, as the case may be, for their own account and not for public distribution. Because such Notes and Bonds are being sold through a private placement, an Official Statement will not be used. In addition, the Notes and Bonds will be neither subject to continuing disclosure requirements, nor credit enhanced, nor rated.

Under the direct purchase structure for the Notes, Citi will make a tax-exempt and taxable loan to the Housing Authority pursuant to the terms of a Funding Loan Agreement among Citi, the Housing Authority, and US Bank as the Fiscal Agent. The loans made by Citi to the Housing Authority (Funding Loan) will be evidenced by separate Notes, which will obligate the Housing Authority to pay Citi the amounts it receives from the Borrower, as described below. The Housing Authority and the Borrower will enter into a Borrower Loan Agreement pursuant to which the proceeds of the Funding Loan will be advanced to the Borrower. In return, the Borrower agrees to pay the Fiscal Agent amounts sufficient for the Fiscal Agent to make payments on the Notes.

Under the direct purchase structure for the Bonds, Bonds will be issued under a Trust Indenture between the Housing Authority and US Bank as the Trustee (which will be the same institution as the Fiscal Agent for the Notes). The Bonds will be payable from residual project revenues after payment of the Notes. Bond proceeds will be loaned by the Housing Authority to the Borrower under a Loan Agreement.

The Housing Authority’s obligation to make payments on the Note and Bonds is limited to amounts the Fiscal Agent and Trustee receive from the Borrower under the Borrower Loan Agreement with respect to the Notes and the Loan Agreement with respect to the Bonds, and no other funds of the Housing Authority are pledged to make payments on the Notes and Bonds. The transfer of the Notes and Bonds to any subsequent purchaser will comply with Housing Commission’s “Bond Issuance and Post-Issuance Compliance Policy” (policy number PO300.301). Moreover, any subsequent Note and Bond holder will be required to represent to the Housing Authority that it is a qualified institutional buyer or accredited investor who is buying such Notes and Bonds for investment purposes and not for resale, and it has made due investigation of any material information necessary in connection with the purchase of the Notes and Bonds.

The following documents will be executed on behalf of the Housing Authority with respect to the Notes and Bonds: the Funding Loan Agreement, the Borrower Loan Agreement, the Assignment of Deed of Trust, the Regulatory Agreement, the Loan Agreement and Trust Indenture, and other ancillary loan documents. At the time of docketing, documents in substantially final form will be presented to members of the Housing Authority. Any changes to the documents following Housing Authority approval require the consent of the City Attorney’s Office and Bond Counsel. The Notes will be issued pursuant to the Funding Loan Agreement, and the Bonds will be issued pursuant to the Trust Indenture. Based upon instructions contained in the Funding Loan Agreement and the Borrower Loan Agreement, Citi will disburse the Note proceeds for eligible costs and will, pursuant to an assignment from the

Housing Authority, receive payments from the Borrower. Bond proceeds will be disbursed by the Trustee pursuant to the direction of the Borrower.

The Borrower Loan Agreement and the Loan Agreement set out the terms of repayment and the security for the loan made by the Housing Authority to the Borrower, and the Housing Authority assigns its rights to receive repayments under the loan to Citi with respect to the Notes and the Trustee with respect to the Bonds. The Regulatory Agreement will be recorded against the property to ensure the long-term use of the development as affordable housing. The Regulatory Agreement will also ensure that the development complies with all applicable federal and California State laws so that interest on the tax-exempt Note and the Bonds remains tax-exempt. An Assignment of Deed of Trust, and other loan documents, will assign the Housing Authority's rights and responsibilities as the issuer to Citi and the Trustee on behalf of the Bondholders. These documents will be signed by the Housing Authority for the benefit of Citi and the Bondholders. Rights and responsibilities that are assigned to Citi and the Trustee include the right to collect and enforce the collection of loan payments, the right to monitor project construction and related budgets, plus the right to enforce insurance and other requirements. These rights will be used by Citi and CIC Fund to protect its financial interests as the Note and Bond holder.

#### **Financial Advisor's Recommendation**

Orrick, Herrington and Sutcliffe, LLP will be the Bond counsel. Ross Financial will be the Bond financial advisor. The financial advisor's analysis and recommendation is at Attachment 6.

#### **AFFORDABLE HOUSING IMPACT**

The Aquila development will be subject to applicable tax credit and Note and Bond regulatory agreements, which will restrict affordability of 180 units for 55 years. In addition, the project will be subject to rent and occupancy restrictions required by the Inclusionary Housing Ordinance that require all 180 units to be affordable at or below 65 percent of AMI for 55 years. The rent and occupancy restrictions required by the CTCAC will be applicable.

**Table 6 Aquila Affordability and Monthly Estimated Rent Table**

<b>Unit Type</b>	<b>AMI</b>	<b>Units</b>	<b>CTCAC Gross Rents</b>
One bedrooms, 1 bath (612 sq. ft.)	30%	2	\$682
One bedrooms, 1 bath (612 sq. ft.)	50%	2	\$1,136
One bedrooms, 1 bath (612 sq. ft.)	60%	20	\$1,455
<b>Subtotal One Bedroom Units</b>	--	<b>24</b>	--
Two bedrooms, 1 bath (814 sq. ft.)	30%	8	\$818
Two bedrooms, 1 bath (814 sq. ft.)	50%	8	\$1,363
Two bedrooms, 2 baths (814 sq. ft.)	60%	62	\$1,636
<b>Subtotal Two Bedroom Units</b>	--	<b>78</b>	--
Three bedroom, 2 baths (1,070 sq. ft.)	30%	8	\$945
Three bedroom, 2 baths (1,070 sq. ft.)	50%	8	\$1,575
Three bedroom, 2 baths (1,070 sq. ft.)	60%	60	\$1,890
<b>Subtotal Three Bedroom Units</b>	--	<b>76</b>	--
Manager's two bedrooms unit	65%	<b>1</b>	\$1,636
Manager's three bedrooms unit	65%	<b>1</b>	\$1,890
<b>Total Units</b>	--	<b>180</b>	--



### **FISCAL CONSIDERATIONS**

The proposed funding sources and uses approved by this proposed action are included in the Housing Authority-approved Fiscal Year (FY) 2022 Housing Commission Budget.

Estimated funding sources approved by this action will be as follows:

\$ 94,250 (Tax-exempt Senior Note issuance fees:  $\$37,700,000 \times .0025 = \$94,250$ )  
+5,750 (Tax-exempt Junior Bond:  $\$2,300,000 \times .0025 = \$5,750$ )  
\$100,000 (Subtotal)  
+64,136 (Taxable Note: estimated  $\$25,654,597 \times .0025 = \$64,136$ )  
\$164,136 (Total Issuance Fee)

Estimated funding uses approved by this action will be as follows:

\$164,136 = Administrative cost

The Notes and Bonds will not constitute a debt of the City of San Diego. If the Notes and Bonds are ultimately issued for the project, the Notes and Bonds will not financially obligate the City, the Housing Authority, nor the Housing Commission because security for the repayment of the Notes and Bonds will be limited to specific project-related revenue sources. Neither the faith and credit nor the taxing power of the City, nor the faith and credit of the Housing Authority will be pledged to the payment of the Notes and Bonds. The developer is responsible for the payment of all costs under the financing, including the Housing Commission's issuer fee, annual Bond administration fee, as well as the Housing Commission's Bond counsel fee and financial advisor's fee.

### **Development Schedule**

The estimated development timeline is as follows:

<b><u>Milestones</u></b>	<b><u>Estimated Dates</u></b>
<ul style="list-style-type: none"><li>• Housing Authority consideration of Bond authorization</li><li>• Estimated Bond issuance and escrow/loan closing</li><li>• CTCAC construction start milestone</li><li>• Estimated start of construction work</li><li>• Estimated completion of construction work</li></ul>	<ul style="list-style-type: none"><li>• October 5, 2021</li><li>• October 12, 2021</li><li>• October 25,, 2021</li><li>• October 25, 2021</li><li>• May 2023</li></ul>

### **COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS**

The proposed development is located in the Mira Mesa neighborhood. On August 16, 2021, the Aquila development was presented as an informational item to the Mira Mesa Community Planning Group and was met with a positive response and no negative feedback.

### **KEY STAKEHOLDERS and PROJECTED IMPACTS**

Stakeholders include Chelsea as the developer, the Housing Commission as a proposed lender, Citi and USBCDC as proposed lenders, the Mira Mesa neighborhood, and Lennar Homes as the developer of the overall master-planned community. The development is anticipated to have a positive impact on the community as it will contribute to the quality of the surrounding neighborhood, contribute to a better quality of life for the proposed development's tenants, and create 180 new affordable rental homes for families.

### **STATEMENT for PUBLIC DISCLOSURE**

The developer's Disclosure Statement is at Attachment 7.

**ENVIRONMENTAL REVIEW**

The project received certification of compliance with CEQA on September 9, 2020 from the City Attorney's office. The Council of the City of San Diego has certified Environmental Impact Report No. 587128/SCH No. 2018041065 and adopted Mitigation Monitoring and Reporting Program No. 587128 [MMRP] for the 3ROOTS Project-Project No. 587128. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA and a Mitigation, Monitoring, and Reporting plan was adopted for this project. Processing under the National Environmental Policy Act (NEPA) is not required as no federal funds are involved in this proposed action.

Respectfully submitted,

*Colin Miller*

Colin Miller  
Vice President  
Multifamily Housing Finance  
Real Estate Division

Approved by,

*Jeff Davis*

Jeff Davis  
Deputy Chief Executive Officer  
San Diego Housing Commission

Attachments: 1) Development Summary  
2) Site Map  
3) Organization Chart  
4) Developer's Project Pro Forma  
5) Bond Program Summary  
6) Financial Advisor's Analysis  
7) Developer's Disclosure Statement

Docket materials are available in the "Governance & Legislative Affairs" section of the San Diego Housing Commission website at [www.sdhc.org](http://www.sdhc.org)

## ATTACHMENT 1 – DEVELOPMENT SUMMARY

**Table 1 –Development Details**

Address	9900 Camino Santa Fe, San Diego
Council District	6
Community Plan Area	Mira Mesa Planning Committee
Developer	Chelsea Investment Corporation (Chelsea)
Development Type	New construction
Construction Type	Type V (four stories)
Parking Type	232 parking spaces
Housing Type	Multifamily
Lot Size	One parcel totaling 3.96 acres, 172,498 square feet
Units	180 (180 units restricted/affordable)
Density	45.45 dwelling units per acre (180 units ÷ 3.96 acres)
Unit Mix	180 affordable units: 24 one-bedrooms, 79 two-bedrooms, 77 three-bedrooms, and two restricted managers' units.
Gross Building Area	172,840 square feet.
Net Rentable Area	148,730 square feet.

**Table 2 Development Team Summary**

ROLE	FIRM/CONTACT
Developer	Chelsea
Owner/Borrower	3Roots CIC L.P.
Managing General Partner	Pacific Southwest Community Development Corporation
Tax Credit Investor Limited Partner	USBCDC
Architect	Bassenian Lagoni Architects (Newport Beach)
General Contractor	Emmerson Construction (a Chelsea affiliate, Carlsbad)
Property Management	ConAm Management Corporation
Tenant Services Provider	Pacific Southwest Community Development Corporation
Construction/Permanent Lender	Citibank N.A.

**Table 3 – Aquila Estimated Permanent Sources and Uses**

<b>Permanent Financing Sources</b>	<b>Amounts</b>	<b>Permanent Financing Uses</b>	<b>Amounts</b>	<b>Per Unit</b>
Senior tax-exempt permanent Note	\$32,390,000	Property	\$1	\$0.006
Junior tax-exempt Bond	2,300,000	Construction Costs	54,860,166	304,779
Accrued interest Junior Bond	450,000	Offsite Infrastructure	6,000,000	33,333
Seller Note	6,000,000	Financing costs	6,285,375	34,919
Land donation	1	Local permits and fees	4,508,400	25,047
State of CA Tax Credits	1,219,953	Other soft costs	2,301,902	12,788
4 percent (CTCAC) tax credit equity	36,337,172	Architect and engineering	1,171,832	6,510
Deferred developer fee	3,274,741	Reserves	694,182	3,857
		Developer fee	6,149,878	34,166
<b>Total Development Cost</b>	<b>\$81,971,871</b>	<b>Total Development Cost (TDC)</b>	<b>\$81,971,871</b>	<b>\$455,399</b>

**Table 4 - Key Performance Indicators**

Development Cost Per Unit	$\$81,971,871 \div 180 \text{ units} =$	\$455,399
Housing Commission Subsidy Per Unit	$\$0 \div 180 \text{ units} =$	\$0
Land Cost Per Unit	$\$1 \div 180 \text{ units} =$	\$0.01
Gross Building Square Foot Hard Cost	$\$60,860,166 \div 172,840 \text{ sq. ft.} =$	\$352
Net Rentable Square Foot Hard Cost	$\$60,860,166 \div 148,730 \text{ sq. ft.} =$	\$409

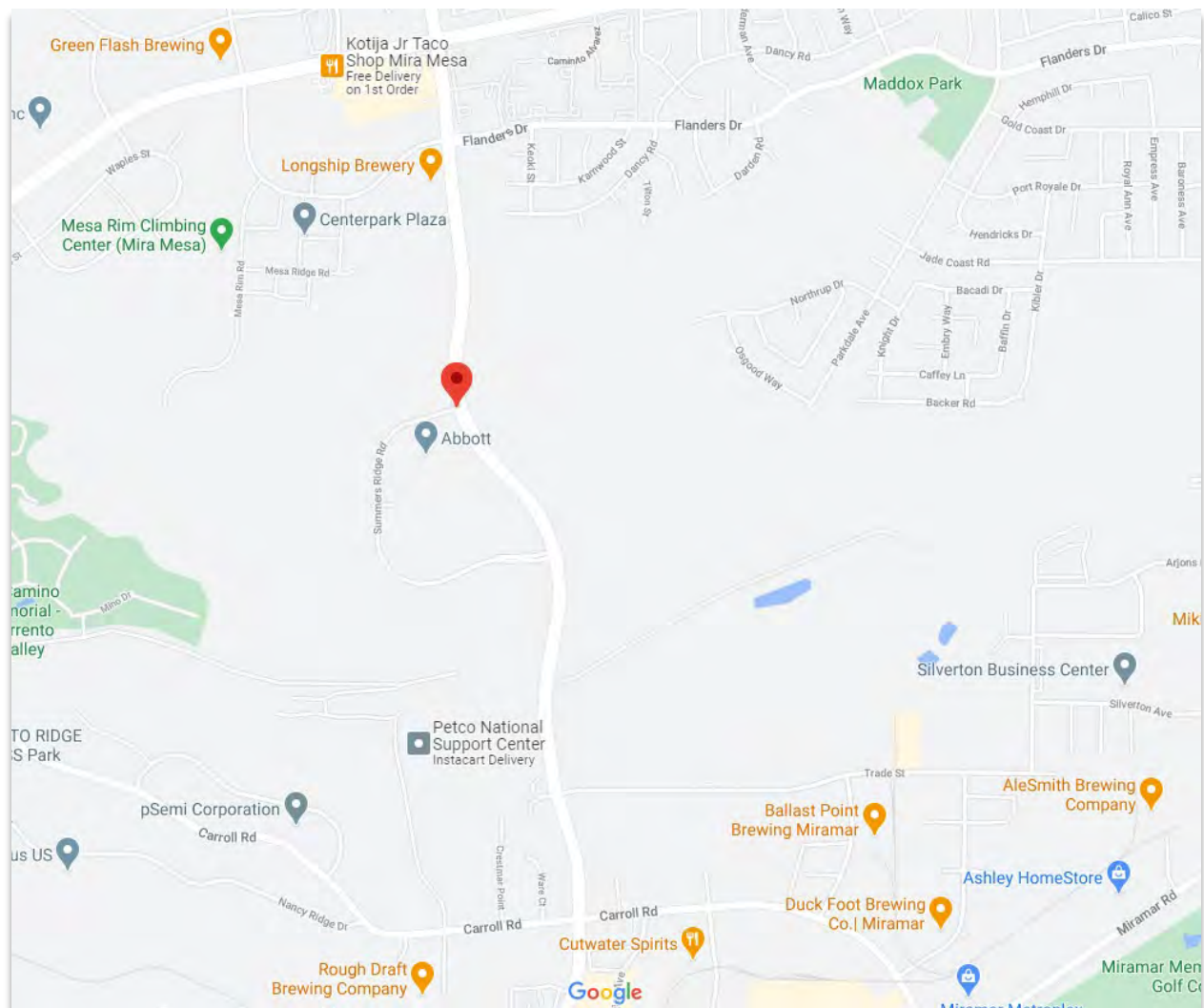
**Table 5 - Comparable Development Projects**

<b>New Construction Project Name</b>	<b>Year</b>	<b>Unit Mix Construction</b>	<b>Units</b>	<b>Total Development Cost</b>	<b>Cost Per Unit</b>	<b>HC Subsidy Per Unit</b>	<b>Gross Hard Cost Per Sq. Ft.</b>
<b>Proposed Subject – Aquila</b>	<b>2021</b>	<b>24 ones, 77 twos, 77 threes + 2 managers</b>	<b>180</b>	<b>\$81,971,871 (w/o prevailing wage)</b>	<b>\$455,399</b>	<b>\$0</b>	<b>\$352</b>
Cortez Hill	2021	79 ones, 8 twos, + 1 manager	88	\$43,647,979 (with prev. wage)	\$496,000	\$56,818	\$526
Southwest Village	2021	30 ones, 29 twos, 21 threes, +1 mgr	81	\$40,314,147 (with prev. wage)	\$497,706	\$0	\$367
Levant Senior Cottages	2021	108 studios, 18 ones, + 1 manager	127	\$51,642,254 (with prev. wage)	\$406,632	\$47,244	\$739
Nestor Senior Village	2021	73 studios, + 1 manager	74	\$31,510,305 (with prev. wage)	\$425,815	\$45,000	\$363

**Table 6 Aquila Affordability and Monthly Estimated Rent Table**

<b><u>Unit Type</u></b>	<b><u>AMI</u></b>	<b><u>Units</u></b>	<b><u>CTCAC Gross Rents</u></b>
One bedrooms, 1 bath (612 sq. ft.)	30%	2	\$682
One bedrooms, 1 bath (612 sq. ft.)	50%	2	\$1,136
One bedrooms, 1 bath (612 sq. ft.)	60%	20	\$1,455
<b>Subtotal One Bedroom Units</b>	--	<b>24</b>	--
Two bedrooms, 1 bath (814 sq. ft.)	30%	8	\$818
Two bedrooms, 1 bath (814 sq. ft.)	50%	8	\$1,363
Two bedrooms, 2 baths (814 sq. ft.)	60%	62	\$1,636
<b>Subtotal Two Bedroom Units</b>	--	<b>78</b>	--
Three bedroom, 2 baths (1,070 sq. ft.)	30%	8	\$945
Three bedroom, 2 baths (1,070 sq. ft.)	50%	8	\$1,575
Three bedroom, 2 baths (1,070 sq. ft.)	60%	60	\$1,890
<b>Subtotal Three Bedroom Units</b>	--	<b>76</b>	--
Manager's two bedrooms unit	65%	<b>1</b>	\$1,636
Manager's three bedrooms unit	65%	<b>1</b>	\$1,890
<b>Total Units</b>	--	<b>180</b>	--

## **Attachment 2 –Aquila Apartments Site Map**

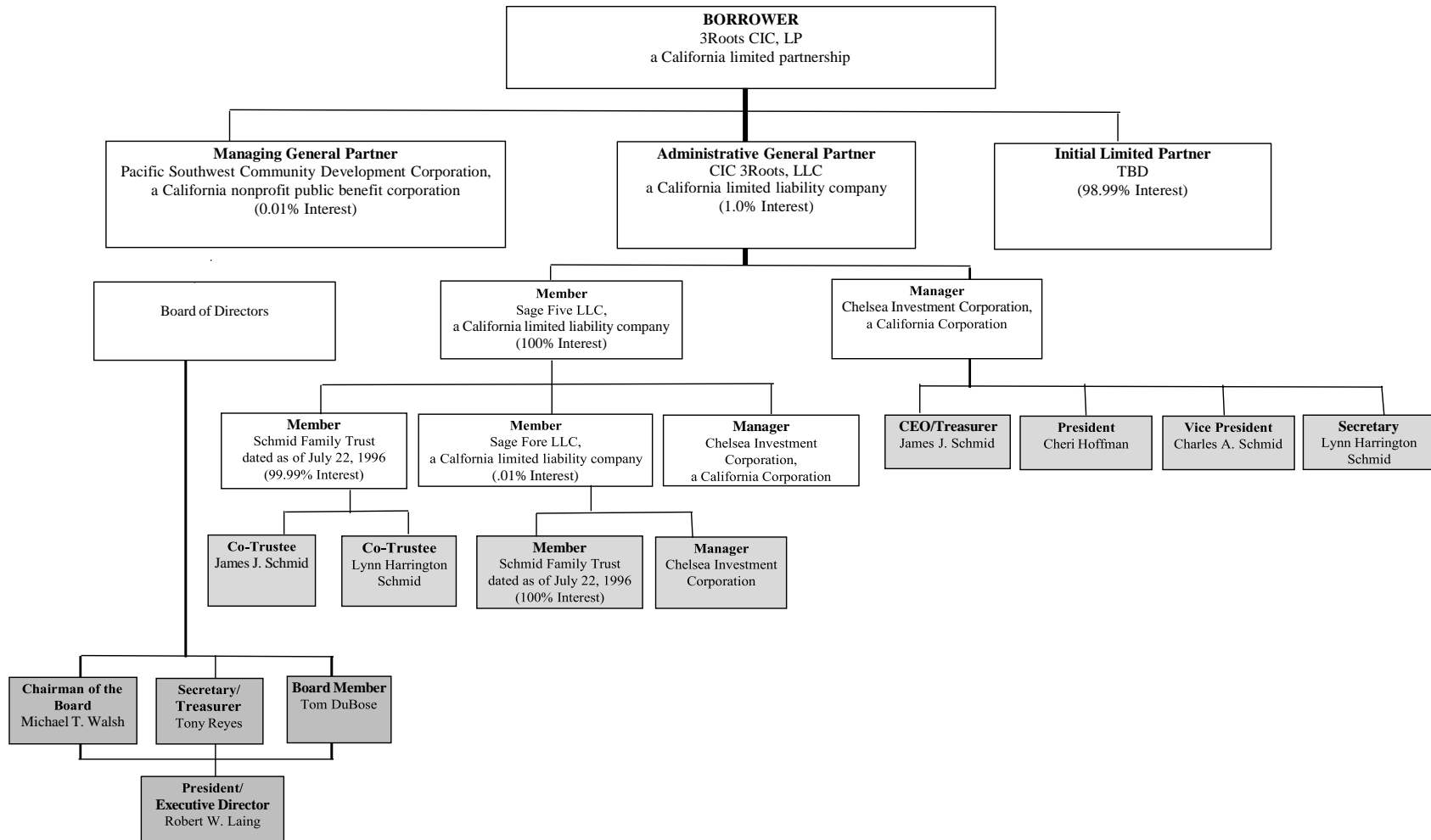


### Aquila Apartments Site Map (aerial view)





## ATTACHMENT 3 – AQUILA ORGANIZATION CHART





PROJECT SUMMARY  
3Roots  
180 UNIT FAMILY  
8/23/2021



ATTACHMENT 4 -DEVELOPER'S PROJECT PRO FORMA

SOURCES AND USES SUMMARY

Development Costs

Acquisition

Land Cost	0.00%	\$0/unit	\$	1.00
Offsite/Infrastructure		\$33,333/unit		6,000,000
Subtotal Acquisition		\$33,333/unit		6,000,001

Hard Costs

Design Assist				626,168
Sitework				2,468,580
Direct Construction		\$230,010/unit		41,401,741
Overhead, Profit, General Conditions				6,416,394
GC Contingecy		\$7,416/unit		1,334,895
GC Contract Total				52,247,777

Owner Hard Costs Contingency		\$14,513/unit		2,612,389
Subtotal Hard Costs		\$304,779/unit		54,860,166

A&E		\$6,510/unit		1,171,832
Financing Fees and Interest		\$34,919/unit		6,285,510
Legal Fees		\$1,583/unit		285,000
Reserves		\$3,857/unit		694,182
Development Impact and Permit Fees		\$25,047/unit		4,508,400
Developer Fee		\$34,166/unit		6,149,878
Remaining Development Soft costs		\$9,167/unit		1,650,014
Owner Soft Costs Contingency		\$2,038/unit		366,888
Subtotal Soft Costs		\$117,287/unit		21,111,704

Total Development Costs		\$455,399/unit		81,971,871
-------------------------	--	----------------	--	------------

Cash Developer Fee

2,875,133

Sources

Federal LIHTC Equity	44%			36,337,172
State LIHTC Equity	1%			1,219,953
Subordinate Developer Fee (MGP Loan)	0%			0
Permanent Loan (Tranche A)	40%			32,390,000
Land Donation	0%	\$		1.00
Deferred Contractor Fee	0.00%	\$		-
Deferred Developer Fee	4%			3,274,746
Seller Note	7%			6,000,000
Gap	\$0/unit	0%		0
Junior C Bond	3%			2,300,000
Residual Receipt Loans Accrued Interest	1%			450,000
Total Development Sources	100%			81,971,871

FINANCING ASSUMPTIONS

	Closing	Completion	Conversion	8,609
Equity Pay In	10%	0%	89%	1%
				\$ 0.9000
State Tax Credit Price		non-certificated		\$ 0.7900
Solar Tax Credit Price				
9% Credit Rate				
4% Credit Rate				4.00%
LP Interest				98.99%
10 Yr Federal Tax Credits				40,786,580
3 Yr State Credits		\$8,667/unit		1,560,000
State Credi equity		\$ 0.79		1,219,953

Debt

Opr. Exp./Unit/Year				\$5,451
Services/Unit/Year				\$74
Replacement Reserves/Unit/Year				\$250
Vacancy Rate				5.00%
DCR				1.15
Perm Loan Amort				35
Interest Rate - Permanent Loan				4.35%
Interest Rate - Construction Loan				4.10%
Taxable USB Construction Loan				61,876,471
Tax-exempt Citi Construction Loan				37,700,000
Taxable Citi Construction Loan				25,654,597
Total Citibank Construction Bridge Loan				63,354,597

Tax Exempt Permanent Loan				32,390,000
---------------------------	--	--	--	------------

Tax exempt bonds - Citi				\$ 37,700,000
Tax Exempt Bonds - Junior Bond/CIC Opps				\$ 2,300,000
Bond Allocation				\$ 40,000,000

Tax Credit Considerations

DDA/QCT Boost				130%
Rural Designation				No
50% Test	40,000,000	Per Allocation		51.00%
CA 9% Site Amenity Score				N/A
CA 9% Tiebreaker				N/A
Housing Set Aside				Family

Prevailing Wage (State, Federal, Both):				NO
---	--	--	--	----

PRELIM DEVELOPMENT PROGRAMMING SUMMARY

City:	San Diego
MSA:	San Diego
4 Person 50% AMI:	
Site (acres):	
Construction Type:	Type III
No. of Stories:	5
Parking Type:	surface with tuck under
No. of Stalls:	232
Census tract 8350	High Resource Area
Impact Fees per Unit:	21,380
Financing Sources:	4% & Bonds, Seller Note

PROJECT UNIT & INCOME MIX

AMI Sq. Ft.	Studio 380	1BR 559	2BR 758	3BR 1,027	Totals 152,377
UA	\$0	\$62	\$82	\$105	
60%	0	20	62	60	142
55%	0	0	0	0	0
50%	0	2	8	8	18
45%	0	0	0	0	0
40%	0	0	0	0	0
35%	0	0	0	0	0
30%	0	2	8	8	18
Mgr.	0	0	1	1	2
Totals	0	24	79	77	180
Bedroom Mix		13%	44%	43%	
Average affordability				BDR:	230
				24	24
				100	125
CDLAC limits 3BR to 30%				54	81
				178	230.0
				332	

Tax Credit Allocation	4/28/21
Construction Begin - Initial Closing	10/25/21
Construction Complete	10/1/23
Lease Up Complete	1/1/24
Conversion/Stabilizatiion	7/1/24
8609	10/1/24

**PROJECTED SOURCES AND USE**

180 UNIT FAMILY		230.00	Construction Period 24 Months										Construction	100%	Stabilization	Conversion	8609	Total
		269,988	Pre-Dev	Close	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6	Quarter 7	Quarter 8	Subtotal	Completion	6mos			
					5%	5%	15%	25%	15%	10%	10%	15%						
<b>SOURCES OF FUNDS</b>																		
1	Federal LIHTC Equity			3,633,717	-	-	-	-	-	-	-	-	3,633,717		-	32,340,083	363,372	36,337,172
2	State LIHTC Equity	6,778		121,995	-	-	-	-	-	-	-	-	121,995		-	1,085,758	12,200	1,219,953
3	Subordinate Developer Fee (MGP Loan)			-	-	-	-	-	-	-	-	-	-		-	-	-	-
5	Taxable US Bank Construction Loan		-	4,566,243	4,515,809	4,289,231	7,686,711	12,771,341	7,925,217	5,519,423	5,603,741	8,998,754	61,876,471	(61,876,471)	-	-	-	-
6	Permanent Loan (Tranche A)			-	-	-	-	-	-	-	-	-	-		-	-	-	-
7	Citi Tax Exempt Bonds During Construction			50,001	-	-	-	-	-	-	-	-	50,001	37,649,999	-	32,390,000	-	32,390,000
8	Citi Taxable Construction bridge loan			-	-	-	-	-	-	-	-	-	-	24,226,472	1,428,125	(37,700,000)	-	-
9	Deferred Developer Fee			-	-	-	-	-	-	-	-	-	-			(25,654,597)	-	-
10	C Bond (App = \$2,200,000)	\$12,778/unit		2,300,000	-	-	-	-	-	-	-	-	2,300,000		-	3,274,746	-	3,274,746
11	Local Subsidy / GAP	\$0/unit		-	-	-	-	-	-	-	-	-	-		-	-	-	-
11	Value of Land Donation		\$	1	-	-	-	-	-	-	-	-	1		-	-	-	1
12	Deferred Contractor Fee			-	-	-	-	-	-	-	-	-	-		-	-	-	-
13	Seller Note	\$33,333/unit		6,000,000	-	-	-	-	-	-	-	-	6,000,000		-	-	-	6,000,000
14	Residual Receipt Loans Accrued Interest			-	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	360,000		90,000	-	-	450,000
15	Income From Operations			-	-	-	-	-	-	-	-	-	-		-	-	-	-
16	<b>Total Sources of Funds</b>		-	16,671,957	4,560,809	4,334,231	7,731,711	12,816,341	7,970,217	5,564,423	5,648,741	9,043,754	74,342,186	-	1,518,125	5,735,989	375,571	81,971,871
<b>USES OF FUNDS</b>																		
<b>ACQUISITION</b>																		
21	Value of Land Donation	\$0/unit	\$	1	-	-	-	-	-	-	-	-	1		-	-	-	1
23	Legal & Carrying Costs			-	-	-	-	-	-	-	-	-	-		-	-	-	-
25	Verifiable Carrying Costs			-	-	-	-	-	-	-	-	-	-		-	-	-	-
26	Basis Eligible Acquisition Cost/ Entitlement	33,333		6,000,000	-	-	-	-	-	-	-	-	6,000,000		-	-	-	6,000,000
27	Other: Closing Costs			5,500	-	-	-	-	-	-	-	-	5,500		-	-	-	5,500
28	<b>Total Land / Acquisition</b>			6,005,501	-	-	-	-	-	-	-	-	6,005,501		-	-	-	6,005,501
<b>NEW CONSTRUCTION</b>																		
48	Design Assist (excluded from contingency)	\$	-	-	626,168	-	-	-	-	-	-	-	626,168		-	-	-	626,168
49	Off-site Improvements	\$	-	-	-	-	-	-	-	-	-	-	-		-	-	-	-
50	Commercial	\$	150.00	-	-	-	-	-	-	-	-	-	-		-	-	-	-
51	Site Work (2,468,580)	\$0/acre	-	-	617,145	1,357,719	-	-	-	-	-	493,716	2,468,580		-	-	-	2,468,580
52	Parking Garage	\$0/stall	-	-	-	-	-	-	-	-	-	-	-		-	-	-	-
53	Vertical (41,401,741)	\$153.35/sq ft	-	-	2,070,087	2,070,087	6,210,261	10,350,435	6,210,261	4,140,174	4,140,174	6,210,261	41,401,741		-	-	-	41,401,741
54	GC Contingency	3.0%	-	-	99,402	102,834	186,308	310,513	186,308	124,205	124,205	201,119	1,334,895		-	-	-	1,334,895
55	General Requirements	4.00%	-	-	136,512	141,226	255,863	426,438	255,863	170,575	170,575	276,204	1,833,255		-	-	-	1,833,255
56	Contractor Overhead/Profit	7.00%	-	-	238,896	247,145	447,760	746,266	447,760	298,507	298,507	483,357	3,208,197		-	-	-	3,208,197
57	Preconstruction Services	3.00%	-	-	1,374,942	-	-	-	-	-	-	-	1,374,942		-	-	-	1,374,942
58	Contractor General Liability Insurance		-	-	-	-	-	-	-	-	-	-	-		-	-	-	-
59	Other:		-	-	-	-	-	-	-	-	-	-	-		-	-	-	-
60	<b>Total New Construction</b>	\$290,265/unit	-	1,374,942	3,788,210	3,919,011	7,100,192	11,833,653	7,100,192	4,733,461	4,733,461	7,664,657	52,247,777		-	-	-	52,247,777
<b>ARCHITECTURAL</b>																		
62	Building		0	-	-	-	-	-	-	-	-	-	-		-	-	-	-
64	Landscape		0	88,500	-	-	-	-	-	-	-	-	88,500		-	-	-	88,500
65	Energy Consultant		0	110,000	-	-	-	-	-	-	-	-	110,000		-	-	-	110,000
66	Other: Acoustic Study		0	9,500	-	-	-	-	-	-	-	-	9,500		-	-	-	9,500
67	Other: Traffic Study		0	-	-	-	-	-	-	-	-	-	-		-	-	-	-
68	Previous out of pocket Architect Fee		0	240,000	-	-	-	-	-	-	-	-	240,000		-	-	-	240,000
69	<b>Total Architectural</b>		-	448,000	-	-	-	-	-	-	-	-	448,000		-	-	-	448,000
<b>SURVEY &amp; ENGINEERING</b>																		
72	Civil		0	304,500	-	-	-	-	-	-	-	-	304,500		-	-	-	304,500
73	ALTA		0	8,500	-	-	-	-	-	-	-	12,000	20,500		-	-	-	20,500
74	Staking		0	-	95,000	-	-	-	-	-	-	-	95,000		-	-	-	95,000
75	Structural Testing		0	-	125,000	-	-	-	-	-	-	-	125,000		-	-	-	125,000
76	Soils		0	-	85,000	-	-	-	-	-	-	-	85,000		-	-	-	85,000
77	Dry Utilities		0	-	35,000	-	-	-	-	-	-	-	35,000		-	-	-	35,000
78	Environmental		0	-	15,000	-	-	-	-	-	-	-	15,000		-	-	-	15,000
79	Other:		0	-	43,832	-	-	-	-	-	-	-	43,832		-	-	-	43,832
80	<b>Total Survey &amp; Engineering</b>		-	313,000	398,832	-	-	-	-	-	-	12,000	723,832		-	-	-	723,832
<b>CONTINGENCY COSTS</b>																		
83	Hard Cost Contingency	5%		68,747	189,411	195,951	355,010	591,683	355,010	236,673	236,673	383,233	2,612,389		-	-	-	2,612,389
84	Soft Cost Contingency	3.0%		250,905	16,986	6,387	8,054	11,389	14,369	17,309	19,765	21,724	366,888		-	-	-	366,888
85	<b>Total Contingency</b>		-	319,652	206,397	202,337	363,063	603,071	369,379	253,982	256,438	404,957	2,979,276		-	-	-	2,979,276
<b>CONSTRUCTION PERIOD EXPENSES</b>																		
88	Construction Loan Interest	4.10%		-	62,746	108,258	163,831	259,992	374,341	447,355	504,217	572,515	2,493,255		1,269,394	-	-	3,762,649
89	Land Note Interest	3.00%		-	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	360,000		90,000	-	-	450,000
90	C Bond Interest	7.50%		-	43,125	43,125	43,125	43,125	43,125	43,125	43,125	43,125	345,000		86,250	-	-	431,250
91	Origination Fee - USB	0.60%		371,259	-	-	-	-	-	-	-	-	371,259		-	-	-	371,259
92	Origination Fee - Citi	0.60%		380,128	-	-	-	-	-	-	-	-	380,128		-	-	-	380,128
93	Junior Bond Origination Fee + DD/Legal Costs	3.00%		104,000	-	-	-	-	-	-	-	-	104,000		-	-	-	104,000
94	Lender Inspection Fees			-	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	60,000		-	-	-	60,000
95	Taxes During Construction			15,000	-	-	-	15,000	-	-	-	-	30,000		-	-	-	30,000
96	Other: Application fee			-	-	-	-	-	-	-	-	-	-		-	-	-	-
97	Insurance During Construction			300,000	-	-	-	-	-	-	-	-	300,000		-	-	-	300,000
98	Title and Recording Fees			55,000	-	-	-	-	-	-	-	-	55,000		-	-	-	55,000
99	Construction Mgmt. and Monitoring		0	-	-	-	-	-	-	-	-	-	-		-	-	-	-
100	Predevelopment Loan Interest			75,000	-	-	-	-	-	-	-	-	75,000		-	-	-	75,000
101	Other: Accounting & Admin			25,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	97,000		-	-	-	97,000

**PROJECTED SOURCES AND USE**

180 UNIT FAMILY		230.00	Construction Period 24 Months										Construction	100%	Stabilization	Conversion	8609	Total
		269,988	Pre-Dev	Close	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6	Quarter 7	Quarter 8	Subtotal	Completion	6mos			
102	Other:				5%	5%	15%	25%	15%	10%	10%	15%						
103	<b>Total Construction Period Expense</b>		-	1,325,386	167,371	212,883	268,456	379,617	478,966	551,980	608,842	677,140	4,670,641		1,445,644	-	-	6,116,285
104																		
105	PERMANENT FINANCING EXPENSES																	
106	Loan Origination Fees	0.00%		-	-	-	-	-	-	-	-	-	-		-	10,000	-	10,000
107	Credit Enhancement & Application Fee			-	-	-	-	-	-	-	-	-	-		-	-	-	-
108	Title and Recording Fees			-	-	-	-	-	-	-	-	-	-		-	7,500	-	7,500
109	Property Taxes			-	-	-	-	-	-	-	-	-	-		-	-	-	-
110	Insurance			-	-	-	-	-	-	-	-	-	-		-	-	-	-
111	Other: Issuer Fee	0.125%		43,363	-	-	-	-	21,681	-	-	-	65,044		21,681	-	-	86,725
112	Other: Financial Advisor			65,000	-	-	-	-	-	-	-	-	65,000		-	-	-	65,000
113	<b>Total Permanent Financing</b>			108,363	-	-	-	-	21,681	-	-	-	130,044		21,681	17,500	-	169,225
114																		
115	LEGAL FEES																	
116	Construction Lender Legal			55,000	-	-	-	-	-	-	-	-	55,000		-	-	-	55,000
117	Permanent Lender Legal			75,000	-	-	-	-	-	-	-	-	75,000		-	-	-	75,000
118	Sponsor Legal		0	75,000	-	-	-	-	-	-	-	-	75,000		-	-	-	75,000
119	Organizational Legal			-	-	-	-	-	-	-	-	-	-		-	-	-	-
120	Other Legal (Issuer Legal, Bond Counsel)			65,000	-	-	-	-	-	-	-	-	65,000		-	-	-	65,000
121	Other:			-	-	-	-	-	-	-	-	-	-		-	-	-	-
122	Other: GP Legal		0	15,000	-	-	-	-	-	-	-	-	15,000		-	-	-	15,000
123	<b>Total Legal Fees</b>		-	285,000	-	-	-	-	-	-	-	-	285,000		-	-	-	285,000
124																		
125	CAPITALIZED RESERVES																	
126	Operating Reserve	3 months		-	-	-	-	-	-	-	-	-	-		-	694,182	-	694,182
127	Replacement Reserve			-	-	-	-	-	-	-	-	-	-		-	-	-	-
128	Rent-up Reserve			-	-	-	-	-	-	-	-	-	-		-	-	-	-
129	Transition Reserve (2 years)			-	-	-	-	-	-	-	-	-	-		-	-	-	-
130	Other: Prepaid HOA			-	-	-	-	-	-	-	-	-	-		-	-	-	-
131	Other: Capitalized LP Fee			-	-	-	-	-	-	-	-	-	-		-	-	-	-
132	<b>Total Reserves</b>		-	-	-	-	-	-	-	-	-	-	-		-	694,182	-	694,182
133																		
134	REPORTS & STUDIES																	
135	Market Study		0	7,500	-	-	-	-	-	-	-	-	7,500		-	-	-	7,500
136	Relocation Plan & consulting		0	-	-	-	-	-	-	-	-	-	-		-	-	-	-
137	Appraisal		0	10,000	-	-	-	-	-	-	-	-	10,000		-	-	-	10,000
138	Environmental		0	-	-	-	-	-	-	-	-	-	-		-	-	-	-
139	Other: Lender Deposit		0	50,000	-	-	-	-	-	-	-	-	50,000		-	-	-	50,000
140	Other: Investor Deposit		0	-	-	-	-	-	-	-	-	-	-		-	-	-	-
141	Other: Soils Report		0	-	-	-	-	-	-	-	-	-	-		-	-	-	-
142	Other: Phase I		0	-	-	-	-	-	-	-	-	-	-		-	-	-	-
143	<b>Total Reports &amp; Studies</b>		-	67,500	-	-	-	-	-	-	-	-	67,500		-	-	-	67,500
144																		
145	OTHER																	
146	TCAC App./Alloc/Monitoring Fees		0	78,527	-	-	-	-	-	-	-	-	78,527		35,800	-	-	114,327
147	CDLAC/CDIAC Fees	0.05%	0	6,500	-	-	-	-	-	-	-	-	6,500		-	-	-	6,500
148	Local Permit Fees	\$1,500/unit	0	660,000	-	-	-	-	-	-	-	-	660,000		-	-	-	660,000
149	Local Development Impact Fees - 2022FBA & School	\$21,380/unit	0	3,848,400	-	-	-	-	-	-	-	-	3,848,400		-	-	-	3,848,400
150	Water Sewer			1,331,187	-	-	-	-	-	-	-	-	1,331,187		-	-	-	1,331,187
151	Syndicator/Investor Fees & Expenses			-	-	-	-	-	-	-	-	-	-		-	-	-	-
152	Furnishings			-	-	-	-	-	-	-	-	-	-		-	-	-	-
153	Final Cost Audit Expense			-	-	-	-	-	-	-	-	-	-		15,000	-	-	15,000
154	Leasing Expenses			-	-	-	-	-	-	25,000	50,000	35,000	110,000		-	-	-	110,000
155	MGP Services Fee			-	-	-	-	-	-	-	-	-	-		-	-	-	-
156	SDHC Ap, Orig, Servicing, Legal, Const Review			-	-	-	-	-	-	-	-	-	-		-	-	-	-
157	Bond Performance Deposit		0	-	-	-	-	-	-	-	-	-	-		-	-	-	-
158	<b>Total Other Costs</b>		-	5,924,614	-	-	-	-	-	25,000	50,000	35,000	6,034,614		50,800	-	-	6,085,414
159																		
160	DEVELOPER COSTS																	
161	Developer Fee			500,000	-	-	-	-	-	-	-	250,000	750,000		-	5,024,307	375,571	6,149,878
162	Consultant/Processing Agent			-	-	-	-	-	-	-	-	-	-		-	-	-	-
163	Project Administration			-	-	-	-	-	-	-	-	-	-		-	-	-	-
164	Syndication Consultant			-	-	-	-	-	-	-	-	-	-		-	-	-	-
165	Guarantee Fees			-	-	-	-	-	-	-	-	-	-		-	-	-	-
166	Broker Fees Paid to Related Party			-	-	-	-	-	-	-	-	-	-		-	-	-	-
167	Construction Oversight & Mgmt			-	-	-	-	-	-	-	-	-	-		-	-	-	-
168	<b>Total Developer Costs</b>		-	500,000	-	-	-	-	-	-	-	250,000	750,000		-	5,024,307	375,571	6,149,878
169																		
170																		
171	<b>Total Uses of Funds</b>		-	16,671,957	4,560,809	4,334,231	7,731,711	12,816,341	7,970,217	5,564,423	5,648,741	9,043,754	74,342,186		1,518,125	5,735,989	375,571	81,971,871
172	Net Source & Use			-	-	-	-	-	-	-	-	-	-		-	0	-	0
173	Distributions			-	-	-	-	-	-	-	-	-	-		-	-	-	-
174	<b>Balance of Funds</b>			-	-	-	-	-	-	-	-	-	-		-	0	0	0

# OPERATING BUDGET & INCOME ANALYSIS

180 UNIT FAMILY

**Estimate  
2021**

				Square	Total	Gross	Utility	Monthly	Annual
Rent:	Restriction	%AMI	Units	Feet/Unit	Sq. Ft.	Rents	Allowance	Net Rent	Rent
1BR/1BA	LIHTC	60%	20	559	11,180	\$ 1,363	\$ 62	\$ 1,301	\$ 312,120
1BR/1BA	LIHTC	50%	2	559	1,118	\$ 1,136	\$ 62	\$ 1,074	\$ 25,782
1BR/1BA	LIHTC	30%	2	559	1,118	\$ 682	\$ 62	\$ 620	\$ 14,874
2BR/1BA	LIHTC	60%	62	758	46,996	\$ 1,635	\$ 82	\$ 1,553	\$1,155,581
2BR/1BA	LIHTC	50%	8	758	6,064	\$ 1,363	\$ 82	\$ 1,281	\$ 122,928
2BR/1BA	LIHTC	30%	8	758	6,064	\$ 818	\$ 82	\$ 736	\$ 70,608
3BR/2BA	LIHTC	60%	60	1,027	61,620	\$ 1,891	\$ 105	\$ 1,786	\$1,285,718
3BR/2BA	LIHTC	50%	8	1,027	8,216	\$ 1,576	\$ 105	\$ 1,471	\$ 141,178
3BR/2BA	LIHTC	30%	8	1,027	8,216	\$ 945	\$ 105	\$ 840	\$ 80,675
(Assume 3BR at 30% meets 50% bond req)			0	1,027	0	\$ -		\$ -	\$ -
2BR/1BA	LIHTC	MGR	1	758	758	\$ -	\$ -	\$ -	\$ -
3BR/2BA	LIHTC	MGR	1	1,027	1,027	\$ -			
Total Rents			180		152,377				3,209,463
Community Room/Office					3,429				
Decks/Patios					11,520				
Parking					22,209				
% Loss to Efficiency					80,453				
Construction Square Feet					269,988				
<b>RA Overhang</b>									<b>0</b>
<b>Income from Operations</b>			PUPM						
Laundry				\$ 8.00					17,280
Other Income (App. Fees, Late, etc.)				\$ 4.00					8,640
Garage				\$ -		0	Garages		0
Cable & Highspeed Data Income				\$ -					0
Telephone Income				\$ -					0
Sub-Total				\$ 12.00					3,235,383
Less: Vacancies @			5%						161,769
Commercial Income									0
Less: Vacancies @			25%						0
<b>Total Income</b>									<b>3,073,614</b>
<b>Operating Expenses</b>			PUPA				Notes		
Admin				\$ 398					71,658
Management Fee				\$ 660					118,800
Utilities				\$ 1,804	includes trash				324,768
Payroll				\$ 1,339	salary schedule froi				240,952
Repair & Maintenance				\$ 950					171,002
Insurance				\$ 300					54,000
SDHC monitoring fees				\$ -					0
Other									0
<b>Total Expenses</b>				\$ 5,451					<b>981,180</b>
<b>Net Operating Income</b>									<b>2,092,434</b>
Reserves				\$250.00/unit					45,000
Services				\$74/unit			Per MOU		13,320
Issuer Fee				0.125%					40,488
Monitoring Fee				\$150/unit					27,000
<b>Net Income Available for Debt Service</b>									<b>1,966,627</b>

**DSC TEST 1.150**

Loan Amount	32,390,000	0	2,300,000
Interest	4.35%		
Term	15		
Amortization	40		
Debt Service Coverage	1.15		
Monthly Payment	142,505		
Annual Payment	1,710,061		
Cash Flow After D/S	256,565		

**TAX CREDITS & BASIS CALCULATION**

180 UNIT FAMILY

DESCRIPTION OF COSTS	ACTUAL OR EST. OF COSTS	70% ELIGIBLE BASIS	30% ELIGIBLE BASIS
<i>ACQUISITION</i>			
Land Cost	\$ 1	XXXXXXXXXXXX	XXXXXXXXXXXX
Demolition	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Legal & Carrying Costs	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Land Lease Rent Prepayment	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Verifiable Carrying Costs	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Existing Improvement Costs	\$ 6,000,000	XXXXXXXXXXXX	\$ 6,000,000
Other: Closing Costs	\$ 5,500	XXXXXXXXXXXX	XXXXXXXXXXXX
<b>TOTAL LAND/AQUISITION COSTS</b>	<b>\$ 6,005,501</b>	<b>\$ -</b>	<b>\$ 6,000,000</b>
<i>REHABILITATION</i>			
Off-Site Improvements	\$ -		\$ -
Environmental Remediation	\$ -		\$ -
Site Work	\$ -		\$ -
Structures	\$ -		\$ -
General Requirements	\$ -		\$ -
Contractor Overhead	\$ -		\$ -
Contractor Profit	\$ -		\$ -
Contractor General Liability Insurance	\$ -		\$ -
Other:	\$ -		\$ -
<b>TOTAL REHABILITATION COSTS</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<i>RELOCATION</i>			
Temporary Relocation	\$ -		\$ -
Permanent Relocation	\$ -		XXXXXXXXXXXX
<b>TOTAL RELOCATION COSTS</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<i>NEW CONSTRUCTION</i>			
<i>Design Assist (excluded from contingency)</i>	\$ 626,168		\$ 626,168
Off-site Improvements	\$ -		\$ -
Commercial	\$ -		\$ -
Site Work	\$ 2,468,580		\$ 2,468,580
Parking Garage	\$ -		\$ -
Vertical	\$ 41,401,741		\$ 41,401,741
GC Contingency	\$ 1,334,895		\$ 1,334,895
General Requirements	\$ 1,833,255		\$ 1,833,255
Contractor Overhead/Profit	\$ 3,208,197		\$ 3,208,197
Preconstruction Services	\$ 1,374,942		\$ 1,374,942
Contractor General Liability Insurance	\$ -		\$ -
Other:	\$ -		\$ -
<b>TOTAL CONSTRUCTION</b>	<b>\$ 52,247,777</b>	<b>\$ -</b>	<b>\$ 52,247,777</b>
<i>ARCHITECTURAL FEES</i>			
Building	\$ -		\$ -
Landscape	\$ 88,500		\$ 88,500
Energy Consultant	\$ 110,000		\$ 110,000
Other: Acoustic Study	\$ 9,500		\$ 9,500
Other: Traffic Study	\$ -		\$ -
Previous out of pocket Architect Fee	\$ 240,000		\$ 240,000
<b>TOTAL ARCHITECTURAL COSTS</b>	<b>\$ 448,000</b>	<b>\$ -</b>	<b>\$ 448,000</b>
<i>SURVEY &amp; ENGINEERING</i>			
Civil	\$ 304,500		\$ 304,500
ALTA	\$ 20,500		\$ 20,500
Staking	\$ 95,000		\$ 95,000
Structural Testing	\$ 125,000		\$ 125,000
Soils	\$ 85,000		\$ 85,000
Dry Utilities	\$ 35,000		\$ 35,000
Environmental	\$ 15,000		\$ 15,000
Other:	\$ 43,832		\$ 43,832
<b>TOTAL SURVEY &amp; ENGINEERING</b>	<b>\$ 723,832</b>	<b>\$ -</b>	<b>\$ 723,832</b>
<i>CONTINGENCY COSTS</i>			
Hard Cost Contingency	\$ 2,612,389		\$ 2,612,389
Soft Cost Contingency	\$ 366,888		\$ 366,888
<b>TOTAL CONTINGENCY COSTS</b>	<b>\$ 2,979,276</b>	<b>\$ -</b>	<b>\$ 2,979,276</b>
<i>CONSTRUCTION PERIOD EXPENSES</i>			
Construction Loan Interest	\$ 3,762,649		\$ 2,169,776
Seller Note Interest	\$ 450,000		\$ 360,000
C Bond Interest	\$ 431,250		\$ 345,415
Origination Fee	\$ 751,386		\$ 375,693
			\$ -
Junior Bond Origination Fee & Legal/DD	\$ 104,000		\$ 52,000
Lender Inspection Fees	\$ 60,000		\$ 60,000
Taxes During Construction	\$ 30,000		\$ 30,000
Prevailing Wage Monitoring	\$ -		\$ -
Insurance During Construction	\$ 300,000		\$ 300,000
Title and Recording Fees	\$ 55,000		\$ 27,500
Construction Management & Testing	\$ -		\$ -
Predevelopment Loan Interest	\$ 75,000		\$ 75,000
Other: Accounting & Admin	\$ 97,000		\$ 97,000
Other:	\$ -		\$ -
<b>TOTAL CONSTRUCTION PERIOD EXPENSE</b>	<b>\$ 6,116,285</b>	<b>\$ -</b>	<b>\$ 3,892,384</b>
<i>PERMANENT FINANCING EXPENSES</i>			
Loan Origination Fee	\$ 10,000	XXXXXXXXXXXX	XXXXXXXXXXXX
Credit Enhancement & Application Fee	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Title and Recording Fees	\$ 7,500	XXXXXXXXXXXX	XXXXXXXXXXXX
Property Taxes	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Insurance	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Other: Issuer Fee	\$ 86,725	XXXXXXXXXXXX	XXXXXXXXXXXX

Other: Financial Advisor	\$ 65,000	XXXXXXXXXXXX	XXXXXXXXXXXX
<b>TOTAL PERMANENT FINANCING COSTS</b>	<b>\$ 169,225</b>	<b>\$ -</b>	<b>\$ -</b>
<b>LEGAL FEES</b>			
Construction Lender Legal	\$ 55,000		\$ 27,500
Permanent Lender Legal	\$ 75,000	XXXXXXXXXXXX	XXXXXXXXXXXX
Sponsor Legal	\$ 75,000		\$ 37,500
Organizational Legal	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Bond Legal	\$ 65,000	XXXXXXXXXXXX	XXXXXXXXXXXX
CPA, Opinion	\$ -		\$ -
Other: GP Legal	\$ 15,000		\$ 7,500
<b>TOTAL LEGAL</b>	<b>\$ 285,000</b>	<b>\$ -</b>	<b>\$ 72,500</b>
<b>CAPITALIZED RESERVES</b>			
Operating Reserve	\$ 694,182	XXXXXXXXXXXX	XXXXXXXXXXXX
Replacement Reserve	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Rent-up Reserve	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Transition Reserve	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Other: Prepaid HOA	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Other: Capitalized LP Fee	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
<b>TOTAL RESERVE COSTS</b>	<b>\$ 694,182</b>	<b>\$ -</b>	<b>XXXXXXXXXXXX</b>
<b>REPORTS &amp; STUDIES</b>			
Appraisal	\$ 7,500		\$ 7,500
Market Study	\$ -		\$ -
Physical Needs Assessment	\$ 10,000		\$ 10,000
Environmental Studies	\$ -		\$ -
Other: Lender Deposit	\$ 50,000		\$ 50,000
Other: Investor Deposit	\$ -		\$ -
Other: Soils Report	\$ -		\$ -
Other: Phase I	\$ -		\$ -
<b>TOTAL REPORTS &amp; STUDIES</b>	<b>\$ 67,500</b>	<b>\$ -</b>	<b>\$ 67,500</b>
<b>OTHER EXPENSES</b>			
TCAC App./Alloc/Monitoring Fees	\$ 114,327	XXXXXXXXXXXX	XXXXXXXXXXXX
CDLAC/CDIAC Fees	\$ 6,500	XXXXXXXXXXXX	XXXXXXXXXXXX
Local Permit Fees	\$ 660,000		\$ 660,000
Local Development Impact Fees - 2022FBA & School	\$ 3,848,400		\$ 3,848,400
Water Sewer	\$ 1,331,187		\$ 1,331,187
Syndicator/Investor Fees & Expenses	\$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Furnishings	\$ -		\$ -
Final Cost Audit Expense	\$ 15,000		\$ 15,000
Leasing Expenses	\$ 110,000	XXXXXXXXXXXX	XXXXXXXXXXXX
MGP Services Fee	\$ -		\$ -
SDHC Ap. Orig, Servicing, Legal, Const Review	\$ -		\$ -
Accounting/Finance/Admin	\$ -		\$ -
Other: CPA Opinion	\$ -		\$ -
Other:	\$ -		\$ -
<b>TOTAL OTHER COSTS</b>	<b>\$ 6,085,414</b>	<b>\$ -</b>	<b>\$ 5,854,587</b>
<b>DEVELOPER COSTS</b>			
Developer Fee Limit - Per Application		\$ -	\$ -
Developer Fee Calculation	\$ 6,149,878.45	\$ -	\$ 6,149,878
Developer Fee	\$ 6,149,878.5	\$ -	\$ 6,149,878
Consultants/Processing Agent	\$ -		\$ -
Project Administration	\$ -		\$ -
Syndication Consultant	\$ -		\$ -
Guarantee Fees	\$ -		\$ -
Broker Fees Paid to Related Party	\$ -		\$ -
Construction Oversight & Mgmt	\$ -		\$ -
<b>TOTAL DEVELOPER FEE</b>	<b>\$ 6,149,878</b>	<b>\$ -</b>	<b>\$ 6,149,878</b>
<b>TOTAL RESIDENTIAL COSTS</b>	<b>\$ 81,971,871</b>	<b>\$ -</b>	<b>\$ 78,435,735</b>

<b>TOTAL COMMERCIAL COSTS</b>	<b>\$ -</b>	<b>\$ -</b>
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<b>TOTAL PROJECT AND BASIS COSTS</b>	<b>\$ 81,971,871</b>	<b>\$ -</b>	<b>\$ 78,435,735</b>
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Adjustment for Excess Basis		\$ -
Additional Amount Voluntarily Excluded From Basis		\$ -
Requested Undadjusted Eligible Basis	\$ -	\$ 78,435,735

130% DIFFICULT DEVELOPMENT FACTOR?	Tract #: Not Avail.	y	\$ 101,966,455
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Credit Reduction		\$ -
Total Adjusted Qualified Basis		\$ 101,966,455

<b>TX CREDITS @ % LI Eligible@ Tx Credit Rt</b>	<b>100.00%</b>	<b>4.00%</b>	<b>4.00%</b>
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<b>TX CREDITS @ % LI Eligible</b>	<b>\$ -</b>	<b>\$ 4,078,658</b>
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<b>TX CREDITS OVER TEN YEARS</b>	<b>\$ -</b>	<b>\$ 40,786,580</b>
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<b>TX CREDIT EQY@\$Credit@% Investment</b>	<b>\$ 0.9000</b>	<b>98.99%</b>	<b>\$ 36,337,172</b>
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State Tax Credits - 13% of Eligible Basis & Over 4 Yrs		<b>98.99%</b>	\$ 1,560,000
State Tax Credits Equity	\$ 0.7900	98.99%	\$ 1,219,953

Solar Credits - 30% of Eligible Basis	<b>30.00%</b>		
Solar Equity	\$ -	98.99%	\$ -
Solar Rebates			\$ -

## 180 UNIT FAMILY

				2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	
Gross Revenue	Inflation @	2.00%		3,235,383	3,300,091	3,366,093	3,433,415	3,502,083	3,572,125	3,643,567	3,716,438	3,790,767	3,866,583	3,943,914	4,022,793	4,103,248	4,185,313	4,269,020	4,354,400	
Vacancy		5%		(161,769)	(165,005)	(168,305)	(171,671)	(175,104)	(178,606)	(182,178)	(185,822)	(189,538)	(193,329)	(197,196)	(201,140)	(205,162)	(209,266)	(213,451)	(217,720)	
Net Revenue				3,073,614	3,135,086	3,197,788	3,261,744	3,326,979	3,393,518	3,461,389	3,530,617	3,601,229	3,673,253	3,746,719	3,821,653	3,898,086	3,976,048	4,055,569	4,136,680	
Operating Expenses	Inflation @	3.00%		981,180	1,010,615	1,040,934	1,072,162	1,104,327	1,137,457	1,171,580	1,206,728	1,242,929	1,280,217	1,318,624	1,358,183	1,398,928	1,440,896	1,484,123	1,528,646	
<u>Net Operating Income</u>				2,092,434	2,124,471	2,156,854	2,189,582	2,222,652	2,256,062	2,289,809	2,323,889	2,358,299	2,393,036	2,428,095	2,463,470	2,499,158	2,535,152	2,571,446	2,608,034	
Replacement Reserves		3.00%		45,000	46,350	47,741	49,173	50,648	52,167	53,732	55,344	57,005	58,715	60,476	62,291	64,159	66,084	68,067	70,109	
Services	Inflation @	3.00%		13,320	13,720	14,131	14,555	14,992	15,442	15,905	16,382	16,873	17,380	17,901	18,438	18,991	19,561	20,148	20,752	
<u>Cash Available to Debt Service</u>				2,034,114	2,064,401	2,094,983	2,125,854	2,157,012	2,188,453	2,220,171	2,252,163	2,284,421	2,316,942	2,349,717	2,382,742	2,416,008	2,449,507	2,483,232	2,517,173	
Principal and Interest	32,390,000	4.35%		1,710,061	1,710,061	1,710,061	1,710,061	1,710,061	1,710,061	1,710,061	1,710,061	1,710,061	1,710,061	1,710,061	1,710,061	1,710,061	1,710,061	1,710,061	2,069,360	
Issuer Fee		0.00%		40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	
SDHC Monitoring Fee				27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	
Managing GP Fee	10,000	3.00%		10,000	10,300	10,609	10,927	11,255	11,593	11,941	12,299	12,668	13,048	13,439	13,842	14,258	14,685	15,126	15,580	
<u>Net Project Cash Flow</u>				246,565	276,552	306,825	337,378	368,208	399,311	430,682	462,315	494,205	526,345	558,729	591,350	624,201	657,273	690,557	364,746	
DSCR				1.15	1.17	1.19	1.20	1.22	1.24	1.26	1.28	1.30	1.32	1.33	1.35	1.37	1.39	1.41	1.18	
<u>Distributions:</u>																				
LP Fee	15,000			15,000	15,000	15,000	15,000	16,500	16,500	16,500	16,500	18,150	18,150	18,150	18,150	19,965	19,965	19,965	19,965	
Deferred Developer Fee	50%of Avail Cashflow	1.00%		115,783	130,776	145,912	161,189	175,854	191,406	207,091	222,907	238,027	254,098	270,290	286,600	302,118	318,654	335,296	172,391	
	Deferred fee = GC + Developer		3,274,746																	
<u>Cash Available After Deferred Fee Payment</u>				115,783	130,776	145,912	161,189	175,854	191,406	207,091	222,907	238,027	254,098	270,290	286,600	302,118	318,654	335,296	172,391	
<u>C Bond</u>																				
	100%of Avail Cashflow	75%of Avail Cashflow	7.50%	115,783	130,776	145,912	161,189	175,854	191,406	207,091	222,907	238,027	254,098	270,290	286,600	302,118	318,654	335,296	172,391	
	50% CF w/ Deferred Fee	75% after Deferred Fee	2,300,000	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	
<u>Cash Available AfterC Bond Payment</u>				0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Seller Note	25.0%of Avail Cashflow	12.5%of Avail Cashflow	3.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
<u>Cash Flow Available After Soft Loan Loans</u>				100.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Partnership Admin Fee (90% of Cash Flow)		90.00%		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
<u>Cash Flow Available after Partnership Admin Fee</u>				0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
LP Distribution		98.99%		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
GP Distribution		1.01%		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
<u>Remaining Cash Flow After Partnership Distribution</u>				0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

## 180 UNIT FAMILY

			17	18	19	20	21	22	23	24	25	26	27	28	29	30
Gross Revenue	Inflation @	2.00%	4,441,488	4,530,318	4,620,924	4,713,343	4,807,609	4,903,762	5,001,837	5,101,874	5,203,911	5,307,989	5,414,149	5,522,432	5,632,881	5,745,538
Vacancy		5%	(222,074)	(226,516)	(231,046)	(235,667)	(240,380)	(245,188)	(250,092)	(255,094)	(260,196)	(265,399)	(270,707)	(276,122)	(281,644)	(287,277)
Net Revenue			4,219,414	4,303,802	4,389,878	4,477,675	4,567,229	4,658,574	4,751,745	4,846,780	4,943,716	5,042,590	5,143,442	5,246,310	5,351,237	5,458,261
Operating Expenses	Inflation @	3.00%	1,574,506	1,621,741	1,670,393	1,720,505	1,772,120	1,825,284	1,880,042	1,936,444	1,994,537	2,054,373	2,116,004	2,179,484	2,244,869	2,312,215
<u>Net Operating Income</u>			<u>2,644,908</u>	<u>2,682,061</u>	<u>2,719,485</u>	<u>2,757,170</u>	<u>2,795,109</u>	<u>2,833,290</u>	<u>2,871,703</u>	<u>2,910,336</u>	<u>2,949,179</u>	<u>2,988,217</u>	<u>3,027,437</u>	<u>3,066,826</u>	<u>3,106,368</u>	<u>3,146,046</u>
Replacement Reserves		3.00%	72,212	74,378	76,609	78,908	81,275	83,713	86,225	88,811	91,476	94,220	97,047	99,958	102,957	106,045
Services	Inflation @	3.00%	21,375	22,016	22,676	23,357	24,057	24,779	25,522	26,288	27,077	27,889	28,726	29,588	30,475	31,389
<u>Cash Available to Debt Service</u>			<u>2,551,321</u>	<u>2,585,667</u>	<u>2,620,199</u>	<u>2,654,906</u>	<u>2,689,776</u>	<u>2,724,797</u>	<u>2,759,956</u>	<u>2,795,237</u>	<u>2,830,626</u>	<u>2,866,108</u>	<u>2,901,665</u>	<u>2,937,281</u>	<u>2,972,936</u>	<u>3,008,612</u>
Principal and Interest	32,390,000	4.35%	2,069,360	2,069,360	2,069,360	2,069,360	2,069,360	2,069,360	2,069,360	2,069,360	2,069,360	2,069,360	2,069,360	2,069,360	2,069,360	2,069,360
Issuer Fee		0.00%	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488	40,488
SDHC Monitoring Fee			27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000
Managing GP Fee	10,000	3.00%	16,047	16,528	17,024	17,535	18,061	18,603	19,161	19,736	20,328	20,938	21,566	22,213	22,879	23,566
<u>Net Project Cash Flow</u>			<u>398,427</u>	<u>432,291</u>	<u>466,327</u>	<u>500,524</u>	<u>534,868</u>	<u>569,347</u>	<u>603,947</u>	<u>638,654</u>	<u>673,451</u>	<u>708,323</u>	<u>743,252</u>	<u>778,220</u>	<u>813,209</u>	<u>848,199</u>
DSCR			1.20	1.22	1.23	1.25	1.27	1.28	1.30	1.32	1.34	1.35	1.37	1.39	1.40	1.42
<b>Distributions:</b>																
LP Fee	15,000															
Deferred Developer Fee	50%of Avail Cashflow		34,240	0	0	0	0	0	0	0	0	0	0	0	0	0
	Deferred fee = GC + Developer		3,274,746													
<u>Cash Available After Deferred Fee Payment</u>			<u>364,187</u>	<u>432,291</u>	<u>466,327</u>	<u>500,524</u>	<u>534,868</u>	<u>569,347</u>	<u>603,947</u>	<u>638,654</u>	<u>673,451</u>	<u>708,323</u>	<u>743,252</u>	<u>778,220</u>	<u>813,209</u>	<u>848,199</u>
<u>C Bond</u>																
	100%of Avail Cashflow	75%of Avail Cashflow	7.50%	364,187	324,218	349,745	326,160	0	0	0	0	0	0	0	0	0
	50% CF w/ Deferred Fee	75% after Deferred Fee	2,300,000	91.4%	75.0%	75.0%	65.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<u>Cash Available AfterC Bond Payment</u>			<u>0</u>	<u>108,073</u>	<u>116,582</u>	<u>174,364</u>	<u>534,868</u>	<u>569,347</u>	<u>603,947</u>	<u>638,654</u>	<u>673,451</u>	<u>708,323</u>	<u>743,252</u>	<u>778,220</u>	<u>813,209</u>	<u>848,199</u>
Seller Note																
	25.0%of Avail Cashflow	12.5%of Avail Cashflow	3.00%	0	27,018	29,145	43,591	66,859	71,168	75,493	79,832	84,181	88,540	92,906	97,278	101,651
							25.0%	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%
<u>Cash Flow Available After Soft Loan Loans</u>			<u>100.00%</u>	<u>0</u>	<u>81,055</u>	<u>87,436</u>	<u>130,773</u>	<u>468,010</u>	<u>498,179</u>	<u>528,454</u>	<u>558,822</u>	<u>589,270</u>	<u>619,782</u>	<u>650,345</u>	<u>680,943</u>	<u>711,558</u>
<u>Partnership Admin Fee (90% of Cash Flow)</u>			<u>90.00%</u>	0	72,949	78,693	117,695	421,209	448,361	475,609	502,940	530,343	557,804	585,311	612,849	640,402
<u>Cash Flow Available after Partnership Admin Fee</u>				<u>0</u>	<u>8,105</u>	<u>8,744</u>	<u>13,077</u>	<u>46,801</u>	<u>49,818</u>	<u>52,845</u>	<u>55,882</u>	<u>58,927</u>	<u>61,978</u>	<u>65,035</u>	<u>68,094</u>	<u>71,156</u>
LP Distribution		98.99%	0	8,024	8,655	12,945	46,328	49,315	52,312	55,318	58,332	61,352	64,378	67,407	70,437	73,468
GP Distribution		1.01%	0	82	88	132	473	503	534	564	595	626	657	688	719	750
<u>Remaining Cash Flow After Partnership Distribution</u>			<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>



## **ATTACHMENT 5**

### **HOUSING COMMISSION MULTIFAMILY HOUSING REVENUE BOND PROGRAM SUMMARY**

**General Description:** The multifamily housing bond program provides below-market financing (based on bond interest being exempt from income tax) for developers willing to set aside a percentage of project units as affordable housing. Multifamily housing revenue bonds are also known as "private activity bonds" because the projects are owned by private entities, often including nonprofit sponsors and for-profit investors.

**Bond Issuer:** Housing Authority of the City of San Diego. There is no direct legal liability to the City, the Housing Authority or the Housing Commission in connection with the issuance or repayment of bonds. There is no pledge of the City's faith, credit or taxing power nor of the Housing Authority's faith and credit. The bonds do not constitute a general obligation of the issuer because security for repayment of the bonds is limited to specific private revenue sources, such as project revenues. The developer is responsible for the payment of costs of issuance and all other costs under each financing.

**Affordability:** Minimum requirement is that at least 20% of the units are affordable at 50% of Area Median Income (AMI). Alternatively, a minimum of the units may be affordable at 50% AMI with an additional 30% of the units affordable at 60% AML. The Housing Commission requires that the affordability restriction be in place for a minimum of 15 years. Due to the combined requirements of state, local, and federal funding sources, projects financed under the Bond Program are normally affordable for 30-55 years and often provide deeper affordability levels than the minimum levels required under the Bond Program.

**Rating:** Generally "AAA" or its equivalent with a minimum rating of "A" or, under conditions that meet IRS and Housing Commission requirements, bonds may be unrated for private placement with institutional investors (typically, large banks). Additional security is normally achieved through the provision of outside credit support ("credit enhancement") by participating financial institutions that underwrite the project loans and guarantee the repayment of the bonds. The credit rating on the bonds reflects the credit quality of the credit enhancement provider.

**Approval Process:**

- **Inducement Resolution:** The bond process is initiated when the San Diego Housing Commission (Housing Commission) adopts an "Inducement Resolution" to establish the date from which project costs may be reimbursable from bond proceeds (if bonds are later issued) and to authorize staff to work with the financing team to perform a due diligence process. The Inducement Resolution does not represent any commitment by the Housing Commission, or the Housing Authority, or the developer to proceed with the financing.

- TEFRA Hearing and Resolution (Tax Equity and Fiscal Responsibility Act of 1982): to assure that projects making use of tax-exempt financing meet appropriate governmental purposes and provide reasonable public benefits, the IRS Code requires that a public hearing be held and that the issuance of bonds be approved by representatives of the governmental unit with jurisdiction over the area in which the project is located. This process does not make the Housing Commission, the Housing Authority, or the City of San Diego financially or legally liable for the bonds or for the project.

[Note: Members of the Housing Commission or the San Diego City Council may be asked to take two actions at this stage in the bond process -- one in their capacity as approving the TEFRA hearing resolution and another as approving the bond inducement.]

- Application for Bond Allocation: The issuance of these "private activity bonds" (bonds for projects owned by private developers, including projects with nonprofit sponsors and for-profit investors) requires an allocation of bond issuing authority from the State of California. To apply for an allocation, an application approved by the Housing Commission and supported by an adopted inducement resolution and by proof of credit enhancement (or bond rating) must be filed with the California Debt Limit Allocation Committee (CDLAC). In addition, evidence of a TEFRA hearing and approval must be submitted prior to the CDLAC meeting.
- Final Bond Approval: The Housing Authority retains absolute discretion over the issuance of bonds through adoption of a final resolution authorizing the issuance. Prior to final consideration of the proposed bond issuance, the project must comply with all applicable financing, affordability, and legal requirements and undergo all required planning procedures/reviews by local planning groups, etc.
- Funding and Bond Administration: All monies are held and accounted for by a third party trustee. The trustee disburses proceeds from bond sales to the developer in order to acquire and/or construct the housing project. Rental income used to make bond payments is collected from the developer by the trustee and disbursed to bond holders, if rents are insufficient to make bond payments, the trustee obtains funds from the credit enhancement provider. No monies are transferred through the Housing Commission or Housing Authority, and the trustee has no standing to ask the issuer for funds.

Bond Disclosure: The offering document (typically a Preliminary Offering Statement or bond placement memorandum) discloses relevant information regarding the project, the developer, and the credit enhancement provider. Since the Housing Authority is not responsible in any way for bond repayment, there are no financial statements or

summaries about the Housing Authority or the City that are included as part of the offering document. The offering document includes a paragraph that states that the Housing Authority is a legal entity with the authority to issue multifamily housing bonds and that the Housing Commission acts on behalf of the Housing Authority to issue the bonds. The offering document also includes a paragraph that details that there is no pending or threatened litigation that would affect the validity of the bonds or curtail the ability of the Housing Authority to issue bonds. This is the extent of the disclosure required of the Housing Authority, Housing Commission, or the City. However, it is the obligation of members of the Housing Authority to disclose any material facts known about the project, not available to the general public, which might have an impact on the viability of the project.

# ATTACHMENT 6 - FINANCIAL ADVISOR'S ANALYSIS

## ROSS FINANCIAL

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1736 Stockton Street, Suite One • San Francisco, CA 94133 • (415) 912-5612 • FAX (415) 912-5611

August 24, 2021

Mr. Joe Correia  
Sr. Real Estate Project Manager  
Housing Finance Real Estate Division  
San Diego Housing Commission  
1122 Broadway, Suite 300  
San Diego, CA 92101

**Re:     Aquila Apartments (f/k/a 3Roots)**

Dear Mr. Correia:

The San Diego Housing Commission (the “Commission”) has retained Ross Financial as its independent municipal advisor, in part, to analyze the feasibility of issuing tax-exempt and taxable obligations, as the case may be (the “Notes” and “Bonds”), for the Aquila Apartments development (the “Development”).

This feasibility analysis reviews the following items:

- Overview of the Development
- Proposed financing approach
- Benefits and risks to Commission
- Public purpose
- Recommendations

Ross Financial has based its analysis of the Development’s financial feasibility on materials provided by Chelsea Investment Corporation (“Chelsea”), which has created the developer and the borrower entity (the “Borrower”) for the Development. The materials include: (1) the joint application to the California Debt Limit Allocation Committee (“CDLAC”) and California Tax Credit Allocation Committee (“CTCAC”), (2) the financing commitments from (a) Citibank, N.A. as construction and permanent lender (the “Lender”) for the Notes and (b) CIC Opportunities Fund LLC for the Bonds, (3) the market study performed by Kinetic Valuation Group in support of the application to CDLAC and CTCAC, and (4) Chelsea’s pro forma financial schedules for the Development. Ross Financial has not visited the site of the proposed Development and had no role in the selection of the Lender or in developing the overall financing structure.

## OVERVIEW OF THE DEVELOPMENT

**Development Summary.** The Development is a new construction multifamily rental housing development that will contain 180 1-bedroom, 2-bedroom and 3-bedroom units in a single 3-story building served by 3 elevators. The Development will consist of 180 affordable units including 2 restricted manager's units.

The Development will be Type V construction and will include: a community building with a kitchenette, a computer room, and a leasing office. There will be 232 surface parking spaces for tenants and guests. Unit amenities will include Energy Star-rated efficient appliances (stove/oven, microwave, dishwasher, garbage disposal and refrigerator); dual-glazed windows coated for limited solar heat gain; low-energy lighting; HVAC systems that utilize energy-efficient heat pumps; use of Low Volatile Organic Compound (VOC) paints and stains for interior surfaces; private patio/balconies with storage closets; blinds; and vinyl-flooring.

**Unit and Affordability Mix.** The unit mix and affordability restrictions for Development is expected to be as follows:

<b>Aquila</b>	<b>Unit Mix</b>	<b>30% AMI**</b>	<b>50% AMI**</b>	<b>60% AMI**</b>
1 Bedroom/1 Bath	24	2	2	20
2 Bedroom/1 Bath	79*	8	8	62
3Bedroom/2Bath	77*	8	8	60
<b>Total Units</b>	<b>180</b>	<b>18</b>	<b>18</b>	<b>142</b>

\*Includes 1 manager's unit in each unit type that are restricted to 65% AMI

\*\* AMI = Area median income; Manager's units are not subject to affordability restrictions

**Description of Project Site.** The Development is to be constructed on a 3.96 acre site located at the southern end of Lennar's 3Roots master-planned community in the northern portion of San Diego. The site is located due north of the intersection of Camino Sante Fe and Miramar Road in San Diego. The current address is 9900 Camino Santa Fe. The site, which is presently undeveloped and rough-graded, is currently owned by Mesa Canyon Partners, LLC of which Lennar is a principal.

The 3Roots master-planned community is a mixed-use living, retail and lifestyle center that will offer:

- 1,800 mostly single family homes
- A 40-acre mixed use urban area
- A 23-acre community park with sports fields and open area
- A 1.5-acre transit hub that will include: ride share spaces, area for on demand transportation and bike repair
- Walking distance to various amenities

The entitlements for the site require compliance with the City of San Diego's Inclusionary Ordinance, resulting in the restriction of all 180 residential dwelling units to households earning at or below 65% of AMI for a period of at least 55 years.

***Ownership of the Development/Borrower.*** The ownership entity for the Development will be a 3Roots CIC, L.P., a single asset California limited partnership consisting of: (a) CIC 3Roots, LLC, created by Chelsea, which will serve as Administrative General Partner, (b) Pacific Southwest Community Development Corporation, a California not-for-profit public benefit corporation which will serve as Managing General Partner and (c) a tax credit limited partnership entity created by U.S. Bank National Association.

**Chelsea Experience.** According to Chelsea, the firm has 35 years of experience in financing, developing and/or rehabilitating multifamily rental housing. This experience encompasses 11,000 units in the Western United States, including more than 6,000 affordable housing units in San Diego, Chula Vista and Carlsbad. Chelsea's most recent activity with the Housing Commission includes:

- Fairbanks Terrace II, a 31-unit new construction inclusionary senior development in San Diego. Completion is expected in November 2021.
- Apollo/Poway, a 44-unit new construction senior project in Poway. Completion is expected in November 2021.
- East Block, a 195-unit new construction project consisting of senior and family components in San Diego. Completion is expected in September 2022.
- 14<sup>th</sup> & Commercial and 14C VHHP Apartments, new construction projects aggregating 407 units of affordable housing located in the East Village Neighborhood of San Diego;
- San Ysidro Family TOD, a 139-unit new construction project in the Beyer Boulevard Trolley District within the San Ysidro Historic Village Specific Plan, which commenced construction in August 2018;
- Civita II Apartments, a 203-unit new construction project within the Creekside District of the Quarry Falls Specific Plan, which commenced construction in April 2018;
- Town & Country Apartments, a 145-unit acquisition-rehabilitation project in the Mountain View Community Plan Area in San Diego, which was completed in July 2018;
- Mesa Verde Apartments, a 90-unit new construction project in the eastern central portion of San Diego which was completed in April 2018;

***CDLAC/CTCAC.*** On February 4, 2021, the Housing Authority filed a joint application to CDLAC and CTCAC requesting a private activity bond allocation of \$40,000,000 for the Development, along with a reservation of 4% Federal and State tax credits. On April 28, 2021, CDLAC awarded a private activity bond allocation in the requested amount and CTCAC reserved the requested 4% Federal and State tax credits. Although the CDLAC

allocation will expire on November 8, 2021, the CTCAC award letter requires construction to commence by October 25, 2021.

In connection with the CDLAC/CTCAC application process, on January 26, 2021, the Housing Authority adopted a resolution of intent to issue tax-exempt obligations for the Development and authorized the submission of an application to CDLAC. On the same date, a TEFRA hearing, duly noticed, was held before the City Council at which time the Development was approved for purposes of Section 147 of the Internal Revenue Code. The TEFRA approval was signed January 26, 2021.

## PROPOSED FINANCING

**Project Costs and Funding.** According to most recent projections provided by Chelsea, the total costs of the Development, including construction and all soft costs, are estimated at \$81,971,778. The estimated sources of funds will differ during the construction period and following construction and lease-up (“at permanent”), as shown in the following table based on the most recent projections:

Sources of Funds	Construction	Permanent
Tax-Exempt Note Proceeds	\$37,700,000	\$32,340,000
Taxable Note Proceeds	25,654,462	--
Tax-Exempt Junior Bond Proceeds	2,300,000	2,300,000
Accrued Interest – Junior Bonds	--	450,000
Federal Low Income Housing Tax Credits	3,633,717	36,337,172
State Tax Credits	121,995	1,219,953
Seller Note	6,000,000	6,000,000
Land Donation	1	1
Deferred Costs	6,561,623	--
Deferred Developer Fee	--	3,324,652
<b>Total</b>	<b>\$81,971,778</b>	<b>\$81,971,778</b>
Uses of Funds		
Land Cost	\$1	\$1
Offsite/Infrastructure	6,000,000	6,000,000
Site Work	2,468,580	2,468,580
Construction	41,401,741	41,401,741
Overhead, Profit, General Conditions	6,416,394	6,416,394
Architectural & Engineering	1,171,832	1,171,832
Contingency Costs (Owner, Hard and Soft)	4,314,172	4,314,172
Impact Fees and Permits	4,508,400	4,508,400
Financing Fees and Interest	6,285,375	6,285,375
Reserves	694,225	694,225
Misc. Soft Costs and Legal	2,561,181	2,561,181
Developer Fee*	6,149,877	6,149,877
<b>Total</b>	<b>\$81,971,778</b>	<b>\$81,971,778</b>

\*Cash developer fee is \$2,825,225 with \$3,324,652 deferred

**Description of Financing.** The expectation (based on the most recent pro forma) is that the Housing Authority will issue:

- The Notes in two series: (a) a tax-exempt series in the estimated amount of \$37,700,000 and (b) a taxable series in the estimated amount of \$25,654,462.
- The Bonds in one series in the estimated amount of \$2,300,000. (Note: The aggregate par of the tax-exempt Note and the Bonds may not exceed \$40,000,000)

The Notes will have the following features:

- Each Note will be funded by Citibank, N.A. (the “Lender”);
- The Notes will be issued on a draw down basis, with interest payable only on the amounts drawn;
- At issuance, the tax-exempt Note will be drawn down in the minimum amount required by Federal Tax Law (\$50,001 or \$55,000). There will no further draws on either the tax-exempt or taxable Note until construction completion.
- Following construction completion (expected in 24 months after closing), the remaining par of tax-exempt Note and the full amount of the taxable Note will be drawn down in full to repay U.S. Bank, which will be providing an estimated \$61,876,369 conventional construction loan, on an interim basis, directly to the Borrower to construct the Development.
- Following lease-up (expected in 6 months after construction completion) (at “Conversion”), the taxable Note will be repaid in full and the tax-exempt Note will be paid down to a permanent estimated par of \$32,340,000. The sources of repayment will be Federal and State low income housing tax credits.
- Prior to Conversion, the tax-exempt Note will bear a variable interest rate equal to 30 Day SOFR + 2.01% and the taxable Note will bear a variable interest rate equal to 30 Day SOFR + 2.51%. SOFR, which stands for “Secured Overnight Financing Rate”, is the successor index to LIBOR which is scheduled to be phased out by June 30, 2023. At Conversion, the tax-exempt Note will convert to a fixed rate that will be set at Closing. The rate will be established by reference to a formula (19-year LIBOR +2.20%) and is estimated at 3.85% in the current market. The pro forma assumes a construction loan rate of 4.10% and a permanent loan rate of 4.35%.
- The tax-exempt Note will have a stated maturity of 34 years from Closing (i.e., in 2055) but will be subject to mandatory prepayment in 19 years after Closing (i.e., in 2040). Following Conversion, the tax-exempt Note will amortize on a 40-year basis. The taxable Note is expected to have a stated maturity of approximately 4 years from Closing and will be repaid in full at Conversion as noted above.
- The Notes are expected to close by late October.

The Bonds will have the following features:



- The Bonds will be purchased by CIC Opportunities Fund LLC (the “Fund”), which was formed by Chelsea. Due to Federal Tax limitations, no more than 49% of the Fund will consist of principals of Chelsea, the Borrower or related entities;
- The Bonds will be issued on a cash basis with proceeds delivered at Closing and held by U.S. Bank National Association as trustee;
- The interest on the Bonds will be at a tax-exempt rate of 7.00%;
- The Bonds will be issued as subordinate obligations payable from residual revenues of the Development after payment of the Notes;
- The expected maturity of the Bonds is 45 years;
- The Bonds will close at the same time as the Notes, in late October.

The Lender will execute a document representing that it has sufficient knowledge and experience to evaluate the risks and merits associated with making the loans evidenced by the Notes and its intention to hold the Notes for its account. The Lender may transfer all or a portion of the Notes only to transferees that execute a document with similar representations. The Fund will execute a similar document with respect to the Bonds and is expected to hold the Bonds through maturity or prior repayment.

***Housing Commission Financial Involvement.*** The Housing Commission has no financial involvement with the Development.

***Affordability Restrictions.*** The Developments will be subject to the following regulatory restrictions and terms:

- Tax-Exempt Note and Bond Regulatory Agreement requirements (including voluntary elections made to CDLAC) for a 55-year term;
- Tax Credit Regulatory Agreement requirements under which all units must be affordable at 60% AMI for a 55-year term to remain eligible for tax credits; and
- A Declaration of Covenants, Conditions and Restrictions and Affordable Housing Agreement (Inclusionary Rental Restrictions) (3Roots) as required by the Inclusionary Ordinance (“Inclusionary Rental Restrictions”), which restricts all 180 units to 65% AMI for 55 years.

**Cash Flow for the Developments.** The Borrower provided pro forma cash flows for the Development. The following table summarizes key elements of the most recent proforma:

	Aquila
<b>Assumptions</b>	
Vacancy	5%
Revenue Escalation	2%
Operating Expense Escalation	3%
<b>Cash Flow and Coverage</b>	
Stabilized Net Income – First Full Year	\$3,073,614
Expenses	(981,180)
Resident Services	(13,320)
Replacement Reserve	(45,000)
Commission Bond Monitoring and Admin Fee <sup>2</sup>	(70,300)
Net Operating Income	\$1,963,751
Tax-Exempt Note Debt Service <sup>3</sup>	(1,707,422)
Debt Service Coverage <sup>4</sup>	1.15x
Managing General Partner Fee	(10,000)
<b>Net Project Cash Flow</b>	<b>\$253,690</b>
MGP and LP Fees	(25,000)
Deferred Developer Fee (50% of excess flow)	(115,696)
Available Cash Flow after Deferred Developer Fee	115,696
Junior Bond	(115,696)
Net Cash Flow for Seller Note and Distributions	0

<sup>2</sup> Commission's fee at permanent is 0.125% x the sum of permanent Note amount (\$32,340,000) and the Bond par (\$2,300,000) plus a monitoring fee of \$150/unit

<sup>3</sup> Assumes an initial permanent loan par of \$32,340,000 at 4.35%

<sup>4</sup> Net operating income divided by sum of Note Debt Service

The following table shows the Borrower's most recent projected cash flow for the Development during first full five years following stabilized occupancy:

<b>Escalation</b>	<b>Revenues</b>	<b>Year</b>				
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
2.00%	Gross Scheduled Rent	3,235,383	3,300,091	3,366,092	3,433,414	3,502,083
	less 5% vacancy	(161,769)	(165,005)	(168,305)	(171,671)	(175,104)
	<b>Total Net Income</b>	3,073,614	3,135,086	3,197,788	3,261,744	3,326,978
	<b>Expenses</b>					
3.00%	Operating Expenses	(981,180)	(1,010,615)	(1,040,934)	(1,072,162)	(1,104,327)
3.00%	Services	(13,320)	(13,720)	(14,131)	(14,555)	(14,992)
3.00%	Replacement Reserves	(45,000)	(46,350)	(47,741)	(49,173)	(50,648)
	Issuer Bond Monitoring and Admin Fee	(70,300)	(70,300)	(70,300)	(70,300)	(70,300)
	<b>Total Expenses + Reserves</b>	(1,109,800)	(1,140,985)	(1,173,106)	(1,206,190)	(1,240,266)
	<b>Net Operating Income</b>	1,963,814	1,994,101	2,024,682	2,055,554	2,086,712
	Permanent Note Service	(1,707,422)	(1,707,422)	(1,707,422)	(1,707,422)	(1,707,422)
	<b>Debt Service Coverage</b>	<b>1.15x</b>	<b>1.17x</b>	<b>1.19x</b>	<b>1.20x</b>	<b>1.22x</b>
	<b>Available Cash Flow after Permanent Loan Debt Service</b>	256,392	286,679	317,260	348,132	379,290
3.00%	Managing GP Fee	(10,000)	(10,300)	(10,609)	(10,927)	(11,255)
	LP Fee	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)
	<b>Project Cash Flow after MGP and LP Fees</b>	231,392	261,379	291,651	322,205	353,035
	Deferred Developer Fee (50% of excess cash flow)	(115,696)	(130,690)	(145,826)	(161,102)	(176,517)
	<b>Project Cash Flow after Deferred Developer Fee</b>	115,696	130,690	145,826	161,102	176,517
	Junior Bond	0	0	0	0	0
	<b>Project Cash Flow after Junior Bond</b>	0	0	0	0	0
3.00%	Seller Note	0	0	0	0	0
	Partnership Admin Fee	0	0	0	0	0
	LP and GP Distributions	0	0	0	0	0

## PUBLIC PURPOSE

The Notes and Bonds are expected to result in the long-term affordability of 180 one, two and three-bedroom units in the City of San Diego. Of the 178 tax credit-restricted units, 18 units will be restricted and affordable to households earning 30% AMI; 18 units will be restricted and affordable to households earning 50% AMI; and 142 units will be restricted and affordable to households earning 60% AMI. Two units will be occupied by resident managers and be restricted to 65% AMI.

The Bond Regulatory Agreement, the Tax Credit Regulatory Agreement and Inclusionary Rental Restrictions will require that these affordability levels be maintained for a period of 55 years.

## BENEFITS AND RISKS TO THE COMMISSION

The Notes and Bonds provide a vehicle for financing a portion of the construction costs of the Development. As proposed, the Notes and Bonds will result in the long-term affordability of 178 one, two and three-bedroom units in the City of San Diego with units restricted to income levels described in “Public Purpose” above – in addition to the affordability restrictions required by the Inclusionary Rental Restrictions.

The Notes and Bonds do not pose undue financial risk to the Housing Authority. The Notes and Bonds are not direct obligations of the Housing Authority or the City of San Diego. The Notes will evidence loans to be funded by the Lender, which has indicated its intention to hold the Notes for its own account. The Notes are expected to be paid down to \$32,340,000 following conversion. The Bonds will be purchased by the Fund, which

also has indicated its intention to hold the Bonds for its own account; the Fund consists of individuals that are principals of Chelsea and understand the risks associated with the Development.

The primary risk is construction and lease-up risk – that the Development is not completed and/or leased up in a timely fashion. Given the development and project management experience of Chelsea, the target tenant population and the demand for affordable units, this risk seems remote. This risk is borne entirely by the Lender and the Fund, which includes Chelsea principals.

If the Housing Authority issues the Notes and Bonds, the Commission would receive an issuer fee at Note/Bond closing of \$164,136: equal to 0.25% times the initial aggregate par amount of the Notes and Bonds. The Commission also would receive estimate annual fees of:

- \$82,068 to monitor the Notes and Bonds during the construction period (based on an aggregate par of \$63,354,462 for the Notes and \$2,300,000 for the Bonds times 0.125%), and
- \$70,300 to monitor the tax-exempt Note and Bonds after conversion (assuming (a) an estimated permanent tax-exempt Note of \$32,340,000 times 0.125% and Bond par of \$2,300,000 times 0.125%) plus (b) a per unit monitor fee of \$150/unit)).
- A minimum of \$10,000 following repayment of the Notes through the end of the 55 year CDLAC compliance period.

Costs of issuance will be funded by the Borrower from low income housing tax credit contributions and/or other funds. The Borrower has agreed to indemnify the Housing Authority and Commission as to matters relating to the Notes and Bonds. However, the Borrower is a single purpose entity with no significant assets or source of income other than the Development and is generally not required to make up any cash flow shortfalls. Accordingly, Chelsea will be providing its indemnification.

## **RECOMMENDATIONS**

Ross Financial recommends that the Housing Authority proceed with the issuance of the Notes and Bonds based on the following findings:

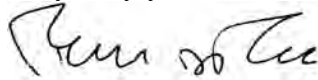
- The Notes and Bonds will achieve a public purpose by providing an aggregate of 178 affordable units, with all units restricted to income levels at 30%, 50% and 60% of AMI. These restrictions are additional to the affordability restrictions required by the Inclusionary Rental Restrictions, which require all 180 units to be restricted to households with income levels that do not exceed 65% of AMI.
- The Notes will evidence tax-exempt loans funded by a well-established, highly capitalized bank that is active in affordable housing lending. The Notes will be subject to restrictive transfer limitations at all times.

Mr. Joe Correia  
Re: Aquila Apartments (f/k/a 3Roots)  
August 24, 2021  
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- The Bonds will be purchased by a Fund comprised of principals of Chelsea and other individuals who understand real estate risk and the risk of the Development. The Bonds are payable only from residual receipts from the Development after payment of the Notes and cannot default due to insufficient cash flow. The Fund and its participants expect to hold the Bonds through maturity and the Bonds will be subject to restrictive transfer limitations at all times.
- The Borrower has agreed to indemnify the Housing Authority and the Commission regarding matters relating to the financing. The Borrower will pay issuance costs from sources other than Note or Bond proceeds.
- Based on estimates provided by Chelsea on behalf of the Borrower, there should be sufficient funds to complete the Development and the Development provides adequate cash flow to cover permanent loan debt service on the Note. The Bonds are payable from residual receipts from the Development and are not subject to default and acceleration in the event that cash flow is insufficient.

If there is any additional information you require concerning the Development, Ross Financial will be pleased to provide a supplemental analysis.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter J. Ross", written over a light blue horizontal line.

Peter J. Ross  
Principal



**DEVELOPERS/CONSULTANTS/SELLERS/CONTRACTORS/  
ENTITY SEEKING GRANT/BORROWERS  
(Collectively referred to as "CONTRACTOR" herein)  
STATEMENT FOR PUBLIC DISCLOSURE**

1. Name of CONTRACTOR: **Chelsea Investment Corporation**
2. Address and Zip Code: **6339 Paseo Del Lago, Carlsbad, CA 92011**
3. Telephone Number: **760-456-6000**
4. Name of Principal Contact for CONTRACTOR: **Cheri Hoffman, President**
5. Federal Identification Number or Social Security Number of CONTRACTOR:  
**90-0151442**
6. If the CONTRACTOR is not an individual doing business under his own name, the CONTRACTOR has the status indicated below and is organized or operating under the laws of California as:  
  
☒ **X** A corporation (Attach Articles of Incorporation)  
  
☐ A nonprofit or charitable institution or corporation. (Attach copy of Articles of Incorporation and documentary evidence verifying current valid nonprofit or charitable status).  
☐ A partnership known as: \_\_\_\_\_  
(Name)  
  
Check one  
( ) General Partnership (Attach statement of General Partnership)  
( ) Limited Partnership (Attach Certificate of Limited Partnership)  
  
☐ A business association or a joint venture known as: \_\_\_\_\_  
(Attach joint venture or business association agreement)  
  
☐ A Federal, State or local government or instrumentality thereof.  
  
☐ Other (explain)

7. If the CONTRACTOR is not an individual or a government agency or instrumentality, give date of organization:

**Original formation date 7/30/1986, restructure 2/23/2004**

8. Provide names, addresses, telephone numbers, title of position (if any) and nature and extent of the interest of the current officers, principal members, shareholders, and investors of the CONTRACTOR, other than a government agency or instrumentality, as set forth below:
- If the CONTRACTOR is a corporation, the officers, directors or trustees, and each stockholder owning more than 10% of any class of stock.
  - If the CONTRACTOR is a nonprofit or charitable institution or corporation, the members who constitute the board of trustees or board of directors or similar governing body.
  - If the CONTRACTOR is a partnership, each partner, whether a general or limited, and either the percent of interest or a description of the character and extent of interest.
  - If the CONTRACTOR is a business association or a joint venture, each participant and either the percent of interest or a description of the character and extent of interest.
  - If the CONTRACTOR is some other entity, the officers, the members of the governing body, and each person having an interest of more than 10%.

Name and Address		Position Title (if any) and percent of interest or description of character and extent of interest
Name:	The Schmid Family Trust	Sole Shareholder
Address:	6339 Paseo del Lago	
	Carlsbad, CA 92011	
Name:	James J. Schmid	Co-Trustee
Address:	6339 Paseo del Lago	
	Carlsbad, CA 92011	
Name:	Lynn Harrington Schmid	Co-Trustee
Address:	6339 Paseo del Lago	
	Carlsbad, CA 92011	

9. Has the makeup as set forth in Item 8(a) through 8(e) changed within the last twelve (12) months? If yes, please explain in detail. **No**

10. Is it anticipated that the makeup as set forth in Item 8(a) through 8(e) will change within the next twelve (12) months? If yes, please explain in detail.  
**No**

11. Provide name, address, telephone number, and nature and extent of interest of each person or entity (not named in response to Item 8) who has a beneficial interest in any of the shareholders or investors named in response to Item 8 which gives such person or entity more than a computed 10% interest in the CONTRACTOR (for example, more than 20% of the stock in a corporation which holds 50% of the stock of the CONTRACTOR or more than 50% of the stock in the corporation which holds 20% of the stock of the CONTRACTOR):

Name and Address		Position Title (if any) and percent of interest or description of character and extent of interest
Name:	James J. Schmid	Sole Director/CEO/Treasurer/Co-Trustee of Schmid Family Trust, Sole Shareholder
Address:	6339 Paseo del Lago	
	Carlsbad, CA 92011	
Name:	Cheri Hoffman	President
Address:	6339 Paseo del Lago	
	Carlsbad, CA 92011	
Name:	Charles S. Schmid	Vice President (son of James J. Schmid)
Address:	6339 Paseo del Lago	
	Carlsbad, CA 92011	

Name:	Lynn Harrington Schmid	Secretary (Wife of James J. Schmid and Co-Trustee of the Schmid Family Trust, Sole Shareholder)
Address:	6339 Paseo del Lago	
	Carlsbad, CA 92011	

12. Names, addresses and telephone numbers (if not given above) of officers and directors or trustees of any corporation or firm listed under Item 8 or Item 11 above:



13. Is the CONTRACTOR a subsidiary of or affiliated with any other corporation or corporations, any other firm or any other business entity or entities of whatever nature. If yes, list each such corporation, firm or business entity by name and address, specify its relationship to the CONTRACTOR, and identify the officers and directors or trustees common to the CONTRACTOR and such other corporation, firm or business entity.

Name and Address		Relationship to CONTRACTOR
Name:	Emmerson Construction, Inc.	General Contractor/Construction Management
Address:	6339 Paseo del Lago	
	Carlsbad, CA 92011	
Name:	CIC Management, Inc.	Property Management
Address:	6339 Paseo del Lago	
	Carlsbad, CA 92011	
Name:		
Address:		

14. Provide the financial condition of the CONTRACTOR as of the date of the statement and for a period of twenty-four (24) months prior to the date of its statement as reflected in the attached financial statements, including, but not necessarily limited to, profit and loss statements and statements of financial position. **See Exhibit B**

15. If funds for the development/project are to be obtained from sources other than the CONTRACTOR's own funds, provide a statement of the CONTRACTOR's plan for financing the development/project:

<u>Sources</u>			
Federal LIHTC Equity	44%	36,743,757	
State LIHTC Equity	1%	1,219,953	
Subordinate Developer Fee (MGP Loan)	0%	0	
Permanent Loan (Tranche A)	39%	32,450,000	
Land Donation	0%	\$ 1.00	
Deferred Contractor Fee	0.00%	\$ -	
Deferred Developer Fee	4%	3,692,946	
Seller Note	7%	6,000,000	
Gap	\$0/unit	0%	0
Junior C Bond	3%	2,300,000	
Residual Receipt Loans Accrued Interest	1%	450,000	
Total Development Sources	100%	82,856,657	

16. Provide sources and amount of cash available to CONTRACTOR to meet equity requirements of the proposed undertaking:

- a. Name, Address & Zip Code of Bank/Savings & Loan:

US Bank CDC  
13017 Washington Ave, Ste. 300  
St Louis, MO 63103

Estimated to be \$36,743,757 in Federal Tax Credits and \$1,219,953 in State Tax Credits

- b. By loans from affiliated or associated corporations or firms:

Name, Address & Zip Code of Bank/Savings & Loan:

Amount: \$\_\_\_\_\_

- c. By sale of readily salable assets/including marketable securities: **N/A**

<u>Description</u>	<u>Market Value</u>	<u>Mortgages or Liens</u>
	\$	\$

17. Names and addresses of bank references, and name of contact at each reference:

Name and Address		Contact Name
<b>Name:</b>	Citi Community Capital	Sonia Rahm, Director
<b>Address:</b>	444 South Flower St. 29th Floor	
	Los Angeles, CA 90071	
<b>Name:</b>	Banner Bank	Waheed Karim, Vice President
<b>Address:</b>	5901 Priestly Drive, Suite 160	
	Carlsbad, CA 92008	
<b>Name:</b>		
<b>Address:</b>		

18. Has the CONTRACTOR or any of the CONTRACTOR's officers or principal members, shareholders or investors, or other interested parties been adjudged bankrupt, either voluntary or involuntary, within the past 10 years?  
\_\_\_ Yes X No

If yes, give date, place, and under what name.

19. Has the CONTRACTOR or anyone referred to above as "principals of the CONTRACTOR" been convicted of any felony within the past 10 years?  
\_\_\_ Yes X No

If yes, give for each case (1) date, (2) charge, (3) place, (4) court, and (5) action taken. Attach any explanation deemed necessary.

20. List undertakings (including, but not limited to, bid bonds, performance bonds, payment bonds and/or improvement bonds) comparable to size of the proposed project which have been completed by the CONTRACTOR including identification and brief description of each project, date of completion, and amount of bond, whether any legal action has been taken on the bond:

**See Exhibit C Experience Report**

21. If the CONTRACTOR, or a parent corporation, a subsidiary, an affiliate, or a principal of the CONTRACTOR is to participate in the development as a construction contractor or builder, provide the following information:

Not Applicable.

- a. Name and addresses of such contractor or builder:

Name and Address	Affiliation
Name: Emmerson Construction	Affiliate
Address: 6339 Paseo Del Lago	
Carlsbad, CA 92011	

- b. Has such contractor or builder within the last 10 years ever failed to qualify as a responsible bidder, refused to enter into a contract after an award has been made, or failed to complete a construction or development contract?

\_\_\_ Yes X No

If yes, please explain, in detail, each such instance:

- c. Total amount of construction or development work performed by such contractor or builder during the last three (3) years: **\$256,170,228**

General description of such work:

List each project, including location, nature of work performed, name, address of the owner of the project, bonding companies involved, amount of contract, date of commencement of project, date of completion, state

whether any change orders were sought, amount of change orders, was litigation commenced concerning the project, including a designation of where, when and the outcome of the litigation.

**See Exhibit C and List of Projects**

- d. Construction contracts or developments now being performed by such contractor or builder:

<u>Identification of Contract or Development</u>	<u>Location</u>	<u>Amount</u>	<u>Date to be Completed</u>
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- e. Outstanding construction-contract bids of such contractor or builder:

<u>Awarding Agency</u>	<u>Amount</u>	<u>Date Opened</u>
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22. Provide a detailed and complete statement respecting equipment, experience, financial capacity, and other resources available to such contractor or builder for the performance of the work involved in the proposed project, specifying particularly the qualifications of the personnel, the nature of the equipment, and the general experience of the contractor:

**See Exhibit C and Lists of Projects**

23. Does any member of the governing body of the San Diego Housing Commission ("COMMISSION"), Housing Authority of the City of San Diego ("AUTHORITY") or City of San Diego ("CITY"), to which the accompanying proposal is being made or any officer or employee of the COMMISSION, the AUTHORITY or the CITY who exercises any functions or responsibilities in connection with the carrying out of the project covered by the CONTRACTOR's proposal, have any direct or indirect personal financial interest in the CONTRACTOR or in the proposed contractor?

\_\_\_ Yes X No

If yes, explain.

24. Statements and other evidence of the CONTRACTOR's qualifications and financial responsibility (other than the financial statement referred to in Item 8) are attached hereto and hereby made a part hereof as follows:

**See Exhibit D – Financials for Emmerson**

25. Is the proposed CONTRACTOR, and/or are any of the proposed subcontractors, currently involved in any construction-related litigation?  
\_\_\_ Yes **X** No

If yes, explain:

26. State the name, address and telephone numbers of CONTRACTOR's insurance agent(s) and/or companies for the following coverages: List the amount of coverage (limits) currently existing in each category: See Certificates Attached.

**The project will have adequate insurance coverage at commencement of construction. Broker is Cavignac & Associates, 450 B Street, Suite 1800, San Diego, CA 92101**

- a. General Liability, including Bodily Injury and Property Damage Insurance [Attach certificate of insurance showing the amount of coverage and coverage period(s)]

Check coverage(s) carried:

- ☐ Comprehensive Form
- ☐ Premises - Operations
- ☐ Explosion and Collapse Hazard
- ☐ Underground Hazard
- ☐ Products/Completed Operations Hazard
- ☐ Contractual Insurance
- ☐ Broad Form Property Damage
- ☐ Independent Contractors
- ☐ Personal Injury

- b. Automobile Public Liability/Property Damage [Attach certificate of insurance showing the amount of coverage and coverage period(s)]

Check coverage(s) carried:

- ☐ Comprehensive Form
- ☐ Owned
- ☐ Hired
- ☐ Non-Owned

c. Workers Compensation [Attach certificate of insurance showing the amount of coverage and coverage period(s)]

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d. Professional Liability (Errors and Omissions) [Attach certificate of insurance showing the amount of coverage and coverage period(s)]

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e. Excess Liability [Attach certificate(s) of insurance showing the amount of coverage and coverage period(s)]

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f. Other (Specify). [Attach certificate(s) of insurance showing the amount of coverage and coverage period(s)]

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27. CONTRACTOR warrants and certifies that it will not during the term of the PROJECT, GRANT, LOAN, CONTRACT, DEVELOPMENT and/or RENDITIONS OF SERVICES discriminate against any employee, person, or applicant for employment because of race, age, sexual orientation, marital status, color, religion, sex, handicap, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, sexual orientation, marital status, color, religion, sex, handicap, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the COMMISSION setting forth the provisions of this nondiscrimination clause.
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28. The CONTRACTOR warrants and certifies that it will not without prior written consent of the COMMISSION, engage in any business pursuits that are adverse, hostile or take incompatible positions to the interests of the COMMISSION, during the term of the PROJECT, DEVELOPMENT, LOAN, GRANT, CONTRACT and/or RENDITION OF SERVICES.
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29. CONTRACTOR warrants and certifies that no member, commissioner, councilperson, officer, or employee of the COMMISSION, the AUTHORITY and/or the CITY, no member of the governing body of the locality in which the PROJECT is situated, no member of the government body in which the Commission was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the assignment of work, has during his or her tenure, or will for one (1) year thereafter, have any interest, direct or indirect, in this PROJECT or the proceeds thereof.



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30. List all citations, orders to cease and desist, stop work orders, complaints, judgments, fines, and penalties received by or imposed upon CONTRACTOR for safety violations from any and all government entities including but not limited to, the City of San Diego, County of San Diego, the State of California, the United States of America and any and all divisions and departments of said government entities for a period of five (5) years prior to the date of this statement. If none, please so state:

Government Entity  
Making Complaint

Date

Resolution

31. Has the CONTRACTOR ever been disqualified, removed from or otherwise prevented from bidding on or completing a federal, state, or local government project because of a violation of law or a safety regulation. If so, please explain the circumstances in detail. If none, please so state:

**No**

32. Please list all licenses obtained by the CONTRACTOR through the State of California and/or the United States of America which are required and/or will be utilized by the CONTRACTOR and/or are convenient to the performance of the PROJECT, DEVELOPMENT, LOAN, GRANT, CONTRACT, or RENDITION OF SERVICES. State the name of the governmental agency granting the license, type of license, date of grant, and the status of the license, together with a statement as to whether the License has ever been revoked:

Government Agency	License Description	License Number	Date Issued (Original)	Status (Current)	Revocation (Yes/No)
State License Board	Contractor's License for Emmerson Construction, Inc.	775773	3/2/2000	Current	No

33. Describe in detail any and all other facts, factors or conditions that may adversely affect CONTRACTOR's ability to perform or complete, in a timely manner, or at all, the PROJECT, CONTRACT, SALES of Real Property to, DEVELOPMENT, repayment of the LOAN, adherence to the conditions of the GRANT, or performance of consulting or other services under CONTRACT with the COMMISSION.

**none**

34. Describe in detail, any and all other facts, factors or conditions that may favorably affect CONTRACTOR's ability to perform or complete, in a timely manner, or at all, the PROJECT, CONTRACT, DEVELOPMENT, repayment of the LOAN, adherence to the conditions of the GRANT, or performance of consulting or other services under CONTRACT with the COMMISSION.

**None**

35. List all CONTRACTS with, DEVELOPMENTS for or with, LOANS with, PROJECTS with, GRANTS from, SALES of Real Property to, the COMMISSION, AUTHORITY and/or the CITY within the last five (5) years:

Date	Entity Involved	Status	Dollar Amount
2015	Trolley Residential	Current	\$2,500,000
2016	Mesa Verde	Current	\$3,120,000
2017	Normal Heights	Current	\$5,200,000
2018	San Ysidro	Current	\$925,000
2019	14 <sup>th</sup> & Commercial	Current	\$11,500,000
2020	East Block Senior	Current	\$6,750,000

36. Within the last five years, has the proposed CONTRACTOR, and/or have any of the proposed subcontractors, been the subject of a complaint filed with the Contractor's State License Board (CSLB)? \_\_\_ Yes **X** No

If yes, explain:

37. Within the last five years, has the proposed CONTRACTOR, and/or have any of the proposed subcontractors, had a revocation or suspension of a CONTRACTOR's License?  
\_\_\_ Yes **X** No

If yes, explain:

38. List three local references who would be familiar with your previous construction project: **See Exhibit C**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Project Name and Description: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Project Name and Description: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Project Name and Description: \_\_\_\_\_

\_\_\_\_\_

39. Give a brief statement respecting equipment, experience, financial capacity and other resources available to the Contractor for the performance of the work involved in the proposed project, specifying particularly the qualifications of the personnel, the nature of the equipment and the general experience of the Contractor.

40. Give the name and experience of the proposed Construction Superintendent.

## **CONSENT TO PUBLIC DISCLOSURE BY CONTRACTOR**

By providing the "Personal Information", (if any) as defined in Section 1798.3(a) of the Civil Code of the State of California (to the extent that it is applicable, if at all), requested herein and by seeking a loan from, a grant from, a contract with, the sale of real estate to, the right to develop from, and/or any and all other entitlements from the SAN DIEGO HOUSING COMMISSION ("COMMISSION"), the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO ("AUTHORITY") and/or the CITY OF SAN DIEGO ("CITY"), the CONTRACTOR consents to the disclosure of any and all "Personal Information" and of any and all other information contained in this Public Disclosure Statement. CONTRACTOR specifically, knowingly and intentionally waives any and all privileges and rights that may exist under State and/or Federal Law relating to the public disclosure of the information contained herein. With respect to "Personal Information", if any, contained herein, the CONTRACTOR, by executing this disclosure statement and providing the information requested, consents to its disclosure pursuant to the provisions of the Information Practices Act of 1977, Civil Code Section 1798.24(b). CONTRACTOR is aware that a disclosure of information contained herein will be made at a public meeting or meetings of the COMMISSION, the AUTHORITY, and/or the CITY at such times as the meetings may be scheduled. CONTRACTOR hereby consents to the disclosure of said "Personal Information", if any, more than thirty (30) days from the date of this statement at the duly scheduled meeting(s) of the COMMISSION, the AUTHORITY and/or the CITY. CONTRACTOR acknowledges that public disclosure of the information contained herein may be made pursuant to the provisions of Civil Code Section 1798.24(d).

CONTRACTOR represents and warrants to the COMMISSION, the AUTHORITY and the CITY that by providing the information requested herein and waiving any and all privileges available under the Evidence Code of the State of California, State and Federal Law, (to the extent of this disclosure that the information being submitted herein), the information constitutes a "Public Record" subject to disclosure to members of the public in accordance with the provisions of California Government Section 6250 et seq.

CONTRACTOR specifically waives, by the production of the information disclosed herein, any and all rights that CONTRACTOR may have with respect to the information under the provisions of Government Code Section 6254 including its applicable subparagraphs, to the extent of the disclosure herein, as well as all rights of privacy, if any, under the State and Federal Law.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at San Diego, California.

CONTRACTOR

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

## **CERTIFICATION**

The CONTRACTOR, \_\_\_\_\_, hereby certifies that this CONTRACTOR's Statement for Public Disclosure and the attached information/evidence of the CONTRACTOR's qualifications and financial responsibility, including financial statements, are true and correct to the best of CONTRACTOR's knowledge and belief.

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

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

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

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

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

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

**WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction or any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.**

ATTEST:

State of California

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Name of Notary

SEAL

**FILED**  
in the office of the Secretary of State  
of the State of California

FEB 23 2004

*Kevin Shelley*  
KEVIN SHELLEY, Secretary of State

**ARTICLES OF INCORPORATION  
OF  
CHELSEA SERVICE CORPORATION**

I

The name of this corporation is Chelsea Service Corporation.

II

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California of this corporation's initial agent for service of process is James J. Schmid, 215 South Highway 101, Suite 200, Solana Beach, California 92075.

IV

This corporation is authorized to issue only one class of shares of stock; and the total number of shares this corporation is authorized to issue is 1,000.

Dated: February 18, 2004

  
James J. Schmid, Incorporator

2578911

10638595

**FILED**  
in the office of the Secretary of State  
of the State of California

**CERTIFICATE OF RESTATED AND AMENDED**

**ARTICLES OF INCORPORATION**

**JAN 1 2006**

**OF CHELSEA SERVICE CORPORATION**

James J. Schmid and Lynn Harrington- Schmid certify that:

1. They are the President and the Secretary, respectively, of Chelsea Service Corporation, a California corporation.
2. The articles of incorporation of the corporation are amended and restated to read in their entirety as follows:

**I**

The name of this corporation is Chelsea Investment Corporation.

**II**

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

**III**

This corporation is authorized to issue only one class of shares of stock; and the total number of shares which this corporation is authorized to issue, is 1,000.

**IV**

The Corporation is authorized to provide indemnification of agents (as the word "agents" is defined in Section 317 of the California Corporations Code) through bylaw provisions, agreements with the agents, vote of shareholders or disinterested directors, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject only to the limits set forth in Section 204 of the California Corporations Code with respect to actions for breach of duty to the Corporation or its shareholders.

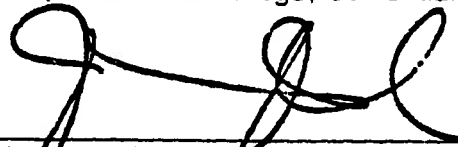
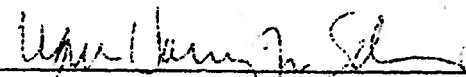
3. This Certificate, restating and amending the articles of incorporation, has been approved by the Board of Directors.
4. The amendment was approved by the required vote of the shareholders in accordance with Section 902 of the Corporations Code. The corporation has only one class of shares and the number of outstanding shares is 100. The number of shares



voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50%.

We declare under penalty of perjury under the laws of the State of California that the statements set forth in this certificate are true and correct of our own knowledge and that this declaration was executed on December 27, 2005 at San Diego, California.

Dated: December 27, 2005

  
James J. Schmid, President  
Lynn Harrington-Schmid, Secretary

# **Chelsea Investment Corporation and Subsidiaries**

**Consolidated Financial Statements with Report of Independent Auditors  
December 31, 2020**

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## **Report of Independent Auditors**

To the Stockholder of  
Chelsea Investment Corporation and Subsidiaries

### *Report on the Consolidated Financial Statements*

We have audited the accompanying consolidated financial statements of Chelsea Investment Corporation and Subsidiaries, which comprise the consolidated balance sheet as of December 31, 2020, and the related consolidated statements of operations, stockholder's equity, and cash flows for the year then ended, and related notes to the consolidated financial statements.

### *Management's Responsibility for the Consolidated Financial Statements*

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement whether due to fraud or error.

### *Auditors' Responsibility*

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditors consider internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

*Opinion*

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Chelsea Investment Corporation and Subsidiaries as of December 31, 2020, and the results of their operations and their cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

*Novogradac & Company LLP*

Long Beach, California  
April 22, 2021

**CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEET**

December 31, 2020

**ASSETS**

Current assets:

Cash and cash equivalents	\$ 8,445,013
Marketable securities, net	2,396,910
Due from related parties	1,576,814
Prepaid expenses and deposits	130,217
Current portion of developer fees receivable - related parties	7,974,708
Current portion of project cost advances - related parties	2,966,650
Note receivable - related party	<u>31,497</u>
Total current assets	23,521,809

Fixed assets:

Property and equipment	662,412
Leasehold improvements	224,469
Accumulated depreciation	<u>(683,616)</u>
Fixed assets, net	203,265

Other assets:

Developer fees receivable - related parties, less current portion	3,503,890
Project cost advances - related parties, less current portion	<u>1,724,224</u>
Total other assets	<u>5,228,114</u>

Total assets	<u><u>\$ 28,953,188</u></u>
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**LIABILITIES AND STOCKHOLDER'S EQUITY**

Current liabilities:

Accounts payable	\$ 44,851
Accrued expenses	346,947
Rent payable	135,492
Line of credit	2,000,000
Due to related parties	<u>112,904</u>
Total current liabilities	<u>2,640,194</u>

Long-term liabilities:

Note payable	6,950,000
Nonqualified deferred compensation plan liability	<u>445,000</u>
Total long-term liabilities	<u>7,395,000</u>

Total liabilities	10,035,194
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Stockholder's equity:

Controlling interest	
Common stock, no par value	
1,000 shares authorized	
100 shares issued and outstanding	100
Additional paid in capital	2,177,038
Retained earnings	<u>16,740,757</u>

Total controlling interest	18,917,895
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Non-controlling interest	<u>99</u>
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Total stockholder's equity	<u>18,917,994</u>
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Total liabilities and stockholder's equity	<u><u>\$ 28,953,188</u></u>
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see accompanying notes

**CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES****CONSOLIDATED STATEMENT OF OPERATIONS**

For the year ended December 31, 2020

**REVENUES**

Developer fees	\$ 10,803,087
Management fees	143,360
Sublease income	468,556
PPP loan forgiveness	915,809
Total revenues	<u>12,330,812</u>

**OPERATING EXPENSES**

Compensation and benefits	5,691,439
Insurance	904,435
Bad debt expense	700,309
Consulting and professional fees	544,475
Payroll taxes	450,521
Rent	395,383
General and administrative	346,379
Utilities	119,971
Deferred compensation	75,000
Office expenses	74,793
Depreciation expense	73,990
Advertising	65,610
Repairs and maintenance	46,003
Real estate taxes	42,995
Other expenses	30,984
Meals and entertainment	12,041
Travel	11,352
Total operating expenses	<u>9,585,680</u>

Operating income 2,745,132

**OTHER INCOME (EXPENSES)**

Investment and interest income	519,920
Gain on marketable securities	97,087
Interest expense	(228,082)
Net other income and (expenses)	<u>388,925</u>

INCOME BEFORE PROVISION FOR INCOME TAXES 3,134,057

Provision for income taxes 39,957

NET INCOME \$ 3,174,014

see accompanying notes

**CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF STOCKHOLDER'S EQUITY**  
For the year ended December 31, 2020

	Common Stock		Additional		Total		Non-controlling	Total
	Shares	Amount	Paid-in Capital	Retained Earnings	Controlling Interest	Interest		Stockholder's Equity
BALANCE, JANUARY 1, 2020	100	\$ 100	\$ 2,967,000	\$ 13,566,743	\$ 16,533,843	\$ 99		\$ 16,533,942
Stockholder contributions	-	-	180,000	-	180,000	-		180,000
Stockholder distributions	-	-	(969,962)	-	(969,962)	-		(969,962)
Net income	-	-	-	3,174,014	3,174,014	-		3,174,014
BALANCE, DECEMBER 31, 2020	100	\$ 100	\$ 2,177,038	\$ 16,740,757	\$ 18,917,895	\$ 99		\$ 18,917,994

see accompanying notes



**CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES**

**CONSOLIDATED STATEMENT OF CASH FLOWS**

For the year ended December 31, 2020

**CASH FLOWS FROM OPERATING ACTIVITIES**

Net income	\$ 3,174,014
Adjustments to reconcile net income to net cash provided by operating activities:	
PPP loan forgiveness	(915,809)
Gain on marketable securities	(97,087)
Depreciation expense	73,990
Bad debt expense	700,309
(Increase) decrease in operating assets	
Marketable securities	(18,199)
Developer fees receivable - related parties	889,120
Management fees receivable	(120,898)
Prepaid expenses and deposits	74,022
Increase (decrease) in operating liabilities	
Accounts payable	(282,209)
Accrued expenses	3,222
Nonqualified deferred compensation plan liability	75,000
Rent payable	586
Net cash provided by operating activities	<u>3,556,061</u>

**CASH FLOWS FROM INVESTING ACTIVITIES**

Funding of notes receivable - related parties	(2,497)
Purchase of property and equipment	(16,372)
Purchase of leasehold improvements	(6,750)
Advances from related parties	112,904
Payment of project cost advances - related parties	(457,772)
Net cash used in investing activities	<u>(370,487)</u>

**CASH FLOWS FROM FINANCING ACTIVITIES**

Contributions from sole stockholder	180,000
Distributions to sole stockholder	(969,962)
Proceeds from PPP loan	915,809
Advances to related parties	(402,683)
Proceeds from note payable	6,950,000
Payment of note payable - related party	(1,950,000)
Net cash provided by financing activities	<u>4,723,164</u>

Net change in cash, cash equivalents and restricted cash	7,908,738
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Cash, cash equivalents and restricted cash at beginning of year	<u>536,275</u>
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Cash, cash equivalents and restricted cash at end of year	<u><u>\$ 8,445,013</u></u>
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Cash and cash equivalents	\$ 8,445,013
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Restricted cash	<u>-</u>
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Total cash, cash equivalents and restricted cash	<u><u>\$ 8,445,013</u></u>
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**SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION**

Cash paid for interest during the year	<u><u>\$ 228,082</u></u>
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see accompanying notes

## **CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

December 31, 2020

#### **NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES**

##### Organization and purpose

Chelsea Investment Corporation (the “Company”) was established in February 2004, as a real estate company focusing on the financing and development of affordable housing in Arizona, California and New Mexico. The Company provides financial engineering, development, asset management, and property management services, as well as legal and labor services to its development and investment partners and clients.

##### Basis of accounting

The Company prepares its consolidated financial statements on the accrual basis of accounting consistent with accounting principles generally accepted in the United States of America.

##### Principles of consolidation

The accompanying consolidated financial statements include the assets, liabilities, and financial activities of the Company and its wholly-owned subsidiaries CIC Calipatria, LLC, CIC Heber, LLC, CIC Beachwind, LLC, and Ajax-Natomas, LLC. In addition, the Company is required to consolidate the financial statements of 15<sup>th</sup> Investment CIC, LLC, as the Company is deemed to have control. All inter-company accounts and transactions have been eliminated in consolidation.

##### Estimates

The preparation of consolidated financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

##### Economic concentrations

The Company develops property for the affordable rental housing market. Future operations could be affected by changes in economic or other conditions in the Company’s geographical area or by changes in the demand for housing.

##### Cash and cash equivalents

Cash and cash equivalents include all cash balances on deposit with financial institutions and highly liquid investments with a maturity of three months or less at the date of acquisition.

##### Concentration of credit risk

The Company maintains its cash in bank deposit accounts which at times may exceed the federally insured limits. The Company has not experienced any losses in such accounts. The Company believes it is not exposed to any significant credit risk on cash and cash equivalents.

##### Investments in securities

The Company’s investments in marketable securities are recorded at fair value measured at each reporting period. The fair value of the investments is based on quoted prices in active markets, and any gain or loss is reported on the statement of operations. The cost of securities sold is based on the specific identification method. Interest on marketable securities is included in investment and interest income on the accompanying consolidated statement of operations.

## CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2020

#### **NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

##### Fair value measurements

The Company applies the accounting provisions related to fair value measurements. Accounting Standards Codification (ASC) 820 defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. As prescribed in ASC 820, fair value is the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. This accounting guidance establishes a fair value hierarchy about the assumptions used to measure fair value and clarifies assumptions about risk and the effect of a restriction on the sale or use of an asset.

Financial assets and liabilities carried at fair value will be classified and disclosed in one of the following three levels of the fair value hierarchy: (1) the fair value is based on quoted prices (unadjusted) for identical assets or liabilities in active markets that the entity has the ability to access as of the measurement date; (2) the fair value is based on significant other observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data; and (3) the fair value is based on significant unobservable inputs that reflect the Company's own assumptions about the assumptions that market participants would use in pricing an asset or liability.

##### Accounts receivable

Accounts receivable is stated at the amount management expects to collect from outstanding balances. Management closely monitors outstanding balances and provides for probable uncollectible amounts through a charge to earnings and a credit to a valuation allowance based on its assessment of the current status of individual accounts. Balances that remain outstanding after management has used reasonable collection efforts are generally written off through a charge to the valuation allowance and a credit to trade accounts receivable. As of December 31, 2020, the balance of the partnership management fees receivable and the allowance for doubtful accounts for partnership management fees receivable was \$1,326,937. Bad debt expense for the year ended December 31, 2020 was \$700,309.

##### Fixed assets

The Company records all depreciable assets at cost. Property and equipment are depreciated on a straight-line method over their estimated useful lives of five to seven years. Leasehold improvements are depreciated on a straight-line method over their estimated useful lives of fifteen years.

##### Loans receivable and allowance for loan losses

Loans receivable are stated at unpaid principal balances, less an allowance for loan losses.

The allowance is increased by a provision for loan losses, which is charged to expense, and reduced by charge-offs, net of recoveries. Management's periodic evaluation of the adequacy of the allowance is based on the Company's past loan loss experience, known and other risks inherent in the portfolio, specific impaired loans, and adverse situations. Although management uses available information to recognize losses on loans, because of uncertainties associated with local economic conditions, collateral values, and future cash flows on impaired loans, it is reasonably possible that a material change could occur in the allowance for loan losses in the near term. However, the amount of the change that is reasonably possible cannot be estimated.

## CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2020

#### **NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

##### Loans receivable and allowance for loan losses (continued)

The Company considers a loan impaired when based on current information or factors, it is probable that the Company will not collect the principal and interest payments according to the loan agreement. Management considers many factors in determining whether a loan is impaired, such as payment history and value of collateral. Loans that are contractually delinquent less than 90 days are generally not considered impaired, unless the borrower has claimed bankruptcy or the Company has received specific information concerning the loan impairment. The Company reviews delinquent loans to determine impaired accounts. The Company measures impairment on a loan-by-loan basis by either using the fair value of collateral or the present value of expected cash flows. Substantially all of the Company loans that are identified as impaired have been measured using the fair value of the collateral.

The Company's key credit quality indicator is a loan's performance status, defined as accruing or non-accruing. Performing loans are considered to have a lower risk of loss, while nonaccrual loans are those which the Company believes have a higher risk of loss. Loans that are 90 days or more past due, based on the contractual terms of the loan, are classified on nonaccrual status. Loans may also be placed on nonaccrual status when management believes, after considering economic conditions, business conditions, and collection efforts, that the loans are impaired or collection of interest is doubtful. Uncollectible interest previously accrued is charged off, or an allowance is established by a charge to interest income. Interest income on nonaccrual loans is recognized only to the extent cash payments are received and the principal balance is believed to be collectible.

A loan previously classified on nonaccrual status will resume accruing interest based on the contractual terms of the loan when payments on the loan become current. Loans may also resume accruing interest if management no longer believes a loan is impaired or the collection of principal and interest is no longer in doubt.

##### Partnership investments

The consolidated wholly-owned subsidiaries of the Company hold co-general partner interests in affiliated affordable housing limited partnerships. These co-general partner interests are recorded at cost pursuant to the measurement alternative provided by FASB ASC 321. The fair value of the investments is not estimated if there are no identified changes that may have a significant adverse effect on the fair value of the investments. As of December 31, 2020, the investment of the subsidiaries in the affiliated affordable housing limited partnerships was \$0.

##### Non-controlling interest in subsidiary

The non-controlling interest represents the aggregate positive balance of the other members' interest in 15th Investment CIC, LLC, and is reported in the aggregate on the consolidated balance sheet within equity and on the consolidated statement of stockholder's equity, separately from the Company's equity.

## CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2020

#### **NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

##### Impairment of long-lived assets

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. Recoverability is measured by a comparison of the carrying amount of the asset to the future net undiscounted cash flows expected to be generated and any estimated proceeds from the eventual disposition. If the long-lived assets are considered to be impaired, the impairment to be recognized is measured at the amount by which the carrying amount of the asset exceeds the fair value as determined from an appraisal, discounted cash flow analysis, or other valuation technique. There were no impairment losses recognized during 2020.

##### Income taxes

By consent of the stockholder, the Company elected to be taxed as an S corporation beginning with the year ended December 31, 2004. Federal and state income taxes on the earnings of an S corporation are payable by the sole stockholder. However, California assesses an additional tax of 1.50% on the taxable income, net of certain credits.

The preparation of consolidated financial statements in accordance with accounting principles generally accepted in the United States of America requires the Company to report information regarding its exposure to various tax positions taken by the Company. Management has determined whether any tax positions have met the recognition threshold and has measured the Company's exposure to those tax positions. Management believes that the Company has adequately addressed all relevant tax positions and that there are no unrecorded tax liabilities. Federal and state tax authorities generally have the right to examine and audit the previous three years of tax returns filed. Any interest or penalties assessed to the Company are recorded in operating expenses. No interest or penalties from federal or state tax authorities were recorded in the accompanying financial statements.

##### Lease expenses

Expenses resulting from leases are recognized when incurred. Lease expense from an operating lease is incurred on a straight-line basis over the lease term. Interest expense is incurred on a capital lease obligation to produce a constant periodic rate of interest on the remaining balance of the obligation.

##### Lease classifications

The Company considers multiple factors in determining the classification of leases as either capital or operating leases, such as ownership at the end of the lease term, bargain purchase options, lease term, present value of minimum lease payments, fair value and useful life of the underlying asset(s), and whether there is significant uncertainty regarding future costs or collectability of lease payments. See Notes 4 and 7 for further discussion of the Company's lease transactions.

##### Revenue recognition

The Company recognizes revenue when it is realized or realizable and earned. Revenue consists of the income from various partnerships, including incentive management fees, partnership administration fees, and consulting fees. The Company considers revenue realized or realizable and earned when it has persuasive evidence of an arrangement, the services have been provided and collectability is reasonably assured.

# CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2020

### **NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

#### Revenue from contracts with customers

Revenue from contracts with customers consists of fees earned for construction and development services provided. The Company considers revenue from contracts with customers realized or realizable and earned when it has satisfied certain performance obligations pursuant to such contracts. Performance obligations are satisfied over time as services are rendered and revenue is recognized based on the estimated percentage of time incurred for each performance obligation. The Company records contract assets for revenue recognized in excess of the amount billed to and received from the customer, which are included in developer fees receivable on the accompanying consolidated balance sheet.

#### Deferred compensation expenses

The costs of deferred compensation arrangements are accrued over the period of employees' service to which they relate.

#### Advertising

Advertising costs are expensed as incurred. For the year ended December 31, 2020, the Company incurred \$65,610 in advertising costs.

#### Subsequent events

Subsequent events have been evaluated through April 22, 2021, which is the date the financial statements were available to be issued, and there are no subsequent events requiring disclosure.

### **NOTE 2 – MARKETABLE SECURITIES**

Marketable securities held by the Company consist of investments purchased at an aggregate cost of \$2,246,504. As of December 31, 2020, the fair market value of the marketable securities was \$2,396,910. Gains and losses are reported in net income on the accompanying consolidated statement of operations. During 2020, the gain on marketable securities was \$97,087.

### **NOTE 3 – FIXED ASSETS**

Fixed assets consist of the following as of December 31, 2020:

Property and equipment, at cost	\$	662,412
Leasehold improvements, at cost		224,469
Accumulated depreciation		(683,616)
Total fixed assets, net	\$	<u>203,265</u>

Depreciation expense for the year ended December 31, 2020 was \$73,990.

**CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
December 31, 2020

**NOTE 4 – RELATED PARTY TRANSACTIONS**

Notes receivable

Notes receivable with related parties consist of the following as of December 31, 2020:

	<u>Amount</u>
The Company has a promissory note with a related entity for \$72,774. This note bears no interest and is payable in whole or in part any time with no penalty. As of December 31, 2020, the balance on this promissory note was \$31,497.	\$ 31,497
Total notes receivable – related parties	<u>\$ 31,497</u>

Project cost advances

The Company and its affiliates have expended certain amounts for projects that it expects will be funded and completed in the future. These amounts are capitalized as the Company expects they will be reimbursed in the future. Any costs associated with projects that cease being feasible for future development are expensed, when the determination is made that feasibility is no longer assured.

Project costs advances consist of the following as of December 31, 2020:

Total project cost advances – related parties	\$ 4,690,874
Less: current portion of project costs advances – related parties	<u>(2,966,650)</u>
Project cost advances – related parties, less current portion	<u>\$ 1,724,224</u>

Developer fees

Developer fees are fees the Company receives for providing development and construction services to associated projects, which are based on contracts with various project developer entities associated with the Company. Balances are recorded at amounts expected to be realized as performance obligations are satisfied under the contracts, as further discussed in Note 1. For the year ended December 31, 2020, developer fees earned were \$10,803,087.

The developer fees receivable balance is recorded at amounts expected to be realized in excess of the amount billed to and received from the customer. Payments for developer fees are due upon scheduled equity installments which correspond to certain milestones achieved for each project. These milestone payments typically begin upon the start of construction and end upon the receipt of IRS Form 8609s by each project. As of December 31, 2020, management estimated no allowance for uncollectible developer fees receivable.

As of December 31, 2020, the contract assets balance is as follows:

Beginning balance	\$ 12,367,718
Revenue recognized	10,803,087
Revenue received	<u>(11,692,207)</u>
Ending balance	<u>\$ 11,478,598</u>

# CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2020

### **NOTE 4 – RELATED PARTY TRANSACTIONS (CONTINUED)**

#### Developer fees (continued)

Developer fees receivable consist of the following as of December 31, 2020:

Total developer fees receivable – related parties	\$ 11,478,598
Less: current portion of developer fees receivable – related parties	(7,974,708)
Developer fees receivable- related parties, less current portion	<u>\$ 3,503,890</u>

#### Partnership management fees

The Company receives partnership management fees from associated properties after they have been completed. The management fees are accrued on the Company's books as services are rendered and are paid out of available cash flow, if any, of the partnerships. For the year ended December 31, 2020, partnership management fees of \$120,898 were earned and are included in management fees revenue on the consolidated statement of operations. During 2020, an allowance of \$120,898 was reserved for the partnership management fees receivable which is included in bad debt expense on the accompanying consolidated statement of operations.

Partnership management fees receivable consist of the following as of December 31, 2020:

Total partnership management fees receivable – related parties	\$ 1,326,937
Less: reserve for allowance for doubtful accounts	(1,326,937)
Partnership management fees receivable – related parties, net	<u>\$ -</u>

#### Incentive management fee

Pursuant to an incentive management fee agreement between the Company and CIC PHR, LP ("PHR") dated September 1, 2002, an incentive management fee equal to 5.4% of gross revenues or 76.5% of remaining cash flow from PHR, shall be earned by the Company for consultative services. For the year ended December 31, 2020, there was no management fee earned or paid.

Pursuant to an incentive management fee agreement between the Company and CIC Villas II, LP ("Villa Glen") dated June 1, 2002, an incentive management fee equal to 5.4% of gross revenues or 76.5% of remaining cash flow from Villa Glen, shall be earned by the Company for consultative services. For the year ended December 31, 2020, a management fee of \$19,962 was earned and paid, and is included in management fees revenue on the accompanying consolidated statement of operations.

#### Operating lease

The Company leases certain building space from a related party under a non-cancelable operating lease that will expire December 31, 2026. This agreement requires aggregate monthly payments of \$23,430 plus the proportionate share of common area maintenance expenses, with monthly payments increasing 3% annually every January. Rent expense, which includes common area expenses, for the year ended December 31, 2020 was \$395,383. As of December 31, 2020, accrued rent payable was \$135,492.



**CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

December 31, 2020

**NOTE 4 – RELATED PARTY TRANSACTIONS (CONTINUED)**Operating lease (continued)

Future minimum lease payments, by year end and in the aggregate, under the non-cancelable lease, consist of the following as of December 31, 2020:

2021	\$	316,448
2022		325,941
2023		335,720
2024		345,791
2025		356,165
Thereafter		366,850
Total	\$	<u>2,046,915</u>

Operating lease – sublease

The Company subleases certain building space under non-cancelable operating leases with CIC Management Inc. (“CICM”) and Emmerson Construction, Inc. (“Emmerson”) that will expire December 31, 2028. Under the sub-lease with CICM, CICM subleases 10% of the office space for a monthly payment of \$2,486, with monthly payments increasing 3% annually every January. Under the sublease with Emmerson, Emmerson subleases 40% of the office space for a monthly payment of \$9,943, with monthly payments increasing 3% annually every January. Sublease income, which includes reimbursements for common area expenses, for the year ended December 31, 2020 was \$468,556. As of December 31, 2020, sublease rent receivable was \$118,515, which is included in due from related parties on the accompanying consolidated balance sheet.

Future minimum lease payments receivable, by year end and in the aggregate, under the non-cancelable lease, consist of the following as of December 31, 2020:

2021	\$	158,224
2022		162,971
2023		167,860
2024		172,896
2025		178,083
Thereafter		566,954
Total	\$	<u>1,406,988</u>

Advances due from related parties

The Company has advanced funds to certain related parties that it expects will be reimbursed. Such advances do not bear interest. As of December 31, 2020, the outstanding amount of advances due from related parties was \$1,458,299, which is included in due from related parties on the accompanying consolidated balance sheet.

Advances due to related parties

The Company was advanced funds from certain related parties. Such advances are payable and do not bear interest. As of December 31, 2020, the outstanding amount of advances due to related parties was \$112,904.

**CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
December 31, 2020

**NOTE 4 – RELATED PARTY TRANSACTIONS (CONTINUED)**

Note payable

On April 17, 2019, the Company entered into a promissory note with a related party for \$1,950,000. The note bore interest at 6.00% per annum and interest payments were due in monthly installments commencing the month following the execution of the note through April 17, 2020 (the “Maturity Date”). The entire unpaid principal balance and any interest accrued were due on the Maturity Date. As of December 31, 2020, the outstanding balance was paid in full.

**NOTE 5 – LINE OF CREDIT**

The Company has a line of credit agreement with Banner Bank, with an available credit line of \$3,000,000, which is scheduled to mature on September 25, 2021. The line of credit bears interest at a variable interest rate. As of December 31, 2020, the interest rate was 5.00%. As of December 31, 2020, the outstanding balance on the line of credit was \$2,000,000.

The line of credit agreement contains certain financial covenants, which if not met, could make the debt callable. The Company is in compliance with all covenants at December 31, 2020.

**NOTE 6 – NOTE PAYABLE**

On November 25, 2020, the Company entered into an unsecured promissory note with Banner Bank under the Main Street Lending Program (“MSLP”) in the amount of \$6,950,000. The note bears interest at annual interest rate equal to the LIBOR rate plus 3.00% commencing on the funding date of the loan. Interest payments are due in monthly installments commencing on December 25, 2021 through November 25, 2025 (the “MSLP Maturity Date”). All accrued and unpaid interest outstanding as of November 25, 2021 will be added to the outstanding principal balance of the note (the “Capitalized Interest”). On November 25, 2023 and November 25, 2024, principal payments of \$1,042,500 plus an amount equal to 15% of any Capitalized Interest are due. The entire unpaid principal balance and any interest accrued are due on the MSLP Maturity Date. The loan is subject to certain certifications and covenants, which if not met, could make the debt callable. As of December 31, 2020, the outstanding principal balance was \$6,950,000 and there was no accrued interest.

Minimum future principal payments consist of the following as of December 31, 2020:

2021	\$	-
2022		-
2023		1,042,500
2024		1,042,500
2025		4,865,000
Total	\$	<u>6,950,000</u>

**NOTE 7 – CAPITAL LEASE**

The Company leases two copy machines under a non-cancelable capital lease that expired on July 12, 2020. This agreement required monthly payments of \$4,424, plus applicable charges and taxes. As of December 31, 2020, the outstanding lease liability was \$0.

## **CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

December 31, 2020

#### **NOTE 8 – COMMITMENT AND CONTINGENCIES**

The Company is a party to certain payment and completion guarantees in connection with bank construction loans made for twelve projects as of December 31, 2020 in the aggregate amount of \$133,434,694. All twelve projects are currently on schedule and are expected to be completed in 2021 and 2022. As of December 31, 2020, the Company expects that it will not be liable for any amount under the guarantees for these twelve projects.

The Company is liable for guarantees of funding at various operating projects in the event that operating deficits occur. These guarantees, if required, are satisfied by making loans to such projects. The obligations to fund the operating deficits expire between 3 and 5 years after the projects convert to permanent financing. As of December 31, 2020, the Company has made an operating deficit loan in the amount of \$31,497, as shown in Note 4.

The Company has committed to third party Investor Limited Partners and lenders, in connection with their investments made and bank construction loans guaranteed for various projects, to maintain certain net worth and net liquidity requirements. As of December 31, 2020, the Company's most restrictive commitment was to maintain a net worth of not less than \$5,000,000 and net unencumbered liquid assets of not less than \$2,500,000 at all times that any portion of the guaranteed bank construction loan is outstanding. As of December 31, 2020, the Company was in compliance with these covenants.

#### **NOTE 9 – PROVISION FOR INCOME TAXES**

The Company is a California S Corporation and pays California a tax of 1.5%, a minimum of \$800 each year, on its apportioned taxable income, net of credits. The consolidated subsidiaries are primarily California limited liability companies that pay a California annual minimum tax of \$800.

The provision for income taxes consisted of the following for the year ended December 31, 2020:

Current income tax provision – state	\$ <u>(39,957)</u>
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#### **NOTE 10 – EMPLOYEE RETIREMENT PLAN**

On August 16, 2006, the Company adopted a 401(k) plan and profit sharing plan covering substantially all employees of the Company. Annual discretionary employer matching contributions, if any, are equal to a safe harbor matching contribution provided by the Company to employees who elect the salary deferral. For the year ended December 31, 2020, the matching contributions paid by the Company were \$48,659, which is included in general and administrative expense on the accompanying consolidated statement of operations.

**CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
December 31, 2020

**NOTE 11 – NONQUALIFIED DEFERRED COMPENSATION PLAN**

On December 1, 2014, the Company adopted an unfunded nonqualified deferred compensation plan (the “Plan”) for certain eligible employees of the Company. Pursuant to the Plan, a discretionary contribution is made each year for each active participant. The participant is fully vested in a contribution for a given year upon remaining continuously employed by the Company for a duration of five years following the end of the year for which the contribution is made while active in the Plan. A rate of return of 3% is earned on the beginning balance of active participant accounts at the end of each year. During 2020, the expense for deferred compensation was \$75,000. As of December 31, 2020, the outstanding Plan liability was \$445,000.

The Plan assets consisted of the following during 2020:

Beginning balance, January 1, 2020	\$ 639,486
Company contributions during 2020	-
Forfeitures during 2020	(187,319)
Earnings accrued during 2020	<u>13,565</u>
Ending balance, December 31, 2020	<u>\$ 465,732</u>

As of December 31, 2020, the balance fully vested to employees under the plan was \$29,851.

**NOTE 12 – PAYCHECK PROTECTION PROGRAM LOAN**

During 2020, the Company received a forgivable loan from Banner Bank under the Paycheck Protection Program (the “PPP Loan”) in the amount of \$915,809. The Company may apply for forgiveness of the PPP Loan after incurring certain qualified costs, as specified in the loan agreement. As of December 31, 2020, management believes the Company had incurred sufficient costs to qualify for forgiveness; however, the forgiveness application had not yet been submitted. For the year ended December 31, 2020, the Company recognized loan forgiveness income of \$915,809.



	Property Name	Partnership Name	Address	City	State	Zip	County	Units	Type	Historical Cost	Year Built/Rehabilitated	Year Acquired	LIHTC Investor	Lender	Compliance Period End	Loan Maturity	Record (Y/N)
1	De Anza Hotel	De Anza Hotel, LP	233 East 4th Street	Calexico	CA	92231	Imperial	94	Senior/9%	\$ 5,825,000	1949/1998	1997	N/A	HCD CHRP	2012	05/01/27	No
2	St. Regis Park	St. Regis Park, LP	1025 Broadway	Chula Vista	CA	91911	San Diego	119	Family	\$ 9,519,000	1979/2000/2019	2000	Raymond James	Citi Community Capital	2015	10/01/35	No
3	Villa Serena	Serena Sunbow, LP	1231 Medical Center Drive	Chula Vista	CA	91911	San Diego	132	Senior	\$ 8,486,000	2000	1999	N/A	Citi Community Capital	2014	09/01/30	No
4	Regency Centre	Regency Centre CIC, LP	4765 Home Avenue	San Diego	CA	92105	San Diego	100	Family	\$ 14,710,000	1976/2001/2019	2018	Raymond James	Citi Community Capital	2033	04/01/35	No
5	Seabreeze Farms	Longacres at Seabreeze Farms, LP	12759 Seabreeze Farms Drive	San Diego	CA	92130	San Diego	38	Family/9%	\$ 5,169,000	2001	2000	N/A	Orix Real Estate Capital	2015	04/01/32	No
6	Villa de Las Flores	VDLF, LP	2201 Meadow Drive	Calexico	CA	92231	Imperial	80	Senior/9%	\$ 7,529,000	2001	2000	N/A	Formula Too	2015	12/31/30	No
7	Torrey Highlands	THA, LP	13370 Torrey Meadows Drive	San Diego	CA	92129	San Diego	76	Family	\$ 8,658,000	2002	2001	N/A	PNC	2016	12/01/23	No
8	Brawley Family	BFA, LP	1690 C Street	Brawley	CA	92227	Imperial	80	Family/9%	\$ 9,714,000	2002	2002	N/A	Rabobank	2016	08/28/28	No
9	Calexico Family	CFA, LP	2301 Andrade Avenue	Calexico	CA	92231	Imperial	80	Family/9%	\$ 10,351,000	2003	2002	N/A	Rabobank	2017	08/28/21	No
10	Market Square Manor	Market Square Manor Associates, LP	525 14th St	San Diego	CA	92101	San Diego	200	Senior/9%	\$ 19,209,000	2003	2002	Highridge Costa	Berkadia	2017	07/01/22	No
11	Villa Andalucia	CIC Villas, LP	6591 Rancho del Sol Way	San Diego	CA	92130	San Diego	32	Family	\$ 4,448,000	2003	2002	N/A	Citi Community Capital	2018	02/01/35	No
12	Villa Glen	CIC Villas II, LP	6984 Torrey Santa Fe Road	San Diego	CA	92129	San Diego	26	Family	\$ 4,211,000	2003	2002	N/A	Citi Community Capital	2017	02/01/35	No
13	Villa Lara	VLA, LP	2371 Myrtle Road	Imperial	CA	92251	Imperial	80	Family/9%	\$ 9,768,000	2002	2002	N/A	Citi Community Capital	2016	07/01/29	No
14	Windwood Village	CIC PHR, LP	12730 Briarcrest Place	San Diego	CA	92130	San Diego	92	Family	\$ 13,936,000	2003	2002	Boston Financial	US Bank	2017	10/01/34	No
15	Countryside	CIC Countryside, LP	1751 Adams Avenue	El Centro	CA	92243	Imperial	73	Family	\$ 9,571,000	2004	2003	N/A	Orix Real Estate Capital	2018	03/01/32	No
16	Holtville Gardens	Holtville Gardens, LP	950 Holt Avenue	Holtville	CA	92250	Imperial	81	Senior	\$ 9,309,000	2004	2003	N/A	Orix Real Estate Capital	2018	07/01/54	No
17	Imperial Gardens	IGA, LP	2385 Myrtle Road	Imperial	CA	92251	Imperial	81	Senior	\$ 8,840,000	2004	2003	N/A	Orix Real Estate Capital	2019	03/01/32	No
18	Mariposa	CIC Calavera, LP	4651 Red Bluff Place	Carlsbad	CA	92010	San Diego	106	Family	\$ 16,809,000	2004	2003	N/A	Orix Real Estate Capital	2018	06/01/35	No
19	Rancho Buena Vista	CIC Eastlake, LP	2155 Corte Vista	Chula Vista	CA	91915	San Diego	150	Family	\$ 23,615,000	2005	2003	Wentwood	Orix Real Estate Capital	2019	05/01/36	No
20	Rancho del Norte	Santaluz Family Apartments, LP	16775 Saintsbury Glen	San Diego	CA	92127	San Diego	119	Family	\$ 21,991,000	2005	2003	Boston Financial	Wells Fargo	2019	01/01/36	No
21	Westmorland Family	WFA, LP	181 South G Street	Westmorland	CA	92281	Imperial	65	Family	\$ 10,094,000	2004	2003	N/A	Orix Real Estate Capital	2018	07/01/54	No
22	Brawley Gardens	Brawley Gardens, LP	221 Best Road	Brawley	CA	92227	Imperial	81	Family	\$ 13,730,000	2005	2004	N/A	Orix Real Estate Capital	2019	07/01/54	No
23	Brawley Senior	BESA, LP	995 Willard Avenue	Brawley	CA	92227	Imperial	81	Senior	\$ 10,825,000	2005	2004	Boston Financial	Citi Community Capital	2019	12/01/41	No
24	Heber Woods	Heber Family, LP	1137 Dogwood Road	Heber	CA	92249	Imperial	81	Family	\$ 14,465,000	2005	2004	N/A	Orix Real Estate Capital	2019	07/01/54	No
25	Fairbanks Ridge	CIC Fairbanks, LP	16016 Babcock Street	San Diego	CA	92127	San Diego	204	Family	\$ 46,900,000	2006	2005	The Richman Group	US Bank	2020	06/01/37	No
26	The Crossings	CIC Crossings, LP	13533 Zinnia Hills Place	San Diego	CA	92130	San Diego	108	Family	\$ 20,846,000	2006	2005	Boston Financial	Berkadia	2020	11/01/36	No
27	City Heights Square	City Heights Square, LP	4065 43rd Street	San Diego	CA	92105	San Diego	150	Senior/9%	\$ 32,500,000	2007	2006	Wentwood	Red Capital	2021	09/01/26	No
28	Hunters Pointe	CIC La Costa, LP	7270 Calle Plata	Carlsbad	CA	92009	San Diego	168	Family	\$ 42,289,000	2007	2006	Boston Financial	Oak Grove Capital	2021	11/01/46	No
29	Villa Dorada	Calexico II, LP	1081 Meadow Drive	Calexico	CA	92231	Imperial	80	Family	\$ 15,465,000	2007	2006	Boston Financial	USDA	2021	07/01/40	No
30	Villa Paloma	Heber Family II, LP	15 West Hawk Street	Heber	CA	92249	Imperial	72	Family	\$ 15,738,000	2007	2006	The Richman Group	US Bank	2021	05/01/38	No
31	Glen Ridge	CIC Glen Ridge, LP	3555 Glen Avenue	Carlsbad	CA	92010	San Diego	78	Family	\$ 20,499,000	2008	2007	Boston Financial	US Bank	2023	12/01/52	No
32	The Landings	CIC Landings, LP	2122 Burdock Way	Chula Vista	CA	91915	San Diego	92	Family	\$ 27,800,000	2008	2007	Boston Financial	US Bank	2022	12/01/52	No
33	16th & Market	16th and Market, LP	640 16th Street	San Diego	CA	92101	San Diego	136	Special Needs	\$ 46,000,000	2008	2007	The Richman Group	US Bank	2022	12/01/44	No
34	Villa Esperanza	Calipatria Family Apts., LP	651 East Bonita Place	Calipatria	CA	92233	Imperial	72	Family	\$ 14,900,000	2008	2007	The Richman Group	CCRC	2022	11/01/39	No
35	Willow Glen	CIC Natomas, LP	1625 Scarlet Ash Avenue	Sacramento	CA	95834	Sacramento	135	Family	\$ 29,026,000	2009	2007	The Richman Group	MMA	2023	04/01/56	No
36	Beachwind Court	Beachwind Court, LP	624 12th Street	Imperial Beach	CA	91932	San Diego	15	Family	\$ 4,122,000	1986/2009	2008	The Richman Group	Orix Real Estate Capital	2023	07/01/54	No
37	Courtyard Terraces	Dawson Ave. Senior Apts., LP	4321 52nd Street	San Diego	CA	92115	San Diego	88	Senior/9%	\$ 24,546,000	2010	2008	Bank of America	CCRC	2024	01/01/29	No
38	Cedar Creek	Fanita 48, LP	8616 Fanita Drive	Santee	CA	92071	San Diego	48	Family	\$ 13,707,000	2010	2009	Boston Financial	US Bank	2025	04/01/26	No
39	Silver Sage	Silver Sage CIC, LP	9757 Marilla Drive	Lakeside	CA	92040	San Diego	80	Family	\$ 24,084,000	2010	2009	Boston Financial	US Bank	2025	08/01/41	No
40	City Place	CIC South Mill Creek, LP	1401 South Street	Bakersfield	CA	93301	Kern	70	Family/9%	\$ 17,566,000	2011	2010	US Bank	US Bank	2025	04/01/27	No
41	Oakridge	CIC Oakridge Apts., LP	10 Willowood Drive	Oakdale	CA	95361	Stanislaus	41	Family	\$ 5,831,000	1984/2011	2010	Boston Financial	Bonneville	2024	07/05/49	No
42	The Landings II	Landings II, LP	1768 Java Way	Chula Vista	CA	91915	San Diego	143	Family	\$ 47,632,000	2012	2010	Raymond James	US Bank	2025	07/01/43	No
43	Verbena	Verbena San Ysidro, LP	3774 Beyer Blvd.	San Ysidro	CA	92173	San Diego	80	Family/9%	\$ 25,657,000	2011	2010	The Richman Group	Impact CIL LLC	2025	03/01/30	No
44	Estrella del Mercado	Mercado CIC, LP	1985 National Avenue	San Diego	CA	92113	San Diego	92	Family/9%	\$ 64,112,000	2012	2011	Raymond James	Citi Community Capital	2026	06/01/28	No
45	Las Brisas	CIC El Centro Family Apts., LP	2001 North 8th Street	El Centro	CA	92243	Imperial	72	Family	\$ 18,057,000	2012	2011	Boston Financial	Rabobank	2026	01/01/44	No
46	Park Terramar	Terramar CIC, LP	13481 Silver Ivy Lane	San Diego	CA	92123	San Diego	21	Family	\$ 7,630,000	2012	2011	US Bank	US Bank	2026	08/01/27	No
47	Villa Del Sol	Calexico Andrade, LP	1080 Meadow Drive	Calexico	CA	92231	Imperial	52	Family/9%	\$ 10,958,000	2012	2011	Boston Financial	USDA	2025	08/25/44	No
48	Villa Fortuna	Brawley Pioneers, LP	235 North Best Avenue	Brawley	CA	92227	Imperial	76	Family/9%	\$ 15,555,000	2012	2011	The Richman Group	USDA	2025	08/25/44	No
49	El Quintero	De Anza II CIC, LP	444 Rockwood Avenue	Calexico	CA	92231	Imperial	54	Senior	\$ 8,844,000	2012	2012	The Richman Group	Rabobank	2026	10/30/67	No
50	Emperor Estates	Dinuba Senior Apartments CIC, LP	350 North M Street	Dinuba	CA	93618	Tulare	62	Senior/9%	\$ 13,974,000	2013	2012	The Richman Group	Rabobank	2027	02/01/68	No
51	Iris	Iris Apartments CIC, LP	641 North Vulcan Avenue	Encinitas	CA	92024	San Diego	20	Family/9%	\$ 12,752,000	2012	2012	Raymond James	Citi Community Capital	2027	03/19/29	No
52	Fairbanks Commons	Fairbanks Commons CIC, LP	15870 Camino San Bernardo	San Diego	CA	92127	San Diego	165	Family	\$ 84,102,000	2014	2012	US Bank	Citi Community Capital	2028	06/01/45	No
53	Park Place	Michigan Drive CIC LLLP	920 East Michigan Drive	Hobbs	NM	88240	Lea	88	Family	\$ 11,623,000	1978/2014	2013	The Richman Group	US Bank	2027	01/01/29	No
54	Cesar Chavez	Vista Montana Coachella, LP	84851 Bagdad Avenue	Coachella	CA	92236	Riverside	56	Family	\$ 14,271,000	2013	2013	US Bank	US Bank	2028		



Finance  
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Chelsea Investment Corporation is a real estate company focused on the financing and development of affordable housing. Incorporated in 1986 by James J. Schmid, who still serves as CEO, Chelsea is a vertically integrated company with asset management, construction, and community investment affiliates.

Having developed over 11,000 apartments throughout the western United States, at a total cost in excess of \$2.5 billion, Chelsea meets and exceeds the level of experience necessary to develop affordable housing in today's complex financing environment. Of the apartments completed, approximately 40% are in urban infill sites, 40% are located in suburban locations, and 20% are in rural areas. Approximately 35% have satisfied inclusionary obligations, 20% are senior housing and 15% are permanent supportive housing. Additionally, while Chelsea has primarily focused on new construction projects, the company has preserved about 1,400 affordable apartments through acquisition and rehabilitation. Virtually all projects are developed with soft residual receipts loans through public-private partnerships with the federal, state or local government.

The Chelsea team enjoys longstanding relationships with distinguished financial institutions and agencies that fund the development of affordable housing, enabling the company to continue closing escrow and completing construction despite the market uncertainty and delays associated with the COVID-19 pandemic. Chelsea works with a variety of leading non-profit partners, such as Father Joe's Villages, Serving Seniors, Housing Development Partners, Alpha Project, Weingart Center Association, United Cerebral Palsy, Regional Center of Orange County, Inland Regional Center, San Diego Regional Center, Guidance Center of Lea County, Center for Independent Living, Families Forward, and Southern California Housing Collaborative, to ensure residents at each community receive a customized menu of meaningful supportive services.

Chelsea's development team excels at adapting financing strategies to capitalize on new sources as they become available and has a greater than 95% success rate at securing competitive funding sources. The financing team is adept at layering sources such as AHP, AHSC, MHP, CDBG, HOME, IIG, TOD, and MHSA, in addition to the 4% and 9% low-income housing tax credits and tax-exempt bond financing, to both efficiently deliver a project and ensure its long-term feasibility. In one project alone, Chelsea utilized loan and grant subsidies from 14 different funding sources.

- To date, Chelsea has developed over 120 affordable communities throughout California, New Mexico, Utah, and Arizona.
- Ranked as 11<sup>th</sup> in Affordable Housing Finance Magazine's Top 50 Developers of 2018.
- 2015 and 2018 Builder of the Year - Building Industry Association.
- Chelsea and its communities are consistently recognized in many categories, including awards for design excellence, preservation of affordable housing, housing for the developmentally disabled, and supportive housing.



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## **HISTORY**

Emmerson Construction, Inc. (ECI) was formed in 2000 to construct residential and mixed-use projects and specializes in affordable multifamily housing. ECI has delivered over 7,500 quality apartments in nearly 100 communities—all on schedule and within budget.

## **AREAS OF EXPERTISE**

ECI offers general contracting and construction management services. Its team of experienced professionals collaborate with clients to provide enhanced value, consistent quality, efficient scheduling, and risk mitigation.

Projects built or managed by ECI include one- to 14-story buildings using Type I, Type III, and Type IV construction and many of them are LEED or GreenPoint rated.

## **TEAM MEMBERS**

### **PRESIDENT- Charles Schmid**

Charles began his career in multifamily housing development in 1986 and applies experience with real estate finance and management in his role as President of Emmerson. As a licensed general contractor and seasoned developer, he has a thorough understanding of the life cycle of apartment development, from feasibility analysis through lease-up and completed operations. Recent projects range from rural development of 80 units to urban and suburban projects of more than 400 units.

### **DIRECTOR OF CONSTRUCTION, GARDEN APT. DIVISION - Janice Patterson**

Janice has worked in the construction industry for over 35 years and she has drawn on her extensive experience to deliver 22 quality affordable communities for Emmerson, consisting of 1,575 apartments with a contract value of more than \$234 million during her tenure since 2009. Prior to joining Emmerson, Janice's project experience included single-family and multifamily market rate homes, in subdivisions up to 175 homes built in multiple phases in master planned communities in San Diego.

### **DIRECTOR OF CONSTRUCTION, MID- & HIGH-RISE DIVISION - Rob Campbell**

Formerly with JPI, Ledcor, Swinerton, and Roel, Rob has over 33 years of experience in high rise, mid-rise, multifamily residential, hotel and commercial construction. Having gained his experience on large projects in the San Diego and Los Angeles areas, including multifamily developments with as many as 1,000 units, he is responsible for the day-to-day operations to ensure projects are completed on time and within budget, and that site safety, environmental standards, quality of materials and workmanship meet or exceed standards.

### **SENIOR CONSTRUCTION MANAGER - John Allegretto**

John Allegretto is a seasoned professional with over 40 years of experience providing general contracting, construction management, real estate development, claims consulting, and management

(CONTINUED) ►



advisory consulting services. He has supervised the successful completion of more than \$500,000,000 in projects in the private and public sectors, on developments of over 450 units and as large as 800,000 SF. He has an appreciation for the unique challenges presented by each new project and strives to encourage teamwork and effective communication among the various project representatives.

#### **SENIOR PROJECT MANAGER – Martin Apicella**

Martin joined the Emmerson team after working ten years as Project Manager at KBS, a top construction firm in Virginia. A veteran of the US Army, Martin holds a BS degree in Construction Management and Real Estate from Virginia Tech and studied Architecture at Technical University of Darmstadt in Germany. His wide-ranging experience includes construction of a 400-unit luxury residential building, transformation of a historic naval industrial facility into 45,000 SF mixed-use complex, and the adaptive reuse of a Lucky Strike tobacco factory into 131 luxury apartments. In his role at Emmerson, Martin supervises construction of developments comprised of hundreds of units, with some as large as 750,000 SF. Martin is a LEED AP BD+C.

#### **SENIOR PROJECT MANAGER – Felix Lee**

Felix Lee has worked on the design and construction of market-rate, high-rise developments in Southern California for over 15 years. Prior to joining Emmerson, Felix worked for various design firms, general contractors, and real estate developers, including The Related Companies, to deliver many projects over 100 units and as large as 500,000 SF. Felix holds a Master of Construction Management and a Bachelor of Architecture from the University of Southern California.

#### **ESTIMATOR – Donald Dickson**

Donald has been in the multifamily construction industry for more than 20 years, including both affordable and market rate developments. His experience encompasses project management, preconstruction, and estimating for garden apartments, mid-rise, and high-rise developments throughout the western United States. Prior to joining Emmerson, Donald worked on the lender side as a Construction Manager, and prior to that, as Director of Preconstruction with Trammell Crow Residential.

#### **PROJECT MANAGER – Tim Hines**

Tim has worked in the construction industry for over 20 years, including affordable multifamily new construction and renovation, master-planned community construction, and public works projects. Since joining Emmerson, Tim has delivered over 1,100 apartments. He studied construction management at San Diego State University and architecture at Mesa College.

#### **PROJECT MANAGER – Matilda del Carmen**

Matilda has worked in the housing industry for over 25 years, with experience ranging from Single Family, Multi-Family to Commercial real estate development. Her involvement encompasses the practices of several professions: from Architect to Builder to Owner/Landlord. Her experience includes project management, property management and construction management. Prior to joining Emmerson, Matilda worked for architecture firms & commercial as well as residential real estate developers throughout California.



Emmerson Construction, Inc.  
Project List  
8/17/2021

	Project Name	City	State	Work	Resident Profile	Mixed Use?	Renovation/ New Const.	Status	Start	Complete	# Units	Contract Value	Architect	GC or CM
1	Calexico Family Apartments	Calexico	CA	Slab on grade	Family	No	New	Completed	Feb-02	Jan-03	80	5,561,540	Hedenkamp	GC
2	Brawley Family Apartments	Brawley	CA	Slab on grade	Family	No	New	Completed	Feb-02	Jan-03	81	6,452,208	Hedenkamp	GC
3	Villa Lara	Imperial	CA	Slab on grade	Family	No	New	Completed	Mar-02	Dec-02	80	6,525,658	Hedenkamp	GC
4	Holtville Gardens	Holtville	CA	Slab on grade	Senior	No	New	Completed	Oct-03	Sep-04	80	6,215,752	Hedenkamp	GC
5	Countryside Family	El Centro	CA	Slab on grade	Family	No	New	Completed	Oct-03	Oct-04	80	7,155,000	Hedenkamp	GC
6	Imperial Garden Senior	Imperial	CA	Slab on grade	Senior	No	New	Completed	Oct-03	Nov-04	80	6,443,020	Hedenkamp	GC
7	Rancho Buena Vista	Chula Vista	CA	Slab on grade	Family	No	New	Completed	Nov-03	Aug-05	150	16,200,000	Hedenkamp	GC
8	Rancho Del Norte	San Diego	CA	Slab on grade	Family	No	New	Completed	Dec-03	Apr-05	120	13,706,694	Hedenkamp	GC
9	Westmorland Family	Westmorland	CA	Slab on grade	Family	No	New	Completed	Jan-04	Nov-04	64	6,900,000	Hedenkamp	GC
10	Brawley Elks Senior	Brawley	CA	Slab on grade	Senior	No	New	Completed	Aug-04	May-05	80	6,994,322	Hedenkamp	GC
11	Brawley Gardens	Brawley	CA	Slab on grade	Family	No	New	Completed	Aug-04	Jul-05	81	9,191,326	Hedenkamp	GC
12	Heber Woods	Heber	CA	Slab on grade	Family	No	New	Completed	Oct-04	Jul-05	81	9,417,954	Hedenkamp	GC
13	Meadow Village Road	Calexico	CA	Off-site work	Commercial	No	New	Completed	Feb-05	Feb-06	N/A	724,153	N/A	GC
14	Fairbanks Ridge	San Diego	CA	Slab on grade	Family	No	New	Completed	Aug-05	Jul-06	204	29,254,314	Hedenkamp	GC
15	Villa Dorado	Calexico	CA	Slab on grade	Family	No	New	Completed	Oct-06	Jul-07	80	10,080,426	Hedenkamp	GC
16	DDE HQ - Office Building	El Centro	CA	Slab on grade	Commercial	No	New	Completed	Jan-07	Jul-07	N/A	1,130,219	Sanders	GC
17	City Heights Square	San Diego	CA	Slab on grade	Senior	No	New	Completed	Feb-06	Sep-07	150	21,468,768	Dominy	CM
18	Villa Paloma	Heber	CA	Slab on grade	Family	No	New	Completed	Dec-06	Sep-07	72	9,864,435	Hedenkamp	GC
19	Hunter's Pointe	Carlsbad	CA	Slab on grade	Family	No	New	Completed	May-06	Jan-08	166	30,389,918	Hedenkamp	GC
20	Villa Esperanza	Calipatria	CA	Slab on grade	Family	No	New	Completed	Jun-07	Jul-08	74	10,318,586	Hedenkamp	GC
21	Beachwind Court	Imperial Beach	CA	Slab on grade	Family	No	Renovation	Completed	Sep-08	Dec-08	16	891,747	Hedenkamp	GC
22	Tierra del Cielo	Somerton	AZ	Slab on grade	Family	No	New	Completed	Jul-08	May-09	34	3,913,810	Hedenkamp	GC

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Project List  
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	Project Name	City	State	Work	Resident Profile	Mixed Use?	Renovation/ New Const.	Status	Start	Complete	# Units	Contract Value	Architect	GC or CM
23	Courtyard Terrace	San Diego	CA	Podium	Senior	No	New	Completed	Nov-08	Mar-10	88	17,700,000	Hedenkamp	GC
24	St. Regis Park	Chula Vista	CA	Slab on grade	Family	No	Renovation	Completed	Sep-09	Aug-10	119	400,000	N/A	GC
25	Silver Sage	Lakeside	CA	Slab on grade	Family	No	New	Completed	Aug-09	Oct-10	80	12,794,227	Hedenkamp	GC
26	Cedar Creek	Santee	CA	Slab on grade	Family	No	New	Completed	Oct-09	Oct-10	48	7,332,286	Hedenkamp	GC
27	Oakridge Apartments	Oakdale	CA	Slab on grade	Family	No	New	Completed	Jul-10	Dec-10	41	1,200,000	Basis	GC
28	De Anza Hotel	Calexico	CA	Post & Beam	Senior	No	Renovation	Completed	Apr-10	Feb-11	94	598,402	Hedenkamp	GC
29	Verbena	San Ysidro	CA	Slab on grade	Family	No	New	Completed	Mar-10	Jun-11	80	13,296,599	Hedenkamp	GC
30	Villa Fortuna	Brawley	CA	Slab on grade	Farmworker	No	New	Completed	Jan-11	Sep-11	76	8,900,000	Hedenkamp	GC
31	Villa Del Sol	San Diego	CA	Slab on grade	Farmworker	No	New	Completed	Dec-10	Sep-11	52	5,600,000	Hedenkamp	GC
32	The Landings Phase II	Chula Vista	CA	Slab on grade	Family	No	New	Completed	Jul-10	Oct-11	143	23,610,280	McKinley	CM
33	CityPlace	Bakersfield	CA	Slab on grade	Family	No	New	Completed	Sep-10	Dec-11	72	10,546,289	Hedenkamp	GC
34	Las Brisas	El Centro	CA	Slab on grade	Family	No	New	Completed	Jan-12	Aug-12	71	10,151,577	Hedenkamp	GC
35	Park Terramar	San Diego	CA	Landscape	Family	No	Renovation	Completed	Feb-12	Aug-12	21	342,631	N/A	GC
36	Estrella Del Mercado	San Diego	CA	Podium	Family	Yes	New	Completed	Feb-11	Oct-12	95	14,485,997	Safdie Rabines	GC
37	El Quintero	Calexico	CA	Slab on grade	Senior	No	New	Completed	Jan-12	Nov-12	54	4,669,035	Hedenkamp	GC
38	St. Regis	Chula Vista	CA	Energy Upgrades	Family	No	Renovation	Completed	Aug-12	Jan-13	119	263,844	N/A	GC
39	Emperor Estates	Dinuba	CA	Slab on grade	Senior	No	New	Completed	Feb-12	Feb-13	62	8,862,257	Hedenkamp	GC
40	Iris Apartments	Encinitas	CA	Landscape	Family	No	New	Completed	Apr-12	Feb-13	20	3,185,728	McKinley	GC
41	CL Dellums Apartments	Oakland	CA	Slab on grade	Homeless	No	Renovation	Completed	Mar-13	May-13	76	4,354,469	John Stewart	CM
42	Vista Terrace	Vista	CA	Landscape	Homeless Family	No	Renovation	Completed	Jul-12	Jul-13	48	3,218,327	Hedenkamp	GC
43	Park Place	Hobbs	NM	Slab on grade	Family	No	Renovation	Completed	Dec-12	Jan-14	88	7,055,677	Jeebs & Zuzu	CM
44	Cesar Chavez Villas	Coachella	CA	Slab on grade	Farmworker	No	New	Completed	Mar-13	Mar-14	56	8,204,753	Hedenkamp	GC

Emmerson Construction, Inc.  
Project List  
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	Project Name	City	State	Work	Resident Profile	Mixed Use?	Renovation/ New Const.	Status	Start	Complete	# Units	Contract Value	Architect	GC or CM
45	Fairbanks Commons	San Diego	CA	Slab on grade	Family	No	New	Completed	Nov-13	Nov-14	165	20,432,196	McKinley	GC
46	Fairbanks Square	San Diego	CA	Slab on grade	Senior	No	New	Completed	Nov-13	Nov-14	100	9,200,000	McKinley	GC
47	Versa at Civita	San Diego	CA	Slab on grade	Senior	No	New	Completed	Nov-13	May-15	150	17,109,905	McKinley	GC
48	Villa Primavera	Calexico	CA	Slab on grade	Family/ Disabled	No	New	Completed	Oct-14	Jul-15	48	8,097,520	Hedenkamp	GC
49	Independence Point	San Diego	CA	Tuck Under	Family/ Disabled	No	New	Completed	Aug-14	Jul-15	32	7,380,985	OBR	GC
50	Mill Creek Courtyard	Bakersfield	CA	Slab on grade	Family	No	New	Completed	Jul-14	Jul-15	62	6,600,950	Hedenkamp	GC
51	Alpha Square	San Diego	CA	Podium	Homeless	Yes	New	Completed	Apr-14	Sep-15	203	27,147,147	JWDA	GC
52	Westminster Manor	San Diego	CA	Slab on grade	Senior	No	Renovation	Completed	Aug-14	Nov-15	156	12,570,976	Basis	GC
53	Las Palmeras	Imperial	CA	Slab on grade	Farmworker	No	New	Completed	Nov-14	Dec-15	56	8,719,000	Hedenkamp	GC
54	Rancho Del Sol	San Diego	CA	On grade w/garage	Family	No	New	Completed	Jan-15	Feb-16	94	11,967,088	Humphreys	GC
55	Nelms Community Garden	Oceanside	CA	Community Garden	Commercial	No	New	Completed	Dec-15	Mar-16	N/A	117,364	N/A	GC
56	Trolley Park Terrace	San Diego	CA	Podium	Family	No	New	Completed	Apr-15	Sep-16	52	13,568,298	McKinley	GC
57	Mill Creek Village	Bakersfield	CA	Wrap	Family	No	New	Completed	Nov-15	Oct-16	63	12,444,783	Hedenkamp	GC
58	Torrey Vale	San Diego	CA	On grade w/garage	Family	No	New	Completed	Jan-16	Oct-16	28	4,985,553	Bassenian Lagoni	GC
59	Fairbanks Terrace	San Diego	CA	Slab on grade	Senior	No	New	Completed	Apr-16	Mar-17	83	10,228,891	McKinley	GC
60	Ouchi Courtyards	San Diego	CA	Podium	Family/ Disabled	Yes	New	Completed	Nov-15	May-17	45	11,616,272	Hedenkamp	GC
61	Volta at Millenia	Chula Vista	CA	Wrap	Senior	No	New	Completed	Mar-16	Oct-17	123	18,772,332	JWDA	GC
62	Duetta at Millenia	Chula Vista	CA	Wrap	Family	No	New	Completed	Mar-16	Oct-17	87	14,452,135	JWDA	GC
63	Pedestrian Corridors Millenia	Chula Vista	CA	Off-site work	Commercial	No	New	Completed	Jun-17	Oct-17	N/A	537,028	JWDA	GC
64	Juniper at The Preserve	Carlsbad	CA	Slab on grade	Family	No	New	Completed	Nov-16	Nov-17	64	10,312,118	McKinley	GC
65	Roselawn Manor	Artesia	NM	Slab on grade	Family	No	New	Completed	Jun-16	Nov-17	63	10,250,000	Autotroph	CM
66	Parkside Terrace	Hobbs	NM	Slab on grade	Family	No	New	Completed	Jun-16	Nov-17	65	9,860,000	Jeebs & Zuzu/ jV De Sousa	CM

Emmerson Construction, Inc.  
Project List  
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	Project Name	City	State	Work	Resident Profile	Mixed Use?	Renovation/ New Const.	Status	Start	Complete	# Units	Contract Value	Architect	GC or CM
67	Villa Storia	Oceanside	CA	Slab on grade	Family	No	New	Completed	Mar-17	Dec-17	38	5,630,056	SummA	GC
68	Mesa Verde	San Diego	CA	Podium	Family	No	New	Completed	Apr-16	Apr-18	90	17,174,144	McKinley	GC
69	Cesar Chavez Villas Phase II	Coachella	CA	Slab on grade	Farmworker	No	New	Completed	Jun-17	Jun-18	80	13,244,171	Hedenkamp	GC
70	North Coast Terrace	Oceanside	CA	Podium	Homeless Family	No	New	Completed	Apr-17	Aug-18	32	10,386,340	Hedenkamp	GC
71	Town & Country Village	San Diego	CA	Slab on grade	Family	No	Renovation	Completed	Dec-17	Oct-18	145	12,230,429	Basis	GC
72	Alpha Lofts	El Cajon	CA	Slab on grade	Homeless Veteran	Yes	New	Completed	Jan-18	Mar-19	53	10,999,708	McKinley	GC
73	Schmale Family Senior Residence	Ramona	CA	Slab on grade	Senior	No	New	Completed	Mar-18	May-19	62	12,337,933	Hedenkamp	GC
74	Pacifica at Playa Del Sol	San Diego	CA	Podium	Family/ Disabled	No	New	Completed	Aug-18	Sep-19	42	9,317,486	Bassenian Lagoni	GC
75	Regency Centre	San Diego	CA	Slab on grade	Family	No	Renovation	Completed	Sep-18	Oct-19	100	9,780,000	Basis	GC
76	Mission La Posada	Carlsbad	NM	CM	Family	No	Renovation	Completed	Jul-19	Oct-19	80	5,859,110	Basis	CM
77	Paseo La Paz	San Ysidro	CA	Slab on grade	Family	No	New	Completed	May-18	Nov-19	139	22,412,161	JWDA	GC
78	St. Regis Park	San Diego	CA	Slab on grade	Family	No	Renovation	Completed	Sep-18	Dec-19	129	10,550,000	Basis	GC
79	Serenita	Brawley	CA	Slab on grade	Family/ Disabled	No	New	Completed	Apr-19	Mar-20	60	10,931,851	Hedenkamp	GC
80	Regency Pool	San Diego	CA	Ammenities	Family	No	Renovation	Completed	Dec-19	Mar-20	1	239,851	Basis	GC
81	Benson Place	San Diego	CA	Renovation	SRO	yes	Renovation	Completed	Jan-20	Aug-20	83	8,238,173	FJV-3rd party	GC
82	Las Praderas	Calexico	CA	Slab on grade	Family	No	New	Completed	May-19	Apr-20	60	11,201,116	Hedenkamp	GC
83	Siena at Civita*	San Diego	CA	Podium	Senior	Yes	New	Completed	Apr-18	Dec-20	103	17,497,995	KTGY	GC
84	Stylus at Civita*	San Diego	CA	Podium	Family	Yes	New	Completed	Apr-18	Dec-20	203	67,377,138	KTGY	GC
85	Civita Retail*	San Diego	CA	Podium	Commercial	No	New	Completed	Apr-18	Nov-20	N/A	6,640,951	KTGY	GC
86	Salerno	Irvine	CA	Tuck Under	Family	Yes	New	Completed	Jun-19	Dec-20	80	25,892,131	Architects Orange	GC
87	Mid-City Family/Senior	San Diego	CA	Podium	Family/ Senior	yes	New	In Progress	Mar-20	Aug-22	195	51,876,065	Quigley/Studio E	GC
88	St. Teresa of Calcutta Villa	San Diego	CA	CM	Homeless	Yes	New	In Progress	Jan-20	Jan-22	418	106,125,009	JWDA	CM

Emmerson Construction, Inc.  
Project List  
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	Project Name	City	State	Work	Resident Profile	Mixed Use?	Renovation/ New Const.	Status	Start	Complete	# Units	Contract Value	Architect	GC or CM
89	Girasol	El Centro	CA	On Grade	Family	No	New	In Progress	Nov-20	Nov-21	56	13,133,884	Hedenkamp	GC
90	Pueblo Viejo Villas	Coachella	CA	3-story On Grade	Family	Yes	New	In Progress	Oct-20	Feb-22	105	27,060,745	McKinley	GC
91	Fairbanks Terrace II	San Diego	CA	On Grade	Senior	No	New	In Progress	Oct-20	Nov-21	31	5,516,900	McKinley	GC
92	Apollo	Poway	CA	On Grade	Seniors	No	New	In Progress	Nov-20	Dec-21	44	9,300,000	McKinley	GC
92	Palomino	Brawley	CA	On Grade	Family	No	New	In Progress	Apr-21	Apr-22	60	12,199,266	Hedenkamp	GC
	Total # of Units & Total Contract Values										7,684	1,145,095,382		

\*Stylus, Sienna, and Civita Retail are a single building with total contact value of \$91,516,084

HOUSING AUTHORITY OF  
THE CITY OF SAN DIEGO

RESOLUTION NUMBER HA-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF SAN DIEGO AUTHORIZING THE ISSUANCE OF ONE OR MORE TAX-EXEMPT AND TAXABLE MULTIFAMILY HOUSING REVENUE NOTES AND BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$70,000,000 TO FINANCE THE ACQUISITION AND CONSTRUCTION OF A MULTIFAMILY RENTAL HOUSING FACILITY TO BE KNOWN AS AQUILA APARTMENTS (FORMERLY KNOWN AS 3ROOTS), AND APPROVING AND AUTHORIZING RELATED DOCUMENTS AND ACTIONS.

WHEREAS, pursuant to Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code, as amended (Act), the Housing Authority of the City of San Diego (Authority) is authorized to incur indebtedness to finance the acquisition, construction, and equipping of multifamily rental housing; and

WHEREAS, 3Roots CIC, LP, a California limited partnership (Borrower), has requested that the Authority borrow funds and loan the funds to the Borrower to finance and/or refinance Borrower's acquisition and construction of a multifamily residential rental housing facility to be known as "Aquila Apartments" (formerly referred to as "3Roots") (Project), consisting of 180 apartment units to be located at 9900 Camino Santa Fe, San Diego, California; and

WHEREAS, the Board of Commissioners of the Authority (Board) desires that a portion of the units in the Project be available for low and very low income persons or families, and to accomplish such purpose it is desirable for the Authority to issue one or more revenue notes and

subordinate bonds, or a combination thereof, to finance costs of the acquisition, construction and equipping of the Project; and

WHEREAS, the Authority intends to (i) execute and deliver its Housing Authority of the City of San Diego Multifamily Housing Revenue Notes (Aquila Apartments) 2021 Series C (Notes), which Notes may be designated in one or more subseries, which may be taxable or tax-exempt, evidencing a loan by Citibank, N.A. (Funding Lender) to the Authority, and (ii) and to issue and deliver its Housing Authority of the City of San Diego Subordinate Multifamily Housing Revenue Bonds (Aquila Apartments) 2021 Subordinate Series C (Subordinate Bonds), which Subordinate Bonds may be designated in one or more subseries, which may be taxable or tax-exempt, and are expected to be purchased by CIC Opportunities Fund III LLC, a California limited liability company, or an affiliate thereof (Subordinate Bond Purchaser), in each case to fund a loan to the Borrower (collectively, Loans) to assist in providing financing for the Project, which will allow the Borrower to reduce the cost of the Project and to assist in providing housing for low and very-low income persons;

WHEREAS, the City Council of the City of San Diego, by its Resolution R-313421, effective February 1, 2021, approved the Authority's issuance of revenue notes or bonds for the Project after publication of a "TEFRA" notice and the holding on January 26, 2021 of a "TEFRA" hearing, as required by the Internal Revenue Code of 1986, as amended (Code), and applicable United States Treasury Regulations; and

WHEREAS, California Government Code section 8869.85 requires that a local agency file an application with the California Debt Limit Allocation Committee (CDLAC) and obtain CDLAC's authorization to issue tax-exempt multifamily housing revenue obligations; and

WHEREAS, on April 28, 2021, CDLAC allocated to the Project \$40,000,000 of available State of California ceiling for private activity bonds under section 146 of the Code (the “Allocation Amount”); and

WHEREAS, the following documents are presented for consideration:

(1) The form of Funding Loan Agreement (Funding Loan Agreement), by and among the Authority, U.S. Bank National Association, as fiscal agent (Fiscal Agent), and the Funding Lender, including the form of Notes attached to the Funding Loan Agreement as Exhibit A; and

(2) The form of Borrower Loan Agreement (Borrower Loan Agreement), by and between the Authority and the Borrower;

(3) The form of Junior Indenture of Trust (Subordinate Indenture), to be entered into by and between the Authority and U.S. Bank National Association, as trustee (Trustee) for the Subordinate Bonds;

(4) The form of Junior Loan Agreement (Subordinate Loan Agreement), to be entered into by and among the Authority, the Trustee and the Borrower;

(5) The form of Regulatory Agreement and Declaration of Restrictive Covenants (Regulatory Agreement), by and among the Authority, the Fiscal Agent and the Borrower; and

(6) The form of Junior Bond Purchase Agreement (Junior BPA) by and among the Authority, the Borrower and the Subordinate Bond Purchaser;

WHEREAS, each of the above-referenced documents is in appropriate form and is an appropriate instrument to be executed and delivered for the purposes intended; and

NOW, THEREFORE, BE IT RESOLVED, by the Housing Authority of the City of San Diego, as follows:



Section 1. Finding and Determination. It is found and determined that it is necessary and desirable for the Authority to provide for the financing of the acquisition and construction of the Project through the execution and delivery of the Notes and the issuance and delivery of the Subordinate Bonds in order to assist persons of low and very low income within the City of San Diego in obtaining decent, safe, and sanitary housing and to achieve certain other public purposes.

Section 2. Authorization of Notes and Bonds. For the purpose of financing the acquisition and construction of the Project, the Authority approves the execution and delivery of the Notes and the issuance and delivery of the Subordinate Bonds (collectively, Obligations), in one or more series or subseries, in an aggregate principal amount not to exceed \$70,000,000, provided that the total principal amount of any tax-exempt Obligations shall not exceed the Allocation Amount. The Obligations shall be issued, executed and delivered in the principal amount, and shall bear interest (which shall not exceed 12% per annum) and mature (not later than 45 years from the date of execution and delivery thereof) as provided in the Funding Loan Agreement and the Subordinate Indenture, respectively. The Notes shall be in substantially the form attached as Exhibit A to the Funding Loan Agreement, and the Subordinate Bonds shall be in substantially the form attached as Exhibit A to the Subordinate Indenture, in each case with such appropriate variations, omissions, insertions, and provisions as are required or permitted by the Funding Loan Agreement. The Obligations shall be special, limited obligations of the Authority and shall be payable as to principal and interest, and the obligations of the Authority under the Funding Loan Agreement and the Subordinate Indenture shall be paid and satisfied, solely from the revenues, receipts and other moneys and assets pledged under the Funding Loan Agreement and the Subordinate Indenture.

Section 3. Execution and Delivery of the Obligations. The Obligations shall be executed on behalf of the Authority by the manual or facsimile signature of the Chairperson of the Authority (Chairperson), the Vice Chairperson of the Authority (Vice Chairperson), the Executive Director of the Housing Authority (Executive Director), President & CEO, Deputy CEO, Executive VP Real Estate or Vice President Multifamily Housing Finance, and the official seal of the Authority, or a facsimile, shall be impressed or imprinted on the Obligations and attested with the manual or facsimile signature of the Secretary or a Deputy Secretary of the Authority.

Section 4. Approval of the Funding Loan Agreement. The Funding Loan Agreement, in the form on file in the Housing Commission offices, is approved. The Chairperson, the Vice Chairperson, the Executive Director, President & CEO, Deputy CEO, Executive VP Real Estate, Vice President Multifamily Housing Finance, and the Deputy Secretary of the Authority, or the designee of any such officer (such officers and any of his or her respective designees, collectively, Designated Officers) are each authorized to execute and deliver the Funding Loan Agreement in such form, together with such changes as may be approved by the Designated Officer executing the same, upon consultation with the General Counsel to the Authority, such execution to constitute conclusive evidence of the approval of all changes from the form of the Funding Loan Agreement approved in this Resolution.

Section 5. Approval of Borrower Loan Agreement. The Borrower Loan Agreement, in the form on file in the Housing Commission offices, is approved. The Designated Officers are each authorized to execute and deliver the Borrower Loan Agreement in such form, together with such changes as may be approved by the Designated Officer executing the same, in consultation with the General Counsel to the Authority, such execution to constitute conclusive

evidence of the approval of all changes from the form of the Borrower Loan Agreement approved in this Resolution.

Section 6. Approval of Subordinate Indenture. The Subordinate Indenture, in the form on file in the Housing Commission offices, is approved. The Designated Officers are each authorized to execute and deliver the Subordinate Indenture in such form, together with such changes as may be approved by the Designated Officer executing the same, in consultation with the General Counsel to the Authority, such execution to constitute conclusive evidence of the approval of all changes from the form of the Subordinate Indenture approved in this Resolution.

Section 7. Approval of Subordinate Loan Agreement. The Subordinate Loan Agreement, in the form on file in the Housing Commission offices, is approved. The Designated Officers are each authorized to execute and deliver the Subordinate Loan Agreement in such form, together with such changes as may be approved by the Designated Officer executing the same, in consultation with the General Counsel to the Authority, such execution to constitute conclusive evidence of the approval of all changes from the form of the Subordinate Loan Agreement approved in this Resolution.

Section 8. Approval of Regulatory Agreement. The Regulatory Agreement, in the form on file in the Housing Commission offices, is approved. The Designated Officers are each authorized to execute and deliver the Regulatory Agreement in such form, together with such changes as may be approved by the Designated Officer executing the same, in consultation with the General Counsel to the Authority, such execution to constitute conclusive evidence of the approval of all changes from the form of the Regulatory Agreement approved in this Resolution.

Section 9. Approval of Junior BPA. The Junior BPA, in the form on file in the Housing Commission offices, is approved. The Designated Officers are each authorized to execute and

deliver the Junior BPA in such form, together with such changes as may be approved by the Designated Officer executing the same, in consultation with the General Counsel to the Authority, such execution to constitute conclusive evidence of the approval of all changes from the form of the Junior BPA approved in this Resolution.

Section 10. Actions Ratified and Authorized. All prior actions taken by the officers, employees, and agents of the Authority with respect to the issuance and sale of the Notes are approved, confirmed, and ratified, and the Designated Officers are each authorized, for and in the name and on behalf of the Authority, to take any and all actions and execute and deliver any and all certificates, agreements (including a tax certificate and agreement), any assignments of security documents or deed of trust, and other documents, including but not limited to those described in any of the documents approved by this Resolution, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Obligations and the making of the Loans in accordance with the Act and this Resolution.

Section 11. Further Consents, Approvals and Other Actions. All consents, approvals, notices, orders, requests, and other actions permitted or required by any of the documents authorized by this Resolution or otherwise appropriate in the administration of the Obligations and the lending program financed by the Obligations, including without limitation any of the foregoing which may be necessary or desirable in connection with any amendment of such documents, any transfer of the Project, any appointment or substitution of fiscal agent or lender, any substitution of security for the Obligations, or any prepayment or redemption of the Obligations may be taken or given by any of the Designated Officers, in consultation with the Authority's General Counsel, without further authorization by the Board, and the Designated Officers are authorized and directed to give any such consent, approval, notice, order or request

and to take any such action which such officer may deem necessary or desirable to further the purposes of this Resolution.

Section 12. Severability. If any section, paragraph, or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any remaining provisions of this Resolution.

Section 13. Effective Date. This Resolution shall take effect immediately upon its adoption.

APPROVED: MARA W. ELLIOTT, General Counsel

By \_\_\_\_\_  
Marguerite E. Middaugh  
Deputy General Counsel

MEM:jdf  
09/13/2021  
Or.Dept: Housing Authority  
Doc. No.: 2758535\_\_\_\_\_

**TO** Housing Authority of the City of San Diego

**FROM** Christine Rankin, Orrick, Herrington & Sutcliffe LLP

**DATE** September 14, 2021

**RE** Aquila Apartments (formerly known as 3Roots)

---

If the Housing Authority of the City of San Diego (Authority) adopts a resolution authorizing the issuance of the Housing Authority of the City of San Diego Multifamily Housing Revenue Notes (Aquila Apartments) 2021 Series C-1 and 2021 Series C-2 (Taxable) (collectively, Notes) and Housing Authority of the City of San Diego Subordinate Multifamily Housing Revenue Bonds (Aquila Apartments) 2021 Subordinate Series C-3 (Bonds) (Notes and Bonds are collectively referred to herein as Obligations), it is expected that the Obligations will be sold and issued in October 2021. The primary legal documents for the Obligations that are referenced in the Resolution of the Authority authorizing the issuance of the Obligations (Resolution) currently contain a number of blanks or bracketed items that are related to the final principal amount of the Obligations, various dates and other matters. The respective par amounts of the Obligations will depend upon the final underwriting by the lenders, which will be completed closer to the issuance date.

The following table sets forth a summary of the open items in the primary legal documents for the Obligations referenced in the Resolution, and describes when, and by whom, the information will be provided to fill in the blanks. Capitalized terms used below and not otherwise defined have the meanings given to them in the related documents.

<u>Document</u>	<u>Location Within Document</u>	<u>Item</u>	<u>When Completed</u>	<u>Responsible Party/Parties</u>
<b>Funding Loan Agreement</b>	Cover Page (and throughout)	Principal amount	Prior to closing	Citibank
	Section 1.1 Definitions (and references throughout)	Definition of “Closing Date”	Prior to closing	Borrower/Citibank/ Authority

September 14, 2021

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<u>Document</u>	<u>Location Within Document</u>	<u>Item</u>	<u>When Completed</u>	<u>Responsible Party/Parties</u>
	Section 2.1(b)	Amount of initial draw at closing	Prior to closing	Citibank/Borrower
	Section 7.7(d)	Initial deposit amount to Project Fund	Prior to closing	Citibank/Borrower
<b>Borrower Loan Agreement</b>	Cover Page and throughout	Principal amount	Prior to closing	Borrower/Citibank
	Section 1.2	Definition of “Closing Date”	Prior to closing	Borrower/Citibank/ Authority
		Definition of “Interim Phase Amount”	Prior to closing	Borrower/Citibank
		Definition of “Outside Conversion Date”	Prior to closing	Borrower/Citibank
		Definition of “Partnership Agreement” and dated date thereof	Prior to closing	Borrower/Equity Investor & Counsel
		Definition of “Subordinate Debt”	Prior to closing	Borrower/Citibank

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<u>Document</u>	<u>Location Within Document</u>	<u>Item</u>	<u>When Completed</u>	<u>Responsible Party/Parties</u>
	Section 5.27 Income from Project	Permitted Borrower distributions of NOI	Prior to closing	Borrower/Citibank/Equity Investor & Counsel
<b>Regulatory Agreement</b>	Cover Page (and throughout)	Principal amount	Prior to closing	Citibank/Authority/Borrower
	Section 1	Definition of “Closing Date”	Prior to closing	Borrower/Citibank/Authority
	Section 20	Authority’s fee	Prior to closing	Authority (following determination of principal amounts)
	Section 20	Occupancy Monitoring Fee information	Prior to closing	Authority
	Exhibit A	Legal Description	Prior to closing	Borrower/ Title Company
<b>Junior Indenture of Trust</b>	Cover Page (and throughout)	Principal Amount	Prior to closing	Borrower/Subordinate Bonds Purchaser/Authority
	Recitals	Principal Amount of Senior Notes	Prior to closing	Citibank
	Section 1.01	Definition of “Authorized Amount”	Prior to closing	Borrower/Subordinate Bonds Purchaser/Authority



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<u>Document</u>	<u>Location Within Document</u>	<u>Item</u>	<u>When Completed</u>	<u>Responsible Party/Parties</u>
		Definition of “Bond Rate”	Prior to closing	Subordinate Bonds Purchaser
		Definition of “Closing Date”	Prior to closing	All parties
		Definition of “Guarantor”	Prior to closing	Borrower, Subordinate Bonds Purchaser & counsel
		Definition of “Junior Completion Guaranty”	Prior to closing	Borrower, Subordinate Bonds Purchaser & counsel
		Definition of “Junior Completion and Repayment Guaranty”	Prior to closing	Borrower, Subordinate Bonds Purchaser & counsel
		Definition of “Maturity Date”	Prior to closing	Borrower, Subordinate Bonds Purchaser & counsel
		Definition of “Partnership Agreement” and dated date thereof	Prior to closing	Borrower/Equity Investor & Counsel
		Definition of “Revenues	Prior to closing	Borrower/Subordinate Bonds Purchaser & counsel

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<u>Document</u>	<u>Location Within Document</u>	<u>Item</u>	<u>When Completed</u>	<u>Responsible Party/Parties</u>
	Section 2.01 – The Bonds	Bond payment dates	Prior to closing	Borrower/Subordinate Bonds Purchaser & counsel
	Section 6.01 – Events of Default	Applicability of Default Rate	Prior to closing	Borrower/Subordinate Bonds Purchaser & counsel
<b>Junior Bond Purchase Agreement</b>	Cover page (and throughout)	Dated Date	Prior to closing	Borrower/Subordinate Bonds Purchaser/ Authority & counsel
	Cover page (and throughout)	Principal amount	Prior to closing	Borrower/Subordinate Bonds Purchaser
	Exhibit A – Glossary of Terms	Definition of “Closing Date”	Prior to closing	Borrower/Citibank/ Authority
		Definition of “Bond Payment Date	Prior to closing	Borrower/Subordinate Bonds Purchaser & counsel
		Definition of “Guarantor”	Prior to closing	Borrower, Subordinate Bonds Purchaser & counsel
	Exhibit B – Bond Terms	Dated date of Bonds	Prior to closing	All parties (Will be the same as the closing date)
		Maturity Date	Prior to closing	Borrower/Subordinate Bonds Purchaser & counsel
		Junior Conversion Date	Prior to closing	Borrower/Subordinate Bonds Purchaser & counsel

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<u>Document</u>	<u>Location Within Document</u>	<u>Item</u>	<u>When Completed</u>	<u>Responsible Party/Parties</u>
		Time of closing	Prior to closing	Borrower/Subordinate Bonds Purchaser & counsel
		Date of closing	Prior to closing	All parties (Will be the same as the closing date)
				Borrower/Subordinate Bonds Purchaser & counsel
	Exhibit C – Form of Supplemental Opinion of Bond Counsel	Form of opinion	Prior to closing	Bond Counsel
	Exhibit D – Form of Issuer’s Closing Certificate and Opinion	Form of Issuer’s Closing Certificate and Opinion	Prior to closing	Authority and counsel
	Exhibit E – Form of Borrower’s Counsel opinion	Form of opinion	Prior to closing	Borrower’s counsel

**FUNDING LOAN AGREEMENT**

**among**

**CITIBANK, N.A.,  
as Funding Lender**

**and**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO,  
as Governmental Lender**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Fiscal Agent**

**Dated as of October 1, 2021**

**Relating to:  
\$[C-1 PAR]**

**Housing Authority of the City of San Diego  
Multifamily Housing Revenue Note  
(Aquila Apartments) 2021 Series C-1**

**\$[C-2 TAXABLE PAR]  
Housing Authority of the City of San Diego  
Multifamily Housing Revenue Note  
(Aquila Apartments) 2021 Series C-2 (Taxable)**

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Exhibit A FORM OF GOVERNMENTAL LENDER NOTES

Exhibit B FORM OF REQUIRED TRANSFEREE REPRESENTATIONS

Exhibit C FORM OF WRITTEN REQUISITION OF THE BORROWER – PROJECT FUND

## FUNDING LOAN AGREEMENT

This Funding Loan Agreement, dated as of October 1, 2021 (this “Funding Loan Agreement”), is entered into by CITIBANK, N.A. (together with any successor hereunder, the “Funding Lender”), the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO, a public body corporate and politic, organized and existing under the laws of the State of California (together with its successors and assigns, the “Governmental Lender”) and U.S. Bank National Association, a national banking association duly organized and existing under the laws of the United States of America, as fiscal agent (together with its successors and assigns, the “Fiscal Agent”).

### RECITALS:

**WHEREAS**, the Governmental Lender is a public body, corporate and politic, duly organized and validly existing under the laws of the State of California; and

**WHEREAS**, the Governmental Lender is empowered pursuant to Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code (the “Act”) to: (a) make loans to any person to provide financing for residential rental developments located within the jurisdiction of the Governmental Lender and intended to be occupied in part by persons of very low and low income; (b) incur indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish any required reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans in order to secure the payment of the principal of, prepayment premium, if any, on and interest on such indebtedness of the Governmental Lender; and

**WHEREAS**, 3Roots CIC, LP, a California limited partnership (the “Borrower”), has requested that the Governmental Lender enter into this Funding Loan Agreement under which the Funding Lender will (i) advance funds (the “Funding Loan”) to or for the account of the Governmental Lender, and (ii) apply the proceeds of the Funding Loan to make a loan (the “Borrower Loan”) to the Borrower to finance or refinance costs of the acquisition and construction of an 180-units (including two managers’ units) multifamily rental housing project to be located at 9900 Camino Santa Fe in the City of San Diego, County of San Diego, California, known or to be known as “Aquila Apartments” (formerly referred to as “3Roots”); and

**WHEREAS**, simultaneously with the delivery of this Funding Loan Agreement, the Governmental Lender and the Borrower will enter into a Borrower Loan Agreement of even date herewith (as it may be supplemented or amended, the “Borrower Loan Agreement”), whereby the Borrower agrees to make loan payments to the Governmental Lender in an amount that, when added to other funds available under this Funding Loan Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

**WHEREAS**, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Borrower Notes (as defined herein) and the obligations of the Borrower under the Borrower Notes will be secured by a lien on



and security interest in the Project (as defined herein) pursuant to a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (California), of even date herewith (the "Security Instrument"), made by the Borrower in favor of the Governmental Lender, as assigned to the Funding Lender to secure the performance by the Governmental Lender of its obligations under the Funding Loan;

**WHEREAS**, the Governmental Lender has executed and delivered to the Funding Lender its Governmental Lender Notes (as defined herein), evidencing its obligation to make the payments due to the Funding Lender under the Funding Loan as provided in this Funding Loan Agreement, all things necessary to make the Funding Loan Agreement the valid, binding and legal limited obligation of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Lender Notes, subject to the terms hereof, have in all respects been duly authorized; and

**WHEREAS**, the Borrower has also requested that the Governmental Lender issue its Housing Authority of the City of San Diego Subordinate Multifamily Housing Revenue Bonds (Aquila Apartments) 2021 Subordinate Series C-3 to [CIC Opportunities Fund II LLC, a California limited liability company] (the "Subordinate Bond Purchaser"), and the Governmental Lender will provide a loan of the proceeds thereof to the Borrower under a Junior Loan Agreement, dated as of October 1, 2021, among the Governmental Lender, as Issuer, U.S. Bank National Association, as trustee (the "Subordinate Bond Trustee"), and the Borrower, that is secured and payable on a subordinate basis in relation to the Borrower Loan.

## A G R E E M E N T :

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

## ARTICLE I

### DEFINITIONS; PRINCIPLES OF CONSTRUCTION

**Section 1.1 Definitions.** For all purposes of this Funding Loan Agreement, except as otherwise expressly provided or unless the context otherwise clearly requires:

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Borrower Loan Agreement.

(b) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. The terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants."

(c) All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well. Singular terms shall include the plural as well as the singular, and vice versa.

(d) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the Approved Accounting Method. All references herein to “Approved Accounting Method” refer to such principles as they exist at the date of application thereof.

(e) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(f) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(g) References to the 2021 Series C-1 Governmental Lender Note as “tax-exempt” or to the “tax-exempt status” of the 2021 Series C-1 Governmental Lender Note are to the exclusion of interest on the 2021 Series C-1 Governmental Lender Note (other than any portion of the 2021 Series C-1 Governmental Lender Note held by a “substantial user” of the Project or a “related person” within the meaning of Section 147 of the Code) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

(h) The following terms have the meanings set forth below:

“Act” means Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code.

“Additional Borrower Payments” shall have the meaning given such term in the Borrower Loan Agreement.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

“Approved Transferee” means (i) a “qualified institutional buyer” (“QIB”) as defined in Rule 144A promulgated under the Securities Act that is a financial institution or commercial bank having capital and surplus of \$5,000,000,000 or more, (ii) an institutional accredited investor as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act (“Accredited Investor”), (iii) an affiliate of the Funding Lender that is a QIB or an Accredited Investor, or (iv) with the consent of the Governmental Lender, a trust or custodial arrangement established by the Funding Lender or one of its affiliates the beneficial interests in which will be owned only by QIBs and/or Accredited Investors.

“Authorized Amount” shall mean, (i) with respect to the 2021 Series C-1 Governmental Lender Note, \$[2021 C-1 PAR], the maximum principal amount of the 2021 Series C-1 Governmental Lender Note authorized under this Funding Loan Agreement; and (ii) with respect to the 2021 Series C-2 Governmental Lender Note, \$[2021 C-2 PAR], the maximum principal amount of the 2021 Series C-2 Governmental Lender Note authorized under this Funding Loan Agreement.

“Authorized Governmental Lender Representative” means the Chairperson, the Vice Chairperson, the Executive Director of the Governmental Lender, the President & CEO, Deputy

CEO, Executive VP Real Estate or Vice President Multifamily Housing Finance, or any person or persons designated to act on behalf of the Governmental Lender by a certificate filed with the Borrower, Funding Lender and Servicer, if any, containing the specimen signatures of such person or persons and signed on behalf of the Governmental Lender by its Chairperson, Vice Chairperson or Executive Director.

“Borrower” means 3Roots CIC, LP, a California limited partnership.

“Borrower Equity Account” shall mean the account within the Project Fund of that name established under Section 7.3(b) hereof.

“Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the aggregate principal amount of the Borrower Loan Amount, as evidenced by the Borrower Notes.

“Borrower Loan Agreement” shall mean the Borrower Loan Agreement, of even date herewith, between the Governmental Lender and the Borrower, as supplemented, amended or replaced from time to time in accordance with its terms.

“Borrower Loan Agreement Default” shall mean any event of default set forth in Section 8.1 of the Borrower Loan Agreement. A Borrower Loan Agreement Default shall “exist” if a Borrower Loan Agreement Default shall have occurred and be continuing beyond any applicable cure period.

“Borrower Loan Amount” shall mean \$[TOTAL 2021C PAR], the maximum principal amount of the Borrower Loan under the Borrower Loan Agreement.

“Borrower Loan Documents” shall have the meaning given such term in the Borrower Loan Agreement.

“Borrower Notes” shall mean, collectively, the 2021 Series C-1 Borrower Note and the 2021 Series C-2 Borrower Note.

“Business Day” shall mean any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York or California are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

“Closing Costs” has the meaning given to the term Costs of Funding in the Borrower Loan Agreement.

“Closing Date” shall mean [Closing Date], the date that initial Funding Loan proceeds are disbursed hereunder.

“Code” means the Internal Revenue Code of 1986 as in effect on the date of execution and delivery of the Governmental Lender Notes or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Commission” shall mean the San Diego Housing Commission, a public agency.

“Construction Funding Agreement” means that certain Construction Funding Agreement of even date herewith, between the Funding Lender, as agent for the Governmental Lender, and Borrower, pursuant to which the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf), as agent of the Governmental Lender, to the Fiscal Agent for disbursement to the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

“Construction Loan” has the meaning given to such term in the Borrower Loan Agreement.

“Contingency Draw-Down Agreement” means the Contingency Draw-Down Agreement of even date herewith among the Fiscal Agent, the Funding Lender and the Borrower relating to possible conversion of the Funding Loan from a draw down loan to a fully funded loan.

“Control” shall mean, with respect to any Person, either (a) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

“Conversion” has the meaning given to such term in the Borrower Loan Agreement.

“Conversion Date” shall have the meaning given such term in the Construction Funding Agreement.

“Default” shall mean the occurrence of an event, which, under any Funding Loan Document, would, but for the giving of notice or passage of time, or both, be an event of default under the applicable Funding Loan Document or a Borrower Loan Agreement Default.

“Draw-Down Notice” shall mean a notice described in Section 1.01 of the Contingency Draw-Down Agreement regarding the conversion of the Funding Loan from a draw down loan to a fully funded loan.

[“Equity Investors” shall mean, individually or collectively as the context shall require, (i) U.S. Bancorp Community Development Corporation, a Minnesota corporation, and (ii) U.S. Bank National Association, a national banking association.]

“Event of Default” shall have the meaning ascribed thereto in Section 9.1 hereof.

“Expense Fund” shall mean the fund of that name established under Section 7.3(c) hereof.

“Fair Market Value” shall mean the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance

with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of the investment. To the extent required by the Regulations, the term "investment" will include a hedge.

"Fiscal Agent" shall mean U.S. Bank National Association, which entity is appointed pursuant to Section 11.1 to serve as Fiscal Agent under this Funding Loan Agreement, and any successor thereto pursuant to Section 11.10.

"Fiscal Agent's Fees" shall mean the annual administration fee for the Fiscal Agent's ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each 12-month period, payable annually in advance on the Closing Date and each anniversary of the Closing Date, which fee is equal to (and shall not exceed) \$[2,500.00].

"Funding Lender" shall mean Citibank N.A., a national banking association, and any successor under this Funding Loan Agreement and the Borrower Loan Documents.

"Funding Loan Agreement" shall mean this Funding Loan Agreement, by and among the Funding Lender, the Governmental Lender and the Fiscal Agent, as it may from time to time be supplemented, modified or amended by one or more agreements or other instruments supplemental hereto entered into pursuant to the applicable provisions hereof.

"Funding Loan Documents" shall mean (a) this Funding Loan Agreement, (b) the Borrower Loan Agreement, (c) the Regulatory Agreement, (d) the Tax Certificate, (e) the Borrower Loan Documents, (f) all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and (g) all amendments, modifications, renewals and substitutions of any of the foregoing.

"Funding Loan Payment Fund" shall mean the fund of that name established by Section 7.3(a) hereof.

"Governmental Authority" has the meaning given to such term in the Borrower Loan Agreement.

"Governmental Lender" shall mean the Housing Authority of the City of San Diego.

"Governmental Lender Notes" shall mean, collectively, the 2021 Series C-1 Governmental Lender Note and the 2021 Series C-2 Governmental Lender Note; and a "Governmental Lender Note" shall mean one of such Governmental Lender Notes.

"Highest Rating Category" shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody's in the highest rating category given by that

rating agency for that general category of security. By way of example, the Highest Rating Category for tax-exempt municipal debt established by S&P is “A1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody’s of “MIG1” (for fixed rate) or “VMIG1” (for variable rate) for three months or less and “Aaa” for greater than three months. If at any time (a) both S&P and Moody’s rate a Permitted Investment and (b) one of those ratings is below the Highest Rating Category, then such Permitted Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, a Permitted Investment rated “AAA” by S&P and “Aa3” by Moody’s is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Permitted Investment will be deemed to be rated below the Highest Rating Category. For example, a Permitted Investment rated “AAA” by S&P and “A1” by Moody’s is not rated in the Highest Rating Category.

“Maturity Date” shall mean (i) with respect to the 2021 Series C-1 Governmental Lender Note, [2021 C-1 MATURITY], and (ii) with respect to the 2021 Series C-2 Governmental Lender Note, [2021 C-2 MATURITY].

“Maximum Rate” shall mean the lesser of (a) 12% per annum, and (b) the maximum interest rate that may be paid on the Funding Loan under State law.

“Minimum Beneficial Ownership Amount” shall mean an amount no less than fifteen percent (15%) of the outstanding principal amount of the Funding Loan, but in any event not less than \$100,000, or the full outstanding principal amount of the Funding Loan, if such principal amount is less than \$100,000.

“Moody’s” shall mean Moody’s Investors Service, Inc., or its successor.

“Negative Arbitrage Account” means the Negative Arbitrage Account of the Project Fund established under Section 7.3, as otherwise described in the Contingency Draw-Down Agreement.

“Negative Arbitrage Deposit” has the meaning set forth in the Contingency Draw-Down Agreement.

“Note Proceeds Account” shall mean the account within the Project Fund established under Section 7.3(b) hereof.

“Noteowner” or “owner of the Governmental Lender Notes” means the owner of the Governmental Lender Notes as shown on the registration books maintained by the Fiscal Agent pursuant to Section 2.4(e).

“Ongoing Governmental Lender Fee” shall mean the ongoing portion of the Governmental Lender Fee (as that term is defined in the Regulatory Agreement) that is payable after the Closing Date.

“Opinion of Counsel” shall mean a written opinion from an attorney or firm of attorneys, acceptable to the Funding Lender and the Governmental Lender with experience in the matters to be covered in the opinion; provided that whenever an Opinion of Counsel is required to address

the exclusion of interest on the 2021 Series C-1 Governmental Lender Note from gross income for purposes of federal income taxation, such opinion shall be provided by Tax Counsel.

“Permitted Investments” shall mean, to the extent authorized by law for investment of any moneys held under this Funding Loan Agreement, but only to the extent that the same are acquired at Fair Market Value:

(a) Direct obligations of the United States of America including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America (“Government Obligations”).

(b) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.

(c) Demand deposits or time deposits with certificates of deposit issued by the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000 and maturing in less than 365 days; provided that the Fiscal Agent or such other institution has been rated at least “VMIG-1”/“A-1+” by Moody’s/S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency.

(d) Bonds (including tax-exempt bonds), bills, notes or other obligations of or secured by Fannie Mae, Freddie Mac, the Federal Home Loan Bank or the Federal Farm Credit Bank.

(e) Money market funds rated AAA by S&P which are registered with the Securities and Exchange Commission and which meet the requirements of Rule 2(a)(7) of the Investment Company Act of 1940, as amended, including those for which the Fiscal Agent or its affiliates receives or retains a fee for providing services, as investment advisor, transfer agent, custodian or otherwise, to the fund.

(f) Collateralized Investment Agreements or Repurchase Agreements with financial institutions rated in the “A” category or higher without regard to qualifiers, by at least one Rating Agency. The agreement must be continually collateralized with obligations specified in paragraphs (a), (b) and/or (d) above, eligible for wire through the Federal Reserve Bank System or the DTC/PTC as applicable, and at a level of at least 103% of the amount on deposit and valued no less than daily. The collateral must be held by a third party custodian and be free and clear of all liens and claims of third parties. Securities must be valued daily, marked-to-market at current market price plus accrued interest. If the market value of the securities is found to be below the required level, the provider must restore the market value of the securities to the required level within one (1) business day. Permitted collateral must be delivered to and held in a segregated account by the Fiscal Agent or a custodian (the “Collateral Agent”), and the Collateral Agent cannot be the provider. The collateral must be delivered to the Collateral Agent before/simultaneous with payment (perfection by possession of certificated securities).

Acceptable collateral must be free and clear of all liens and claims of third parties and shall be registered in the name of the Collateral Agent for the benefit of the Governmental Lender and Fiscal Agent. The agreement shall state that the Collateral Agent has a valid and perfected first priority security interest in the securities, any substituted securities and all proceeds thereof.

(g) Any other investment authorized by the laws of the State, if such investment is approved in advance in writing by the Funding Lender in its sole discretion.

Permitted Investments shall not include any of the following:

(i) Except for any investment described in the next sentence, any investment or any agreement with a maturity profile greater than the date(s) on which funds representing the corpus of the investment may be needed under the Funding Loan Documents. This exception (1) shall not apply to Permitted Investments listed in paragraph (g).

(ii) Any obligation bearing interest at an inverse floating rate.

(iii) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

(iv) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index.

“Person” shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Pledged Revenues” shall mean the amounts pledged under this Funding Loan Agreement to the payment of the principal of, prepayment premium, if any, and interest on the Funding Loan and the Governmental Lender Notes, consisting of the following: (i) all income, revenues, proceeds and other amounts to which the Governmental Lender is entitled (other than amounts received by the Governmental Lender with respect to the Unassigned Rights) derived from or in connection with the Project and the Funding Loan Documents, including all Borrower Loan Payments due under the Borrower Loan Agreement and the Borrower Notes, payments with respect to the Borrower Loan Payments and all amounts obtained through the exercise of the remedies provided in the Funding Loan Documents and all receipts credited under the provisions of this Funding Loan Agreement against said amounts payable, and (ii) moneys held in the funds and accounts established under this Funding Loan Agreement, together with investment earnings thereon.

“Prepayment Premium” shall mean (i) any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Notes (including any prepayment premium as set forth in the Borrower Notes) and (ii) any premium payable on the Governmental Lender Notes pursuant to this Funding Loan Agreement.



“Project” shall have the meaning given to that term in the Borrower Loan Agreement.

“Project Fund” shall mean the fund by that name established under Section 7.3(b) hereof.

“Qualified Project Costs” shall have the meaning given to that term in the Borrower Loan Agreement.

“Rebate Fund” shall mean the fund of that name established by Section 7.3(d) hereof.

“Regulations” shall mean with respect to the Code, the relevant U.S. Treasury regulations and proposed regulations thereunder or any relevant successor provision to such regulations and proposed regulations.

“Regulatory Agreement” shall mean that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated as of the date hereof, between the Governmental Lender and the Borrower, as hereafter amended or modified.

“Remaining Funding Loan Proceeds Account” means the Remaining Funding Loan Proceeds Account of the Project Fund established under Section 7.3, as otherwise described in the Contingency Draw-Down Agreement.

“Remaining Funding Loan Proceeds Account Earnings Subaccount” has the meaning set forth in the Contingency Draw-Down Agreement.

“Required Transferee Representations” shall mean the representations in substantially the form attached to this Funding Loan Agreement as Exhibit B.

“Resolution” shall mean the resolution of the Governmental Lender authorizing the Funding Loan and the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party.

“Responsible Officer” means, when used with respect to the Fiscal Agent, the president, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any senior associate, any associate or any other officer of the Fiscal Agent within the corporate trust office designated for the Fiscal Agent in Section 12.1 hereof (or any successor corporate trust office, the “Corporate Trust Office”) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Corporate Trust Office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Funding Loan Agreement.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security” shall have the meaning assigned to it in Section 4.1.

“Security Instrument” shall mean the Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (California) (as amended, restated and/or supplemented from time to time) of even date herewith, made by the Borrower in favor of the Governmental

Lender, as assigned to the Funding Lender to secure the performance by the Governmental Lender of its obligations under the Funding Loan.

“2021 Series C-1 Borrower Note” shall mean that certain Multifamily Note, dated the Closing Date, in the original maximum principal amount of \$[2021 C-1 PAR], made by the Borrower and payable to the Governmental Lender, evidencing the loan of the proceeds of the 2021 Series C-1 Governmental Lender Note, as endorsed and assigned by the Governmental Lender without recourse to the Funding Lender, as executed by the Borrower, and as it may thereafter be amended or supplemented from time to time.

“2021 Series C-1 Governmental Lender Note” shall mean that certain Housing Authority of the City of San Diego Multifamily Housing Revenue Note (Aquila Apartments) 2021 Series C-1, dated the Closing Date, in the original maximum principal amount of \$[2021 C-1 PAR], made by the Governmental Lender and payable to the Funding Lender, as executed by the Governmental Lender and as it may thereafter be amended or supplemented from time to time.

“2021 Series C-2 Borrower Note” shall mean that certain Multifamily Note, dated the Closing Date, in the original maximum principal amount of \$[\_\_\_\_\_], made by the Borrower and payable to the Governmental Lender, evidencing the loan of the proceeds of the 2021 Series C-2 Governmental Lender Note, as endorsed and assigned by the Governmental Lender without recourse to the Funding Lender, as executed by the Borrower, and as it may thereafter be amended or supplemented from time to time.

“2021 Series C-2 Governmental Lender Note” shall mean that certain Housing Authority of the City of San Diego Multifamily Housing Revenue Note (Aquila Apartments) 2021 Series C-2 (Taxable), dated the Closing Date, in the original maximum principal amount of \$[\_\_\_\_\_], made by the Governmental Lender and payable to the Funding Lender, as executed by the Governmental Lender and as it may thereafter be amended or supplemented from time to time

“Servicer” shall mean any Servicer appointed by the Funding Lender to perform certain servicing functions with respect to the Funding Loan and on the Borrower Loan pursuant to a separate servicing agreement to be entered into between the Funding Lender and the Servicer. Initially the Servicer shall be the Funding Lender pursuant to this Funding Loan Agreement.

“Servicing Agreement” shall mean any servicing agreement entered into between the Funding Lender and a Servicer with respect to the servicing of the Funding Loan and/or the Borrower Loan.

“S&P” shall mean S&P Global Ratings, a Standard & Poor’s Financial Services LLC business, and its successors

“State” shall mean the State of California.

“Tax Certificate” shall mean the Tax Certificate and Agreement, dated the Closing Date, executed by Borrower and Governmental Lender, as the same may be amended or supplemented from time to time in accordance with its terms.

“Tax Counsel” shall mean (a) Orrick, Herrington & Sutcliffe LLP, or (b) any other attorney or firm of attorneys designated by the Governmental Lender and approved by the Funding Lender having a national reputation for skill in connection with the authorization and issuance of municipal obligations under Sections 103 and 141 through 150 (or any successor provisions) of the Code.

“Tax Counsel Approving Opinion” shall mean an opinion of Tax Counsel substantially to the effect that the Governmental Lender Notes constitute valid and binding obligations of the Governmental Lender and that, under existing statutes, regulations published rulings and judicial decisions, the interest on the 2021 Series C-1 Governmental Lender Note is excludable from gross income of the owner thereof for federal income tax purposes (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“Tax Counsel No Adverse Effect Opinion” shall mean an opinion of Tax Counsel substantially to the effect that the taking of the action specified therein will not, in and of itself, adversely affect any exclusion of interest on the 2021 Series C-1 Governmental Lender Note from gross income of the owner thereof for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“Title Company” shall mean, as of the Closing Date, First American Title Insurance Company.

“UCC” shall mean the Uniform Commercial Code as in effect in the State.

“Unassigned Rights” shall mean the Governmental Lender’s rights to (a) reimbursement and payment of its fees, costs and expenses and the Rebate Amount under Sections 2.5 and 5.35 of the Borrower Loan Agreement and Sections 2(h), 7 and 20 of the Regulatory Agreement, (b) access to the Project under Section 5.17 of the Borrower Loan Agreement, (c) indemnification under Section 5.15 of the Borrower Loan Agreement and Section 9 of the Regulatory Agreement, (d) attorneys’ fees under Sections 5.11, 5.14 and 10.15 of the Borrower Loan Agreement and Section 17 of the Regulatory Agreement, (e) receive notices, reports and other statements and its rights to consent to certain matters, including but not limited to its right to consent to amendments to this Funding Loan Agreement, the Borrower Loan Agreement and the Regulatory Agreement, and otherwise as provided in this Funding Loan Agreement and the Borrower Loan Agreement, (f) seek performance by the Borrower of its obligations under the Regulatory Agreement, and (g) seek performance of, and enforce, various tax covenants as described in Section 2.2(b)(i) of the Borrower Loan Agreement, including but not limited to those in Sections 5.34 and 5.35 of the Borrower Loan Agreement.

“Written Certificate,” “Written Certification,” “Written Consent,” “Written Direction,” “Written Notice,” “Written Order,” “Written Registration,” “Written Request,” and “Written Requisition” shall mean a written certificate, direction, notice, order or requisition signed by an Authorized Borrower Representative, an Authorized Governmental Lender Representative or an authorized representative of the Funding Lender and delivered to the Funding Lender, the Servicer, the Fiscal Agent or such other Person as required under the Funding Loan Documents.

“Yield” shall mean yield as defined in Section 148(h) of the Code and any regulations promulgated thereunder.

**Section 1.2 Effect of Headings and Table of Contents.** The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

**Section 1.3 Date of Funding Loan Agreement.** The date of this Funding Loan Agreement is intended as and for a date for the convenient identification of this Funding Loan Agreement and is not intended to indicate that this Funding Loan Agreement was executed and delivered on said date.

**Section 1.4 Designation of Time for Performance.** Except as otherwise expressly provided herein, any reference in this Funding Loan Agreement to the time of day shall mean the time of day in the city where the Funding Lender maintains its place of business for the performance of its obligations under this Funding Loan Agreement.

**Section 1.5 Interpretation.** The parties hereto acknowledge that each of them and their respective counsel have participated in the drafting and revision of this Funding Loan Agreement. Accordingly, the parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Funding Loan Agreement or any amendment or supplement or exhibit hereto.

## ARTICLE II

### TERMS; GOVERNMENTAL LENDER NOTES

#### Section 2.1 Terms.

(a) Principal Amount. The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount.

(b) Draw-Down Funding. The Funding Loan is originated on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Funding Lender to the Fiscal Agent for deposit by the Fiscal Agent to the Project Fund for the account of the Governmental Lender as and when needed to make each advance in accordance with the disbursement provisions of the Borrower Loan Agreement and the Construction Funding Agreement. Subject to the terms and conditions of the Borrower Loan Agreement, the Funding Lender agrees to advance, on behalf of the Governmental Lender, to the Title Company, to be used to pay Qualified Project Costs, \$[MINIMUM 55,000] on the Closing Date. The Borrower Loan advances and Funding Loan advances shall be allocated first to the 2021 Series C-1 Borrower Note and the related 2021 Series C-1 Governmental Lender Note and, once the foregoing have been fully funded, then to the 2021 Series C-2 Borrower Note and the related 2021 Series C-2 Governmental Lender Note. Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts may be drawn down and funded hereunder after December 31, 2024; provided, however, that upon the delivery of a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Funding Lender such date may be changed to a later date as specified in such Tax Counsel No Adverse Effect Opinion.

The Governmental Lender consents to the terms of the Contingency Draw-Down Agreement and agrees to take all actions requested in writing by the Funding Lender or the Borrower that are reasonably required of the Governmental Lender, in connection with the conversion of the Funding Loan to a fully drawn loan pursuant to the provisions of the Contingency Draw-Down Agreement in the event a Draw-Down Notice is filed by the Funding Lender or the Borrower, all at the expense of the Borrower. The Funding Lender authorizes and directs the Fiscal Agent to enter into the Contingency Draw-Down Agreement.

(c) Origination Date; Maturity. The Funding Loan shall be originated on the Closing Date and shall mature on the corresponding Maturity Date at which time the entire principal amount of the portion of the Funding Loan evidenced by the applicable Governmental Lender Note, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

(d) Principal. The outstanding principal amount of each Governmental Lender Note and of the Funding Loan as of any given date shall be the total amount advanced to the Fiscal Agent by the Funding Lender to or for the account of the Governmental Lender to fund corresponding advances with respect to the corresponding Borrower Note under the Borrower Loan Agreement and the Construction Funding Agreement as proceeds of the Borrower Loan, less any payments of principal of the Governmental Lender Note previously received upon payment of corresponding principal amounts under the corresponding Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of each Governmental Lender Note and interest thereon shall be payable on the basis specified in this paragraph (d) and in paragraphs (e) and (f) of this Section 2.1.

The Fiscal Agent shall keep a record of all principal advances and principal repayments made under each Governmental Lender Note and shall upon written request provide the Governmental Lender with a statement of the outstanding principal balance of each Governmental Lender Note and the Funding Loan.

(e) Interest. Interest shall be paid on the outstanding principal amount of each Governmental Lender Note at the rate or rates set forth in the corresponding Borrower Note and otherwise as set forth in the Borrower Loan Agreement.

(f) Corresponding Payments. The payment or prepayment of principal, interest and premium, if any, due on the Funding Loan and each Governmental Lender Note shall be identical with and shall be made on the same dates, terms and conditions, as the principal, interest, premiums, late payment fees and other amounts due on the corresponding Borrower Note. The 2021 Series C-1 Governmental Lender Note shall be payable from payments on the corresponding 2021 Series C-1 Borrower Note and the 2021 Series C-2 Governmental Lender Note shall be payable from payments on the related 2021 Series C-2 Borrower Note. Any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on a Borrower Note shall be deemed to be like payments or prepayments of principal, interest and Premium, if any, due on the Funding Loan and the corresponding Governmental Lender Note.

(g) Usury. The Governmental Lender intends to conform strictly to the usury laws applicable to this Funding Loan Agreement and the Governmental Lender Notes and all agreements made in the Governmental Lender Notes, this Funding Loan Agreement and the Funding Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid as interest or the amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed under any law which a court of competent jurisdiction may deem applicable hereto. If, from any circumstances whatsoever, the fulfillment of any provision of the Governmental Lender Notes, this Funding Loan Agreement or the other Funding Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Funding Lender shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Funding Lender, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. In no event shall the interest on the Governmental Lender Notes exceed the Maximum Rate. This paragraph shall control every other provision of the Governmental Lender Notes, this Funding Loan Agreement and all other Funding Loan Documents.

In determining whether the amount of interest charged and paid might otherwise exceed the limit prescribed by law, the Governmental Lender intends and agrees that (i) interest shall be computed upon the assumption that payments under the Borrower Loan Agreement and other Funding Loan Documents will be paid according to the agreed terms, and (ii) any sums of money that are taken into account in the calculation of interest, even though paid at one time, shall be spread over the actual term of the Funding Loan.

**Section 2.2 Form of Governmental Lender Notes.** As evidence of its obligation to repay the Funding Loan, simultaneously with the delivery of this Funding Loan Agreement to the Funding Lender, the Governmental Lender hereby agrees to execute and deliver the Governmental Lender Notes. The Governmental Lender Notes shall be substantially in the form set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement.

In connection with Conversion, the Funding Lender shall have the right to exchange the then existing 2021 Series C-1 Governmental Lender Note on or after the Conversion Date for a new 2021 Series C-1 Governmental Lender Note with a dated date of the Conversion Date and in a stated principal amount equal to the then outstanding principal amount of the 2021 Series C-1 Governmental Lender Note, which amount will equal the Permanent Period Amount (as defined in the Borrower Loan Agreement) of the Borrower Loan, but shall not otherwise change any material terms of the 2021 Series C-1 Governmental Lender Note.

**Section 2.3 Execution and Delivery of Governmental Lender Notes.** The Governmental Lender Notes shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of the Authorized Governmental Lender Representative and attested by the manual or facsimile signature of its Secretary or Deputy Secretary of Housing Authority of the City of San Diego. The manual or facsimile signatures of individuals who were the proper

officers of the Governmental Lender at the time of execution shall bind the Governmental Lender, notwithstanding that such individuals or any of them shall have ceased to hold such offices prior to the execution and delivery of the Governmental Lender Notes or shall not have held such offices at the date of the Governmental Lender Notes.

Following execution by the Governmental Lender, the Governmental Lender Notes shall not be valid or obligatory for any purpose or be entitled to any security or benefit under this Funding Loan Agreement unless and until a certificate of authentication on each such Governmental Lender Note substantially in the form contained on Exhibit A attached hereto shall have been duly executed by the Fiscal Agent. The certificate of authentication appearing on each Governmental Lender Note shall be deemed to have been duly executed by the Fiscal Agent if manually signed by an authorized officer or employee of the Fiscal Agent. Such authentication certificate of the Fiscal Agent shall be conclusive evidence that the applicable Governmental Lender Note so registered or authenticated has been duly executed, registered, or authenticated and delivered.

**Section 2.4 Required Transferee Representations; Participations; Sale and Assignment.**

(a) The Funding Lender shall deliver to the Governmental Lender and the Fiscal Agent the Required Transferee Representations in substantially the form attached hereto as Exhibit B on the Closing Date.

(b) The Funding Lender shall have the right to sell (i) the Governmental Lender Notes and the Funding Loan or (ii) any portion of or a participation interest in the Governmental Lender Note and the Funding Loan, to the extent permitted by Section 2.4(c) below, provided that such sale shall be such that there shall be no more than five (5) Approved Transferees owning or holding interests in the Governmental Lender Notes at any one time, and each Approved Transferee shall execute and deliver Required Transferee Representations to the Funding Lender, the Governmental Lender and the Fiscal Agent.

(c) Notwithstanding the other provisions of this Section 2.4, no beneficial ownership interest in the Governmental Lender Note and Funding Loan shall be sold in an amount that is less than the Minimum Beneficial Ownership Amount.

(d) No service charge shall be made for any sale or assignment of any portion of the Governmental Lender Notes, but the Governmental Lender may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any such sale or assignment. Such sums shall be paid in every instance by the purchaser or assignee of the Funding Loan or portion thereof.

(e) The Governmental Lender Notes, or any interest therein, shall be in fully registered form transferable to subsequent owners only on the registration books which shall be maintained by the Fiscal Agent for such purpose and which shall be open to inspection by the Governmental Lender and the Funding Lender. The Governmental Lender Notes shall not be transferred through the services of the Depository Trust Company or any other third party registrar.

The Fiscal Agent acknowledges that the Funding Lender is the initial registered owner of the Governmental Lender Notes and shall remain the sole registered owner of the Governmental Lender Notes except as provided herein. The Funding Lender shall provide written notice to the Fiscal Agent of any transfer by the Funding Lender of the Governmental Lender Notes or any interest of the Funding Lender in the Governmental Lender Notes.

(f) The parties agree that no rating shall be sought from a rating agency with respect to the Funding Loan or the Governmental Lender Notes.

### **ARTICLE III**

#### **PREPAYMENT**

**Section 3.1 Prepayment of the Governmental Lender Notes from Prepayment under the Corresponding Borrower Notes.** The Governmental Lender Notes are subject to voluntary and mandatory prepayment as follows:

(a) Each Governmental Lender Note shall be subject to voluntary prepayment in full or in part by the Governmental Lender, from funds received by the Fiscal Agent from the Borrower under the Borrower Loan Agreement to the extent and in the manner and on any date that the related Borrower Note is subject to voluntary prepayment as set forth therein, at a prepayment price equal to the principal balance of the related Borrower Note to be prepaid, plus interest thereon to the date of prepayment and the amount of any Prepayment Premium payable under the related Borrower Note, plus any Additional Borrower Payments due and payable under the Borrower Loan Agreement through the date of prepayment.

Except as specifically permitted in the Borrower Notes, the Borrower shall not have the right to voluntarily prepay all or any portion of the Borrower Notes, thereby causing the related Governmental Lender Note to be prepaid, without the prior written consent of Funding Lender, which may be withheld in Funding Lender's sole and absolute discretion.

(b) Each Governmental Lender Note shall be subject to mandatory prepayment in whole or in part upon prepayment of the related Borrower Note at the direction of the Funding Lender in accordance with the terms of the related Borrower Note at a prepayment price equal to the outstanding principal balance of the related Borrower Note prepaid, plus accrued interest plus any other amounts payable under the related Borrower Note or the Borrower Loan Agreement.

**Section 3.2 Notice of Prepayment.** Notice of prepayment of a Governmental Lender Note shall be deemed given to the extent that notice of prepayment of the related Borrower Note is timely and properly given to the Funding Lender (with a copy to the Governmental Lender) in accordance with the terms of the related Borrower Note and the Borrower Loan Agreement, and no separate notice of prepayment of a Governmental Lender Note is required to be given.



## ARTICLE IV

### SECURITY

**Section 4.1 Security for the Funding Loan.** To secure the payment of the Funding Loan and each Governmental Lender Note, to declare the terms and conditions on which the Funding Loan and each Governmental Lender Note are secured, and in consideration of the premises and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender by these presents does grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Funding Lender (except as limited herein), a lien on and security interest in the following described property (excepting, however, in each case, the Unassigned Rights) (said property, rights and privileges being herein collectively called, the "Security"):

(a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement and the Borrower Notes, including, without limitation, all rents, revenues and receipts derived by the Governmental Lender from the Borrower relating to the Project and including, without limitation, all Pledged Revenues, Borrower Loan Payments and Additional Borrower Payments derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement; provided that the pledge and assignment made under this Funding Loan Agreement shall be limited to the Security received by the Governmental Lender from the Borrower, but subject to such limitation shall not impair or diminish the obligations of the Governmental Lender under the provisions of the Borrower Loan Agreement;

(b) All right, title and interest of the Governmental Lender in, to and under, together with all rights, remedies, privileges and options pertaining to, the Funding Loan Documents, and all other payments, revenues and receipts derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Funding Loan Documents;

(c) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held under this Funding Loan Agreement and any amounts held at any time in the Remaining Funding Loan Proceeds Account, any Negative Arbitrage Deposit and any other amounts held under the Contingency Draw-Down Agreement, subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

(d) Any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of this Funding Loan Agreement as additional security by the Governmental Lender or anyone on its part or with its consent, or which pursuant to any of the provisions hereof or of the Borrower Loan Agreement may come into the possession or control of the Fiscal Agent, the Funding Lender or a receiver appointed pursuant to this Funding Loan Agreement; and the Funding Lender and the Fiscal Agent are hereby authorized to receive any and all such property as and for additional security for the Funding Loan and each Governmental Lender Note and to hold and apply all such property subject to the terms hereof.

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 4.1 for the payment of the principal of, premium, if any, and interest on each Governmental Lender Note, in accordance with its terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Lender Notes by the Governmental Lender. The Security so pledged and then or thereafter received by the Governmental Lender, Fiscal Agent or the Funding Lender shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

**Section 4.2 Delivery of Security.** To provide security for the payment of the Funding Loan and each Governmental Lender Note, the Governmental Lender has pledged and assigned to secure payment of the Funding Loan and the Governmental Lender Notes its right, title and interest in the Security to the Funding Lender. In connection with such pledge, assignment, transfer and conveyance, there shall be delivered to the Funding Lender, by or at the expense of the Borrower, the following documents or instruments promptly following their execution and, to the extent applicable, their recording or filing:

- (a) Each Borrower Note endorsed without recourse to the Funding Lender by the Governmental Lender;
- (b) The originally executed Borrower Loan Agreement and Regulatory Agreement;
- (c) The originally executed Security Instrument and all other Borrower Loan Documents existing at the time of delivery of the Borrower Notes and an assignment for security of the Security Instrument from the Governmental Lender to the Funding Lender, in recordable form;
- (d) Uniform Commercial Code financing statements or other chattel security documents giving notice of the Funding Lender's status as an assignee of the Governmental Lender's security interest in any personal property forming part of the Project, in form suitable for filing; and
- (e) Uniform Commercial Code financing statements giving notice of the pledge by the Governmental Lender of the Security pledged under this Funding Loan Agreement.

There shall be delivered and deposited with the Funding Lender such additional documents, financing statements, and instruments as the Funding Lender may reasonably require from time to time for the better perfecting and assuring to the Funding Lender of its lien and security interest in and to the Security including, at the request of the Funding Lender, any amounts held under the Contingency Draw-Down Agreement, in each case at the expense of the Borrower.

## **ARTICLE V**

### **LIMITED LIABILITY**

**Section 5.1 Source of Payment of Funding Loan and Other Obligations.** The Funding Loan is a limited obligation of the Governmental Lender, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned hereunder. NONE OF THE GOVERNMENTAL LENDER (EXCEPT AS PROVIDED IN THE FIRST SENTENCE OF THIS SECTION 5.1), THE CITY OF SAN DIEGO, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE GOVERNMENTAL LENDER, TO THE LIMITED EXTENT SET FORTH HEREIN), SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE FUNDING LOAN OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER WITH RESPECT THERETO EXCEPT AS SET FORTH HEREIN, AND NONE OF THE FUNDING LOAN, OR THE GOVERNMENTAL LENDER NOTES OR ANY OF THE GOVERNMENTAL LENDER'S AGREEMENTS OR OBLIGATIONS WITH RESPECT TO THE FUNDING LOAN, THE GOVERNMENTAL LENDER NOTES, OR HEREUNDER OR UNDER ANY OF THE OTHER FUNDING LOAN DOCUMENTS, SHALL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF OR A MORAL OBLIGATION OF ANY OF THE FOREGOING WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.

**Section 5.2 Exempt from Individual Liability.** No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of any present or future member of the Board of Commissioners, officer, director, employee or agent of the Governmental Lender in his individual capacity, and none of the members of the Board of Commissioners, the officers, directors, employees or agents of the Governmental Lender executing the Governmental Lender Notes or this Funding Loan Agreement shall be liable personally on the Governmental Lender Notes or under this Funding Loan Agreement or be subject to any personal liability or accountability by reason of the issuance of the Governmental Lender Notes or the execution of this Funding Loan Agreement or any of the Funding Loan Documents.

## **ARTICLE VI**

### **CLOSING CONDITIONS; APPLICATION OF FUNDS**

**Section 6.1 Conditions Precedent to Closing.** Closing of the Funding Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Funding Lender in its sole discretion of each of the conditions precedent to closing set forth in this Funding Loan Agreement, including but not limited to the following:

(a) Receipt by the Funding Lender of the original Governmental Lender Notes, authenticated by the Fiscal Agent;

(b) Receipt by the Funding Lender of the original executed Borrower Notes, endorsed without recourse to the Funding Lender by the Governmental Lender;

(c) Receipt by the Funding Lender of executed counterpart copies of this Funding Loan Agreement, the Borrower Loan Agreement, the Construction Funding Agreement, the Regulatory Agreement, the Tax Certificate and the Security Instrument;

(d) Receipt by the Funding Lender of a certified copy of the Resolution;

(e) Executed Required Transferee Representations from the Funding Lender;

(f) Delivery into escrow of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit, in accordance with Section 2.3(c)(ii) of, and as such capitalized term is defined in, the Borrower Loan Agreement;

(g) Receipt by the Funding Lender of a Tax Counsel Approving Opinion;

(h) Receipt by the Funding Lender of an Opinion of Counsel from Tax Counsel to the effect that the Governmental Lender Notes are exempt from registration under the Securities Act of 1933, as amended, and this Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;

(i) Delivery of an opinion of counsel to the Borrower addressed to the Governmental Lender to the effect that the Borrower Loan Documents and the Regulatory Agreement are valid and binding obligations of the Borrower that are enforceable against the Borrower in accordance with their terms, subject to such exceptions and qualifications as are acceptable to the Governmental Lender; and

(j) Receipt by the Funding Lender of any other documents or opinions that the Funding Lender or Tax Counsel may require.

Upon making the initial advance of the Funding Loan, the Funding Lender shall have deemed satisfied or waived each of the conditions to the closing of the Funding Loan set forth above.

## **ARTICLE VII**

### **FUNDS AND ACCOUNTS**

**Section 7.1 Authorization to Create Funds and Accounts.** Except as provided in Section 7.3 hereof, no funds or accounts shall be established in connection with the Funding Loan at the time of closing and origination of the Funding Loan. The Funding Lender, the Fiscal Agent (as directed in writing by the Funding Lender) and the Servicer, if any, and any designee of the Funding Lender or the Servicer, are authorized to establish and create from time to time such other funds and accounts or subaccounts as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Fiscal Agent, the Funding Lender or the Servicer pursuant to the terms

hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.

**Section 7.2 Investment of Funds.** Amounts held in any funds or accounts created under this Funding Loan Agreement shall be invested by the Fiscal Agent, the Funding Lender, the Servicer or the designee of the Funding Lender or Servicer, as applicable, in Permitted Investments at the Written Direction of the Borrower, which direction shall take into account the restrictions of Section 8.7 hereof and of the Tax Certificate. The Borrower's instruction shall be sufficient evidence that the investment constitutes a Permitted Investment (including as to the legality thereof). In the absence of any such instruction, monies shall be held uninvested. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in such fund or account. For purposes of acquiring any investments hereunder, the Fiscal Agent may commingle funds held by it hereunder, except as provided in Section 7.8(h) hereof with respect to the Rebate Fund. The Fiscal Agent shall incur no liability for losses arising from any investments made pursuant to this Section.

The Fiscal Agent shall furnish the Borrower and Funding Lender periodic cash transaction statements that include detail for all investment transactions effected by the Fiscal Agent or brokers selected by the Borrower. Upon the Borrower's or Funding Lender's election, such statements will be delivered via the Fiscal Agent's online service, and upon electing such service, paper statements will be provided only upon request. The Borrower waives the right to receive brokerage confirmations of security transactions effected by the Fiscal Agent as they occur, to the extent permitted by law. The Borrower further understands that trade confirmations for securities transactions effected by the Fiscal Agent will be available upon request and at no additional cost, and other trade confirmations may be obtained from the applicable broker.

**Section 7.3 Establishment of Funds.** There are established with the Fiscal Agent the following funds and accounts:

- (a) The Funding Loan Payment Fund;
- (b) The Project Fund (consisting solely of a Note Proceeds Account, an Equity Account, a Remaining Funding Loan Proceeds Account and a Negative Arbitrage Account);
- (c) The Expense Fund; and
- (d) The Rebate Fund (to be established by the Fiscal Agent once the Fiscal Agent is required to deposit or transfer, as applicable, amounts to the Rebate Fund in accordance with Section 7.8(a)).

All money required to be deposited with or paid to the Fiscal Agent for the account of any of the funds or accounts created by this Funding Loan Agreement shall be held by the Fiscal Agent for the benefit of the Funding Lender, and except for money held in the Expense Fund or the Rebate Fund, shall, while held by the Fiscal Agent, constitute part of the Pledged Revenues and be subject to the lien hereof.

**Section 7.4 Funding Loan Payment Fund.** The Governmental Lender and the Borrower shall have no interest in the Funding Loan Payment Fund or the moneys therein, which shall always be maintained by the Fiscal Agent completely separate and segregated from all other moneys held hereunder and from any other moneys of the Governmental Lender and the Borrower.

The Fiscal Agent shall deposit into the Funding Loan Payment Fund any amounts received from or on behalf of the Borrower as payments of principal of or premium and interest on the Borrower Loan and any other amounts received by the Fiscal Agent that are subject to the lien and pledge of this Funding Loan Agreement, including any Pledged Revenues not required to be deposited to the Expense Fund or not otherwise specifically directed in writing to be deposited into other funds created by this Funding Loan Agreement.

The Fiscal Agent shall apply all amounts on deposit in the Funding Loan Payment Fund in the following order of priority:

First, to pay or provide for the payment of the interest then due on the Funding Loan to the Funding Lender or any transferee of the Funding Lender with respect to the Funding Loan;

Second, to pay or provide for the payment or the prepayment (together with any Prepayment Premium payable in connection with such prepayment) of principal on the Funding Loan to the Funding Lender or any transferee of the Funding Lender with respect to the Funding Loan, provided moneys have been transferred or deposited into the Funding Loan Payment Fund for such purpose; and

Third, to pay or provide for the payment of the Funding Loan on the Maturity Date to the Funding Lender or any transferee of the Funding Lender with respect to the Funding Loan.

**Section 7.5 Expense Fund.** The Fiscal Agent shall deposit into the Expense Fund the amounts required by the Regulatory Agreement or the Borrower Loan Agreement to be paid by the Borrower to the Governmental Lender or the Fiscal Agent on behalf of the Borrower. Amounts on deposit in the Expense Fund shall be used to pay the fees and expenses of the Governmental Lender and the Fiscal Agent, as and when the same become due. In that regard, moneys in the Expense Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent to pay (i) the Ongoing Governmental Lender Fee to the Governmental Lender as and when due, (ii) the Fiscal Agent's Fees to the Fiscal Agent when due, (iii) upon receipt, to the Fiscal Agent, any amounts due to the Fiscal Agent which have not been paid, other than amounts paid in accordance with clause (ii) hereof, and (iv) upon receipt, to, or at the Written Direction of, the Governmental Lender, any amounts owing the Governmental Lender by the Borrower and then due and unpaid, other than amounts paid in accordance with clause (i) hereof.

In the event that the amounts on deposit in the Expense Fund are not equal to the amounts payable from the Expense Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower of such deficiency and of the amount of such deficiency and request payment within two Business Days to the Fiscal Agent of the amount of such deficiency.

Written notice of any insufficiency, which would result in the Governmental Lender not receiving the Ongoing Governmental Lender Fee on the applicable due date, shall be provided by the Fiscal Agent to the Governmental Lender (with a copy to the Borrower and the Funding Lender) within 10 days of the respective due date.

Upon payment by the Borrower to the Fiscal Agent of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

Notwithstanding anything herein to the contrary, the Fiscal Agent, on behalf of the Governmental Lender, shall prepare and submit a written invoice to the Borrower for payment of the Ongoing Governmental Lender Fee not later than 30 days prior to the due date for payment of such Ongoing Governmental Lender Fee, and shall remit moneys received by the Borrower to the Governmental Lender for payment of such fee.

**Section 7.6 [Reserved].**

**Section 7.7 Project Fund.**

(a) All proceeds of the Funding Loan provided by the Funding Lender shall be deposited to the Note Proceeds Account of the Project Fund and disbursed as herein provided; provided, however, that (i) the initial disbursement of the Funding Loan on the Closing Date shall be sent by the Funding Lender to the Title Company, and (ii) any proceeds of the Funding Loan funded pursuant to the Contingency Draw-Down Agreement shall be deposited to the Remaining Funding Loan Proceeds Account of the Project Fund and disbursed as herein provided. The Fiscal Agent shall disburse moneys in the Project Fund to finance or refinance the construction, improvement and equipping of the Project, to pay other Qualified Project Costs and to pay other costs related to the Project, as provided herein.

Not less than 97% of the moneys deposited in and credited to the Note Proceeds Account and Remaining Funding Loan Proceeds Account of the Project Fund representing the proceeds of the 2021 Series C-1 Governmental Lender Note, including Investment Income thereon, will be expended for Qualified Project Costs (the "97% Requirement"). The amounts on deposit in the Note Proceeds Account and Remaining Funding Loan Proceeds Account of the Project Fund shall not be applied to the payment of Closing Costs.

Before any payment shall be made from the Note Proceeds Account of the Project Fund, the Regulatory Agreement shall have been executed and submitted to a title company for recordation in the official records of San Diego County and there shall be filed with the Fiscal Agent a Written Requisition of the Borrower substantially in the form attached hereto as Exhibit C and approved by the Funding Lender pursuant to the terms, conditions and provisions of the Construction Funding Agreement.

In addition to the above, in connection with a Written Requisition:

(i) Only the signature of an authorized officer of the Funding Lender shall be required on a Written Requisition during any period in which a default by the Borrower has occurred and is then continuing under the Borrower Loan (Written Notice of which default has been given in writing by an authorized officer

of the Funding Lender to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such Written Notice as to the occurrence and continuation of such a default).

(ii) The Fiscal Agent shall disburse amounts in the Note Proceeds Account of the Project Fund for the payment of interest due on the Governmental Lender Notes upon receipt from the Funding Lender of a statement detailing the amount due (and without any need for a Written Requisition signed by the Funding Lender or any approval by an Authorized Representative of the Borrower) so long as the amounts to be disbursed do not exceed the total Authorized Amount of the Governmental Notes.

(iii) The Fiscal Agent may conclusively rely on all Written Requisitions, the execution of the Written Requisitions by the Authorized Borrower Representative and the approval of all Written Requisitions by the Funding Lender, as required by this Section, as conditions of payment from the Project Fund, which Written Requisitions constitute, as to the Fiscal Agent, irrevocable determinations that all conditions to payment of the specified amounts from the Project Fund have been satisfied. These documents shall be retained by the Fiscal Agent, subject at all reasonable times to examination by the Borrower, the Governmental Lender, the Funding Lender and the agents and representatives thereof upon reasonable notice to the Fiscal Agent. The Fiscal Agent is not required to inspect the Project or the construction work or to make any independent investigation with respect to the matters set forth in any Written Requisition or other statements, orders, certifications and approvals received by the Fiscal Agent. The Fiscal Agent is not required to obtain completion bonds, lien releases or otherwise supervise the acquisition, construction, equipping, improvement and installation of the Project.

(b) Upon receipt of each Written Requisition submitted by the Borrower and approved in writing by the Funding Lender, the Fiscal Agent shall promptly, but in any case within three Business Days, make payment from the appropriate Account within the Project Fund in accordance with such Written Requisition. The Fiscal Agent shall have no duty to determine whether any requested disbursement from the Project Fund complies with the terms, conditions and provisions of the Funding Loan Documents, constitutes payment of Qualified Project Costs or complies with the 97% Requirement. The approval in writing of a Written Requisition by the Funding Lender shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender, as applicable, are concerned, shall constitute conclusive evidence that all of the terms, conditions and requirements of the Funding Loan Documents applicable to such disbursement have been fully satisfied or waived and the Written Requisition from the Borrower shall, insofar as the Fiscal Agent and the Governmental Lender, as applicable, are concerned, constitute conclusive evidence that the costs described in the Written Requisition constitute Qualified Project Costs or other permitted Project costs.

The Fiscal Agent shall promptly provide Written Notice to the Borrower, the Funding Lender and the Governmental Lender if there are not sufficient funds available to or on deposit with the Fiscal Agent to make the disbursements as and when required by this Section 7.7(b). Except as provided in the next sentence, all such disbursements shall



be made by check or draft payable, or by wire transfer, either: (i) directly to the person, firm or corporation to be paid; (ii) to the Borrower and such person, firm or corporation; or (iii) upon receipt by the Funding Lender of evidence that the Borrower has previously paid such amount and Written Direction to the Fiscal Agent as to such as evidenced by the Funding Lender's approval of the Written Requisition, to the Borrower. Upon the occurrence of an Event of Default of the Borrower of which the Fiscal Agent has knowledge as provided herein, which is continuing under the Funding Loan Documents, with the Written Consent of the Funding Lender, the Fiscal Agent may apply amounts on deposit in the Project Fund to the payment of principal of and interest on the Funding Loan. If a Written Requisition signed by the Authorized Borrower Representative and countersigned by an authorized officer of the Funding Lender is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Fund, the Fiscal Agent shall close the Project Fund.

(c) Moneys deposited to the Negative Arbitrage Account of the Project Fund pursuant to the Contingency Draw-Down Agreement, together with investment earnings thereon, which shall be retained therein, shall be transferred to the Funding Loan Payment Fund and applied pursuant to Section 7.4 on each Borrower Loan Payment Date to the extent necessary to enable the Fiscal Agent to pay interest due on the Funding Loan on such date. The transfer of moneys from the Negative Arbitrage Account of the Project Fund to the Funding Loan Payment Fund shall occur automatically without the need for a Written Requisition of the Borrower, or consent of the Funding Lender.

(d) The Fiscal Agent shall deposit \$[ ] that it receives from the Title Company in the Borrower Equity Account of the Project Fund. Thereafter, the Fiscal Agent shall deposit to the Borrower Equity Account of the Project Fund amounts, if any, advanced by the Borrower to the Fiscal Agent with written direction to so deposit the funds to the Borrower Equity Account.

Amounts on deposit in the Borrower Equity Account of the Project Fund shall be disbursed from time to time by the Fiscal Agent to pay designated amounts as set forth in and upon receipt of a Written Requisition of the Borrower signed by an Authorized Borrower Representative and the Funding Lender. Notwithstanding the foregoing, only the signature of an authorized officer of the Funding Lender shall be required on a Written Requisition during any period in which a default by the Borrower has occurred and is then continuing under the Borrower Loan (Written Notice of which default has been given in writing by an authorized officer of the Funding Lender to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such Written Notice as to the occurrence and continuation of such a default).

(e) Prior to any mandatory prepayment of the Funding Loan pursuant to the terms hereof, any amounts then remaining in the Project Fund shall, at the written direction of the Funding Lender, be transferred to the Funding Loan Payment Fund to be applied to the prepayment of the Funding Loan pursuant hereto.

## **Section 7.8    Rebate Fund.**

(a)     The Fiscal Agent shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Fiscal Agent by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.

(b)     Within 15 days after each receipt or transfer of funds to the Rebate Fund, the Fiscal Agent shall withdraw from the Rebate Fund and pay to the United States of America the entire balance of the Rebate Fund.

(c)     All payments to the United States of America pursuant to this Section shall be made by the Fiscal Agent for the account and in the name of the Governmental Lender and shall be paid through the United States Mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such completed and signed forms to be provided to the Fiscal Agent by the Borrower or the Rebate Analyst).

(d)     The Fiscal Agent shall preserve all statements, forms and explanations received from the Borrower and delivered to the Fiscal Agent and all records of transactions in the Rebate Fund until six years after the retirement of the Governmental Lender Notes.

(e)     The Fiscal Agent may conclusively rely on the instructions of the Borrower (based upon the report of the Rebate Analyst) with regard to any actions to be taken by it pursuant to this Section and shall have no liability for any consequences of any failure of the Borrower or the Rebate Analyst to perform its duties or obligations or to supply accurate or sufficient instructions. Except as specifically provided in subsection (b) above, the Fiscal Agent shall have no duty or responsibility with respect to the Rebate Fund or the Borrower's duties and responsibilities with respect thereto except to follow the Borrower's specific written instruction related thereto.

(f)     If at any time during the term of this Funding Loan Agreement the Governmental Lender, the Fiscal Agent or the Borrower desires to take any action that would otherwise be prohibited by the terms of this Section, such person shall be permitted to take such action if it shall first obtain and provide to the other persons named herein, a Tax Counsel No Adverse Effect Opinion and an opinion of Tax Counsel that such action shall be in compliance with the laws of the State and the terms of this Funding Loan Agreement.

(g)     Moneys and securities held by the Fiscal Agent in the Rebate Fund shall not be deemed funds of the Governmental Lender and are not pledged or otherwise subject to any security interest in favor of the Owners to secure the Governmental Lender Notes or any other obligations.

(h)     Moneys in the Rebate Fund may be separately invested and reinvested by the Fiscal Agent, at the request of and as directed in writing by the Borrower, in Permitted Investments. The Fiscal Agent shall sell and reduce to cash a sufficient amount of such Permitted Investments, as directed in writing by the Borrower, whenever the cash balance in the Rebate Fund is insufficient for its purposes.

(i) Notwithstanding anything to the contrary in this Funding Loan Agreement, no payment shall be made by the Fiscal Agent to the United States if the Borrower shall furnish to the Governmental Lender and the Fiscal Agent an opinion of Tax Counsel to the effect that such payment is not required under Section 148(d) and (f) of the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the 2021 Series C-1 Governmental Lender Note. In such event the Borrower shall be entitled to withdraw funds from the Rebate Fund to the extent the Borrower shall provide a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Fiscal Agent with respect to such withdrawal.

(j) The Fiscal Agent shall keep and make available to the Governmental Lender and the Borrower records concerning the investments of all funds held by the Fiscal Agent pursuant to the Funding Loan Agreement including date bought and sold, price and commission paid, and bids taken, if any, and shall keep all such records until six years after the date on which neither of the Governmental Lender Notes are Outstanding in order to enable the Borrower to make the computations required under Section 148(f) of the Code.

(k) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 7.8 need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on a Tax Counsel No Adverse Effect Opinion, a copy of which shall be provided to the Fiscal Agent and the Governmental Lender. In the event of any conflict between the requirements of this Section 7.8 and those of the Tax Certificate, the Tax Certificate shall control.

## **Section 7.9 Investments.**

(a) Amounts on deposit in the Project Fund shall be invested in Permitted Investments directed in writing by the Borrower. Investment Income earned on amounts on deposit in each account of the Project Fund shall be retained in and credited to and become a part of the amounts on deposit in that account of the Project Fund.

(b) Amounts on deposit in the Funding Loan Payment Fund, Expense Fund and Rebate Fund shall be invested in Permitted Investments directed in writing by the Borrower. Investment Income earned on amounts on deposit in each account of the Funding Loan Payment Fund, Expense Fund and Rebate Fund shall be retained in and credited to and become a part of the amounts on deposit in that account of the Funding Loan Payment Fund, Expense Fund and Rebate Fund.

The Fiscal Agent may make any and all investments permitted under this Funding Loan Agreement through its own trust or banking department or any affiliate and may pay said department reasonable, customary fees for placing such investments. The Fiscal Agent and its affiliates may act as principal, agent, sponsor, advisor or depository with respect to Permitted Investments under this Funding Loan Agreement. The Fiscal Agent shall not be liable for any losses from investments made by the Fiscal Agent in accordance with this Funding Loan Agreement.

The Governmental Lender, the Funding Lender and the Borrower (by its execution of the Borrower Loan Agreement) acknowledge that to the extent regulations of the Comptroller of the

Currency or other applicable regulatory entity grant the Governmental Lender or the Funding Lender the right to receive brokerage confirmations of security transactions as they occur, at no additional cost, the Governmental Lender and the Funding Lender will not receive such confirmations to the extent permitted by law. The Fiscal Agent shall furnish the Borrower, the Funding Lender and the Governmental Lender (to the extent requested by such parties) periodic cash transaction statements which shall include detail for all investment transactions, if any, made by the Fiscal Agent hereunder.

## **ARTICLE VIII**

### **REPRESENTATIONS AND COVENANTS**

**Section 8.1 General Representations.** The Governmental Lender makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Governmental Lender is a public body corporate and politic, organized and existing under the laws of the State, has the power and authority to (i) enter into the Funding Loan Documents to which it is a party and the transactions contemplated thereby, (ii) incur the limited obligation represented by the Governmental Lender Notes and the Funding Loan, and apply the proceeds of such obligation or loan to finance the Project, and (iii) carry out its other obligations under this Funding Loan Agreement and the Governmental Lender Notes, and by proper action has duly authorized the Governmental Lender's execution and delivery of, and its performance under, the Funding Loan Documents to which it is a party.

(b) The Governmental Lender is not in default under or in violation of, and the execution and delivery of the Funding Loan Documents to which it is a party and its compliance with the terms and conditions thereof will not conflict or constitute a default under or a violation of, (i) the Act, (ii) to its knowledge, any other existing laws, rules, regulations, judgments, decrees and orders applicable to it, or (iii) to its knowledge, the provisions of any agreements and instruments to which the Governmental Lender is a party, a default under or violation of which would prevent it from entering into the Funding Loan Agreement, executing and delivering the Governmental Lender Notes, financing the Project, executing and delivering the other Funding Loan Documents to which it is a party or consummating the transactions on its part contemplated thereby, and, to its knowledge, no event has occurred and is continuing under the provisions of any such agreement or instrument or otherwise that with the lapse of time or the giving of notice, or both, would constitute such a default or violation (it being understood, however, that the Governmental Lender is making no representations as to the necessity of registering the Governmental Lender Notes or the Borrower Notes pursuant to any securities laws or complying with any other requirements of securities laws).

(c) No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending with respect to which the Governmental Lender has been served with process or, to the knowledge of the Governmental Lender, is threatened against the Governmental Lender with respect to (i) the organization and existence of the Governmental Lender, (ii) its authority to execute or deliver the Funding Loan Documents to which it is a party, (iii) the validity or enforceability of any such Funding Loan Documents or the transactions contemplated thereby, (iv) the title of any officer of the Governmental Lender who executed such

Funding Loan Documents or (v) any authority or proceedings relating to the execution and delivery of such Funding Loan Documents on behalf of the Governmental Lender, and no such authority or proceedings have been repealed, revoked, rescinded or amended but are in full force and effect.

(d) The revenues and receipts to be derived from the Borrower Loan Agreement, the Borrower Notes and this Funding Loan Agreement have not been pledged previously by the Governmental Lender to secure any of its notes or bonds other than the Funding Loan Agreement as evidenced by the Governmental Lender Notes.

THE GOVERNMENTAL LENDER MAKES NO REPRESENTATION, COVENANT OR AGREEMENT AS TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE PROJECT AND DOES NOT REPRESENT OR WARRANT AS TO ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWER IN CONNECTION WITH THE FUNDING LOAN OR THE BORROWER LOAN, OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

**Section 8.2 No Encumbrance on Security.** The Governmental Lender will not knowingly create or knowingly permit the creation of any mortgage, pledge, lien, charge or encumbrance of any kind on the Security or any part thereof prior to or on a parity with the lien of this Funding Loan Agreement, except as expressly permitted or contemplated by the Funding Loan Documents.

**Section 8.3 Repayment of Funding Loan.** Subject to the provisions of Articles III and V hereof, the Governmental Lender will duly and punctually repay, or cause to be repaid, the Funding Loan, as evidenced by the Governmental Lender Notes, as and when the same shall become due, all in accordance with the terms of the Governmental Lender Notes and this Funding Loan Agreement.

**Section 8.4 Servicer.** The Funding Lender may appoint a Servicer to service and administer the Funding Loan and/or the Borrower Loan on behalf of the Funding Lender, including without limitation the fulfillment of rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to Section 2.1 of the Borrower Loan Agreement.

**Section 8.5 Borrower Loan Agreement Performance.**

(a) The Funding Lender and the Servicer, if any, on behalf of the Governmental Lender, may (but shall not be required or obligated to) perform and observe any agreement or covenant of the Governmental Lender under the Borrower Loan Agreement subject to the terms and provisions contained therein, all to the end that the Governmental Lender's rights under the Borrower Loan Agreement may be unimpaired and free from default.

(b) The Governmental Lender will promptly notify the Borrower, the Servicer and the Funding Lender in writing of the occurrence of any Borrower Loan Agreement Default, provided that the Governmental Lender has received written notice of such event.

## **Section 8.6 Maintenance of Records; Inspection of Records.**

(a) The Fiscal Agent shall keep and maintain adequate records pertaining to any funds and accounts established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Governmental Lender Notes and interests therein. The Fiscal Agent shall retain in its possession all certifications and other documents presented to it, all such records and all records of principal, interest and premium paid on the Funding Loan, subject to the inspection of the Funding Lender and the Governmental Lender and their representatives at all reasonable times and upon reasonable prior notice.

(b) The Governmental Lender and the Funding Lender will at any and all times, upon the reasonable request of the Servicer, if any, the Borrower, the Fiscal Agent, the Governmental Lender or the Funding Lender, afford and procure a reasonable opportunity by their respective representatives to inspect the books, records, reports and other papers of the Governmental Lender or the Funding Lender, as appropriate, relating to the Project and the Funding Loan, if any, and (at their own expense) to make copies thereof.

**Section 8.7 Tax Covenants.** The Governmental Lender covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other instrument, it will:

(a) Require the Borrower to execute the Regulatory Agreement as a condition of funding the Borrower Loan;

(b) Not take or cause to be taken any action or actions, or fail to take any action or actions, which would cause the interest payable on the 2021 Series C-1 Governmental Lender Note to be includable in gross income of the Noteowner for federal income tax purposes;

(c) Whenever and so often as requested in writing by Funding Lender, the Governmental Lender (at the sole cost and expense of the Borrower), shall do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the 2021 Series C-1 Governmental Lender Note will be excluded from the gross income of the Noteowner, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any owner of the Governmental Lender Notes or a portion thereof is a “substantial user” of the facilities financed with the Funding Loan or a “related person” within the meaning of Section 147(a) of the Code;

(d) Not take any action nor, solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, knowingly permit or suffer any action to be taken if the result of the same would be to cause the Governmental Lender Notes to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations;

(e) Require the Borrower to agree, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, not to commit any act and not to make any use of the proceeds of the Funding Loan corresponding to the 2021 Series C-1 Governmental Lender Note, or any other moneys which may be deemed to be proceeds of such portion of the Funding Loan

pursuant to the Code, which would cause the 2021 Series C-1 Governmental Lender Note to be an “arbitrage bond” within the meaning of Sections 103(b) and 148 the Code, and to comply with the requirements of the Code throughout the term of the Funding Loan corresponding to the 2021 Series C-1 Governmental Lender Note; and

(f) Require the Borrower, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, to take all steps necessary to compute and pay any rebatable arbitrage in accordance with Section 148(f) of the Code.

In furtherance of the covenants in this Section 8.7, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate which are by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full. In the event of any conflict between this Funding Loan Agreement and the Tax Certificate, the requirements of the Tax Certificate shall control.

For purposes of this Section 8.7 the Governmental Lender’s compliance shall be based solely on matters within the Governmental Lender’s knowledge and control and no acts, omissions or directions of the Borrower, the Funding Lender or any other Persons shall be attributed to the Governmental Lender.

In complying with the foregoing covenants, the Governmental Lender may rely from time to time on a Tax Counsel No Adverse Effect Opinion or other appropriate opinion of Tax Counsel.

**Section 8.8 Performance by the Borrower.** Without relieving the Governmental Lender from the responsibility for performance and observance of the agreements and covenants required to be performed and observed by it hereunder, the Borrower, on behalf of the Governmental Lender, may (but is under no obligation to) perform any such agreement or covenant if no Borrower Loan Agreement Default or Potential Default under (and as such term is defined in) the Borrower Loan Agreement exists.

## **ARTICLE IX**

### **DEFAULT; REMEDIES**

**Section 9.1 Events of Default.** Any one or more of the following shall constitute an event of default (an “Event of Default”) under this Funding Loan Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative authority or Governmental Authority):

(a) A default in the payment of any interest on the Governmental Lender Notes when such interest becomes due and payable;

(b) A default in the payment of principal of, or premium on, the Governmental Lender Notes when such principal or premium becomes due and payable, whether at its stated maturity, by declaration of acceleration or call for mandatory prepayment or otherwise;

(c) Subject to Section 8.8 hereof, default in the performance or breach of any material covenant or warranty of the Governmental Lender in this Funding Loan Agreement (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 30 days after there has been given written notice, as provided in Section 12.1 hereof, to the Governmental Lender and the Borrower by the Funding Lender or the Servicer, specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” under this Funding Loan Agreement; provided that, so long as the Governmental Lender has commenced to cure such failure to observe or perform within the thirty (30) day cure period, the subject matter of the default is not capable of cure within said thirty (30) day period and the Governmental Lender is diligently pursuing such cure to the Funding Lender’s satisfaction, with the Funding Lender’s Written Direction or Written Consent, then the Governmental Lender shall have an additional period of time as reasonably necessary (not to exceed 30 days unless extended in writing by the Funding Lender) within which to cure such default;

(d) A default in the payment of any Additional Borrower Payments; or

(e) Any other “Default” or “Event of Default” under any of the other Funding Loan Documents (taking into account any applicable grace periods therein).

## **Section 9.2 Acceleration of Maturity; Rescission and Annulment.**

(a) Subject to the provisions of Section 9.9 hereof, upon the occurrence of an Event of Default under Section 9.1 hereof, then and in every such case, the Funding Lender may declare the principal of the Funding Loan and the Governmental Lender Notes and the interest accrued to be immediately due and payable, by notice to the Governmental Lender, Borrower and the Equity Investors, and upon any such declaration, all principal of and Prepayment Premium, if any, and interest on the Funding Loan and the Governmental Lender Notes shall become immediately due and payable.

(b) At any time after a declaration of acceleration has been made pursuant to subsection (a) of this Section, the Funding Lender may by Written Notice to the Governmental Lender rescind and annul such declaration and its consequences if:

(i) there has been deposited with the Funding Lender a sum sufficient to pay (1) all overdue installments of interest on the Funding Loan, (2) the principal of and Prepayment Premium on the Funding Loan that has become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in the Funding Loan, (3) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in the Funding Loan, and (4) all sums paid or advanced by the Funding Lender and the reasonable compensation, expenses, disbursements and advances of the Funding Lender, its agents and counsel (but only to the extent not duplicative with subclauses (1) and (3) above); and



(ii) all Events of Default, other than the non-payment of the principal of the Funding Loan that has become due solely by such declaration of acceleration, have been cured or have been waived in writing as provided in Section 9.9 hereof.

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

(c) Notwithstanding the occurrence and continuation of an Event of Default, it is understood that the Funding Lender shall pursue no remedies against the Borrower, any of the Borrower's partners or the Project if no Borrower Loan Agreement Default has occurred and is continuing. An Event of Default hereunder shall not in and of itself constitute a Borrower Loan Agreement Default.

### **Section 9.3 Additional Remedies; Funding Lender Enforcement.**

(a) Upon the occurrence of an Event of Default, the Funding Lender may, subject to the provisions of this Section 9.3 and Section 9.9 hereof, proceed to protect and enforce its rights by mandamus or other suit, action or proceeding at law or in equity. No remedy conferred by this Funding Loan Agreement upon or remedy reserved to the Funding Lender is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy given to the Funding Lender hereunder or now or hereafter existing at law or in equity or by statute.

(b) Upon the occurrence and continuation of any Event of Default, the Funding Lender may proceed forthwith to protect and enforce its rights and this Funding Loan Agreement by such suits, actions or proceedings as the Funding Lender, in its sole discretion, shall deem expedient. Funding Lender shall have upon the occurrence and continuation of any Event of Default all rights, powers, and remedies with respect to the Security as are available under the Uniform Commercial Code applicable thereto or as are available under any other applicable law at the time in effect and, without limiting the generality of the foregoing, the Funding Lender may proceed at law or in equity or otherwise, to the extent permitted by applicable law:

(i) to take possession of the Security or any part thereof, with or without legal process, and to hold, service, administer and enforce any rights thereunder or thereto, and otherwise exercise all rights of ownership thereof, including (but not limited to) the sale of all or part of the Security;

(ii) to become mortgagee of record for the Borrower Loan including, without limitation, completing the assignment of the Security Instrument by the Governmental Lender to the Funding Lender as anticipated by this Funding Loan Agreement, and recording the same in the real estate records of the jurisdiction in which the Project is located, without further act or consent of the Governmental Lender, and to service and administer the same for its own account;

(iii) to service and administer the Funding Loan as agent and on behalf of the Governmental Lender or otherwise, and, if applicable, to take such actions necessary to enforce the Borrower Loan Documents and the Funding Loan

Documents on its own behalf, and to take such alternative courses of action, as it may deem appropriate; or

(iv) to take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Governmental Lender Notes, this Funding Loan Agreement or the other Funding Loan Documents, or the Borrower Loan Documents, or in and of the execution of any power herein granted, or for foreclosure hereunder, or for enforcement of any other appropriate legal or equitable remedy or otherwise as the Funding Lender may elect.

(c) Whether or not an Event of Default has occurred, the Funding Lender, in its sole discretion, shall have the sole right to waive or forbear from enforcing any term, condition, covenant or agreement of the Security Instrument, the Borrower Loan Agreement, the Borrower Notes or any other Borrower Loan Documents or Funding Loan Documents applicable to the Borrower, or any breach thereof, other than a covenant that would adversely impact the tax-exempt status of the interest on the Governmental Lender Notes, and provided that the Governmental Lender may seek specific performance by the Borrower to enforce the Unassigned Rights; provided, however, that any such forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion (as such term is defined in the Borrower Loan Agreement).

(d) If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreement, and if such default remains uncured for a period of 60 days after the Borrower, the Equity Investors and the Funding Lender receive Written Notice stating that a default under the Regulatory Agreement has occurred and specifying the nature of the default, the Funding Lender shall have the right to seek specific performance of the provisions of the Regulatory Agreement or to exercise its other rights or remedies thereunder.

(e) If the Borrower defaults in the performance of its obligations under the Borrower Loan Agreement (subject to applicable notice and cure periods) to make rebate payments, to comply with any applicable continuing disclosure requirements, or to make payments owed pursuant to Sections 2.5, 5.14 or 5.15 of the Borrower Loan Agreement for fees, expenses or indemnification, the Funding Lender shall have the right to exercise all its rights and remedies thereunder (subject to the last paragraph of Section 9.14 hereof).

**Section 9.4 Application of Money Collected.** Any money collected by the Funding Lender pursuant to this Article and any other sums then held by the Funding Lender as part of the Security, shall be applied in the following order, at the date or dates fixed by the Funding Lender:

(a) First: To the payment of any and all amounts due under the Funding Loan Documents other than with respect to principal and interest accrued on the Funding Loan, including, without limitation, any amounts due to the Governmental Lender, the Funding Lender, the Servicer, the Fiscal Agent and the Rebate Analyst;

(b) Second: To the payment of the whole amount of the Funding Loan, as evidenced by the Governmental Lender Notes, then due and unpaid in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Funding Loan) on overdue principal of, and Prepayment Premium and overdue installments of interest on the Funding Loan; provided, however, that partial interests in any portion of the Funding Loan shall be paid in such order of priority as may be prescribed by Written Direction of the Funding Lender in its sole and absolute discretion; and

(c) Third: The payment of the remainder, if any, to the Borrower or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

If and to the extent this Section 9.4 conflicts with the provisions of the Servicing Agreement, the provisions of the Servicing Agreement shall control. Capitalized terms used in this Section 9.4 but not otherwise defined in this Funding Loan Agreement shall have the meanings given such terms in the Servicing Agreement.

**Section 9.5 Remedies Vested in Funding Lender.** All rights of action and claims under this Funding Loan Agreement or the Governmental Lender Notes may be prosecuted and enforced by the Funding Lender without the possession of the Governmental Lender Notes or the production thereof in any proceeding relating thereto.

**Section 9.6 Restoration of Positions.** If Funding Lender shall have instituted any proceeding to enforce any right or remedy under this Funding Loan Agreement and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Funding Lender, then and in every such case the Governmental Lender and the Funding Lender shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Governmental Lender and the Funding Lender shall continue as though no such proceeding had been instituted.

**Section 9.7 Rights and Remedies Cumulative.** No right or remedy herein conferred upon or reserved to the Funding Lender is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**Section 9.8 Delay or Omission Not Waiver.** No delay or omission of the Funding Lender to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Funding Lender may be exercised from time to time, and as often as may be deemed expedient, by Funding Lender. No waiver of any default or Event of Default pursuant to Section 9.9 hereof shall extend to or shall affect any subsequent default or Event of Default hereunder or shall impair any rights or remedies consequent thereon.

**Section 9.9 Waiver of Past Defaults.** Before any judgment or decree for payment of money due has been obtained by the Funding Lender, the Funding Lender may, subject to Section 9.6 hereof, by Written Notice to the Governmental Lender and the Borrower, waive any past default hereunder or under the Borrower Loan Agreement and its consequences except for default in obligations due the Governmental Lender pursuant to or under the Unassigned Rights. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Funding Loan Agreement and the Borrower Loan Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

**Section 9.10 Remedies Under Borrower Loan Agreement or Borrower Notes.** As set forth in this Section 9.10 but subject to Section 9.9 hereof, the Funding Lender shall have the right, in its own name or on behalf of the Governmental Lender, to declare any default and exercise any remedies under the Borrower Loan Agreement or the Borrower Notes, whether or not the Governmental Lender Notes have been accelerated or declared due and payable by reason of an Event of Default.

**Section 9.11 Waiver of Appraisalment and Other Laws.**

(a) To the extent permitted by law, the Governmental Lender will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisalment, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws. The Governmental Lender, for itself and all who may claim under it, waives, to the extent that it may lawfully do so, all right to have the property in the Security marshaled upon any enforcement hereof.

(b) If any law now in effect prohibiting the waiver referred to in clause (a) shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section 9.11.

**Section 9.12 Suits to Protect the Security.** The Funding Lender shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Security by any acts that may be unlawful or in violation of this Funding Loan Agreement and to protect its interests in the Security and in the rents, issues, profits, revenues and other income arising therefrom, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any Governmental Authority enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Funding Lender.

**Section 9.13 Remedies Subject to Applicable Law.** All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Funding

Loan Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

**Section 9.14 Assumption of Obligations.** In the event that the Funding Lender or its assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under the Borrower Loan Agreement, the Borrower Notes, the Regulatory Agreement and any other Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default hereunder, rights and remedies may be pursued pursuant to the terms of the Funding Loan Documents.

## **ARTICLE X**

### **AMENDMENT; AMENDMENT OF BORROWER LOAN AGREEMENT AND OTHER DOCUMENTS**

**Section 10.1 Amendment of Funding Loan Agreement.** Any of the terms of this Funding Loan Agreement and the Governmental Lender Notes may be amended or waived only by an instrument signed by the Funding Lender and the Governmental Lender, provided, however, no such amendment which materially affects the rights, duties, obligations or other interests of the Borrower or Fiscal Agent shall be made without the consent of the Borrower or Fiscal Agent, as applicable, and, provided further, that if the Borrower is in default under any Funding Loan Document, no Borrower consent shall be required unless such amendment has a material adverse effect on the rights, duties, obligations or other interests of the Borrower. All of the terms of this Funding Loan Agreement shall be binding upon the successors and assigns of and all persons claiming under or through the Governmental Lender or any such successor or assign, and shall inure to the benefit of and be enforceable by the successors and assigns of the Funding Lender.

**Section 10.2 Amendments Require Funding Lender Consent.** The Governmental Lender shall not consent to any amendment, change or modification of the Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document without the prior Written Consent of the Funding Lender.

**Section 10.3 Consents and Opinions.** No amendment to this Funding Loan Agreement or any other Funding Loan Document entered into under this Article X or any amendment, change or modification otherwise permitted under this Article X shall become effective unless and until (i) the Funding Lender shall have approved the same in writing in its sole discretion and (ii) the Funding Lender shall have received, at the expense of the Borrower, a Tax Counsel No Adverse Effect Opinion and an Opinion of Counsel substantially to the effect that any such proposed amendment is authorized and complies with the provisions of this Funding Loan Agreement and is a valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

## ARTICLE XI

### THE FISCAL AGENT

**Section 11.1 Appointment of Fiscal Agent; Acceptance.** The Governmental Lender hereby appoints Fiscal Agent as fiscal agent hereunder. The Fiscal Agent shall signify its acceptance of the duties and obligations imposed upon it by this Funding Loan Agreement by executing this Funding Loan Agreement.

**Section 11.2 Certain Duties and Responsibilities of Fiscal Agent.**

(a) The Fiscal Agent undertakes to perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement, and no implied covenants or obligations shall be read into this Funding Loan Agreement against the Fiscal Agent.

(b) If an event of default exists hereunder or under any Borrower Loan Document, the Fiscal Agent shall exercise such of the rights and powers vested in it by this Funding Loan Agreement, and exercise any rights or duties or remedies solely at the written direction of the Funding Lender.

(c) No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, in each case, as finally adjudicated by a court of law, except that:

(i) This subsection shall not be construed to limit the effect of subsection (a) of this Section;

(ii) The Fiscal Agent shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts;

(iii) The Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Funding Lender relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any power conferred upon the Fiscal Agent under this Funding Loan Agreement; and

(iv) No provision of this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it in its sole discretion.

(v) Subject to its rights to indemnification pursuant to Section 11.4 hereof, the Fiscal Agent is directed to enter into the Borrower Loan Documents to which it is a party solely in its capacity as Fiscal Agent.

(d) Whether or not therein expressly so provided, every provision of this Funding Loan Agreement and the other Funding Loan Documents relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section.

(e) The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Fiscal Agent and conforming to the requirements of this Funding Loan Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Funding Loan Agreement on their face.

(f) The permissive rights of the Fiscal Agent to do things enumerated in this Funding Loan Agreement shall not be construed as a duty.

**Section 11.3 Notice of Defaults.** Upon the occurrence of any default hereunder or under any Borrower Loan Document and provided that a Responsible Officer of the Fiscal Agent has actual knowledge or has received Written Notice of the existence of such default, promptly, and in any event within 15 days, the Fiscal Agent shall transmit to the Governmental Lender, the Borrower, the Equity Investors, the Servicer, if any, and the Funding Lender, in the manner and at the addresses for notices set forth in Section 12.1 hereof, notice of such default hereunder known to the Fiscal Agent pursuant to Section 11.4(g) hereof, unless such default shall have been cured or waived.

**Section 11.4 Certain Rights of Fiscal Agent.** Except as otherwise provided in Section 11.1 hereof:

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

(b) Any request or direction of the Governmental Lender mentioned herein shall be sufficiently evidenced by a certificate or order executed by an Authorized Governmental Lender Representative;

(c) Whenever in the administration of this Funding Loan Agreement or any Borrower Loan Document the Fiscal Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Fiscal Agent (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a Written Certificate of the Governmental Lender, the Funding Lender, the Servicer or the Borrower, as appropriate;

(d) The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Funding Loan Agreement or any Borrower Loan Document at the request or direction of the Funding Lender, pursuant to this Funding Loan Agreement, unless the Funding Lender shall have offered to the Fiscal Agent in writing security or indemnity reasonably

satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, except costs, expenses and liabilities which are adjudicated to have resulted from its own negligence or willful misconduct, provided, that nothing contained in this subparagraph (d) shall be construed to require such security or indemnity for the performance by the Fiscal Agent of its obligations under Article VII hereof;

(e) The Fiscal Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, debenture, coupon or other paper or document but the Fiscal Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Fiscal Agent shall determine to make such further inquiry or investigation, it shall be entitled to examine the books and records of the Governmental Lender, if any, and of the Borrower, in either case personally or by agent or attorney after reasonable notice and during normal business hours;

(f) The Fiscal Agent may execute any of its powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and pay reasonable compensation thereto and the Fiscal Agent shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder. The Fiscal Agent may act upon the advice of counsel of its choice concerning all matters hereof and the Fiscal Agent shall not be responsible for any loss or damage resulting from any action or inaction taken in good faith reliance upon said advice; and

(g) The Fiscal Agent shall not be required to take notice or be deemed to have notice of any default hereunder or under any Borrower Loan Document except for failure by the Borrower to make payments of principal, interest, premium, if any, or Ongoing Governmental Lender Fee when due, unless a Responsible Officer of the Fiscal Agent shall be specifically notified by a Written Direction of such default by the Governmental Lender, the Servicer or the Funding Lender, and all notices or other instruments required by this Funding Loan Agreement or under any Borrower Loan Document to be delivered to the Fiscal Agent, must, in order to be effective, be delivered in writing to a Responsible Officer of the Fiscal Agent at the Office of the Fiscal Agent, and in the absence of such Written Notice so delivered the Fiscal Agent may conclusively assume there is no default as aforesaid. In no event shall the Fiscal Agent be required to institute or participate in a foreclosure of the Project.

(h) The Fiscal Agent shall not be accountable for the use or application by the Borrower of the Governmental Lender Notes or the proceeds thereof or for the use or application of any money paid over by the Fiscal Agent in accordance with the provisions of this Funding Loan Agreement or for the use and application of money received by any paying agent.

**Section 11.5 Not Responsible for Recitals.** The recitals contained herein and in the Governmental Lender Notes shall be taken as the statements of the Governmental Lender, and the Fiscal Agent assumes no responsibility for their correctness. The Fiscal Agent makes no representations as to the value or condition of the Pledged Revenues, the Security or any part thereof, or as to the title of the Governmental Lender thereto or as to the security afforded thereby or hereby, or as to the validity or sufficiency of this Funding Loan Agreement or of the Funding Loan.



The Fiscal Agent shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the funding of the Funding Loan.

The Fiscal Agent shall not be required to monitor the financial condition of the Borrower or the physical condition of the Project. The Fiscal Agent shall be under no obligation to analyze, review or make any credit decisions with respect to any financial statements, reports, notices, certificates or documents received hereunder but shall hold such financial statements reports, notices, certificates and documents solely for the benefit of, and review by, the Funding Lender and such other parties to whom the Fiscal Agent may provide such information pursuant to this Funding Loan Agreement.

The Fiscal Agent makes no representations as to and shall have no responsibility for the sufficiency of the insurance required under any of the Borrower Loan Documents.

**Section 11.6 May Hold Funding Loan.** The Fiscal Agent in its individual or any other capacity may become the owner or pledgee of the Funding Loan and may otherwise deal with the Governmental Lender, the Funding Lender and the Borrower with the same rights it would have if it were not Fiscal Agent.

**Section 11.7 Moneys Held Hereunder.** Moneys held by the Fiscal Agent hereunder need not be segregated from other funds except to the extent required by law. The Fiscal Agent shall be under no liability for interest on any moneys received by it hereunder except as otherwise provided herein.

**Section 11.8 Compensation and Reimbursement.** Under the Borrower Loan Agreement, the Borrower has agreed to, except as otherwise expressly provided herein, pay the Fiscal Agent its fees and reimburse the Fiscal Agent as provided in this Funding Loan Agreement or the Borrower Loan Agreement, upon its request for all reasonable expenses, disbursements and advances incurred or made by the Fiscal Agent in accordance with any provision of this Funding Loan Agreement (including the reasonable fees, expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Fiscal Agent's negligence or willful misconduct, both as finally adjudicated by a court of law.

When the Fiscal Agent incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally.

(a) The Governmental Lender has no obligation to pay the Fiscal Agent for services rendered.

(b) As security for the performance of the obligations of the Borrower under this Section and for the payment of such compensation, expenses, reimbursements and indemnity, the Fiscal Agent shall have the right to use and apply any moneys held by it as Pledged Revenues.

(c) The Fiscal Agent's rights to compensation and reimbursement shall survive its resignation or removal, the payment of the Funding Loan or the Borrower Loan or the release of this Funding Loan Agreement.

**Section 11.9 Fiscal Agent Required; Eligibility.** Any successor Fiscal Agent shall at all times be a trust company, a state banking corporation or a national banking association with the authority to accept trusts in the State approved in writing by the Governmental Lender and either (a) have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, (b) be a wholly owned subsidiary of a bank holding company, or a wholly owned subsidiary of a company that is a wholly owned subsidiary of a bank holding company, having a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition and have at least \$500,000,000 of trust assets under management, or (c) be otherwise acceptable to the Funding Lender in its sole and absolute discretion.

**Section 11.10 Resignation and Removal; Appointment of Successor.**

(a) No resignation or removal of the Fiscal Agent hereunder and no appointment of a successor Fiscal Agent pursuant to this Article shall become effective until the written acceptance by the successor Fiscal Agent of such appointment.

(b) The Fiscal Agent may resign at any time by giving 60 days' Written Notice thereof to the Governmental Lender, the Borrower, the Servicer, if any, and the Funding Lender.

(c) The Fiscal Agent may be removed at any time with 30 days' notice by (i) the Governmental Lender, (ii) the Borrower (unless the Borrower is in default under any of the Borrower Loan Documents), subject to applicable notice and cure periods, with the Written Consent of the Funding Lender and the Governmental Lender, or (iii) the Funding Lender with the Written Consent of the Governmental Lender and Written Notice delivered to the Fiscal Agent and the Borrower.

(d) If the Fiscal Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the Office of the Fiscal Agent for any cause, the Governmental Lender shall promptly appoint a successor Fiscal Agent, with the consent of the Funding Lender, which consent shall not be unreasonably withheld. In case all or substantially all of the Pledged Revenues and Security shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee may similarly appoint a successor to fill such vacancy until a new Fiscal Agent shall be so appointed by the Governmental Lender. If, within 60 days after such resignation, removal or incapability or the occurrence of such vacancy, the Governmental Lender has failed to so appoint a successor Fiscal Agent, then a successor Fiscal Agent shall be appointed by the Funding Lender (from any of the institutions approved by the Governmental Lender to serve as a fiscal agent or trustee) with Written Notice thereof delivered to the Governmental Lender, the Borrower, the Servicer, if any, and the retiring Fiscal Agent, and the successor Fiscal Agent so appointed shall, forthwith upon its acceptance of such appointment, become the successor Fiscal Agent and supersede the successor Fiscal Agent appointed by such receiver or Fiscal Agent. If no successor Fiscal Agent shall have been appointed by the Governmental Lender or the Funding Lender and accepted appointment within 60 days after such resignation, removal or incapability or the

occurrence of such vacancy, the Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

(e) The retiring Fiscal Agent shall cause Written Notice of each resignation and each removal of the Fiscal Agent and each appointment of a successor Fiscal Agent to be provided to the Funding Lender. Each notice shall include the name of the successor Fiscal Agent and the address of the office of the successor Fiscal Agent.

#### **Section 11.11 Acceptance of Appointment by Successor.**

(a) Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to the Governmental Lender and to the retiring Fiscal Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Fiscal Agent shall become effective and such successor Fiscal Agent, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers and duties of the retiring Fiscal Agent; notwithstanding the foregoing, on request of the Governmental Lender or the successor Fiscal Agent, such retiring Fiscal Agent shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to such successor Fiscal Agent all the estates, properties, rights, powers and trusts of the retiring Fiscal Agent, and shall duly assign, transfer and deliver to such successor Fiscal Agent all property and money held by such retiring Fiscal Agent hereunder. Upon request of any such successor Fiscal Agent, the Governmental Lender shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Fiscal Agent all such estates, properties, rights and powers.

(b) No successor Fiscal Agent shall accept its appointment unless at the time of such acceptance such successor Fiscal Agent shall be qualified and eligible under this Article, to the extent operative.

**Section 11.12 Merger, Conversion, Consolidation or Succession to Business.** Any corporation into which the Fiscal Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Fiscal Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Fiscal Agent, shall be the successor of the Fiscal Agent hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, to the extent operative, without the execution or filing of any paper or any further act on the part of any of the parties hereto. Notwithstanding the foregoing, any such successor Fiscal Agent shall cause Written Notice of such succession to be delivered to the Funding Lender within 30 days of such succession.

**Section 11.13 Appointment of Co-Fiscal Agent.** It is recognized that in case of litigation under this Funding Loan Agreement, the Borrower Loan Agreement, any other Borrower Loan Document or the Regulatory Agreement, and in particular in case of the enforcement of any of them on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Fiscal Agent or hold title to the properties, as herein provided, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent appoint an additional individual or institution as a separate or co-fiscal agent. The following provisions of this Section are adopted to these ends.

The Fiscal Agent is hereby authorized to appoint an additional individual or institution as a separate or co-fiscal agent hereunder, upon Written Notice to the Governmental Lender, the Funding Lender and the Borrower, and with the consent of the Governmental Lender and the Funding Lender, but without the necessity of further authorization or consent, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement, any Borrower Loan Document, the Regulatory Agreement or the Borrower Loan Agreement to be exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be exercisable by and vest in such separate or co-fiscal agent but only to the extent necessary to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-fiscal agent shall run to and be enforceable by either of them.

Should any instrument in writing from the Governmental Lender be required by the separate fiscal agent or co-fiscal agent appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, duties and obligations, any and all such instruments in writing shall, on request of the Fiscal Agent, be executed, acknowledged and delivered by the Governmental Lender. In case any separate fiscal agent or co-fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, duties and obligations of such separate fiscal agent or co-fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a successor to such separate fiscal agent or co fiscal agent.

**Section 11.14 Loan Servicing.** The Governmental Lender and the Fiscal Agent acknowledge that the Funding Lender shall have the right to appoint a Servicer to service and administer the Funding Loan and the Borrower Loan as set forth in a Servicing Agreement. The Governmental Lender and the Fiscal Agent shall not be responsible for monitoring the performance of any Servicer or for any acts or omissions of such Servicer. The Funding Lender may, in its sole discretion, terminate or replace the Servicer.

**Section 11.15 No Recourse Against Officers or Employees of Fiscal Agent.** No recourse with respect to any claim related to any obligation, duty or agreement contained in this Funding Loan Agreement or any other Funding Loan Document shall be had against any officer or employee, as such, of the Fiscal Agent, it being expressly understood that the obligations, duties and agreements of the Fiscal Agent contained in this Funding Loan Agreement and the other Funding Loan Documents are solely corporate in nature.

**Section 11.16** [The Fiscal Agent/Trustee shall not be under any obligation (i) to monitor, determine or verify the unavailability or cessation of LIBOR (or other applicable Benchmark), or whether or when there has occurred, or to give notice to any other transaction party of the occurrence of, any [Benchmark Transition Event] or [Benchmark Replacement Date], (ii) to select, determine or designate any [Alternative Reference Rate] or [Benchmark Replacement], or other successor or replacement benchmark index, **or** whether any conditions to the designation of such a rate have been satisfied, or (iii) to select, determine or designate any [BenchmarkReplacement Adjustment], or other modifier to any replacement or successor index, or (iv) to determine whether or what [Benchmark Replacement Conforming Changes] are necessary or advisable, if any, in connection with any of the foregoing.]

[The Fiscal Agent/Trustee shall not be liable for any inability, failure or delay on its part to perform any of its duties set forth in this Agreement as a result of the unavailability of LIBOR (or other applicable Benchmark) and absence of a designated replacement Benchmark, including as a result of any inability, delay, error or inaccuracy on the part of any other transaction party, including without limitation the [Designated Transaction Representative], in providing any direction, instruction, notice or information required or contemplated by the terms of this Agreement and reasonably required for the performance of such duties.]

## **ARTICLE XII**

### **MISCELLANEOUS**

**Section 12.1 Notices.** All notices, demands, requests and other communications required or permitted to be given by any provision of this Funding Loan Agreement shall be in writing and sent by first class, regular, registered or certified mail, commercial delivery service, overnight courier, telegraph, telex, telecopier or facsimile transmission, air or other courier, hand delivery, to the party to be notified addressed as follows:

If to the Fiscal Agent: U.S. Bank National Association

If to the Governmental Lender: Housing Authority of the City of San Diego  
1122 Broadway, Suite 300  
San Diego, California 92101  
Attention: Executive Director  
Telephone: (619) 578-7575  
Facsimile: (619) 578-7356

If to the Borrower: 3Roots CIC, LP  
c/o Chelsea Investment Corporation  
6339 Paseo Del Lago  
Carlsbad, California 92011  
Attention: President

with a copy to:

and a copy to:

and a copy to:

and a copy to:

If to the Equity Investors:

U.S. Bancorp Community Development Corporation  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, Missouri 63103  
Reference: USB Project No. 27717  
Attention: Director of Asset Management  
Phone: (314) 335-2600

U.S. Bank National Association  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, MO 63103  
USB Project No: 27717  
Attn.: Director of Asset Management  
Phone: (314) 335-2600

with a copy to:

Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attention: Jill H. Goldstein

If to the Funding Lender:

Citibank, N.A.  
388 Greenwich Street, 6th Floor Trading  
New York, New York 10013  
Attention: Transaction and Asset Management  
Group  
Re: Aquila Apartments  
Deal ID #  
Facsimile: (212) 723-8209

and to:

Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360

Attention: Operations Manager/Asset Manager  
Re: Aquila Apartments  
Deal ID #  
Facsimile: (805) 557-0924

prior to the Conversion Date,  
with a copy to:

Citibank, N.A.  
388 Greenwich Street, 6th Floor Trading  
New York, New York 10013  
Attention: Account Specialist  
Re: Aquila Apartments  
Deal ID #  
Facsimile: (212) 723-8209

following the Conversion Date  
with a copy to:

Citibank, N.A.  
to: c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Re: Aquila Apartments  
Deal ID #  
Facsimile: (215) 328-0305

and a copy of any notices of  
default sent to:

Citibank, N.A.  
388 Greenwich Street, 17th Floor  
New York, New York 10013  
Attention: General Counsel's Office  
Re: Aquila Apartments  
Deal ID #  
Facsimile: (646) 291-5754

Any such notice, demand, request or communication shall be deemed to have been given and received for all purposes under this Funding Loan Agreement: (i) three Business Days after the same is deposited in any official depository or receptacle of the United States Postal Service first class, or, if applicable, certified mail, return receipt requested, postage prepaid; (ii) on the date of transmission when delivered by telecopier or facsimile transmission, telex, telegraph or other telecommunication device, provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day; (iii) on the next Business Day after the same is deposited with a nationally recognized overnight delivery service that guarantees overnight delivery; and (iv) on the date of actual delivery to such party by any other means; provided, however, if the day such notice, demand, request or communication shall be deemed to have been given and received as aforesaid is not a Business Day, such notice, demand, request or communication shall be deemed to have been given and received on the next Business Day. Any facsimile signature by a Person on a document, notice, demand, request or communication required or permitted by this Funding Loan Agreement shall constitute a legal, valid and binding execution thereof by such Person.

Any party to this Funding Loan Agreement may change such party's address for the purpose of notice, demands, requests and communications required or permitted under this Funding Loan Agreement by providing written notice of such change of address to all of the parties by written notice as provided herein.

**Section 12.2 Term of Funding Loan Agreement.** This Funding Loan Agreement shall be in full force and effect until all payment obligations of the Governmental Lender hereunder have been paid in full and the Funding Loan has been retired or the payment thereof has been provided for; except that on and after payment in full of the Governmental Lender Notes, this Funding Loan Agreement shall be terminated, without further action by the parties hereto.

**Section 12.3 Successors and Assigns.** All covenants and agreements in this Funding Loan Agreement by the Governmental Lender shall bind its successors and assigns, whether so expressed or not.

**Section 12.4 Legal Holidays.** In any case in which the date of payment of any amount due hereunder or the date on which any other act is to be performed pursuant to this Funding Loan Agreement shall be a day that is not a Business Day, then payment of such amount or such act need not be made on such date but may be made on the next succeeding Business Day, and such later payment or such act shall have the same force and effect as if made on the date of payment or the date fixed for prepayment or the date fixed for such act, and no additional interest shall accrue for the period from and after such date and prior to the date of payment.

**Section 12.5 Governing Law.** This Funding Loan Agreement shall be governed by and shall be enforceable in accordance with the laws of the State applicable to contracts made and performed in the State.

**Section 12.6 Severability.** If any provision of this Funding Loan Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement contained in the Governmental Lender Notes or in this Funding Loan Agreement shall for any reason be held to be usurious or in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Governmental Lender or the Funding Lender only to the full extent permitted by law.

**Section 12.7 Execution in Several Counterparts.** This Funding Loan Agreement may be contemporaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

**Section 12.8 Nonrecourse Obligation of the Borrower.** Except as otherwise provided in the Borrower Loan Agreement, any obligations of the Borrower under this Funding Loan Agreement are without recourse to the Borrower or to the Borrower's partners or members, as the case may be, and the provisions of Section 11.1 of the Borrower Loan Agreement are by this reference incorporated herein.

**Section 12.9 Waiver of Trial by Jury.** IF AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE GOVERNMENTAL LENDER AND THE FUNDING LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY



WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS FUNDING LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

IF FOR ANY REASON THIS WAIVER IS DETERMINED TO BE UNENFORCEABLE, ALL DISPUTES WILL BE RESOLVED BY JUDICIAL REFERENCE PURSUANT TO THE PROCEDURES SET FORTH IN THE SECURITY INSTRUMENT.

**Section 12.10 Electronic Transactions.** The transactions described in this Funding Loan Agreement may be conducted and the related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 12.11 Reference Date.** This Funding Loan Agreement is dated for reference purposes only as of the first day of [October] 2021.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Funding Lender, the Fiscal Agent and the Governmental Lender have caused this Funding Loan Agreement to be duly executed as of the date first written above.

FUNDING LENDER:

CITIBANK, N.A.

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

[Signature Page to Funding Loan Agreement – Aquila Apartments]

GOVERNMENTAL LENDER:

HOUSING AUTHORITY OF THE CITY OF SAN  
DIEGO

By: \_\_\_\_\_  
[Executive Director /  
Executive Vice President &  
Chief of Staff]

[Signature Page to Funding Loan Agreement – Aquila Apartments]

FISCAL AGENT:

U.S. Bank National Association, as Fiscal Agent

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

[Signature Page to Funding Loan Agreement – Aquila Apartments]

## **EXHIBIT A**

### **FORM OF GOVERNMENTAL LENDER NOTES**

THIS NOTE MAY BE OWNED ONLY BY A PERMITTED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT, AND THE HOLDER HEREOF, BY THE ACCEPTANCE OF THIS FUNDING LOAN AGREEMENT (A) REPRESENTS THAT IT IS A PERMITTED TRANSFEREE AND (B) ACKNOWLEDGES THAT IT CAN ONLY TRANSFER THIS GOVERNMENTAL LENDER NOTE TO ANOTHER PERMITTED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT.

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
MULTIFAMILY HOUSING REVENUE NOTE  
(AQUILA APARTMENTS),  
2021 SERIES C-\_\_\_\_\_**

\$ \_\_\_\_\_

[Closing Date]

FOR VALUE RECEIVED, the undersigned HOUSING AUTHORITY OF THE CITY OF SAN DIEGO (“Obligor”) promises to pay to the order of CITIBANK, N.A. (“Holder”) the maximum principal sum of \_\_\_\_\_ MILLION \_\_\_\_\_ THOUSAND DOLLARS (\$\_\_\_\_\_), on \_\_\_\_\_, \_\_\_\_\_, or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Holder on or before each date on which payment is due under that certain Funding Loan Agreement, dated as of October 1, 2021 (the “Funding Loan Agreement”), among Obligor, Holder and U.S. Bank National Association, as fiscal agent (“Fiscal Agent”), an amount in immediately available funds sufficient to pay the principal amount of and Prepayment Premium, if any, on this Governmental Lender Note then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts held derived from proceeds of this Governmental Lender Note, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on this Governmental Lender Note in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of this Governmental Lender Note so paid. Capitalized terms not otherwise defined herein shall have the meaning assigned in the Funding Loan Agreement.

Obligor shall pay to the Holder on or before each date on which interest on the Funding Loan is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on this Governmental Lender Note then due and payable in the amounts and at the rate or rates set forth in the Funding Loan Agreement.

This Governmental Lender Note is a pass-through obligation relating to a construction and permanent loan (the “Borrower Loan”) made by Obligor from proceeds of the Funding Loan to 3Roots CIC, LP, a California limited partnership, as borrower (the “Borrower”), under that certain Borrower Loan Agreement, dated as of October 1, 2021 (as the same may be modified, amended

or supplemented from time to time, the “Borrower Loan Agreement”), between the Obligor and the Borrower, evidenced by the [2021 Series C-1][2021 Series C-2] Borrower Note (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan Agreement and to the [2021 Series C-1][2021 Series C-2] Borrower Note for complete payment and prepayment terms of the [2021 Series C-1][2021 Series C-2] Borrower Note, payments on which are passed-through under this Governmental Lender Note.

This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned under the Funding Loan Agreement. None of the Governmental Lender, the State, or any political subdivision thereof (except the Governmental Lender, to the limited extent set forth herein) or any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on this Governmental Lender Note or the Funding Loan or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein and in the Funding Loan Agreement, and none of the Funding Loan or this Governmental Lender Note or any of the Governmental Lender’s agreements or obligations with respect to the Funding Loan or this Governmental Lender Note shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. The Governmental Lender has no taxing power.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement or in the Borrower Loan Agreement.

This Governmental Lender Note is subject to the express condition that at no time shall interest be payable on this Governmental Lender Note or the Funding Loan at a rate in excess of the Maximum Rate provided in the Funding Loan Agreement; and Obligor shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such Maximum Rate. If by the terms of this Governmental Lender Note or of the Funding Loan Agreement, Obligor is required to pay interest at a rate in excess of such Maximum Rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such Maximum Rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

Amounts payable hereunder representing late payments, penalty payments or the like shall be payable to the extent allowed by law.

This Governmental Lender Note is subject to all of the terms, conditions, and provisions of the Funding Loan Agreement, including those respecting prepayment and the acceleration of maturity and those respecting limitations of liability in Article V of the Funding Loan Agreement.

If there is an Event of Default under the Funding Loan Documents, then in any such event and subject to the requirements set forth in the Funding Loan Agreement, the Holder may declare the entire unpaid principal balance of this Governmental Lender Note and accrued interest, if any, due and payable at once. All of the covenants, conditions and agreements contained in the Funding Loan Documents are hereby made part of this Governmental Lender Note.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Governmental Lender Note or the Funding Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Holder under this Governmental Lender Note and the Funding Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

Obligor shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the indebtedness hereunder, together with interest thereon, to the extent allowed by law, as set forth in the Funding Loan Agreement.

This Governmental Lender Note may not be changed orally. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Holder of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Holder of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Obligor to pay the entire sum then due, and Obligor's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Holder to any action of Obligor which is subject to consent or approval of the Holder hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

This Governmental Lender Note (and the Funding Loan that it represents), and any interests herein or therein, are transferable by the registered owner hereof, but only in the manner, subject to the limitations and upon payment of the charges provided in the Funding Loan Agreement. Upon such transfer a new fully registered Governmental Lender Note will be issued to the transferee in exchange herefor. The Obligor, the Funding Lender and the Fiscal Agent may treat the registered owner hereof as the absolute owner hereof for all purposes, and the Obligor and the Funding Lender shall not be affected by any notice to the contrary.

The Obligor hereby certifies that all of the conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Governmental Lender Note do exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State (including the Act) and that the amount of this Governmental Lender Note, together with all other indebtedness of the Obligor, does not exceed any limit prescribed by the Constitution or laws of the State.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Governmental Lender Note by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

OBLIGOR:

HOUSING AUTHORITY OF THE CITY OF SAN  
DIEGO

By: \_\_\_\_\_  
Jeff Davis,  
Executive Vice President &  
Chief of Staff

[Signature Page to 2021 Series C-[ ] [(Taxable)] Governmental Lender Note – Aquila Apartments]



## CERTIFICATE OF AUTHENTICATION

This Governmental Lender Note is the 2021 Series C-[ ] [(Taxable)] Governmental Lender Note described in the within mentioned Funding Loan Agreement.

Date of Authentication: \_\_\_\_\_

U.S. Bank National Association, as Fiscal Agent

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

[Signature Page to 2021 Series C-[ ] [(Taxable)] Governmental Lender Note – Aquila Apartments]

## **EXHIBIT B**

### **FORM OF REQUIRED TRANSFEREE REPRESENTATIONS**

[\_\_\_\_\_, 20\_\_]

The undersigned, as holder (the “Holder”) of a loan (the “Funding Loan”) in the maximum principal amount of \$[TOTAL 2021C PAR] from CITIBANK, N.A. (“Funding Lender”) to HOUSING AUTHORITY OF THE CITY OF SAN DIEGO (“Governmental Lender”) pursuant to a Funding Loan Agreement dated as of October 1, 2021 (the “Funding Loan Agreement”) among the Funding Lender, the Governmental Lender and U.S. Bank National Association, as fiscal agent (the “Funding Loan”), evidenced by the Housing Authority of the City of San Diego Multifamily Housing Revenue Note (Aquila Apartments) 2021 Series C-1 and the Housing Authority of the City of San Diego Multifamily Housing Revenue Note (Aquila Apartments) 2021 Series C-2 (Taxable) (together, the “Governmental Lender Notes”), or an interest therein, hereby represents that:

1. The Holder has sufficient knowledge and experience in financial and business matters with respect to the evaluation of residential real estate developments such as the Project to be able to evaluate the risk and merits of the investment represented by the Funding Loan. We are able to bear the economic risks of such investment.

2. The Holder acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Holder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, the Project, the use of proceeds of the Funding Loan and the Funding Loan and the security therefor so that, as a reasonable investor, the Holder has been able to make its decision to [extend/purchase] the Funding Loan [or an interest therein]. In entering into this transaction, the Holder acknowledges that it has not relied upon any representations or opinions of the Governmental Lender relating to the legal consequences to the Funding Lender or other aspects of its making the Funding Loan and acquiring the Governmental Lender Note, nor has it looked to or expected, the Governmental Lender to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the financing or management thereof), or any other matter pertaining to the merits or risks of the transactions contemplated by the Funding Loan Agreement and the Borrower Loan Agreement, or the adequacy of the funds pledged to the Funding Lender to secure repayment of the Governmental Lender Note.

3. The Holder is an Approved Transferee.

4. The Holder acknowledges that it is purchasing [an interest in] the Funding Loan for investment for its own account and not with a present view toward resale or the distribution thereof, in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan; provided, however, that the Holder may sell or transfer the Governmental Lender Note and the Funding Loan as provided in Section 2.4 of the Funding Loan Agreement.

5. In the event any placement memorandum to be provided to any subsequent buyer or beneficial owner of such portion of the Funding Loan will disclose information with respect to the Governmental Lender other than its name, location and type of political subdivision and general information with respect to the Funding Loan and Borrower Loan and related documents, the Holder will provide the Governmental Lender with a draft of such placement memorandum and the Governmental Lender shall have the right to approve any description of the Governmental Lender therein (which approval shall not be unreasonably withheld).

6. The Holder understands that the Funding Loan is a limited obligation of the Governmental Lender; payable solely from funds and moneys pledged and assigned under the Funding Loan Agreement, and that the liabilities and obligations of the Governmental Lender with respect to the Funding Loan are expressly limited as set forth in the Funding Loan Agreement and related documents.

7. Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Funding Loan Agreement.

[\_\_\_\_], as Holder

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

Name: \_\_\_\_\_

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

## EXHIBIT C

### FORM OF WRITTEN REQUISITION OF THE BORROWER – PROJECT FUND

Draw # \_\_\_\_\_

To: U.S. Bank National Association, as Fiscal Agent (the “Fiscal Agent”) under that certain Funding Loan Agreement, dated as of October 1, 2021, among Citibank, N.A., as Funding Lender, the Housing Authority of the City of San Diego, as Governmental Lender, and the Fiscal Agent (the “Funding Loan Agreement”), pursuant to which the Housing Authority of the City of San Diego Multifamily Housing Revenue Notes (Aquila Apartments) 2021 Series C-1 and, 2021 Series C-2 (Taxable) (collectively, the “Governmental Lender Notes”) were issued.

1. You are requested to disburse funds from the Project Fund pursuant to Section 7.7 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference. An invoice or other appropriate evidence of the obligations described on Schedule I is attached hereto.

2. The undersigned certifies that:

(i) there has been received no notice (A) of any lien, right to lien or attachment upon, or claim affecting the right of the payee to receive payment of, any of the moneys payable under such requisition to any of the persons, firms or corporations named therein, and (B) that any materials, supplies or equipment covered by such requisition are subject to any lien or security interest, or if any notice of any such lien, attachment, claim or security interest has been received, such lien, attachment, claim or security interest has been released, discharged, insured or bonded over or will be released, discharged, insured or bonded over upon payment of the requisition;

(ii) such requisition contains no items representing payment on account of any percentage entitled to be retained at the date of the certificate;

(iii) the obligation stated on the requisition has been incurred in connection with the construction or equipping of the Project, or the reimbursement of advances of the Construction Loan (as defined in the Funding Loan Agreement) for such purposes, each item is a proper charge against the Project Fund, and the obligation has not been the basis for a prior requisition that has been paid;

(iv) such requisition contains no items representing any Costs of Issuance or any other amount constituting an issuance cost under Section 147(g) of the Code, unless such item is being paid solely from the Equity Account of the Project Fund;

(v) not less than 97% of the sum of: (A) the amounts requisitioned by this Requisition to be funded with the proceeds of the 2021 Series C-1 Governmental Lender Note plus (B) all amounts allocated to the 2021 Series C-1 Governmental Lender Note previously disbursed from the Note Proceeds Account of the Project Fund, have been or will be applied by the Borrower to pay Qualified Project Costs;

(vi) to the undersigned's current, actual knowledge, as of the date hereof no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under the Funding Loan Agreement; and

(vii) attached as Schedule I to this Requisition is an exhibit that allocates the amount requested hereby from each account of the Project Fund among the sources for payment.

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

**3ROOTS CIC, LP,**  
a California limited partnership

By: Pacific Southwest Community Development  
Corporation,  
a California nonprofit public benefit  
corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Robert W. Laing  
Executive Director/President

By: CIC 3Roots LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
Cheri Hoffman  
President

Approved by:

CITIBANK, N.A.,  
as Funding Lender

By: \_\_\_\_\_  
Authorized Signer

Schedule I  
Payment Instructions

---

---

**BORROWER LOAN AGREEMENT**

**between the**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO,  
as Governmental Lender**

**and**

**3ROOTS CIC, LP,  
a California limited partnership  
as Borrower**

**Dated as of October 1, 2021**

**Relating to:**

**§[AGGREGATE PAR]**

**Funding Loan originated by CITIBANK, N.A., as Funding Lender  
from the proceeds of the**

**§[C-1 PAR]**

**Housing Authority of the City of San Diego  
Multifamily Housing Revenue Note  
(Aquila Apartments) 2021 Series C-1**

**and**

**§[C-2 PAR]**

**Housing Authority of the City of San Diego  
Multifamily Housing Revenue Note  
(Aquila Apartments) 2021 Series C-2 (Taxable)**

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The interest of the Governmental Lender in this Borrower Loan Agreement (except for certain rights described herein) has been pledged and assigned to Citibank, N.A., as funding lender (the “Funding Lender”), under that certain Funding Loan Agreement, of even date herewith, by and among the Housing Authority of the City of San Diego (the “Governmental Lender”), U.S. Bank National Association, as fiscal agent, and the Funding Lender, under which the Funding Lender is originating a loan to the Governmental Lender the proceeds of which are to be used to fund the Borrower Loan made under this Borrower Loan Agreement.



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## **BORROWER LOAN AGREEMENT**

This Borrower Loan Agreement, dated as of October 1, 2021 (this “Borrower Loan Agreement”) is entered into by the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO, a public body corporate and politic, organized and existing under the laws of the State of California (together with its successors and assigns, the “Governmental Lender”), and 3ROOTS CIC, LP, a California limited partnership (together with its successors and assigns, the “Borrower”).

### **R E C I T A L S :**

**WHEREAS**, the Governmental Lender is a public body, corporate and politic, duly organized and validly existing under the laws of the State of California; and

**WHEREAS**, the Governmental Lender is empowered pursuant to Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code (the “Act”) to: (a) make loans to any person to provide financing for residential rental developments located within the City of San Diego, California, and intended to be occupied in part or in whole by persons of low and moderate income; (b) borrow funds for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with any such borrowing by the Governmental Lender; and (c) pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans in order to secure the repayment of any such borrowing by the Governmental Lender; and

**WHEREAS**, the Borrower has applied to the Governmental Lender for a loan (the “Borrower Loan”), for the acquisition, construction, development and equipping of 180 units (including two manager’s units) multifamily rental housing development located at 9900 Camino Santa Fe in the City of San Diego, County of San Diego, California, known or to be known as “Aquila Apartments” (formerly known as “3Roots”); and

**WHEREAS**, the Borrower’s repayment obligations under this Borrower Loan Agreement are evidenced by the Borrower Notes, as defined herein; and

**WHEREAS**, the Borrower has requested that the Governmental Lender enter into that certain Funding Loan Agreement, of even date herewith (the “Funding Loan Agreement”), among the Governmental Lender, U.S. Bank National Association, as fiscal agent (the “Fiscal Agent”), and Citibank, N.A. (the “Funding Lender”), under which the Funding Lender will make a loan (the “Funding Loan”) to the Governmental Lender (and the Governmental Lender will issue its Governmental Lender Notes (as defined herein) in connection therewith), the proceeds of which will be loaned under this Borrower Loan Agreement to the Borrower to finance costs of the acquisition and construction of the Project (as defined herein);

**WHEREAS**, the Borrower Loan is secured by, among other things, that certain Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (California) (as amended, restated and/or supplemented from time to time, the “Security Instrument”), of even date herewith and assigned without recourse to the Funding Lender to secure the Funding Loan, encumbering the Project, and will be advanced to the Borrower pursuant to this

Borrower Loan Agreement, the Funding Loan Agreement and the Construction Funding Agreement (as defined herein); and

**WHEREAS**, the Borrower has also requested that the Governmental Lender issue its Housing Authority of the City of San Diego Subordinate Multifamily Housing Revenue Bonds (Aquila Apartments) 2021 Subordinate Series C-3 to [CIC Opportunities Fund II LLC, a California limited liability company] (the “Subordinate Bond Purchaser”), and the Governmental Lender will provide a loan of the proceeds thereof to the Borrower under a Junior Loan Agreement, dated as of October 1, 2021, among the Governmental Lender, as Issuer, U.S. Bank National Association, as trustee (the “Subordinate Bond Trustee”), and the Borrower, that is secured and payable on a subordinate basis in relation to the Borrower Loan.

## A G R E E M E N T :

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

### ARTICLE I

#### DEFINITIONS; PRINCIPLES OF CONSTRUCTION

**Section 1.1 Specific Definitions.** For all purposes of this Borrower Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Security Instrument or, if not defined in the Security Instrument, in the Funding Loan Agreement.

(b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with GAAP.

(c) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(d) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(e) Unless otherwise specified, (i) all references to sections and schedules are to those in this Borrower Loan Agreement, (ii) the words “hereof,” “herein” and “hereunder” and words of similar import refer to this Borrower Loan Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined and (iv) the word “including” means “including but not limited to.”

**Section 1.2 Definitions.** The following terms, when used in this Borrower Loan Agreement (including when used in the above recitals), shall have the following meanings:

“Act” shall have the meaning given to it in the recitals to this Borrower Loan Agreement.

“Act of Bankruptcy” shall mean the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) under any applicable bankruptcy, insolvency, reorganization, or similar law, now or hereafter in effect; provided that, in the case of an involuntary proceeding, such proceeding is not dismissed within ninety (90) days after the commencement thereof.

“ADA” shall have the meaning set forth in Section 4.1.38 hereof.

“Additional Borrower Payments” shall mean the payments payable pursuant to Section 2.5 (Additional Borrower Payments), Section 2.6 (Overdue Payments; Payments in Default), Section 3.3.3 of the Construction Funding Agreement (Borrower Loan in Balance), Section 5.14 (Expenses), and Section 10 of the Borrower Notes (Voluntary and Involuntary Prepayments).

“Administrative General Partner” shall mean CIC 3Roots LLC, a California limited liability company.

“Agreement of Environmental Indemnification” shall mean the Agreement of Environmental Indemnification, of even date herewith, executed by the Borrower and Guarantor for the benefit of the Beneficiary Parties (as defined therein) and any lawful holder, owner or pledgee of the Borrower Note from time to time.

“Appraisal” shall mean an appraisal of the Project and Improvements, which appraisal shall be (i) performed by a qualified appraiser licensed in the State selected by Funding Lender, and (ii) satisfactory to Funding Lender (including, without limitation, as adjusted pursuant to any internal review thereof by Funding Lender) in all respects.

“Approved Developer Fee Schedule” shall have the meaning set forth in the Construction Funding Agreement.

“Architect” shall mean any licensed architect, space planner or design professional that Borrower may engage from time to time, with the approval of Funding Lender, to design any portion of the Improvements, including the preparation of the Plans and Specifications.

“Architect’s Agreement” means any agreement that Borrower and any Architect from time to time may execute pursuant to which Borrower engages such Architect to design any portion of the Improvements, including the preparation of the Plans and Specifications, as approved by Funding Lender.

“Authorized Borrower Representative” shall mean a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer and containing the specimen signature of such person and signed on behalf of the Borrower by its Borrower Controlling Entity which certificate may designate one or more alternates.

“Bankruptcy Code” shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, or any substitute or replacement legislation.

“Bankruptcy Event” shall have the meaning given to that term in the Security Instrument.

“Bankruptcy Proceeding” shall have the meaning set forth in Section 4.1.8 hereof.

“Beneficiary Parties” shall mean, collectively, the Funding Lender and the Governmental Lender.

“Borrower” shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

“Borrower Affiliate” means, as to the Borrower, its general partner or the Guarantor, (i) any entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of Borrower, its general partner or the Guarantor, (ii) any corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the Borrower, its general partner or the Guarantor, (iii) any partner of Borrower, its general partner or the Guarantor, or (iv) any other person that is related (to the third degree of consanguinity) by blood or marriage to the Borrower, its general partner or the Guarantor (to the extent any of the Borrower, its general partner or the Guarantor is a natural person) ; provided that the Equity Investor shall not be a Borrower Affiliate.

“Borrower Controlling Entity” shall mean the Administrative General Partner and Managing General Partner of the Borrower.

“Borrower Deferred Equity” shall have the meaning set forth in the Construction Funding Agreement.

“Borrower Initial Equity” shall have the meaning set forth in the Construction Funding Agreement.

“Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to this Borrower Loan Agreement, in the maximum principal amount of the Borrower Loan Amount, as evidenced by the Borrower Notes.

“Borrower Loan Agreement” shall mean this Borrower Loan Agreement.

“Borrower Loan Amount” shall mean \$[AGGREGATE 2021C LOAN AMOUNT], the original maximum principal amount of the Borrower Notes.

“Borrower Loan Documents” shall mean this Borrower Loan Agreement, the Construction Funding Agreement, the Borrower Notes, the Security Instrument, the Agreement of Environmental Indemnification, the Replacement Reserve Agreement, the Guaranty, the Contingency Draw Down Agreement, and all other documents or agreements evidencing or relating to the Borrower Loan.

“Borrower Loan Payment Date” shall mean (i) the date upon which regularly scheduled Borrower Loan Payments are due pursuant to the Borrower Notes, or (ii) any other date on which the Borrower Notes are prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

“Borrower Loan Payments” shall mean the monthly loan payments payable pursuant to the Borrower Notes.

“Borrower Loan Proceeds” shall mean proceeds of the Borrower Loan, to be disbursed in accordance with Section 2.10 of this Borrower Loan Agreement, Section 7.7 of the Funding Loan Agreement and the Construction Funding Agreement.

“Borrower Notes” shall mean, collectively, the 2021 Series C-1 Borrower Note and the 2021 Series C-2 Borrower Note.

“Borrower Payment Obligations” shall mean all payment obligations of the Borrower under the Borrower Loan Documents, including, but not limited to, the Borrower Loan Payments and the Additional Borrower Payments.

“Business Day” shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which the Fiscal Agent or federally insured depository institutions in New York, New York or California are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

“Calculation Period” shall mean three (3) consecutive full Calendar Months occurring prior to the Conversion Date, as the same may be extended in accordance with Section 3.1 hereof.

“Calendar Month” shall mean each of the twelve (12) calendar months of the year.

“CC&R’s” shall mean any covenants, conditions, restrictions, maintenance agreements or reciprocal easement agreements affecting the Project or the Mortgaged Property.

“Closing Date” means [Closing Date], the date that the initial Borrower Loan Proceeds are disbursed hereunder.

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

“Collateral” shall mean all collateral described in (i) this Borrower Loan Agreement (including, without limitation, all property in which the Funding Lender is granted a security interest pursuant to any provision of this Borrower Loan Agreement), (ii) the Security Instrument, or (iii) any other Security Document, which Collateral shall include the Project, all of which collateral is pledged and assigned to Funding Lender under the Funding Loan Agreement to secure the Funding Loan.

“Completion” shall have the meaning set forth in Section 5.25.

“Completion Date” shall have the meaning set forth in the Construction Funding Agreement.

“Computation Date” shall have the meaning ascribed thereto in Section 1.148-3(e) of the Regulations.

“Condemnation” shall mean any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Project, whether direct or indirect.

“Conditions to Conversion” shall have the meaning set forth in the Construction Funding Agreement.

“Construction Consultant” shall mean a third-party architect or engineer selected and retained by Funding Lender, at the reasonable cost and expense of Borrower, to monitor the progress of construction of the Project and to inspect the Improvements to confirm compliance with this Borrower Loan Agreement.

“Construction Contract” shall mean any agreement that Borrower and any Contractor from time to time may execute pursuant to which Borrower engages the Contractor to construct any portion of the Improvements, as approved by Funding Lender.

“Construction Funding Agreement” means that certain Construction Funding Agreement of even date herewith, between the Funding Lender, as agent for the Governmental Lender, and Borrower, pursuant to which the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf), as agent of the Governmental Lender, to the Fiscal Agent for disbursement to the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during construction of the Project, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

“Construction Loan” shall have the meaning given such term in the Construction Loan Agreement.

[“Construction Loan Agreement” means the Construction Loan Agreement, dated [Closing Date], among the Borrower, U.S. Bank National Association, as “Administrative Agent,” the lenders referred to therein, and U.S. Bank National Association, as “Sole Lead Arranger and Sole Book Runner.”]

“Construction Schedule” shall mean a schedule of construction progress with the anticipated commencement and completion dates of each phase of construction, and the anticipated date and amounts of each Disbursement for the same, as approved by Funding Lender, as assignee of the Governmental Lender, as it may be updated from time to time.

“Contingency Draw-Down Agreement” means the Contingency Draw-Down Agreement dated of even date herewith, among the Fiscal Agent, the Funding Lender and the Borrower relating to possible conversion of the portion of the Funding Loan evidenced by the Tax-Exempt Governmental Note from a draw down loan to a fully funded loan.

“Continuing Disclosure Agreement” shall mean that certain Continuing Disclosure Agreement dated of even date herewith, between the Borrower and the Funding Lender, pursuant to which the Borrower agrees to provide certain information with respect to the Project, the

Borrower and the Funding Loan subsequent to the Closing Date, as amended, supplemented or restated from time to time.

“Contractor” shall mean any licensed general contractor or subcontractor that Borrower may directly engage from time to time, with the approval of Funding Lender, to construct any portion of the Improvements.

“Contractual Obligation” shall mean, for any Person, any debt or equity security issued by that Person, and any indenture, mortgage, deed of trust, contract, undertaking, instrument or agreement (written or oral) to which such Person is a party or by which it is bound, or to which it or any of its assets is subject.

“Conversion” shall mean Funding Lender’s determination that the Conditions to Conversion have been satisfied in accordance with the provisions of this Borrower Loan Agreement and the Construction Funding Agreement.

“Conversion Date” shall mean the date to be designated by Funding Lender once the Conditions to Conversion have been satisfied, the determination of the Permanent Period Amount has been made and any loan balancing payments in accordance with Section 3.3 hereof and the Construction Funding Agreement have been made. The Conversion Date must occur no later than the Outside Conversion Date (or Extended Outside Conversion Date, as applicable).

“Cost Breakdown” shall mean the schedule of costs for the Improvements, as set forth in the Construction Funding Agreement, as the same may be amended from time to time with Funding Lender’s consent.

“Cost of Improvements” shall mean the costs for the Improvements, as set forth on the Cost Breakdown.

“Costs of Funding” shall mean the Governmental Lender’s Closing Fee and the fees, costs, expenses and other charges incurred in connection with the funding of the Borrower Loan and the Funding Loan, the negotiation and preparation of this Borrower Loan Agreement and each of the other Borrower Loan Documents and Funding Loan Documents and shall include, but shall not be limited to, the following: (i) counsel fees (including but not limited to Tax Counsel, counsel to the Governmental Lender, Borrower’s counsel, Fiscal Agent’s counsel and Funding Lender’s counsel); (ii) municipal advisor fees incurred in connection with the closing of the Borrower Loan and the Funding Loan; (iii) Fiscal Agent fees and expenses payable on the Closing Date; (iv) recording fees; (v) any additional fees charged by the Governmental Lender or the Fiscal Agent; and (vi) costs incurred in connection with the required public notices generally and costs of the public hearing.

“Costs of Funding Deposit” shall mean the amount required to be deposited by the Borrower with the Title Company to pay Costs of Funding in connection with the closing of the Borrower Loan and the Funding Loan on the Closing Date.

“Date of Disbursement” shall mean the date of a Disbursement.

“Day” or “Days” shall mean calendar days unless expressly stated to be Business Days.

“Debt” shall mean, as to any Person, any of such Person’s liabilities, including all indebtedness (whether recourse or nonrecourse, short term or long term, direct or contingent), all committed and unfunded liabilities, and all unfunded liabilities, that would appear upon a balance sheet of such Person prepared in accordance with GAAP.

“Default Rate” shall have the meaning given to that term in the Borrower Notes.

“Determination of Taxability” shall mean (i) a determination by the Commissioner or any District Director of the Internal Revenue Service, (ii) a private ruling or Technical Advice Memorandum concerning the 2021 Series C-1 Governmental Lender Note issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (iii) a determination by any court of competent jurisdiction, (iv) the enactment of legislation or (v) receipt by the Funding Lender, at the request of the Governmental Lender, the Borrower or the Funding Lender, of an opinion of Tax Counsel, in each case to the effect that the interest on the 2021 Series C-1 Governmental Lender Note is includable in gross income for federal income tax purposes of any holder or any former holder of all or a portion of the 2021 Series C-1 Governmental Lender Note, other than a holder who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (i) or (iii) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower), the Funding Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (a) a final determination from which no appeal may be taken with respect to such determination, (b) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (c) one year from the date of initial determination.

“Developer Fee” shall have the meaning set forth in the Construction Funding Agreement.

“Disbursement” means a disbursement of Borrower Loan Proceeds and Other Borrower Moneys pursuant to this Borrower Loan Agreement.

“Engineer” shall mean any licensed civil, structural, mechanical, electrical, soils, environmental or other engineer that Borrower may engage from time to time, with the approval of Funding Lender, to perform any engineering services with respect to any portion of the Improvements.

“Engineer’s Contract” shall mean any agreement that Borrower and any Engineer from time to time may execute pursuant to which Borrower engages such Engineer to perform any engineering services with respect to any portion of the Improvements, as approved by Funding Lender.

“Equipment” shall have the meaning given to the term “Personalty” in the Security Instrument.

“Equity Contributions” shall mean the equity to be contributed by the Equity Investors to Borrower, in accordance with and subject to the terms, conditions and adjustments of the Partnership Agreement.



["Equity Investors" shall mean, individually or collectively as the context shall require, (i) U.S. Bancorp Community Development Corporation, a Minnesota corporation, and (ii) U.S. Bank National Association, a national banking association.]

"ERISA" shall mean the Employment Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" shall mean all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with the Borrower, are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

"Event of Default" shall mean any Event of Default set forth in Section 8.1 of this Borrower Loan Agreement. An Event of Default shall "exist" if a Potential Default shall have occurred and be continuing beyond any applicable cure period.

"Excess Revenues" shall have the meaning ascribed thereto in Section 2.2(e) hereof.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Expenses of the Project" shall mean, for any period, the current expenses, paid or accrued, for the operation, maintenance and current repair of the Project, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Borrower Loan Documents), a management fee (however characterized) not to exceed the Underwritten Management Fee, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the Project shall not include any payments, however characterized, on account of any subordinate financing in respect of the Project or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

"Extended Outside Conversion Date" shall have the meaning set forth in the Construction Funding Agreement.

"Fair Market Value" shall mean the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the

investment is an interest in any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

“Fiscal Agent” shall mean the Fiscal Agent from time to time under and pursuant to the Funding Loan Agreement. Initially, the Fiscal Agent is U.S. Bank National Association.

“Funding Lender” shall mean Citibank, N.A., a national banking association, in its capacity as lender under the Funding Loan.

“Funding Loan” means the Funding Loan in the original maximum principal amount of \$[AGGREGATE 2021C LOAN AMOUNT] made by Funding Lender to Governmental Lender under the Funding Loan Agreement, the proceeds of which are used by the Governmental Lender to make the Borrower Loan.

“Funding Loan Agreement” means the Funding Loan Agreement, of even date herewith, among the Governmental Lender, the Fiscal Agent and the Funding Lender, as it may from time to time be supplemented, modified or amended by one or more amendments or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

“Funding Loan Documents” shall have the meaning given to that term in the Funding Loan Agreement.

“GAAP” shall mean generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

“General Partner” shall mean, collectively, (i) the Administrative General Partner, (ii) the Managing General Partner, and/or (iii) any other Person that the partners of the Borrower, with the prior written approval of the Funding Lender (or as otherwise permitted with the Funding Lender’s approval pursuant to the Borrower Loan Documents), selected to be a general partner of the Borrower.

“Governmental Authority” shall mean (i) any governmental municipality or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (iii) any court, administrative tribunal or public utility, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), now or hereafter in existence.

“Governmental Lender” shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

“Governmental Lender Notes” shall mean, collectively, the 2021 Series C-1 Governmental Lender Note and the 2021 Series C-2 Governmental Lender Note.

“Governmental Lender’s Closing Fee” shall mean the administrative fees of the Governmental Lender payable on the Closing Date, as specified in the definition of “Governmental

Lender Fee” in the Regulatory Agreement. The Governmental Lender’s Closing Fee is payable to the Governmental Lender on the Closing Date pursuant to Section 2.3(c)(iii) hereof.

“Gross Income” shall mean all receipts, revenues, income and other moneys received or collected by or on behalf of Borrower and derived from the ownership or operation of the Project, if any, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the Project. Gross Income shall not include loan proceeds, equity or capital contributions, or tenant security deposits being held by Borrower in accordance with applicable law.

“Gross Proceeds” shall mean, without duplication, the aggregate of:

(a) the net amount (after payment of all expenses of originating the Funding Loan) of Funding Loan proceeds received by the Governmental Lender as a result of the origination of the Funding Loan;

(b) all amounts received by the Governmental Lender as a result of the investment of the Funding Loan proceeds;

(c) any amounts held in any fund or account to the extent that the Governmental Lender reasonably expects to use the amounts in such fund to pay any portion of the Funding Loan; and

(d) any securities or obligations pledged by the Governmental Lender or by the Borrower as security for the payment of any portion of the Funding Loan.

“Guarantor” shall mean, as applicable, [(i) Chelsea Investment Corporation, and (ii) any other person or entity which may hereafter become a guarantor of any of the Borrower’s obligations under the Borrower Loan.]

“Guaranty” shall mean, collectively, (i) the Completion and Repayment Guaranty, by Chelsea Investment Corporation, as Guarantor for the benefit of the Beneficiary Parties (as defined therein), and (ii) the Exceptions to Non-Recourse Guaranty, by Chelsea Investment Corporation as Guarantor for the benefit of the Beneficiary Parties (as defined therein), each dated of even date herewith.

“Improvements” shall mean the 180-unit multifamily rental housing development (including two manager’s units) to be constructed upon the Land and known or to be known as “Aquila Apartments”, and all other buildings, structures, fixtures, wiring, systems, equipment and other improvements and personal property to be constructed and/or installed at or on the Land in accordance with the Cost Breakdown and the Plans and Specifications.

“Indemnified Party” shall have the meaning set forth in Section 5.15 hereof.

“Installment Computation Date” shall mean any Computation Date other than the first Computation Date or the final Computation Date.

“Interest Rate” shall mean the rate of interest accruing on the Borrower Loan pursuant to the Borrower Notes.

“Interim Phase Amount” shall mean \$[AGGREGATE 2021C LOAN AMOUNT].

“Land” means the real property described on Exhibit A to the Security Instrument.

“Late Charge” shall mean the amount due and payable as a late charge on overdue payments under the Borrower Notes, as provided in Section 7 of the Borrower Notes and Section 2.5 hereof.

“Legal Action” shall mean an action, suit, investigation, inquiry, proceeding or arbitration at law or in equity or before or by any foreign or domestic court, arbitrator or other Governmental Authority.

“Legal Requirements” shall mean statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting all or part of the Project or any of Borrower’s property (including the Project) or the construction, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to the Borrower, at any time in force affecting all or part of the Project, including any that may (i) require repairs, modifications or alterations in or to all or part of the Project, or (ii) in any way limit the use and enjoyment thereof.

“Liabilities” shall have the meaning set forth in Section 5.15 hereof.

“Licenses” shall have the meaning set forth in Section 4.1.22 hereof.

“Lien” shall mean any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

“Management Agreement” shall mean the Management Agreement between the Borrower and the Manager, pursuant to which the Manager is to manage the Project, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Manager” shall mean the management company to be employed by the Borrower and approved by the Funding Lender in accordance with the terms of the Security Instrument, this Borrower Loan Agreement or any of the other Borrower Loan Documents.

“Managing General Partner” shall mean [Pacific Southwest Community Development Corporation], a California nonprofit public benefit corporation, as managing general partner of the Borrower.

“Material Adverse Change” means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Borrower Loan Agreement or any other Borrower Loan Document; (b) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, results of operations of the Borrower, General Partner, Guarantor or the Mortgaged Property; (c) could reasonably be expected to impair materially the ability of the Borrower, General Partner or Guarantor to duly and punctually pay or perform any of their respective obligations under any of the Borrower Loan Documents to which they are a party; or (d) impairs materially or could reasonably be expected to impair materially any rights of or benefits available to the Governmental Lender under this Borrower Loan Agreement or any other Borrower Loan Document, including, without limitation, the ability of Governmental Lender or, upon the assignment of the Borrower Loan to it, of the Funding Lender, to the extent permitted, to enforce its legal remedies pursuant to this Borrower Loan Agreement or any other Borrower Loan Document.

“Moody’s” shall mean Moody’s Investors Service, Inc., or its successor.

“Mortgaged Property” shall have the meaning given to that term in the Security Instrument.

“Net Operating Income” shall mean: (i) the Gross Income, less (ii) the Expenses of the Project.

“Nonpurpose Investment” shall mean any investment property (as defined in Section 148(b) of the Code) that is acquired with the Gross Proceeds of the Funding Loan and which is not acquired to carry out the governmental purpose of the Funding Loan.

“Ongoing Governmental Lender Fee” shall mean the ongoing portion of the Governmental Lender Fee (as that term is defined in the Regulatory Agreement) that is payable after the Closing Date.

“Other Borrower Moneys” shall mean monies of Borrower other than Borrower Loan Proceeds and includes, but is not limited to, Net Operating Income, the Borrower’s Equity Contributions and any other funds contributed by or loaned to the Borrower for application to the Costs of the Improvements or other costs associated with the Project.

“Other Charges” shall mean all maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Project, now or hereafter levied or assessed or imposed against the Project or any part thereof.

“Outside Conversion Date” shall mean [DATE], subject to and as set forth in the Construction Funding Agreement.

“Partnership Agreement” shall mean that certain Amended and Restated Agreement of Limited Partnership of the Borrower dated as of [Date], as the same may be amended, restated or modified from time to time in accordance with its terms.

“Patriot Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

“Patriot Act Offense” shall have the meaning set forth in Section 4.1.48 hereof.

“Permanent Period” shall mean the period of time from the Conversion Date to the Maturity Date (as defined in the Funding Loan Agreement).

“Permanent Period Amount” shall mean the principal amount of the Borrower Loan as of the first day of the Permanent Period following the applicable calculation provided for in the Construction Funding Agreement.

“Permitted Encumbrances” shall have the meaning given to that term in the Security Instrument.

“Permitted Lease” shall mean a lease and occupancy agreement pursuant to the form approved by Funding Lender, to a residential tenant in compliance with the Legal Requirements, providing for an initial term of not less than six (6) months nor more than two (2) years.

“Person” shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

“Plan” shall mean (i) an employee benefit or other plan established or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions and (ii) which is covered by Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

“Plans and Specifications” shall mean the plans and specifications, and all approved changes thereto pursuant to the approval process set forth in the Construction Funding Agreement, for the construction of the Project approved by Funding Lender.

“Potential Default” shall mean the occurrence of an event which, under this Borrower Loan Agreement or any other Borrower Loan Document, would, but for the giving of notice or passage of time, or both, be an Event of Default.

“Prepayment Premium” shall mean any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Notes (including any prepayment premium as set forth in the Borrower Notes).

“Project” shall mean the Mortgaged Property (as defined in the Security Instrument) and Improvements thereon owned by the Borrower and encumbered by the Security Instrument, together with all rights pertaining to such real property and Improvements, as more particularly described in the Granting Clauses of the Security Instrument and referred to therein as the “Mortgaged Property.”

“Project Agreements and Licenses” shall mean any and all Construction Contracts, Engineer’s Contracts and Management Agreements, and all other rights, licenses, permits, franchises, authorizations, approvals and agreements relating to use, occupancy, operation or leasing of the Project or the Mortgaged Property.

“Provided Information” shall have the meaning set forth in Section 9.1.1 (a) hereof.

“Qualified Project Costs” shall mean costs paid with respect to the Project that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Regulations (as defined in the Funding Loan Agreement), provided, however, that only such portion of the interest accrued during construction of the Project shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all costs of the acquisition and construction of the Project; and provided further that interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed by a Borrower Affiliate (whether as general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out of pocket costs incurred by such affiliate in constructing the Project (or any portion thereof), and (B) any overhead expenses incurred by such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an “affiliated group” (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior to January 26, 2021, being the date on which the Governmental Lender first declared its “official intent” to reimburse costs paid with respect to the Project (within the meaning of Section 1.150 2 of the Regulations) or the date of issue of the Governmental Lender Notes, and (iv) if the costs of the acquisition and construction of the Project were previously paid and are to be reimbursed with proceeds of the Funding Loan such costs were (A) “preliminary expenditures” (within the meaning of Section 1.150-2(f)(2) of the Regulations) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition and construction of the Project that do not exceed twenty percent (20%) of the issue price of the 2021 Series C-1 Governmental Lender Note (as defined in Section 1.148-1 of the Regulations), or (B) were capital expenditures with respect to the Project that are reimbursed no later than 18 months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three years after the expenditures is paid); provided, however, that (w) Costs of Funding shall not be deemed to be Qualified Project Costs; (x) fees, charges or profits (including, without limitation, developer fees) payable to the Borrower or a “related person” (within the meaning of Section 144(a)(3) of the Code) shall not be deemed to be Qualified Project Costs; (y) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk and are allocable to the construction period of the Project shall be allocated between Qualified Project Costs and other costs and expenses to be paid from the proceeds of the Funding Loan; and (z) letter of credit fees and municipal bond insurance premiums which do not represent a transfer of credit risk (including, without limitation, letter of credit fees payable to a “related person” to the Borrower) shall not constitute Qualified Project Costs.

“Rebate Amount” shall mean, for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the portion of the Funding Loan corresponding to the Tax-Exempt Governmental Lender Note.

“Rebate Analyst” shall mean the rebate analyst selected by the Borrower and acceptable to the Governmental Lender and the Funding Lender.

“Rebate Analyst’s Fee” shall mean the annual fee of the Rebate Analyst payable by the Borrower to the Rebate Analyst.

“Rebate Fund” shall mean the Rebate Fund created pursuant to Section 5.35 hereof.

“Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of October 1, 2021, between the Governmental Lender and the Borrower.

“Related Documents” shall mean, collectively, any agreement or other document (other than the Borrower Loan Documents) granting a security interest in all or a portion of the Project (including each agreement that is the subject of any Borrower Loan Document), and any other agreement, instrument or other document (not constituting a Borrower Loan Document) relating to or executed in connection with the transactions contemplated by this Borrower Loan Agreement, but excluding the Partnership Agreement.

“Replacement Reserve Agreement” shall mean the Replacement Reserve Agreement, of even date herewith, between the Borrower and the Funding Lender, as the same may be amended, restated or supplemented from time to time.

“Replacement Reserve Fund Requirement” means Borrower’s funding obligations from time to time under the Replacement Reserve Agreement.

“Retainage” shall have the meaning set forth in the Construction Funding Agreement.

“Review Fee” shall mean the three thousand dollar (\$3,000) fee payable to Funding Lender in connection with the review of requests from the Borrower in connection with events requiring the consent and/or approval of the Funding Lender, including, but not limited to, subordinate financings and easements.

“Secondary Market Disclosure Document” shall have the meaning set forth in Section 9.1.2 hereof.

“Secondary Market Transaction” shall have the meaning set forth in Section 9.1.1 hereof.

“Securities” shall have the meaning set forth in Section 9.1.1 hereof.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security Documents” shall mean the Security Instrument, the Replacement Reserve Agreement, the Collateral Agreements, the Collateral Assignments, this Borrower Loan



Agreement, the Agreement of Environmental Indemnification, and such other security instruments that Funding Lender may reasonably request.

“Security Instrument” shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

“Series 2021C-1 Borrower Note” shall mean that certain Multifamily Note, dated the Closing Date, in the original maximum principal amount of \$[\_\_\_\_\_], made by the Borrower and payable to the Governmental Lender, evidencing the loan of the proceeds of the 2021 Series C-1 Governmental Lender Note, as endorsed and assigned by the Governmental Lender without recourse to the Funding Lender, as executed by the Borrower, and as it may thereafter be amended or supplemented from time to time.

“Series 2021C-1 Governmental Lender Note” shall mean that certain Housing Authority of the City of San Diego Multifamily Housing Revenue Note (Aquila Apartments) 2021 Series C-1, dated the Closing Date, in the original maximum principal amount of \$[\_\_\_\_\_], made by the Governmental Lender and payable to the Funding Lender, as executed by the Governmental Lender and as it may thereafter be amended or supplemented from time to time.

“Series 2021C-2 Borrower Note” shall mean that certain Multifamily Note, dated the Closing Date, in the original maximum principal amount of \$[C-2 PAR], made by the Borrower and payable to the Governmental Lender, evidencing the loan of the proceeds of the 2021 Series C-2 Governmental Lender Note, as endorsed and assigned by the Governmental Lender without recourse to the Funding Lender, as executed by the Borrower, and as it may thereafter be amended or supplemented from time to time.

“Series 2021C-2 Governmental Lender Note” shall mean that certain Housing Authority of the City of San Diego Multifamily Housing Revenue Note (Aquila Apartments) 2021 Series C-2 (Taxable), dated the Closing Date, in the original maximum principal amount of \$[C-2 PAR], made by the Governmental Lender and payable to the Funding Lender, as executed by the Governmental Lender and as it may thereafter be amended or supplemented from time to time

“Servicer” shall mean the Servicer contracting with or appointed by the Funding Lender to service the Borrower Loan. The initial Servicer shall be Citibank, N.A.

“Servicing Agreement” shall mean any servicing agreement or master servicing agreement, between the Servicer and the Funding Lender relating to the servicing of the Borrower Loan and any amendments thereto or any replacement thereof.

“Standard & Poor’s” or “S&P” shall mean S&P Global Ratings, a business unit of Standard & Poor’s Rating Services, or its successors.

“State” shall mean the State in which the Project is located.

“Subordinate Debt” shall mean the Subordinate Bonds (as defined in the recitals to this Borrower Loan Agreement) and [\_\_\_\_\_].

“Subordinate Lender” in respect of the Subordinate Bonds shall mean the Subordinate Bonds Purchaser [and/or the Governmental Lender, as the issuer of the Subordinate Bonds, as the context requires.]

“Subordinate Loan Documents” shall mean, collectively, the Subordinate Indenture, the Subordinate Loan Agreement, and all other instruments, agreements and other documents evidencing, securing or otherwise relating to the Subordinate Debt or executed and delivered by Borrower and/or Subordinate Lender in connection with the Subordinate Debt.

“Substantial Completion Date” shall have the meaning set forth in the Construction Funding Agreement.

“Substantially Complete” or “Substantially Completed” shall have the meaning set forth in the Construction Funding Agreement.

“Tax Counsel” shall have the meaning set forth in the Funding Loan Agreement.

“Taxes” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the Project.

“Term” shall mean the term of this Borrower Loan Agreement pursuant to Section 10.14.

“Title Company” means First American Title Insurance Company.

“Title Insurance Policy” shall mean the mortgagee title insurance policy, in form acceptable to the Funding Lender, issued with respect to the Mortgaged Property and insuring the lien of the Security Instrument.

“Transfer” shall have the meaning given to that term in the Security Instrument.

“UCC” shall mean the Uniform Commercial Code as in effect in the State.

“Unassigned Rights” shall have the meaning set forth in the Funding Loan Agreement.

“Underwritten Management Fee” shall have the meaning set forth in the Construction Funding Agreement.

“Unit” shall mean a residential apartment unit within the Improvements.

“Written Consent” and “Written Notice” shall mean a written consent or notice signed by an Authorized Borrower Representative or an authorized representative of the Governmental Lender or the Funding Lender, as appropriate.

## **ARTICLE II**

### **GENERAL**

**Section 2.1 Origination of Borrower Loan.** In order to provide funds for the purposes provided herein, the Governmental Lender agrees that it will, in accordance with the Act, enter

into the Funding Loan Agreement and accept the Funding Loan from the Funding Lender. The proceeds of the Funding Loan shall be advanced by the Funding Lender on behalf of the Governmental Lender and disbursed by the Fiscal Agent to the Borrower in accordance with the terms of the Construction Funding Agreement, the Funding Loan Agreement and this Borrower Loan Agreement; provided that the first such disbursement on the Closing Date shall be made by the Funding Lender to the Fiscal Agent, which shall transfer such funds to the Title Company as specified in Section 7.7(a) of the Funding Loan Agreement.

The Governmental Lender hereby appoints the Funding Lender as its agent with full authority and power to act on its behalf to disburse the Borrower Loan for the account of the Governmental Lender, to take certain actions and exercise certain remedies with respect to the Borrower Loan, and for the other purposes set forth in this Borrower Loan Agreement and to do all other acts necessary or incidental to the performance and execution thereof to the extent those actions and remedies are not delegated to the Fiscal Agent. This appointment is coupled with an interest and is irrevocable except as expressly set forth herein. Accordingly, references to the rights of the Funding Lender to take actions under this Borrower Loan Agreement shall refer to Funding Lender in its role as agent of the Governmental Lender. The Funding Lender may designate Servicer to fulfill the rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to this Section 2.1. Notwithstanding the foregoing, disbursements of the Borrower Loan shall be made from the Project Fund held by the Fiscal Agent pursuant to the Funding Loan Agreement.

## **Section 2.2 Security for the Funding Loan.**

(a) As security for the Funding Loan, the Governmental Lender has pledged and assigned to the Funding Lender under and pursuant to the Funding Loan Agreement (a) the Borrower Notes and all of its right, title and interest in and to this Borrower Loan Agreement and the Borrower Loan Documents (except for the Unassigned Rights) and all revenues and receipts therefrom and the security therefor (including the Security Instrument) and (b) the amounts on deposit from time to time in any and all funds, other than the Rebate Fund, established under the Funding Loan Agreement. All revenues and assets pledged and assigned thereby shall immediately be subject to the lien of such pledge without any physical delivery thereof or any further act, except in the case of the Borrower Notes, which shall be delivered to the Funding Lender. The Borrower hereby acknowledges and consents to such assignment to the Funding Lender.

(b) With respect to the Unassigned Rights, subject to the limitations set forth in this Section 2.2, the Governmental Lender may:

(i) Tax Covenants. Seek specific performance of, and enforce, the tax covenants in Section 8.7 of the Funding Loan Agreement, the provisions of the Regulatory Agreement, the Tax Certificate and the covenants of the Borrower in Section 5.34 of this Borrower Loan Agreement, and seek injunctive relief against acts which may be in violation of any of the foregoing covenants, and enforce the Borrower's obligation under Section 5.35 to pay amounts for credit to the Rebate Fund;

(ii) Regulatory Agreement. Seek specific performance of the obligations of the Borrower or any other owner of the Project under the Regulatory Agreement and injunctive relief against acts which may be in violation of the Regulatory Agreement or otherwise in accordance with the provisions of the Regulatory Agreement; provided, however, that the Governmental Lender may enforce any right it may have under the Regulatory Agreement for monetary damages only against Excess Revenues (defined below), if any, of the Borrower, unless Funding Lender otherwise specifically consents in writing to the use of other funds; and

(iii) Reserved Rights. Take whatever action at law or in equity which appears necessary or desirable to enforce the other Unassigned Rights, provided, however, that the Governmental Lender or any person under its control may only enforce any right it may have for monetary damages against Excess Revenues, if any, of the Borrower, unless Funding Lender otherwise specifically consents in writing to the enforcement against other funds of the Borrower.

(c) In no event shall the Governmental Lender, except at the express written direction of the Funding Lender:

(i) prosecute its action to a lien on the Project; or

(ii) except in connection with actions under Section 2.2(b) above, take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan or of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, construction, composition, reorganization, conservation or other similar law in effect now or in the future; or

(iii) interfere with the exercise by Funding Lender or Servicer of any of their rights under the Borrower Loan Documents upon the occurrence of an event of default by the Borrower under the Borrower Loan Documents or the Funding Loan Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan or the Funding Loan.

(d) The Governmental Lender shall provide Written Notice to the Funding Lender and the Servicer immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Borrower Loan Documents or the Funding Loan Documents.

(e) As used in this Section 2.2, the term “Excess Revenues” means, for any period, the net cash flow of the Borrower available for distribution to shareholders, members or partners (as the case may be) for such period, after the payment of all interest expense, the amortization of all principal of all indebtedness coming due during such period (whether by maturity, mandatory sinking fund payment, acceleration or otherwise), the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Borrower Loan or the Funding Loan, the payment of all operating, overhead, ownership and other expenditures of the Borrower directly or indirectly in connection with the Project (whether any such expenditures are current, capital or

extraordinary expenditures), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Borrower is required to set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

### **Section 2.3    Loan; Borrower Notes; Conditions to Closing.**

(a)    The Funding Loan shall be funded directly to the Fiscal Agent by the Funding Lender for disbursement to the Borrower pursuant to the Construction Funding Agreement in one or more installments not to exceed the Borrower Loan Amount in accordance with the disbursement procedures set forth in the Construction Funding Agreement and the Funding Loan Agreement, except for the initial disbursement of the Funding Loan as provided in Section 7.7(a) of the Funding Loan Agreement. Upon funding of each installment of the Funding Loan, the Governmental Lender shall be deemed to have made the Borrower Loan to the Borrower in a like principal amount. The Borrower Loan advances and Funding Loan advances shall be allocated first to the 2021 Series C-1 Borrower Note and the related 2021 Series C-1 Governmental Lender Note and, once the foregoing have been fully funded, then to the 2021 Series C-2 Borrower Note and the related 2021 Series C-2 Governmental Lender Note. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Notes. The proceeds of the Borrower Loan shall be used by the Borrower to pay costs of the acquisition and construction of the Project. The Borrower hereby accepts the Borrower Loan and acknowledges that the Governmental Lender shall cause the Funding Lender to fund the Borrower Loan in the manner set forth herein and in the Funding Loan Agreement. The Governmental Lender acknowledges that the Borrower Loan shall be funded by the Funding Lender to the Fiscal Agent for the account of the Governmental Lender, except as otherwise provided in Section 7.7 of the Funding Loan Agreement with respect to the funding thereof on the Closing Date.

(b)    The Borrower hereby accepts the Borrower Loan. As evidence of its obligation to repay the Borrower Loan, simultaneously with its execution and delivery of this Borrower Loan Agreement, the Borrower hereby agrees to execute and deliver the Borrower Notes. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Notes.

(c)    Closing of the Borrower Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Governmental Lender and the Funding Lender, in their sole discretion, of each of the conditions precedent to closing set forth in the Funding Loan Agreement and this Borrower Loan Agreement, including but not limited to the following:

(i)    evidence of proper recordation of the Security Instrument, an assignment of the Security Instrument from the Governmental Lender to the Funding Lender, the Regulatory Agreement, and each of the other documents specified for recording in instructions delivered to the Title Company by counsel to the Funding Lender (or that such documents have been delivered to an authorized agent of the Title Company for recordation under binding recording instructions from Funding Lender's counsel or such other counsel as may be acceptable to the Funding Lender);

(ii) delivery to the Fiscal Agent or into escrow with the Title Company (or separate escrow company, if applicable) of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit and the Borrower Initial Equity, all as specified in written instructions delivered to the Title Company by counsel to the Funding Lender (or such other counsel as may be acceptable to the Funding Lender) and/or as specified in a closing memorandum of the Funding Lender; and

(iii) payment of all fees payable in connection with the closing of the Borrower Loan including the Governmental Lender's Closing Fee and the initial fees and expenses of the Fiscal Agent and the Funding Lender.

In addition, closing of the Borrower Loan shall be subject to the delivery of an opinion of counsel to the Borrower addressed to the Governmental Lender and the Funding Lender, dated the Closing Date, in form and substance acceptable to Tax Counsel, regarding the due execution by the Borrower of, and the enforceability against the Borrower of, the Borrower Loan Documents.

#### **Section 2.4 Borrower Loan Payments.**

(a) The Borrower shall make Borrower Loan Payments in accordance with the Borrower Notes. Each Borrower Loan Payment made by the Borrower shall be made in funds immediately available through and including the Conversion Date on the Borrower Loan Payment Date, to the Fiscal Agent by 2:00 p.m., New York City time, or, if to the Servicer by 11:00 a.m., New York City time, and after the Conversion Date on the date that is two (2) Business Days prior to the Borrower Loan Payment Date to the Servicer, by 11:00 a.m., New York City time. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or Servicer, as applicable, may designate by Written Notice to the Borrower. Whenever any Borrower Loan Payment shall be stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make Borrower Loan Payments in accordance with the Borrower Notes in the amounts and at the times necessary to make all payments due and payable on the Funding Loan. All payments made by the Borrower hereunder or by the Borrower under the other Borrower Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

(b) Unless there is no Servicer, payments of principal and interest on the Borrower Notes shall be paid to the Servicer and the Servicer shall then remit such funds to the Fiscal Agent. If there is no Servicer, payments of principal and interest on the Borrower Notes shall be paid directly to the Fiscal Agent.

#### **Section 2.5 Additional Borrower Payments.**

(a) The Borrower shall pay the following amounts:

(i) to the Fiscal Agent, the Rebate Amount then due, if any, to be deposited in the Rebate Fund as specified in Section 5.35 hereof and the Rebate Analyst's Fee and any

other costs incurred to calculate such Rebate Amount (to the extent such costs are not included in the Borrower Loan Payment);

(ii) to the Governmental Lender, any and, on demand, all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Governmental Lender incurred by the Governmental Lender at any time in connection with the Borrower Loan Documents, the Funding Loan Documents or the Project, including, without limitation, the Ongoing Governmental Lender Fee, counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit related to the Governmental Lender Notes, the Project or the Borrower;

(iii) [Reserved];

(iv) all Costs of Funding and fees, charges and expenses, including agent and counsel fees incurred in connection with the origination of the Borrower Loan and the Funding Loan, as and when the same become due;

(v) to the Funding Lender, on demand, all charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Funding Lender incurred by the Funding Lender at any time in connection with the Borrower Loan, the Funding Loan or the Project, including, without limitation, any Review Fee, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit;

(vi) all Late Charges due and payable under the terms of the Borrower Notes and Section 2.6 hereof; provided, however, that all payments made pursuant to this subsection (vi) shall be made to the Servicer, and if there is no Servicer, such payments shall be made to the Funding Lender; and

(vii) to the Fiscal Agent, all reasonable fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of Fiscal Agent incurred under the Borrower Loan Documents or the Funding Loan Documents as and when the same become due.

(b) The Borrower shall pay to the party entitled thereto as expressly set forth in this Borrower Loan Agreement or the other Borrower Loan Documents or Funding Loan Documents:

(i) all expenses incurred in connection with the enforcement of any rights under this Borrower Loan Agreement or any other Borrower Loan Document, the Regulatory Agreement, or any Funding Loan Document by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer;

(ii) all other payments of whatever nature that the Borrower has agreed to pay or assume under the provisions of this Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document; and

(iii) all expenses, costs and fees relating to inspections of the Project required by the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer or the Construction Consultant, in accordance with the Borrower Loan Documents or the Funding Loan Documents or to reimburse such parties for such expenses, costs and fees.

**Section 2.6 Overdue Payments; Payments in Default.** If any Borrower Payment Obligation is not paid by or on behalf of the Borrower when due, the Borrower shall pay to the Servicer a Late Charge in the amount and to the extent set forth in the Borrower Notes, if any.

**Section 2.7 Calculation of Interest Payments and Deposits to Real Estate Related Reserve Funds.** The Borrower acknowledges as follows: (a) calculation of all interest payments shall be made by the Funding Lender; (b) deposits with respect to the Taxes and Other Charges shall be calculated by the Servicer or if there is no Servicer, the Funding Lender in accordance with the Security Instrument; and (c) deposits with respect to any replacement reserve funds required by the Funding Lender shall be calculated by the Servicer in accordance with the Replacement Reserve Agreement. In the event and to the extent that the Servicer or the Funding Lender, pursuant to the terms hereof, shall determine at any time that there exists a deficiency in amounts previously owed but not paid with respect to deposits to such replacement reserve fund, such deficiency shall be immediately due and payable hereunder following Written Notice to the Borrower.

**Section 2.8 Grant of Security Interest; Application of Funds.** To the extent not inconsistent with the Security Instrument and as security for payment of the Borrower Payment Obligations and the performance by the Borrower of all other terms, conditions and provisions of the Borrower Loan Documents, the Borrower hereby pledges and assigns to the Fiscal Agent and the Funding Lender, and grants to the Fiscal Agent and the Funding Lender, a security interest in, all the Borrower's right, title and interest in and to all payments to or moneys held in the funds and accounts created and held by the Fiscal Agent, the Funding Lender or the Servicer for the Project. This Borrower Loan Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default hereunder, the Fiscal Agent, the Funding Lender and the Servicer shall apply or cause to be applied any sums held by the Fiscal Agent, the Funding Lender and the Servicer with respect to the Project in accordance with the provisions of Article IX of the Funding Loan Agreement to the extent applicable and otherwise in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion.

**Section 2.9 Marshalling; Payments Set Aside.** The Governmental Lender, the Fiscal Agent and the Funding Lender shall be under no obligation to marshal any assets in favor of the Borrower or any other Person or against or in payment of any or all of the proceeds. To the extent that the Borrower makes a payment or payments or transfers any assets to the Governmental Lender, the Fiscal Agent or the Funding Lender, or the Governmental Lender, the Fiscal Agent or the Funding Lender enforces its liens, and such payment or payments or transfers, or the proceeds of such enforcement or any part thereof are subsequently invalidated, declared to be fraudulent or



preferential, set aside or required to be repaid to a trustee, receiver or any other party in connection with any insolvency proceeding, or otherwise, then: (i) any and all obligations owed to the Governmental Lender, the Fiscal Agent or the Funding Lender and any and all remedies available to the Governmental Lender, the Fiscal Agent or the Funding Lender under the terms of the Borrower Loan Documents and the Funding Loan Documents or in law or equity against the Borrower, Guarantor or General Partner and/or any of their properties shall be automatically revived and reinstated to the extent (and only to the extent) of any recovery permitted under clause (ii) below; and (ii) the Governmental Lender, the Fiscal Agent and the Funding Lender shall be entitled to recover (and shall be entitled to file a proof of claim to obtain such recovery in any applicable bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding) either: (x) the amount of payments or the value of the transfer or (y) if the transfer has been undone and the assets returned in whole or in part, the value of the consideration paid to or received by the Borrower for the initial asset transfer, plus in each case any deferred interest from the date of the disgorgement to the date of distribution to the Governmental Lender, the Fiscal Agent or the Funding Lender in any bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding, and any costs and expenses due and owing, including, without limitation, any reasonable attorneys' fees incurred by the Governmental Lender, the Fiscal Agent or the Funding Lender in connection with the exercise by the Governmental Lender, the Fiscal Agent or the Funding Lender of its rights under this Section 2.9.

**Section 2.10 Borrower Loan Disbursements.** Proceeds of the Borrower Loan shall be disbursed by the Fiscal Agent upon approval by the Funding Lender, as agent for the Governmental Lender, pursuant to the Construction Funding Agreement, to or for the benefit of the Borrower as provided in Section 7.7 of the Funding Loan Agreement.

## **ARTICLE III**

### **CONVERSION**

**Section 3.1 Conversion Date and Extension of Outside Conversion Date.** Borrower shall satisfy each of the Conditions to Conversion and cause the Conversion Date to occur on or before the Outside Conversion Date (including the Extended Outside Conversion Date, if any), as further provided in the Construction Funding Agreement. The failure to satisfy each of the Conditions to Conversion on or before the Outside Conversion Date (including the Extended Outside Conversion Date, if any) shall constitute an Event of Default under the Borrower Loan Documents.

**Section 3.2 Notice From Funding Lender; Funding Lender's Calculation Final.** Following satisfaction of all of the Conditions to Conversion, Funding Lender shall deliver Written Notice to Borrower (with a copy to the Governmental Lender and the Fiscal Agent) of: (i) the Conversion Date, (ii) the amount of the Permanent Period Amount, (iii) any required prepayment of the Borrower Notes (as described below in Section 3.3) and (iv) any amendments to the amortization schedule, as applicable.

Funding Lender's calculation of the Permanent Period Amount and any amendments to the amortization of the Borrower Loan shall be, in the absence of manifest error, conclusive and binding on all parties.

**Section 3.3 Mandatory Prepayment of the Borrower Loan.** As further provided in the Construction Funding Agreement, if and to the extent the Permanent Period Amount is less than the Interim Phase Amount, Funding Lender may in its sole discretion require Borrower to make a partial prepayment of the Borrower Loan in an amount equal to the difference between the Interim Phase Amount and the Permanent Period Amount, provided, however, that if the Permanent Period Amount is less than the Minimum Permanent Period Amount (as defined in the Construction Funding Agreement), then Funding Lender may in its sole discretion require Borrower to prepay the Borrower Loan in full.

Any prepayment in full or in part of the Borrower Loan required pursuant to the preceding paragraph shall be subject to a prepayment premium under certain circumstances as more particularly set forth in the Borrower Notes.

**Section 3.4 Release of Remaining Loan Proceeds.** If and to the extent that the Permanent Period Amount is greater than the principal amount of the Borrower Loan which has previously been disbursed to Borrower, Funding Lender shall deliver Written Notice thereof to Borrower (with a copy to the Governmental Lender) on or before the Conversion Date. Within ten (10) business days after delivery of such notice, but in no event later than the Outside Conversion Date, Funding Lender shall advance to the Fiscal Agent, for deposit by the Fiscal Agent to the Note Proceeds Account of the Project Fund under the Funding Loan Agreement, Funding Loan proceeds so that the aggregate principal amount of the Funding Loan and of the Borrower Loan disbursed equals the Permanent Period Amount. Any Borrower Loan proceeds previously disbursed to the Borrower in excess of the Permanent Period Amount shall be paid by Borrower to Fiscal Agent.

**Section 3.5 No Amendment.** Nothing contained in this Article III shall be construed to amend, modify, alter, change or supersede the terms and provisions of the Borrower Notes, Security Instrument, the Construction Funding Agreement or any other Borrower Loan Document and, if there shall exist a conflict between the terms and provisions of this Article III and those of the Borrower Notes, Security Instrument, the Construction Funding Agreement or other Borrower Loan Documents, then the terms and provisions of the Borrower Notes, Security Instrument, the Construction Funding Agreement and other Borrower Loan Documents shall control; provided, however, that in the event of a conflict between the terms and provisions of this Article III and those of the Borrower's loan application with the Funding Lender, the terms and provisions of this Article III shall control.

**Section 3.6 Determinations by Funding Lender.** In any instance where the consent or approval of Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Funding Lender under this Article III, including in connection with the Construction Funding Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Funding Lender (or its designated representative), at its sole and exclusive option and in its sole and absolute discretion.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES**

**Section 4.1 Borrower Representations.** To induce the Governmental Lender to execute this Borrower Loan Agreement and to induce the Funding Lender to make Disbursements, the Borrower represents and warrants for the benefit of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, that the representations and warranties set forth in this Section 4.1 are complete and accurate [in all material respects] as of the Closing Date and, subject to Section 4.2, shall survive the making of the Borrower Loan and will be complete and accurate [in all material respects], and deemed remade, except as otherwise noted through notice to Funding Lender and approved by Funding Lender, as of the date of each Disbursement, as of the original Outside Conversion Date, as of the date of any extension thereof and as of the Conversion Date in accordance with the terms and conditions of the Borrower Notes:

**Section 4.1.1 Organization; Special Purpose.** The Borrower is a limited partnership in good standing under the laws of the State (and under the laws of the state in which the Borrower was formed if the Borrower was not formed under the laws of the State), has full legal right, power and authority to enter into the Borrower Loan Documents to which it is a party, and to carry out and consummate all transactions contemplated by the Borrower Loan Documents to which it is a party, and by proper limited partnership action has duly authorized the execution, delivery and performance of the Borrower Loan Documents to which it is a party. The Person(s) of the Borrower executing the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are fully authorized to execute the same. The Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party have been duly authorized, executed and delivered by the Borrower. The sole business of the Borrower is the ownership, management and operation of the Project.

**Section 4.1.2 Proceedings; Enforceability.** Assuming due execution and delivery by the other parties thereto, the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

**Section 4.1.3 No Conflicts.** The execution and delivery of the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party or is otherwise bound, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the Partnership Agreement of the Borrower or to the best knowledge of the Borrower and with respect to the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever (other than the lien of the Security Instrument and the Subordinate Debt and any related financing statements) upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions

contemplated by the Borrower Loan Documents and the Funding Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

**Section 4.1.4 Litigation; Adverse Facts.** There is no Legal Action, nor is there a basis known to Borrower for any Legal Action, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower, the General Partner or the Guarantor, or their respective assets, properties or operations which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, the Borrower Loan Documents or the Funding Loan Documents, upon the ability of each of Borrower, General Partner and Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or upon the financial condition, assets (including the Project), properties or operations of the Borrower, the General Partner or the Guarantor. None of the Borrower, General Partner or Guarantor is in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the ability of each of Borrower, General Partner and Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or the financial condition, assets, properties or operations of the Borrower, General Partner or Guarantor. None of Borrower, General Partner or Guarantor are (a) in violation of any applicable law, which violation materially and adversely affects or may materially and adversely affect the business, operations, assets (including the Project), financial condition of Borrower, General Partner or Guarantor, as applicable; (b) subject to, or in default with respect to, any other Legal Requirement that would have a material adverse effect on the business, operations, assets (including the Project), financial condition of Borrower, General Partner or Guarantor, as applicable; or (c) in default with respect to any agreement to which Borrower, General Partner or Guarantor, as applicable, are a party or by which they are bound, which default would have a material adverse effect on the business, operations, assets (including the Project), financial condition of Borrower, General Partner or Guarantor, as applicable; and (d) there is no Legal Action pending or, to the knowledge of Borrower, threatened against or affecting Borrower, General Partner or Guarantor questioning the validity or the enforceability of this Borrower Loan Agreement or any of the other Borrower Loan Documents or the Funding Loan Documents or of any of the Related Documents. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating its facilities.

**Section 4.1.5 Agreements; Consents; Approvals.** Except as contemplated by the Borrower Loan Documents and the Funding Loan Documents, the Borrower is not a party to any agreement or instrument or subject to any restriction that would materially adversely affect the Borrower, the Project, or the Borrower's business, properties, operations or financial condition,

except the Permitted Encumbrances. The Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Project is bound.

No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the best knowledge of the Borrower and only with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except no representation is made with respect to any state securities or “blue sky” laws) is necessary in connection with the execution and delivery of the Borrower Loan Documents or the Funding Loan Documents, or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

**Section 4.1.6 Title.** The Borrower shall have marketable title to the Project free and clear of all Liens except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (i) after repayment in full of the Construction Loan, a valid, perfected first priority lien on the fee interest in the Project and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty included in the Project (including the Permitted Leases) to the extent such personalty is the type in which a security interest may be perfected under the UCC by the filing of a financing statement with the Secretary of State of the State, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To the Borrower’s knowledge, there are no delinquent real property taxes or assessments, including water and sewer charges, with respect to the Project, nor are there any claims for payment for work, labor or materials affecting the Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Borrower Loan Documents and the Funding Loan Documents.

**Section 4.1.7 Survey.** To the best knowledge of the Borrower, the survey for the Project delivered to the Governmental Lender and the Funding Lender does not fail to reflect any material matter affecting the Project or the title thereto.

**Section 4.1.8 No Bankruptcy Filing.** The Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a “Bankruptcy Proceeding”), and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it. As of the Closing Date, the Borrower has the ability to pay its debts as they become due.

**Section 4.1.9 Full and Accurate Disclosure.** No statement of fact made by the Borrower in any Borrower Loan Document or any Funding Loan Document contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein in light of the circumstances in which they were made, not misleading. There is no material fact or circumstance presently known to the Borrower that has not been disclosed to the Governmental Lender and the Funding Lender which materially and adversely affects the Project or the business, operations or financial condition of the Borrower or the Borrower’s ability to meet its obligations

under this Borrower Loan Agreement and the other Borrower Loan Documents and Funding Loan Documents to which it is a party in a timely manner.

**Section 4.1.10 No Plan Assets.** The Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of the Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3 101.

**Section 4.1.11 Compliance.** The Borrower, the Project and the use thereof will comply, to the extent required, in all material respects with all applicable Legal Requirements. The Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which would materially adversely affect the financial condition or the business of the Borrower. There has not been committed by the Borrower or any Borrower Affiliate involved with the operation or use of the Project any act or omission affording any Governmental Authority the right of forfeiture as against the Project or any part thereof or any moneys paid in performance of the Borrower’s obligations under any Borrower Loan Document or any Funding Loan Documents.

**Section 4.1.12 Contracts.** All service, maintenance or repair contracts affecting the Project have been entered into at arm’s length (except for such contracts between the Borrower and Borrower Affiliates or the Affiliates of the Borrower Controlling Entity of the Borrower) in the ordinary course of the Borrower’s business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

**Section 4.1.13 Financial Information.** All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the Governmental Lender or the Funding Lender in respect of the Project by or on behalf of the Borrower, to the best knowledge of the Borrower, (i) are accurate and complete in all material respects, as of their respective dates, (ii) accurately represent the financial condition of the Project as of the date of such reports in all material respects, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. Other than pursuant to or permitted by the Borrower Loan Documents or the Funding Loan Documents or the Borrower organizational documents, the Borrower has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of the Borrower from that set forth in said financial statements.

**Section 4.1.14 Condemnation.** No Condemnation or other proceeding has been commenced or, to the Borrower’s knowledge, is contemplated, threatened or pending with respect to all or part of the Project or for the relocation of roadways providing access to the Project.

**Section 4.1.15 Federal Reserve Regulations.** No part of the proceeds of the Borrower Loan will be used for the purpose of purchasing or acquiring any “margin stock” within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such

Board of Governors, or for any purpose prohibited by Legal Requirements or any Borrower Loan Document or Funding Loan Document.

**Section 4.1.16 Utilities and Public Access.** To the best of the Borrower's knowledge, the Project is or will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service it for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Project are or will be located in the public right-of-way abutting the Project, and all such utilities are or will be connected so as to serve the Project without passing over other property absent a valid easement. All roads necessary for the use of the Project for its current purpose have been or will be completed and dedicated to public use and accepted by all Governmental Authorities. Except for Permitted Encumbrances, the Project does not share ingress and egress through an easement or private road or share on-site or off-site recreational facilities and amenities that are not located on the Project and under the exclusive control of the Borrower, or where there is shared ingress and egress or amenities, there exists an easement or joint use and maintenance agreement under which (i) access to and use and enjoyment of the easement or private road and/or recreational facilities and amenities is perpetual, (ii) the number of parties sharing such easement and/or recreational facilities and amenities must be specified, (iii) the Borrower's responsibilities and share of expenses are specified, and (iv) the failure to pay any maintenance fee with respect to an easement will not result in a loss of usage of the easement.

**Section 4.1.17 Not a Foreign Person.** The Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

**Section 4.1.18 Separate Lots.** Each parcel comprising the Land is a separate tax lot and is not a portion of any other tax lot that is not a part of the Land.

**Section 4.1.19 Assessments.** Except as disclosed in the Title Insurance Policy, there are no pending or, to the Borrower's best knowledge, proposed special or other assessments for public improvements or otherwise affecting the Project, or any contemplated improvements to the Project that may result in such special or other assessments.

**Section 4.1.20 Enforceability.** The Borrower Loan Documents and the Funding Loan Documents are not subject to, and the Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

**Section 4.1.21 Insurance.** The Borrower has obtained the insurance required by this Borrower Loan Agreement, if applicable, and the Security Instrument and has delivered to the Servicer copies of insurance policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Borrower Loan Agreement, if applicable, and the Security Instrument.

**Section 4.1.22 Use of Property; Licenses.** The Project will be used exclusively as a multifamily rental housing project and other appurtenant and related uses, which use is consistent with the applicable zoning classification for the Project. All certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use or legal, nonconforming use, as applicable, occupancy and operation of the Project (collectively, the "Licenses") required at this time for the construction and equipping of the Project have been

obtained. To the Borrower's knowledge, all Licenses obtained by the Borrower have been validly issued and are in full force and effect. The Borrower has no reason to believe that any of the Licenses required for the future use and occupancy of the Project and not heretofore obtained by the Borrower will not be obtained by the Borrower in the ordinary course following the Completion Date. No Licenses will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project, including any transfer pursuant to foreclosure sale under the Security Instrument or deed in lieu of foreclosure thereunder. The Project does not violate any density or building setback requirements of the applicable zoning law except to the extent, if any, shown on the survey. No proceedings are, to the best of the Borrower's knowledge, pending or threatened that would result in a change of the zoning of the Project.

**Section 4.1.23 Flood Zone.** As of the Closing Date, no structure within the Mortgaged Property lies or is located in an identifiable or designated Special Flood Hazard Area. Subsequent to the Closing Date, if the Mortgaged Property is determined to be in a Special Flood Hazard Area, Borrower will obtain appropriate flood insurance as required under the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994 as amended or as required by the Servicer pursuant to its underwriting guidelines.

**Section 4.1.24 Physical Condition.** The Project, including all Improvements, parking facilities, systems, fixtures, Equipment and landscaping, are or, after completion of the construction and/or repairs, as appropriate, will be in good and habitable condition in all material respects and in good order and repair in all material respects (reasonable wear and tear excepted). The Borrower has not received notice from any insurance company or bonding company of any defect or inadequacy in the Project, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. After completion of construction, the physical configuration of the Project will not be in material violation of the ADA.

**Section 4.1.25 Encroachments.** All of the Improvements included in determining the appraised value of the Project will lie wholly within the boundaries and building restriction lines of the Project, and no improvement on an adjoining property encroaches upon the Project, and no easement or other encumbrance upon the Project encroaches upon any of the Improvements, so as to affect the value or marketability of the Project, except those insured against by the Title Insurance Policy or disclosed in the survey of the Project as approved by the Servicer.

**Section 4.1.26 State Law Requirements.** The Borrower hereby represents, covenants and agrees to comply with the provisions of all applicable state laws relating to the Borrower Loan, the Funding Loan and the Project.

**Section 4.1.27 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of the Project to the Borrower have been paid or will be paid at Closing. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Borrower Loan Documents and the Funding Loan Documents have been or will be paid.



**Section 4.1.28 Investment Company Act.** The Borrower is not (i) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; or (ii) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended.

**Section 4.1.29 Fraudulent Transfer.** The Borrower has not accepted the Borrower Loan or entered into any Borrower Loan Document or Funding Loan Document with the actual intent to hinder, delay or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Borrower Loan Documents and the Funding Loan Documents. Giving effect to the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the fair saleable value of the Borrower’s assets exceeds and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, exceed the Borrower’s total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower’s assets is and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, be greater than the Borrower’s probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower’s assets do not and, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

**Section 4.1.30 Ownership of the Borrower.** Except as set forth in the Partnership Agreement of the Borrower and the exhibits thereto, the Borrower has no obligation to any Person to purchase, repurchase or issue any ownership interest in the Borrower.

**Section 4.1.31 Environmental Matters.** To the best of Borrower’s knowledge, the Project is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or cleanup, and will comply with covenants and requirements relating to environmental hazards as set forth in the Security Instrument. The Borrower will execute and deliver the Agreement of Environmental Indemnification on the Closing Date.

**Section 4.1.32 Name; Principal Place of Business.** Unless prior Written Notice is given to the Funding Lender, the Borrower does not use and will not use any trade name, and has not done and will not do business under any name other than its actual name set forth herein. The principal place of business of the Borrower is its primary address for notices as set forth in Section 10.1 hereof, and the Borrower has no other place of business, other than the Project and such principal place of business.

**Section 4.1.33 Subordinated Debt.** There is no secured or unsecured indebtedness with respect to the Project or any residual interest therein, other than Permitted Encumbrances and the permitted secured indebtedness described in Section 6.7 hereof, except an unsecured deferred developer fee not to exceed the amount permitted by Funding Lender as determined on the Closing

Date, and unsecured, subordinate partner loans to Borrower permitted or required under the terms of the Partnership Agreement.

**Section 4.1.34 [Reserved].**

**Section 4.1.35 General Tax.** All representations, warranties and certifications of the Borrower set forth in the Regulatory Agreement and the Tax Certificate are incorporated by reference herein and the Borrower will comply with such as if set forth herein.

**Section 4.1.36 Approval of the Borrower Loan Documents and Funding Loan Documents.** By its execution and delivery of this Borrower Loan Agreement, the Borrower approves the form and substance of the Borrower Loan Documents and the Funding Loan Documents, and agrees to carry out the responsibilities and duties specified in the Borrower Loan Documents and the Funding Loan Documents to be carried out by the Borrower. The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the provisions of all of the Borrower Loan Documents and the Funding Loan Documents and other documents and instruments relating to the financing, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents or otherwise relied on the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer in any manner.

**Section 4.1.37 Funding Loan Agreement.** The Borrower has read and accepts and agrees that it is bound by the Funding Loan Agreement and the Funding Loan Documents.

**Section 4.1.38 Americans with Disabilities Act.** The Project, as designed, will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, the Americans with Disabilities Act of 1990 (“ADA”), to the extent required (as evidenced by an architect’s certificate to such effect).

**Section 4.1.39 Requirements of Act, Code and Regulations.** The Project satisfies all requirements of the Act, the Code and the Regulations applicable to the Project.

**Section 4.1.40 Regulatory Agreement.** The Project is, as of the date of origination of the Funding Loan, in compliance with all requirements of the Regulatory Agreement to the extent such requirements are applicable; and 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 and the Regulations, and pursuant to leases which comply with all applicable laws.

**Section 4.1.41 Intention to Hold Project.** The Borrower intends to hold the Project for its own account and has no current plans, and except as set forth in the Partnership Agreement has not entered into any agreement, to sell the Project or any part of it; and the Borrower intends to occupy the Project or cause the Project to be occupied and to operate it or cause it to be operated at all times during the term of this Borrower Loan Agreement in compliance with the terms of this

Borrower Loan Agreement and the Regulatory Agreement and does not know of any reason why the Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control.

**Section 4.1.42 Concerning General Partner.** Each General Partner represents and covenants as to itself only and not on behalf of the other General Partner as follows:

(a) The managing general partner of Borrower is Pacific Southwest Community Development Corporation, a California nonprofit public benefit corporation, and the administrative general partner of Borrower is 3Roots CIC LLC, a California limited liability company, and each of the Managing General Partner and Administrative General Partner is duly organized and validly existing under the laws of the State of California. The General Partner has all requisite power and authority, rights and franchises to enter into and perform its obligations under the Borrower Loan Documents and the Funding Loan Documents to be executed by it for its own account and on behalf of Borrower, as general partner of Borrower, under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents.

(b) The General Partner has made all filings (including, without limitation, all required filings related to the use of fictitious business names) and is in good standing in the State and in each other jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a material adverse effect on the business, operations, assets, or financial condition of General Partner.

(c) The General Partner is duly authorized to do business in the State.

(d) The execution, delivery and performance by Borrower of the Borrower Loan Documents and the Funding Loan Documents to which Borrower is a party have been duly authorized by all necessary action of General Partner on behalf of Borrower, and by all necessary action on behalf of General Partner.

(e) The execution, delivery and performance by General Partner, on behalf of Borrower, of the Borrower Loan Documents and the Funding Loan Documents to which Borrower is a party will not violate (i) General Partner's organizational documents; (ii) any other Legal Requirement affecting General Partner or any of its properties; or (iii) any agreement to which General Partner is bound or to which it is a party; and will not result in or require the creation (except as provided in or contemplated by this Borrower Loan Agreement) of any Lien upon any of such properties, any of the Collateral or any of the property or funds pledged or delivered to Funding Lender pursuant to the Security Documents.

**Section 4.1.43 Government and Private Approvals.** All governmental or regulatory orders, consents, permits, authorizations and approvals required for the construction, use, occupancy and operation of the Improvements, that may be granted or denied in the discretion of any Governmental Authority, have been obtained and are in full force and effect (or, in the case of any of the foregoing that Borrower is not required to have as of the Closing Date, will be obtained), and will be maintained in full force and effect at all times during the construction of the Improvements. All such orders, consents, permits, authorizations and approvals that may not be

denied in the discretion of any Governmental Authority shall be obtained prior to the commencement of any work for which such orders, consents, permits, authorizations or approvals are required, and, once obtained, such orders, consents, permits, authorizations and approvals will be maintained in full force and effect at all times during the construction of the Improvements. Except as set forth in the preceding two sentences, no additional governmental or regulatory actions, filings or registrations with respect to the Improvements, and no approvals, authorizations or consents of any trustee or holder of any indebtedness or obligation of Borrower, are required for the due execution, delivery and performance by Borrower or General Partner of any of the Borrower Loan Documents or the Funding Loan Documents or the Related Documents executed by Borrower or General Partner, as applicable. All required zoning approvals have been obtained, and the zoning of the Land for the Project is not conditional upon the happening of any further event.

**Section 4.1.44 Concerning Guarantor.** The Borrower Loan Documents and the Funding Loan Documents to which the Guarantor is a party or a signatory executed simultaneously with this Borrower Loan Agreement have been duly executed and delivered by Guarantor and are legally valid and binding obligations of Guarantor, enforceable against Guarantor in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**Section 4.1.45 No Material Defaults.** Except as previously disclosed to Funding Lender and the Governmental Lender in writing, there exists no material violation of or material default by Borrower under, and, to the best knowledge of Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default with respect to: (i) the terms of any instrument evidencing, securing or guaranteeing any indebtedness secured by the Project or any portion or interest thereof or therein; (ii) any lease or other agreement affecting the Project or to which Borrower is a party; (iii) any license, permit, statute, ordinance, law, judgment, order, writ, injunction, decree, rule or regulation of any Governmental Authority, or any determination or award of any arbitrator to which Borrower or the Project may be bound; or (iv) any mortgage, instrument, agreement or document by which Borrower or any of its respective properties is bound; in the case of any of the foregoing: (1) which involves any Borrower Loan Document or Funding Loan Document; (2) which involves the Project and is not adequately covered by insurance; (3) that would materially and adversely affect the ability of Borrower, General Partner or Guarantor or to perform any of its respective obligations under any of the Borrower Loan Documents or the Funding Loan Documents or any other material instrument, agreement or document to which it is a party relating to the Project; or (4) which would adversely affect the priority of the Liens created by this Borrower Loan Agreement or any of the Borrower Loan Documents or the Funding Loan Documents.

**Section 4.1.46 Payment of Taxes.** Except as previously disclosed to Funding Lender in writing: (i) all tax returns and reports of Borrower, General Partner and Guarantor required to be filed have been timely filed, and all taxes, assessments, fees and other governmental charges upon Borrower, General Partner and Guarantor, and upon their respective properties, assets, income and franchises, which are due and payable have been paid when due and payable; and (ii) Borrower knows of no proposed tax assessment against it or against General Partner or Guarantor that would be material to the condition (financial or otherwise) of Borrower, General Partner or Guarantor,

and neither Borrower nor General Partner have contracted with any Governmental Authority in connection with such taxes.

**Section 4.1.47 Rights to Project Agreements and Licenses.** Borrower is the legal and beneficial owner of all rights in and to the Plans and Specifications and all existing Project Agreements and Licenses, and will be the legal and beneficial owner of all rights in and to all future Project Agreements and Licenses. Borrower's interest in the Plans and Specifications and all Project Agreements and Licenses is not subject to any present claim (other than under the Borrower Loan Documents and the Funding Loan Documents and Subordinate Debt or as otherwise approved by Funding Lender in its sole discretion), set-off or deduction other than in the ordinary course of business.

**Section 4.1.48 Patriot Act Compliance.** Borrower is not now, nor has ever been (i) listed on any Government Lists (as defined below), (ii) a person who has been determined by a Governmental Authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (September 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" shall mean any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism; (B) the criminal laws against money laundering, (C) Bank Representative Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" shall mean (1) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control ("OFAC"), (2) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Funding Lender notified Borrower in writing is now included in "Government Lists", or (3) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that Funding Lender notified Borrower in writing is now included in "Government Lists".

**Section 4.1.49 Rent Schedule.** Borrower has prepared a prospective Unit absorption and rent collection schedule with respect to the Project substantially in the form attached as an exhibit to the Construction Funding Agreement, which schedule takes into account, among other relevant factors (i) a schedule of minimum monthly rentals for the Units, and (ii) any and all concessions including free rent periods, and on the basis of such schedule, Borrower believes it will collect rents with respect to the Project in amounts greater than or equal to debt service on the Borrower Loan.

**Section 4.1.50 Other Documents.** Each of the representations and warranties of Borrower or General Partner contained in any of the other Borrower Loan Documents or the Funding Loan

Documents or Related Documents is true and correct in all material respects (or, in the case of representations or warranties contained in any of the other Borrower Loan Documents or Funding Loan Documents or Related Documents that speak as of a particular date, were true and correct in all material respects as of such date). All of such representations and warranties are incorporated herein for the benefit of Funding Lender.

**Section 4.1.51 Subordinate Loan Documents.** The Subordinate Loan Documents are in full force and effect and the Borrower has paid all commitment fees and other amounts due and payable to the Subordinate Lender(s) thereunder. There exists no material violation of or material default by the Borrower under, and no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default under the Subordinate Loan Documents.

**Section 4.1.52 Survival of Representations and Covenants.** All of the representations and warranties in Section 4.1 hereof and elsewhere in the Borrower Loan Documents (i) shall survive for so long as any portion of the Borrower Payment Obligations remains due and owing and (ii) shall be deemed to have been relied upon by the Governmental Lender and the Servicer notwithstanding any investigation heretofore or hereafter made by the Governmental Lender or the Servicer or on its or their behalf, provided, however, that the representations, warranties and covenants set forth in Section 4.1.31 hereof shall survive in perpetuity and shall not be subject to the exculpation provisions of Section 11.1 hereof.

## **ARTICLE V**

### **AFFIRMATIVE COVENANTS**

During the term of this Borrower Loan Agreement, the Borrower hereby covenants and agrees with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer that:

**Section 5.1 Existence.** The Borrower shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and its material rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all material Licenses, and (iv) qualify to do business and remain in good standing under the laws of the State.

**Section 5.2 Taxes and Other Charges.** The Borrower shall pay all Taxes and Other Charges as the same become due and payable and prior to their becoming delinquent in accordance with the Security Instrument, except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Security Instrument.

The Borrower covenants to pay all taxes and Other Charges of any type or character charged to the Funding Lender affecting the amount available to the Funding Lender from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and Other Charges assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Funding Lender and taxes based upon or measured by the net income of the Funding Lender; provided, however, that the

Borrower shall have the right to protest any such taxes or Other Charges and to require the Funding Lender, at the Borrower's expense, to protest and contest any such taxes or Other Charges levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or Other Charges pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Funding Lender. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

**Section 5.3 Repairs; Maintenance and Compliance; Physical Condition.** The Borrower shall cause the Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) as set forth in the Security Instrument and shall not remove, demolish or materially alter the Improvements or Equipment (except for removal of aging or obsolete equipment or furnishings in the normal course of business), except as provided in the Security Instrument.

**Section 5.4 Litigation.** The Borrower shall give prompt Written Notice to the Governmental Lender, the Funding Lender and the Servicer of any litigation, governmental proceedings or claims or investigations regarding an alleged actual violation of a Legal Requirement pending or, to the Borrower's knowledge, threatened against the Borrower which might materially adversely affect the Borrower's condition (financial or otherwise) or business or the Project.

**Section 5.5 Performance of Other Agreements.** The Borrower shall observe and perform in all material respects each and every term to be observed or performed by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Project.

**Section 5.6 Notices.** The Borrower shall promptly advise the Governmental Lender, the Funding Lender and the Servicer of (i) any Material Adverse Change in the Borrower's financial condition, assets, properties or operations other than general changes in the real estate market, (ii) any fact or circumstance affecting the Borrower or the Project that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Borrower Loan Document to which it is a party in a timely manner, or (iii) the occurrence of any Potential Default or Event of Default of which the Borrower has knowledge. If the Borrower becomes subject to federal or state securities law filing requirements, the Borrower shall cause to be delivered to the Governmental Lender, the Funding Lender and the Servicer any Securities and Exchange Commission or other public filings, if any, of the Borrower within two (2) Business Days of such filing.

**Section 5.7 Cooperate in Legal Proceedings.** The Borrower shall cooperate fully with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer with respect to, and permit the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer at their option, to participate in, any proceedings before any Governmental Authority that may in any way affect the rights of the Governmental Lender, the Funding Lender, the Fiscal Agent and/or the Servicer under any Borrower Loan Document or Funding Loan Document.

**Section 5.8 Further Assurances.** The Borrower shall, at the Borrower's sole cost and expense (except as provided in Section 9.1 hereof), (i) furnish to the Servicer and the Funding Lender all instruments, documents, boundary surveys, footing or foundation surveys (to the extent that Borrower's construction or renovation of the Project alters any existing building foundations or footprints), certificates, plans and specifications, appraisals, title and other insurance reports and agreements relating to the Project, reasonably requested by the Servicer or the Funding Lender for the better and more efficient carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents; (ii) execute and deliver to the Servicer and the Funding Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Borrower Loan, as the Servicer, the Fiscal Agent (at the direction of the Funding Lender) and the Funding Lender may reasonably require from time to time; (iii) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents, as the Servicer, the Fiscal Agent (at the direction of the Funding Lender) or the Funding Lender shall reasonably require from time to time; provided, however, with respect to clauses (i)-(iii) above, the Borrower shall not be required to do anything that has the effect of (A) changing the essential economic terms of the Borrower Loan or (B) imposing upon the Borrower greater personal liability under the Borrower Loan Documents and the Funding Loan Documents; and (iv) upon the Servicer's, the Fiscal Agent's (at the direction of the Funding Lender) or the Funding Lender's request therefor given from time to time after the occurrence of any Potential Default or Event of Default for so long as such Potential Default or Event of Default, as applicable, is continuing pay for (a) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to the Borrower and (b) searches of title to the Project, each such search to be conducted by search firms reasonably designated by the Servicer, the Fiscal Agent (at the direction of the Funding Lender) or the Funding Lender in each of the locations reasonably designated by the Servicer, the Fiscal Agent or the Funding Lender.

**Section 5.9 Delivery of Financial Information.** After notice to the Borrower of a Secondary Market Disclosure Document, the Borrower shall, concurrently with any delivery to the Funding Lender or the Servicer, deliver copies of all financial information required under Article IX.

**Section 5.10 Environmental Matters.** So long as the Borrower owns or is in possession of the Project, the Borrower shall (a) keep the Project in compliance with all Hazardous Materials Laws (as defined in the Security Instrument), (b) promptly notify the Funding Lender and the Servicer if the Borrower shall become aware that any Hazardous Materials (as defined in the Security Instrument) are on or near the Project in violation of Hazardous Materials Laws, and (c) commence and thereafter diligently prosecute to completion all remedial work necessary with respect to the Project required under any Hazardous Material Laws, in each case as set forth in the Security Instrument or the Agreement of Environmental Indemnification.

**Section 5.11 Governmental Lender's and Funding Lender's Fees.** The Borrower covenants to pay the reasonable fees and expenses of the Governmental Lender (including the Ongoing Governmental Lender Fee), the Fiscal Agent and the Funding Lender or any agents, attorneys, accountants, consultants selected by the Governmental Lender, the Fiscal Agent or the



Funding Lender to act on its behalf in connection with this Borrower Loan Agreement and the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents, including, without limitation, any and all reasonable expenses incurred in connection with the making of the Borrower Loan or in connection with any litigation which may at any time be instituted involving the Borrower Loan, this Borrower Loan Agreement, the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents 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. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

**Section 5.12 Estoppel Statement.** The Borrower shall furnish to the Funding Lender, the Fiscal Agent or the Servicer for the benefit of the Funding Lender or the Servicer within ten (10) days after request by the Funding Lender and the Servicer, with a statement, duly acknowledged and certified, setting forth (i) the unpaid principal of the Borrower Notes, (ii) the applicable Interest Rate, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment of the Borrower Payment Obligations, and (v) that the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party or is otherwise bound are valid, legal and binding obligations of the Borrower and have not been modified or, if modified, giving particulars of such modification, and no Event of Default exists thereunder or specify any Event of Default that does exist thereunder. The Borrower shall use commercially reasonable efforts to furnish to the Funding Lender or the Servicer, within 30 days of a request by the Funding Lender or Servicer, tenant estoppel certificates from each commercial tenant at the Project in form and substance reasonably satisfactory to the Funding Lender and the Servicer; provided that the Funding Lender and the Servicer shall not make such requests more frequently than twice in any year.

**Section 5.13 Defense of Actions.** The Borrower shall appear in and defend any action or proceeding purporting to affect the security for this Borrower Loan Agreement hereunder or under the Borrower Loan Documents and the Funding Loan Documents, and shall pay, in the manner required by Section 2.4 hereof, all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Funding Lender may appear. If the Borrower fails to perform any of the covenants or agreements contained in this Borrower Loan Agreement or any other Borrower Loan Document, or if any action or proceeding is commenced that is not diligently defended by the Borrower which affects the Funding Lender's interest in the Project or any part thereof, including eminent domain, code enforcement or proceedings of any nature whatsoever under any Federal or state law, whether now existing or hereafter enacted or amended, then the Funding Lender may make such appearances, disburse such sums and take such action as the Funding Lender deems necessary or appropriate to protect its interests. Such actions include disbursement of attorneys' fees, entry upon the Project to make repairs or take other action to protect the security of the Project, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of Funding Lender appears to be prior or superior to the Borrower Loan Documents or the Funding Loan Documents other than the Permitted Exceptions. The Funding Lender shall have no obligation to do any of the above. The Funding Lender may take any such action without notice to or demand upon the Borrower. No such action shall release the Borrower from any obligation under this Borrower Loan Agreement or any of the other Borrower Loan Documents or Funding Loan Documents. In

the event (i) that the Security Instrument is foreclosed in whole or in part or that any Borrower Loan Document is put into the hands of an attorney for collection, suit, action or foreclosure, or (ii) of the foreclosure of any mortgage, deed of trust or deed to secure debt prior to or subsequent to the Security Instrument or any Borrower Loan Document in which proceeding the Funding Lender is made a party or (iii) of the bankruptcy of the Borrower or an assignment by the Borrower for the benefit of its creditors, the Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including actual attorneys' fees in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes.

**Section 5.14 Expenses.** The Borrower shall pay all reasonable expenses incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer (except as provided in Section 9.1 hereof) in connection with the Borrower Loan and the Funding Loan, including reasonable fees and expenses of the Governmental Lender's, the Fiscal Agent's, the Funding Lender's and the Servicer's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the recording or filing of the Borrower Loan Documents and the Funding Loan Documents. The Borrower shall pay or cause to be paid all reasonable expenses of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer (except as provided in Section 9.1 hereof) in connection with the issuance or administration of the Borrower Loan and the Funding Loan, including audit costs, inspection fees, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto. The Borrower shall, upon request, promptly reimburse the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer for all reasonable amounts expended, advanced or incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer to collect the Borrower Notes, or to enforce the rights of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer under this Borrower Loan Agreement or any other Borrower Loan Document, or to defend or assert the rights and claims of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer under the Borrower Loan Documents and the Funding Loan Documents arising out of an Event of Default or with respect to the Project (by litigation or other proceedings) arising out of an Event of Default, which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be reasonably incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the Date of Disbursement until the date of reimbursement to the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, all of which shall constitute part of the Borrower Loan and the Funding Loan and shall be secured by the Borrower Loan Documents and the Funding Loan Documents. The obligations and liabilities of the Borrower under this Section 5.14 shall survive the Term of this Borrower Loan Agreement and the exercise by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, of any of its rights or remedies under the Borrower Loan Documents and the Funding Loan Documents, including the acquisition of the Project by foreclosure or a conveyance in lieu of foreclosure. Notwithstanding the foregoing, the Borrower shall not be obligated to pay amounts incurred as a result of the gross negligence or willful misconduct of any other party, and any obligations of the Borrower to pay for environmental inspections or audits will be governed by Section 18(i) and 43(i) of the Security Instrument.

**Section 5.15 Indemnity.** In addition to its other obligations hereunder, and in addition to any and all rights of reimbursement, indemnification, subrogation and other rights of Governmental Lender, the Fiscal Agent or Funding Lender pursuant hereto, pursuant to the Regulatory Agreement and under law or equity, to the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, the Beneficiary Parties, Citigroup, Inc., and each of their respective commissioners, officers, directors, employees, attorneys and agents (each an “Indemnified Party”), against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) (hereinafter, the “Liabilities”) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to:

(a) The Borrower Loan Documents and the Funding Loan Documents or the execution or amendment thereof or in connection with transactions contemplated thereby, including the sale, transfer or resale of the Borrower Loan or the Funding Loan, except with respect to any Secondary Market Disclosure Document (other than any Borrower’s obligations under Article IX);

(b) Any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan, the Funding Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, construction, installation or operation of, the Project or any part thereof;

(c) Any lien (other than a Permitted Lien) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Funding Lender hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and Other Charges imposed on the Governmental Lender, the Fiscal Agent or the Funding Lender in respect of any portion of the Project;

(d) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof during the period in which the Borrower is in possession or control of the Project;

(e) The enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender related to remedies under, this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents;

(f) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower made in the course of Borrower applying for the Borrower Loan or the Funding Loan or contained in any of the Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party;

(g) Any Determination of Taxability;

(h) Any breach (or alleged breach) by Borrower of any representation, warranty or covenant made in or pursuant to this Borrower Loan Agreement or in connection with any written or oral representation, presentation, report, appraisal or other information given or delivered by Borrower, General Partner, Guarantor or their Affiliates to Governmental Lender, the Fiscal Agent the Funding Lender, Servicer or any other Person in connection with the Borrower's application for the Borrower Loan and the Funding Loan (including, without limitation, any breach or alleged breach by Borrower of any agreement with respect to the provision of any substitute credit enhancement);

(i) any failure (or alleged failure) by Borrower, the Funding Lender or Governmental Lender to comply with applicable federal and state laws and regulations pertaining to the making of the Borrower Loan and the Funding Loan;

(j) the Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, construction of, the Project or any part thereof; or

(k) the use of the proceeds of the Borrower Loan and the Funding Loan,

except in the case of the foregoing indemnification of the Governmental Lender or any related Indemnified Party, to the extent such damages are caused by the willful misconduct of such Indemnified Party, and except in the case of the foregoing indemnification of the Funding Lender or the Servicer or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. Notwithstanding anything herein to the contrary, the Borrower's indemnification obligations to the parties specified in Section 9.1.4 hereof with respect to any securitization or Secondary Market Transaction described in Article IX hereof shall be limited to the indemnity set forth in Section 9.1.4 hereof. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party (which notice shall be timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not be unreasonably withheld. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement or the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 5.15 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Governmental Lender and the Funding Lender have consented to such transfer and to the

assignment of the rights and obligations of the Borrower hereunder in which event the Borrower shall only be obligated to indemnify for events up to the date the Project is transferred.

The rights of any persons to indemnity hereunder shall survive the final payment or defeasance of the Borrower Loan and the Funding Loan and in the case of the Servicer, any resignation or removal. The provisions of this Section 5.15 shall survive the termination of this Borrower Loan Agreement and the earlier removal or resignation of the Fiscal Agent.

The foregoing provisions of this Section 5.15 are not intended to and shall not negate, modify, limit or change the provisions of Section 9 of the Borrower Notes.

**Section 5.16 No Warranty of Condition or Suitability by the Governmental Lender or Funding Lender.** Neither the Governmental Lender nor the Funding Lender makes any warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Borrower's purposes or needs.

**Section 5.17 Right of Access to the Project.** Subject to the rights of tenants and any safety and security procedures (including compliance with any health orders), the Borrower agrees that the Governmental Lender, the Funding Lender, the Servicer and the Construction Consultant, and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but no obligation, at all reasonable times during business hours and upon reasonable notice, to enter onto the Land (a) to examine, test and inspect the Project without material interference or prejudice to the Borrower's operations and (b) to perform such work in and about the Project made necessary by reason of the Borrower's default under any of the provisions of this Borrower Loan Agreement. The Governmental Lender, the Funding Lender, the Servicer, and their duly authorized agents, attorneys, accountants and representatives shall also be permitted, without any obligation to do so, at all reasonable times and upon reasonable notice during business hours, to examine the books and records of the Borrower with respect to the Project.

**Section 5.19 Covenant with Governmental Lender and Funding Lender.** Covenant with Governmental Lender and Funding Lender. The Borrower agrees that this Borrower Loan Agreement is executed and delivered in part to induce the purchase by others of the Governmental Lender Notes and, accordingly, all covenants and agreements of the Borrower contained in this Borrower Loan Agreement are hereby declared to be for the benefit of the Governmental Lender, the Fiscal Agent, the Funding Lender and any lawful owner, holder or pledgee of the Borrower Notes or the Governmental Lender Notes from time to time.

**Section 5.20 Obligation of the Borrower to Construct the Project.** The Borrower shall proceed with reasonable dispatch to construct, and equip the Project. If the proceeds of the Borrower Loan, together with the Other Borrower Moneys, available to be disbursed to the Borrower are not sufficient to pay the costs of such construction and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Funding Lender or the Servicer in respect of any such costs or to any diminution or abatement in the repayment of the

Borrower Loan. The Governmental Lender, the Fiscal Agent and the Funding Lender shall not be liable to the Borrower or any other person if for any reason the Project is not completed or if the proceeds of the Borrower Loan are insufficient to pay all costs of the Project. The Governmental Lender, the Fiscal Agent and the Funding Lender do not make any representation or warranty, either express or implied, that moneys, if any, which will be made available to the Borrower will be sufficient to complete the Project, and the Governmental Lender, the Fiscal Agent and the Funding Lender shall not be liable to the Borrower or any other person if for any reason the Project is not completed.

**Section 5.21 Maintenance of Insurance.** Borrower will maintain the insurance required by the Security Instrument.

**Section 5.22 Information; Statements and Reports.** Borrower shall furnish or cause to be furnished to Funding Lender and, with respect to subsection (a) only, to Governmental Lender:

(a) Notice of Default. As soon as possible, and in any event not later than five (5) Business Days after the occurrence of any Event of Default or Potential Default, a statement of an Authorized Representative of Borrower describing the details of such Event of Default or Potential Default and any curative action Borrower proposes to take;

(b) Financial Statements; Rent Rolls. In the manner and to the extent required under the Security Instrument, such financial statements, expenses statements, rent rolls, reports and other financial documents and information as required by the Security Instrument and the other Borrower Loan Documents and Funding Loan Documents, in the form and within the time periods required therein;

(c) General Partner. As soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of General Partner, copies of the financial statements of General Partner as of such date, prepared in substantially the form previously delivered to the Governmental Lender and Funding Lender and in a manner consistent therewith, or in such form (which may include a form prepared in accordance with GAAP) as Funding Lender may reasonably request;

(d) Leasing Reports. Prior to the Conversion Date, on a monthly basis (and in any event within fifteen (15) days after the end of each Calendar Month), a report of all efforts made by Borrower, if any, to lease all or any portion of the Project during such Calendar Month and on a cumulative basis since Project inception, which report shall be prepared and delivered by Borrower, shall be in form and substance satisfactory to Funding Lender, and shall, if requested by Funding Lender, be supported by copies of letters of intent, leases or occupancy agreements, as applicable;

(e) Audit Reports. Promptly upon receipt thereof, copies of all reports, if any, submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

(f) Notices; Certificates or Communications. Immediately upon giving or receipt thereof, copies of any notices, certificates or other communications delivered at the Project or to Borrower or General Partner naming Governmental Lender or Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the Project or the ability of Borrower to perform its obligations under the Borrower Loan Documents and the Funding Loan Documents;

(g) Certification of Non-Foreign Status. Promptly upon request of Funding Lender from time to time, a Certification of Non-Foreign Status, executed on or after the date of such request by Funding Lender;

(h) Compliance Certificates. Together with each of the documents required pursuant to Section 5.22(b) hereof submitted by or on behalf of Borrower, a statement, in form and substance satisfactory to Funding Lender and certified by an Authorized Borrower Representative, to the effect that Borrower is in compliance with all covenants, terms and conditions applicable to Borrower, under or pursuant to the Borrower Loan Documents and the Funding Loan Documents and under or pursuant to any other Debt owing by Borrower to any Person, and disclosing any noncompliance therewith, and any Event of Default or Potential Default, and describing the status of Borrower's actions to correct such noncompliance, Event of Default or Potential Default, as applicable; and

(i) Other Items and Information. Such other information concerning the assets, business, financial condition, operations, property and results of operations of Borrower, General Partner, Guarantor or the Project, as Funding Lender or Governmental Lender reasonably requests from time to time.

Borrower shall furnish to Governmental Lender, upon its written request, any of the items described in the foregoing subsections (b) through and including (i) above.

**Section 5.23 Additional Notices.** Borrower will, promptly after becoming aware thereof, give notice to Funding Lender and the Governmental Lender of:

(a) any Lien affecting the Project, or any part thereof, other than Liens expressly permitted under this Borrower Loan Agreement;

(b) any Legal Action which is instituted by or against Borrower, General Partner or Guarantor, or any Legal Action which is threatened against Borrower, General Partner or Guarantor which, in any case, if adversely determined, could have a material adverse effect upon the business, operations, properties, assets, management, ownership or financial condition of Borrower, General Partner, Guarantor or the Project;

(c) any Legal Action which constitutes an Event of Default or a Potential Default or a default under any other Contractual Obligation to which Borrower, General Partner or Guarantor is a party or by or to which Borrower, General Partner or Guarantor, or any of their respective properties or assets, may be bound or subject, which default would have a material adverse effect on the business, operations, assets (including the Project), or financial condition of Borrower, General Partner or Guarantor, as applicable;

(d) any default, alleged default or potential default on the part of Borrower under any of the CC&R's (together with a copy of each notice of default, alleged default or potential default received from any other party thereto);

(e) any notice of default, alleged default or potential default on the part of Borrower received from any tenant or occupant of the Project under or relating to its lease or occupancy agreement (together with a copy of any such notice), if, in the aggregate, notices from at least fifteen percent (15%) of the tenants at the Project have been received by Borrower with respect to, or alleging, the same default, alleged default or potential default;

(f) any change in (i) the location of Borrower's or General Partner's executive headquarters or principal place of business; (ii) the legal, trade, or fictitious business names used by Borrower or General Partner; or (iii) the nature of the trade or business of Borrower; and

(g) any default, alleged default or potential default on the part of any general or limited partner (including, without limitation, General Partner and the Equity Investors) under the Partnership Agreement.

#### **Section 5.24 Compliance with Other Agreements; Legal Requirements.**

(a) Borrower shall timely perform and comply with, and shall cause General Partner to timely perform and comply with the covenants, agreements, obligations and restrictions imposed on them under the Partnership Agreement, and Borrower shall not do or permit to be done anything to impair any such party's rights or interests under any of the foregoing.

(b) Borrower will comply and, to the extent it is able, will require others to comply with, all Legal Requirements of all Governmental Authorities having jurisdiction over the Project or construction of the Improvements, and will furnish Funding Lender with reports of any official searches for or notices of violation of any requirements established by such Governmental Authorities. Borrower will comply and, to the extent it is able, will require others to comply, with applicable CC&R's and all restrictive covenants and all obligations created by private contracts and leases which affect ownership, construction, equipping, fixturing, use or operation of the Project, and all other agreements requiring a certain percentage of the Units to be rented to persons of low or moderate income. The Improvements, when completed, shall comply with all applicable building, zoning and other Legal Requirements, and will not violate any restrictions of record against the Project or the terms of any other lease of all or any portion of the Project. Funding Lender and Governmental Lender shall at all times have the right to audit, at Borrower's expense, Borrower's compliance with any agreement requiring a certain percentage of the Units to be rented to persons of low or moderate income, and Borrower shall supply all such information with respect thereto as Funding Lender or Governmental Lender, as applicable, may request and otherwise cooperate with Funding Lender or Governmental Lender, as applicable, in any such audit. Without limiting the generality of the foregoing, Borrower shall properly obtain, comply with and keep in effect (and promptly deliver copies to Funding Lender of) all permits, licenses and approvals which are required to be obtained from Governmental Authorities in order to construct, occupy, operate, market and lease the Project.



**Section 5.25 Completion and Maintenance of Project.** Borrower shall cause the construction of the Improvements to be prosecuted with diligence and continuity and completed substantially in accordance with the Plans and Specifications, and in accordance with the Construction Funding Agreement, free and clear of any liens or claims for liens (but without prejudice to Borrower's rights of contest under Section 10.16 hereof) ("Completion") on or before the Completion Date. Borrower shall thereafter maintain the Project as a residential apartment complex in good order and condition, ordinary wear and tear excepted. A maintenance program shall be in place at all times to assure the continuation of appropriate maintenance.

**Section 5.26 Fixtures.** Borrower shall deliver to Funding Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower or any other Person claims title to any materials, fixtures or articles incorporated into the Improvements.

**Section 5.27 Income from Project.** Borrower shall first apply all Gross Income to Expenses of the Project, including all amounts then required to be paid under the Borrower Loan Documents and the Funding Loan Documents and the funding of all sums necessary to meet the Replacement Reserve Fund Requirement, before using or applying such Gross Income for any other purpose. Prior to the Conversion Date, except for any asset management fees or tax credit adjuster payments payable to the Equity Investor pursuant to the Partnership Agreement, or as otherwise permitted by the Borrower Loan Documents, the Funding Loan Documents or the Subordinate Loan Documents, Borrower shall not make or permit any distributions or other payments of Net Operating Income to its partners, shareholders or members, as applicable, in each case, without the prior Written Consent of Funding Lender.

**Section 5.28 Leases and Occupancy Agreements.**

(a) Lease Approval.

(i) Borrower may enter into leases of space within the Improvements (and amendments to such leases) in the ordinary course of business with bona fide third party tenants without Funding Lender's prior Written Consent if:

(A) The lease is a Permitted Lease;

(B) Borrower, acting in good faith following the exercise of due diligence, has determined that the tenant meets requirements imposed under any applicable CC&R and is financially capable of performing all of its obligations under the lease; and

(C) The lease conforms to the Rent Schedule attached as an exhibit to the Construction Funding Agreement and reflects an arm's-length transaction, subject to the requirement that the Borrower comply with any applicable CC&R.

(ii) If any Event of Default has occurred and is continuing, Funding Lender may make written demand on Borrower to submit all future leases for Funding Lender's approval prior to execution. Borrower shall comply with any such demand by Funding Lender.

(iii) No approval of any lease by Funding Lender shall be for any purpose other than to protect Funding Lender's security for the Borrower Loan and to preserve Funding Lender's rights under the Borrower Loan Documents and the Funding Loan Documents. No approval by Funding Lender shall result in a waiver of any default of Borrower. In no event shall any approval by Funding Lender of a lease be a representation of any kind with regard to the lease or its enforceability, or the financial capacity of any tenant or guarantor.

(b) Landlord's Obligations. Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Improvements.

(c) Leasing and Marketing Agreements. Except as may be contemplated in the Management Agreement with Borrower's Manager, Borrower shall not without the approval of Funding Lender enter into any leasing or marketing agreement and Funding Lender reserves the right to approve the qualifications of any marketing or leasing agent.

**Section 5.29 Project Agreements and Licenses.** To the extent not heretofore delivered to Funding Lender, Borrower will furnish to Funding Lender, as soon as available, true and correct copies of all Project Agreements and Licenses and the Plans and Specifications, and upon the Funding Lender's request assignments thereof to Funding Lender and consents to such assignments where required by Funding Lender, all in form and substance acceptable to Funding Lender. Neither Borrower nor General Partner has assigned or granted, or will assign or grant, a security interest in any of the Project Agreements and Licenses, other than to Funding Lender.

**Section 5.30 Payment of Debt Payments.** In addition to its obligations under the Borrower Notes, Borrower will (i) duly and punctually pay or cause to be paid all principal of and interest on any Debt of Borrower as and when the same become due on or before the due date; (ii) comply with and perform all conditions, terms and obligations of other instruments or agreements evidencing or securing such Debt; (iii) promptly inform Funding Lender of any default, or anticipated default, under any such note, agreement, instrument; and (iv) forward to Funding Lender a copy of any notice of default or notice of any event that might reasonably result in default under any such note, agreement, instrument, including Liens encumbering the Project, or any portion thereof, which have been subordinated to the Security Instrument (regardless of whether or not permitted under this Borrower Loan Agreement).

**Section 5.31 ERISA.** Borrower will comply, and will cause each of its ERISA Affiliates to comply, in all respects with the provisions of ERISA.

**Section 5.32 Patriot Act Compliance.** Borrower shall use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Project, including those relating to money laundering and terrorism. Funding Lender shall have the right to audit Borrower's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Project, including those relating to money laundering and terrorism. In the event that Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then Funding Lender may, at its option, cause Borrower to comply therewith and any and all costs and expenses incurred by Funding Lender in

connection therewith shall be secured by the Security Instrument and shall be immediately due and payable.

Borrower covenants that it shall comply with all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Without limiting the foregoing, Borrower shall not take any action, or permit any action to be taken, that would cause Borrower's representations and warranties in Section 4.1.48 and this Section 5.32 become untrue or inaccurate at any time during the term of the Funding Loan. Upon any Beneficiary Party's request from time to time during the term of the Funding Loan, Borrower shall certify in writing to such Beneficiary Party that Borrower's representations, warranties and obligations under Section 4.1.48 and this Section 5.32 remain true and correct and have not been breached, and in addition, upon request of any Beneficiary Party, Borrower covenants to provide all information required to satisfy obligations under all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, during the term of the Funding Loan. Borrower shall immediately notify the Funding Lender in writing of (a) Borrower's actual knowledge that any of such representations, warranties or covenants are no longer true and have been breached, (b) Borrower has a reasonable basis to believe that they may no longer be true and have been breached or (c) Borrower becomes the subject of an investigation by Governmental Authorities related to money laundering, anti-terrorism, trade embargos and economic sanctions. Borrower shall also reimburse Funding Lender for any expense incurred by Funding Lender in evaluating the effect of an investigation by Governmental Authorities on the Funding Loan and Funding Lender's interest in the collateral for the Funding Loan, in obtaining necessary license from Governmental Authorities as may be necessary for Funding Lender to enforce its rights under the Funding Loan Documents, and in complying with all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect applicable to Funding Lender as a result of the existence of such an event and for any penalties or fines imposed upon Funding Lender as a result thereof.

**Section 5.33 Funds from Equity Investors.** Borrower shall cause the Equity Investors to fund all installments of the Equity Contributions in the amounts and at the times subject and according to the terms of the Partnership Agreement.

**Section 5.34 Tax Covenants.** The Borrower further represents, warrants and covenants as follows:

(a) **General.** The Borrower shall not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the exclusion of interest on the 2021 Series C-1 Governmental Lender Note from gross income (as defined in Section 61 of the Code), for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and that the Borrower will take such action or actions, including amendment of this Borrower Loan Agreement, the Security Instrument and the Regulatory Agreement, as may be necessary, in the opinion of Tax Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the 2021 Series C-1 Governmental Lender Note, the

Funding Loan or affecting the Project. Capitalized terms used in this Section 5.34 shall have the respective meanings assigned to them in the Regulatory Agreement or, if not defined therein, in the Funding Loan Agreement. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that, prior to the final maturity of the 2021 Series C-1 Governmental Lender Note, unless it has received and filed with the Governmental Lender and the Funding Lender a Tax Counsel No Adverse Effect Opinion, as such term is defined in the Funding Loan Agreement (other than with respect to interest on any portion of the 2021 Series C-1 Governmental Lender Note for a period during which such portion of the Governmental Lender Notes are held by a “substantial user” of any facility financed with the proceeds of the 2021 Series C-1 Governmental Lender Note or a “related person,” as such terms are used in Section 147(a) of the Code), the Borrower will comply with this Section 5.34.

(b) Use of Proceeds. The use of the net proceeds of the Funding Loan corresponding to the 2021 Series C-1 Governmental Lender Note at all times will satisfy the following requirements:

(i) Limitation on Net Proceeds. At least 95% of the proceeds of the 2021 Series C-1 Governmental Lender Note (within the meaning of the Code) actually expended by Borrower shall be used to pay Qualified Project Costs that are costs of a “qualified residential rental project” (within the meaning of Sections 142(a)(7) and 142(d) of the Code) and property that is “functionally related and subordinate” thereto (within the meaning of Sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) of the Regulations).

(ii) Limit on Costs of Funding. The proceeds of the 2021 Series C-1 Governmental Lender Note will be expended by Borrower for the purposes set forth in this Borrower Loan Agreement and in the 2021 Series C-1 Governmental Lender Note Agreement and no portion thereof in excess of two percent of the proceeds of the 2021 Series C-1 Governmental Lender Note, within the meaning of Section 147(g) of the Code, will be expended to pay Costs of Funding.

(iii) Prohibited Facilities. The Borrower shall not use or permit the use of any proceeds of the 2021 Series C-1 Governmental Lender Note or any income from the investment thereof to provide any airplane, skybox, or other private luxury box, 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.

(iv) Limitation on Land. Less than 25 percent of the proceeds of the 2021 Series C-1 Governmental Lender Note actually expended by Borrower will be used, directly or indirectly, for the acquisition of land or an interest therein, nor will any portion of the net proceeds of the 2021 Series C-1 Governmental Lender Note be used, directly or indirectly, for the acquisition of land or an interest therein to be used for farming purposes.

(v) Limitation on Existing Facilities. No portion of the proceeds of the 2021 Series C-1 Governmental Lender Note will be used by Borrower for the acquisition of any existing property or an interest therein unless (A) the first use of such property is pursuant to such acquisition or (B) the rehabilitation expenditures with respect to any building and the equipment therefor equal or exceed 15 percent of the cost of acquiring such building

financed with the proceeds of the 2021 Series C-1 Governmental Lender Note (with respect to structures other than buildings, this clause shall be applied by substituting 100 percent for 15 percent). For purposes of the preceding sentence, the term “rehabilitation expenditures” shall have the meaning set forth in Section 147(d)(3) of the Code.

(vi) Accuracy of Information. The information furnished by the Borrower and used by the Governmental Lender in preparing its certifications with respect to Section 148 of the Code and the Borrower’s information statement pursuant to Section 149(e) of the Code is accurate and complete as of the date of origination of the 2021 Series C-1 Governmental Lender Note.

(vii) Limitation of Project Expenditures. The acquisition and construction of the Project were not commenced (within the meaning of Section 144(a) of the Code) prior to the 60th day preceding the adoption of the resolution of the Governmental Lender with respect to the Project on January 26, 2021, and no obligation for which reimbursement will be sought from proceeds of the 2021 Series C-1 Governmental Lender Note relating to the acquisition or construction of the Project was paid or incurred prior to 60 days prior to such date, except for permissible “preliminary expenditures”, which include architectural, engineering surveying, soil testing, reimbursement bond issuance and similar costs incurred prior to the commencement of the acquisition and construction of the Project.

(viii) Qualified Costs. The Borrower hereby represents, covenants and warrants that the proceeds of the 2021 Series C-1 Governmental Lender Note shall be used or deemed used by Borrower exclusively to pay Qualified Project Costs.

(c) Limitation on Maturity. The average maturity of the 2021 Series C-1 Governmental Lender Note does not exceed 120 percent of the average reasonably expected economic life of the Project to be financed by the Funding Loan, weighted in proportion to the respective cost of each item comprising the property the cost of which has been or will be financed, directly or indirectly, with the net proceeds of the Series 2021C-1 Governmental Lender Note. For purposes of the preceding sentence, the reasonably expected economic life of property shall be determined as of the later of (A) the Closing Date for the Funding Loan or (B) the date on which such property is placed in service (or expected to be placed in service). In addition, land shall not be taken into account in determining the reasonably expected economic life of property.

(d) No Arbitrage. The Borrower shall not take any action or omit to take any action with respect to the Gross Proceeds of the Funding Loan or of any amounts expected to be used to pay the principal thereof or the interest thereon which, if taken or omitted, respectively, would cause the 2021 Series C-1 Governmental Lender Note to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. Except as provided in the Funding Loan Agreement and this Borrower Loan Agreement, the Borrower shall not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under this Borrower Loan Agreement or the Series 2021C-1 Governmental Lender Note, shall not establish any segregated reserve or similar fund for such purpose and shall not prepay any such amounts in advance of the redemption date of an equal principal amount of the Funding Loan, unless the Borrower has obtained in each case a Tax Counsel No Adverse Effect Opinion with respect to such action, a copy of which shall be provided

to the Governmental Lender and the Funding Lender. The Borrower shall not, at any time prior to the final maturity of the Funding Loan, invest or cause any Gross Proceeds to be invested in any investment (or to use Gross Proceeds to replace money so invested), if, as a result of such investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Series 2021C-1 Governmental Lender Note to the Maturity Date, except as permitted by Section 148 of the Code and Regulations thereunder or as provided in the Regulatory Agreement. The Borrower further covenants and agrees that it will comply with all applicable requirements of said Section 148 and the rules and Regulations thereunder relating to the proceeds of the 2021 Series C-1 Governmental Lender Note and the interest thereon, including the employment of a Rebate Analyst acceptable to the Governmental Lender and Funding Lender for the calculation of rebatable amounts to the United States Treasury Department. The Borrower agrees that it will cause the Rebate Analyst to calculate the rebatable amounts not later than forty-five days after the fifth anniversary of the Closing Date and each five years thereafter, and not later than forty-five days after the final Computation Date, and agrees that the Borrower will pay all costs associated therewith. Upon the request of the Governmental Lender or the Funding Lender, the Borrower agrees to provide evidence of the employment of the Rebate Analyst satisfactory to the entity requesting the same.

(e) No Federal Guarantee. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Borrower shall not take or omit to take any action which would cause the 2021 Series C-1 Governmental Lender Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(f) Representations. The Borrower has supplied or caused to be supplied to Tax Counsel all documents, instruments and written information requested by Tax Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Tax Counsel, which have been reasonably relied upon by Tax Counsel in rendering its opinion with respect to the exclusion from gross income of the interest on the 2021 Series C-1 Governmental Lender Note for federal income tax purposes, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein in order to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information which Tax Counsel has not requested.

(g) Qualified Residential Rental Project. The Borrower hereby covenants and agrees that the Project will be operated as a “qualified residential rental project” within the meaning of Section 142(d) of the Code, on a continuous basis during the longer of the Qualified Project Period (as defined in the Regulatory Agreement) or any period during which any portion of the Governmental Lender Notes remain outstanding, to the end that the interest on the 2021 Series C-1 Governmental Lender Note shall be excluded from gross income for federal income tax purposes. The Borrower hereby covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(h) Information Reporting Requirements. The Borrower will comply with the information reporting requirements of Section 149(e)(2) of the Code requiring certain information

regarding the 2021 Series C-1 Governmental Lender Note to be filed with the Internal Revenue Service within prescribed time limits.

(i) Funding Loan Not a Hedge Bond. The Borrower covenants and agrees that not more than 50% of the proceeds of the 2021 Series C-1 Governmental Lender Note will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more within the meaning of Section 149(f)(3)(A)(ii) of the Code, and the Borrower reasonably expects that at least 85% of the spendable proceeds of the 2021 Series C-1 Governmental Lender Note will be used to carry out the governmental purposes of the Funding Loan within the three-year period beginning on the Closing Date.

(j) Termination of Restrictions. Although the parties hereto recognize that, subject to the provisions of the Regulatory Agreement, the provisions of this Borrower Loan Agreement shall terminate in accordance with Section 10.14 hereof, the parties hereto recognize that pursuant to the Regulatory Agreement, certain requirements, including the requirements incorporated by reference in this Section, may continue in effect beyond the term hereof.

(k) Public Approval. The Borrower covenants and agrees that the proceeds of the 2021 Series C-1 Governmental Lender Note will not be used by Borrower in a manner that deviates in any substantial degree from the Project described in the written notice of a public hearing regarding the Funding Loan.

(l) 40/60 Test Election. The Borrower and the Governmental Lender hereby elect to apply the requirements of Section 142(d)(1)(B) to the Project. The Borrower hereby represents, covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(m) Modification of Tax Covenants. Subsequent to the origination of the Funding Loan and prior to its payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Funding Loan Agreement), this Section 5.34 hereof may not be amended, changed, modified, altered or terminated except as permitted herein and by the Funding Loan Agreement and with the Written Consent of the Governmental Lender and the Funding Lender. Anything contained in this Borrower Loan Agreement or the Funding Loan Agreement to the contrary notwithstanding, the Governmental Lender, the Funding Lender and the Borrower hereby agree to amend this Borrower Loan Agreement and, if appropriate, the Funding Loan Agreement and the Regulatory Agreement, to the extent required, in the opinion of Tax Counsel, in order for interest on the 2021 Series C-1 Governmental Lender Note to remain excludable from gross income for federal income tax purposes. The party requesting such amendment, which may include the Funding Lender, shall notify the other parties to this Borrower Loan Agreement of the proposed amendment and send a copy of such requested amendment to Tax Counsel. After review of such proposed amendment, Tax Counsel shall render to the Funding Lender and the Governmental Lender an opinion as to the effect of such proposed amendment upon the includability of interest on the 2021 Series C-1 Governmental Lender Note in the gross income of the recipient thereof for federal income tax purposes. The Borrower shall pay all necessary fees and expenses incurred with respect to such amendment. The Borrower, the Governmental Lender and, where applicable, the Funding Lender per written instructions from the Governmental Lender shall execute, deliver and, if applicable, the Borrower shall file of record,

any and all documents and instruments, including without limitation, an amendment to the Regulatory Agreement, with a file-stamped copy to the Funding Lender, necessary to effectuate the intent of this Section 5.34, and the Borrower and the Governmental Lender hereby appoint the Funding Lender as their true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Governmental Lender, as is applicable, any such document or instrument (in such form as may be approved by and upon instruction of Tax Counsel) if either the Borrower or the Governmental Lender defaults in the performance of its obligation under this Section 5.34; provided, however, that the Funding Lender shall take no action under this Section 5.34 without first notifying the Borrower or the Governmental Lender in writing, as is applicable, of its intention to take such action and providing the Borrower or the Governmental Lender, as is applicable, a reasonable opportunity to comply with the requirements of this Section 5.34.

The Borrower irrevocably authorizes and directs the Funding Lender and any other agent designated by the Governmental Lender to make payment of such amounts from funds of the Borrower, if any, held by the Funding Lender, or any agent of the Governmental Lender or the Funding Lender. The Borrower further covenants and agrees that, pursuant to the requirements of Treasury Regulation Section 1.148-1(b), it (or any related person contemplated by such regulations) will not purchase interests in the Funding Loan or the Governmental Lender Notes in an amount related to the amount of the 2021 Series C-1 Governmental Lender Note.

In furtherance of the covenants in this Section 5.34, the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into this Borrower Loan Agreement and made a part of this Borrower Loan Agreement as if set forth in this Borrower Loan Agreement in full. In the event of a conflict between the terms of this Borrower Loan Agreement and the Tax Certificate, the terms of the Tax Certificate shall control.

### **Section 5.35 Payment of Rebate.**

(a) Arbitrage Rebate. The Borrower agrees to take all steps necessary to compute and pay any rebatable arbitrage relating to the 2021 Series C-1 Governmental Lender Note in accordance with Section 148(f) of the Code including:

(i) Delivery of Documents and Money on Computation Dates. The Borrower will deliver to the Fiscal Agent, with a copy to the Funding Lender, within 55 days after each Computation Date:

(A) with a copy to the Governmental Lender, a statement, signed by the Borrower, stating the Rebate Amount as of such Computation Date;

(B) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90% of the Rebate Amount as of such Installment Computation Date, less any “previous rebate payments” made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations), or (2) if such Computation Date is the final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount as of such



final Computation Date, less any “previous rebate payments” made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations); and

(C) with a copy to the Governmental Lender, an Internal Revenue Service Form 8038-T properly signed and completed as of such Computation Date.

(ii) Correction of Underpayments. If the Borrower shall discover or be notified as of any date that any payment paid to the United States Treasury pursuant to this Section 5.35 of an amount described in Section 5.35(a)(i)(A) or (B) above shall have failed to satisfy any requirement of Section 1.148-3 of the Regulations (whether or not such failure shall be due to any default by the Borrower, the Governmental Lender or the Funding Lender), the Borrower shall (1) pay to the Fiscal Agent (for deposit to the Rebate Fund) and cause the Fiscal Agent to pay to the United States Treasury from the Rebate Fund the underpayment of the Rebate Amount, together with any penalty and/or interest due, as specified in Section 1.148-3(h) of the Regulations, within 175 days after any discovery or notice and (2) deliver to the Fiscal Agent an Internal Revenue Service Form 8038-T completed as of such date. If such underpayment of the Rebate Amount, together with any penalty and/or interest due, is not paid to the United States Treasury in the amount and manner and by the time specified in the Regulations, the Borrower shall take such steps as are necessary to prevent the 2021 Series C-1 Governmental Lender Note from becoming an arbitrage bond within the meaning of Section 148 of the Code.

(iii) Records. The Borrower shall retain all of its accounting records relating to the funds established under this Borrower Loan Agreement and all calculations made in preparing the statements described in this Section 5.35 for at least six years after the later of the final maturity of the Governmental Lender Notes or the date the Funding Loan is retired in full.

(iv) Costs. The Borrower agrees to pay all of the fees and expenses of a nationally recognized Tax Counsel, the Rebate Analyst a certified public accountant and any other necessary consultant employed by the Borrower or the Funding Lender in connection with computing the Rebate Amount.

(v) No Diversion of Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the 2021 Series C-1 Governmental Lender Note which is not purchased at Fair Market Value or includes terms that the Borrower would not have included if such portion of the Funding Loan were not subject to Section 148(f) of the Code.

(vi) Modification of Requirements. If at any time during the term of this Borrower Loan Agreement, the Governmental Lender, the Funding Lender or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section 5.35, such Person shall be permitted to take such action if it shall first obtain and provide to the other Persons named herein a Tax Counsel No Adverse Effect Opinion (as defined in the Funding Loan Agreement) with respect to such action.

(b) **Rebate Fund.** The Borrower acknowledges that the Fiscal Agent shall establish and hold a separate fund designated as the “Rebate Fund” under the Funding Loan Agreement and deposit or transfer to the credit of the Rebate Fund each amount delivered to the Fiscal Agent by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto, as further described in Section 7.8 of the Funding Loan Agreement.

**Section 5.36 Covenants under Funding Loan Agreement.** The Borrower will fully and faithfully perform all the duties and obligations which the Governmental Lender has covenanted and agreed in the Funding Loan Agreement to cause the Borrower to perform and any duties and obligations which the Borrower is required in the Funding Loan Agreement to perform. The foregoing will not apply to any duty or undertaking of the Governmental Lender that by its nature cannot be delegated or assigned.

**Section 5.37 Continuing Disclosure Agreement.** The Borrower and the Funding Lender shall enter into the Continuing Disclosure Agreement to provide for the continuing disclosure of information about the Funding Loan, the Borrower and other matters as specifically provided for in such agreement.

## ARTICLE VI

### NEGATIVE COVENANTS

Borrower hereby covenants and agrees as follows, which covenants shall remain in effect so long as any Borrower Payment Obligation or other obligation of Borrower under any of the other Borrower Loan Documents or the Funding Loan Documents remains outstanding or unperformed. Borrower covenants and agrees that it will not, directly or indirectly:

**Section 6.1 Management Agreement.** Without first obtaining the Funding Lender’s prior Written Consent, enter into the Management Agreement, and thereafter the Borrower shall not, without the Funding Lender’s prior Written Consent (which consent shall not be unreasonably withheld) and subject to the Regulatory Agreement: (i) surrender, terminate or cancel the Management Agreement or otherwise replace the Manager or enter into any other management agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; (iv) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect any of its rights and remedies under, the Management Agreement; or (v) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the Manager to terminate the Management Agreement (or such successor management agreement); provided, however, the Funding Lender’s prior Written Consent shall not be required for any extension or renewal of the Management Agreement on the same terms and conditions.

**Section 6.2 Dissolution.** Dissolve or liquidate, in whole or in part, merge with or consolidate into another Person.

**Section 6.3 Change in Business or Operation of Property.** Enter into any line of business other than the ownership and operation of the Project, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business and activities incidental or related thereto or otherwise cease to operate the Project as a multi-family property or terminate such business for any reason whatsoever (other than temporary cessation in connection with construction of the Project).

**Section 6.4 Debt Cancellation.** Cancel or otherwise forgive or release any claim or debt owed to the Borrower by a Person, except for adequate consideration or in the ordinary course of the Borrower's business in its reasonable judgment.

**Section 6.5 Assets.** Purchase or own any real property or personal property incidental thereto other than the Project.

**Section 6.6 Transfers.** Make, suffer or permit the occurrence of any Transfer other than a transfer permitted under the Security Instrument and Section 12 of the Regulatory Agreement, nor transfer any material License required for the operation of the Project.

**Section 6.7 Debt.** Other than as expressly approved in writing by the Funding Lender, create, incur or assume any indebtedness for borrowed money (including subordinate debt) whether unsecured or secured by all or any portion of the Project or interest therein or in the Borrower or any partner thereof (including subordinate debt) other than (i) the Borrower Payment Obligations, (ii) the Subordinate Debt, (iii) secured indebtedness incurred pursuant to or permitted by the Borrower Loan Documents and the Funding Loan Documents, (iv) trade payables incurred in the ordinary course of business, (v) deferred developer fees, and (vi) unsecured loans payable solely from cash flow made by a partner of the Borrower as set forth in the Partnership Agreement.

**Section 6.8 Assignment of Rights.** Without the Funding Lender's prior Written Consent, attempt to assign the Borrower's rights or interest under any Borrower Loan Document or Funding Loan Document in contravention of any Borrower Loan Document or Funding Loan Document.

**Section 6.9 Principal Place of Business.** Change its principal place of business without providing 30 days' prior Written Notice of the change to the Funding Lender and the Servicer.

**Section 6.10 Partnership Agreement.** Without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) surrender, terminate, cancel, modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect (except as allowed by the Security Instrument), any of its rights or remedies under the Partnership Agreement; provided, however, the consent of Funding Lender is not required for an amendment of the Partnership Agreement resulting solely from the "Permitted Transfer" of partnership interests of Borrower as defined in and permitted by the Security Instrument.

**Section 6.11 ERISA.** Maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of the Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Plan, or permit the assets of the Borrower to become "plan assets," whether by operation of law or under regulations promulgated under ERISA.

**Section 6.12 No Hedging Arrangements.** Without the prior Written Consent of the Funding Lender or unless otherwise required by this Borrower Loan Agreement, the Borrower will not enter into or guarantee, provide security for or otherwise undertake any form of contractual obligation with respect to any interest rate swap, interest rate cap or other arrangement that has the effect of an interest rate swap or interest rate cap or that otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

**Section 6.13 Loans and Investments; Distributions; Related Party Payments.**

(a) Without the prior Written Consent of Funding Lender in each instance, Borrower shall not (i) lend money, make investments, or extend credit, other than in the ordinary course of its business as presently conducted; or (ii) repurchase, redeem or otherwise acquire any interest in Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in Borrower, or make any distribution, in cash or in kind, in respect of interests in Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in Borrower (except to the extent permitted by the Security Instrument and subject to the limitations set forth in Section 5.27 hereof).

(b) Disbursements for fees and expenses of any Borrower Affiliate and developer fees (however characterized) will only be paid to the extent that such fee or expense bears a proportionate relationship to the percentage of completion of the construction of the Improvements, as determined by the Construction Consultant, and only after deducting the applicable Retainage. Except as otherwise permitted hereunder or by the Funding Lender, no Disbursements for the Developer Fee or any “deferred developer fees” shall be made prior to the Conversion Date other than in accordance with the Approved Developer Fee Schedule.

**Section 6.14 Amendment of Related Documents or CC&R’s.** Without the prior Written Consent of Funding Lender in each instance, except as provided herein or in the Construction Funding Agreement, Borrower shall not enter into or consent to any amendment, termination, modification, or other alteration of any of the Related Documents or any of the CC&R’s (including, without limitation, those contained in this Borrower Loan Agreement, any Architect’s Agreement or Engineer’s Contract, any Construction Contract, and any Management Agreement, but excluding the Partnership Agreement, which is covered by Section 6.10), or any assignment, transfer, pledge or hypothecation of any of its rights thereunder, if any.

**Section 6.15 Personal Property.** Borrower shall not install materials, personal property, equipment or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any Person other than Borrower to remove or repossess any such materials, equipment or fixtures, or whereby title to any of the same is not completely vested in Borrower at the time of installation, without Funding Lender’s prior Written Consent; provided, however, that this Section 6.15 shall not apply to laundry equipment or other equipment that is owned by a third-party vendor and commercial tenants.

**Section 6.16 Fiscal Year.** Without Funding Lender’s Written Consent, which shall not be unreasonably withheld, neither Borrower nor General Partner shall change the times of

commencement or termination of its fiscal year or other accounting periods, or change its methods of accounting, other than to conform to GAAP.

**Section 6.17 Publicity.** Neither Borrower nor General Partner shall issue any publicity release or other communication to any print, broadcast or on-line media, post any sign or in any other way identify Funding Lender or any of its Affiliates as the source of the financing provided for herein, without the prior written approval of Funding Lender in each instance (provided that nothing herein shall prevent Borrower or General Partner from identifying Funding Lender or its Affiliates as the source of such financing to the extent that Borrower or General Partner are required to do so by disclosure requirements applicable to publicly held companies). With the exception of Equity Investor signage posted on the Project, Borrower and General Partner agree that no sign shall be posted on the Project in connection with the construction of the Improvements unless such sign identifies Citigroup and its affiliates as the source of the financing provided for herein or Funding Lender consents to not being identified on any such sign.

**Section 6.18 Subordinate Loan Documents.** Without Funding Lender's prior written consent, Borrower will not surrender, terminate, cancel, modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Subordinate Loan Documents.

## **ARTICLE VII**

### **RESERVED**

## **ARTICLE VIII**

### **DEFAULTS**

**Section 8.1 Events of Default.** Each of the following events shall constitute an "Event of Default" under this Borrower Loan Agreement:

(a) failure by the Borrower to pay any Borrower Loan Payment in the manner and on the date such payment is due in accordance with the terms and provisions of the Borrower Notes, or the failure by the Borrower to pay any Additional Borrower Payment on the date such payment is due in accordance with the terms and provisions of the Borrower Notes, the Security Instrument, this Borrower Loan Agreement or any other Borrower Loan Document;

(b) failure by or on behalf of the Borrower to pay when due any amount (other than as provided in subsection (a) above or elsewhere in this Section 8.1) required to be paid by the Borrower under this Borrower Loan Agreement, the Borrower Notes, the Security Instrument or any of the other Borrower Loan Documents or Funding Loan Documents, including a failure to repay any amounts that have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings, which default remains uncured for a period of five (5) days after Written Notice thereof shall have been given to the Borrower;

(c) an Event of Default, as defined in the Borrower Notes, the Security Instrument or any other Borrower Loan Document, occurs (or to the extent an "Event of Default" is not defined in any other Borrower Loan Document, any default or breach by the Borrower or any Guarantor

of its obligations, covenants, representations or warranties under such Borrower Loan Document occurs and any applicable notice and/or cure period has expired);

(d) any representation or warranty made by any of the Borrower, the Guarantor or the General Partner in any Borrower Loan Document or Funding Loan Document to which it is a party, or in any report, certificate, financial statement or other instrument, agreement or document furnished by the Borrower, the Guarantor or the General Partner in connection with any Borrower Loan Document or Funding Loan Document, shall be false or misleading in any material respect as of the Closing Date;

(e) the Borrower shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

(f) the Borrower Controlling Entity shall make a general assignment for the benefit of creditors, shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to the Borrower Controlling Entity shall occur, unless in all cases the Borrower Controlling Entity is replaced with a substitute Borrower Controlling Entity that satisfies the requirements of Section 21 of the Security Instrument; which, in the case of a nonprofit Borrower Controlling Entity, may be replaced within sixty (60) days of such event with another nonprofit Borrower Controlling Entity acceptable to the Funding Lender, in which case no Event of Default shall be deemed to have occurred;

(g) any portion of Borrower Deferred Equity to be made by Equity Investors and required for (i) completion of the construction of the Improvements, (ii) the satisfaction of the Conditions of Conversion or (iii) the operation of the Improvements, is not received in accordance with the Partnership Agreement (and subject to the terms and conditions as set forth therein) after the expiration of all applicable notice and cure periods;

(h) the failure by Borrower or any ERISA Affiliate of Borrower to comply in all respects with ERISA, or the occurrence of any other event (with respect to the failure of Borrower or any ERISA Affiliate to pay any amount required to be paid under ERISA or with respect to the termination of, or withdrawal of Borrower or any ERISA Affiliate from, any employee benefit or welfare plan subject to ERISA) the effect of which is to impose upon Borrower (after giving effect to the tax consequences thereof) for the payment of any amount in excess of Fifty Thousand Dollars (\$50,000);

(i) a Bankruptcy Event shall occur with respect to Borrower, any General Partner or Guarantor, or there shall be a change in the assets, liabilities or financial position of any such Person which has a material adverse effect upon the ability of such Person to perform such Person's obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document, provided that any such Bankruptcy Event with respect to a Guarantor shall not constitute an Event of Default: (i) if such Bankruptcy Event occurs on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such Bankruptcy Event occurs prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such

Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender, and provided further that any such Bankruptcy Event with respect to the Managing General Partner shall not constitute an Event of Default if the Managing General Partner is replaced with a substitute non-profit managing general partner that satisfies the requirements of Section 21 of the Security Instrument and is acceptable to Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from Funding Lender;

(j) all or any part of the property of Borrower is attached, levied upon or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released: (i) prior to completion of the construction of the Improvements, within ten (10) days of the date thereof or (ii) after completion of the construction of the Improvements, within thirty (30) days of the date thereof;

(k) subject to Section 10.16 hereof, Borrower fails to pay when due any monetary obligation (other than pursuant to this Borrower Loan Agreement) to any Person in excess of \$100,000, and such failure continues beyond the expiration of any applicable cure or grace periods;

(l) any material litigation or proceeding is commenced before any Governmental Authority against or affecting Borrower, any General Partner or Guarantor, or property of Borrower, any General Partner or Guarantor, or any part thereof, and such litigation or proceeding is not defended diligently and in good faith by Borrower, any General Partner or Guarantor, as applicable, provided that any such material litigation or proceeding against a Guarantor shall not constitute an Event of Default: (i) if such material litigation is commenced on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such material litigation or proceeding is commenced prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender, and provided further that any such material litigation or proceeding against the Managing General Partner shall not constitute an Event of Default if the Managing General Partner is replaced with a substitute non-profit managing general partner that satisfies the requirements of Section 21 of the Security Instrument and is acceptable to Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from Funding Lender;

(m) a final judgment or decree for monetary damages in excess of \$50,000 or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Borrower, any General Partner or Guarantor by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged or stayed or bonded over to the satisfaction of the Funding Lender (i) prior to completion of the construction of the Improvements, within ten (10) days after entry thereof or (ii) after completion of the construction of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be

permitted for payment by the terms of such judgment, fine or penalty), provided that any such judgment, decree, fine or penalty against a Guarantor shall not constitute an Event of Default: (i) if such judgment, decree, fine or penalty is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, decree, fine or penalty is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender, and provided further that any such judgment, decree, fine or penalty against the Managing General Partner shall not constitute an Event of Default if the Managing General Partner is replaced with a substitute non-profit managing general partner that satisfies the requirements of Section 21 of the Security Instrument and is acceptable to Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from Funding Lender;

(n) a final, un-appealable and uninsured money judgment or judgments, in favor of any Person other than a Governmental Authority, in the aggregate sum of \$50,000 or more shall be rendered against Borrower, any General Partner or Guarantor, or against any of their respective assets, that is not paid, superseded or stayed (i) prior to completion of the construction of the Improvements, within ten (10) days after entry thereof or (ii) after completion of the construction of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment); or any levy of execution, writ or warrant of attachment, or similar process, is entered or filed against Borrower, any General Partner or Guarantor, or against any of their respective assets (that is likely to have a material adverse effect upon the ability of Borrower, any General Partner or Guarantor to perform their respective obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document), and such judgment, writ, warrant or process shall remain unsatisfied, unsettled, unvacated, unhanded and unstayed (i) prior to completion of the construction of the Improvements, for a period of ten (10) days or (ii) after completion of the construction of the Improvements, for a period of thirty (30) days, or in any event later than five (5) Business Days prior to the date of any proposed sale thereunder, provided that any such judgment, levy, writ, warrant, attachment or similar process against a Guarantor shall not constitute an Event of Default: (i) if such judgment, levy, writ, warrant, attachment or similar process is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, levy, writ, warrant, attachment or similar process is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender, and provided further that any such judgment, levy, writ, warrant, attachment or similar process against the Managing General Partner shall not constitute an Event of Default if the Managing General Partner is replaced with a substitute non-profit managing general partner that satisfies the requirements of Section 21 of the



Security Instrument and is acceptable to Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from Funding Lender;

(o) the inability of Borrower to satisfy any condition for the receipt of a Disbursement hereunder (other than an Event of Default specifically addressed in this Section 8.1) and failure to resolve the situation to the satisfaction of Funding Lender for a period in excess of thirty (30) days after Written Notice from Funding Lender unless (i) such inability shall have been caused by conditions beyond the control of Borrower, including, without limitation, acts of God or the elements, fire, strikes and disruption of shipping; (ii) Borrower shall have made adequate provision, acceptable to Funding Lender, for the protection of materials stored on-site or off-site and for the protection of the Improvements to the extent then constructed against deterioration and against other loss or damage or theft; (iii) Borrower shall furnish to Funding Lender satisfactory evidence that such cessation of construction will not adversely affect or interfere with the rights of Borrower under labor and materials contracts or subcontracts relating to the construction or operation of the Improvements; and (iv) Borrower shall furnish to Funding Lender satisfactory evidence that the completion of the construction of the Improvements can be accomplished by the Completion Date;

(p) the construction of the Improvements is abandoned or halted prior to completion for any period of thirty (30) consecutive days subject to Force Majeure;

(q) Borrower shall fail to keep in force and effect any material permit, license, consent or approval required under this Borrower Loan Agreement, or any Governmental Authority with jurisdiction over the Mortgaged Property or the Project orders or requires that construction of the Improvements be stopped, in whole or in part, or that any required approval, license or permit be withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect for a period of thirty (30) days;

(r) failure by the Borrower to Substantially Complete the construction of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Substantial Completion Date;

(s) failure by Borrower to complete the construction of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Completion Date;

(t) failure by Borrower to satisfy the Conditions to Conversion on or before the Outside Conversion Date or the Extended Outside Conversion Date, if applicable;

(u) [Reserved];

(v) an "Event of Default" or "Default" (as defined in the applicable agreement) shall occur under any of the Subordinate Loan Documents, after the expiration of all applicable notice and cure periods; or

(w) Borrower fails to obtain all grading, foundation, building and all other construction permits, licenses and authorizations from all applicable Governmental Authorities or third parties necessary for the completion of the construction of the Improvements, and the operation of, and

access to, the Project, prior to the commencement of any work for which such permit, license or authorization is required; or

(x) any failure by the Borrower to perform or comply with any of its obligations under this Borrower Loan Agreement (other than those specified in this Section 8.1), as and when required, that continues for a period of thirty (30) days after written notice of such failure by Funding Lender or the Servicer on its behalf to the Borrower (with a copy to the Equity Investors); provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in the Funding Lender's judgment, absent immediate exercise by the Funding Lender of a right or remedy under this Borrower Loan Agreement, result in harm to the Funding Lender, impairment of the Borrower Notes or this Borrower Loan Agreement or any security given under any other Borrower Loan Document.

Additionally, except with respect to any payment due on the Borrower Note and Additional Borrower Payments, (a) any Default or Event of Default that occurs by reason of acts or omissions of a general partner of Borrower shall be deemed cured if such general partner of Borrower is replaced, within thirty (30) days after notice to Borrower and the Equity Investors of such Default or Event of Default by Funding Lender, by a substitute general partner approved by Funding Lender in its sole discretion, except if such replacement is an affiliate of the Equity Investors or otherwise permitted pursuant to the Security Instrument or Construction Funding Agreement, no such approval by Funding Lender shall be required, provided in either case such replacement is approved by the Governmental Lender in the manner and to the extent provided in the Regulatory Agreement and such substitute general partner timely cures such Default or Event of Default; and (b) any Default or Event of Default that occurs which can be cured by replacement of any guarantor of the Borrower Loan shall be deemed cured if such guarantor is replaced by a substitute guarantor approved by Funding Lender in its sole discretion, which substitute guarantor executes such guaranty agreements requested by Funding Lender within thirty (30) days after notice to Borrower of such Default or Event of Default by Funding Lender.

## **Section 8.2 Remedies.**

**Section 8.2.1 Acceleration.** Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (e), (f) or (i) of Section 8.1) and at any time and from time to time thereafter, as long as such Event of Default continues to exist, in addition to any other rights or remedies available to the Governmental Lender pursuant to the Borrower Loan Documents or at law or in equity, the Funding Lender may, take such action (whether directly or by directing the actions of the Fiscal Agent), without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Borrower Payment Obligations to be immediately due and payable (including, without limitation, the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Borrower Notes to be immediately due and payable), without notice or demand, and apply such payment of the Borrower Payment Obligations in any manner and in

any order determined by Funding Lender, in Funding Lender's sole and absolute discretion; and upon any Event of Default described in paragraph (e), (f) or (i) of Section 8.1, the Borrower Payment Obligations shall become immediately due and payable, without notice or demand, and the Borrower hereby expressly waives any such notice or demand, anything contained in any Borrower Loan Document to the contrary notwithstanding. Notwithstanding anything herein to the contrary, enforcement of remedies hereunder and under the Funding Loan Agreement shall be controlled by the Funding Lender.

**Section 8.2.2 Remedies Cumulative.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to the Funding Lender against the Borrower under the Borrower Loan Documents or at law or in equity may be exercised by the Funding Lender or the Fiscal Agent, at any time and from time to time, whether or not all or any of the Borrower Payment Obligations shall be declared due and payable, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Borrower Loan Documents. Any such actions taken by the Funding Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as the Funding Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of the Funding Lender permitted by law, equity or contract or as set forth in the Borrower Loan Documents. Without limiting the generality of the foregoing, the Borrower agrees that if an Event of Default is continuing, all Liens and other rights, remedies or privileges provided to the Funding Lender shall remain in full force and effect until they have exhausted all of its remedies, the Security Instrument has been foreclosed, the Project has been sold and/or otherwise realized upon satisfaction of the Borrower Payment Obligations or the Borrower Payment Obligations has been paid in full. To the extent permitted by applicable law, nothing contained in any Borrower Loan Document shall be construed as requiring the Funding Lender to resort to any portion of the Project for the satisfaction of any of the Borrower Payment Obligations in preference or priority to any other portion, and the Funding Lender may seek satisfaction out of the entire Project or any part thereof, in its absolute discretion.

Notwithstanding any provision herein to the contrary, the Governmental Lender, the Fiscal Agent and the Funding Lender agree that any cure of any default made or tendered by the Equity Investors under the Borrower Loan Documents or the Funding Loan Documents shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

**Section 8.2.3 Delay.** No delay or omission to exercise any remedy, right, power accruing upon an Event of Default, or the granting of any indulgence or compromise by the Funding Lender or the Fiscal Agent shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Potential Default or Event of Default shall not be construed to be a waiver of any subsequent Potential Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Borrower Loan Agreement, the Funding Lender and the Fiscal Agent reserve the right to seek a deficiency judgment or preserve a deficiency claim, in connection with the foreclosure of the

Security Instrument to the extent necessary to foreclose on the Project, the Rents, the funds or any other collateral.

**Section 8.2.4 Set Off; Waiver of Set Off.** Upon the occurrence of an Event of Default, Funding Lender may, at any time and from time to time, without notice to Borrower or any other Person (any such notice being expressly waived), set off and appropriate and apply (against and on account of any obligations and liabilities of the Borrower to the Funding Lender or the Fiscal Agent arising under or connected with this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents, irrespective of whether or not the Funding Lender shall have made any demand therefor, and although such obligations and liabilities may be contingent or unmatured), and the Borrower hereby grants to the Funding Lender, as security for the Borrower Payment Obligations, a security interest in, any and all deposits (general or special, including but not limited to Debt evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Debt at any time held or owing by the Funding Lender to or for the credit or the account of the Borrower.

**Section 8.2.5 Assumption of Obligations.** In the event that the Funding Lender or its assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Borrower Loan Agreement, the Borrower Notes, the Regulatory Agreement, and any other Borrower Loan Documents and Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

**Section 8.2.6 Accounts Receivable.** Upon the occurrence of an Event of Default, Funding Lender shall have the right, to the extent permitted by law, to impound and take possession of books, records, notes and other documents evidencing Borrower's accounts, accounts receivable and other claims for payment of money, arising in connection with the Project, and to make direct collections on such accounts, accounts receivable and claims for the benefit of Funding Lender.

**Section 8.2.7 Defaults under Other Documents.** Funding Lender shall have the right to cure any default under any of the Related Documents and the Subordinate Loan Documents, but shall have no obligation to do so.

**Section 8.2.8 Abatement of Disbursements.** Notwithstanding any provision to the contrary herein or any of the other Borrower Loan Documents or the Funding Loan Documents, Funding Lender's obligation to make further Disbursements shall abate (i) during the continuance of any Potential Default, (ii) after any disclosure to Funding Lender of any fact or circumstance that, absent such disclosure, would cause any representation or warranty of Borrower to fail to be true and correct in all material respects, unless and until Funding Lender elects to permit further Disbursements notwithstanding such event or circumstance; and (iii) upon the occurrence of any Event of Default.

**Section 8.2.9 Completion of Improvements.** Upon the occurrence of any Event of Default, Funding Lender shall have the right to cause an independent contractor selected by Funding Lender to enter into possession of the Project and to perform any and all work and labor

necessary for the completion of the Project substantially in accordance with the Plans and Specifications, if any, and to perform Borrower's obligations under this Borrower Loan Agreement. All sums expended by Funding Lender for such purposes shall be deemed to have been disbursed to and borrowed by Borrower and shall be secured by the Security Documents.

**Section 8.2.10 Right to Directly Enforce.** Notwithstanding any other provision hereof to the contrary, the Funding Lender shall have the right to directly enforce all rights and remedies hereunder with or without involvement of the Governmental Lender or the Fiscal Agent, provided that only the Governmental Lender may enforce the Unassigned Rights. In the event that any of the provisions set forth in this Section 8.2.10 are inconsistent with the covenants, terms and conditions of the Security Instrument, the covenants, terms and conditions of the Security Instrument shall prevail.

**Section 8.2.11 Power of Attorney.** Effective upon the occurrence of an Event of Default, and continuing until and unless such Event of Default is cured or waived, Borrower hereby constitutes and appoints Funding Lender, or an independent contractor selected by Funding Lender, as its true and lawful attorney-in-fact with full power of substitution, for the purposes of completion of the Project and performance of Borrower's obligations under this Borrower Loan Agreement in the name of Borrower, and hereby empowers said attorney-in-fact to do any or all of the following upon the occurrence and continuation of an Event of Default (it being understood and agreed that said power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked until full payment and performance of all obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents):

(a) to use any of the funds of Borrower or General Partner, including any balance of the Borrower Loan, as applicable, and any funds which may be held by Funding Lender for Borrower (including all funds in all deposit accounts in which Borrower has granted to Funding Lender a security interest), for the purpose of effecting completion of the construction of the Improvements, in the manner called for by the Plans and Specifications;

(b) to make such additions, changes and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Project in substantially the manner contemplated by the Plans and Specifications;

(c) to employ any contractors, subcontractors, agents, architects and inspectors required for said purposes;

(d) to employ attorneys to defend against attempts to interfere with the exercise of power granted hereby;

(e) to pay, settle or compromise all existing bills and claims which are or may be liens against the Project or the Improvements, or may be necessary or desirable for the completion of the construction of the Improvements, or clearance of objections to or encumbrances on title;

(f) to execute all applications and certificates in the name of Borrower, which may be required by any other construction contract;

(g) to prosecute and defend all actions or proceedings in connection with the Project and to take such action, require such performance and do any and every other act as is deemed necessary with respect to the completion of the construction of the Improvements, which Borrower might do on its own behalf;

(h) to let new or additional contracts to the extent not prohibited by their existing contracts;

(i) to employ watchmen and erect security fences to protect the Project from injury; and

(j) to take such action and require such performance as it deems necessary under any of the bonds or insurance policies to be furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder, and in connection therewith to execute instruments of release and satisfaction.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default, rights and remedies may be pursued pursuant to the terms of the Borrower Loan Documents and the Funding Loan Documents. The parties hereto acknowledge that, among the possible outcomes to the pursuit of such remedies, is the situation where the Funding Lender assignees or designees become the owner of the Project and assume the obligations identified above, and the Borrower Notes, the Borrower Loan and the other Borrower Loan Documents and Funding Loan Documents remain outstanding.

## **ARTICLE IX**

### **SPECIAL PROVISIONS**

#### **Section 9.1 Sale of Note and Secondary Market Transaction.**

**Section 9.1.1 Cooperation.** Subject to the restrictions of Section 2.4 of the Funding Loan Agreement, at the Funding Lender's or the Servicer's request (to the extent not already required to be provided by the Borrower under this Borrower Loan Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Funding Lender or the Servicer customarily adheres or which may be reasonably required in the marketplace or by the Funding Lender or the Servicer in connection with one or more sales or assignments of all or a portion of the Governmental Lender Notes or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Governmental Lender Notes (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that neither the Borrower nor the Governmental Lender shall incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs shall be paid by the Funding Lender or the Servicer, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower shall, so long as the Borrower Loan is still outstanding:

(a) (i) [provide such financial and other information with respect to the Borrower Loan, and with respect to the Project, the Borrower, the Manager, the contractor of the Project or the Borrower Controlling Entity, (ii) provide financial statements, audited, if available, relating to the Project with customary disclaimers for any forward looking statements or lack of audit, and (iii), at the expense of the Funding Lender or the Servicer, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports and other due diligence investigations of the Project, as may be reasonably requested from time to time by the Funding Lender or the Servicer or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Funding Lender or the Servicer pursuant to this paragraph (a) being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents (including, without limitation, auditor consents) to include or incorporate by reference the Provided Information in an offering document or otherwise provide the Provided Information to investors and potential investors or opinions of counsel of independent attorneys acceptable to the Funding Lender or the Servicer and the Rating Agencies];

(b) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project, the Borrower, the Borrower Loan Documents and the Funding Loan Documents reasonably acceptable to the Funding Lender or the Servicer, consistent with the facts covered by such representations and warranties as they exist on the date thereof; and

(c) execute such amendments to the Borrower Loan Documents and the Funding Loan Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Borrower Loan Documents and the Funding Loan Documents and is not otherwise adverse to the Borrower in its reasonable discretion.

**Section 9.1.2 Use of Information.** The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a "Secondary Market Disclosure Document"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 9.1.1(c) hereof, with the Funding Lender and the Servicer in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

The Borrower and the Funding Lender agree and acknowledge that the Governmental Lender undertakes no obligation hereunder or in the Funding Loan Agreement to participate in the preparation of, or to approve, any Secondary Market Disclosure Document.

**Section 9.1.3 Borrower Obligations Regarding Secondary Market Disclosure Documents.** In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Manager, cause it to provide, information reasonably requested by the Funding Lender pertaining to the Borrower, the Project or such third party (and portions of any other sections reasonably requested by the Funding Lender pertaining to the Borrower, the Project or the third party). The Borrower shall, if requested by the Funding Lender and the Servicer, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the Project or the Manager, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project or the Manager) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such parties. Furthermore, the Borrower hereby indemnifies the Funding Lender, the Servicer and the Governmental Lender for any Liabilities to which any such parties may become subject to the extent such Liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document, [unless caused by the gross negligence or willful misconduct of the Funding Lender or the Servicer].

**Section 9.1.4 Borrower Indemnity Regarding Filings.** In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) indemnify Funding Lender and the [underwriter group] for any securities [(the “Underwriter Group”)] for any Liabilities to which Funding Lender, the Servicer or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading and (ii) reimburse the Funding Lender, the Servicer, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Funding Lender, the Servicer or the Underwriter Group in connection with defending or investigating the Liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

**Section 9.1.5 Indemnification Procedure.** Promptly after receipt by an indemnified party under Sections 9.1.3 and 9.1.4 hereof of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 9.1.5, the Borrower shall not be responsible for any legal or other expenses subsequently



incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower.

**Section 9.1.6 Contribution.** In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.1.4 hereof is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.1.4 hereof, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 10(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

## **ARTICLE X**

### **MISCELLANEOUS**

**Section 10.1 Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Borrower Loan Document or Funding Loan Document (a "notice") shall be deemed to be given and made when delivered by hand, recognized overnight delivery service, confirmed facsimile transmission (provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day), or five (5) calendar days after deposited in the United States mail, registered or certified, postage prepaid, with return receipt requested, addressed as follows:

If to the Fiscal Agent:

U.S. Bank National Association

If to the Governmental Lender:

Housing Authority of the City of San Diego  
1122 Broadway, Suite 300  
San Diego, California 92101  
Attention: Executive Director  
Phone: (619) 578-7575  
Facsimile: (619) 578-7356

If to the Borrower:

3Roots CIC, LP  
c/o Chelsea Investment Corporation  
6339 Paseo Del Lago

Carlsbad, California 92011  
Attention: President

with a copy to:

Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, CA 94111  
Attention: Ofer Elitzur  
Phone (415) 262-5165  
Fax (415) 262-5199

and a copy to:

and a copy to:

and a copy to:

If to the Equity Investors:

U.S. Bancorp Community Development  
Corporation  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, Missouri 63103  
Reference: USB Project No: 27717  
Attention: Director of Asset Management  
Phone: (314) 335-2600

U.S. Bank National Association  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, MO 63103  
USB Project No: 27717  
Attn.: Director of Asset Management  
Phone: (314) 335-2600

with a copy to:

Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attention: Jill H. Goldstein

If to the Funding Lender:

Citibank, N.A.  
388 Greenwich Street, 6th Floor Trading  
New York, New York 10013  
Attention: Transaction and Asset  
Management Group  
Re: Aquila Apartments  
Deal ID No. 60000987  
Facsimile: (212) 723 8209

and to:	<p>Citibank, N.A.  325 East Hillcrest Drive, Suite 160  Thousand Oaks, California 91360  Attention: Operations Manager/Asset Manager  Re: Aquila Apartments  Deal ID No. 60000987  Facsimile: (805) 557-0924</p>
prior to the Conversion Date, with a copy to:	<p>Citibank, N.A.  388 Greenwich Street, 6th Floor Trading  New York, New York 10013  Attention: Account Specialist  Re: Aquila Apartments  Deal ID No. 60000987  Facsimile: (212) 723-8209</p>
following the Conversion Date with a copy to:	<p>Citibank, N.A.  c/o Berkadia Commercial Servicing  Department  323 Norristown Road, Suite 300  Ambler, Pennsylvania 19002  Attention: Client Relations Manager  Re: Aquila Apartments  Deal ID No. 60000987  Facsimile: (215) 328-0305</p>
and a copy of any notices of default sent to:	<p>Citibank, N.A.  388 Greenwich Street, 17<sup>th</sup> Floor  New York, New York 10013  Attention: General Counsel's Office  Re: Aquila Apartments  Deal ID No. 60000987  Facsimile: (212) 723-8939</p>

Any party may change such party's address for the notice or demands required under this Borrower Loan Agreement by providing written notice of such change of address to the other parties by written notice as provided herein.

**Section 10.2 Brokers and Financial Advisors.** The Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Borrower Loan, other than those disclosed to the Funding Lender and whose fees shall be paid by the Borrower pursuant to separate agreements. The Borrower and the Funding Lender shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions

contemplated herein. The provisions of this Section 10.2 shall survive the expiration and termination of this Borrower Loan Agreement and the repayment of the Borrower Payment Obligations.

**Section 10.3 Survival.** This Borrower Loan Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by the Governmental Lender of the Borrower Loan and the execution and delivery to the Governmental Lender of the Borrower Notes and the assignment of the Borrower Notes to the Funding Lender, and shall continue in full force and effect so long as all or any of the Borrower Payment Obligations is unpaid. All the Borrower's covenants and agreements in this Borrower Loan Agreement shall inure to the benefit of the respective legal representatives, successors and assigns of the Governmental Lender, the Fiscal Agent, the Funding Lender and the Servicer.

**Section 10.4 Preferences.** The Governmental Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by the Borrower to any portion of the Borrower Payment Obligations. To the extent the Borrower makes a payment to the Governmental Lender or the Servicer, or the Governmental Lender or the Servicer receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Borrower Payment Obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Governmental Lender or the Servicer.

**Section 10.5 Waiver of Notice.** The Borrower shall not be entitled to any notices of any nature whatsoever from the Funding Lender, the Fiscal Agent or the Servicer except with respect to matters for which this Borrower Loan Agreement or any other Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, to the Borrower and except with respect to matters for which the Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. The Borrower hereby expressly waives the right to receive any notice from the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, with respect to any matter for which no Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender, the Fiscal Agent or the Servicer to the Borrower.

**Section 10.6 Offsets, Counterclaims and Defenses.** The Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by the Funding Lender or the Servicer with respect to a Borrower Loan Payment. Any assignee of Funding Lender's interest in and to the Borrower Loan Documents or the Funding Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses that are unrelated to the Borrower Loan Documents or the Funding Loan Documents which the Borrower may otherwise have against any assignor of such documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by the Borrower in any action or proceeding brought by any such assignee upon such documents, and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrower.

**Section 10.7 Publicity.** The Funding Lender and the Servicer (and any Affiliates of either party) shall have the right to issue press releases, advertisements and other promotional materials describing the Funding Lender's or the Servicer's participation in the making of the Borrower Loan or the Borrower Loan's inclusion in any Secondary Market Transaction effectuated by the Funding Lender or the Servicer or one of its or their Affiliates. All news releases, publicity or advertising by the Borrower or Borrower Affiliates through any media intended to reach the general public, which refers to the Borrower Loan Documents or the Funding Loan Documents, the Borrower Loan, the Funding Lender or the Servicer in a Secondary Market Transaction, shall be subject to the prior Written Consent of the Funding Lender or the Servicer, as applicable.

**Section 10.8 Construction of Documents.** The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Borrower Loan Documents and the Funding Loan Documents and that the Borrower Loan Documents and the Funding Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

**Section 10.9 No Third Party Beneficiaries.** The Borrower Loan Documents and the Funding Loan Documents are solely for the benefit of the Governmental Lender, the Funding Lender, the Servicer, the Fiscal Agent and the Borrower and, with respect to Sections 9.1.3 and 9.1.4 hereof, the Underwriter Group, and with respect to Section 8.2.2, the Equity Investors, and nothing contained in any Borrower Loan Document shall be deemed to confer upon anyone other than the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, and the Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

**Section 10.10 Assignment.** The Borrower Loan, the Security Instrument, the Borrower Loan Documents and the Funding Loan Documents and all Funding Lender's or Fiscal Agent's rights, title, obligations and interests therein may be assigned by the Funding Lender or the Fiscal Agent, as appropriate, at any time in its sole discretion, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise, subject in any event to the provisions of Section 2.4 of the Funding Loan Agreement. Upon such assignment, all references to Funding Lender or the Fiscal Agent, as appropriate, in this Borrower Loan Agreement and in any Borrower Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the Funding Lender or the Fiscal Agent, as appropriate. The Borrower shall accord full recognition to any such assignment, and all rights and remedies of Funding Lender in connection with the interest so assigned shall be as fully enforceable by such assignee as they were by Funding Lender before such assignment. In connection with any proposed assignment, Funding Lender may disclose to the proposed assignee any information that the Borrower has delivered, or caused to be delivered, to Funding Lender with reference to the Borrower, General Partner, Guarantor or any Borrower Affiliate, or the Project, including information that the Borrower is required to deliver to Funding Lender pursuant to this Borrower Loan Agreement, provided that such proposed assignee agrees to treat such information as confidential. The Borrower may not assign its rights, interests or obligations under this Borrower Loan Agreement or under any of the Borrower Loan Documents or Funding Loan Documents, or the Borrower's interest in any moneys to be disbursed or advanced hereunder, except only as may be expressly permitted hereby.

## **Section 10.11 [Reserved].**

**Section 10.12 Governmental Lender, Funding Lender and Servicer Not in Control; No Partnership.** None of the covenants or other provisions contained in this Borrower Loan Agreement shall, or shall be deemed to, give the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer the right or power to exercise control over the affairs or management of the Borrower, the power of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer being limited to the rights to exercise the remedies referred to in the Borrower Loan Documents and the Funding Loan Documents. The relationship between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Borrower Loan Documents or the Funding Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer or to create an equity interest in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer. Neither the Governmental Lender, the Funding Lender, the Fiscal Agent nor the Servicer undertakes or assumes any responsibility or duty to the Borrower or to any other person with respect to the Project or the Borrower Loan, except as expressly provided in the Borrower Loan Documents or the Funding Loan Documents; and notwithstanding any other provision of the Borrower Loan Documents and the Funding Loan Documents: (1) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members, or partners and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer do not intend to ever assume such status; (2) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall in no event be liable for any the Borrower Payment Obligations, expenses or losses incurred or sustained by the Borrower; and (3) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Borrower, the Borrower Controlling Entities or its stockholders, members, or partners. The Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer and the Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the Governmental Lender, the Funding Lender, the Servicer, the Fiscal Agent and the Borrower, or to create an equity interest in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, or any sharing of liabilities, losses, costs or expenses.

**Section 10.13 Release.** The Borrower hereby acknowledges that it is executing this Borrower Loan Agreement and each of the Borrower Loan Documents and the Funding Loan Documents to which it is a party as its own voluntary act free from duress and undue influence.

**Section 10.14 Term of Borrower Loan Agreement.** This Borrower Loan Agreement shall be in full force and effect until all payment obligations of the Borrower hereunder have been paid in full and the Borrower Loan and the Funding Loan have been retired or the payment thereof has been provided for; except that on and after payment in full of the Borrower Notes, this Borrower Loan Agreement shall be terminated, without further action by the parties hereto; provided, however, that the obligations of the Borrower under Sections 5.11, 5.14, 5.15, 9.1.3,

9.1.4, 9.1.5, 9.1.6 and 10.15 hereof, as well as under Section 5.7 of the Construction Funding Agreement, shall survive the termination of this Borrower Loan Agreement.

**Section 10.15 Reimbursement of Expenses.** If, upon or after the occurrence of any Event of Default or Potential Default, the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer shall employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein, the Borrower will on demand therefor reimburse the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer for fees of such attorneys and such other expenses so incurred.

The Borrower's obligation to pay the amounts required to be paid under this Section 10.15 shall be subordinate to its obligations to make payments under the Borrower Notes.

**Section 10.16 Permitted Contests.** Notwithstanding anything to the contrary contained in this Borrower Loan Agreement, Borrower shall have the right to contest or object in good faith to any claim, demand, levy or assessment (other than in respect of Debt or Contractual Obligations of Borrower under any Borrower Loan Document or Related Document) by appropriate legal proceedings that are not prejudicial to Funding Lender's rights, but this shall not be deemed or construed as in any way relieving, modifying or providing any extension of time with respect to Borrower's covenant to pay and comply with any such claim, demand, levy or assessment, unless Borrower shall have given prior Written Notice to the Funding Lender of Borrower's intent to so contest or object thereto, and unless (i) Borrower has, in the Funding Lender's judgment, a reasonable basis for such contest, (ii) Borrower pays when due any portion of the claim, demand, levy or assessment to which Borrower does not object, (iii) Borrower demonstrates to Funding Lender's satisfaction that such legal proceedings shall conclusively operate to prevent enforcement prior to final determination of such proceedings, (iv) Borrower furnishes such bond, surety, undertaking or other security in connection therewith as required by law, or as requested by and satisfactory to Funding Lender, to stay such proceeding, which bond, surety, undertaking or other security shall be issued by a bonding company, insurer or surety company reasonably satisfactory to Funding Lender and shall be sufficient to cause the claim, demand, levy or assessment to be insured against by the Title Company or removed as a lien against the Project, (v) Borrower at all times prosecutes the contest with due diligence, and (vi) Borrower pays, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by Borrower, the amount so determined to be due and owing by Borrower. In the event that Borrower does not make, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by Borrower, any payment required to be made pursuant to clause (vi) of the preceding sentence, an Event of Default shall have occurred, and Funding Lender may draw or realize upon any bond or other security delivered to Funding Lender in connection with the contest by Borrower, in order to make such payment.

**Section 10.17 Funding Lender Approval of Instruments and Parties.** All proceedings taken in accordance with transactions provided for herein, and all surveys, appraisals and documents required or contemplated by this Borrower Loan Agreement and the persons responsible for the execution and preparation thereof, shall be satisfactory to and subject to approval by Funding Lender. Funding Lender's approval of any matter in connection with the Project shall be for the sole purpose of protecting the security and rights of Funding Lender. No

such approval shall result in a waiver of any default of Borrower. In no event shall Funding Lender's approval be a representation of any kind with regard to the matter being approved.

**Section 10.18 Funding Lender Determination of Facts.** Funding Lender shall at all times be free to establish independently, to its reasonable satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Borrower Loan Agreement.

**Section 10.19 Calendar Months.** With respect to any payment or obligation that is due or required to be performed within a specified number of Calendar Months after a specified date, such payment or obligation shall become due on the day in the last of such specified number of Calendar Months that corresponds numerically to the date so specified; provided, however, that with respect to any obligation as to which such specified date is the 29th, 30th or 31st day of any Calendar Month: if the Calendar Month in which such payment or obligation would otherwise become due does not have a numerically corresponding date, such obligation shall become due on the first day of the next succeeding Calendar Month.

**Section 10.20 Determinations by Lender.** Except to the extent expressly set forth in this Borrower Loan Agreement to the contrary, in any instance where the consent or approval of the Governmental Lender and the Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by the Governmental Lender and the Funding Lender under this Borrower Loan Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Governmental Lender and the Funding Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

**Section 10.21 Governing Law.** This Borrower Loan Agreement shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

**Section 10.22 Consent to Jurisdiction and Venue.** Borrower agrees that any controversy arising under or in relation to this Borrower Loan Agreement shall be litigated exclusively in the State. The state and federal courts and authorities with jurisdiction in the State shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Borrower Loan Agreement. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Beneficiary Parties' right to enforce a judgment against Borrower or any of Borrower's assets in any court of any other jurisdiction where Borrower's assets are located.

**Section 10.23 Successors and Assigns.** This Borrower Loan Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a "person" or "persons" shall be deemed to include individuals and entities.



**Section 10.24 Severability.** The invalidity, illegality or unenforceability of any provision of this Borrower Loan Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

**Section 10.25 Entire Agreement; Amendment and Waiver.** This Borrower Loan Agreement contains the complete and entire understanding of the parties with respect to the matters covered. This Borrower Loan Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Borrower Loan Agreement shall be considered as a general waiver. Without limiting the generality of the foregoing, no Disbursement shall constitute a waiver of any conditions to the Governmental Lender's or the Funding Lender's obligation to make further Disbursements nor, in the event Borrower is unable to satisfy any such conditions, shall any such waiver have the effect of precluding the Governmental Lender or the Funding Lender from thereafter declaring such inability to constitute a Potential Default or Event of Default under this Borrower Loan Agreement.

**Section 10.26 Counterparts.** This Borrower Loan Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

**Section 10.27 Captions.** The captions of the sections of this Borrower Loan Agreement are for convenience only and shall be disregarded in construing this Borrower Loan Agreement.

**Section 10.28 Servicer.** Borrower hereby acknowledges and agrees that, pursuant to the terms of Section 39 of the Security Instrument: (a) from time to time, the Governmental Lender or the Funding Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Borrower Notes, this Borrower Loan Agreement or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless Borrower receives Written Notice from the Governmental Lender or the Funding Lender to the contrary, any action or right which shall or may be taken or exercised by the Governmental Lender or the Funding Lender may be taken or exercised by such servicer with the same force and effect.

**Section 10.29 Beneficiary Parties as Third Party Beneficiary.** Each of the Beneficiary Parties shall be a third party beneficiary of this Borrower Loan Agreement for all purposes.

**Section 10.30 Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND THE BENEFICIARY PARTIES (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BORROWER LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

IF FOR ANY REASON THIS WAIVER IS DETERMINED TO BE UNENFORCEABLE, ALL DISPUTES WILL BE RESOLVED BY JUDICIAL REFERENCE PURSUANT TO THE PROCEDURES SET FORTH IN THE SECURITY INSTRUMENT.

**Section 10.31 Time of the Essence.** Time is of the essence with respect to this Borrower Loan Agreement.

**Section 10.32 [Reserved].**

**Section 10.33 Reference Date.** This Borrower Loan Agreement is dated for reference purposes only as of the first day of [October 2021], and will not be effective and binding on the parties hereto unless and until the Closing Date (as defined herein) occurs.

## **ARTICLE XI**

### **LIMITATIONS ON LIABILITY**

**Section 11.1 Limitation on Liability.** Notwithstanding anything to the contrary herein, the liability of the Borrower hereunder and under the other Borrower Loan Documents and the Funding Loan Documents (except under Section 5.15 hereof, with respect to the indemnification of the Fiscal Agent, which shall be full recourse to the Borrower) shall be limited to the extent set forth in the Borrower Notes.

**Section 11.2 Limitation on Liability of Governmental Lender.** The Governmental Lender shall not be obligated to pay the principal (or prepayment price) of or interest on the Funding Loan, except from moneys and assets received by the Fiscal Agent or the Funding Lender on behalf of the Governmental Lender pursuant to this Borrower Loan Agreement. Neither the faith and credit nor the taxing power of the State, or any political subdivision thereof, nor the faith and credit of the Governmental Lender is pledged to the payment of the principal (or prepayment price) of or interest on the Funding Loan. The Governmental Lender 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 Borrower Loan Agreement or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of moneys to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Borrower Loan Agreement, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment price) of and interest on the Funding Loan as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Fiscal Agent, the Funding Lender or the Servicer, 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 (or prepayment price) of or interest on the Funding Loan, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Funding Lender, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from

the Fiscal Agent, the Funding Lender, the Governmental Lender or any such third party, as the case may be, therefor.

**Section 11.3 Waiver of Personal Liability.** No Commissioner, officer, agent or employee of the Governmental Lender shall be individually or personally liable for the payment of any principal (or prepayment price) of or interest on the Funding Loan or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Borrower Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Borrower Loan Agreement.

**Section 11.4 Limitation on Liability of Governmental Lender's or Funding Lender's Commissioners, Officers, Employees, Etc.**

(a) Borrower assumes all risks of the acts or omissions of the Governmental Lender and the Funding Lender, provided, however, this assumption is not intended to, and shall not, preclude the Borrower from pursuing such rights and remedies as it may have against the Governmental Lender and the Funding Lender at law or under any other agreement. None of Governmental Lender, the Fiscal Agent and the Funding Lender, nor the other Beneficiary Parties or their respective commissioners, officers, directors, employees or agents shall be liable or responsible for (i) for any acts or omissions of the Governmental Lender and the Funding Lender; or (ii) the validity, sufficiency or genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the Governmental Lender and the Funding Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes gross negligence or willful misconduct on the part of the Funding Lender, or willful misconduct of the Governmental Lender.

(b) None of the Governmental Lender, the Fiscal Agent, the Funding Lender, the other Beneficiary Parties or any of their respective commissioners, officers, directors, employees or agents shall be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. The Governmental Lender, the Fiscal Agent and the Funding Lender shall not be liable for any debts or claims accruing in favor of any such parties against the Borrower or others or against the Project. Borrower is not and shall not be an agent of the Governmental Lender and the Funding Lender for any purpose. Neither the Governmental Lender nor the Funding Lender is a joint venture partner with Borrower in any manner whatsoever. Prior to default by Borrower under this Borrower Loan Agreement and the exercise of remedies granted herein, the Governmental Lender, the Fiscal Agent and the Funding Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by the Governmental Lender, the Fiscal Agent and the Funding Lender. Approvals granted by the Governmental Lender, the Fiscal Agent and the Funding Lender for any matters covered under this Borrower Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of Borrower.

(c) Any obligation or liability whatsoever of the Governmental Lender, the Fiscal Agent and the Funding Lender that may arise at any time under this Borrower Loan Agreement or any other Borrower Loan Document shall be satisfied, if at all, out of the Funding Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the Project or any of the Governmental Lender's, the Fiscal Agent's or the Funding Lender's shareholders (if any), directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

**Section 11.5 Delivery of Reports, Etc.** The delivery of reports, information and documents to the Governmental Lender, the Fiscal Agent and the Funding Lender as provided herein is for informational purposes only and the Governmental Lender's, the Fiscal Agent's and the Funding Lender's receipt of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Governmental Lender, the Fiscal Agent and the Funding Lender shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Borrower Loan Agreement against the Governmental Lender, the Fiscal Agent and the Funding Lender.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Borrower Loan Agreement by their respective authorized representative, as of the date first set forth above.

**BORROWER:**

**3ROOTS CIC, LP,**  
a California limited partnership

By: Pacific Southwest Community Development  
Corporation, a California nonprofit public  
benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Robert W. Laing  
Executive Director/President

By: CIC 3Roots LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
Cheri Hoffman  
President

[Signature Page to Borrower Loan Agreement – Aquila Apartments]

GOVERNMENTAL LENDER:

HOUSING AUTHORITY OF THE CITY OF  
SAN DIEGO

By: \_\_\_\_\_  
[Executive Director /  
Executive Vice President &  
Chief of Staff]

[Signature Page to Borrower Loan Agreement – Aquila Apartments]

Agreed to and Acknowledged by:

FUNDING LENDER:

CITIBANK, N.A.

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

[Signature Page to Borrower Loan Agreement – Aquila Apartments]

**JUNIOR INDENTURE OF TRUST**

**between**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO,  
as Issuer**

**and**

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

**Relating to**

**\$(SUBORDINATE PAR)  
HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
SUBORDINATE MULTIFAMILY HOUSING REVENUE BONDS  
(AQUILA APARTMENTS)  
2021 SUBORDINATE SERIES C-3**

**Dated as of October 1, 2021**



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## **JUNIOR INDENTURE OF TRUST**

THIS JUNIOR INDENTURE OF TRUST (this “Indenture”), made and entered into and dated as of October 1, 2021, by and between the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO (the “Issuer”), a public body, corporate and politic, organized and existing under the laws of the State of California (the “State”), and U.S. Bank National Association, a national banking association organized and existing under and by virtue of the laws of the United States of America, qualified to accept and administer the trusts hereby created (together with any successor trustee hereunder and their respective successors and assigns, the “Trustee”);

### **WITNESSETH:**

**WHEREAS**, the Issuer is authorized by Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code (the “Act”), to issue one or more series of its revenue bonds and loan the proceeds thereof to finance, among other things, the acquisition, construction and development of multifamily rental housing for persons and families of low or moderate income; and

**WHEREAS**, pursuant to the Act and this Indenture, the Issuer proposes to finance the acquisition, construction and development of 180-units (including two manager’s units) multifamily rental housing development to be located within the City of San Diego, California to be known as “Aquila Apartments” (formerly known as “3Roots”) (as more particularly described herein, the “Project”);

**WHEREAS**, in order to provide a portion of the funds necessary to finance the Project, pursuant to and in accordance with the Act, the Issuer has issued revenue notes designated Housing Authority of the City of San Diego Multifamily Housing Revenue Note (Aquila Apartments) 2021 Series C-1 and Housing Authority of the City of San Diego Multifamily Housing Revenue Note (Aquila Apartments) 2021 Series C-2 (Taxable) in the original aggregate principal amount of \$[SENIOR NOTES PAR] (together, as more particularly defined herein, the “Senior Issuer Notes”) pursuant to a Funding Loan Agreement dated as of October 1, 2021 (the “Senior Funding Loan Agreement”) between the Issuer, the Trustee and Citibank, N.A., as funding lender (the “Senior Funding Lender”);

**WHEREAS**, pursuant to and in accordance with the Act, the Issuer has authorized and undertaken to issue revenue bonds to be designated Housing Authority of the City of San Diego Subordinate Multifamily Housing Revenue Bonds (Aquila Apartments) 2021 Subordinate Series C-3, in the original aggregate principal amount of \$[C-3 PAR] (the “Bonds”) pursuant to this Indenture in order to provide a portion of the funds necessary to finance the Project;

**WHEREAS**, the Issuer has duly entered into a Junior Loan Agreement of even date herewith (the “Junior Loan Agreement”) with 3Roots CIC, LP, a California limited partnership (the “Borrower”) and the Trustee specifying the terms and conditions under which it will issue the Bonds and use the proceeds of the sale thereof to make a mortgage loan in the original aggregate principal amount of \$[C-3 PAR] (the “Junior Loan”), to the Borrower for the financing of the Project, evidenced by a Junior Promissory Note (the “Junior Note”), endorsed by the Issuer to the Trustee pursuant to this Indenture;

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

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

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

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

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

#### **GRANTING CLAUSE FIRST**

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

#### **GRANTING CLAUSE SECOND**

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

thereof, and to do any and all things which the Issuer or any other Person is or may become entitled to do under said documents.

### **GRANTING CLAUSE THIRD**

All funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

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

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

PROVIDED, HOWEVER, that if the Issuer or its successors or assigns shall pay or cause to be paid to the Holders of the Bonds the principal, interest and, to become due thereon at the times and in the manner provided in Article IX hereof, and if the Issuer shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Issuer, cease, terminate and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.09, 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any property at the time subject to the lien of this Indenture which may then be in its possession; otherwise this Indenture to be and remain in full force and effect and upon the trusts and subject to the covenants and conditions hereinafter set forth.

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

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** Terms used herein and not otherwise defined shall have the meaning provided in the Indenture. The terms used in this Indenture (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified below:

“*Act*” means Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code, as now in effect and as it may from time to time hereafter be amended and supplemented.

“*Authorized Amount*” shall mean \$[C-3 PAR], the principal amount of Bonds authorized to be issued under this Indenture.

“*Authorized Denomination*” means \$100,000 or any dollar amount in excess thereof, unless less than \$100,000 remains outstanding, in which case it shall mean such remaining outstanding amount.

“*Authorized Officer*” means (a) when used with respect to the Issuer, the Chairperson of the Issuer, the Vice Chairperson of the Issuer, the Executive Director of the Issuer, the President & CEO, Deputy CEO, Executive VP Real Estate or Vice President Multifamily Housing Finance, and/or such additional Person or Persons, if any, duly designated by the Issuer in writing to act on its behalf, (b) when used with respect to the Borrower, any general partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, and (c) when used with respect to the Trustee, any authorized signatory of the Trustee, or any Person who is authorized in writing to take the action in question on behalf of the Trustee.

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

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

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



“*Bond Payment Date*” means (i) [PAYMENT DATES] (iii) any date on which the Bonds are subject to mandatory redemption pursuant to the provisions hereof, and (iv) the Maturity Date.

“*Bond Purchase Agreement*” shall mean the Junior Bond Purchase Agreement by and among the Issuer, the Bondholder Representative and the Borrower executed in connection with the Bonds.

“*Bond Rate*” means [\_\_\_\_\_] % per annum, provided that, following an Event of Default hereunder the Bond Rate shall equal the Default Rate.

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

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

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

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

“*Bondholder Representative*” means any Person appointed to such position by written instrument signed by 100% of the Holders of the Outstanding Bonds. If at any time there is no appointed Bondholder Representative, the Servicer shall be deemed to be the Bondholder Representative. If there is no appointed Bondholder Representative and no Servicer, the Holder of a majority or plurality of the Outstanding Bonds shall be deemed to be the Bondholder Representative. The initial Bondholder Representative is CIC Opportunities Fund II LLC, a California limited liability company.

“*Bonds*” means the Housing Authority of the City of San Diego Subordinate Multifamily Housing Revenue Bonds (Aquila Apartments) 2021 Subordinate Series C-3 issued pursuant to the provisions of this Indenture.

“*Borrower*” means 3Roots CIC, LP, a limited partnership duly organized and existing under the laws of the State of California, or any of its permitted successors or assigns, as owner of the Project.

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

“*Capitalized Interest Account*” shall mean the Capitalized Interest Account of the Junior Loan Fund created pursuant to Section 2.10 herein.

“*Cash Flow*” has the meaning set forth in the Partnership Agreement.

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

“*Closing Date*” means [Closing Date], the date of issuance of the Bonds.

“*Code*” means the Internal Revenue Code of 1986 and the regulations promulgated thereunder.

“*Compliance Period*” has the meaning set forth in the Partnership Agreement.

“*City*” means the City of San Diego, California.

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

“*Deferred Development Fee*” means any part of the Development Fee (as defined in the Partnership Agreement) together with any interest thereon not paid by the Completion Date (as defined in the Partnership Agreement) and payable out of Cash Flow in accordance with the terms of the Partnership Agreement.

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

“*Electronic Notice*” means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.05 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.05 hereof.

“*Enforcement Action*” shall have the meaning given to that term in the Subordination Agreement.

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

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

“*Government Obligations*” means investments meeting the requirements of clauses (a) or (b) of the definition of “Qualified Investments” herein.

“*Guarantor*” shall mean [\_\_\_\_\_].

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

“*Investor Limited Partner*” shall mean U.S. Bancorp Community Development Corporation, a Minnesota corporation, its successors and assigns.

“*Issuer*” means the Housing Authority of the City of San Diego, a public instrumentality and political subdivision of the State of California, and its successors and assigns.

“*Junior Agreement of Environmental Indemnification*” shall mean the Junior Agreement of Environmental Indemnification, dated as of the date thereof, executed by the Borrower and Chelsea Investment Corporation for the benefit of the Issuer, the Trustee, the Bondholder Representative, and any lawful holder, owner or pledgee of the Junior Note from time to time.

“*Junior Bonds Conversion Date*” shall mean [DATE], provided that such date may be extended to [OUTSIDE EXTENSION DATE], if Borrower exercises its right to extend such date.

“*Junior Completion Guaranty*” shall mean the Junior Completion Guaranty, dated as of the date of this Indenture, by [\_\_\_\_\_].

“*Junior Completion and Repayment Guaranty*” shall mean the Junior Completion and Repayment Guaranty, dated as of the date of this Indenture, by [\_\_\_\_\_].

*“Junior Exceptions to Non-Recourse Guaranty”* shall mean the Junior Exceptions to Non-Recourse Guaranty, dated as of the date of this Indenture, by [Guarantor].

*“Junior Loan”* means the loan made by the Issuer to the Borrower in the original principal amount of \$[C-3 PAR] pursuant to the Junior Loan Agreement.

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

*“Junior Loan Documents”* means, collectively, this Indenture, the Junior Loan Agreement, the Junior Note, the Junior Mortgage, the Bond Purchase Agreement, the Junior Exceptions to Non-Recourse Guaranty, the Junior Agreement of Environmental Indemnification, the Junior Completion Guaranty, the Junior Completion and Repayment Guaranty, and all other documents securing the Junior Loan.

*“Junior Loan Fund”* means the Junior Loan Fund created pursuant to Section 2.10 herein.

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

*“Junior Note”* means the Junior Promissory Note dated the Closing Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Junior Loan, as the same may be amended, supplemented or restated from time to time, which Junior Promissory Note will be delivered to the Issuer and endorsed by the Issuer to the Trustee.

*“Maturity Date”* means [FINAL MATURITY - NOT LATER THAN 45 YEARS FROM ISSUANCE DATE].

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

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

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

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

(c) Bonds in lieu of which others have been authenticated (or payment, when due, of which is made without replacement) under Section 2.06 hereof.

*“Partnership Agreement”* means the Amended and Restated Agreement of Limited Partnership of the Borrower, dated as of [Date].

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

*“Pledged Revenues”* means the amounts pledged under the Senior Funding Loan Agreement.

*“Principal Office of the Trustee”* means the office of the Trustee referenced in Section 11.05(a) hereof, or such other office or offices as the Trustee may designate in writing from time to time, or the office of any successor Trustee where it principally conducts its business of serving as trustee under indentures pursuant to which municipal or governmental obligations are issued.

*“Project”* means, collectively, the land and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as Aquila Apartments located in San Diego, California, including the real estate described in the Junior Mortgage.

*“Qualified Investments”* means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Trustee or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Trustee or such other institution has been rated at least “VMIG-1”/“A-2+” by Moody’s/S&P or which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with Freddie Mac or a bank or any insurance company or other financial institution which has a rating assigned by Moody’s/S&P to its outstanding long-term unsecured debt which is the highest rating (as defined

below) for long-term unsecured debt obligations assigned by Moody's/S&P, and which are approved by the Bondholder Representative; or (g) any other investments approved in writing by the Bondholder Representative. For purposes of this definition, the "highest rating" shall mean a rating of at least "VMIG-1"/"A-1+" for obligations with less than one year maturity; at least "Aaa"/"VMIG-1"/"AAA"/"A-1+" for obligations with a maturity of one year or greater but less than three years; and at least "Aaa"/"AAA" for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

*"Record Date"* means the 15th day of the month preceding the month in which any Bond Payment Date falls.

*"Regulatory Agreement"* means the Regulatory Agreement and Declaration of Restrictive Covenants dated as of October 1, 2021 among the Issuer, the Trustee, the fiscal agent under the Senior Funding Loan Agreement and the Borrower with respect to the Project.

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

*"Revenue Fund"* means the Revenue Fund established by the Trustee pursuant to Section 4.01 hereof.

*"Revenues"* means [REVISE/CONFIRM] [(a) following the Junior Bonds Conversion Date 50% of available Cash Flow, until any Deferred Development Fee relating to the Project is paid off, and thereafter, 75% of available Cash Flow, in each case with respect to the Junior Loan pursuant to the Junior Loan Agreement, the Junior Note or the Junior Mortgage, including any proceeds from a sale or exchange of any assets of the Borrower, any financing or refinancing of the Project, or any other transaction proceeds, all casualty or other insurance benefits and condemnation awards paid in connection therewith (subject in all events to the interests of the holders of the Senior Issuer Notes in connection with the Senior Issuer Notes), and (b) all money and securities held by the Trustee in the funds and accounts established pursuant to this Indenture, together with all investment earnings thereon (collectively, "Annual Revenues"). Notwithstanding the foregoing, "Revenues" for (a) the October 1 payments to be made in accordance with this Indenture, shall mean an estimated amount equal to 50% of Annual Revenues for such fiscal year, and (b) the April 1 payments to be made in accordance with this Indenture, shall mean an amount equal to Annual Revenues for the prior fiscal year minus the amount of the October 1 payment paid for such prior fiscal year. ]

*"Securities Act"* means the Securities Act of 1933, as amended.

*"Senior Borrower Loan"* shall have the meaning given to the term "Borrower Loan" in the Senior Funding Loan Agreement.

*"Senior Borrower Loan and Property Items"* means and includes, with respect to the Senior Borrower Loan and the Project securing the Senior Borrower Loan, for any period, each

of the following: (a) all debt service, including interest expense and the amortization of all principal coming due in respect of the Senior Borrower Loan and the Senior Issuer Notes during such period (whether by maturity, mandatory sinking fund payment, redemption, acceleration or otherwise); (b) all operating, overhead, ownership and other expenditures (whether ordinary, capital or extraordinary expenditures (other than those paid from the excluded sources of gross revenues in the definition of Cash Flow, from the proceeds of insurance or out of escrows or reserves to the extent not required to be replenished)), including, but not limited to, all direct and indirect costs, charges and expenses of owning, operating, maintaining and repairing the Project, further including, without limitation, insurance, taxes (including property taxes), assessments and other public charges and all expenditures (capital or otherwise) required for the proper maintenance of the Project in accordance with the Senior Borrower Loan Documents (excluding (A) fees or other payments made to the Borrower or any of its affiliates in excess of market rates, and (B) fees, compensation or charges paid to any General Partner of the Borrower or any of its affiliates (other than a management fee not to exceed 5% of gross rent and any Deferred Development Fee owed to the developer, any incentive management fee to the manager and fees and amounts payable to the Investor Limited Partner pursuant to the Partnership Agreement)); (c) all other senior claims, including all fees, costs and expenses payable pursuant to the Senior Borrower Loan Documents and the Senior Funding Loan Documents; (d) all other obligations under the Senior Funding Loan Documents and the Senior Borrower Loan Documents, including, but not limited to, the payment of all fees, costs and expenses and other expenditures (whether for capital expenditures, repairs or replacements (other than those paid from the excluded sources of gross revenues in the definition of Cash Flow, from the proceeds of insurance or out of escrows or reserves to the extent not required to be replenished)), and the funding of any reserves or escrows required under the Senior Borrower Loan Documents (including, but not limited to, replacement reserves, capital reserves, reserves for taxes, insurance, water and sewer charges and other similar impositions), operating reserves and interest rate hedge reserves; (e) all obligations of the Borrower under the Senior Transaction Documents in respect of the Senior Borrower Loan and the Senior Issuer Notes; and (f) all other amounts that the Borrower is required to pay or set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

*“Senior Borrower Loan Documents”* shall have the meaning given to the term “Borrower Loan Documents” in the Senior Funding Loan Agreement.

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

*“Senior Funding Loan”* has the meaning given to the term “Funding Loan” in the Senior Funding Loan Agreement.

*“Senior Funding Loan Agreement”* has the meaning given to it in the recitals hereof.

*“Senior Funding Loan Documents”* shall have the meaning given to the term “Funding Loan Documents” in the Senior Funding Loan Agreement.

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

“*Senior Mortgage*” has the meaning given to the term “Security Instrument” in the Senior Funding Loan Agreement.

“*Senior Noteowner Representative*” means the “Noteowner” as defined in the Senior Funding Loan Agreement.

“*Senior Obligations*” means and includes, collectively, and without limitation, each of the following: (a) all debt service payments (including, but not limited to, interest and principal, whether at maturity or by mandatory sinking fund payments, redemption, acceleration or otherwise) on the Senior Issuer Notes and the Senior Borrower Loan, (b) all obligations of the Borrower under the Senior Funding Loan Documents and the Senior Borrower Loan Documents, (c) all obligations in respect of all Senior Borrower Loan and Property Items and (d) all fees, costs, expenses of the Trustee under the Senior Funding Loan Agreement and of the Senior Noteowner Representative under the Senior Transaction Documents; “Senior Obligations” is expressly intended to include any and all obligations in respect of “Subordinate Bonds” as defined in and issued under the Senior Funding Loan Agreement.

“*Senior Security*” has the meaning given the term “Security” in the Senior Funding Loan Agreement.

“*Senior Transaction Documents*” means the Senior Funding Loan Documents and the Senior Borrower Loan Documents.

“*Servicer*” means the “Servicer” as appointed under and as defined in the Senior Funding Loan Agreement.

“*Sophisticated Investor*” means (a) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act; (b) an institutional “accredited investor” as defined in Sections 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act; or (c) an entity in which each of the equity owners qualify as an entity described in (a) or (b).

“*Subordination Agreement*” means the Subordination and Intercreditor Agreement, dated as of October 1, 2021, by and between the Trustee and U.S. Bank National Association, as trustee under Senior Funding Loan Agreement.

“*State*” means the State of California.

“*Tax Certificate*” shall mean the Tax Certificate and Agreement, dated the Closing Date, executed and delivered by the Issuer and the Borrower.

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

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

“*Unassigned Rights*” means all of the rights of the Issuer and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be paid its fees and expenses, to give or withhold consent to



amendments, changes, modifications and alterations, to receive notices and the right to enforce such rights.

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

## **ARTICLE II**

### **THE BONDS**

#### **Section 2.01. The Bonds.**

(a) The Bonds are hereby authorized to be issued hereunder as revenue bonds of the Issuer in accordance with the Bond Resolution. The Bonds are hereby authorized to be designated “Housing Authority of the City of San Diego Subordinate Multifamily Housing Revenue Bonds (Aquila Apartments) 2021 Subordinate Series C-3” in the original aggregate principal amount of \$[C-3 PAR]. The Bonds shall be fully registered as to principal and interest, without coupons, and shall be numbered by series, if any, in the manner and with any additional designation as the Trustee, as Bond Registrar, deems necessary for the purpose of identification. All of the Bonds are equally and ratably secured. Bonds issued on the Closing Date shall be dated such date; Bonds issued after the Closing Date shall be dated the date they are authenticated by the Trustee. The Bonds shall be due and payable in full on the Maturity Date.

(b) The Bonds shall be issued in Authorized Denominations and shall bear interest at the Bond Rate. Payment of the principal of and interest on the Bonds shall be payable on each Bond Payment Date, solely from Revenues received by the Trustee pursuant to the provisions of the Junior Note and the Junior Loan Agreement; provided, however, such payments shall be first applied to the payment of the interest on the Bonds due payable on such Bond Payment Date. Unpaid principal of and interest on the Bonds, and other overdue amounts under this Indenture, shall accrue interest at the Bond Rate.

(i) From the Closing Date until the Junior Bonds Conversion Date, but excluding [DATE], interest on the Bonds shall be computed on the basis of a 360-day year of twelve months. Interest on the Bonds shall be payable on each Bond Payment Date, in each case from the Bond Payment Date next preceding the date of authentication thereof to which interest has been paid or duly provided for, unless the date of authentication is an Bond Payment Date to which interest has been paid or duly provided for, in which case from the date of authentication of the Bond, or unless no interest has been paid or duly provided for on the Bonds, in which case from the Closing Date, until payment of the principal of the Bond has been made or duly

provided for. Notwithstanding the foregoing, if a Bond is authenticated after a Record Date and before the following Bond Payment Date, such Bond shall bear interest from such Bond Payment Date; provided, however, that if there shall be a default in the payment of interest due on such Bond Payment Date, then the Bonds shall bear interest from the next preceding Bond Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for on the Bonds, from the Closing Date.

(ii) [to be confirmed/revised as needed][Commencing with the Junior Bonds Conversion Date, unpaid principal of and interest on the Bonds, and other overdue amounts under this Indenture, shall accrue interest at the Bond Rate and interest shall be computed on the basis of actual days elapsed in a 365- (or 366-) day year, as applicable, compounding semi-annually, commencing on [DATE], and thereafter on [June 1 and December 1] of each year until the Maturity Date or the date of redemption prior thereto.]

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

(d) No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued hereunder, or in substitution for other Bonds pursuant to Section 2.06 hereof, is expressly limited to \$[C-3 PAR].

**Section 2.02. Limited Obligations.** The Bonds are limited obligations of the Issuer, payable solely from the Revenues and other funds and money pledged and assigned hereunder. Neither the Issuer, the State of California (the “State”), nor any political subdivision thereof (except the Issuer, to the limited extent set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, or interest on the Bonds or for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and none of the Bonds or any of the Issuer’s agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. The Issuer has no taxing power.

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

It is recognized that notwithstanding any other provision of this Indenture, neither the Borrower, the Trustee nor any Bondholder shall look to the Issuer for damages suffered by the Borrower, the Trustee or such Bondholder as a result of the failure of the Issuer to perform any covenant, undertaking or obligation under this Indenture, the Junior Loan Agreement, the Bonds or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Issuer in any of such documents, nor for any other reason. Although this Indenture recognizes that such documents shall not give rise to any pecuniary liability of the Issuer, nothing contained in this Indenture shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Issuer) in any court or before any governmental body, agency or instrumentality or otherwise against the Issuer or any of its officers or employees to enforce the provisions of any of such documents which the Issuer is obligated to perform and the performance of which the Issuer has not assigned to the Trustee or any other person; provided, however, that as a condition precedent to the Issuer proceeding pursuant to this Section 2.02, the Issuer shall have received satisfactory indemnification.

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

**Section 2.04. *Form and Execution.*** The Bonds shall be in substantially the form attached as Exhibit A, with necessary and appropriate variations, omissions and insertions as are customary, permitted or required by this Indenture. The Bonds shall be executed on behalf of the manual or facsimile signature of the Authorized Officer of the Issuer, the official seal of the Authority, or a facsimile, shall be impressed or imprinted on the Bonds, and the Bonds shall be attested with the manual or facsimile signature of the Secretary or a Deputy Secretary of the Issuer. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Bonds. Any reproduction of the official seal of the Issuer on the Bonds shall have the same force and effect as if the official seal of the Issuer had been impressed on the Bonds.

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

**Section 2.05. *Authentication.*** No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless a certificate of authentication on such Bond, substantially in the form set forth in Exhibit A, shall have been duly executed by an Authorized Officer of the Trustee; and such executed certificate of authentication upon any such Bond shall be conclusive evidence that such Bond has been duly executed, registered,

authenticated and delivered under this Indenture. It shall not be necessary that the same Person sign the certificate of authentication on all of the Bonds.

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

**Section 2.07. *Transfer and Exchange of Bonds; Persons Treated as Owners; Restrictions on Transfer.***

(a) The Trustee as Bond Registrar shall cause a Bond Register to be kept for the registration of transfers of Bonds. Subject to the restrictions on transfer set forth herein, any Bond may be transferred only upon an assignment duly executed by the registered Owner or such registered Owner's duly authorized representative in such form as shall be satisfactory to the Bond Registrar and upon surrender of such Bond to the Trustee for cancellation. Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the Trustee shall authenticate and deliver to the transferee a replacement fully registered Bond or Bonds, of Authorized Denomination or Denominations and for the amount of such Bond or Bonds so surrendered.

(b) Any Bond may, in accordance with its terms, be exchanged, at the office of the Trustee, for a new fully registered Bond or Bonds, of the same maturity, of any Authorized Denomination or Denominations and for the aggregate amount of such Bond then Outstanding.

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

(d) The Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the registered Owner thereof, or such registered Owner's legal representative, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

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

(f) The following shall apply to any sales or transfers of the Bonds after the initial sale and delivery of the Bonds:

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

(ii) The Bonds shall only be sold or transferred in Authorized Denominations.

(iii) The Bonds shall only be sold (including participation interests therein) and subsequently transferred to Sophisticated Investors which execute and deliver an Investor Letter addressed to the Issuer and the Trustee in the form attached as Exhibit B hereto.

(iv) The Trustee shall not authenticate or register a Bond unless it has received a certificate from the Issuer stating that the conditions of this Section 2.07 have been satisfied and there shall have been delivered to the Trustee an Investor Letter executed by the transferee of the Bonds.

(v) There shall be no more than five (5) Holders of the Bonds at any time.

**Section 2.08. *Temporary Bonds.*** Until definitive Bonds are ready for delivery, there may be executed, and upon the request of the Issuer the Trustee shall authenticate and deliver, in lieu of definitive Bonds temporary printed, typewritten, engraved or lithographed Bonds, in such denomination or denominations as shall be determined by the Issuer, in fully registered form, in substantially the form hereinabove set forth and with such appropriate omissions, insertions and variations as may be required.

If temporary Bonds shall be issued, the Issuer shall cause the definitive Bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it, at the Principal Office of the Trustee, of any temporary Bond shall cancel the same and authenticate and deliver in exchange therefor, without charge to the Owner thereof, a definitive Bond or Bonds, as the case may be, of an equal aggregate principal amount, of the same maturities and bearing interest at the same rates as the temporary Bond surrendered. Until so exchanged the temporary Bonds shall in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds to be issued and authenticated hereunder. Interest on temporary Bonds, when due and payable, if the definitive Bonds shall not be ready for exchange, shall be paid on presentation of such temporary Bonds and notation of such payment shall be endorsed thereon by the Trustee.

**Section 2.09.     *Delivery of Bonds.*** Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate the Bonds and deliver them to or upon the order of the Issuer upon receipt by the Trustee of the following:

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

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

(c)     proceeds of the Bonds;

(d)     the Junior Note;

(e)     a copy of the Junior Mortgage;

(f)     an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the agreements described herein to which it is a party, that its execution and delivery of and performance of its covenants in such agreements do not contravene law or any provision of any other agreement to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their respective terms;

(g)     an opinion of Bond Counsel to the effect that the interest on the Bonds, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

(h)     a certified copy of the Bond Resolution;

(i)     evidence satisfactory to the Trustee that the Senior Issuer Notes have been issued and delivered to the initial purchasers thereof; and

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

**Section 2.10.     *Establishment of Junior Loan Fund and Capitalized Interest Account; Application of Bond Proceeds and Other Money; Assignment of Junior Loan to Trustee.***

(a)     The Trustee shall establish, maintain and hold in trust and there is hereby established with the Trustee a Junior Loan Fund, and within the Junior Loan Fund, the Trustee shall create the Capitalized Interest Account.

No amount shall be charged against the Junior Loan Fund except as expressly provided in this Section 2.10 and Section 4.02.

(b) On the Closing Date, (i) \$[C-3 PAR] of the principal amount of the proceeds of the Bonds shall be deposited with the Title Company, and (ii) \$0.00 of the principal amount of the proceeds of the Bonds shall be deposited in the Capitalized Interest Account. Amounts in the Junior Loan Fund shall be disbursed as provided in subparagraph (d) below, subject to the conditions set forth in Section 3.1 of the Junior Loan Agreement. Amounts in the Capitalized Interest Account shall be disbursed as provided in Section 4.02(b). Upon the disbursement of all amounts in the Junior Loan Fund and the Capitalized Interest Account, the Trustee shall close the Junior Loan Fund and the Capitalized Interest Account.

(c) The Issuer shall cause the Borrower to deliver to the Trustee, on or prior to the Closing Date, the amount of \$0 for deposit to the credit of the Cost of Issuance Fund established pursuant to Section 4.01.

(d) Upon the deposit of money to the credit of the Junior Loan Fund, the Issuer shall originate the Junior Loan pursuant to the Junior Loan Agreement and the Trustee shall make disbursements of amounts in the Junior Loan Fund to the Borrower or otherwise as provided in Section 4.02.

#### **Section 2.11. Subordination.**

This Indenture and the Junior Loan Agreement are and at all times shall be subject and subordinate in all respects to the terms, provisions, conditions, covenants, liens and security interests of the Senior Transaction Documents. Correspondingly, payment of the indebtedness evidenced by the Bonds is and shall be subject and subordinate in all respects to the prior payment in full of all amounts due and payable in respect of the Senior Issuer Notes and the Senior Borrower Loan Documents, and otherwise under the Senior Transaction Documents. Accordingly, the Bondholders expressly subject and subordinate all of their right, title and interest in and to the Bonds in all respects to (i) the payment in full of the Senior Issuer Notes, (ii) the payment in full of the Senior Borrower Loan, (iii) the lien of the Pledged Revenues under the Senior Funding Loan Agreement and of the Senior Mortgage and (iv) the payment in full of all amounts owed to the Noteowner Representative under the Senior Transaction Documents. In addition, notwithstanding anything contained in this Indenture, the Junior Loan Agreement, the Junior Note or the Junior Mortgage to the contrary, the Issuer and the Trustee agree, and the Bondholders by their acceptance of the Bonds agree, that:

(a) the sole source of funds available to the Issuer for the purpose of paying the principal of, and interest on, the Bonds, including scheduled sinking fund payments, if any, shall be the Revenues;

(b) the Junior Note is payable solely from, and only to the extent of, the Revenues as defined and provided for in this Indenture;

(c) payments of the principal of, and interest on, the Junior Note shall be made only after all current and past due Senior Obligations have been paid in full;

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

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

(f) so long as any amounts are currently due and owing in respect of the Senior Obligations, whether under the Senior Transaction Documents or otherwise, the Trustee shall not be entitled to (1) make any payment in respect of the Bonds or (2) foreclose on the Junior Mortgage notwithstanding (a) any arrearages in the payments of any amounts due and owing under or with respect to the Bonds or (b) any default in respect of the Bonds, the Junior Note, the Junior Mortgage or the Junior Loan except as consented to in writing by the Bondholder Representative; or (3) take any other action except as permitted under the Subordination Agreement; and

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

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

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

### **ARTICLE III**

#### **REDEMPTION OF BONDS PRIOR TO MATURITY**

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

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

(b) The Bonds shall be subject to mandatory redemption in whole on the next date for which notice of redemption can timely be given at a redemption price equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date fixed for



redemption upon acceleration of the Junior Loan in whole following an Event of Default under Article VII of the Junior Loan Agreement.

(c) Except as otherwise provided in this Article III, including but not limited to Section 3.01(g) hereof, the Bonds are subject to optional or mandatory redemption in whole or in part on any Business Day for which notice of redemption can timely be given, in the event and to the extent that the Junior Loan is prepaid pursuant to the Junior Note as set forth in Section 4.4 of the Junior Loan Agreement, at a redemption price equal to the principal amount of Bonds to be redeemed, plus accrued interest to the date fixed for redemption.

(d) On and after the Junior Bonds Conversion Date, the Bonds shall be subject to mandatory redemption in whole or in part, on April 1 and October 1 of each year until the Maturity Date or the redemption of the Bonds, from Revenues deposited in the Bond Fund, at a redemption price equal to the principal amount of Bonds to be redeemed, plus accrued interest to the date fixed for redemption.

(e) The Bonds are subject to mandatory redemption upon a Determination of Taxability in whole on any Business Day for which notice of redemption can timely be given at a redemption price equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption.

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

(g) The Bonds are subject to mandatory redemption upon in whole on any Business Day for which notice of redemption can timely be given at a redemption price equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption if the Base Rate is greater than the maximum interest rate that may be paid on the Bonds under State law.

(h) The Bonds shall be subject to optional redemption in whole or in part on any Business Day for which notice of redemption can timely be given, at a redemption price equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption, subject to the consent of the Senior Noteowner Representative, so long as the Senior Issuer Notes are outstanding.

(i) The Borrower shall have the option to cause the Bonds to be purchased by the Borrower or its designee in lieu of redemption pursuant to this Section 3.01. Such option may be exercised by delivery to the Trustee on or prior to the Business Day preceding the applicable date of redemption of a written notice of the Borrower, specifying that the Bonds shall not be redeemed, but instead shall be subject to purchase pursuant to this Section. Upon delivery of

such notice, the Bonds shall not be redeemed but shall instead be subject to mandatory tender at the applicable purchase price on the date that would have been the date of redemption.

**Section 3.02. *Selection of Bonds for Redemption.*** Bonds shall be redeemed pursuant to this Article III only in Authorized Denominations.

**Section 3.03. *Notice of Redemption.*** Notice of the intended redemption of each Bond shall be given by the Trustee by first class mail, postage prepaid, or by facsimile transmission, to the registered Owner at the address of such Owner shown on the Bond Register. All such redemption notices shall be given not less than ten (10) days prior to the date fixed for redemption. The Trustee may provide a conditional notice of redemption.

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

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

**Section 3.04. *Effect of Notice of Redemption.*** If a conditional notice of redemption has been provided pursuant to the terms of this Indenture and the conditions are not satisfied, such notice of redemption shall be of no force and effect and the Bondholders shall be restored to their former positions as though no such notice of redemption had been delivered. Notice of redemption having been given in the manner provided in this Article III and if either there were no conditions to such redemption or the conditions have been satisfied (or in the event no such notice is required under Section 3.03), and money for the redemption being held by the Trustee for that purpose, thereupon the Bonds so called for redemption shall become due and payable on the redemption date, and interest thereon shall cease to accrue on such date; and such Bonds shall thereafter no longer be entitled to any security or benefit under this Indenture except to receive payment of the redemption price thereof.

## **ARTICLE IV**

### **REVENUES AND FUNDS**

**Section 4.01. *Pledge of Revenues and Assets; Establishment of Funds.*** The pledge and assignment of and the security interest granted in the Trust Estate pursuant to the Granting Clauses hereof shall attach, be perfected and be valid and binding from and after the time of the

delivery of the Bonds by the Trustee or by any Person authorized by the Trustee to deliver the Bonds. The Trust Estate so pledged and then or thereafter received by the Trustee shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Issuer irrespective of whether such parties have notice thereof.

In addition to the Junior Loan Fund and the Capitalized Interest Account established therein pursuant to Section 2.10 hereof, the Trustee shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Bond Fund; and
- (c) Cost of Issuance Fund

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

**Section 4.02.     *Junior Loan Fund and Capitalized Interest Account.***

(a) The Trustee shall deposit the proceeds of the Bonds as provided in Section 2.10 and disburse amounts deposited in the Junior Loan Fund immediately upon receipt to the Borrower in funding of the Junior Loan. No amounts shall be invested or retained in the Junior Loan Fund.

(b) After the Closing Date, the Borrower, with the written consent of the Bondholder Representative, may deposit additional funds into the Capitalized Interest Account. On the last Business Day immediately preceding each Bond Payment Date up to and including the date the Project is placed in service, the Trustee shall transfer funds from the Capitalized Interest Account to the Bond Fund to pay accrued interest on the Bonds through the date immediately preceding such Bond Payment Date without any requirement or condition of submission of any requisition. After the Project is placed in service, amounts held in the Capitalized Interest Account shall be applied to pay Qualified Project Costs (as defined in the Senior Funding Loan Agreement) or

transferred to the Bond Fund for application to the payment of interest due in respect to the Bonds, in each case upon the written direction of the Bondholder Representative to the Trustee (a copy of which shall be provided to the Borrower).

**Section 4.03.     *Application of Revenues.***

(a) All Revenues shall be deposited by the Trustee, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Bonds received by the Trustee on the Closing Date, which shall be applied in accordance with the provisions of Section 2.10 hereof; (ii) with respect to investment earnings to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iii) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

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

(c) Promptly upon receipt, the Trustee shall deposit directly to the Bond Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Junior Loan, after reimbursement of any and all amounts owed to the Bondholder Representative and (ii) amounts paid to the Trustee to be applied to the redemption of all or a portion of the Bonds pursuant to Article III hereof.

(d) Should the amount in the Bond Fund be insufficient to pay the amount due on the Bonds on any given Bond Payment Date or other payment date, the Trustee shall credit to the Bond Fund the amount of such deficiency by charging the Revenue Fund.

**Section 4.04.     *Application of Bond Fund.*** The Trustee shall charge the Bond Fund, on each Bond Payment Date, an amount equal to the unpaid interest and principal due on the Bonds on such Bond Payment Date, and shall cause the same to be applied to the payment of such interest and principal when due.

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

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

**Section 4.05.     *Reserved.***

**Section 4.06.     *Reserved.***

**Section 4.07.     *Reserved.***

**Section 4.08.     *Investment of Funds.*** The money held by the Trustee shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Trustee, at the

written direction of the Borrower in Qualified Investments. The Trustee may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Trustee shall be entitled to assume, absent receipt by the Trustee of written notice to the contrary, that any investment which at the time of purchase in a Qualified Investment remains a Qualified Investment thereafter.

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

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

**Section 4.09. *Money Held for Particular Bonds; Funds Held in Trust.*** The amounts held by the Trustee for the payment of the interest, principal or redemption price due on any date with respect to particular Bonds pending such payment, shall be set aside and held in trust by it for the Holders of the Bonds entitled thereto, and for the purposes hereof such interest, principal or redemption price, after the due date thereof, shall no longer be considered to be unpaid.

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

**Section 4.10. *Accounting Records.*** The Trustee shall maintain accurate books and records for all funds and accounts established hereunder and provide monthly statements (or other electronic access as agreed to by the parties) of such funds and accounts to the Issuer and the Borrower upon request.

**Section 4.11. *Amounts Remaining in Funds.*** After full payment of the Bonds (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Issuer and the Trustee and other amounts required to be paid hereunder or under any Junior Loan Document, any amounts remaining in any fund or account hereunder shall be paid to the Borrower.

**Section 4.12. *Cost of Issuance Fund.*** The Trustee shall use money on deposit to the credit of the Cost of Issuance Fund to pay the costs of issuance on the Closing Date or as soon as practicable thereafter in accordance with written instructions to be given to the Trustee by the Borrower, as set forth in the closing memorandum prepared by the purchaser of the Senior Issuer Notes (and accepted and agreed to by the Issuer and the Borrower) on the Closing Date or by Requisition in the form attached hereto as Exhibit C, upon delivery to the Trustee of appropriate invoices for such expenses. Investment earnings on amounts in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Closing Date shall be transferred to the Borrower. Upon such final disbursement, the Trustee shall close the Cost of Issuance Fund.

## **ARTICLE V**

### **GENERAL COVENANTS AND REPRESENTATIONS**

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

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

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

- (a) The Issuer is a public instrumentality and political subdivision of the State of California.
- (b) The Issuer has all necessary power and authority to issue the Bonds and to execute and deliver this Indenture, the Junior Loan Agreement and the other Bond Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.
- (c) The revenues and assets pledged for the repayment of the Bonds are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Indenture, and all action on the part of the Issuer to that end has been duly and validly taken.
- (d) The Bond Documents to which the Issuer is a party have been validly authorized, executed and delivered by the Issuer, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

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

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

**Section 5.06. *Tax Covenants.*** (a) *Issuer's Covenants.* The Issuer covenants to and for the benefit of the Holders of the Bonds that it will:

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

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

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

(iv) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Issuer on the Bonds will be excluded from the gross income for federal income tax purposes, of the Bondholders pursuant to the Code, except in the event where any such owner of Bonds is a "substantial user" of the facilities financed with the Bonds or a "related person" within the meaning of the Code; and

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

In furtherance of the covenants in this Section 5.05, the Issuer and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Indenture and made a part of this Indenture as if set forth in this Indenture in full, and by its acceptance of this Indenture the Trustee acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Indenture by this reference and agrees to comply with the terms specifically applicable to it. In the event of a conflict between the terms of this Indenture and the Tax Certificate, the terms of the Tax Certificate shall control.

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

## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

**Section 6.01.** *Events of Default.* Each of the following shall be an event of default with respect to the Bonds (an “Event of Default”) under this Indenture:

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

(b) failure by the Issuer or the Trustee to perform or observe any other of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, and the continuation of such failure for a period of thirty (30) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Issuer or the Trustee by the Borrower, the Trustee or the Issuer, as applicable, or by the holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding; or



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

The Trustee and the Issuer agree that a failure to pay any amounts required to be paid under this Indenture as a result of a deficiency of available Revenues shall not constitute an Event of Default hereunder during any period in which any Senior Issuer Notes are Outstanding.

The Trustee and the Issuer agree that a failure to pay any amounts required to be paid under this Indenture as a result of a deficiency of available Revenues shall not during any period in which any Senior Issuer Notes are Outstanding constitute an Event of Default hereunder whereby the Bondholder Representative may commence an Enforcement Action; provided, however, such deficiency of available Revenues may during the period commencing on the Closing Date and ending on and including [DATE] result in the Bonds bearing interest at the Default Rate as set forth in Section 2.01(b) hereof.

**Section 6.02. *Acceleration; Other Remedies Upon Event of Default.***

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

(b) Upon the occurrence of an Event of Default (other than an Event of Default under Section 6.01(b) hereof), the Trustee shall, but only upon the written direction of the Bondholder Representative, by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable and interest on the Bonds shall cease to accrue, anything contained in this Indenture or in the Bonds to the contrary notwithstanding.

If at any time after the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Issuer or the Borrower shall pay to or deposit with the Trustee a sum sufficient to pay all principal of the Bonds then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) upon all the Bonds then due, with interest at the rate borne by the Bonds on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Trustee (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor (collectively, the “Cure Amount”)) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Bondholder Representative, then and in every case, the Trustee on behalf of the Holders of all the Outstanding Bonds shall rescind and annul such declaration and its consequences; but no such

rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

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

- (i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of or interest on the Bonds then Outstanding and to require the Issuer to carry out any covenants or agreements with or for the benefit of the Bondholders and to perform its duties under the Act, this Indenture, the Junior Loan Agreement or the Regulatory Agreement to the extent permitted under the applicable provisions thereof;
- (ii) by pursuing any available remedies under the Junior Loan Agreement or any Junior Loan Document or the Regulatory Agreement;
- (iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and
- (iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Holders of the Bonds and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

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

**Section 6.03. *Rights of Bondholders.*** If an Event of Default under Section 6.01(b) hereof shall have occurred and is then continuing, and if requested in writing so to do by the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding with respect to which there is a default, and if indemnified to its satisfaction, the Trustee shall exercise

one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel or a committee of Responsible Officers, shall deem to be in the best interest of the affected Bondholders. If an Event of Default under Section 6.01(b) hereof shall have occurred and is then continuing, the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding with respect to which an Event of Default has occurred shall have the right at any time, subject to the provisions of Section 6.08 hereof, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Indenture.

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

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

In the event that at any time the money credited to the Revenue Fund and the Bond Fund available for the payment of interest or principal then due with respect to the Bonds shall be insufficient for such payment, such money (other than money held for the payment or redemption of particular Bonds as provided in Section 4.09 hereof) shall be applied as follows and in the following order of priority:

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

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

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

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

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

**Section 6.06.     *Reserved.***

**Section 6.07.     *Remedies Vested in Trustee.*** All rights of action, including the right to file proof of claims, under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery or judgment shall be for the mutual benefit as provided herein of all of the Holders of the Outstanding Bonds.

**Section 6.08. Remedies of Bondholders.** No Holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default shall have occurred of which the Trustee shall have been notified as provided herein; (b) such default shall have become an Event of Default under Section 6.01(b) hereof; (c) the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding with respect to which there is such an Event of Default shall have made written request to the Trustee and shall have offered reasonable opportunity to the Trustee either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (d) such Holders shall have offered to the Trustee indemnity as provided in this Indenture; and (e) the Trustee shall within sixty (60) days thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture or the rights of any other Holders of Bonds or to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided with respect to the equal and ratable benefit of all Holders of Bonds with respect to which there is a default. Nothing contained in this Indenture shall, however, affect or impair the right of any Bondholder to enforce the payment of the principal of and interest on any Bond at the maturity thereof or the obligation of the Issuer to pay the principal of, and interest on the Bonds issued hereunder to the respective holders thereof, at the time, in the place, from the sources and in the manner expressed herein and in said Bonds.

**Section 6.09. Termination of Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee, the Bondholder Representative, the Borrower and the Bondholders shall be restored to their former positions and rights hereunder with respect to the Trust Estate herein conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 6.10. Waivers of Events of Default.** So long as no Event of Default has occurred and is then continuing under Section 6.01(b) hereof, the Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of, and interest on the Bonds only upon the written direction of the Bondholder Representative. If there shall have occurred and is then continuing an Event of Default under Section 6.01(b) hereof, the Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of, and interest on the Bonds upon the written request of the Holders of 100% of the Bonds then Outstanding with respect to which there is a default; provided, however, that there shall not be waived (a) any Event of Default in the payment of the principal of any Bonds at the date of maturity specified therein, or upon proceedings for mandatory redemption of any Bonds, (b) any default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal or when due (whether at the stated maturity thereof or upon proceedings for mandatory redemption) as the case may be, and all expenses of the Trustee in connection with such default shall have been

paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee, and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.11.     *Notice to Bondholders if Default Occurs.*** Upon the occurrence of an Event of Default, or if an event occurs which could lead to an Event of Default with the passage of time and of which the Trustee is required to take notice pursuant to Section 7.02(l) hereof, the Trustee shall, within thirty (30) days, give written notice thereof by first class mail to the registered Owners of all Bonds then Outstanding. Notwithstanding the foregoing, except in the case of an Event of Default with respect to the payment of principal of or and interest on the Bonds, the Trustee shall be protected in withholding such notice if and so long as the board of directors of the Trustee, the executive committee, or a trust committee of directors or officers of the Trustee in good faith determines that the withholding of such notice is in the best interests of the Holders of the Bonds.

## **ARTICLE VII**

### **CONCERNING THE TRUSTEE**

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

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

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

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

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

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

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

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Bondholder Representative or the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding (or such lesser or greater percentage as is specifically required or permitted by this Indenture) relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

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

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

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

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

(d) [Intentionally Omitted];

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

(f) [Intentionally Omitted];

(g) [Intentionally Omitted];

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

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

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

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

(l) the Trustee shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Trustee) herein or in any contracts or securities assigned or conveyed to or pledged with the Trustee hereunder, except Events of Default that are evident under Section 6.01(a) or Section 6.01(b) hereof. The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) or Section 6.01(b) hereof) unless the Trustee shall receive from the Issuer, the Bondholder Representative or the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Trustee may conclusively assume that there is not such default. Every provision contained in this Indenture or related instruments or in any such contract or security wherein the duty of the Trustee depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(l);



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

(n) the Trustee shall be under no obligation to exercise those rights or powers vested in it by this Indenture, other than such rights and powers which it shall be obliged to exercise in the ordinary course of its trusteeship under the terms and provisions of this Indenture and as required by law, at the request or direction of any of the Bondholders pursuant to Sections 6.03 and 6.08 of this Indenture, unless such Bondholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

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

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

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

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

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

The Trustee shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

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

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

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

**Section 7.06. *Compensation of Trustee.*** The Trustee shall be entitled to its acceptance fee and its annual administration fee, payable by the Borrower pursuant to the Junior Loan Agreement, in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Trustee hereunder. The Trustee shall be entitled to extraordinary fees and expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Junior Loan Documents; provided the Trustee shall not incur any extraordinary fees and expenses without the consent of the Bondholder Representative (except that no consent shall be required if an Event of Default under 6.01(b) has occurred and is continuing). If any property, other than cash, shall at any time be held by the Trustee subject to this Indenture, or any supplemental indenture, as security for the Bonds, the Trustee, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Indenture as such security for the Bonds, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Trustee for its services and reimbursement to the Trustee for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Junior Loan Agreement and in Sections 4.11 and 6.05 hereof. The Issuer shall have no liability for Trustee's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Trustee agrees that it shall continue to perform its duties hereunder (including, but not limited to, its duties as Paying Agent and Bond Registrar) and under the Junior Loan Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Trustee's fees and expenses as required by the Junior Loan Agreement.

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

including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section shall survive the termination of this Indenture.

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

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

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

**Section 7.10. *Removal of the Trustee.*** The Trustee may be removed at any time, either with or without cause, with the consent of the Bondholder Representative (which consent of the Bondholder Representative shall not be unreasonably withheld and which approval shall be deemed given after fifteen (15) days if the Bondholder Representative has not responded to a written request for such approval) by a written instrument signed by the Issuer and delivered to

the Trustee and the Borrower, and if an Event of Default shall have occurred and be continuing, other than an Event of Default under Section 6.01(b), by a written instrument signed by the Bondholder Representative and delivered to the Trustee, the Issuer and the Borrower. The Trustee may also be removed, if an Event of Default under Section 6.01(b) shall have occurred and be continuing, by a written instrument or concurrent instruments signed by the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding and delivered to the Trustee, the Issuer, the Borrower and the Bondholder Representative. The Trustee may also be removed by the Bondholder Representative following notice to the Issuer and after a thirty (30) day period during which the Issuer may attempt to cause the Trustee to discharge its duties in a manner acceptable to Bondholder Representative, and in each case written notice of such removal shall be given to the Servicer, the Borrower and to each registered Owner of Bonds then Outstanding as shown on the Bond Registrar. Any such removal shall take effect on the day specified in such written instrument(s), but the Trustee shall not be discharged from the trusts hereby created until a successor Trustee has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Trustee hereunder.

**Section 7.11.     *Appointment of Successor Trustee.***

(a) In case at any time the Trustee shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Trustee or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Trustee or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Trustee hereunder, and the Issuer, with the written consent of the Bondholder Representative (which consent shall not be unreasonably withheld and which consent shall be deemed given after fifteen (15) days if the applicable party has not responded to a written request from the Issuer for such consent), shall promptly appoint a successor Trustee. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Issuer.

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

**Section 7.12.     *Concerning Any Successor Trustee.*** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer a written instrument accepting such appointment hereunder, accepting assignment of the beneficial interest in the Junior Mortgage, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Trust Estate and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, the Borrower or the Bondholder Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Trustee all the Trust Estate and the rights, powers and trusts of such predecessor

hereunder; and every predecessor Trustee shall deliver all securities and money held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by a successor Trustee for more fully and certainly vesting in such successor the Trust Estate and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Trustee in each recording office where this Indenture shall have been filed and/or recorded. Each successor Trustee shall mail notice by first class mail, postage prepaid, at least once within 30 days of such appointment, to the Owners of all Bonds Outstanding at their addresses on the Bond Register.

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

**Section 7.14. *Appointment of Co-Trustee or Separate Trustee.*** It is the intent of the Issuer and the Trustee that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in case of litigation under or connected with this Indenture, the Junior Loan Agreement or any of the other Junior Loan Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Trustee or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee, with the consent of the Issuer, appoint an additional individual or institution as a co-trustee or separate trustee.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 7.16. *Reserved.***

**Section 7.17. *Filing of Financing Statements.*** The Trustee shall, at the expense of the Borrower, file or record or cause to be filed or recorded all UCC continuation statements for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Closing Date in connection with the security for the Bonds pursuant to the authority of the UCC. Upon the filing of any such continuation statement the Trustee shall immediately notify the Issuer, the Borrower, the Bondholder Representative and the Servicer that the same has been done. If direction is given by the Servicer or the Bondholder Representative, the Trustee shall file all continuation statements in accordance with such directions.

## ARTICLE VIII

### SUPPLEMENTAL INDENTURES AND AMENDMENTS OF CERTAIN DOCUMENTS

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

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

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

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

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

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

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

**Section 8.02. *Supplemental Indentures Requiring Consent of Bondholders.*** With the prior written consent of the Bondholder Representative, the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture; provided, however, that nothing in this Section contained shall permit, or be construed as permitting, (a) an extension of the time for payment of, or an extension of the stated maturity or reduction in the principal amount or reduction in the rate of interest on or extension of the time of payment, of interest on, or reduction of any premium payable on the redemption of, any Bonds, or a reduction in the Borrower's obligation on the Junior Note, without the consent of the Holders of all of the Bonds then Outstanding, (b) the creation of any lien prior to or on a parity with the lien of this Indenture, (c) a reduction in the aforesaid percentage of the principal amount of Bonds which is required in connection with the giving of consent to any such supplemental indenture, without the consent of the Holders of all of the Bonds then Outstanding, (d) the modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, (e) a privilege or priority of any Bond over any other Bonds, or (f) any action that results in the interest on the Bonds becoming included in gross income for federal income tax purposes.

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

Thirty (30) days after the date of the mailing of such notice, the Issuer and the Trustee may enter into such supplemental indenture substantially in the form described in such notice, but only if there shall have first been or is simultaneously delivered to the Trustee the required



consents, in writing, of the Bondholder Representative and the Holders of not less than the percentage of Bonds required by this Section 8.02. If the Holders of not less than the percentage of Bonds required by this Section 8.02 shall have consented to and approved the execution and delivery of a supplemental indenture as provided herein, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section 8.02 permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith. The Trustee may rely upon an opinion of counsel as conclusive evidence that execution and delivery of a supplemental indenture has been effected in compliance with the provisions of this Article VIII.

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

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

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

- (a) as may be required by the provisions of Junior Loan Agreement or this Indenture;
- (b) to cure any formal defect, omission, inconsistency or ambiguity in the Junior Loan Agreement in a manner not materially adverse to the Holder of any Bond to be Outstanding after the effective date of the change;
- (c) to make such additions, deletions or modifications as may be necessary, in the opinion of Bond Counsel delivered to the Issuer and the Trustee, to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds; or
- (d) to modify, amend or supplement the Junior Loan Agreement in any other respect which is not materially adverse to the Trustee or Holders of the Bonds to be Outstanding after the effective date of the change and which does not involve a change described in Section 8.04.

**Section 8.04. *Amendments to Junior Loan Agreement Requiring Consent of Bondholders.*** Except for the amendments, changes or modifications of the Junior Loan

Agreement as provided in Section 8.03 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Junior Loan Agreement without the consent of the Bondholder Representative, and the Borrower and without the giving of notice and the written approval or consent of the Holders of at least 51% of the aggregate principal amount of the Bonds then Outstanding given and procured in accordance with the procedure set forth in Section 8.02 hereof; provided, however, that nothing contained in this Section 8.04 shall permit, or be construed as permitting, any amendment, change or modification of the Borrower's obligation to make the payments required under the Junior Loan Agreement without the consent of the Holders of all of the Bonds then Outstanding. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of the Junior Loan Agreement, the Trustee shall cause notice of such proposed amendment, change or modification to be given in the same manner as provided in Section 8.02 hereof. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Trustee for inspection by Bondholders.

**Section 8.05. *Consent of Holders of Senior Issuer Notes.*** No supplement or amendment to the Junior Loan Agreement or this Indenture, as described in this Article VIII, shall be effective except upon receipt by the Trustee of the written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, thereto of (a) the "Noteowner Representative" under and as defined in the Senior Funding Loan Agreement or (b) the registered holders of 100% of the aggregate principal amount of the Senior Issuer Notes then outstanding.

**Section 8.06. *Opinion of Bond Counsel Required.*** No supplement or amendment to the Junior Loan Agreement or this Indenture, as described in this Article VIII, shall be effective until the Issuer, the Trustee and the Bondholder Representative shall have received an opinion of Bond Counsel to the effect that such supplement or amendment is authorized or permitted by this Indenture and, upon execution and delivery thereof, will be valid and binding upon the Issuer in accordance with its terms and will not cause interest on the Bonds to be includable in gross income of the Holders thereof for federal income tax purposes. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it as conclusive evidence that (i) any proposed supplemental indenture or amendment permitted by this Article VIII complies with the provisions of this Indenture, (ii) it is proper for the Trustee to join in the execution of that supplemental indenture or amendment under the provisions of this Article VIII, and (iii) if applicable, such proposed supplemental indenture or amendment is not materially adverse to the interests of the Bondholders.

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF INDENTURE

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

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

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

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

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

Any Outstanding Bond shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 if, under circumstances which do not cause interest on the Bonds to become includable in the Holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) in case such Bond is to be redeemed on any date prior to its maturity, the Trustee shall have given to the Bondholder irrevocable notice of redemption of such Bond on said date; (b) there shall be on deposit with the Trustee, pursuant to Section 9.04 hereof, either money or direct obligations of the United States of America in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal or redemption price, if applicable, and interest due and to become due on such Bond on the redemption date or Maturity Date thereof, as the case may be; and (c) in the case of Bonds which do not mature or will not be redeemed within Sixty (60) days of such deposit, the Trustee shall have received a verification report of a firm of certified public accountants reasonably acceptable to the Trustee as to the adequacy of the amounts so deposited to fully pay the Bonds deemed to be paid.

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

**Section 9.02.     *Reserved.***

**Section 9.03.     *Discharge of Liability on Bonds.*** Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01) to pay or redeem Outstanding Bonds (whether upon or prior to their maturity or the redemption date of such Bonds) provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article III provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, all liability of the Issuer in respect of such Bonds shall cease, terminate and be completely

discharged, except only that thereafter the holders thereof shall be entitled to payment by the Issuer, and the Issuer shall remain liable for such payment, but only out of the money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 9.04.

**Section 9.04. *Payment of Bonds After Discharge of Indenture.*** Notwithstanding any provisions of this Indenture, and subject to applicable unclaimed property laws of the State, any money deposited with the Trustee or any paying agent in trust for the payment of the principal of, interest on the Bonds remaining unclaimed for two (2) years after the payment thereof, to the extent permitted by applicable law, shall be paid to the Borrower, whereupon all liability of the Issuer and the Trustee with respect to such money shall cease, and the holders of the Bonds shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Trustee and subject to this Section 9.04 shall be held uninvested and without liability for interest thereon.

**Section 9.05. *Deposit of Money or Securities With Trustee.*** Whenever in this Indenture it is provided or permitted that there be deposited with or credited to the account of or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held shall consist of:

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

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

## **ARTICLE X**

### **INTENTIONALLY OMITTED**

## **ARTICLE XI**

### **MISCELLANEOUS**

**Section 11.01. *Consents and Other Instruments of Bondholders.*** Any consent, request, direction, approval, waiver, objection, appointment or other instrument required by this Indenture to be signed and executed by the Bondholders may be signed and executed in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such instrument, namely:

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

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

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

**Section 11.02. *Reserved.***

**Section 11.03. *Limitation of Rights.*** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the Parties hereto, the Bondholder Representative, the Borrower and the Holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions hereof.

**Section 11.04. *Severability.*** If any provision of this Indenture shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

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

**Section 11.05. *Notices.***

(a) Any provision of this Indenture relating to the mailing of notice or other communication to Bondholders shall be deemed fully complied with if such notice or other

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

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

The Issuer:                   Housing Authority of the City of San Diego  
c/o San Diego Housing Commission  
1122 Broadway, Suite 300  
San Diego, CA 92101  
Attention: Bond Project Manager-Real Estate Department  
Telephone: (619) 578-7582  
Telecopier: (619) 578-7356

The Trustee:               U.S. Bank National Association  
U.S. Bank Tower  
633 West 5th Street  
Los Angeles, CA 90071  
Attention: Julia Hommel  
Fax: (213) 615-6199

The Borrower:           3Roots CIC, LP  
c/o Chelsea Investment Corporation  
5993 Avenida Encinas, Suite 101  
Carlsbad, CA 92008  
Attention: Tim Baker  
Telephone: (760) 456-6000, ext. 106

With a copy to:         Odu & Associates, P.C.  
250 S. Pasadena Ave. #2082  
Pasadena, CA 91105  
Attention: Nkechi Odu  
Telephone: (626) 639-3812

And a copy to: Cox, Castle & Nicholson  
50 California Street, Suite 3200  
San Francisco, CA 94111  
Attention: Ofer Elitzur  
Telephone: (415) 262-5165

The Investor Limited U.S. Bancorp Community Development Corporation  
Partner: 1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, MO 63103  
Attn: Director of LIHTC Asset Management

With a copy to: U.S. Bank National Association  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, MO 63103  
USB Project No: 27717  
Attn.: Director of Asset Management

With a copy to: Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102  
Attention: Jill H. Goldstein

Bondholder  
Representative: CIC Opportunities Fund II LLC  
c/o Chelsea Investment Corporation  
5993 Avenida Encinas, Suite 101  
Carlsbad, CA 92008  
Attention: James J. Schmid  
Telephone: (760) 456-6000 ext. 104

With a copy to: Odu & Associates, P.C.  
250 S. Pasadena Ave. #2082  
Pasadena, CA 91105  
Attention: Nkechi Odu  
Telephone: (626) 639-3812

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

(b) The Trustee shall provide to the Bondholder Representative (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written

information or other written communication received by the Trustee hereunder within ten (10) Business Days of receiving a written request from the Bondholder Representative for any such information or other communication.

**Section 11.06. *Reserved.***

**Section 11.07. *Trustee as Paying Agent and Bond Registrar.*** The Trustee is hereby designated and agrees to act as Paying Agent and Bond Registrar for and in respect to the Bonds. When acting in either such capacity, the Trustee will receive the same rights, protections and indemnifications afforded to the Trustee hereunder.

**Section 11.08. *Payments Due on Non-Business Days.*** In any case where a date of payment with respect to any Bonds shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period from and after such date providing that payment is made on such next succeeding Business Day.

**Section 11.09. *Counterparts.*** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 11.10. *Laws Governing Indenture and Administration of Trust.*** The effect and meanings of this Indenture and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State without regard to conflicts of laws principles.

**Section 11.11. *No Recourse.*** No recourse under or upon any obligation, covenant or agreement contained in this Indenture or in any Bond shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Issuer, either directly or through the Issuer or its governing body or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Holder of any Bond issued hereunder, or otherwise, of any sum that may be due and unpaid by the Issuer or its governing body upon any such Bond. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Holder of any Bond issued hereunder or otherwise of any sum that may remain due and unpaid upon any Bond hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Indenture and the issuance of the Bonds.

[Signature Pages Follow]



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

HOUSING AUTHORITY OF THE  
CITY OF SAN DIEGO, as Issuer

By \_\_\_\_\_  
Authorized Signatory

[Signature page – Junior Indenture of Trust – Aquila Apartments]

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By \_\_\_\_\_  
Authorized Officer

[Signature page – Junior Indenture of Trust - Aquila Apartments]

**EXHIBIT A**

**FORM OF JUNIOR BOND**

**\$(C-3 PAR)**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
SUBORDINATE MULTIFAMILY HOUSING REVENUE BONDS  
(AQUILA APARTMENTS)  
2021 SUBORDINATE SERIES C-3**

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

<u>MATURITY DATE</u>	<u>DATED DATE</u>	<u>INTEREST RATE</u>
[FINAL MATURITY - NOT LATER THAN 45 YEARS FROM ISSUANCE DATE]	[Closing Date]	[Bond Rate]

Registered Owner: CIC Opportunities Fund II LLC, a California limited liability company

Principal Amount: [ ] DOLLARS

The Housing Authority of the City of San Diego, a public instrumentality and political subdivision of the State of California (the “Issuer”), for value received, hereby promises to pay (but only out of Revenues as hereinafter provided) to the registered owner identified above or registered assigns, on the Maturity Date set forth above, the principal sum set forth above and to pay (but only out of Revenues as hereinafter provided) interest on the balance of said principal amount from time to time remaining unpaid from and including the date hereof until payment of said principal amount has been made or duly provided for, at the rates and on the dates determined as described herein and in the Indenture (as hereinafter defined). The principal of and, interest on this Bond are payable at final maturity, acceleration or redemption in lawful money of the United States of America upon surrender hereof at the principal corporate trust office of U.S. Bank National Association, as Trustee, or its successor in trust (the “Trustee”). Payment of the interest on any Bond shall be made on each Bond Payment Date (as hereinafter defined) to the Person appearing on the bond registration books of the Bond Registrar as the Owner thereof on the Record Date, such interest to be paid by the Paying Agent (i) to such Owner by check or draft mailed on the Bond Payment Date, to such Owner’s address as it appears on the registration books or at such other address as has been furnished to the Bond Registrar as provided below, in writing by such Owner not later than the Record Date or (ii) upon written request, at least three Business Days prior to the applicable Record Date, to the

Owner of Bonds aggregating not less than \$1,000,000 in principal amount, by wire transfer in immediately available funds at an account maintained in the United States at such wire address as such Owner shall specify in its written notice; except, in each case, that, if and to the extent that there shall be a default in the payment of the interest due on such Bond Payment Date, such defaulted interest shall be paid to the Owner in whose name any such Bonds are registered at the close of business on the fifth to last Business Day next preceding the date of payment of such defaulted interest.

The Bonds are authorized to be issued pursuant to Act. The Bonds are limited obligations of the Issuer and, as and to the extent set forth in the Indenture, are payable solely from, and secured by a pledge of and lien on, the Revenues. Proceeds from the sale of the Bonds will be loaned by the Issuer to 3Roots CIC, LP, a California limited partnership (the “Borrower”) under the terms of a Junior Loan Agreement, dated as of October 1, 2021 (the “Agreement”), among the Issuer, the Borrower and the Trustee. The Bonds are all issued under and secured by and entitled to the benefits of a Junior Indenture of Trust, dated as of October 1, 2021 (the “Indenture”) between the Issuer and the Trustee. No holder of this Bond shall ever have the right to compel the exercise of the taxing power the State or any political subdivision of the State to pay the principal of this Bond or the interest on it or any other cost incident to this Bond, or to enforce payment of this Bond against any property of the Issuer, the State or any political subdivision of the State. The Issuer has no taxing power.

This Bond is one of a duly authorized issue of bonds of the Issuer designated as the “Housing Authority of the City of San Diego Subordinate Multifamily Housing Revenue Bonds (Aquila Apartments) 2021 Subordinate Series C-3”, limited in aggregate principal amount of \$[C-3 PAR] (the “Bonds”). Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights thereunder of the registered owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Issuer thereunder, to all of the provisions of the Indenture and of the Junior Loan Agreement the holder of this Bond, by acceptance hereof, assents and agrees.

The Bonds are issued simultaneously with the funding of the Housing Authority of the City of San Diego Multifamily Housing Revenue Note (Aquila Apartments) 2021 Series C-1 and Housing Authority of the City of San Diego Multifamily Housing Revenue Note (Aquila Apartments) 2021 Series C-2 (Taxable) in the original aggregate principal amount of \$[SENIOR NOTES PAR] (collectively, the “Senior Issuer Notes”), executed and delivered pursuant to that certain Funding Loan Agreement dated as of October 1, 2021 (the “Senior Funding Loan Agreement”) among the Issuer, the Trustee and Citibank, N.A., as Senior Funding Lender. **AS SET FORTH IN THE INDENTURE, THE BONDS ARE SUBORDINATE IN ALL RESPECTS TO THE SENIOR ISSUER NOTES.**

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

The Bonds are issuable as fully registered bonds without coupons in denominations of \$100,000 or any dollar amount in excess thereof (herein “Authorized Denominations”). Subject to the limitations and upon payment of the charges, if any, provided in the Indenture, Bonds may

be exchanged at the Principal Corporate Trust Office of the Trustee and the Bond Registrar, for a like aggregate principal amount of Bonds of other Authorized Denominations.

***The Bonds may only be held by, or transferred to, Sophisticated Investors (as defined in the Indenture), with such Sophisticated Investors executing and delivering an Investor Letter in the form attached as Exhibit B to the Indenture as Exhibit B.***

This Bond is transferable by the registered owner hereof, in person, or by its attorney duly authorized in writing, at the Principal Corporate Trust Office of the Trustee and the Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new fully registered Bond or Bonds, in an Authorized Denomination or Denominations, for the same aggregate principal amount, will be issued to the transferee in exchange therefor. The Issuer, the Trustee and the Bond Registrar may treat the registered owner hereof as the absolute owner hereof for all purposes, and the Issuer, the Trustee and the Bond Registrar shall not be affected by any notice to the contrary.

### **Interest on the Bonds**

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

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

### **Redemption of Bonds**

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

### **General Matters**

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

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

### **Amendments Permitted**

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

Owners of more than fifty-one percent (51%) in aggregate principal amount of Bonds at the time Outstanding, subject to certain conditions as set forth in the Indenture.

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

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

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

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

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

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

**IN WITNESS WHEREOF**, the Housing Authority of the City of San Diego has caused this Bond to be executed on its behalf by the manual or facsimile signature of its Executive Director, and its seal to be reproduced hereon and attested by the manual or facsimile signature of the Deputy Secretary.

HOUSING AUTHORITY OF THE CITY OF  
SAN DIEGO, as Issuer

[SEAL]

By: \_\_\_\_\_  
Executive Director

ATTEST:

By: \_\_\_\_\_  
Deputy Secretary

## CERTIFICATE OF AUTHENTICATION

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

Date of Authentication: \_\_\_\_\_

U.S. Bank National Association, as Trustee

By \_\_\_\_\_  
Authorized Signer

### ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto  
(Please insert Social Security Number or other identifying number of assignee)

(Please Print or Typewrite Name and Address of Assignee)

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

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

Signature Guaranteed

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

\_\_\_\_\_  
Signature

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



**EXHIBIT B**  
**FORM OF PURCHASER'S LETTER**

[To be prepared on letterhead of Purchaser]

[Date]

Housing Authority of the City of San Diego  
1122 Broadway, Suite 300  
San Diego, CA 92101

U.S. Bank National Association,  
as Trustee  
U.S. Bank Tower  
633 West 5th Street  
Los Angeles, CA 90071

Re: Housing Authority of the City of San Diego  
Subordinate Multifamily Housing Revenue Bonds  
(Aquila Apartments) 2021 Subordinate Series C-3

Ladies and Gentlemen:

The undersigned (the "Purchaser") hereby acknowledges receipt as transferee, [from a previous owner thereof], of [a participation interest in] the above-referenced bonds (the "Bonds") [in fully registered form and] in the original aggregate principal amount of \$[C-3 PAR], [constituting all of the Bonds currently outstanding]. The Bonds have been checked, inspected and approved by the Purchaser.

The undersigned acknowledges that the Bonds were issued for the purpose of making a loan to assist in financing the acquisition and construction of a 180-unit multifamily rental housing development known as Aquila Apartments located in the City of San Diego, California (the "Project"), as more particularly described in that certain Junior Loan Agreement dated as of October 1, 2021, as may be amended and supplemented from time to time (the "Junior Loan Agreement"), by and among the Housing Authority of the City of San Diego (the "Issuer"), 3Roots CIC, LP, a limited partnership duly organized and existing under the laws of the State of California (the "Borrower"), and U.S. Bank National Association (the "Trustee"). The undersigned further acknowledges that the Bonds are secured by a certain Junior Indenture of Trust dated as of October 1, 2021, as amended and supplemented (the "Indenture"), between the Issuer and the Trustee, which creates a security interest in loan repayments made pursuant to the Junior Loan Agreement for the benefit of the holders and Owners of the Bonds, and by a Subordinate Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing with respect to the Project (the "Junior Mortgage"), which creates a security interest in the

Project, subject to permitted encumbrances, as provided therein. Terms not otherwise defined herein shall have the meanings assigned thereto in the Indenture.

In connection with the sale of [a participation interest in] the Bonds to the Purchaser, the Purchaser hereby makes the following representations upon which you may rely:

1. The Purchaser hereby certifies that it is a Sophisticated Investor as defined in the Indenture because it is a [identify entity type].

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

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

4. The Purchaser acknowledges that it is familiar with the conditions, financial and otherwise, of the Borrower and understands that the Borrower has no significant assets other than the Project. To the extent deemed appropriate in making its investment decision, the Purchaser has discussed the Borrower's financial condition and the Borrower's current and proposed business activities with the Borrower. The Purchaser further acknowledges that it has such knowledge and experience in business matters that it is fully capable of evaluating the merits and risks of this investment and it is able to bear the economic risk of the investment. The Bonds are a security of the kind the Purchaser wishes to purchase and hold for investment, and the nature and amount of the Bonds are consistent with the Purchaser's investment program. The Purchaser has been furnished such information and such documents as the Purchaser deems necessary to make a decision to purchase the Bonds, including copies or forms of the Indenture, the Junior Loan Agreement, the Junior Mortgage and the Regulatory Agreement (as defined in the Indenture), and certain other documents relating to the Bonds and the Project, all of which documents the Purchaser has reviewed. Specifically, but without limitation, the Purchaser has reviewed information about the Project and the property manager for the Project, if any, as well as information about the investment risks relating to the Bonds, and the Purchaser understands that the Bonds involve a high degree of risk. SPECIFICALLY, AND WITHOUT IN ANY MANNER LIMITING THE FOREGOING, THE PURCHASER UNDERSTANDS AND ACKNOWLEDGES THAT, AMONG OTHER RISKS, THE BONDS ARE PAYABLE SOLELY FROM REVENUES DERIVED FROM THE PROJECT AND THAT THE BONDS ARE NOT ENTITLED TO THE BENEFIT OF ANY CREDIT FACILITY AND NOT RATED BY THE RATING AGENCY. The Purchaser has made such inquiry with respect to all of the foregoing as it believed to be desirable for its purposes.

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

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

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

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

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

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

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

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

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

(b) The Purchaser will not sell or otherwise transfer the Bonds unless such transfer will not result in the transferee owning less than an Authorized Denomination (as defined in the Indenture), except with the prior written approval of the Issuer;

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

(d) The Purchaser will not sell or otherwise transfer the Bonds without requiring the transferee to deliver to the Issuer and to the Trustee an investor's letter to the same effect as this Purchaser's Letter, including this paragraph 12, with no revisions except as may be approved in writing by the Issuer.

[INVESTOR SIGNATURE BLOCK]

**EXHIBIT C**  
**COSTS OF ISSUANCE REQUISITION**  
**(Cost of Issuance Fund)**

U.S. Bank National Association, as Trustee

Re: Housing Authority of the City of San Diego  
Subordinate Multifamily Housing Revenue Bonds  
(Aquila Apartments) 2021 Subordinate Series C-3

Trustee:

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Indenture in the amount(s), to the Person(s) and for the purpose(s) set forth in this requisition (the "Requisition"). The terms used in this requisition shall have the meaning given to those terms in the Junior Indenture of Trust (the "Indenture"), dated as of October 1, 2021, by and between the Housing Authority of the City of San Diego and U.S. Bank National Association, as Trustee, securing the above-referenced Bonds.

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT TO BE DISBURSED: \$\_\_\_\_\_

The undersigned, on behalf of 3Roots CIC, LP, a limited partnership duly organized and existing under the laws of the State of California (the "Borrower"), certifies that:

(a) the expenditures for which money are requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and

(b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: \_\_\_\_\_

**3ROOTS CIC, LP,**  
a California limited partnership

By: Pacific Southwest Community Development Corporation,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Robert W. Laing  
Executive Director/President

By: CIC 3Roots LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
Cheri Hoffman  
President

## EXHIBIT D

### FORM OF JUNIOR LOAN FUND REQUISITION

[Date]

U.S. Bank National Association, as trustee (the "Trustee")

Re: Housing Authority of the City of San Diego  
Subordinate Multifamily Housing Revenue Bonds  
(Aquila Apartments) 2021 Subordinate Series C-3

Trustee:

Pursuant to Section 4.02 of the Indenture referenced below, you are requested to disburse funds from the Junior Loan Fund in the amount(s), to the person(s) and for the purpose(s) set forth in this Requisition and the Indenture. The terms used in this Requisition shall have the meanings given to those terms in the Junior Indenture of Trust, dated as of October 1, 2021 (the "Indenture"), between the Housing Authority of the City of San Diego, as issuer, and the Trustee, securing the above-referenced Bonds.

1. REQUISITION NO.: [ ]
2. PAYMENT DUE TO: [ ]
3. AMOUNT TO BE DISBURSED: \$[ ]
4. ACCOUNT: [ ]

5. The amount requested to be disbursed pursuant to this Requisition will be used to pay construction costs of the Project detailed in Section I attached to this Requisition.

6. With respect to a disbursement from the Junior Loan Fund, the undersigned certifies that:

(i) the amounts included in 3 above were made or incurred or financed and were necessary for the Project;

(ii) the amount paid or to be paid, as set forth in this Requisition, represents a part of the funds due and payable for construction costs of the Project, such funds were not paid in advance of the time, if any, fixed for payment and such funds are due in accordance with the terms of any contracts applicable to the Project and in accordance with usual and customary practice under existing conditions;

(iii) the expenditures for which amounts are requisitioned represent proper charges against the Junior Loan Fund, have not been included in any previous requisition,

have been properly recorded on the Borrower's books and are set forth in Schedule I, with paid invoices attached for any sums for which reimbursement is requested;

(iv) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Borrower for its funds actually advanced for construction costs of the Project and do not represent a reimbursement to the Borrower for working capital;

(v) all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Indenture, the Junior Loan Agreement and the Regulatory Agreement;

(vi) not less than 97% of the sum of:

(A) the amounts requisitioned by this Requisition; plus

(B) all amounts previously requisitioned and disbursed from the Junior Loan Fund;

have been or will be applied by the Borrower to pay Qualified Project Costs (as defined in the Senior Funding Loan Agreement) of the Project;

(viii) the Borrower is not in default under the Junior Loan Agreement, the Regulatory Agreement or any other loan documents and nothing has occurred to the knowledge of the Borrower that would prevent the performance of its obligations under the Junior Loan Agreement, the Regulatory Agreement or any other loan documents;

(ix) no amounts being requisitioned by this Requisition will be used to pay, or reimburse, any costs of issuance incurred in connection with the issuance of the Bonds.

7. With respect to the disbursement from the Junior Loan Fund, attached to this Requisition is Schedule I, together with copies of invoices or bills of sale covering all items for which payment is being requested.

[Remainder of Page Intentionally Left Blank]



[Signature Page to Junior Loan Fund Requisition]

**3ROOTS CIC, LP,**  
a California limited partnership

By: Pacific Southwest Community Development Corporation,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Robert W. Laing  
Executive Director/President

By: CIC 3Roots LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
Cheri Hoffman  
President

Approved by:

CIC Opportunities Fund II LLC,  
a California limited liability company

[SIGNATURE BLOCK]

## **SCHEDULE I**

**JUNIOR LOAN AGREEMENT**

**among**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO,  
as Issuer**

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

**and**

**3ROOTS CIC, LP, a California limited partnership,  
as Borrower**

**Relating to**

**\$(SUBORDINATE PAR)  
HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
SUBORDINATE MULTIFAMILY HOUSING REVENUE BONDS  
(AQUILA APARTMENTS)  
2021 SUBORDINATE SERIES C-3**

**Dated as of October 1, 2021**

All of the right, title and interest of the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO (except for its Unassigned Rights) in and to this Junior Loan Agreement are being assigned to U.S. Bank National Association, as Trustee, as security for the above-referenced bonds pursuant to a certain Junior Indenture of Trust dated as of October 1, 2021.

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**EXHIBIT A – FORM OF JUNIOR PROMISSORY NOTE**

## **JUNIOR LOAN AGREEMENT**

**THIS JUNIOR LOAN AGREEMENT** (this “Junior Loan Agreement”), made and entered into October 1, 2021, by and among the **HOUSING AUTHORITY OF THE CITY OF SAN DIEGO** (the “Issuer”), a public body, corporate and politic, organized and existing under the laws of the State of California (the “State”), **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, organized and operating under the laws of the United States of America (together with any successor trustees appointed under the Indenture, the “Trustee”), and 3Roots CIC, LP, a limited partnership duly organized and existing under the laws of the State of California (together with its successors and assigns permitted hereunder, the “Borrower”),

### **WITNESSETH:**

**WHEREAS**, the Agency is authorized by Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code (the “Act”) to issue revenue bonds for the purpose of financing, among other things, the acquisition, construction and development of multifamily rental housing and for the provision of capital improvements in connection therewith and determined necessary thereto; and

**WHEREAS**, the Borrower has requested the assistance of the Agency in financing the acquisition, construction and development of 180 units (including two manager’s units) multifamily rental housing development to be known as “Aquila Apartments,” formerly known as “3Roots,” located in the City of San Diego, California (the “Project”), and as a condition to such financial assistance the Borrower has agreed to enter into a Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith (the “Regulatory Agreement”) setting forth certain restrictions with respect to the Project; and

**WHEREAS**, the Agency has determined to assist in the financing of the Project by issuing its Subordinate Multifamily Housing Revenue Bonds (Aquila Apartments) 2021 Subordinate Series C-3, in the original aggregate principal amount of \$[SUBORDINATE PAR] (the “Bonds”), pursuant to a Junior Indenture of Trust, dated as of October 1, 2021 (the “Indenture”), by and between the Issuer and the Trustee, and the Act, and making a subordinate loan to the Borrower in the amount of the sum of such principal amount (the “Junior Loan”), evidenced by a Junior Promissory Note (the “Junior Note”) upon the terms and conditions set forth herein;

**WHEREAS**, the Borrower’s obligations under this Junior Loan, the Junior Note and this Junior Loan Agreement are subordinate in all respects to all payment obligations under Senior Transaction Documents (as defined in the Indenture) and the Issuer’s Housing Authority of the City of San Diego Multifamily Housing Revenue Note (Aquila Apartments) 2021 Series C-1 and Housing Authority of the City of San Diego Multifamily Housing Revenue Note (Aquila Apartments) 2021 Series C-2 (Taxable) in the original aggregate principal amount of \$[SENIOR NOTES PAR] (collectively, the “Senior Issuer Notes”), issued pursuant to that certain Funding Loan Agreement dated as of October 1, 2021 (the “Senior Funding Loan Agreement”) among the Issuer, the Trustee and Citibank, N.A., as Senior Funding Lender;



NOW, THEREFORE, for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.1. Definitions.** All words and phrases (except for “Event of Default”) defined in the Indenture shall have the same meanings for the purposes of this Junior Loan Agreement. In addition to the words and phrases defined in the Indenture and elsewhere herein, the following words and phrases shall have the following meanings:

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

“Junior Loan Agreement” means this Junior Loan Agreement, together with any amendments hereto.

“Taxes” means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

**Section 1.2. Interpretation.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Junior Loan Agreement are the Articles, sections and other subdivisions of this Junior Loan Agreement as originally executed.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Junior Loan Agreement; the term “heretofore” means before the date of execution of this Junior Loan Agreement; and the term “hereafter” means after the date of execution of this Junior Loan Agreement.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.1. Representations, Warranties and Covenants of the Issuer.** The Issuer makes the following representations, warranties and covenants:

(a) The Issuer is a public body, corporate and politic, organized and existing under the laws of the State.

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

(c) The Issuer has taken all action on its part for the issuance of the Bonds and for the execution and delivery thereof.

(d) Each of the Junior Loan Documents to which the Issuer is a party has been duly validly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general equitable principles.

(e) To the best knowledge of the Issuer, the Issuer has complied with the provisions of the Act and the laws of the State which are prerequisites to the consummation of the transactions on the part of the Issuer described or contemplated in the Junior Loan Documents. To the best knowledge of the Issuer, the execution and delivery of the Bonds and the Junior Loan Documents to which the Issuer is a party, the consummation of the transactions on the part of the Issuer contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Issuer is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Issuer under the terms of any instrument or agreement.

(f) To the best knowledge of the Issuer, no authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Issuer of, and performance by the Issuer of its obligations under, any of the Junior Loan Documents, which has not been obtained.

(g) To the best knowledge of the Issuer, there is no action, suit, proceeding, inquiry or investigation pending or threatened against the Issuer by or before any court, governmental agency or public board or body, nor, to the Issuer's knowledge, any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Issuer or the title to office of any member of the governing body of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Junior Loan Documents or the issuance, execution or delivery of the Bonds, as applicable; (iii) affects or questions the validity or enforceability of the Bonds; or (iv) questions the power or authority of the Issuer to perform its obligations under the Bonds or to carry out the transactions contemplated by the Bonds and the Junior Loan Documents.

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, execution and delivery of the Bonds, as applicable, or as to the correctness, completeness or accuracy of such statements.

**Section 2.2. *Representations, Warranties and Covenants of the Borrower.*** The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Junior Loan Agreement, are relied upon by the Issuer and the Trustee and serve as a basis for the undertakings of the Issuer and the Trustee contained in this Junior Loan Agreement:

(a) The Borrower is a limited partnership duly organized, validly existing and in good standing under the laws of the State of California and duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Junior Loan Agreement and the other Junior Loan Documents, and to carry out and consummate all transactions contemplated hereby and by the other Junior Loan Documents, and by proper partnership action has duly authorized the execution, delivery and performance of this Junior Loan Agreement and the other Junior Loan Documents. All general partners, if any, of the Borrower are duly incorporated, organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Junior Loan Documents to which it is a party.

(c) The officers of the Borrower executing this Junior Loan Agreement and the other Junior Loan Documents are duly and properly in office and fully authorized to execute the same. This Junior Loan Agreement and the other Junior Loan Documents have been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

(d) No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the best knowledge of the Borrower and with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of this Junior Loan Agreement or the other Junior Loan Documents or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

(e) The execution and delivery of this Junior Loan Agreement and the other Junior Loan Documents, the consummation of the transactions herein and therein contemplated and the

fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under (i) the organizational or other governing documents of the Borrower or to the best knowledge of the Borrower and with respect to the Borrower, (ii) any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, (iii) any mortgage, deed of trust, Junior Loan Agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iv), except as provided in the Junior Loan Documents, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Junior Loan Agreement or the Junior Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

(f) There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower or the assets, properties or operations of the Borrower which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, this Junior Loan Agreement or the other Junior Loan Documents or upon the financial condition, assets, properties or operations of the Borrower, and the Borrower is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Junior Loan Agreement or the other Junior Loan Documents or the financial condition, assets, properties or operations of the Borrower. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of all of the Property.

(g) The Project and the operation of the Project (in the manner contemplated by the Junior Loan Documents) conform with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(h) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(i) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated

by the Junior Loan Documents or the operations of the Borrower or the enforceability of the Junior Loan Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(j) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(k) If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and, except as set forth in the Borrower's Partnership Agreement, there are no outstanding options or rights to purchase or acquire those interests. If the Borrower is a limited liability company, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Junior Loan Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws, provided such issuance is in accordance with the Borrower's Partnership Agreement.

(l) The representations and warranties of the Borrower contained in the Regulatory Agreement are true and accurate.

(m) The information, statements or reports furnished in writing to the Issuer by the Borrower in connection with this Junior Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material 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; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Closing Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or the assumptions contained in any certificate of the Borrower delivered as of the Closing Date are reasonable.

(n) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Issuer or the Trustee for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Junior Loan Documents or otherwise relied on the Issuer or the Trustee in any manner.

(o) The Borrower covenants to pay all third-party fees of the financing, including but not limited to the following:

(i) All taxes and assessments of any type or character charged to the Issuer or to the Trustee affecting the amount available to the Issuer or the Trustee from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Trustee and taxes based upon or measured by the net income of the Trustee; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Issuer or the Trustee, at the Borrower's expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Issuer or the Trustee;

(ii) All fees, charges and expenses of the Trustee for services rendered under the Indenture, as and when the same become due and payable;

(iii) The portion of the annual fee of the Issuer attributable to the Bonds (in addition to the fee attributable to the Senior Issuer Notes, which shall be payable in accordance with and pursuant to the Senior Transaction Documents), payable as set forth in Section 20 of the Regulatory Agreement, and the fees and expenses of the Issuer or any agents, attorneys, accountants, consultants selected by the Issuer to act on its behalf in connection with this Junior Loan Agreement, the Regulatory Agreement or the Junior Loan Documents, including, without limitation, any and all expenses incurred in connection with the authorization, issuance and delivery of the Bonds, as applicable, or in connection with any litigation which may at any time be instituted involving this Junior Loan Agreement, the Regulatory Agreement, or the Junior Loan Documents 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; and

(iv) These obligations and those in Section 6.1 shall remain valid and in effect notwithstanding repayment of the loan hereunder or termination of this Junior Loan Agreement or the Indenture.

**Section 2.3. *Representations and Warranties of the Trustee.*** The Trustee makes the following representations and warranties:

(a) The Trustee is a national banking association, duly organized and existing under the laws of the United States of America. The Trustee is duly authorized to act as a fiduciary and to execute the trust created by the Indenture, and meets the qualifications to act as Trustee under the Indenture.

(b) The Trustee has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Junior Loan Agreement and the other Junior Loan Documents to which it is a party, (ii) to perform its obligations under this Junior Loan Agreement and the other Junior Loan Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Junior Loan Agreement and the other Junior Loan Documents to which it is a party.

(c) The Trustee has duly authorized (i) the execution and delivery of this Junior Loan Agreement and the other Junior Loan Documents to which it is a party, (ii) the performance by the Trustee of its obligations under this Junior Loan Agreement and the other Junior Loan Documents to which it is a party, and (iii) the actions of the Trustee contemplated by this Junior Loan Agreement and the other Junior Loan Documents to which it is a party.

(d) Each of the Junior Loan Documents to which the Trustee is a party has been duly executed and delivered by the Trustee and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Trustee, enforceable against the Trustee in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Trustee as a prerequisite to (i) the execution and delivery of this Junior Loan Agreement and the other Junior Loan Documents to which the Trustee is a party (ii) the authentication or delivery of the Bonds, (iii) the performance by the Trustee of its obligations under this Junior Loan Agreement and the other Junior Loan Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Junior Loan Agreement and the other Junior Loan Documents to which the Trustee is a party. The Trustee makes no representation or warranty relating to compliance with any federal or state securities laws.

**Section 2.4. *Tax Covenants of the Borrower.*** The Borrower covenants and agrees that:

(a) It will at all times comply with the terms of the Tax Certificate and the Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Bonds to be included in gross income, for federal income tax purposes, and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation, the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Regulatory Agreement);

(c) No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Bonds;

(d) It will comply with the requirements of Section 148 of the Code and the Regulations issued thereunder throughout the term of the Bonds and will not make any use of the proceeds of the Bonds, or of any other funds which may be deemed to be proceeds of the Bonds under the Code and the related regulations of the United States Treasury, which would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code;

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Bonds becoming includable in gross income for purposes of federal income tax purposes, it will promptly give written notice of such circumstance, event or condition to the Issuer and the Trustee.

In the event of a conflict between the terms of this Section 2.4 and the Tax Certificate, the terms of the Tax Certificate shall control.

**Section 2.5. *Enforcement of Junior Loan Documents.*** The Trustee may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Junior Loan Documents as and to the extent set forth therein.

### ARTICLE III

#### THE JUNIOR LOAN

**Section 3.1. *Conditions to Funding the Junior Loan.*** On the Closing Date, the Issuer shall direct the Trustee to transfer the proceeds of the Bonds for deposit with the Trustee, in accordance with Section 2.10 of the Indenture and Section 3.3 hereof. The Trustee shall use such proceeds as provided in Article II of the Indenture; provided that no such disbursements of proceeds of the Bonds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Issuer the Junior Note in the form attached hereto as Exhibit A, with only such changes therein as shall be approved in writing by the Issuer, and the Issuer shall have endorsed the Junior Note to the Trustee;

(b) The Junior Mortgage shall have been executed and delivered by the Borrower and delivered to the title company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the “Recorder’s Office”);

(c) The Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the title company for recording in the Recorder’s Office, and the Trustee shall have received evidence satisfactory to it of such delivery;

(d) All other Junior Loan Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Trustee; and

(e) The Borrower shall have delivered to the Trustee and the Issuer a certificate confirming, as of the Closing Date, the matters set forth in Section 2.2 and an opinion of its counsel or other counsel satisfactory to the Trustee and the Issuer.



**Section 3.2. *Terms of the Junior Loan.*** The Junior Loan shall (i) be evidenced by the Junior Note; (ii) be initially secured by the Junior Mortgage; (iii) be in the original aggregate principal amount of \$[SUBORDINATE PAR]; (iv) bear interest as provided in the Junior Note; (v) provide for principal and interest payments in accordance with the Junior Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Junior Note.

**Section 3.3. *Initial Deposits.*** On the Closing Date, proceeds of the Bonds and other amounts shall be deposited and applied pursuant to the Indenture.

**Section 3.4. *Assignment to Trustee.*** The parties hereto acknowledge, and the Borrower consents to, the assignment by the Issuer to the Trustee pursuant to the Indenture of all of the Issuer's right, title and interest in this Junior Loan Agreement (excluding the Unassigned Rights), the Junior Loan, the Junior Mortgage and the Revenues as security for the payment of the principal of, premium, if any, and interest on the Bonds.

**Section 3.5. *Investment of Funds.*** Except as otherwise provided in the Indenture, any money held as a part of any fund or account established under the Indenture shall be invested or reinvested by the Trustee in Qualified Investments in accordance with the Indenture.

**Section 3.6. *Damage; Destruction and Eminent Domain.*** If, prior to payment in full of the Bonds, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Issuer, the Borrower, or the Trustee receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized, after satisfaction of all payment requirements of the Senior Transaction Documents, as provided in the Junior Loan Documents and the Indenture.

## ARTICLE IV

### LOAN PAYMENTS

**Section 4.1. *Payments Under the Junior Note; Independent Obligation of Borrower.***

(a) The Borrower agrees to repay the Junior Loan as provided in the Junior Note, and in all instances at the times and in the amounts necessary to enable the Trustee, on behalf of the Issuer, to pay all amounts payable with respect to the Bonds, when due, whether at maturity or upon redemption (with premium, if applicable), acceleration or otherwise. The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent and separate obligation of the Borrower from its obligation to make payments under the Junior Note, provided that in all events payments made by the Borrower under and pursuant to the Junior Note shall be credited against the Borrower's obligations hereunder on a dollar-for-dollar basis. If for any reason the Junior Note or any provision of the Junior Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Junior Note or such provision of the Junior Note shall be deemed to be the obligation of the Borrower pursuant to this Junior Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the

Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Junior Note.

(b) The obligations of the Borrower to repay the Junior Loan, to perform all of its obligations under the Junior Loan Documents, to provide indemnification pursuant to Section 6.1 hereof, to pay costs, expenses and charges pursuant to Section 4.2 hereof and to make any and all other payments required by this Junior Loan Agreement, the Indenture or any other documents contemplated by this Junior Loan Agreement or by the Junior Loan Documents shall, subject to the limitations set forth in Section 5.1 hereof, be absolute and unconditional and shall not be subject to diminution by setoff, recoupment, counterclaim, abatement or otherwise.

(c) Notwithstanding anything contained in any other provision of this Junior Loan Agreement to the contrary (but subject to the provisions of Section 5.1 hereof and the Intercreditor Agreement), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and each of the Borrower's general partners, payable from and enforceable against any and all income, assets and properties of the Borrower: (i) the Borrower's obligations to the Issuer and the Trustee under Section 4.2 of this Junior Loan Agreement; (ii) the Borrower's obligations under Section 6.1 of this Junior Loan Agreement; and (iii) the Borrower's obligation to pay legal fees and such expenses under Section 7.4 of this Junior Loan Agreement.

#### **Section 4.2. *Payment of Certain Fees and Expenses Under the Junior Note.***

(a) The Borrower shall pay (or cause to be paid by the Trustee), in consideration of the funding of the Junior Loan, the following fees, expenses and other money payable in connection with the Junior Loan:

(i) On or prior to the Closing Date, to the Issuer, an initial financing fee attributable to the Bonds (in addition to the fee attributable to the Senior Issuer Notes, which shall be payable in accordance with and pursuant to the Senior Transaction Documents) in an amount equal to \$[ISSUANCE FEE-SUB BONDS], together with all third-party and out-of-pocket expenses of the Issuer (including but not limited to the fees and expenses of counsel to the Issuer) in connection with the Junior Loan and the issuance of the Bonds.

(ii) On the Closing Date, to the Trustee, an acceptance fee attributable to the Bonds (in addition to the fee attributable to the Senior Issuer Notes, which shall be payable in accordance with and pursuant to the Senior Transaction Documents) in an amount equal to \$[TRUSTEE FEE], together with all third party and out-of-pocket expenses of the Trustee (including but not limited to the fees and expenses of counsel to the Trustee) in connection with the Junior Loan and the issuance of the Bonds.

(iii) All other fees and expenses of the Trustee and the Issuer described in Sections 2.2(o)(ii) and 2.2(o)(iii) hereof.

(iv) On the Closing Date, the amount of \$[COI DEPOSIT] to be deposited into the Costs of Issuance Fund.

**Section 4.3. *Reserved.***

**Section 4.4. *Prepayment of Junior Loan.*** The Borrower shall have the option to prepay the Junior Loan in full or in part prior to the payment and discharge of all the outstanding Bonds in accordance with the provisions of the Indenture, this Junior Loan Agreement and the Junior Note, upon payment of any amount due under the next succeeding paragraph. The Borrower shall be required to prepay the Junior Loan in each case that Bonds are required to be redeemed in accordance with the terms and conditions set forth in the Indenture.

The Bonds are subject to redemption in accordance with the terms and conditions set forth in the Indenture. In connection with any prepayment, whether optional or mandatory, in addition to all other payments required under the Junior Note or the Indenture, the Borrower shall pay an amount sufficient to pay the redemption price of the Bonds to be redeemed, including principal, interest and premium (if any), and further including any interest to accrue with respect to the Junior Loan and such Bonds between the prepayment date and the redemption date, together with a sum sufficient to pay all fees, costs and expenses in connection with such redemption and, in the case of redemption in whole, to pay all other amounts payable under this Junior Loan Agreement and the Indenture. The Borrower shall provide notice of the prepayment to the Issuer, and the Trustee in writing forty-five (45) days, or such shorter time as is possible in the case of mandatory prepayments, prior to the date on which the Borrower will make the prepayment. Each such notice shall state, to the extent such information is available, (a) the amount to be prepaid, (b) the date on which the prepayment will be made by the Borrower, and (c) the cause for the prepayment, if any.

**Section 4.5. *Borrower's Obligations Upon Redemption.*** In the event of any redemption, the Borrower will timely pay, to the Trustee an amount equal to the principal amount of such Bonds or portions thereof called for redemption, together with interest accrued to the redemption date. In addition, the Borrower will timely pay all fees, costs and expenses associated with any redemption of Bonds.

ARTICLE V

SPECIAL COVENANTS OF BORROWER

**Section 5.1. *Performance of Obligations.*** The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Junior Loan Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

Except as otherwise provided herein or in the Junior Loan Documents, the obligations of the Borrower under this Junior Loan Agreement are non-recourse liabilities of the Borrower and its partners. However, nothing in this Section 5.1 shall limit the right of the Issuer or the Trustee to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Junior Loan Agreement or the other Junior Loan Documents. In any action or proceeding brought with respect to the Junior Loan or the Bonds, no deficiency or other money judgment

shall be enforced against the Borrower or any partner of the Borrower or any successor or assign of the Borrower, and any judgment obtained shall be enforced only against the Project and other property of the Borrower encumbered by the Junior Loan Documents and not against the Borrower or any partner of the Borrower or any successor or assign of the Borrower.

**Section 5.2. *Compliance With Applicable Laws.*** All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

**Section 5.3. *Indenture Provisions.*** The execution of this Junior Loan Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower. Whenever the Indenture by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower shall carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

**Section 5.4. *Intentionally Omitted.***

**Section 5.5. *Borrower to Maintain Its Existence.*** The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

**Section 5.6. *Borrower to Remain Qualified in State and Appoint Agent.*** The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

**Section 5.7. *Sale or Other Transfer of Project.*** The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Senior Transaction Documents, the Regulatory Agreement and the Junior Loan Documents.

**Section 5.8. *Right to Perform Borrower's Obligations.*** In the event the Borrower fails to perform any of its obligations under this Junior Loan Agreement, and during the continuance of any Event of Default the Issuer or the Trustee, after giving requisite notice, if any, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced by the Issuer or the Trustee shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Junior Loan Documents.

**Section 5.9. *Notice of Certain Events.*** The Borrower shall promptly advise the Issuer and the Trustee in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.10. *Survival of Covenants.*** The provisions of Sections 2.4, 4.2, 6.1 and 7.4 of this Junior Loan Agreement shall survive the expiration or earlier termination of this Junior Loan Agreement and, with regard to the Trustee, the resignation or removal of the Trustee.

**Section 5.11. *Access to Project; Records.*** Subject to reasonable notice, the Issuer and the Trustee, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Junior Loan and the Borrower's compliance with the terms and conditions of the Junior Loan Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Junior Loan and the Borrower's compliance with the terms and conditions of the Junior Loan Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Issuer and the Trustee, as the Issuer or the Trustee, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Junior Loan Documents have been complied with and (ii) to make copies of any records that the Issuer or the Trustee or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Issuer and the Trustee, such information concerning the Project, the Junior Mortgage and the Junior Loan Documents as any of them may reasonably request.

**Section 5.12. *Reserved.***

**Section 5.13. *Damage, Destruction and Condemnation.*** If prior to full payment of the Bonds (or provision for payment of the Bonds in accordance with the provisions of the Indenture) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Junior Loan Agreement and in the Junior Note to the extent the Junior Loan is not prepaid in accordance with the terms of the Junior Loan Documents.

**Section 5.14. *Obligation of the Borrower to Acquire and Construct the Project.*** The Borrower shall proceed with reasonable dispatch to complete the acquisition, construction, development and equipping of the Project. If amounts on deposit in the Junior Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of such acquisition, construction, development and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Issuer, the Trustee, or the Bondholders in respect of any such costs or to any diminution or abatement in the repayment of the Junior Loan. Neither of the Trustee nor the Issuer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Junior Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and neither of the Trustee nor the Issuer shall be liable to the Borrower, the Bondholders or any other person if for any reason the Project is not completed.

**Section 5.15. *Filing of Financing Statements.*** The Borrower shall file or record or cause to be filed or recorded on or prior to the Closing Date all financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Junior Loan, the Trust Estate and the Junior Mortgage, and the rights and powers of the Issuer and the Trustee in connection with such security interests. The

Borrower shall cooperate with the Trustee in connection with the filing of any continuation statements for purposes of continuing without lapse the effectiveness of such financing statements.

## ARTICLE VI

### INDEMNIFICATION

**Section 6.1. *Indemnification.*** (a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Issuer, the Trustee, and each of their respective officers, governing members, directors, officials, employees, attorneys and agents (collectively, the “Indemnified Parties”), against any and all losses, damages, claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under or any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

(i) the Bonds, the Junior Loan Documents, or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby, including, as applicable, the issuance, issuance, sale or resale of the Bonds;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Project or any part thereof;

(iii) any lien (other than a permitted encumbrance) or charge upon payments by the Borrower to the Issuer and the Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project;

(iv) any violation of any environmental regulations with respect to, or the release of any hazardous substances from, the Project or any part thereof during the period in which the Borrower is in possession or control of the Project;

(v) the defeasance and/or redemption, in whole or in part, of the Bonds;

(vi) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in any offering statement or disclosure or continuing disclosure document for the Bonds or any of the documents relating to the Bonds, or any omission or alleged omission from any offering statement or disclosure or continuing disclosure document for the Bonds of any material fact necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(viii) the Trustee's acceptance or administration of the trust of the Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which it is a party;

except (a) in the case of the foregoing indemnification of (1) the Bondholder Representative or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party, or (2) in the case of the Trustee or any related Indemnified Party, the negligence or willful misconduct of the Trustee, or any breach by such party of its obligations under any of the Junior Loan Documents or any untrue statement or misleading statement of a material fact by such Indemnified Party contained in any offering statement or document for the Bonds or any of the Junior Loan Documents or any omission or alleged omission from any such offering statement or document of any material fact necessary to be stated therein in order to make the statements made therein by such Indemnified Party not misleading; or (b) in the case of the foregoing indemnification of the Issuer or any related Indemnified Party or the City or any related Indemnified Party, they shall not be indemnified by the Borrower with respect to liabilities arising from their own bad faith, fraud or willful misconduct. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party (which notice shall be timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not be unreasonably withheld. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof; provided however the City and the Issuer have the absolute right to employ separate counsel at the expense of the Borrower. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party other than the Issuer or the City may only employ separate counsel at the expense of the Borrower if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation except that the Borrower shall always pay the reasonable fees and expenses of the Issuer's or the City's separate counsel.

In addition thereto, the Borrower will pay upon demand all of the fees and expenses paid or incurred by the Trustee and/or the Issuer in enforcing the provisions hereof, as more fully set forth in this Junior Loan Agreement.

(b) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant this Junior Loan Agreement shall survive the final payment or defeasance of the Bonds and in the case of the Trustee any resignation or removal. The provisions of this Section shall survive the termination of this Junior Loan Agreement.

Nothing contained in this Section 6.1 shall in any way be construed to limit the indemnification rights of the Issuer contained in Section 9 of the Regulatory Agreement. With respect to the Issuer, the Regulatory Agreement shall control in any conflicts between this Section 6.1 and Section 9 of the Regulatory Agreement.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.1. *Events of Default.*** The following shall be “Events of Default” under this Junior Loan Agreement and the term “Event of Default” shall mean, whenever it is used in this Junior Loan Agreement, one or all of the following events after the expiration of any applicable cure periods:

(a) Any representation or warranty made by the Borrower in the Junior Loan Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Issuer for assistance proves at any time to have been incorrect when made in any material respect;

(b) Failure by the Borrower to pay any amounts due under this Junior Loan Agreement, the Junior Note or the Junior Mortgage at the times and in the amounts required by this Junior Loan Agreement, the Junior Note and the Junior Mortgage, as applicable; or

(c) The Borrower’s failure to observe and perform any of its other covenants, conditions or agreements contained herein, other than as referred to in clause (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given by the Issuer or the Trustee to the Borrower; provided, however, that if the failure shall be such that it can be corrected but not within such period, the Issuer and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower within such period and diligently pursued until the failure is corrected;

Nothing contained in this Section is intended to amend or modify any of the provisions of the Junior Loan Documents or to bind the Issuer or the Trustee to any notice and cure periods other than as expressly set forth in the Junior Loan Documents. Notwithstanding anything herein to the contrary, the Investor Limited Partner shall have the right, but not the obligation, to cure defaults hereunder in the same manner as the Borrower.

**Section 7.2. *Remedies on Default.*** Whenever any Event of Default hereunder shall have occurred and be continuing, the Trustee or the Issuer where so provided may take any one or more of the following remedial steps:

(a) The Issuer shall cooperate with the Trustee as the Trustee acts pursuant to Section 6.02 of the Indenture.

(b) In the event any of the Bonds shall at the time be Outstanding and not paid and discharged in accordance with the provisions of the Indenture, the Issuer or the Trustee may have access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower.

(c) The Issuer or the Trustee may, without being required to give any notice (other than to the Issuer or the Trustee, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.



(d) The Issuer or Trustee may take whatever action at law or in equity may appear necessary or desirable to collect the payments due under this Junior Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Junior Loan Agreement.

Any amounts collected pursuant to Article IV and any other amounts which would be applicable to payment of principal of and interest and any premium on the Bonds collected pursuant to action taken under this Section shall be applied in accordance with the provisions of the Indenture.

The provisions of this Section are subject to the further limitation that if, after any Event of Default hereunder all amounts which would then be payable hereunder by the Borrower if such Event of Default had not occurred and was not continuing shall have been paid by or on behalf of the Borrower, and the Borrower shall have also performed all other obligations in respect of which it is then in default hereunder, and shall have paid the reasonable charges and expenses of the Issuer and the Trustee, including reasonable attorneys' fees paid or incurred in connection with such default, and if there shall then be no default existing under the Indenture, then and in every such case such Event of Default hereunder shall be waived and annulled, but no such waiver or annulment shall affect any subsequent or other Event of Default or impair any right consequent thereon.

**Section 7.3. *No Remedy Exclusive.*** No remedy conferred upon or reserved to the Issuer or the Trustee by this Junior Loan Agreement 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 Junior Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article VII, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Junior Loan Agreement.

**Section 7.4. *Agreement to Pay Attorneys' Fees and Expenses.*** In the event the Borrower should default under any of the provisions of this Junior Loan Agreement and the Issuer or the Trustee should employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Junior Loan Agreement or in the Junior Note, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.5. *No Additional Waiver Implied by One Waiver.*** In the event any agreement contained in this Junior Loan Agreement should be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.1. *Notices.*** Whenever in this Junior Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Issuer, the Trustee, or the Borrower shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.05 of the Indenture or upon receipt such notice or other communication delivered by facsimile transmission as required or permitted by this Junior Loan Agreement (receipt of which shall be evidenced by confirmation of transmission). The Issuer, the Trustee, or the Borrower may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

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

**Section 8.2. *Concerning Successors and Assigns.*** All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Junior Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Junior Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Issuer and the Trustee.

**Section 8.3. *Governing Law.*** This Junior Loan Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the laws of the State and, where applicable, the laws of the United States of America.

**Section 8.4. *Modifications in Writing.*** Modification or the waiver of any provisions of this Junior Loan Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given and so long as the interests of any Bondholders are not adversely affected and the Trustee consents in writing thereto. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

**Section 8.5. *Further Assurances and Corrective Instruments.*** The Issuer, the Trustee and the Borrower agree that they 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 correcting any inadequate or incorrect description of the performance of this Junior Loan Agreement.

**Section 8.6. *Captions.*** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Junior Loan Agreement.

**Section 8.7. *Severability.*** The invalidity or unenforceability of any provision of this Junior Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**Section 8.8. *Counterparts.*** This Junior Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.9. *Amounts Remaining in Bond Fund or Other Funds.*** It is agreed by the parties hereto that any amounts remaining in the Bond Fund or other funds and accounts established under the Indenture upon expiration or sooner termination of the term hereof, shall be paid in accordance with the Indenture.

**Section 8.10. *Effective Date and Term.*** This Junior Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Indenture shall terminate.

**Section 8.11. *Cross References.*** Any reference in this Junior Loan Agreement to an “Exhibit,” an “Article,” a “Section,” a “Subsection” or a “Paragraph” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Junior Loan Agreement, an article of this Junior Loan Agreement, a section of this Junior Loan Agreement, a subsection of the section of this Junior Loan Agreement in which the reference appears and a paragraph of the subsection within this Junior Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Junior Loan Agreement are incorporated by reference into this Junior Loan Agreement.

**Section 8.12. *Reserved.***

**Section 8.13. *Waiver of Personal Liability.*** No member, officer, agent or employee of the Issuer or any director, officer, agent or employee of the Borrower shall be individually or personally liable for the payment of any principal (or redemption price) 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 Junior Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Junior Loan Agreement.

**Section 8.14. *No Liability of Issuer.*** The Issuer shall not be obligated to pay the principal (or redemption price) of or interest on the Bonds, except from Revenues and other money and assets received by the Trustee on behalf of the Issuer pursuant to this Junior Loan Agreement. 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 (or redemption price) 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 Junior Loan Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under this Junior Loan Agreement.

The Borrower hereby acknowledges that the Issuer's sole source of money to repay the Bonds will be provided by the payments made by the Borrower pursuant to this Junior Loan Agreement, together with investment income on certain funds and accounts held by the Trustee under the Indenture, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or redemption price) 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 (or redemption price) 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.

**Section 8.15. *No Liability of Officers.*** No recourse under or upon any obligation, covenant, or agreement or in any Bonds, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Owner of any Bonds, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Owner of any Bonds, of any sum that may remain due and unpaid upon the Bonds or any of them, is hereby expressly waived and released as a condition of and consideration for the execution of this Junior Loan Agreement and the issuance of the Bonds.

**Section 8.16. *Capacity of the Trustee.*** The Trustee is entering into this Junior Loan Agreement solely in its capacity as Trustee and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Trustee under the Indenture. The Trustee shall be responsible only for the duties of the Trustee expressly set forth herein and in the Indenture.

**Section 8.17. *Reliance.*** The representations, covenants, agreements and warranties set forth in this Junior Loan Agreement may be relied upon by the Issuer and the Trustee. In performing their duties and obligations under this Junior Loan Agreement and under the Indenture, the Issuer and the Trustee may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Issuer and the Trustee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Trustee under this Junior Loan Agreement and under the Indenture in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Junior Loan Agreement (other than the Issuer) that:

(a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee, any Bondholder or the Borrower as to the existence of a fact or state of affairs required under this Junior Loan Agreement to be noticed by the Issuer;

(b) 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, as applicable; and

(c) none of the provisions of this Junior Loan Agreement shall require the Issuer or the Trustee 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 Junior Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Junior Loan Agreement and the Issuer has caused its corporate seal to be affixed hereto and to be attested, all as of the date first set forth above.

HOUSING AUTHORITY OF THE  
CITY OF SAN DIEGO, as Issuer

By: \_\_\_\_\_  
[Executive Director]

[Signature page – Junior Loan Agreement – Aquila Apartments]

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

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

[Signature page – Junior Loan Agreement – Aquila Apartments]

**3ROOTS CIC, LP,**  
a California limited partnership

By: Pacific Southwest Community Development Corporation,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Robert W. Laing  
Executive Director/President

By: CIC 3Roots LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
Cheri Hoffman  
President

[Borrower's Signature Page to Junior Loan Agreement]



## EXHIBIT A

### FORM OF JUNIOR PROMISSORY NOTE

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
SUBORDINATE MULTIFAMILY HOUSING REVENUE BONDS  
(AQUILA APARTMENTS)  
2021 SUBORDINATE SERIES C-3**

### JUNIOR PROMISSORY NOTE

US \$[\_\_\_\_\_]

[Closing Date]

FOR VALUE RECEIVED, **3ROOTS CIC, LP**, a California limited partnership organized and existing under the laws of the State of California (together with its permitted successors and assigns, “Maker”), promises to pay to the **HOUSING AUTHORITY OF THE CITY OF SAN DIEGO**, a public body, corporate and politic, organized and existing under the laws of the State of California, or its successors or assigns (the “Issuer” or the “Holder” as the context requires), in legal tender of the United States, the Principal Sum of \$[A-3 PAR], on [MATURITY DATE-not to exceed 45 years from closing date], or earlier as provided herein and in the Junior Loan Agreement (hereinafter defined), together with interest thereon at the rates, at the times and in the amounts necessary to make payments on the Issuer’s Subordinate Multifamily Housing Revenue Bonds (Aquila Apartments) 2021 Subordinate Series C-3 (the “Bonds”), issued under that certain Junior Indenture of Trust, dated as of October 1, 2021 (the “Indenture”), by and between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”), when such payments become due and payable on each Bond Payment Date (as defined in the Indenture). Maker shall pay to the Holder on or before each Bond Payment Date (as defined in the Indenture) an amount in immediately available funds sufficient to pay the principal amount of the Bonds then due and payable, whether by maturity, acceleration, redemption or otherwise, and any such payment shall reduce the said principal amount due hereunder. In the event that amounts held under the Indenture and derived from Bond proceeds, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on the Bonds in accordance with the Indenture, the principal amount due hereunder shall be reduced to the extent of the principal amount of the Bonds so paid. Maker shall pay to the Holder on or before each Bond Payment Date on which interest on the Bonds is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on the Bonds then due and payable.

“Indebtedness” means the principal of, interest on, and any other amounts due at any time under, this Note, the Mortgage (as defined herein) or any other Junior Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of the Mortgage as described in Section 12 of the Mortgage.

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

All payments under this Note shall be applied first to the payment of interest due and the balance, if any, shall be applied to the payment of principal.

This Note is secured by a Subordinate Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of October 1, 2021 (as the same may be modified, amended or supplemented from time to time, the “Mortgage”) made by Maker to a trustee for the benefit of the Trustee covering property, with improvements thereon, as more fully described therein (the “Mortgaged Property”) and certain other security as more fully set forth in the Junior Loan Agreement.

1. Default Rate. (1) So long as any other Event of Default has occurred and is continuing or (2) pursuant to Section 6.01(b) of the Indenture, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate per annum (the “Default Rate”) equal to the lesser of (i) the maximum rate permitted by applicable law or (ii) a rate equal to the Base Rate plus [\_\_\_\_] percent ([\_\_\_\_]%), subject to the interest calculation set forth in Section 2.01(b) of the Indenture. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate. Maker also acknowledges that its failure to make timely payments will cause the Holder, to incur additional expenses in servicing and processing the Loan, that, during the time that any required monthly installment under this Note is delinquent, Holder will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Holder’s ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Maker also acknowledges that, during the time that any monthly installment under this Note is delinquent or any other Event of Default has occurred and is continuing, Holder’s risk of nonpayment of this Note will be materially increased and Holder is entitled to be compensated for such increased risk. Maker agrees that the increase in the rate of interest payable under this Note to the Default Rate as provided above represents a fair and reasonable estimate, taking into account all circumstances existing on the Closing Date, of the additional costs and expenses Holder will incur by reason of Maker’s delinquent payment and the additional compensation Holder is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

2. This Note is subject to the express condition that at no time shall interest be payable on this Note or under the Mortgage or the Junior Loan Agreement at a rate in excess of the maximum permitted by law; and Maker shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such maximum rate. If by the terms of this Note or of the Mortgage or Junior Loan Agreement, Maker is required to pay interest at a rate in excess of such maximum rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such maximum rate, and any such excess payment previously made

shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

3. Amounts payable hereunder representing late payments, penalty payments or the like shall be payable to the extent allowed by law.

4. This Note is subject to all of the terms, conditions, and provisions of the Junior Loan Agreement, including those respecting prepayment and the acceleration of maturity and the provisions of Section 4.5 thereof, and is further subject to all of the terms, conditions and provisions of the Indenture. The outstanding principal hereof is subject to acceleration at the same time or times and under the same terms and conditions, and with the same notice, if any, as provided under the Indenture for the acceleration of payment of the Bonds.

5. If there is an Event of Default, then in any such event and subject to the provisions and requirements of the Junior Loan Agreement and the Indenture, the Holder may declare the entire unpaid principal balance of this Note and accrued interest, if any, due and payable at once. All of the covenants, conditions and agreements contained in the Junior Loan Agreement, the Regulatory Agreement, the Mortgage and all other security instrument and related documents, instruments and assignments evidencing or securing the Borrower's obligations to the Issuer or to the Trustee relating to the Project and all other documents and instruments delivered simultaneously herewith, as the same may be supplemented and amended from time to time (the "Loan Documents") are hereby made part of this Note.

6. No delay or omission on the part of the Holder in exercising any remedy, right or option under this Note or the Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Holder under this Note and the Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

7. Maker shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the Indebtedness hereunder, together with interest thereon at the Default Rate to the extent allowed by law.

8. No amendments or other changes of any nature may be made to this Note except in writing and subject in all events to the provisions of the Indenture and the Junior Loan Agreement. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Holder of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Holder of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Maker to pay the entire sum then due, and Maker's failure to pay such amount then due shall be

and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Holder to any action of Maker which is subject to consent or approval of the Holder hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

9. (a) Prior to the Junior Bonds Conversion Date, Borrower shall be personally liable for all amounts due under this Note. On and after the Junior Bonds Conversion Date, except as otherwise provided in this Section 9 and Section 5.1 of the Junior Loan Agreement, neither Borrower nor any of its partners, members and/or managers shall have any personal liability under this Note, the Mortgage or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents, and Lender's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any obligations of Borrower.

(b) Borrower shall be personally liable to Lender for the repayment of a portion of the Indebtedness equal to any loss or damage suffered by Lender (the "Losses") as a result of (1) failure of Borrower to pay to Lender upon demand after an Event of Default all Rents (as defined in the Mortgage) to which Lender is entitled under Section 3(a) of the Mortgage and the amount of all security deposits collected by Borrower from tenants then in residence; (2) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Mortgage; (3) failure of Borrower to comply with Section 14(d) or (e) of the Mortgage relating to the delivery of books and records, statements, schedules, and reports; (4) fraud or material misrepresentation by Borrower or Guarantor or any general partner, managing member, manager, officer, director, partner, member, agent or employee of Borrower or Guarantor in connection with the application for or creation of the Indebtedness or any request for any action or consent by or on behalf of Lender; (5) failure to apply Rents, first, to the payment of reasonable operating expenses (other than property management fees that are not currently payable or any other Loan Document) and then to amounts ("Debt Service Amounts") payable under this Note, the Mortgage or any other Loan Document (except that Borrower will not be personally liable (i) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (ii) with respect to Rents that are distributed on account of any calendar year if Borrower has paid all operating expenses and Debt Service Amounts for that calendar year); (6) failure of Borrower to comply with the provisions of Section 17(a) of the Mortgage prohibiting the commission of waste or allowing the impairment or deterioration of the Mortgaged Property; (7) failure of Borrower to obtain and maintain any local real estate tax abatement or exemption required under the Mortgage, or the reduction, revocation, cancellation or other termination of such abatement or exemption, as a result of any act or omission by or on behalf of Borrower, Guarantor or any of their respective partners, members, managers, directors, officers, agents, employees or representatives; (8) Borrower's acquisition of any property or operation of any business not permitted by Section 32 of the Mortgage; (9) a Transfer (including, but not limited to,

a lien or encumbrance) that is an Event of Default under Section 21 of the Mortgage, other than a Permitted Transfer or Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company; or (10) a Bankruptcy Event, as defined by the Mortgage (but only if the Bankruptcy Event occurs with the consent or active participation of Borrower, its General Partner, Guarantor or any Borrower Affiliate (as defined by the Mortgage)).

(c) In addition to the Borrower's personal liability pursuant to the other provisions of this Note, Borrower shall be personally liable to Lender for (1) the performance of all of Borrower's obligations under Sections 18 and 43(i) of the Mortgage (relating to environmental matters) and the Junior Agreement of Environmental Indemnification dated as of the date hereof; (2) the costs of any audit under Section 14(d) of the Mortgage; and (3) any costs and expenses incurred by Lender in connection with the collection of all amounts for which Borrower is personally liable under this Section 9, including out of pocket expenses and reasonable fees of attorneys and expert witnesses and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability.

(d) Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Mortgage, any other Loan Document or applicable law. For purposes of this Section 9, the term "Mortgaged Property" shall not include any funds that (1) have been applied by Borrower as required or permitted by the Mortgage prior to the occurrence of an Event of Default or (2) Borrower was unable to apply as required or permitted by the Mortgage because of a bankruptcy, receivership, or similar judicial proceeding. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

(e) Nothing herein or in the other Loan Documents shall be deemed to be a waiver of any right which the Lender or the Servicer may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to the Lender and the Servicer hereunder and under the other Loan Documents or to require that all collateral shall continue to secure the amounts due hereunder and under the other Loan Documents.

10. The right of the holder of this Note to payment of any of the Indebtedness evidenced by this Note is and shall at all times be subordinate to the right of U.S. Bank National Association, as fiscal agent (the "Fiscal Agent"), in accordance with that certain Borrower Loan Agreement dated as of October 1, 2021 by and between the maker of this Note and the Housing Authority of the City of San Diego (in its capacity as Governmental Lender thereunder) (the "Senior Loan Agreement"), to payment in full of the currently due obligations evidenced by the Senior Loan Agreement.

11. In addition, the Indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of all amounts then due and payable (including, but not limited to, all amounts due and payable by virtue of any default or acceleration or upon maturity) with respect to the Indebtedness evidenced by the Note (as defined by that certain Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing by the Borrower in favor of Citibank, N.A.), in the original maximum principal amount of \$[SENIOR NOTES PAR], executed by Borrower and payable to Citibank, N.A. (the “Funding Lender”) to the extent and in the manner provided in that certain Subordination and Intercreditor Agreement, dated as of October 1, 2021, by and between the Trustee and U.S. Bank National Association, as fiscal agent (the “Fiscal Agent”) under the Senior Funding Loan Agreement dated as of October 1, 2021, among the Issuer, the Funding Lender and the Fiscal Agent (the “Funding Loan Agreement”). The rights and remedies of the Holder and each subsequent holder of this Note shall be deemed, by virtue of such holder’s acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the “Junior Lender” under the Citibank Subordination Agreement.

Maker agrees that this Note shall be construed in accordance with and governed by the laws of the State of California.

**3ROOTS CIC, LP,**  
a California limited partnership

By: Pacific Southwest Community Development Corporation,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Robert W. Laing  
Executive Director/President

By: CIC 3Roots LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
Cheri Hoffman  
President

## **ASSIGNMENT**

Pay to the order of U.S. Bank National Association, without recourse or warranty,  
as Trustee under the Indenture referred to in the attached Note.

HOUSING AUTHORITY OF THE CITY  
OF SAN DIEGO

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



RECORDING REQUESTED BY:  
3Roots CIC, LP, a California limited partnership

WHEN RECORDED RETURN TO:  
Orrick, Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, CA 94105-2669  
Attention: Justin S. Cooper

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REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

By and Among

HOUSING AUTHORITY OF THE CITY OF SAN DIEGO,

U.S. BANK NATIONAL ASSOCIATION,  
as Fiscal Agent and Trustee,

and

3Roots CIC, LP

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Dated as of October 1, 2021

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Relating to

HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

\$(AGGREGATE SENIOR PAR)  
MULTIFAMILY HOUSING REVENUE NOTES  
(AQUILA APARTMENTS)  
2021 SERIES C-1 AND 2021 SERIES C-2 (TAXABLE)

\$(\_\_\_\_\_)  
HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
SUBORDINATE MULTIFAMILY HOUSING REVENUE BONDS  
(AQUILA APARTMENTS)  
2021 SUBORDINATE SERIES C-3

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## **REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS**

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (as supplemented and amended from time to time, this “Regulatory Agreement”) is made and entered into as of October 1, 2021, by and among the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO, a public body, corporate and politic, duly organized and existing under the laws of the State of California (together with any successor to its rights, duties and obligations, the “Housing Authority”), U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under and by virtue of the laws of the United States of America, as fiscal agent (the “Fiscal Agent”) and as trustee (the “Trustee”) (as more particularly defined herein), and 3Roots CIC, LP, a California limited partnership, duly organized, validly existing and in good standing under the laws of the State of California (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the “Owner”).

### **W I T N E S S E T H:**

WHEREAS, pursuant to Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code (as amended, the “Housing Law”), and the hereinafter defined Funding Loan Agreement, the Housing Authority has agreed to execute and deliver its Housing Authority of the City of San Diego Multifamily Housing Revenue Notes (Aquila Apartments) 2021 Series C-1 (the “2021 Series C-1 Note”) and 2021 Series C-2 (Taxable) (the “Taxable Note”) in the original aggregate face amount (maximum principal amount) of \$[AGGREGATE SENIOR PAR] (the “Governmental Lender Notes”) and to issue and deliver its Housing Authority of the City of San Diego Subordinate Multifamily Housing Revenue Bonds (Aquila Apartments) 2021 Subordinate Series C-3, in the original aggregate principal amount of \$[C-3 PAR] (the “Subordinate Bonds” and, together with the Governmental Lender Notes, the “Obligations”);

WHEREAS, the Governmental Lender Notes will be executed and delivered pursuant to a Funding Loan Agreement, dated as of October 1, 2021 (as amended from time to time, the “Funding Loan Agreement”), among the Housing Authority, Citibank, N.A., as Funding Lender (the “Funding Lender”) and the Fiscal Agent, and the Subordinate Bonds will be issued and delivered pursuant to a Junior Indenture of Trust, dated as of October 1, 2021, between the Housing Authority and the Trustee (as amended from time to time, the “Subordinate Indenture”);

WHEREAS, the proceeds of the Governmental Lender Notes and of the Subordinate Bonds, respectively, will be used to fund two loans (each, a “Loan” and together, the “Loans”) to the Owner to finance the acquisition, construction and development of a 180-unit (including two manager’s units) multifamily rental housing development to be known as “Aquila Apartments” (formerly known as “3Roots”), located on the real property site described in Exhibit A hereto (as more particularly described herein, the “Project”);

WHEREAS, to assure the Housing Authority and the owners of the 2021 Series C-1 Note and the Subordinate Bonds, respectively (together, the “Tax-Exempt Obligations”) that interest on the Tax-Exempt Obligations will be excluded from gross income for federal income

tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”), and to satisfy the public purposes for which the Obligations are authorized to be executed and delivered under the Housing Law, and to satisfy the purposes of the Housing Authority in determining to issue, execute and deliver the Obligations, certain limits on the occupancy of units in the Project need to be established and certain other requirements need to be met;

NOW, THEREFORE, in consideration of the execution and delivery of the Obligations by the Housing Authority and the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Housing Authority, the Fiscal Agent, the Trustee and the Owner hereby agree as follows:

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

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

“Area” means the Metropolitan Statistical Area or County, as applicable, in which the Project is located as defined by the United States Department of Housing and Urban Development.

“Available Units” means residential units in the Project that are actually occupied and residential units in the Project that are vacant and have been occupied at least once after becoming available for occupancy, provided that (a) a residential unit that is vacant on the later of (i) the date the Project is acquired or (ii) the Closing Date is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after the renovations are completed.

“Borrower Loan Agreement” means that certain Borrower Loan Agreement, dated as of October 1, 2021, by and between the Housing Authority and the Owner in respect of the Loan to the Owner from proceeds of the Governmental Notes, as the same may be amended and supplemented from time to time.

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

“CDLAC Conditions” has the meaning given such term in Section 29.

“CDLAC Resolution” means CDLAC Resolution No. 21-133 attached hereto as Exhibit D, adopted on April 28, 2021 and relating to the Project, as such resolution may be modified or amended from time to time.

“Certificate of Continuing Program Compliance” means the Certificate to be filed by the Owner with the Administrator, on behalf of the Housing Authority, and the Fiscal Agent and Trustee pursuant to Section 4(f) hereof, which shall be substantially in the form attached as Exhibit C hereto or in such other comparable form as may be provided by the Housing Authority to the Owner, or as otherwise approved by the Housing Authority.

“City” means the City of San Diego, California.

“Closing Date” means the date the Obligations are originally issued, executed and delivered, expected to be on or about [Closing Date].

“Compliance Period” means the period beginning on the first day of the Qualified Project Period and ending on the later of the end of the Qualified Project Period or such later date as set forth in Section 29(c) of this Regulatory Agreement.

“Conversion Date” means in respect of the Governmental Lender Notes and the Subordinate Bonds, as applicable the latest such date, if any, upon which the related Loan converts from the construction phase to the permanent phase in accordance with the terms of the related Loan Agreement.

“County” means the County of San Diego, California.

“Deed of Trust” means the “Security Instrument” as defined in the Funding Loan Agreement, as the same may be modified, amended or supplemented from time to time, or any deed of trust (or similar security instrument) containing a power of sale clause reflecting a valid, perfected first-priority lien on the fee interest in the Project delivered by the Owner to secure the Owner’s obligations to a third-party lender.

“Fiscal Agent” means U.S. Bank National Association, or any successor fiscal agent appointed and acting under the Funding Loan Agreement.

“Funding Lender” means during any period in which any Notes are outstanding, the “Noteowner” under and as such term is defined in the Funding Loan Agreement. If at any time no Governmental Lender Notes remain outstanding and the Funding Loan Agreement has been discharged, then there is no Funding Lender and references herein to the Funding Lender are void and inapplicable and shall be disregarded.

“Gross Income” means the gross income of a person (together with the gross income of all persons who intend to reside with such person in one residential unit) as calculated in the manner prescribed in under Section 8 of the Housing Act.

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

“Housing Law” means Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code, as amended.

“Income Certification” means a Tenant Income Certification and a Tenant Income Certification Questionnaire in the form attached as Exhibit B hereto or in such other comparable form as may be provided by the Housing Authority to the Owner, or as otherwise approved by the Housing Authority.

“Investor Limited Partner” means the investor limited partner of the Owner, or any other successor entity in such entity’s capacity as a limited partner of the Owner.

“Loan” shall have the meaning given in the recitals hereto.

“Loan Agreement” means, individually or collectively as the context shall require, in respect of the Governmental Lender Notes the Borrower Loan Agreement, and in respect of the Subordinate Bonds, the Subordinate Loan Agreement.

“Low Income Tenant” means a tenant occupying a Low Income Unit.

“Low Income Unit” means any Available Unit if the aggregate Gross Income of all tenants therein does not exceed limits determined in a manner consistent with determinations of “low-income families” under Section 8 of the Housing Act, provided that the percentage of median gross income that qualifies as low income hereunder shall be sixty percent (60%) of median gross income for the Area, with adjustments for family size. A unit occupied by one or more students shall only constitute a Low Income Unit if such students meet the requirements of Section 142(d)(2)(C) of the Code. The determination of an Available Unit’s status as a Low Income Unit shall be made by the Owner upon commencement of each lease term with respect to such unit, and annually thereafter, on the basis of an Income Certification executed by each tenant.

“Manager” means a property manager meeting the requirements of Section 27 hereof. [CIC Management, Inc.], a California corporation, is hereby approved as the initial Manager.

“Project” means the 180-unit multifamily rental housing development (including two manager’s units) to be located at 9900 Camino Santa Fe, in the City of San Diego, San Diego County, on the real property site described in Exhibit A hereto, consisting of those facilities, including real property, structures, buildings, fixtures or equipment situated thereon, as it may at any time exist, the acquisition, construction and development of which facilities are to be financed, in whole or in part, from the proceeds of the sale of the Obligations or the proceeds of any payment by the Owner pursuant to the Loan Agreements, and any real property, structures, buildings, fixtures or equipment acquired in substitution for, as a renewal or replacement of, or a modification or improvement to, all or any part of the facilities described in the Loan Agreements.

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

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

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

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

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

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

“Rental Payments” means the rental payments paid by the occupant of a unit, excluding any supplemental rental assistance to the occupant from the State, the federal government, or any other public agency, but including any mandatory fees or charges imposed on the occupant by the Owner as a condition of occupancy of the unit.

“Subordinate Deed of Trust” means Subordinate Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of October 1, 2021, as the same may be modified, amended or supplemented from time to time, made by Owner to a trustee for the benefit of the Trustee.

“Subordinate Loan Agreement” means that certain Junior Loan Agreement, dated as of October 1, 2021, by and among the Housing Authority, the Trustee and the Owner in respect of the Loan to the Owner from proceeds of the Subordinate Bonds, as the same may be amended and supplemented from time to time.

“Tax Certificate” means the Tax Certificate and Agreement in respect of the Tax-Exempt Obligations, dated the Closing Date, executed by the Housing Authority and the Owner, as the same may be amended from time to time.

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

“Tax-Exempt Obligations” shall have the meaning given in the recitals hereto.

“Transfer” means the conveyance, assignment, sale or other disposition of all or any portion of the Project; and shall also include, without limitation to the foregoing, the following: (1) an installment sales agreement wherein Owner agrees to sell the Project or any part thereof for a price to be paid in installments; and (2) an agreement by the Owner leasing all or a substantial part of the Project to one or more persons or entities pursuant to a single or related transactions.



“Trustee” means U.S. Bank National Association, or any successor trustee appointed and acting under the Subordinate Indenture.

“Very Low Income Tenant” means a tenant occupying a Very Low Income Unit.

“Very Low Income Unit” means any Available Unit if the aggregate Gross Income of all tenants therein does not exceed limits determined in a manner consistent with determinations of “very low-income families” under Section 8 of the Housing Act, provided that the percentage of median gross income that qualifies as very low income hereunder shall be fifty percent (50%) of median gross income for the Area, with adjustments for family size. A unit occupied by one or more students shall only constitute a Very Low Income Unit if such students meet the requirements of Section 142(d)(2)(C) of the Code. The determination of an Available Unit’s status as a Very Low Income Unit shall be made by the Owner upon commencement of each lease term with respect to such unit, and annually thereafter, on the basis of an Income Certification executed by each tenant.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of any gender shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

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

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

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

(b) The Owner hereby represents and warrants that the Project is located entirely within the City.

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

inherent in such transactions; and that it has not relied on the Housing Authority for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Housing Authority in any manner except to execute and deliver the Obligations in order to provide funds to assist the Owner in acquiring, constructing and developing the Project.

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

(a) The Project will be acquired, constructed, developed and operated for the purpose of providing multifamily residential rental property. The Owner will own, manage and operate the Project as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with Section 142(d) of the Code, Section 1.103-8(b) of the Regulations and the provisions of the Housing Law, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the dwelling units in the Project (except for not more than two units set aside for a resident manager or other administrative use) will be similarly constructed units, and each dwelling unit in the Project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink.

(c) None of the dwelling units in the Project will at any time be utilized on a transient basis or rented for a period of less than 30 consecutive days, or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park; provided that the use of certain units for tenant guests on an intermittent basis shall not be considered transient use for purposes of this Regulatory Agreement.

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

(e) All of the Available Units in the Project (except for not more than two units set aside for a resident manager or other administrative use) will be available for rental during the period beginning on the date hereof and ending on the termination of the Compliance Period on a continuous, “first-come, first-served” basis to members of the general public, and the Owner will not give preference to any particular class or group in renting the dwelling units in the Project,

except to the extent that dwelling units are required to be leased or rented in such a manner that they constitute Low Income Units or Very Low Income Units.

(f) The Project consists of a parcel or parcels that are contiguous except for the interposition of a road, street or stream, and all of the facilities of the Project comprise a single geographically and functionally integrated project for residential rental property, as evidenced by the ownership, management, accounting and operation of the Project.

(g) No dwelling unit in the Project shall be occupied by the Owner; provided, however, that if the Project contains five or more dwelling units, this provision shall not be construed to prohibit occupancy of not more than two dwelling units by a resident manager or maintenance personnel, any of whom may be the Owner.

(h) The Owner shall deliver to the Administrator and the Funding Lender, (i) within 30 days after the date on which 10% of the dwelling units in the Project are occupied, a written notice specifying such date, and (ii) within 30 days after the date on which 50% of the dwelling units in the Project are occupied, a written notice specifying such date.

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

(a) During the Compliance Period, no less than 30% of the total number of completed units in the Project shall at all times be Low Income Units and no less than 10% of the total number of completed units in the Project shall at all times be Very Low Income Units. For the purposes of this paragraph (a), a vacant unit that was most recently a Low Income Unit or Very Low Income Unit is treated as a Low Income Unit or Very Low Income Unit, respectively, until reoccupied, other than for a temporary period of not more than 31 days, at which time the character of such unit shall be redetermined.

(b) No tenant qualifying as a Low Income Tenant or Very Low Income Tenant upon initial occupancy shall be denied continued occupancy of a unit in the Project because, after admission, the aggregate Gross Income of all tenants in the unit occupied by such Low Income Tenant or Very Low Income Tenant, respectively, increases to exceed the qualifying limit for a Low Income Unit or Very Low Income Unit, respectively. However, should the aggregate Gross Income of tenants in a Low Income Unit or Very Low Income Unit as of the most recent determination thereof, exceed one hundred forty percent (140%) of the applicable income limit for a Low Income Unit or Very Low Income Unit, respectively, occupied by the same number of tenants, the next available unit of comparable or smaller size must be rented to (or held vacant and available for immediate occupancy by) Low Income Tenant(s) or Very Low Income Tenant(s), respectively. The unit occupied by such tenants whose aggregate Gross Income exceeds such applicable income limit shall continue to be treated as a Low Income Unit or Very Low Income Unit for purposes of the 30% or 10%, respectively, requirement of Section 4(a) hereof unless and until an Available Unit of comparable or smaller size is rented to persons other than Low Income Tenants or Very Low Income Tenants, respectively.

(c) For the Compliance Period, the Owner will obtain, complete and maintain on file Income Certifications for each Low Income Tenant and Very Low Income Tenant, including (i) an Income Certification dated immediately prior to the initial occupancy of such Low Income Tenant or Very Low Income Tenant, respectively, in the unit and (ii) thereafter, an annual Income Certification with respect to each Low Income Tenant or Very Low Income Tenant, respectively. The Owner will provide such additional information as may be required in the future by the Code, the State or the Housing Authority, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to Tax-Exempt obligations. Upon request of the Administrator or the Housing Authority, copies of Income Certifications for Low Income Tenants and/or Very Low Income Tenants commencing or continuing occupation of a Low Income Unit or Very Low Income Unit, respectively, shall be submitted to the Administrator or the Housing Authority, as requested.

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

(e) The Owner will maintain complete and accurate records pertaining to the Low Income Units and Very Low Income Units, and will permit any duly authorized representative of the Housing Authority, the Fiscal Agent, the Trustee, the Department of the Treasury or the Internal Revenue Service to inspect during normal business hours the books and records of the Owner pertaining to the Project upon reasonable written notice, including those records pertaining to the occupancy of the Low Income Units and the Very Low Income Units.

(f) The Owner will prepare and submit to the Administrator, on behalf of the Housing Authority, not less than annually, commencing the first anniversary of the Closing Date and each anniversary thereafter, a Certificate of Continuing Program Compliance executed by the Owner in substantially the form attached hereto as Exhibit C. During the Compliance Period, the Owner shall submit a completed Internal Revenue Code Form 8703 or such other annual certification as required by the Code with respect to the Project, to the Secretary of the Treasury on or before March 31 of each year (or such other date as may be required by the Code).

(g) For the Compliance Period, all tenant leases or rental agreements shall be subordinate to this Regulatory Agreement, the Deed of Trust and the Subordinate Deed of Trust. All leases pertaining to Low Income Units or Very Low Income Units shall contain clauses, among others, wherein each tenant who occupies a Low Income Unit or a Very Low Income Unit, respectively: (i) certifies the accuracy of the statements made by such tenant in the Income Certification; (ii) agrees that the family income and other eligibility requirements shall be deemed

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

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

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

(a) The Owner and the Housing Authority will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the Tax-Exempt nature of the interest on the Tax-Exempt Obligations and, if either of them should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

(b) The Owner and the Housing Authority will file of record such documents and take such other steps as are necessary, in the written opinion of Tax Counsel filed with the Housing Authority, the Fiscal Agent and the Trustee (with a copy to the Owner), in order to ensure that the requirements and restrictions of this Regulatory Agreement will be binding upon all owners of the Project, including, but not limited to, the execution and recordation of this Regulatory Agreement in the real property records of the County.

Section 6. Requirements of the Housing Law. In addition to the other requirements set forth herein, pursuant to the requirements of Section 34312.3 of the Housing Law, the Owner agrees that it shall comply with the following:

(a) Not less than 30% of the total number of units in the Project shall be Low Income Units and not less than 10% of the total number of units in the Project shall be Very Low Income Units. The units made available to meet this requirement shall be of comparable quality and offer a range of sizes and numbers of bedrooms comparable to the units that are available to other tenants in the Project.

(b) The Rental Payments for the Low Income Units paid by the tenants thereof (excluding any supplemental rental assistance from the State, the federal government or any other public agency to those tenants or on behalf of those units) shall not exceed 30% of an amount equal to 60% of the median adjusted gross income for the Area. The Rental Payments for the Very Low Income Units paid by the tenants thereof (excluding any supplemental rental assistance from the State, the federal government or any other public agency to those tenants or on behalf of those units) shall not exceed 30% of an amount equal to 50% of the median adjusted gross income for the Area, based upon an assumed household size of one person/studio, two persons/one bedroom, three persons/two bedroom, four persons/three bedroom, and five persons/four bedroom, or as otherwise required by the Housing Law.

(c) The Owner shall accept as tenants, on the same basis as all other prospective tenants, low-income persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act. The Owner shall not permit any selection criteria to be applied to Section 8 certificate or voucher holders that is more burdensome than the criteria applied to all other prospective tenants.

(d) The units reserved for occupancy as required by Section 4(a) shall remain available on a priority basis for occupancy at all times on and after the Closing Date and continuing through the Compliance Period.

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

(f) Except as set forth in Section 13 hereof, the covenants and conditions of this Regulatory Agreement shall be binding upon successors in interest of the Owner.

(g) This Regulatory Agreement shall be recorded in the office of the County recorder, and shall be recorded in the grantor-grantee index under the name of the Owner as grantor and under the name of the Housing Authority as grantee.

Section 7. Requirements of the Housing Authority. In addition to other requirements set forth herein and to the extent not prohibited by the requirements set forth in Sections 4 through 6 hereof, the Owner hereby agrees to comply with each of the requirements of the Housing Authority set forth in this Section 7, as follows:

(a) For the duration of the Compliance Period, notwithstanding any retirement of the Obligations or termination of the Loan Agreements, the Owner will pay to the Housing

Authority all of the amounts required to be paid by the Owner under the Loan Agreements and will indemnify the Housing Authority, the Fiscal Agent and the Trustee as provided in Section 9 and, with respect to the Fiscal Agent and the Trustee, Section 18 of this Regulatory Agreement.

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

(c) The Owner acknowledges that the Housing Authority has appointed the Administrator to administer this Regulatory Agreement and to monitor performance by the Owner of the terms, provisions and requirements hereof. The Owner shall comply with any reasonable request made by the Administrator or the Housing Authority to deliver to any such Administrator, in addition to or instead of the Housing Authority, any reports, notices or other documents required to be delivered pursuant hereto, and to make the Project and the books and records with respect thereto available for inspection by the Administrator as an agent of the Housing Authority. The fees and expenses of the Administrator shall be paid by the Housing Authority.

(d) For purposes of Section 6(b), the base rents shall be adjusted for household size appropriate for the unit, to the extent permitted by law.

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

(f) As provided by the CDLAC Resolution, throughout the Compliance Period, the Owner shall maintain at least 36 units as Very Low Income Units (including two two-bedroom units and two three-bedroom units), and at least 142 units as Low Income Units.

Any of the foregoing requirements of the Housing Authority contained in this Section 7 may be expressly waived by the Housing Authority, in its sole discretion, in writing, but (i) no waiver by the Housing Authority of any requirement of this Section 7 shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement except to the extent the Housing Authority has received an opinion of Tax Counsel that any such provision is not required by the Act and the Housing Law and may be waived without adversely affecting the exclusion from gross income of interest on the Tax-Exempt Obligations for federal income tax purposes; and (ii) any requirement of this Section 7 shall be void and of no force and effect if the Housing Authority and the Owner receive a written opinion of Tax Counsel to the effect that

compliance with any such requirement would cause interest on the Obligations to cease to be Tax-Exempt or to the effect that compliance with such requirement would be in conflict with the Housing Law or any other state or federal law.

Section 8. Modification of Covenants. The Owner, the Fiscal Agent, the Trustee and the Housing Authority hereby agree as follows:

(a) To the extent any amendments to the Housing Law, the Regulations or the Code shall, in the written opinion of Tax Counsel filed with the Housing Authority, the Fiscal Agent, the Trustee and the Owner, retroactively impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement, and if such requirements are applicable to the Project and compliance therewith is necessary to maintain the validity of, or the Tax-Exempt status of interest on the Tax-Exempt Obligations, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements.

(b) To the extent that the Housing Law, the Regulations or the Code, or any amendments thereto, shall, in the written opinion of Tax Counsel filed with the Housing Authority, the Fiscal Agent, the Trustee and the Owner, impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Regulatory Agreement, this Regulatory Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Housing Authority, at its sole discretion, the Fiscal Agent, the Trustee and the Owner, with the consent of the Funding Lender, and only upon receipt by the Housing Authority, the Fiscal Agent and the Trustee of the written opinion of Tax Counsel to the effect that such amendment will not affect the Tax-Exempt status of interest on the Tax-Exempt Obligations or violate the requirements of the Housing Law, and otherwise in accordance with Section 22 hereof.

(c) The Owner, the Housing Authority and, if applicable, the Fiscal Agent and the Trustee, shall execute, deliver and, if applicable, the Owner or the Housing Authority shall file of record any and all documents and instruments necessary to effectuate the intent of this Section 8, and each of the Owner and the Housing Authority hereby appoints the Fiscal Agent and Trustee as its true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record (it being understood that the Fiscal Agent and Trustee has no duty or obligation to take such action) on behalf of the Owner or the Housing Authority, as is applicable, any such document or instrument (in such form as may be approved in writing by Tax Counsel) if either the Owner or the Housing Authority defaults in the performance of its obligations under this subsection (c); provided, however, that unless directed in writing by the Housing Authority or the Owner, the Fiscal Agent and Trustee shall take no action under this subsection without first notifying the Owner or the Housing Authority, or both of them, as is applicable, and without first providing the Owner or the Housing Authority, or both of them, as is applicable, an opportunity to comply with the requirements of this Section 8. Nothing in this subsection (c) shall be construed to allow the Fiscal Agent or Trustee to execute an amendment to this Regulatory Agreement on behalf of the Housing Authority or the Owner.



Section 9. Indemnification; Other Payments. To the fullest extent permitted by law, the Owner agrees to indemnify, hold harmless and defend the Housing Authority, the City, the Fiscal Agent, the Trustee and each of its officers, governing members, directors, officials, employees, attorneys and agents (collectively, the “Indemnified Parties”), against any and all losses, damages, claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys’ fees and expenses, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under or any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

(i) the Obligations, the Funding Loan Agreement, the Subordinate Indenture, the Loan Agreements, this Regulatory Agreement or the Tax Certificate and all documents related thereto, or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby, including, as applicable, the execution and delivery or transfer of interests in the Obligations;

(ii) any act or omission of the Owner or any of its agents, contractors, servants, employees or licensees in connection with the Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, construction/rehabilitation of, the Project or any part thereof;

(iii) any lien or charge upon payments by the Owner to the Housing Authority or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Housing Authority in respect of any portion of the Project;

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

(v) the prepayment, defeasance and/or redemption, in whole or in part, of the Obligations;

(vi) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in any offering statement or disclosure document for the Obligations or any of the documents relating to the Obligations, or any omission or alleged omission from any offering statement or disclosure document for the Obligations of any material fact necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading; or

(vii) any declaration of taxability of interest on the Tax-Exempt Obligations, or allegations (or regulatory inquiry) that interest on the Tax-Exempt Obligations is taxable, for federal tax purposes;

except to the extent such damages are caused by the willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Owner shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Owner if in the judgment of such Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

In addition to the foregoing, the Owner will pay upon demand all of the fees and expenses paid or incurred by the Fiscal Agent, the Trustee and/or the Housing Authority in enforcing the provisions hereof, as more fully set forth in the Loan Agreements.

The provisions of this Section 9 shall survive the final payment or defeasance of the Obligations and this Regulatory Agreement; provided, however, the provisions of this Section shall, in the case of the Fiscal Agent and Trustee, survive the term of this Regulatory Agreement or the resignation or removal of the Fiscal Agent or Trustee, but only as to claims arising from events occurring during the term of this Regulatory Agreement or the Fiscal Agent's and Trustee's tenure under the Funding Loan Agreement and Subordinate Indenture, respectively, and shall, in the case of the Housing Authority, survive the term of this Regulatory Agreement, but only as to claims arising from events occurring during the term of this Regulatory Agreement.

Section 10. Consideration. The Housing Authority has agreed to execute and deliver the Obligations to provide funds to lend to the Owner to finance the Project, all for the purpose, among others, of inducing the Owner to acquire, construct, develop and operate the Project. In consideration of the execution and delivery of the Obligations by the Housing Authority, the Owner has entered into this Regulatory Agreement and has agreed to restrict the uses to which this Project can be put on the terms and conditions set forth herein.

Section 11. Reliance. The Housing Authority and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons, including but not limited to the Administrator, Trustee and Fiscal Agent, interested in the legality and validity of the Obligations, in the exemption from California personal income taxation of interest on the Obligations and in the Tax-Exempt status of the interest on the Tax-Exempt Obligations. In performing their duties and obligations hereunder, the Housing Authority, the Administrator, the Trustee and the Fiscal Agent may rely upon statements and certificates of the Low Income Tenants and the Very Low Income Tenants, and upon audits of the books and records of the Owner pertaining to the Project. In addition, the Housing Authority, the Trustee and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Housing Authority,

the Trustee or the Fiscal Agent hereunder in good faith and in conformity with such opinion. In determining whether any default or lack of compliance by the Owner exists under this Regulatory Agreement, the Fiscal Agent shall not be required to conduct any investigation into or review of the operations or records of the Owner and may rely solely on any written notice or certificate delivered to the Fiscal Agent and the Trustee by the Owner or the Housing Authority with respect to the occurrence of a default, and in the absence of such certificate, may assume that no default or lack of compliance exists.

Section 12. Transfer of the Project. For the Compliance Period, the Owner shall not Transfer the Project, in whole or in part, without the prior written consent of the Housing Authority, which consent shall not be unreasonably withheld or delayed if the following conditions are satisfied: (A) the receipt by the Housing Authority of evidence acceptable to the Housing Authority that (1) the Owner shall not be in default hereunder or under the Loan Agreements, if in effect (which may be evidenced by a Certificate of Continuing Program Compliance), or the transferee undertakes to cure any defaults of the Owner to the reasonable satisfaction of the Housing Authority; (2) the continued operation of the Project shall comply with the provisions of this Regulatory Agreement; (3) either (a) the transferee, or its general partner or member, or its Manager has at least three years' experience in the ownership, operation and management of similar size rental housing projects, and at least one year's experience in the ownership, operation and management of rental housing projects containing below-market-rate units, without any record of material violations of discrimination restrictions or other state or federal laws or regulations or local governmental requirements applicable to such projects, or (b) the transferee agrees to retain a Manager with the experience and record described in subclause (a) above, or (c) the transferring Owner or its management company will continue to manage the Project, or another management company reasonably acceptable to the Housing Authority will manage, for at least one year following such Transfer and, if applicable, during such period the transferring Owner or its management company will provide training to the transferee and its manager in the responsibilities relating to the Low Income Units and the Very Low Income Units; and (4) the person or entity that is to acquire the Project does not have pending against it, and does not have a history of significant and material building code violations or complaints concerning the maintenance, upkeep, operation, and regulatory agreement compliance of any of its projects as identified by any local, state or federal regulatory agencies; (B) the execution by the transferee of any document reasonably requested by the Housing Authority with respect to the assumption of the Owner's obligations under this Regulatory Agreement and the Loan Agreements (if then in effect), including without limitation an instrument of assumption hereof and thereof, and delivery to the Housing Authority, the Trustee and the Fiscal Agent of an opinion of such transferee's counsel to the effect that each such document and this Regulatory Agreement are valid, binding and enforceable obligations of such transferee, subject to bankruptcy and other standard limitations affecting creditor's rights; (C) receipt by the Housing Authority, the Trustee and the Fiscal Agent of an opinion of Tax Counsel to the effect that any such Transfer will not adversely affect the Tax-Exempt status of interest on the Tax-Exempt Obligations; (D) receipt by the Housing Authority of all fees and/or expenses then currently due and payable to the Housing Authority by the Owner and (E) receipt by the Issuer of evidence of satisfaction of compliance with the provisions of Section 29(d)(i) related to notice to CDLAC of transfer of the Project.

It is hereby expressly stipulated and agreed that any Transfer of the Project in violation of this Section 12 shall be null, void and without effect, shall cause a reversion of title to the Owner, and shall be ineffective to relieve the Owner of its obligations under this Regulatory Agreement. The written consent of the Housing Authority to any Transfer of the Project shall constitute conclusive evidence that the Transfer is not in violation of this Section 12. Nothing in this Section shall affect any provision of any other document or instrument between the Owner and any other party which requires the Owner to satisfy certain conditions or obtain the prior written consent of such other party in order to Transfer the Project. Upon any Transfer that complies with this Regulatory Agreement, the Owner shall be fully released from its obligations hereunder to the extent such obligations have been fully assumed in writing by the transferee of the Project.

The foregoing notwithstanding, the Project may be transferred pursuant to a foreclosure, exercise of power of sale or deed in lieu of foreclosure or comparable conversion under the Deed of Trust without the consent of the Housing Authority or compliance with the provisions of this Section 12. Notwithstanding the foregoing, no approval shall be needed for the transfer of limited partnership interests in the Owner to affiliates of the Investor Limited Partner of the Owner, including, without limitation, the transfer of partnership interests in the Owner from the Investor Limited Partner and non-managing membership interests in the limited partner of the Owner.

For the Compliance Period, the Owner shall not: (1) encumber any of the Project or grant commercial leases of any part thereof, or permit the conveyance, transfer or encumbrance of any part of the Project, except for (A) the Deed of Trust and Permitted Encumbrances (as defined in the Deed of Trust), or (B) a Transfer in accordance with the terms of this Regulatory Agreement, in each case upon receipt by the Housing Authority, the Trustee and the Fiscal Agent of an opinion of Tax Counsel to the effect that such action will not adversely affect the Tax-Exempt status of interest on the Tax-Exempt Obligations, respectively (provided that such opinion will not be required with respect to any encumbrance, lease or transfer relating to a commercial operation or ancillary facility that will be available for tenant use and is customary to the operation of multifamily housing developments similar to the Project, as certified in writing by the Owner to the Housing Authority, the Trustee and the Fiscal Agent); (2) demolish any part of the Project or substantially subtract from any real or personal property of the Project, except to the extent that what is demolished or removed is replaced with comparable property or such demolition or removal is otherwise permitted by the Borrower Loan Agreement or the Deed of Trust; or (3) permit the use of the dwelling accommodations of the Project for any purpose except rental residences.

Section 13. Term. This Regulatory Agreement and all and several of the terms hereof shall become effective upon its execution and delivery, and shall remain in full force and effect for the period provided herein and shall terminate as to any provision not otherwise provided with a specific termination date and shall terminate in its entirety at the end of the Compliance Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Obligations and discharge of the Funding Loan Agreement, the Subordinate Indenture and the Loan Agreements; provided, however, the Fiscal Agent or Trustee, as applicable, shall no longer be deemed a party hereto, as set forth in the last paragraph of Section 18 hereof.

The terms of this Regulatory Agreement to the contrary notwithstanding, the requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other casualty, 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 Closing Date, which prevents the Housing Authority, the Fiscal Agent or the Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Obligations are retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure or the delivery of a deed in lieu of foreclosure or a similar event, the Owner or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Owner hereby agrees that, following any foreclosure, transfer of title by deed in lieu of foreclosure or similar event, neither the Owner nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes. Notwithstanding any other provision of this Regulatory Agreement, this Regulatory Agreement may be terminated upon agreement by the Housing Authority, the Fiscal Agent, the Trustee and the Owner, with the consent of CDLAC, upon receipt by the Housing Authority, the Fiscal Agent and the Trustee of an opinion of Tax Counsel to the effect that such termination will not adversely affect the exclusion from gross income of interest on the Tax-Exempt Obligations for federal income tax purposes. Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and (in the case of the Housing Authority and the Owner) record appropriate instruments of release and discharge of the terms hereof prepared by or on behalf of the Owner or the Housing Authority; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

Section 14. Covenants to Run With the Land. Notwithstanding Section 1461 of the California Civil Code, the Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Housing Authority and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Project; provided, however, that on the termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

Section 15. Burden and Benefit. The Housing Authority and the Owner hereby declare their understanding and intent that the burdens of the covenants set forth herein touch and concern the land in that the Owner's legal interest in the Project is rendered less valuable thereby. The Housing Authority and the Owner hereby further declare their understanding and intent that the benefits of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Low Income Tenants and Very Low Income Tenants, the intended

beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Obligations were executed and delivered.

Section 16. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use of the site on which the Project is located.

Section 17. Default; Enforcement. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured for a period of 60 days after written notice thereof shall have been given by the Housing Authority, Funding Lender, the Trustee or the Fiscal Agent to the Owner, or for a period of 60 days from the date the Owner should, with reasonable diligence, have discovered such default, then the Housing Authority, the Trustee or the Fiscal Agent shall declare an "Event of Default" to have occurred hereunder; provided, however, that if the default is of such a nature that it cannot be corrected within 60 days, such default shall not constitute an Event of Default hereunder so long as (i) the Owner institutes corrective action within said 60 days and diligently pursues such action (to the satisfaction of the Housing Authority) until the default is corrected, and (ii) in the opinion of Tax Counsel, the failure to cure said default within 60 days will not adversely affect the Tax-Exempt status of interest on the Tax-Exempt Obligations. The Housing Authority, the Trustee and the Fiscal Agent shall have the right to enforce the obligations of the Owner under this Regulatory Agreement within shorter periods of time than are otherwise provided herein if necessary to ensure compliance with the Housing Law or the Code.

Following the declaration of an Event of Default hereunder, the Housing Authority or the Fiscal Agent or Trustee, at the written direction of Housing Authority, subject to the terms of the Funding Loan Agreement, may take any one or more of the following steps, in addition to all other remedies provided by law or equity:

(i) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Owner to perform its obligations and covenants hereunder or enjoin any acts or things that may be unlawful or in violation of the rights of the Housing Authority or the Fiscal Agent hereunder;

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

(iii) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder; and

(iv) with the consent of the Funding Lender, which consent shall not be unreasonably withheld, declare a default under the Borrower Loan Agreement or the Subordinate Loan Agreement, as applicable, and proceed with any remedies provided therein.

The Owner hereby agrees that specific enforcement of the Owner's agreements contained herein is the only means by which the Housing Authority may fully obtain the benefits of this Regulatory Agreement made by the Owner herein, and the Owner therefore agrees to the

imposition of the remedy of specific performance against it in the case of any Event of Default by the Owner hereunder.

The Fiscal Agent shall have the right, in accordance with this Section and the provisions of the Funding Loan Agreement, without the consent or approval of the Housing Authority, but with the consent of the Funding Lender, which consent shall not be unreasonably withheld, to exercise any or all of the rights or remedies of the Housing Authority hereunder; provided that prior to taking any such action the Fiscal Agent shall give the Housing Authority written notice of its intended action. After the Funding Loan Agreement has been discharged, the Housing Authority may act on its own behalf to declare an "Event of Default" to have occurred and to take any one or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Fiscal Agent.

The Housing Authority, the Fiscal Agent and Trustee hereby agree that cure of any Event of Default made or tendered by any partner of the Owner shall be deemed to be a cure by the Owner and shall be accepted or rejected on the same basis as if made or tendered by the Owner.

All reasonable fees, costs and expenses (including reasonable attorney's fees and expenses) of the Fiscal Agent, the Trustee and the Housing Authority incurred in taking any action pursuant to this Section shall be the sole responsibility of the Owner; provided, however, that in the event that any action arises hereunder in which the Owner and the Fiscal Agent or Trustee are adversaries, the prevailing party, if any, shall be entitled to recover legal fees and costs from the other party; provided, further, if the prevailing party is not the Fiscal Agent or Trustee, as applicable, the Fiscal Agent or Trustee shall remain entitled to any indemnity applicable to it hereunder, or under the Loan Agreements, for the payment of such legal fees and costs.

Section 18. The Fiscal Agent and the Trustee. The Fiscal Agent and the Trustee shall act as specifically provided herein and in the Funding Loan Agreement and the Subordinate Indenture and may exercise such additional powers as are reasonably incidental hereto and thereto. The Fiscal Agent and Trustee shall have no duty to act with respect to enforcement of the Owner's performance hereunder as described in Section 17 unless it shall have actual knowledge of any such default as provided in Section 17 and, with respect to the Fiscal Agent, unless it has received written direction from the Funding Lender and has been indemnified to its satisfaction. The Fiscal Agent may act as the agent of and on behalf of the Housing Authority, and any act required to be performed by the Housing Authority as herein provided shall be deemed taken if such act is performed by the Fiscal Agent. In connection with any such performance, the Fiscal Agent is acting solely as Fiscal Agent under the Funding Loan Agreement and not in its individual capacity, and, except as expressly provided herein, all provisions of the Funding Loan Agreement relating to the rights, privileges, powers and protections of the Fiscal Agent shall apply with equal force and effect to all actions taken (or omitted to be taken) by the Fiscal Agent in connection with this Regulatory Agreement. The Trustee is acting solely as Trustee under the Subordinate Indenture not in its individual capacity, and, except as expressly provided herein, all provisions of the Subordinate Indenture relating to the rights, privileges, powers and protections of the Trustee shall apply with equal force and effect to all actions taken (or omitted to be taken) by the Trustee in connection with this Regulatory Agreement. None of the Fiscal Agent, the Trustee, nor any of their officers, directors or employees shall be liable for any action taken or omitted to be taken by it or

them hereunder or in connection herewith except for its or their own gross negligence or willful misconduct.

No provision of this Regulatory Agreement shall require the Fiscal Agent or Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

The Housing Authority shall be (or shall cause the Administrator to be) responsible for the monitoring of the Owner's compliance with the terms of this Regulatory Agreement. Neither the Fiscal Agent nor the Trustee shall be responsible for such monitoring.

After the date on which no portion of the Governmental Lender Notes remains Outstanding, as provided in the Funding Loan Agreement, the Fiscal Agent shall no longer have any duties or responsibilities under this Regulatory Agreement.

After the date on which no portion of the Subordinate Bonds remains Outstanding, as provided in the Subordinate Indenture, the Trustee shall no longer have any duties or responsibilities under this Regulatory Agreement.

After the date on which no portion of the Obligations remain Outstanding, all references to the Fiscal Agent or the Trustee in this Regulatory Agreement shall be deemed references to the Housing Authority.

To the extent that the Fiscal Agent and the Trustee are the same entity, rights, duties, obligations and immunities of either of them hereunder shall be construed without duplication.

Section 19. Recording and Filing. (a) The Owner shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the County, and in such other places as the Housing Authority may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording.

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

(c) The Owner hereby covenants to include or reference the requirements and restrictions contained in this Regulatory Agreement in any documents transferring any interest in the Project to another person to the end that such transferee has notice of, and is bound by, such restrictions, and, except in the case of a foreclosure or comparable involuntary conversion of the Deed of Trust, whereby the Funding Lender becomes the owner of the Project, to obtain the agreement from any transferee to abide by all requirements and restrictions of this Regulatory Agreement.



Section 20. Payment of Fees. Notwithstanding any prepayment of the Loans or the discharge of the Funding Loan Agreement or the Subordinate Indenture, throughout the Compliance Period, the Owner shall continue to pay the fees of the Housing Authority as provided in Section 9 hereof, unless such prepayment is made in connection with a refunding of the Obligations.

The Owner agrees to pay to the Housing Authority (a) on the Closing Date, the Housing Authority's up-front administrative fee, in the amount of \$[\_\_\_\_\_], which amount is equal to 25 basis points (0.25%) of the maximum principal amount of the Obligations (\$[AGGREGATE NOT TO EXCEED PAR]), subject to any limitations of the Code, and (b) commencing on the first anniversary of the Closing Date and continuing on each anniversary of the Closing Date throughout the Compliance Period, the annual ongoing Housing Authority's administrative fee (the "Ongoing Administrative Fee") as follows: (i) prior to the Conversion Date, 0.125% per annum of the maximum authorized principal amount of the Obligations as of the Closing Date, and (ii) commencing with the first October 1 occurring after the Conversion Date and thereafter on each subsequent October 1, an amount equal to the greater of \$10,000 per year or 0.125% of the outstanding principal amount of the Obligations outstanding following any partial repayment of principal of the Obligations on or in connection with the Conversion Date, provided, however, the Ongoing Administrative Fee in any event will not be less than \$10,000 nor more than \$62,500, which amount shall be payable annually, in arrears, on each such October 1 and continuing throughout the Qualified Project Period, and provided further that no further reduction in the Ongoing Administrative Fee shall be made following the Conversion Date (*i.e.*, the Ongoing Administrative Fee will remain fixed based on the principal amount of the Obligations outstanding at the Conversion Date regardless of any later reductions of the outstanding principal of the Obligations); and (iii) the Owner agrees to pay, within 30 days after receipt of request for payment thereof, all reasonable out-of-pocket expenses of the Housing Authority (not including salaries and wages of Housing Authority employees) related to the Obligations, the Project and the financing thereof, including, without limitation, legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Obligations.

The Ongoing Administrative Fee will be charged each year during the Compliance Period hereunder in respect of administrative and monitoring costs of the Housing Authority and will be due and payable, without the requirement for any invoice to be delivered to the Owner.

The fees of the Housing Authority referenced in this Section 20 shall in no way limit amounts payable by the Borrower under Section 9 hereof, or otherwise arising in connection with the Housing Authority's or Funding Lender's enforcement of the provisions of this Regulatory Agreement, but the Housing Authority does agree to compensate any third party Administrator appointed by it from its annual administrative fees for the ordinary duties of the Administrator hereunder. In addition to the foregoing, the Owner shall pay to the Housing Authority, promptly following a written demand from the Housing Authority to the Owner, any out-of-pocket expenses of the Housing Authority incurred in connection with the administration of any of the Loan Documents.

In the event that the Obligations are prepaid in part or in full prior to the end of the term of this Regulatory Agreement other than (i) by means of refunding bonds issued by the Housing Authority to refund the Obligations, or (ii) in connection with a foreclosure or deed in lieu of foreclosure, and transfer of title to the Project other than to the Borrower or any party related to the Borrower; the Housing Authority's annual fee for the remainder of the term of this Regulatory Agreement, at the option of the Housing Authority, shall be paid by the Borrower at the time of the prepayment of the Obligations and shall be a lump sum amount equal to the present value (based on a discount rate equal to the yield on the Obligations, as determined by the Housing Authority at the time of prepayment) of the Housing Authority's fee, calculated based on the principal amount of the Obligations outstanding immediately preceding such prepayment, for the number of remaining years of the Compliance Period.

Notwithstanding any prepayment of the Borrower Loan and discharge of the Funding Loan Agreement, the Owner shall continue to pay (or, to the extent allowed under the Code, shall prepay the present value at such time of) the fees of the Housing Authority as provided in this Section 20.

If the Owner fails to make payment of the Housing Authority's annual fee for a period of two consecutive years or more, then the Housing Authority may, in its sole discretion, declare the total amount of the annual fee of the Housing Authority through the end of the Compliance Period immediately due and payable, such amount to be discounted at a rate equal to the then current market rate for U.S. Treasury obligations of a maturity equal to the remaining term of the Compliance Period.

*Occupancy Monitoring Fee.* Separately from, and in addition to, the annual ongoing administrative fee the Owner will pay to the Housing Authority an annual occupancy monitoring fee (the "Occupancy Monitoring Fee") for the greater of: (1) [ ] units (constituting [ ]% of the [180] units) at an initial amount of \$150/unit for a total of \$[ ] or (b) the total number of units monitored by the Housing Authority. The Occupancy Monitoring Fee is subject to annual adjustment. The Owner agrees to pay the Housing Authority an initial monitoring fee in the amount set forth in schedules promulgated by Housing Authority from time to time. In addition, in each year during the term of this Regulatory Agreement, the Owner shall pay to the Housing Authority an annual Occupancy Monitoring Fee, as determined by the Housing Authority in schedules promulgated by Housing Authority from time to time.

Section 21. Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California.

Section 22. Amendments; Waivers. (a) Except as provided in Section 8(a) hereof, this Regulatory Agreement may be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County, and only upon (i) receipt by the Housing Authority, the Trustee and the Fiscal Agent of an opinion from Tax Counsel that such amendment will not adversely affect the Tax-Exempt status of interest on the Tax-Exempt Obligations and is not contrary to the provisions of the Housing Law and (ii) the written consent of the Funding Lender, who shall receive a copy of any such amendment.

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

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

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

San Diego Housing Commission  
1122 Broadway, Suite 300  
San Diego, CA 92101  
Attention: Bond Project Manager-Real Estate Department  
Telephone: (619) 578-7582  
Facsimile: (619) 578-7356

Unless otherwise specified by CDLAC, the address of CDLAC is:

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

The Housing Authority, the Administrator, the Trustee, the Fiscal Agent, CDLAC and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Notice shall be deemed given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission; provided that any telecopy or other electronic transmission received by any party after 4:00 p.m., local time of the receiving party, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day. A copy of each notice of default provided to the Owner hereunder shall also be provided the Funding Lender at the address(es) for the Funding Lender set forth in the Funding Loan Agreement.

A copy of each notice sent by or to the Owner shall also be sent to the Manager at the address of the Manager provided by the Owner to the Administrator and to the Investor Limited Partner at the address(es) for the Investor Limited Partner set forth in the Funding Loan Agreement, but such copies shall not constitute notice to the Owner, nor shall any failure to send such copies constitute a breach of this Regulatory Agreement or a failure of or defect in notice to the Owner.

The Owner shall notify the Housing Authority and the Administrator in writing of any change to the name of the Project or any change of name or address for the Owner or the Manager. The Owner shall notify CDLAC in writing of any event provided in Section 29(d) hereof.

Section 24. Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 25. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

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

Section 27. Property Management. The Owner agrees that at all times the Project shall be managed by a property manager (i) approved by the Housing Authority in its reasonable discretion and (ii) who has at least three years' experience in the ownership, operation and

management of similar size rental housing projects, and at least one year's experience in the ownership, operation and management of rental housing projects containing below-market-rate units, without any record of material violations of discrimination restrictions or other state or federal laws or regulations or local governmental requirements applicable to such projects (the "Manager"). The Housing Authority has approved [CIC Management, Inc.], [a California corporation], as the initial Manager. The Owner shall submit to the Housing Authority from time to time such information about the background, experience and financial condition of any existing or proposed Manager as the Housing Authority may reasonably require to determine whether such Manager meets the requirements for a Manager set forth herein. The Housing Authority reserves the right to conduct periodic reviews of the management practices and of the Manager to determine if the Project is being operated and managed in accordance with the requirements and standards of this Regulatory Agreement. The Owner agrees to cooperate with the Housing Authority in such reviews.

*Replacement of Manager.* If the Housing Authority determines in its reasonable judgment that the Project is not being operated and managed in accordance with one or more of the material requirements or standards of this Regulatory Agreement, the Housing Authority may deliver written notice to the Owner, the Fiscal Agent, the Trustee and the Funding Lender requesting replacement of the Manager, which notice shall state clearly the reasons for such request. The Owner agrees that, upon receipt of such notice, it shall within 60 days submit to the Housing Authority, with copies to the Fiscal Agent and the Funding Lender, a proposal to engage a new Manager meeting the requirements of this Section 27. Each of the Housing Authority and the Funding Lender shall respond within 30 days to such proposal or such approval shall be deemed given. Upon receipt of such consent or deemed consent, the Owner shall within 60 days terminate the existing Manager's engagement and engage the new Manager.

Notwithstanding any other provision of this Section 27 to the contrary, the Funding Lender may at any time by written instruction to the Housing Authority, the Fiscal Agent, the Trustee and the Owner deny the Housing Authority's request for a replacement Manager and direct that the existing Manager be retained.

Section 28. Third-Party Beneficiary. CDLAC is intended to be and shall be a third-party beneficiary of this Regulatory Agreement. CDLAC shall have the right (but not the obligation) to enforce the CDLAC Conditions and to pursue an action for specific performance or other available remedy at law or in equity in accordance with Section 17 hereof, provided that any such action or remedy shall not materially adversely affect the interests and rights of the Holders of the Obligations.

Section 29. Requirements of CDLAC. In addition to other requirements set forth herein and to the extent not prohibited by the requirements set forth in Sections 4 through 6 hereof, the Owner hereby agrees to comply with each of the requirements of CDLAC set forth in this Section 29, as follows:

(a) The Owner shall comply with the CDLAC Resolution attached hereto as Exhibit D and the CDLAC Conditions set forth in Exhibit A thereto (collectively, the "CDLAC Conditions"), which conditions are incorporated herein by reference and made a part hereof. The

Owner will prepare and submit to the Housing Authority, not later than February 1 of each year, until the Project is completed, and on February 1 every three years thereafter until the end of the Compliance Period, a Certificate of Compliance II for Qualified Residential Rental Projects, in substantially the form attached to the CDLAC Conditions or otherwise as provided by CDLAC from time to time, executed by an authorized representative of the Owner. Such Certificate of Compliance II for Qualified Residential Rental Projects shall be prepared pursuant to the terms of the CDLAC Conditions. Additionally, the Owner will prepare and submit to the Housing Authority, a Certificate of Completion, in substantially the form attached to the CDLAC Conditions or otherwise provided by CDLAC from time to time, executed by an authorized representative of the Owner certifying among other things to the substantial completion of the Project. Following the submission of the Certificate of Completion, the Owner will prepare and submit to the Housing Authority, not later than February 1, every three years thereafter until the end of the Compliance Period, a California Tax Credit Allocation Committee Project Status Report or equivalent documentation in substantially the form required or otherwise provided by CDLAC from time to time. Compliance with the terms of the CDLAC Conditions not contained within this Regulatory Agreement, but referred to in the CDLAC Conditions are the responsibility of the Owner to report to the Housing Authority.

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

(c) Except as otherwise provided in Section 13 of this Regulatory Agreement, this Regulatory Agreement shall terminate on the date 55 years after the date on which at least fifty percent (50%) of the units in the Project are first occupied or otherwise after the commencement of the Qualified Project Period.

(d) The Owner shall notify CDLAC in writing of: (i) any change in ownership of the Project, (ii) any change in the Housing Authority, (iii) any change in the name of the Project or the Manager; (iv) any material default under the Funding Loan Agreement the Subordinate Indenture, the Loan Agreements or this Regulatory Agreement, including, but not limited to, such defaults associated with the Tax-Exempt status of the Tax-Exempt Obligations, and the income and rental requirements as provided in Sections 4 and 6 hereof and the CDLAC Conditions; or (v) termination of this Regulatory Agreement.

(e) CDLAC shall have the right, but not the obligation, to deliver revised CDLAC Conditions to the Owner after the Closing Date at any time, that are not more restrictive than the original CDLAC Conditions; provided however, that, with the prior consent of the Lender, which shall not be unreasonably withheld: (i) any changes in the terms and conditions of such revised CDLAC Conditions prior to the recordation against the Project in the real property records of the County of a regulatory agreement between Owner and the California Tax Credit Allocation Committee ("TCAC Regulatory Agreement") shall be limited to such changes as are necessary to

correct any factual errors or to otherwise conform the CDLAC Conditions to any change in facts or circumstances applicable to the Owner or the Project; and (ii) after recordation of the TCAC Regulatory Agreement, any changes in the terms and conditions of such revised CDLAC Conditions shall be limited to such changes as are necessary to conform Items 1, 6, 7, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26 and/or 37 of Exhibit A to the CDLAC Conditions to any change in terms and conditions requested by Owner and approved by CDLAC. The Housing Authority may, in its sole and absolute discretion, require the Owner to record or cause to be recorded in the real property records of the County an amendment to this Regulatory Agreement containing such revised CDLAC Conditions, executed by the parties hereto or their successor in title and pay any expenses in connection therewith. The Owner shall provide CDLAC with a copy of that recorded amendment reflecting the revised CDLAC Conditions.

Any of the foregoing requirements of the CDLAC contained in this Section 29 may be expressly waived by CDLAC, in its sole discretion, in writing, but (i) no waiver by CDLAC of any requirement of this Section 29 shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement except to the extent the Housing Authority has received an opinion of Bond Counsel that any such provision is not required by the Housing Law and may be waived without adversely affecting the exclusion from gross income of interest on the Tax-Exempt Obligations for federal income tax purposes; and (ii) any requirement of this Section 29 shall be void and of no force and effect if the Housing Authority and the Owner receive a written opinion of Bond Counsel to the effect that compliance with any such requirement would cause interest on the Bonds to cease to be Tax-Exempt or to the effect that compliance with such requirement would be in conflict with the Housing Law or any other state or federal law.

Section 30. Annual Reporting Covenant. No later than January 31 of each calendar year (commencing January 31, 2021), the Owner, on behalf of the Housing Authority, agrees to provide to the California Debt and Investment Advisory Commission, by any method approved by the California Debt and Investment Advisory Commission, with a copy to the Housing Authority, the annual report information required by Section 8855(k)(1) of the California Government Code. This covenant shall remain in effect until the later of the date (i) the Obligations are no longer outstanding or (ii) the proceeds of the Obligations and the Loan have been fully spent.

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

**HOUSING AUTHORITY OF THE  
CITY OF SAN DIEGO**

By: \_\_\_\_\_  
[Executive Director]

[Signature Page – Aquila Apartments Regulatory Agreement]



U.S. BANK NATIONAL ASSOCIATION,  
as Fiscal Agent

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

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

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

[Signature Page – Aquila Apartments Regulatory Agreement]

**OWNER:**

3Roots CIC, LP,  
a California limited partnership

By: Pacific Southwest Community Development Corporation,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Robert W. Laing  
Executive Director/President

By: CIC 3Roots LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
Cheri Hoffman  
President

[Signature Page – Aquila Apartments Regulatory Agreement]

## **EXHIBIT A**

### **DESCRIPTION OF REAL PROPERTY**

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

[TO BE INSERTED]

**EXHIBIT B**  
**FORM OF INCOME CERTIFICATION**  
[ATTACHED]

# TENANT INCOME CERTIFICATION

☐ Initial Certification

☐ 1<sup>st</sup> Recertification

☐ Other:

Effective Date:

Move-in Date:

(YYYY-MM-DD)

## PART I - DEVELOPMENT DATA

Property Name:

County:

BIN #:

Address:

Unit Number:

# Bedrooms:

## PART II. HOUSEHOLD COMPOSITION

☐ Vacant

HH Mbr #	Last Name	First Name	Middle Initial	Relationship to Head of Household	Date of Birth (YYYY/MM/DD)	F/T Student (Y or N)	Last 4 digits of Social Security #
1				HEAD			
2							
3							
4							
5							
6							
7							

## PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/ Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$	\$	\$	\$

Add totals from (A) through (D), above

TOTAL INCOME (E):

\$

## PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$	\$
Enter Column (H) Total				Passbook Rate
If over \$5000				\$
				X
				2.00% =
				(J) Imputed Income
Enter the greater of the total of column I, or J: imputed income				\$
TOTAL INCOME FROM ASSETS (K)				\$
(L) Total Annual Household Income from all Sources [Add (E) + (K)]				\$

Effective Date of Move-in Income Certification:

Household Size at Move-in Certification:

## HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

_____ Signature	_____ (Date)	_____ Signature	_____ (Date)
_____ Signature	_____ (Date)	_____ Signature	_____ (Date)

**PART V. DETERMINATION OF INCOME ELIGIBILITY****RECERTIFICATION ONLY:**

TOTAL ANNUAL HOUSEHOLD INCOME  
FROM ALL SOURCES:  
From item (L) on page 1

\$

Current Income Limit x 140%:

Unit Meets Income Restriction at

☐ 60%

☐ 50%

\$

☐ 40%

☐ 30%

☐ %

Household Income exceeds 140%  
at recertification:  
Yes ☐ No

Current Income Limit per Family Size:

\$

Household Income at Move-in:

\$

Household Size at Move-in:

**PART VI. RENT**

Tenant Paid Rent

\$

Rent Assistance:

\$

Utility Allowance

\$

Other non-optional charges:

\$

GROSS RENT FOR UNIT:  
(Tenant paid rent plus Utility Allowance &  
other non-optional charges)

\$

Unit Meets Rent Restriction at:

☐ 60%

☐ 50%

☐ 40%

☐ 30%

☐ %

Maximum Rent Limit for this unit:

\$

**PART VII. STUDENT STATUS**

ARE ALL OCCUPANTS FULL TIME  
STUDENTS?

☐ yes

☐ no

If yes, Enter student explanation\*  
(also attach documentation)

Enter 1-5

\*Student Explanation:

1 AFDC / TANF Assistance

2 Job Training Program

3 Single Parent/ Dependent Child

4 Married/Joint Return

5 Former Foster Care

**PART VIII. PROGRAM TYPE**

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

a. Tax Credit ☐

b. HOME ☐

c. Tax Exempt ☐

d. AHDP ☐

e. ☐

(Name of Program)

See Part V above.

Income Status

☐ ≤50% AMGI

☐ ≤60% AMGI

☐ ≤80% AMGI

☐ OI\*\*

Section 1. Income  
Status

☐ 50% AMGI

☐ 60% AMGI

☐ 80% AMGI

☐ OI\*\*

Income Status

☐ 50% AMGI

☐ 80% AMGI

☐ OI\*\*

Income Status

☐

☐

☐ OI\*\*

\*\* Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

<b>SIGNATURE OF OWNER/REPRESENTATIVE</b>
--

Based on the representations herein and upon the proof and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

\_\_\_\_\_  
SIGNATURE OF OWNER/REPRESENTATIVE

\_\_\_\_\_  
DATE



## INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

*This form is to be completed by the owner or an authorized representative.*

### ARTICLE II **Part I - Development Data**

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

- \*Move-in Date Enter the date the tenant has or will take occupancy of the unit. (YYYY-MM-DD)
- \*Effective Date Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification. (YYYY-MM-DD)
- Property Name Enter the name of the development.
- County Enter the county (or equivalent) in which the building is located.
- BIN # Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).
- Address Enter the address of the building.
- Unit Number Enter the unit number.
- # Bedrooms Enter the number of bedrooms in the unit.
- \*Vacant Unit Check if unit was vacant on December 31 of requesting year.

### **Part II - Household Composition**

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following coded definitions:

H	-	Head of Household	S	-	Spouse
A	-	Adult co-tenant	O	-	Other family member
C	-	Child	F	-	Foster child(ren)/adult(s)
L	-	Live-in caretaker	N	-	None of the above

**Enter the date of birth, student status, and last four digits of social security number or alien registration number for each occupant. If tenant does not have a Social Security Number (SSN) or alien registration number, please enter the numerical birth month and last two digits of birth year (e.g. birthday January 1, 1970, enter "0170"). If tenant has no SSN number or date of birth, please enter the last 4 digits of the BIN.**

*If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.*

### Part III - Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List **each** respective household member number from Part II. Include anticipated income only if documentation exists verifying pending employment. If any adult states zero-income, please note "zero" in the columns of Part III.

Column (A)	Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
Column (B)	Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
Column (C)	Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.).
Column (D)	Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
Row (E)	Add the totals from columns (A) through (D), above. Enter this amount.

### Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

Column (F)	List the type of asset (i.e., checking account, savings account, etc.)
Column (G)	Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
Column (H)	Enter the cash value of the respective asset.
Column (I)	Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
TOTALS	Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

Row (K)	Enter the greater of the total in Column (I) or (J)	
Row (L)	Total Annual Household Income From all Sources	Add (E) and (K) and enter the total

*Effective Date of Income Certification	Enter the effective date of the income certification corresponding to the total annual household income entered in Box L. If annual income certification is not required, this may be different from the effective date listed in Part I.
*Household Size at Certification	Enter the number of tenants corresponding to the total annual household income entered in Box L. If annual income certification is not required, this may be different from the number of tenants listed in Part II.

## ARTICLE IIIHOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than 5 days prior to the effective date of the certification.

### ARTICLE IVPart V – Determination of Income Eligibility

Total Annual Household Income from all Sources	Enter the number from item (L).
Current Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size.
Household income at move-in	For recertifications, only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
Household size at move-in	For recertifications only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. <b>140% is based on the Federal Set-Aside of 20/50 or 40/60, as elected by the owner for the property, not deeper targeting elections of 30%, 40%, 45%, 50%, etc.</b> Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than
Current Income Limit x 140%	140% of the current income limit, then the available unit rule must be followed.
*Units Meets Income Restriction at	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.

### ARTICLE VPart VI - Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of <u>non-optional</u> charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

### ARTICLE VIPart VII - Student Status

If all household members are full time\* students, check “yes”. If at least one household member is not a full time student, check “no”.

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

***Full time is determined by the school the student attends.***

### ARTICLE VIIPart VIII – Program Type

Mark the program(s) for which this household’s unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit      See Part V above.

- HOME** If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household's designation.
- Tax Exempt** If the property participates in the Tax Exempt Bond program; mark the appropriate box indicating the household's designation.
- AHDP** If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count towards the set-aside requirements, mark the appropriate box indicating the household's designation.
- Other** If the property participates in any other affordable housing program, complete the information as appropriate.

#### **ARTICLE VIII SIGNATURE OF OWNER/REPRESENTATIVE**

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

*These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.*

#### **ARTICLE IX PART IX. SUPPLEMENTAL INFORMATION**

- Tenant Demographic Profile** Complete for each member of the household, including minors, for move-in. Use codes listed on supplemental form for Race, Ethnicity, and Disability Status.
- Resident/Applicant Initials** All tenants who wish not to furnish supplemental information should initial this section. Parent/guardian may complete and initial for minor child(ren).

*\*Please note areas with asterisks are new or have been modified. Please ensure to note the changes or formats now being requested.*

## TENANT INCOME CERTIFICATION QUESTIONNAIRE

(a)	NAME: _____	TELEPHONE NUMBER: _____
(b)	<input type="checkbox"/> Initial Certification <input type="checkbox"/> Re-certification <input type="checkbox"/> Other	(     ) BIN # _____ Unit # _____

(A) **INCOME INFORMATION**

a.	YES	No	MONTHLY GROSS INCOME
<input type="checkbox"/>	<input type="checkbox"/>	I am self employed. (List nature of self employment)	(use <u>net</u> income from business) \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I have a job and receive wages, salary, overtime pay, commissions, fees, tips, bonuses, and/or other compensation: List the businesses and/or companies that pay you: <u>Name of Employer</u> 1) _____ 2) _____ 3) _____	\$ _____ \$ _____ \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I receive cash contributions of gifts including rent or utility payments, on an ongoing basis from persons not living with me.	i. \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I receive unemployment benefits.	ii. \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I receive Veteran's Administration, GI Bill, or National Guard/Military benefits/income.	iii. \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I receive periodic social security payments.	iv. \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	The household receives <u>unearned</u> income from family members age 17 or under (example: Social Security, Trust Fund disbursements, etc.).	v. \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I receive Supplemental Security Income (SSI).	vi. \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I receive disability or death benefits other than Social Security.	vii. \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I receive Public Assistance Income (examples: TANF, AFDC)	viii. \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I am entitled to receive child support payments. I am currently receiving child support payments. If yes, from how many persons do you receive support? _____ I am currently making efforts to collect child support owed to me. List efforts being made to collect child support: _____ _____	ix. \$ _____ \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I receive alimony/spousal support payments	x. \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I receive periodic payments from trusts, annuities, inheritance, retirement funds or pensions, insurance policies, or lottery winnings. If yes, list sources: 1) _____ 2) _____	xi. \$ _____ \$ _____

<input type="checkbox"/>	<input type="checkbox"/>	I receive income from real or personal property.	(use <u>net</u> earned income) \$
<input type="checkbox"/>	<input type="checkbox"/>	Student financial aid (public or private, not including student loans) Subtract cost of tuition from Aid received	xii. \$

**Asset information**

2.	YES	NO		INTEREST RATE	CASH VALUE
<input type="checkbox"/>	<input type="checkbox"/>	I have a checking account(s). If yes, list bank(s) 1) 2)		i.  % %	ii.  \$ \$
<input type="checkbox"/>	<input type="checkbox"/>	I have a savings account(s) If yes, list bank(s) 1) 2)		iii. iv. % %	v. vi. \$ \$
<input type="checkbox"/>	<input type="checkbox"/>	I have a revocable trust(s) If yes, list bank(s) 1)		vii.  %	viii.  \$
<input type="checkbox"/>	<input type="checkbox"/>	I own real estate. If yes, provide description:			ix. \$
<input type="checkbox"/>	<input type="checkbox"/>	I own stocks, bonds, or Treasury Bills If yes, list sources/bank names 1) 2) 3)		x.  % % %	xi.  \$ \$ \$
<input type="checkbox"/>	<input type="checkbox"/>	I have Certificates of Deposit (CD) or Money Market Account(s). If yes, list sources/bank names 1) 2) 3)		xii.  % % %	xiii.  \$ \$ \$
<input type="checkbox"/>	<input type="checkbox"/>	I have an IRA/Lump Sum Pension/Keogh Account/401K. If yes, list bank(s) 1) 2)		xiv.  % %	xv.  \$ \$
<input type="checkbox"/>	<input type="checkbox"/>	I have a whole life insurance policy. If yes, how many policies			xvi. \$
<input type="checkbox"/>	<input type="checkbox"/>	I have cash on hand.			xvii. \$
<input type="checkbox"/>	<input type="checkbox"/>	I have disposed of assets (i.e. gave away money/assets) for less than the fair market value in the past 2 years. xviii. If yes, list items and date disposed: 1) 2)			xix.  \$ \$

(B)

(C) **STUDENT STATUS**

1.	YES	NO	
<input type="checkbox"/>	<input type="checkbox"/>		Does the household consist of all persons who are <u>full-time</u> students (Examples: College/University, trade school, etc.)?
<input type="checkbox"/>	<input type="checkbox"/>		Does the household consist of all persons who have been a <u>full-time</u> student in the previous 5 months?
<input type="checkbox"/>	<input type="checkbox"/>		Does your household anticipate becoming an all full-time student household in the next 12 months?
<input type="checkbox"/>	<input type="checkbox"/>		If you answered yes to any of the previous three questions are you: <ul style="list-style-type: none"><li>• Receiving assistance under Title IV of the Social Security Act (AFDC/TANF/Cal Works - <b>not</b> SSA/SSI)</li><li>• Enrolled in a job training program receiving assistance through the Job Training Participation Act (JTPA) or other similar program</li><li>• Married and filing (or are entitled to file) a joint tax return</li><li>• Single parent with a dependant child or children and neither you nor your child(ren) are dependent of another individual</li><li>• Previously enrolled in the Foster Care program (age 18-24)</li></ul>
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		

(ii) **UNDER PENALTIES OF PERJURY, I CERTIFY THAT THE INFORMATION PRESENTED ON THIS FORM IS TRUE AND ACCURATE TO THE BEST OF MY/OUR KNOWLEDGE. THE UNDERSIGNED FURTHER UNDERSTANDS THAT PROVIDING FALSE REPRESENTATIONS HEREIN CONSTITUTES AN ACT OF FRAUD. FALSE, MISLEADING OR INCOMPLETE INFORMATION WILL RESULT IN THE DENIAL OF APPLICATION OR TERMINATION OF THE LEASE AGREEMENT.**

_____ PRINTED NAME OF APPLICANT/TENANT	_____ SIGNATURE OF APPLICANT/TENANT	_____ DATE
_____ WITNESSED BY (SIGNATURE OF OWNER/REPRESENTATIVE)		_____ DATE

**EXHIBIT C**

**FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

[ATTACHED]



[FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE]

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Witnesseth that on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, the undersigned, having borrowed certain funds from the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO (the "Housing Authority") for the purpose of financing a multifamily rental housing development (the "Project"), does hereby certify that:

A. During the preceding year (i) such Project was continually in compliance with the Regulatory Agreement executed in connection with such loan from the Housing Authority, (ii) \_\_\_% of the units in the Project were at all times Low Income Units (minimum of 30%) and \_\_\_% of the units in the Project were at all times Very Low Income Units (minimum of 10%).

B. Set forth below is certain information regarding occupancy of the Project as of the date hereof.

1. Total Units: \_\_\_\_\_
2. Total Units Occupied: \_\_\_\_\_
3. Total Units Held Vacant  
and Available for Rent to Very Low Income Tenants \_\_\_\_\_  
and Available for Rent to Low Income Tenants \_\_\_\_\_
4. Total Very Low Income Units Occupied: \_\_\_\_\_  
Total Low Income Units Occupied: \_\_\_\_\_
5. % of Very Low Income Units to Total Units \_\_\_\_\_ %  
% of Low Income Units to Total Units \_\_\_\_\_ %  
(equals the Total of Lines 3 and 4, divided by the lesser of Line 1 or Line 2)

C. Set forth below are the names of Very Low Income Tenants or Low Income Tenants who commenced or terminated occupancy during the preceding year.

Commenced Occupancy

- 1.
- 2.
- 3.

Terminated Occupancy

- 1.
- 2.
- 3.

D. Set forth below is the unit number and name of the head of household of each unit that was a Very Low Income Unit or a Low Income Unit as of the beginning of the previous year, but has ceased to be a Very Low Income Unit or a Low Income Unit because (a) the gross income of the tenants of such unit, as of the most recent determination thereof, exceeds one hundred forty percent (140%) of the applicable income limit for a Very Low Income Tenant or a Low Income Tenant, adjusted for family size, or (b) all the individuals in such unit are currently students (as defined under Section 151(c)(4) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code:

Unit Number

- 1.
- 2.
- 3.

Name (Head of Household)

- 1.
- 2.
- 3.

E. The Very Low Income Units or Low Income Units are of similar size and quality to other units and are dispersed throughout the Project.

F. *Select appropriate certification:* [No unremedied default has occurred under this Regulatory Agreement, the Loan Agreements or the Deed of Trust.] [A default has occurred under the \_\_\_\_\_. The nature of the default and the measures being taken to remedy such default are as follows: \_\_\_\_\_.]

G. The representations set forth herein are true and correct to the best of the undersigned's knowledge and belief.

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

**EXHIBIT D**  
**CDLAC RESOLUTION**  
[ATTACHED]

DRAFT

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JUNIOR BOND PURCHASE AGREEMENT

by and among

HOUSING AUTHORITY OF THE CITY OF SAN DIEGO,

3ROOTS CIC, LP,

and

CIC OPPORTUNITIES FUND II LLC

Dated [October 1, 2021]

Relating to:

\$2,300,000

HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
SUBORDINATE MULTIFAMILY HOUSING REVENUE BONDS  
(AQUILA APARTMENTS)  
2021 SUBORDINATE SERIES C-3

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## **JUNIOR BOND PURCHASE AGREEMENT**

**CIC OPPORTUNITIES FUND II LLC**, a California limited liability company, solely in its capacity as purchaser of the Bonds described herein (the “Purchaser”), hereby offers to enter into the following agreement with the **HOUSING AUTHORITY OF THE CITY OF SAN DIEGO**, a public body, corporate and politic, organized and existing under the laws of the State of California (together with its successors and assigns, the “Issuer”), and **3ROOTS CIC, LP**, a California limited partnership (together with its permitted successors and assigns, the “Borrower”). Upon your acceptance of this offer and your execution and delivery of this Junior Bond Purchase Agreement (this “Agreement”), this Agreement will be binding upon each of you and the Purchaser. This offer is made subject to your acceptance, evidenced by your execution and delivery of this Agreement to the Purchaser, at or prior to 12:00 P.M. San Diego, California time on [October \_\_, 2021] and will expire if not so accepted at or prior to such time (or such later time as the Purchaser may agree in writing).

Section 1. Definitions. The capitalized terms used in this Agreement have the meanings assigned to them in the Glossary of Terms attached as Exhibit A hereto.

Section 2. Purchase and Sale.

2.1 Subject to the terms and conditions set forth in this Agreement and the Exhibits attached hereto, the Purchaser hereby agrees to purchase all (but not less than all) of the Bonds from the Issuer and the Issuer hereby agrees to sell to the Purchaser when, as and if issued, all (but not less than all) of the Bonds identified in Item 1 in Exhibit B attached hereto for a total purchase price equal to the purchase price set forth as Item 2 on Exhibit B attached hereto.

2.2 The Bonds will (i) be issued in accordance with the Issuer’s enabling legislation and all applicable procedural and substantive requirements and the Indenture and (ii) have the payment related terms (that is, the dated date, maturity date, interest rates, interest payment dates and redemption provisions) set forth in Item 3 of Exhibit B attached hereto.

2.3 The Purchaser acknowledges the restrictions on registration and transfer of the Bonds as set forth in the Indenture and agrees to deliver a purchaser’s letter in the form set forth in Exhibit G hereto, dated the Closing Date, addressed to the Issuer and the Trustee, not later than the Closing Date.

Section 3. Closing. The Closing will take place at the time and on the date set forth in Item 4 of Exhibit B attached hereto or at such other time or on such other date as may be mutually agreed upon by the parties hereto. At the Closing, the Issuer will direct the Trustee to deliver the Bonds to or upon the order of the Purchaser or its designee, in definitive form, duly executed and authenticated by the Trustee. Subject to the terms and conditions hereof, the Issuer will deliver or cause to be delivered to Bond Counsel as set forth in Item 4 of Exhibit B attached hereto, the other documents and instruments to be delivered pursuant to this Agreement (the “Closing Documents”) and the Purchaser will accept delivery of the Bonds and Closing Documents and pay the purchase price for the Bonds on the Closing Date as set forth in Section 2.1 above by wire transfer, to the Trustee, in immediately available federal funds, for the account of the Issuer or as the Issuer directs. The Bonds (or an electronic copy thereof) will be made available to the Purchaser at least one business day before the Closing for purposes of inspection. The Bonds will be prepared and delivered as fully registered Bonds without coupons in the denominations set forth in the Indenture.

Section 4. Representations and Warranties of Issuer.

4.1 The Issuer hereby makes the following representations and warranties to the Purchaser and the Borrower as of the date hereof:

(a) The Issuer is a public body, corporate and politic, organized and existing under the laws of the State of California, and is authorized to execute and deliver this Agreement and the Issuer Documents and to issue, sell and deliver the Bonds pursuant to the laws of the State, including particularly the Act.

(b) The Issuer has, and as of the Closing Date will have, all necessary power and authority to (i) execute and deliver the Issuer Documents, (ii) issue the Bonds in the manner contemplated by the Resolution, this Agreement and the Indenture, and (iii) otherwise consummate the transactions contemplated by the Issuer Documents.

(c) The Issuer has all necessary power and authority to issue the Bonds.

(d) The Issuer has duly adopted the Resolution at a meeting duly called and held in accordance with applicable law and procedures of the Issuer, and since that time the Resolution has not been rescinded, amended or modified.

(e) By official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has duly authorized the (i) execution and delivery of the Bonds and the Issuer Documents, (ii) performance by the Issuer of the obligations in the Issuer Documents, and (iii) consummation by the Issuer of all of the transactions contemplated by the Issuer Documents.

(f) Assuming the valid authorization, execution and delivery of this Agreement and the Issuer Documents by the other parties thereto and the authentication of the Bonds by the Trustee, this Agreement is, and the Bonds and the other Issuer Documents will be, the legal, valid and binding obligations of the Issuer, enforceable in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(g) All consents, approvals, orders or authorizations of, notices to, or filings, registrations or declarations with any court or governmental authority, board, agency, commission or body having jurisdiction which are required by or on behalf of the Issuer for the execution and delivery by the Issuer of the Issuer Documents or the Bonds, or the consummation by the Issuer of the transactions on its part contemplated hereby or thereby, have been obtained or will be obtained prior to Closing, except for the filing of the IRS Form 8038 (which will be filed after Closing).

(h) The execution and delivery by the Issuer of the Bonds and the Issuer Documents, and the consummation by the Issuer of the transactions on its part contemplated thereby are not prohibited by, do not violate any provision of, and will not result in the breach of or default under (i) the Act, the Constitution of the State or the organizational documents of the Issuer, (ii) any applicable law, rule, regulation, judgment, decree, order or other requirement applicable to the Issuer, or (iii) any contract, indenture, agreement, mortgage, lease, note, commitment or other obligation or instrument to which the Issuer is a party or by which the Issuer or its properties are bound.

(i) To the best knowledge of the Issuer, there is no legal action, suit, proceeding, investigation or inquiry at law or in equity, before or by any court, agency, arbitrator, public board or body or other entity or person, pending or threatened against or affecting the Issuer or its officials,

in their respective capacities as such, or, to the best knowledge of the Issuer, any basis therefor, (i) which would restrain or enjoin the issuance or delivery of the Bonds or the collection of revenues pledged under the Indenture, (ii) which would in any way contest or affect the organization or existence of the Issuer or the entitlement of any officers of the Issuer to their respective offices or (iii) which may reasonably be expected to contest or have a material and adverse effect upon (A) the due performance by the Issuer of this Agreement or the Issuer Documents or the transactions contemplated hereby or thereby, (B) the validity or enforceability of the Bonds, the Resolution, this Agreement, the Issuer Documents or any other agreement or instrument to which the Issuer is a party and that is used or contemplated for use in the consummation of the transactions contemplated hereby and thereby, (C) the exclusion from gross income for federal income tax purposes of the interest on the Bonds or (D) the use of the proceeds of the Bonds to make the Loan. The Issuer is not subject to any judgment, decree or order entered in any lawsuit or proceeding brought against it that would have such an effect.

(j) Other than the Issuer Documents and the Senior Issuer Documents, the Issuer has not entered into any contract or arrangement that might give rise to any lien or encumbrance on the revenues or other assets, properties, funds or interests pledged pursuant to the Indenture.

(k) The Issuer has not taken or omitted to take on or prior to the date hereof any action that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(l) On the Closing Date, each of the representations and warranties of the Issuer contained herein and in the Issuer Documents and all other documents executed by the Issuer in connection with the Bonds shall be true, correct and complete.

#### Section 5. Representations and Warranties of Borrower.

5.1 The Borrower makes the following representations and warranties to the Issuer and the Purchaser as of the date hereof, all of which will continue in effect in accordance with Section 12.5 hereof:

(a) The Borrower is, and at all times will be, a limited partnership, duly organized, validly existing and in good standing under the laws of the State and duly qualified, authorized and licensed under the laws of the State to transact business as a limited partnership for the purpose of owning and operating a multifamily housing facility in the State. All general partners of the Borrower (collectively, the "Partners"), are, and at all times will be organized, existing and in good standing under the laws of the State and are in good standing and duly qualified, authorized and licensed under the laws of the State, to the extent required by applicable law. There are no other general partners of the Borrower, other than the managing general partner and the administrative general partner.

(b) The Borrower has, and on the Closing Date will have, full legal right, power and authority (i) to execute and deliver the Loan Documents and (ii) to consummate the transactions contemplated by this Agreement and the Loan Documents. The Partners have, and on the Closing Date will have, full legal right, power and authority to execute and deliver this Agreement and the other Loan Documents on behalf of the Borrower.

(c) Prior to the acceptance hereof, the Borrower has duly authorized the execution and delivery of this Agreement and the performance by the Borrower of the obligations contained herein and prior to the Closing Date the Borrower will have duly authorized the (i) execution and delivery of the Loan Documents, (ii) performance by the Borrower of the obligations contained in the Loan



Documents, and (iii) consummation by the Borrower of all transactions contemplated by the Loan Documents in connection with the issuance of the Bonds.

(d) All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Borrower by the Closing Date or for the execution and delivery by the Borrower of this Agreement and the other Loan Documents or the consummation by the Borrower of the transactions contemplated hereby or thereby required by the Closing Date, have been obtained or will be obtained prior to the Closing Date.

(e) The Borrower has not taken or omitted to take on or prior to the date hereof any action that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(f) There is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or to the knowledge of the Borrower, threatened against or affecting the Borrower or the Partners, or, to the knowledge of the Borrower, any basis therefor (i) in any way affecting the organization and existence of the Borrower, (ii) contesting or materially affecting the validity or enforceability of this Agreement or the other Loan Documents, (iii) contesting the powers of the Borrower or its authority with respect to the Loan Documents, (iv) contesting the authority of the Partners to act on behalf of the Borrower, (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on (A) the operations or the financial position or condition of the Borrower, (B) the due performance by the Borrower of the Loan Documents as of the Closing Date, (C) the validity or enforceability of any of the Loan Documents, or (D) the transactions contemplated hereby or by any Loan Document or (vi) in any way contesting the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(g) This Agreement is, and, when executed and delivered by the Borrower and the other parties thereto, the Loan Documents will be, the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(h) The execution and delivery by the Borrower of this Agreement and the Loan Documents and the consummation by the Borrower of the transactions contemplated hereby and thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under (i) the partnership agreement of the Borrower, (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which the Borrower is subject, or (iii) any contract, indenture, agreement, mortgage, lease, note, commitment or other obligation or instrument to which the Borrower is a party or by which the Borrower or its properties is bound.

5.2 Each of the representations and warranties set forth in this Section will survive until the Maturity Date or the redemption of the Bonds.

5.3 Any certificate signed by the Borrower or the Partners and delivered to the Purchaser and/or the Issuer shall be deemed a representation and warranty by the Borrower to the Purchaser and/or the Issuer as to the statements of the Borrower made therein.

Section 6.      Covenants.

6.1      The Issuer hereby makes the following covenants with the Purchaser:

(a)      Prior to the Closing, the Issuer will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture, the other Issuer Documents or the Senior Issuer Documents.

(b)      The Issuer will cause the Bonds to be delivered to the Trustee and will direct the Trustee to deliver the Bonds to Purchaser's address, as set forth in Section 12.1 below, following the Closing.

6.2      The Borrower hereby makes the following covenants with the Issuer and the Purchaser:

(a)      The Borrower will not take or omit to take any action within its control, which will in any way cause the proceeds of the Bonds to be applied in a manner other than as provided in the Indenture or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(b)      Prior to the Closing, the Borrower will obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency that would constitute a condition precedent to the performance by it of its obligations under the Loan Documents as of the Closing Date. After the Closing, the Borrower will use its best efforts to obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency that would constitute a condition precedent to the performance by it of its obligations under the Loan Documents.

(c)      The Borrower shall not be in default under any of the Loan Documents, subject to any notice and cure provisions provided therein.

Section 7.      Conditions of Closing.

7.1      The parties hereto are entering into this Agreement in reliance upon representations, covenants and agreements of the other parties contained herein, in reliance upon the representations, covenants and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Purchaser, the Issuer and the Borrower of their obligations hereunder, both as of the date hereof and as of the Closing Date. Accordingly, the Purchaser's obligations under this Agreement to purchase, to accept delivery of and to pay for the Bonds, and the obligation of the Issuer to issue and sell the Bonds to the Purchaser, will be subject to the performance by the Issuer and the Borrower of their respective obligations to be performed by them hereunder at or prior to the Closing, and to the accuracy in all material respects of the representations, covenants and agreements of the Issuer and of the Borrower contained herein as of the date hereof and as of the Closing as if made on the Closing Date, and will also be subject to the following additional conditions:

(a)      The Purchaser shall not have discovered any material error, misstatement or omission in the representations and warranties made by either of the Issuer or the Borrower in this Agreement, which representations and warranties will be deemed to have been made again at and as of the time of the Closing and will then be true in all material respects.

(b) This Agreement, the other Issuer Documents and the Loan Documents each shall have been executed and delivered by each of the parties thereto, shall be in full force and effect on and as of the Closing Date.

7.2 In addition to the conditions set forth in Section 7.1, the obligations of the Purchaser and the Issuer to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Purchaser and the Issuer of the following items:

(a) An opinion of Bond Counsel, dated the Closing Date and addressed to the Purchaser, substantially in the form set forth in Exhibit C;

(b) An opinion of counsel (addressed to the Issuer, Purchaser and the Trustee) or certificate of the Issuer, satisfactory in form and substance to the Purchaser, dated the Closing Date and covering the points identified in Exhibit D;

(c) An opinion or opinions of counsel to the Borrower, the Partners and the Guarantor, addressed to the Issuer and the Purchaser dated the Closing Date and substantially in the form set forth in Exhibit E;

(d) A copy of the Tax Certificate and Agreement executed by the Borrower and the Issuer;

(e) An opinion of counsel to the Trustee or Trustee's certificate addressed to the Purchaser, covering the points identified in Exhibit F;

(f) A properly completed and executed IRS Form 8038;

(g) A certified copy of the Resolution and an executed copy of each of the Issuer Documents and the Loan Documents; and

(h) Such additional financing statements, legal opinions, certificates and other documents as the Purchaser or Bond Counsel may reasonably deem necessary to evidence the truth and accuracy as of the Closing Date of the respective representations and warranties herein contained and to evidence compliance by the Issuer and the Borrower with this Agreement and all applicable legal requirements, and the due performance and satisfaction by the parties hereto at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the parties hereto.

7.3 If any of the conditions set forth in Sections 7.1 or 7.2 have not been met on the Closing Date, the Purchaser may, at its sole option, terminate this Agreement or proceed to Closing upon waiving any rights under this Agreement with respect to any such condition. If this Agreement is terminated pursuant to this Section, no party will have any rights or obligations to any other party, except as provided in Section 10.

Section 8. Actions and Events at the Closing. The following events will take place at the Closing:

(a) The Issuer will deliver the Bonds to the Purchaser or its designee, at the place set forth in Item 4 in Exhibit B. The Bonds so delivered will be in the form prescribed by the Indenture, duly executed on behalf of the Issuer and authenticated by the Trustee, and will be fully registered in the name of the Purchaser.

(b) The Borrower will deliver or cause to be delivered to the Purchaser the materials described in Section 7.2.

(c) The Purchaser or its designee will deliver to the Trustee, for the account of the Issuer or as the Issuer directs, an amount equal to the purchase price of the Bonds as set forth in Item 2 of Exhibit B by wire transfer to the Trustee, in immediately available federal funds.

Section 9. Termination of Agreement. The Purchaser may terminate this Agreement, without liability therefor, by notifying you at any time prior to the Closing if:

(a) Any legislation is introduced in, or enacted by, the United States Congress, or shall have been reported out of committee or be pending in committee, or any decision is rendered by any court of competent jurisdiction, or any ruling or regulation, temporary regulation, release or announcement shall have been issued or proposed by the Treasury Department of the United States, the Internal Revenue Service, or any other agency of the government of the United States that, in the reasonable judgment of the Purchaser, has the purpose or effect of subjecting interest on the Bonds to inclusion in gross income for purposes of federal income taxation; or

(b) Any legislation is introduced in, or enacted by the United States Congress or any action is taken by, or on behalf of, the Securities and Exchange Commission, that, in the opinion of counsel to the Purchaser has the effect of requiring (i) the contemplated purchase of the Bonds, or the Indenture or the Loan Agreement to be registered under the 1933 Act or the Indenture to be qualified under the 1939 Act, or (ii) any governmental consents, approvals, orders or authorizations for the consummation of the transactions contemplated by this Agreement, the Issuer Documents or the Loan Documents which cannot, without undue expense, be obtained prior to the Closing Date; or

(c) (A) additional material restrictions not in force as of the date hereof shall have been imposed upon the purchase or sale in securities generally by any governmental authority or by any national securities exchange; (B) a general banking moratorium shall have been established by federal, or State authorities; or (C) any outbreak or material escalation of hostilities, or a war involving the United States of America shall have been declared, or any other national or international calamity shall have occurred, or any conflict involving the armed forces of the United States of America shall have escalated, in each case, to such a magnitude as to materially affect the ability of the Purchaser to purchase the Bonds; or

(d) Any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance or sale of the Bonds or in any way contesting any authority or security for or the validity of the Bonds, or the existence or powers of the Issuer; or

(e) Legislation shall have been introduced in or enacted by the legislature of the State that would, in the reasonable judgment of the Purchaser, materially adversely affect the security for the Bonds.

Section 10. Fees and Expenses; Costs of Issuance. All reasonable costs, fees and expenses incident to the performance of the Issuer's, the Purchaser's and Borrower's obligations in connection with the issuance and purchase of the Bonds, including the reasonable expenses of counsel, shall be paid by the Borrower to the Trustee by wire transfer of immediately available funds on the Closing Date.

Section 11. Indemnification by Borrower.

(a) The Borrower agrees to pay, defend, protect, indemnify, save and hold harmless the Issuer, the Purchaser and each affiliate, member, officer, director, official, employee and agent of the Issuer and the Purchaser and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended (referred to herein as an “Indemnified Party” and collectively as the “Indemnified Parties”), against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys’ fees), causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the “Liabilities”) caused by or directly or indirectly arising from or in any way relating to the Bonds, the Project, the loan of the proceeds of the Bonds, the Loan Agreement, the Indenture, this Agreement or any document related to the Bonds, the Project, the loan of the proceeds of the Bonds (the “Transaction Documents”) or any transaction or agreement, written or oral, pertaining to the foregoing; provided, however, that the Borrower shall not be required to indemnify, save or hold harmless an Indemnified Party for losses caused by the gross negligence or the willful misconduct of the Indemnified Party.

(b) The Borrower also agrees to pay, defend, protect, indemnify, save and hold harmless the Purchaser and each affiliate, member, officer, director, official, employee and agent of the Purchaser from and against the Liabilities directly or indirectly arising from or relating to (i) any errors or omissions of any nature whatsoever contained in any legal proceedings or other official representation or inducement made by the Issuer pertaining to the Bonds and (ii) any fraud or misrepresentations or omissions contained in the proceedings of the Issuer pertaining to the financial condition of the Borrower.

(c) The Indemnified Party shall, in the event of any claim, suit, action or proceeding against it with respect to which indemnity may be sought on account of any indemnity agreement by the Borrower contained herein, promptly give written notice thereof to the Borrower. When such notice is given, the Borrower shall be entitled to participate, at its own expense, in the defense of, or if it so elects, to assume the defense of, such claim, suit, action or proceeding, in which event such defense shall be conducted by counsel chosen by the Borrower, provided that each Indemnified Party shall have the right to review and approve or disapprove any compromise or settlement which approval shall not be unreasonably withheld. If the Borrower shall elect not to assume such defense, it shall assume the payment of all expenses reasonably incurred and related thereto. Notwithstanding the above, each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, provided that the Borrower shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the Borrower to represent the Indemnified Party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the Indemnified Party and the Borrower and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to the Borrower, (iii) the Borrower shall not have employed counsel satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, or (iv) the Borrower shall authorize the Indemnified Party to employ separate counsel at the expense of the Borrower. Each and every Indemnified Party shall have the right to compromise, settle or conclude any claim, action or proceeding against it with the written consent of the Borrower, which consent shall not be unreasonably withheld. The foregoing notwithstanding, in the event that the Borrower shall assume such defense and any Indemnified Party or Parties shall be advised by independent legal counsel that counsel selected by the Borrower is not fully and adequately protecting such party or parties and representing the interests of such party or parties and the Borrower has been given written notice thereof and a reasonable opportunity to cure or find other counsel acceptable to the Indemnified Parties, any such Indemnified Party or Parties shall have the right to conduct its own defense against any such claim, suit, action or proceeding in addition to or in lieu of any defense conducted by the Borrower, and the Indemnifying Party shall indemnify and hold harmless such Indemnified Party or Parties against and from any and all suits, claims, damages, liabilities

or reasonable expenses whatsoever, including reasonable fees and expenses of counsel selected by such Indemnified Party or Parties incurred by and arising out of or in connection with any such claim, suit, action or proceeding.

(d) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph (a) or (b) of this Section 11 is for any reason held to be unavailable, the Borrower and the Indemnified Party shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Party may be subject, so that the Indemnified Party is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds bear to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Indemnified Party be responsible for any amount in excess of the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds.

(e) The Indemnified Parties, other than the Issuer and the Purchaser, shall be considered to be third party beneficiaries of this Agreement for purposes of this Section 11. The provisions of this Section 11 will be in addition to all liability which the Borrower may otherwise have and shall survive any termination of this Agreement, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds. No person guilty of fraudulent misrepresentation (within the meaning of Section 10(b) of the Securities Exchange Act of 1934) shall be entitled to contribution from any person who was not guilty of such misrepresentation.

(f) The indemnification hereunder shall be in addition to, and shall not limit, any indemnity granted by the Borrower pursuant to the Loan Agreement or any other document.

Section 12.      Miscellaneous.

12.1 All notices, demands and formal actions hereunder will be writing and mailed, telecopied or delivered to the following address or such other address as any of the parties shall specify:

If to the Purchaser:

CIC Opportunities Fund II LLC  
6339 Paseo Del Lago  
Carlsbad, CA 92011  
Attention: James J. Schmid  
Telephone: (760) 456-6000  
Facsimile: (760) 456-6001

If to the Issuer:

San Diego Housing Commission  
1122 Broadway, Suite 300,  
San Diego, CA 92101  
Attention: Bond Project Manager-Real Estate Department  
Telephone: (619) 578-7582  
Facsimile: (619) 578-7356

If to the Borrower:	3Roots CIC, LP 6339 Paseo Del Lago Carlsbad, CA 92011 Attention: Cheri Hoffman Facsimile: (760) 456-6001
With a copy to:	Cox, Castle & Nicholson LLP 50 California Street, Suite 3200 San Francisco, CA 94111 Attention: Ofer Elitzur Facsimile: (415) 262-5199
With a copy to the Equity Investors:	U.S. Bancorp Community Development Corporation 1307 Washington Avenue, Suite 300 Mail Code: SL MO RMCD St. Louis, MO 63103 USB Project No. 27717 Attn.: LIHTC Project Manager Telephone: (314) 335-2600 Facsimile: (314) 335-2601
	U.S. Bank National Association 1307 Washington Avenue, Suite 300 Mail Code: SL MO RMCD St. Louis, MO 63103 USB Project No: 27717 Attn.: Director of Asset Management Phone: (314) 335-2600
With a copy to:	Kutak Rock LLP 1650 Farnam Street Omaha, NE 68102 Attn: Jill Goldstein, Esq. Telephone: (402) 346-6000 Facsimile: (402) 346-1148

12.2 This Agreement will inure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns and will not confer any rights upon any other person.

12.3 This Agreement may not be assigned by the Issuer or the Borrower without the prior written consent of the Purchaser. This Agreement may be assigned by the Purchaser upon written notice of such assignment from the Purchaser to the Issuer and the Borrower.

12.4 This Agreement may not be amended without the prior written consent of the Issuer, the Borrower and the Purchaser.

12.5 The representations, covenants and agreements of the Borrower will not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of (a) any investigations made by or on behalf of the Purchaser (or statements as to the results of such

investigations) concerning such representations, covenants and agreements and (b) delivery of and payment for the Bonds.

12.6 This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute but one and the same instrument.

12.7 This Agreement will become effective and binding upon the respective parties hereto upon the execution and delivery hereof by the parties hereto and will be valid and enforceable as of the time of such execution and delivery.

12.8 If any provision of this Agreement is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any constitution, statute, rule of public policy, or any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

12.9 This Agreement will be governed by and construed in accordance with the laws of the State applicable to agreements to be performed wholly therein.

12.10 Except as provided in Section 11, the obligations of the Purchaser and Borrower hereunder shall be without recourse to any shareholder, partner, member, trustee, officer, employee, agent or manager of the Purchaser or Borrower and no shareholder, partner, member, trustee, officer, employee, agent or manager of the Purchaser or Borrower shall be personally liable for the payment of any obligation of the Purchaser or Borrower, as applicable, hereunder. In the event any legal actions or proceedings are brought in respect of such obligations, any judgment against the Purchaser or Borrower shall be enforced only against the assets of the Purchaser or Borrower, as applicable, and not against any property of any trustee or manager of the Purchaser or Borrower.

12.11 The Issuer and the Borrower each acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Agreement is an arm's-length commercial transaction among the Issuer, the Borrower, and the Purchaser, (ii) in connection therewith and with the discussions, undertaking and procedures leading up to the consummation of such transaction, the Purchaser is and has been acting solely as a principal and is not acting as the agent, advisor, or fiduciary of the Issuer or the Borrower, (iii) the Purchaser has not assumed an advisory or fiduciary responsibility in favor of the Issuer or the Borrower with respect to the Bonds or the discussions, undertakings and procedures leading thereto (irrespective of whether the Purchaser has provided other services or is currently providing other services to the Issuer or the Borrower on other matters) and the Purchaser has no obligation to the Issuer or the Borrower with respect to the Bonds except the obligations expressly set forth in this Agreement and (iv) the Issuer and the Borrower have consulted their own legal, financial and other advisors to the extent they deem appropriate.

[Signature pages start on next page]



[Counterpart Signature Page to the Aquila Apartments Junior Bond Purchase Agreement]

If the foregoing accurately sets forth our mutual understanding concerning the subject matter hereof, kindly indicate your acceptance by executing this Agreement.

**CIC OPPORTUNITIES FUND II LLC,**  
a California limited liability company

By: CIC Manager II LLC,  
a California limited liability company,  
its manager

By: \_\_\_\_\_  
James J. Schmid  
President

[Counterpart Signature Page to the Aquila Apartments Junior Bond Purchase Agreement]

**HOUSING AUTHORITY OF THE CITY OF  
SAN DIEGO, as Issuer**

By: \_\_\_\_\_  
[\_\_\_\_\_] Executive Director

[Signatures continue on next page]

**3 ROOTS CIC, LP,**  
a California limited partnership

By: Pacific Southwest Community Development  
Corporation,  
a California nonprofit public benefit corporation,  
its managing general partner

By: \_\_\_\_\_  
Robert W. Laing  
Executive Director/President

By: CIC 3Roots, LLC,  
a California limited liability company,  
its administrative general partner

By: Chelsea Investment Corporation,  
a California corporation, its Manager

By: \_\_\_\_\_  
Cheri Hoffman, President

## EXHIBIT A – GLOSSARY OF TERMS

“Act” means the provisions of Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code.

“Agreement” means this Junior Bond Purchase Agreement, as amended from time to time.

“Bond Counsel” means Orrick, Herrington & Sutcliffe LLP.

“Bonds” means the Issuer’s Housing Authority of the City of San Diego Subordinate Multifamily Housing Revenue Bonds (Aquila Apartments) 2021 Subordinate Series C-3 issued and delivered in the aggregate original principal amount of \$2,300,000.

“Bond Payment Date” means (i) the [INSERT PAYMENT DATE], (ii) any date on which the Bonds are subject to mandatory redemption pursuant to the provisions hereof, and (iii) the Maturity Date.

“Borrower” means 3Roots CIC, LP, a California limited partnership, and its successors and assigns.

“Closing” means the proceeding on the Closing Date at which the Bonds are delivered to the Purchaser.

“Closing Date” means [\_\_\_\_\_, 2021], the date on which the Closing takes place.

“Closing Documents” has the meaning ascribed to such term in Section 3 hereof.

“Code” means the Internal Revenue Code of 1986, as amended, together with all corresponding and applicable final or temporary regulations and revenue rulings issued or promulgated thereunder.

“Constitution” means the Constitution of the State.

“Equity Investors” shall mean, individually or collectively as the context shall require, (i) U.S. Bancorp Community Development Corporation, a Minnesota corporation in its capacity as the federal limited partner, and (ii) U.S. Bank National Association, a national banking association, in its capacity as the state limited partner, along with their respective permitted successors and assigns.

“Guarantor” means the party or parties making the Junior Exceptions to Non-Recourse Guaranty dated [\_\_\_\_\_, 2021], Junior Completion and Repayment Guaranty dated [\_\_\_\_\_, 2021], and the Junior Completion Guaranty dated [\_\_\_\_\_, 2021] in connection with the issuance of the Bonds;

“Indenture” means that certain Junior Indenture of Trust dated as of [\_\_\_\_\_, 2021] between the Issuer and the Trustee.

“Indemnified Parties” means the Issuer, the Purchaser and each affiliate, member, officer, director, official, employee and agent of the Issuer and the Purchaser and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended.

“Issuer” means the Housing Authority of the City of San Diego, a public body, corporate and politic, organized and existing under the laws of the State of California.

“Issuer Documents” means, collectively, the Junior Indenture, the Loan Agreement, this Agreement, the Assignment of Junior Deed of Trust and Loan Documents dated as of [October 1, 2021] executed by the Issuer and all other agreements, documents and certificates as may be required to be executed and delivered by the Issuer to carry out, give effect to, and consummate the transactions contemplated by this Agreement or by the other Issuer Documents.

“Loan Agreement” means that certain Junior Loan Agreement dated as of [October 1, 2021] between the Issuer and the Borrower.

“Loan Documents” shall have the meaning ascribed to such term in the Indenture.

“Mortgage” means that certain Junior Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by the Borrower and granting a second lien on the Project for the benefit of the Trustee (by assignment from the Issuer), including any amendments and supplements thereto.

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

“1934 Act” means the Securities Exchange Act of 1934, as amended.

“1939 Act” means the Trust Indenture Act of 1939, as amended.

“Note” means that certain junior multifamily note from the Borrower relating to the Bonds and secured by the Mortgage.

“Partners” means all partners, members and other entities that comprise the Borrower and are included on the Borrower’s signature page to this Agreement.

“Project” means that 180-unit multifamily project known as Aquila Apartments and site improvements and related personal property and equipment located in San Diego, San Diego County, California.

“Purchaser” means CIC Opportunities Fund II LLC, a California limited liability company, or its designee or nominee, together with their respective permitted successors and assigns hereunder.

“Regulatory Agreement” means that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated as of October 1, 2021, by and among the Issuer, the Trustee/Fiscal Agent and the Borrower.

“Resolution” means the resolution or resolutions of the Issuer, authorizing, among other things, the execution and delivery by the Issuer of the Issuer Documents and the Bonds and the performance of its obligations thereunder.

“Senior Issuer Documents” means, collectively, the Housing Authority of the City of San Diego Multifamily Housing Revenue Notes (Aquila Apartments) 2021 Series C-1 (the “2021 Series C-1 Note”) and 2021 Series C-2 (Taxable) (the “Taxable Note”) in the original aggregate face amount (maximum principal amount) of \$[AGGREGATE SENIOR PAR]; the Funding Loan Agreement, dated as of [October 1, 2021], among the Housing Authority, Citibank, N.A., U.S. Bank National Association (the “Funding Loan Agreement”); the Borrower Loan Agreement, dated as of [October 1, 2021], between the Issuer and Borrower (the “Borrower Loan Agreement”), and all other agreements, documents and certificates as may be required to be executed and delivered by the Issuer to carry out, give effect to, and consummate the transactions contemplated by the Funding Loan Agreement or the Borrower Loan Agreement.

“State” means the State of California.

“Trustee” means [TRUSTEE] or its successors or any other corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at any time serving as successor trustee under the Indenture.

## EXHIBIT B – TERMS OF BONDS

1. Title of Bonds: \$2,300,000 Housing  
Authority of the City of San Diego  
Subordinate Multifamily Housing  
Revenue Bonds (Aquila Apartments)  
2021 Subordinate Series C-3.
2. Purchase Price: 100% of Aggregate Original Principal  
Amount.
3. Payment Related Terms:
  - (a) *Date of the Bonds:* [\_\_\_\_\_, 2021].
  - (b) *Interest Payment Dates:* Bond Payment Date, as set forth in the  
Indenture
  - (d) *Aggregate Principal Amount:* \$2,300,000,000 purchased upon the  
Date.
  - (d) *Maturity Dates:* [\_\_\_\_\_].
  - (e) *Junior Conversion Date:* [\_\_\_\_\_]
  - (f) *Interest Rates:* 7.50% per annum.  
  
The above stated interest rate reflects an  
all in rate, excluding any loan servicing,  
annual trustee fees, issuer fees or other  
trust indenture expenses.
  - (g) *Default Rate:* If an Event of Default (as defined in the  
Loan Document) occurs under the Loan  
Documents, or an event of default  
occurs under any senior mortgage  
secured against the Project, the interest  
rate on the Bonds, shall be the lesser of  
(i) the interest rate in effect at the time  
of such event of default plus five (5)  
percentage points, and (ii) the maximum  
interest rate that may be paid on the  
Bonds under California law; and shall  
compound monthly.
  - (h) *Principal and Interest Payments:* Interest only shall be payable on each  
Bond Payment Date.

Closing

Following the Junior Conversion Date,  
interest and principal shall be payable

on May 1 and November 1 of each year that the Bonds are outstanding, (i) from 50% of available Cash Flow until all of the deferred development fee relating to the Project is paid; and (ii) thereafter, from 75% of available Cash Flow.

In addition, the Bonds shall be payable in accordance with the terms and conditions of the Indenture from Revenues, as defined in the Indenture.

(i) *Redemption Provisions:*

(i) Mandatory Redemption: as set forth in the Indenture.

(ii) Optional Redemption: as set forth in the Indenture.

4. Logistics of Closing:

(a) *Date of Closing:* [\_\_\_\_\_].

(b) *Delivery of Bonds:* as directed by Purchaser, subject to the provisions of Section 3 hereof.



EXHIBIT C – FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL

[Letterhead of Bond Counsel]

\_\_\_\_\_, 2021

CIC Opportunities Fund II LLC  
Carlsbad, CA

\$2,300,000  
HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
SUBORDINATE MULTIFAMILY HOUSING REVENUE BONDS  
(AQUILA APARTMENTS)  
2021 SUBORDINATE SERIES C-3

[After appropriate introductory language, the opinion shall state substantially as follows:]

(1) The Junior Bond Purchase Agreement dated [\_\_\_\_\_] has been duly executed and delivered by, and constitutes the valid and binding agreement of, the Issuer.

(2) The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended.

EXHIBIT D – POINTS TO BE COVERED IN OPINION OF COUNSEL TO THE  
ISSUER/CERTIFICATE OF ISSUER

[After appropriate introductory language, the opinion or certificate shall state substantially as follows:]

(1) The Issuer is a public body, corporate and politic, organized and existing under the laws of the State.

(2) The Resolution was duly adopted at a meeting of the governing board of the Issuer, which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout. The Resolution is in full force and effect and has not been amended, modified or superseded.

(3) The Issuer Documents have been duly executed and delivered by the Issuer and (assuming due authorization, execution and delivery by and validity against the other parties thereto) are valid and binding agreements of the Issuer.

(4) To the best of my knowledge, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body has been served upon the Issuer and is pending or is otherwise known to be threatened in any way affecting the existence of the Issuer, or the titles of the Issuer's officials to their respective offices, or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds or the application of the proceeds thereof in accordance with the Indenture, or the collection or application of the Pledged Revenues (as defined in the Indenture) to pay the principal of and interest on the Bonds, or in any way contesting or affecting the validity or enforceability of the Issuer Documents or any action of the Issuer contemplated by any of said documents, or in any way contesting the powers of the Issuer or its authority with respect to the Issuer Documents or any action on the part of the Issuer contemplated by any of said documents, nor to my knowledge is there any basis therefor.

EXHIBIT E – FORM OF BORROWER’S COUNSEL OPINION

[Letterhead of Borrower’s Counsel]

October \_\_, 2021

CIC Opportunities Fund II LLC,  
Carlsbad, California

Housing Authority of the City of San Diego  
San Diego, California

Citigroup Global Markets Inc.,  
New York, New York

U.S. Bank National Association  
[\_\_\_\_], California

\$2,300,000  
HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
SUBORDINATE MULTIFAMILY HOUSING REVENUE BONDS  
(AQUILA APARTMENTS)  
2021 SUBORDINATE SERIES C-3  
(the “Bonds”)

Ladies and Gentlemen:

We are counsel for 3 Roots CIC, LP, a California limited partnership (the “Borrower”), [\_\_\_\_\_] (the “General Partner”), [\_\_\_\_\_] a [\_\_\_\_\_] (the “Corporate Guarantor”), [\_\_\_\_\_] an individual resident of the State of [\_\_\_\_\_] and [\_\_\_\_\_] an individual resident of the State of [\_\_\_\_\_] (the “Individual Guarantors”; and together with General Partner and Corporate Guarantor, collectively, the “Guarantors”) in connection with the making of a loan in the amount of [\_\_\_\_\_] (the “Loan”) being made from the proceeds of the issuance by the Housing Authority of the City of San Diego (“Issuer”) and sale of the referenced Bonds to CIC Opportunities Fund II LLC (in its capacity as purchaser of the Bonds, the “Purchaser”). CIC Opportunities Fund II LLC (in its capacity as Bondholder Representative, “Bondholder Representative”), [\_\_\_\_\_] (in its capacity as trustee under the Trust Indenture, “Trustee”) and Issuer are collectively referred to herein as the “Beneficiary Parties”.

In our capacity as counsel to Borrower and Guarantors, we have examined certain documents with respect to the above-referenced transaction, including:

- A. The Junior Promissory Note, dated [\_\_\_\_\_] in the original principal amount of \$2,300,000, executed by Borrower (the “Note”);
- B. The Junior Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the “Mortgage”) dated as of [\_\_\_\_\_] executed by Borrower for the

benefit of Issuer, granting a security interest in the real and personal property (the “Project”) as more specifically described in the Mortgage;

- C. The Assignment of Junior Deed of Trust and Loan Documents dated as of [\_\_\_\_\_] by Issuer to Trustee (the “Issuer Assignment”);
- D. Uniform Commercial Code financing statement(s) naming Borrower as debtor (the “Financing Statement(s)”);
- E. Uniform Commercial Code financing statement(s) naming General Partner as debtor (the “Financing Statement(s)”);
- F. The Junior Bond Purchase Agreement, dated as of [\_\_\_\_\_] by and among Borrower, Issuer and Purchaser;
- G. The Continuing Disclosure Agreement, dated as of [\_\_\_\_\_] by and between Borrower and Citibank, N.A., as Funding Lender;
- H. The Contingency Draw-Down Agreement, dated as of [\_\_\_\_\_] by and among Citibank, N.A., the Funding Lender, and U.S. Bank National Association, the Fiscal Agent;
- I. Intentionally Omitted;
- J. Intentionally Omitted;
- K. The Junior Loan Agreement, dated as of [\_\_\_\_\_] between Borrower and Issuer;
- L. The Junior Agreement of Environmental Indemnification, dated as of [\_\_\_\_\_] by Borrower for the benefit of Beneficiary Parties;
- M. The Construction Funding Agreement dated as of [\_\_\_\_\_] between Borrower and Citibank, N.A., as agent for the Housing Authority of the City of San Diego.
- N. The Junior Completion and Repayment Guaranty dated as of [\_\_\_\_\_] made by Chelsea Investment Corporation for the benefit of the Beneficiary Parties;
- O. The Junior Completion Guaranty dated as of [\_\_\_\_\_] made by Emmerson Construction, Inc. for the benefit of Beneficiary Parties;
- P. The Junior Exceptions to Non-Recourse Guaranty dated as of [\_\_\_\_\_] made by Guarantors for the benefit of Beneficiary Parties;
- Q. The Borrower’s Certificate and Agreement dated as of [\_\_\_\_\_] made by Borrower for the benefit of Beneficiary Parties;
- R. The Assignment of Equity Investor Capital Contributions, Pledge and Security Agreement dated as of [\_\_\_\_\_] by Borrower for the benefit of Citibank, N.A., as agent for the Housing Authority of the City of San Diego;
- S. The Assignment of Equity Interests, Pledge and Security Agreement dated as of [\_\_\_\_\_] by General Partner for the benefit of Citibank, N.A., as agent for the Housing Authority of the City of San Diego;

- T. The Junior Assignment of Construction Contract dated as of [\_\_\_\_\_] by Borrower for the benefit of Trustee;
- U. The Junior Assignment of Architect's Agreement and Plans and Specifications dated as of [\_\_\_\_\_] by Borrower for the benefit of Trustee;
- V. The Junior Assignment of Project Documents dated as of [\_\_\_\_\_] by Borrower for the benefit of Trustee and Bondholder Representative;
- W. The Junior Assignment of Management Agreement dated as of [\_\_\_\_\_] by Borrower for the benefit of Trustee;
- X. The Tax Certificate and Agreement dated as of the Closing Date by and among Issuer, Borrower and Trustee;
- Y. The Regulatory Agreement and Declaration of Restrictive Covenants dated as of October 1, 2021, by and among Borrower, the Issuer and the Trustee/Fiscal Agent;
- Z. Subordination and Intercreditor Agreement dated as of [\_\_\_\_\_] made by and between Citibank, N.A. and Purchaser.
- AA. Subordination and Intercreditor Agreement dated as of [\_\_\_\_\_] made by and between [SELLER CARRYBACK LENDER], and the Trustee.
- BB. Intentionally Omitted.
- CC. Intentionally Omitted.
- DD. A certified copy of the Limited Partnership Agreement and Certificate of Limited Partnership of Borrower, and a Certificate of Good Standing with respect to Borrower issued by the California Secretary of State on [\_\_\_\_\_] (collectively, the "Borrower Organizational Documents");
- EE. A certified copy of the Articles of Organization and the Bylaws of General Partner, which executed the Loan Documents, and a certificate of existence with respect to General Partner issued by the California Secretary of State on [\_\_\_\_\_] and a certified copy of the Articles of Organization of Corporate Guarantor and the Bylaws of Corporate Guarantor, and a Certificate of Good Standing with respect to Corporate Guarantor issued by the California Secretary of State on [\_\_\_\_\_] (collectively, the "Guarantor Organizational Documents");
- FF. Such other documents, matters, statutes, ordinances, published rules and regulations, published judicial and governmental decisions interpreting or applying the same, and other official interpretations as we deemed applicable in connection with this opinion.

The documents listed in A through AA above are referred to collectively as the "Loan Documents." The documents listed as L, N, O and P above, are referred to collectively as the "Guarantor Documents."

We have examined pertinent statutes and regulations and copies, certified or otherwise, identified to our satisfaction of such records of Borrower and Guarantors and have done such other investigation as we have considered necessary as a basis for the opinions hereinafter expressed. In the course of our

examination and review and in connection with the opinions hereafter expressed, we have assumed the due authorization, execution and delivery of all documents by all parties thereto other than Borrower and Guarantors. We have also made such inquiries of Borrower and Guarantors and others as we have deemed necessary in connection with this opinion.

In basing the opinion set forth in this opinion on “our knowledge”, the words “our knowledge” signify that, in the course of our representation of Borrower and Guarantor, no facts have come to our attention that would give us actual knowledge or actual notice that any such opinions or other matters are not accurate or that any of the Loan Documents are not accurate and complete. “Our knowledge” is a qualification as to factual matters and information, as qualified in this paragraph, and is not a qualification as to our knowledge of applicable laws, regulations, rulings and court decisions.

Based on the foregoing, it is our opinion that:

1. Borrower is a limited partnership, duly formed, validly existing and in good standing under the laws of the State of California and is qualified and in good standing wherever such qualification and/or standing are required, including the State of California.
2. Borrower has full legal right, power and authority to own its properties and conduct its business as now conducted, to borrow the proceeds of the Loan, and to execute and perform its obligations under the Loan Documents.
3. General Partner is a [ ] duly organized, validly existing and in good standing under the laws of the State of [ ] and has all requisite corporate/limited liability company/partnership power and all material governmental licenses, authorizations, consents and approvals necessary to own and operate its property and conduct its business. General Partner is qualified to do business in the State of [ ].
4. Corporate Guarantor is a [ ] duly organized, validly existing and in good standing under the laws of the State of [ ] and has all requisite corporate/limited liability company/partnership power and all material governmental licenses, authorizations, consents and approvals necessary to own and operate its property and conduct its business.
5. All necessary partnership action, including required approvals, if any, by all partners of Borrower including General Partner, has been taken to authorize the execution, delivery and performance of the Loan Documents by Borrower. The individual or individuals who have executed the Loan Documents on behalf of General Partner of Borrower have the authority to bind General Partner and thereby Borrower to the terms and conditions of the Loan Documents.
6. All necessary [corporate/limited liability company/partnership] action, including required approvals, if any, by [directors and shareholders/members/partners] of Corporate Guarantor, has been taken to authorize the execution, delivery and performance of the Guarantor Documents by Corporate Guarantor. The individual or individuals who have executed the Guarantor Documents on behalf of Corporate Guarantor have the authority to bind Corporate Guarantor to the terms and conditions of the Guarantor Documents.
7. To the best of our knowledge after due and diligent inquiry, no authorization, consent, approval, license, exemption of, or filing or registration with, any municipal, county, state or Federal court or governmental department, commission, board, bureau, agency or

instrumentality is or will be necessary for the valid execution or delivery by Borrower of the Loan Documents or by any Guarantor of the Guarantor Documents or their performance of their respective obligations thereunder, other than any filings, notices or recordings which may be required for the perfection of any liens, pledges or security interests granted pursuant to the Loan Documents or Guarantor Documents.

8. To the best of our knowledge after due and diligent inquiry, as of the date of this opinion letter, none of Borrower, General Partner nor any Guarantor is in any material respect in violation of, breach of or default under any applicable Constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Borrower, General Partner, or any Guarantor or any of their activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note agreement (including, without limitation, the Loan Documents) or other agreement or instrument to which any of Borrower, General Partner, or any Guarantor is a party or by which any of Borrower, General Partner or any Guarantor or any of their property or assets is bound, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instruments; and the execution and delivery of the Bonds, the Loan Documents and the Guarantor Documents, and compliance with the provisions on Borrower's, General Partner's or any Guarantor's part contained therein, do not and will not conflict with, or constitute on the part of Borrower, General Partner or any Guarantor a violation of, breach of or default under, any applicable constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Borrower, General Partner or any Guarantor or any of their activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note agreement or other agreement or instrument to which Borrower, General Partner, or any Guarantor is a party or by which Borrower, General Partner or any Guarantor or any of their property or assets is bound, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of Borrower, General Partner or any Guarantor or under the terms of any such law, regulation or instrument, except as provided by the Bonds, the Loan Documents or the Guarantor Documents.
9. To the best of our knowledge after due and diligent inquiry, other than any filings, notices or recordings which may be required for the perfection of any liens, pledges or security interests granted pursuant to the Loan Documents, Borrower has obtained all material permits, licenses or other authorizations or approvals necessary under the laws of the State of California and the United States of America for the operation of the Project as multifamily residential rental housing and all such licenses, permits, authorizations and approvals are valid and are in full force and effect.
10. Each of the Loan Documents has been duly executed and delivered by Borrower and constitutes the valid and legally binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and (ii) the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity); and (iii) certain remedies, waivers, and other provisions of the Loan Documents may not be enforceable, but, subject to the qualifications set forth in the foregoing subparagraphs (i) and (ii), such unenforceability will not preclude (a) the enforcement of the obligation of the Borrower to

pay the principal, interest and prepayment premium, if any, as provided in the Note, and (b) the foreclosure of the Security Instrument upon the event of a material breach.

11. The execution and delivery of, and the performance of the obligations under, the Loan Documents, will not violate the Borrower Organizational Documents nor the organizational documents of General Partner.
12. Neither the execution and delivery by Borrower of the Loan Documents, nor the fulfillment of the terms of the Loan Documents violate any law or regulations applicable to Borrower or court decree known to us to be applicable to Borrower; and, to the best of our knowledge after due and diligent inquiry, none of such actions will result in a breach of, or constitute a default under any agreement, indenture or other instruments to which Borrower or General Partner is a party or by which it is bound.
13. Each of the Guarantor Documents has been duly executed and delivered by each Guarantor and constitutes the valid and legally binding obligation of each Guarantor, enforceable against each Guarantor in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and (ii) the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity).
14. The execution and delivery of, and the performance of the obligations under, the Guarantor Documents, will not violate the Guarantor Organizational Documents.
15. Neither the execution and delivery by Guarantors of the Guarantor Documents, nor the fulfillment of the terms of the Guarantor Documents violate any law or regulations applicable to any Guarantor or court decree known to us to be applicable to any Guarantor; and, to the best of our knowledge after due and diligent inquiry, none of such actions will result in a breach of, or constitute a default under any agreement, indenture or other instruments to which any Guarantor is a party or by which it is bound.
16. To the best of our knowledge after due and diligent inquiry, as of the Closing Date, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, Federal or other, pending or, to the best of our knowledge, threatened against Borrower, General Partner or any Guarantor, affecting the existence of Borrower, General Partner or any Guarantor or the titles of its officers to their respective offices, or contesting or affecting as to Borrower, General Partner or any Guarantor the validity or enforceability of the Act (as defined in the Indenture), the Bonds, any Loan Document or any Guarantor Document or the execution and delivery or adoption by Borrower of any Loan Document or Guarantor of any Guarantor Document or in any way contesting or challenging the powers of Borrower, General Partner or any Guarantor or its authority with respect to the Loan Documents or the Guarantor Documents, as applicable, or the consummation of the transactions contemplated thereby; nor, to the best of our knowledge after due and diligent inquiry, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the financial condition or operations of Borrower, General Partner or any Guarantor or the validity of the authorization, execution, delivery or performance by Borrower or General Partner of any Loan Documents or by any Guarantor of any Guarantor Documents.



17. The Mortgage is in appropriate form for recordation in the land records of the County of San Diego, and upon such recordation, will create the encumbrance and security interest it purports to create in the real property, including fixtures, as described in the Mortgage. Enforcement of the remedies provided in the Mortgage with respect to Borrower or the Project will not, except as expressly limited by the terms of the Mortgage, deprive any secured party of its right to seek a deficiency or personal judgment nor will it limit the right to foreclose on other security or collateral securing the debt. The Mortgage satisfies the requirements of [applicable state statute governing mortgages].
18. Filing of the Financing Statements in the office of the [Office of the County Clerk/Recorder of Deeds] of San Diego County, California and in the Office of the Secretary of State of the State of California (collectively, the “Filing Offices”), will perfect the security interest granted under the Loan Documents in the personal property (the “Personalty”) of Borrower located in the State of California. The Filing Offices are the only offices in the State of California in which the Financing Statement(s) are required to be filed in order to perfect the security interest in the Personalty as contemplated by the Loan Documents.
19. Filing of the Financing Statements in the office of the Office of the Secretary of State of the State of California will perfect the security interest granted under the Hedge Security Agreement in the collateral described in collateral described in the Hedge Agreement (the “Hedge Collateral”). The Office of the Secretary of State of the State of California is the only office in the State of California in which the Financing Statement(s) are required to be filed in order to perfect the security interest in the Hedge Collateral as contemplated by the Hedge Security Agreement.
20. Only the Issuer Assignment and the Financing Statements are required under the laws of the State of California to be recorded or filed in order to effect a valid and binding assignment of the Loan to the Trustee (assuming the Issuer Assignment and the endorsement to the Note have been duly authorized, executed and delivered by the Issuer). In connection therewith, the [Office of the County Clerk/Recorder of Deeds] of San Diego County, California is the only office in the State of California in which the Issuer Assignment is required to be recorded or filed. Assuming the Issuer Assignment and the endorsement of the Note are duly authorized, executed, and delivered by the Issuer and the Issuer Assignment is recorded in the appropriate offices of the State of California and the Financing Statements are filed in Filing Offices, the Issuer Assignment and the endorsement of the Note are adequate under the laws of the State of California to effect a valid and binding assignment of the Loan to the Trustee.
21. Under the laws of the State of California, the holder of the Loan is not required to pay interest to Borrower on any escrow or reserve accounts established by such holder or any other party for the payment of real estate taxes and assessments or insurance premiums or for replacements to the Project.
22. The Loan Documents are governed by the laws of the State of California and with reference to the usury laws of the State of California, in which the Project is located, the payment of all interest, loan fees, late fees, prepayment premiums, the default rate of interest and other charges under and pursuant to the Loan Documents are not usurious under the law of such State. No Federal, state or local laws in the nature of truth-in-lending, real estate settlement procedures, equal credit opportunity or disclosure, apply to the loan made pursuant to the Loan Documents.

23. Except for certain fees for recording charged by the Filing Offices and the Secretary of State of the State of California, no recording, filing, privilege or other tax must be paid in connection with the execution, delivery, recordation or enforcement of any of the Loan Documents.

The opinions set forth above are subject to the following qualifications:

- (i) We express no opinion with respect to the relative priority of the liens or security interests created by any of the Loan Documents. We have assumed that Borrower has rights in the Project. We understand that, with respect to the real property, you are relying upon a mortgagee's title insurance policy insuring the lien on the Project, and, with respect to the Personalty, you are relying on UCC lien searches and Financing Statements. We also have assumed the recordation and filing of the Mortgage and Financing Statements in accordance with this opinion following their execution and delivery by Borrower.
- (ii) The Uniform Commercial Code of the State of California requires the periodic filing of continuation statements with the Secretary of State and the Filing Offices not more than six (6) months prior to and not later than the expiration of the five (5) year period from the date of filing of the Financing Statement and the expiration of each subsequent five (5) year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.
- (iii) We express no opinion as to the laws of any jurisdiction other than the laws of the State of California and the laws of the United States of America. The opinions expressed above concern only the effect of the laws of the State of California and the United States of America as currently in effect.

We confirm that:

- (a) Based on the Borrower Organizational Documents and the Guarantor Organizational Documents, the name of Borrower, General Partner and each Guarantor in each of the Loan Documents and the Title Policy is the correct legal name of Borrower and such Guarantor;
- (b) We do not have any financial interest in the Project or the Loan Documents, other than fees for legal services performed by us, payment for which has been provided;
- (c) We acknowledge that the Beneficiary Parties are relying on this opinion letter and would not be issuing the Bonds, purchasing the Bonds, making the Loan and/or acquiring the Loan, without its issuance. We (i) acknowledge that Borrower has instructed us to issue and deliver this opinion for the benefit of the addressees, and (ii) waive any defense or claim of lack of contractual privity which we might assert against the addressees in connection with the issuance of this opinion letter; and
- (d) Other than as counsel for Borrower, General Partner and Guarantors, we have no interest in Borrower, General Partner or Guarantors, and do not serve as employees of Borrower, General Partner or Guarantors. We have no undisclosed interest in the subject matters of this opinion.

The foregoing opinions are for the exclusive reliance of the addressees, and their respective successors and assigns, including a trustee in connection with a securitization, their respective counsel, and

by a rating agency in connection with the assignment of a rating to the Bonds or to any certificates backed by the Bonds for purposes of a securitization.

EXHIBIT F – POINTS TO BE COVERED IN THE OPINION OF TRUSTEE’S  
COUNSEL/TRUSTEE’S CERTIFICATE

[After appropriate introductory language, the opinion/certificate shall state substantially as follows:]

(1) The Trustee is a national banking association duly organized, validly existing and in good standing under the laws of the United States of America with trust powers.

(2) The Trustee has all requisite corporate and trust power, authority and legal right and has taken all necessary corporate action to: (i) execute and deliver the Indenture and to accept the trusts created under the Indenture and to perform its obligations thereunder, (ii) execute and deliver in its capacity as Trustee the Loan Agreement, the Continuing Disclosure Agreement, the Contingency Draw-Down Agreement, the Issuer Assignment and the Regulatory Agreement, as such documents are defined in the Indenture, (such documents, collectively, with the Indenture, the “Trustee Documents”) and perform the duties and obligations of the Trustee thereunder.

(3) The Trustee has duly authorized, executed and delivered the Trustee Documents. Assuming the due authorization, execution and delivery thereof by the other parties thereto, the Trustee Documents are the legal, valid and binding agreements of the Trustee, enforceable in accordance with their terms against the Trustee.

(4) No authorization, approval, consent, or other order of any governmental agency or regulatory authority having jurisdiction over the Trustee that has not been obtained is required for the authorization, execution and delivery by the Trustee of the Trustee Documents.

(5) There is no litigation pending or, to our knowledge, threatened against the Trustee to restrain the Trustee’s participation in, or in any way contesting or affecting the creation, organization or existence of the Trustee or the power of the Trustee with respect to the transactions contemplated by the Trustee Documents.

(6) The execution and delivery of the Trustee Documents by the Trustee, and compliance with the provisions thereof will not contravene the Articles of Association or Bylaws of the Trustee or any law or regulation governing the banking and trust powers of the Trustee or, to our knowledge, any indenture, mortgage, deed of trust, resolution, note agreement or other agreement or instrument to which the Trustee is a party or by which the Trustee is bound.

EXHIBIT G – PURCHASER’S LETTER

[To be attached]