



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

**DATE ISSUED:** September 10, 2020

**REPORT NO:** HAR20-028

**ATTENTION:** Chair and Members of the Housing Authority of the City of San Diego  
For the Agenda of September 29, 2020

**SUBJECT:** Final Bond Authorization for The Orchard at Hilltop Family Housing

**COUNCIL DISTRICT:** 4

### **REQUESTED ACTION**

Authorize the issuance of up to \$27,885,943 of Housing Authority of the City of San Diego tax-exempt and up to \$3,500,000 of taxable Multifamily Housing Revenue Bonds to fund the acquisition and new construction of The Orchard at Hilltop Family Housing, formerly known as Hilltop & Euclid Family Housing, a 113-unit affordable rental housing development to be located at 922-944 Euclid Avenue, San Diego, CA 92114, which will consist of 111 units that will remain affordable for 55 years and two managers' units.

### **STAFF RECOMMENDATION**

That the Housing Authority of the City of San Diego (Housing Authority) take the following actions:

1. Authorize the issuance of up to \$27,885,943 in tax-exempt Multifamily Housing Revenue Bonds to facilitate Hilltop Family Housing L.P.'s new construction of The Orchard at Hilltop Family Housing, formerly known as Hilltop & Euclid Family Housing, to be located at 922-944 Euclid Avenue, San Diego, California 92115, which will consist of 111 units that will remain affordable for 55 years and two managers' units.
2. Authorize the issuance of up to \$3,500,000 in taxable Multifamily Housing Revenue Bonds for the Hilltop Family Housing L.P.'s construction financing for The Orchard at Hilltop Family Housing.

### **SUMMARY**

A Development Summary is at Attachment 1.

**Table 1 –Development Details**

Address	922-944 Euclid Avenue, San Diego
Council District	4
Community Plan Area	Encanto Neighborhoods Community Planning Group (ENCPG)
Developers	Affirmed Housing Group, Inc.
Development Type	New construction
Construction Type	Mid-rise: two four-story and one three-story building
Parking Type	98 Standard non-accessible parking spaces: 3 accessible parking spaces; 21 spaces for commercial use:

	57 secured bicycle parking spaces 5 non-accessible EVCS for the multifamily units 1 accessible EVCS for the multifamily space
Housing Type (Affordable)	Low-income families and individuals
Lot Size	4.801 acre, 209,132 square feet.
Units (407-units total)	113 (111-units affordable, plus two managers' units).
Density	27.7 dwelling units per acre (113 units ÷ 4.08 acres).
Unit Mix	113 units: 14 Studio, 23 One-bedrooms, 36 two-bedrooms, 20 three-bedrooms, 18 four-bedrooms, and 2 managers' units.
Gross Building Area	145,047 square feet
Net Rentable Area	124,772 square feet
Commercial/Retail Space	8,485 square feet
Project Based Housing Vouchers	25 Project-Based Housing Vouchers

The Orchard at Hilltop is a new construction mixed-use development containing 113 apartment homes for single-member through large-family low-income households, as well as 8,485 square feet of commercial space. Pursuant to the terms of a Disposition and Development Agreement (DDA) with Civic San Diego, Affirmed Housing will redevelop the eastern half of the vacant nine-acre site, and a market-rate developer (Infill Development Company) will construct 20 market-rate single-family dwelling units and 27 market rate two- and three-story townhomes on the western half of the site. The terms, conditions and financing of the affordable and market-rate components are entirely separate from one another. This report only discusses the affordable mixed-use component under development by Affirmed Housing. On January 2, 2020, the San Diego Housing Commission (Housing Commission) Board of Commissioners approved a residual receipts loan of up to \$8,550,000 for the affordable housing development.

The project will also include several infrastructure improvements, including: the extension of Hilltop Drive from its current terminus at the drainage crossing east to the existing signalized intersection at Euclid Avenue; the construction of a raised center median along the project's frontage on Euclid Avenue; and the restoration and enhancement of a naturally occurring arroyo, creating a natural habitat amenity and focal point for the community.

The apartments are spread over two, four-story buildings and one, three-story building. A separate single-level building contains a community room and other common area features, including an adjacent swimming pool and recreational lawn that will be part of the market-rate development and accessible by residents of the affordable housing development. Studio E Architects designed the building facades to create visual interest through articulation and offsetting planes. A mix of colors and materials break up the visual bulk along Euclid Avenue and Hilltop Drive. The complex includes various recreational amenities, including a basketball court, gardening space, community room, and outdoor gathering areas.

The project will provide 98 standard non-accessible parking spaces, three accessible parking spaces, one van-accessible space, and 12 motorcycle spaces for residential use; 21 spaces for commercial use. Fifty-seven secured bicycle parking spaces are located in the ground level of one of the residential buildings. The project will also provide five non-accessible Electric Vehicle Charging Stations (EVCS) parking spaces for the multifamily units and one accessible EVCS multifamily residential space.

All of the 113 apartments (except for two manager's units) are income- and rent-restricted. Rents will be the lesser of California Tax Credit Allocation Committee (CTCAC) or California Redevelopment Law maximums, ranging from 30 percent to 60 percent of San Diego Area Median Income (AMI). The apartment unit types include studios to four-bedroom units.

#### The Development

The development's location is a 9.38-acre vacant site at 922-1040 Euclid Avenue and 5012 Hilltop Drive, on the northeastern corner of Hilltop Drive and Euclid Avenue in the Encanto Neighborhoods Community Planning Group (Attachment 2 – Site Map) area. Pursuant to the terms of a Disposition and Development Agreement (DDA) with Civic San Diego (Attachment 6), Affirmed Housing will redevelop the eastern half of the site, approximately 4.801 acres, and a market-rate developer (Infill Development Company) will construct 20 market-rate single-family dwelling units and 27 market-rate two- and three-story townhomes on the western half of the site.

The development proposes to provide 111 affordable rental housing units and two managers' units. The development will include studios, one-, two-, three-, and four-bedroom units. The apartments will range from 456 square feet for studios to 1,441 square feet for four-bedroom units. Site amenities will include: an approximately 8,485-square-foot community building, basketball court, gardening space, community room, and outdoor gathering areas. However, neither the Housing Commission's loan funds nor the Multifamily Housing Revenue Bond proceeds can be used for commercial space financing nor for furnishings.

#### The Property

The property is owned by the City of San Diego. A DDA (Attachment 6) was entered into between Civic San Diego and the Hilltop Family Housing, L.P., (the developer) on November 5, 2019, through which the City will receive \$1 for the property in return for the construction of a 113-unit affordable housing development.

#### Appraisal

On November 14, 2018, the land was appraised by Novogradac & Company at \$5,500,000.

#### Prevailing Wages

The development proposes to use U.S. Department of Housing and Urban Development (HUD) federal Project-Based Housing Vouchers (PBVs), administered by the Housing Commission, which will require the project to pay federal Davis-Bacon prevailing wages.

#### Relocation

The developer reports that there will be no relocation as the site is vacant.

#### Accessibility

CTCAC requires wheelchair accessibility in 10 percent of the units, with an additional 4 percent of the units accessible to residents with visual and/or hearing impairment. The same units can satisfy both of these accessibility requirements. In addition, these accessible units will satisfy the federal HOME Investment Partnerships Program (HOME) and Project-Based Housing Voucher accessibility requirement of wheelchair accessibility in 5 percent of the units, plus an additional 2 percent of the units accessible to residents with visual and/or hearing impairment. The project will be 100 percent accessible for visitors. The development will include Universal Design features.

### Project Sustainability

The development will be designed to achieve a Build It Green® GreenPoint Gold certification. It will also comply with the CTCAC minimum energy-efficiency construction standards for new construction. Sustainable features will include: Energy Star-rated efficient appliances, use of Low Volatile Organic Compound (VOC) paints and stains for interior surfaces, high-efficiency heating and cooling, energy-efficient windows, and light-emitting diode (LED) lighting. Water conservation will be promoted via drought-tolerant landscaping, and low-flow water fixtures in the kitchens and bathrooms.

### Development Team

The proposed borrower will be Hilltop Family Housing L.P., a single-asset California limited partnership.

The limited partnership will include Affirmed Housing Group, Inc., (Affirmed Housing) as the Administrative General Partner, NEXUS for Affordable Housing as Managing General Partner, and Boston Capital as tax credit Investor Limited Partner (Attachment 3 – Organization Chart).

Since its inception in 1992, Affirmed Housing has successfully developed 42 communities with more than 3,000 affordable rental and for-sale apartments and homes. The Affirmed Housing pipeline of projects currently includes more than 500 apartments, each at various stages of development. Affirmed Housing has secured more than \$200 million of tax credit, conventional, and other financing for affordable housing developments. Recent developments include new construction in San Diego as well as acquisition and substantial rehabilitation in San Diego, Los Angeles, Riverside and Ventura counties. Projects in San Diego include the 229-unit 1050 B Apartments, the 106-unit Tesoro Grove Apartments, the 94-unit Hollywood Palms Apartments, and their most recent completions, the 80-unit Stella and 80-unit Bluewater properties.

Affirmed Housing has developed multiple affordable rental housing developments in the City using Housing Commission loan funds. Affirmed Housing is in full compliance on its previous Housing Commission-funded loans. Based upon the developer's past experience and performance, Housing Commission staff has determined that the developer has the capacity to successfully complete the proposed Orchard at Hilltop project.

### Supportive Services

The development's tenant supportive services will be provided by Compass for Affordable Housing. Founded in 2009 and broadened to Compass for Affordable Housing (Compass) in 2018, Compass is an inclusive organization providing support to those of low income residing in affordable housing. Utilizing technology, Compass shares educational information with a wide spread, diverse group of individuals who may lack access to pertinent information that can aid in their ability to achieve success. Compass is the connection between these individuals and pertinent social information. Compass provides a direction to share, to raise awareness and empower.

**Table 2 Development Team Summary**

<b>ROLE</b>	<b>FIRM/CONTACT</b>
Developers	Affirmed Housing
Owner/Borrower	Hilltop Family Housing L.P.,
Managing General Partner	NEXUS for Affordable Housing, Inc
Administrative General Partner	Affirmed Housing Group, Inc.
Tax Credit Investor Limited Partner	Boston Capital
Architect	Studio E
General Contractor	HA Builders
Property Management	Solari Enterprises
Supportive Services Provider	Compass for Affordable Housing
Construction and Permanent Lender	Boston Capital Finance LLC

**Property Management**

This development will be managed by Solari Enterprises, Inc. (Solari), a full-service property management organization specializing in multifamily affordable housing. Solari has provided property management services for affordable housing developments for more than 25 years and operates in multiple California cities.

**FINANCING STRUCTURE**

The project has an estimated total development cost of \$54,305,415 (\$480,579/unit). Financing will include a combination of sources as described in Table 3. The developer's current pro forma is included as Attachment 4 and is summarized below.

**Table 3 – Hilltop Family Housing L.P., Estimated Permanent Sources and Uses**

<b>Financing Sources</b>	<b>Amounts</b>	<b>Financing Uses</b>	<b>Amounts</b>	<b>Per Unit</b>
Permanent Loan	\$13,046,340	Property acquisition	\$1	\$0
CivicSD Predevelopment Loan	2,826,626	Construction costs	37,395,648	330,935
CivicSD Loan	3,023,374	Hard Cost Contingency	3,066,443	27,137
Housing Commission Loan	8,300,000	Architectural, Survey, & Engineering	2,559,135	22,647
Deferred developer's fee	1,009,420	Development Impact Fees & Permits	3,000,531	26,553
Federal Tax Credit Equity	20,137,617	Construction Interest & Fees	1,695,300	15,003
State Tax Credit Equity	5,962,038	Financing costs	1,199,141	10,612
		Legal	365,000	3,230
		Other soft costs	865,066	7,655
		Soft Cost Contingency	\$559,150	4,948
		Developer's fee	3,600,000	31,858
<b>Total Development Cost</b>	<b>\$54,305,415</b>	<b>Total Development Cost (TDC)</b>	<b>\$54,305,415</b>	<b>\$480,579</b>

The developer proposes financing with a combination of tax-exempt and taxable bonds, 4 percent tax credits, loan funds from Civic San Diego, deferred developer fee funds, and a Housing Commission residual receipts loan. The Housing Commission requires affordable housing developers to pursue all viable sources of funding to reduce the financing gap and amount of Housing Commission subsidy required. If other funding is secured, proceeds will first be used to make an adjustment to reduce the Housing Commission's loan.

Developers' Fee

\$3,600,000 – gross developer fee  
- 1,009,420 – deferred developer fee  
\$2,590,580 – net cash developer fee

On April 25, 2017, the Housing Authority approved the “Request for Approval of Updated Developer Fees” (HAR17-011). That report approved certain developer fee guidelines for multifamily loans and bonds issuances. That report at its Attachment 1 states: “Developer fee for 4% tax credits: in project costs 15% of eligible basis....” For this development the developers are proposing a \$3,600,000 total developer fee which complies with HAR17-011. The net cash developer fee shall be \$2,590,580 provided, however, that in the event financing terms or construction costs change and result in a financing gap, the developer may defer additional developer fee. The fee proposed is consistent with the Request for Approval of Updated Developer Fees (HAR17-011) approved by the Housing Authority on April 25, 2017.

Development Cost Key Performance Indicators

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

**Table 4 – Hilltop Family Housing L.P. Key Performance Indicators**

Total Development Cost Per Unit	$\$54,305,415 \div 113 \text{ units} =$	\$480,579
Housing Commission Subsidy Per Unit	$\$8,300,000 \div 113 \text{ units} =$	\$73,451
Gross Building Square Foot Hard Cost	$\$40,462,091 \div 145,047 \text{ sq. ft.} =$	\$279
Net Rentable Square Foot Hard Cost	$\$40,462,091 \div 124,772 \text{ sq. ft.} =$	\$324

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 recent 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 the subject development.

**Table 5 – Hilltop Family Housing L.P., Comparable Development Projects**

Project Name	Year	Units	Prevailing Wages	Total Development Cost	Cost Per Unit	HC Subsidy Per Unit	Gross Hard Cost Sq. Ft.
<b>Subject- Hilltop Family Housing L.P.</b>	<b>2020</b>	<b>113</b>	<b>Yes</b>	<b>\$54,305,415</b>	<b>\$480,579</b>	<b>\$73,451</b>	<b>\$279</b>
Civita	2017	203	No	\$99,859,721	\$491,919	0	\$332
Town & Country	2018	145	Yes	\$48,166,994	\$332,186	\$91,358	\$90
Ten Fifty B	2010	229	Yes	\$88,682,000	\$387,258	0	\$447
Stella	2017	80	Yes	\$28,734,448	\$359,181	\$93,750	\$303
Bluewater	2017	80	Yes	\$32,174,500	\$402,182	\$118,356	\$218

### 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. Prior to submitting applications to CDLAC, developments are brought before the Housing Commission, Housing Authority, and City Council. Housing Authority bond inducement resolutions must be obtained prior to application submittal, and City Council Tax Equity and Fiscal Responsibility Act (TEFRA) resolutions must be secured no later than 30 days after application submittal. On January 7, 2020, these actions were completed for The Orchard at Hilltop.

On January 7, 2020, an application was submitted to CDLAC for a bond allocation of up to \$27,885,943. On April 14, 2020, CDLAC approved the \$27,885,943 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. 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 ordinance on bonds disclosure.

The bonds 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 bonds proceeds will be used for both construction financing and permanent financing. 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 are described in Attachment 5.

### Public Disclosure and Bond Authorization

The tax-exempt and taxable debt, in the form of the bonds, will be sold through a private placement, purchased directly by Boston Capital Finance LLC. Boston Capital is a "qualified institutional buyer" within the meaning of the U.S. securities laws. At closing, Boston Capital will sign an "Investor's Letter" certifying, among other things, that it is buying the bonds for its own account and not for public distribution. Because the bonds is being sold through a private placement, an Official Statement will not be used. In addition, the bonds will be neither subject to continuing disclosure requirements, nor credit enhanced, nor rated. Under the private placement structure for this transaction, Boston Capital will make a loan to the Housing Authority pursuant to the terms of a Funding Loan Agreement among Boston Capital, the Housing Authority, and a to-be selected Fiscal Agent. The loan made by Boston Capital to the Housing Authority (Funding Loan) will be evidenced by the bonds, which will obligate the Housing Authority to pay Boston Capital 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 bonds. The Housing Authority's obligation to make payments on the bonds is limited to amounts the Fiscal Agent receives from the Borrower under the Borrower Loan Agreement, and no other funds of the Housing Authority are pledged to make payments on the bonds. The transfer of the 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 bonds holder will be required to represent to the Housing Authority that it is a qualified institutional buyer or accredited investor who is buying the 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 bonds. The following documents will be executed on behalf of the Housing Authority with respect to the bonds: the Funding Loan Agreement, the Borrower Loan Agreement, the Assignment of Deed of Trust, the Regulatory Agreement, 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 bonds will be issued pursuant to the Funding Loan Agreement. Based upon instructions contained in the Funding Loan Agreement and the Borrower Loan Agreement, Boston Capital will disburse the bonds proceeds for eligible costs and will, pursuant to an assignment from the Housing Authority, receive payments from the Borrower. The Borrower Loan Agreement sets 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 Boston Capital. The Regulatory Agreement will be recorded against the property to ensure the long-term use of the project as affordable housing. The Regulatory Agreement will also ensure that the project complies with all applicable federal and state laws. An Assignment of Deed of Trust, and other loan documents, will assign the Housing Authority's rights and responsibilities as the issuer to Boston Capital. It will be signed by the Housing Authority for the benefit of Boston Capital. Rights and responsibilities that are assigned to Boston Capital 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 Boston Capital to protect its financial interests as the bonds holder.

#### Financial Advisor's Recommendation

Jones Hall will be the Bond Counsel and CSG Advisors Incorporated will be the Financial Advisor to work on the tax-exempt and taxable bond issuance. After evaluating the terms of the proposed financing and the public benefits to be achieved, it is the Financial Advisor's recommendation that the Housing Authority should proceed with the bond issuance. The Financial Advisor's analysis and recommendation is included as Attachment 7.

#### **AFFORDABLE HOUSING IMPACT**

Under the proposed bond financing, the development will serve low- income individuals and families with incomes from 30 percent to 60 percent of San Diego Area Median Income (AMI). Approvals will be contingent upon National Environmental Policy Act clearance, and a subsidy layering review.

The development will be subject to a Housing Commission Declaration of Covenants and Restrictions, in addition to applicable tax credit and bond regulatory agreements that will restrict affordability of 111 units for 55 years. The HOME program's funds will have affordability and rent restrictions for 20 years. Under the proposed loan and bond financing, the development will have 111 units restricted to households with incomes from 30 percent (\$24,300/year for a studio, one-person household) to 60 percent (\$74,880 year for a four-bedroom, five- person household) of the 2020 San Diego Area Median Income (AMI). The remaining two units will be unrestricted managers' units. Table 6 summarizes the affordability:

**Table 6 – The Orchard at Hilltop Family Housing Affordability & Monthly Estimated Rent Table**

Unit Type	AMI	Number of Units	Maximum TCAC Gross Rents
Studio	30%	14	\$606
One-Bedroom	30%	12	\$649
One- Bedroom	60%	11	\$1,299
Two-Bedroom	40%	5	\$1,040
Two-Bedroom	60%	31	\$1,560
Three-Bedroom	40%	4	\$1,201
Three-Bedroom	60%	16	\$1,802
Four-Bedroom	40%	3	\$1,340
Four-Bedroom	60%	15	\$2,010
Subtotal residential units		111	
Managers' units (one & two bedrooms)	--	2	--
Total Units		113	

There will be 20 total HOME restricted units. The tax credit restricted units and/or the HOME restricted units may be counted against the same specific units. The more stringent of the funding sources' affordability/rent restrictions will take precedence during the term of their applicability.

### **FISCAL CONSIDERATIONS**

The funding sources and uses proposed for this approval are not included in the Housing Authority-approved Fiscal Year (FY) 2021 Housing Commission Budget. Approving this action will increase the FY 2021 total budget.

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

Bond Issuance Fees - \$78,465 (\$31,385,943 X .0025)

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

Program Administration Costs - \$78,465

There are no fiscal impacts to the Housing Commission, or to the City of San Diego, or to the Housing Authority associated with the requested bond actions. The bonds will not constitute a debt of the City of San Diego. If the bonds is ultimately issued for the project, the bonds will not financially obligate the City, the Housing Authority, or the Housing Commission because security for the repayment of the bonds will be limited to specific private 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 bonds. The developer is responsible for the payment of all costs under the financing, including the Housing Commission Bond Counsel and Financial Advisor fees. Additionally the developer is responsible for payment of the Housing Commission's .0025 bond amount issuer fee (estimated at \$78,465 with a \$31,385,943 tax-exempt and taxable bond issuance).

### Development Schedule

The estimated development timeline is as follows:

<b>Milestones</b>	<b>Estimated Dates</b>
<ul style="list-style-type: none"><li>• Housing Commission final bond authorization</li><li>• Housing Authority final bond authorization</li><li>• Estimated bond issuance and escrow/loan closing</li><li>• Estimated start of construction work</li><li>• Estimated completion of construction work</li></ul>	<ul style="list-style-type: none"><li>• September 18, 2020</li><li>• September 29, 2020</li><li>• October 2020</li><li>• October 2020</li><li>• July 2022</li></ul>

### **PREVIOUS COUNCIL and/or COMMITTEE ACTION**

Site Development Permit No. 1976637 and Neighborhood Development Permit No. 2179090 were granted by the City Council of the City of San Diego to the City of San Diego and Affirmed Housing for the Hilltop & Euclid Mixed-Use Development Project No. 560527, currently known as The Orchard at Hilltop, on December 3, 2018. On January 2, 2020, the Housing Commission approved preliminary bond authorization and loan recommendation. On January 7, 2020, the Housing Authority approved preliminary bond authorization.

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

On February 26, 2018, the Encanto Neighborhoods Community Planning Group voted 5-4-1 in support of the proposed development.

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

Stakeholders include Affirmed Housing as the developer, the Housing Authority as bond issuer, Civic San Diego as a lender, and the Encanto Village neighborhood. The development is anticipated to have a positive impact on the community as it will contribute to the quality of the surrounding neighborhood and create 111 new affordable rental homes for low-income persons and families.

### **ENVIRONMENTAL REVIEW**

On December 3, 2018 the City of San Diego passed Resolution Number R-312078 outlining the following Environmental determination. "The information contained in the Program Environmental Impact Report No. 386029/SCH No. 2014051075 along with the Addendum thereto, including any comments received during the public review process, has been reviewed and considered by this City Council prior to making decisions on the project. There are no substantial changes proposed to the Project and no substantial changes with respect to the circumstances under which the Project is to be undertaken that would require major revisions in the Program Environmental Impact Report No. 386029/SCH No. 2014051075 for the Project. Pursuant to State CEQA Guidelines Section 15164, only minor technical changes or additions are necessary, and therefore, the City Council adopts Addendum to Program Environmental Impact Report No. 386029/SCH No. 2014051075 with respect to the Project, a copy of which is on file in the office of the City Clerk, 202 C Street, San Diego, CA 92101. Pursuant to CEQA Section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the change to the project as required by the City Council of San Diego in order to mitigate or avoid significant effects on the environment.

### National Environmental Policy Act

Federal funds constitute a portion of this project making the project subject to U.S. Department of Housing and Urban Development under 24 CFR Part 58 of the National Environmental Policy Act

(NEPA). The Housing Commission received final NEPA clearance and authorizations to grant funds on May 2, 2020.

Respectfully submitted,

Approved by,



Colin Miller  
Vice President, Multifamily Housing Finance  
Real Estate Division

Jeff Davis  
Executive Vice President & Chief of Staff  
San Diego Housing Commission

Attachments: 1) Development Summary  
2) Site Map  
3) Organization Chart  
4) Developer's Project Proforma  
5) Multifamily Housing Revenue Bond Program Summary  
6) Civic Disposition and Development Agreement  
7) Financial Advisor's Analysis  
8) Developer's Disclosure Statement – Affirmed

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

**Table 1 – Development Details**

Address	922-944 Euclid Avenue, San Diego
Council District	4
Community Plan Area	Encanto Neighborhoods Community Planning Group (ENCPG)
Developers	Affirmed Housing Group, Inc.
Development Type	New construction
Construction Type	Mid-rise: two four-story and one three-story building
Parking Type	98 Standard non-accessible parking spaces: 3 accessible parking spaces; 21 spaces for commercial use: 57 secured bicycle parking spaces 5 non-accessible EVCS for the multifamily units 1 accessible EVCS for the multifamily space
Housing Type (Affordable)	Low-income families and individuals
Lot Size	4.801 acre, 209,132 square feet.
Units (407-units total)	113 (111-units affordable, plus two managers' units).
Density	27.7 dwelling units per acre (113 units ÷ 4.08 acres).
Unit Mix	113 units: 14 Studio, 23 One-bedrooms, 36 two-bedrooms, 20 three-bedrooms, 18 four-bedrooms, and 2 managers' units.
Gross Building Area	145,047 square feet
Net Rentable Area	124,772 square feet
Commercial/Retail Space	8,485 square feet
Project Based Housing Vouchers	25 Project-Based Housing Vouchers

**Table 2 Development Team Summary**

<b>ROLE</b>	<b>FIRM/CONTACT</b>
Developers	Affirmed Housing
Owner/Borrower	Hilltop Family Housing L.P.,
Managing General Partner	NEXUS for Affordable Housing, Inc
Administrative General Partner	Affirmed Housing Group, Inc.
Tax Credit Investor Limited Partner	Boston Capital
Architect	Studio E
General Contractor	HA Builders
Property Management	Solari Enterprises
Supportive Services Provider	Compass for Affordable Housing
Construction and Permanent Lender	Boston Capital Finance LLC

**Table 3 – Hilltop Family Housing L.P., Estimated Permanent Sources and Uses**

<b>Financing Sources</b>	<b>Amounts</b>	<b>Financing Uses</b>	<b>Amounts</b>	<b>Per Unit</b>
Permanent Loan	\$13,046,340	Property acquisition	\$1	\$0

CivicSD Predevelopment Loan	2,826,626	Construction costs	37,395,648	330,935
CivicSD Loan	3,023,374	Hard Cost Contingency	3,066,443	27,137
Housing Commission Loan	8,300,000	Architectural, Survey, & Engineering	2,559,135	22,647
Deferred developer's fee	1,009,420	Development Impact Fees & Permits	3,000,531	26,553
Federal Tax Credit Equity	20,137,617	Construction Interest & Fees	1,695,300	15,003
State Tax Credit Equity	5,962,038	Financing costs	1,199,141	10,612
		Legal	365,000	3,230
		Other soft costs	865,066	7,655
		Soft Cost Contingency	\$559,150	4,948
		Developer's fee	3,600,000	31,858
<b>Total Development Cost</b>	<b>\$54,305,415</b>	<b>Total Development Cost (TDC)</b>	<b>\$54,305,415</b>	<b>\$480,579</b>

**Table 4 – Hilltop Family Housing L.P. Key Performance Indicators**

Total Development Cost Per Unit	$\$54,305,415 \div 113 \text{ units} =$	<b>\$480,579</b>
Housing Commission Subsidy Per Unit	$\$8,300,000 \div 113 \text{ units} =$	<b>\$73,451</b>
Gross Building Square Foot Hard Cost	$\$40,462,091 \div 145,047 \text{ sq. ft.} =$	<b>\$279</b>
Net Rentable Square Foot Hard Cost	$\$40,462,091 \div 124,772 \text{ sq. ft.} =$	<b>\$324</b>

**Table 5 – Hilltop Family Housing L.P., Comparable Development Projects**

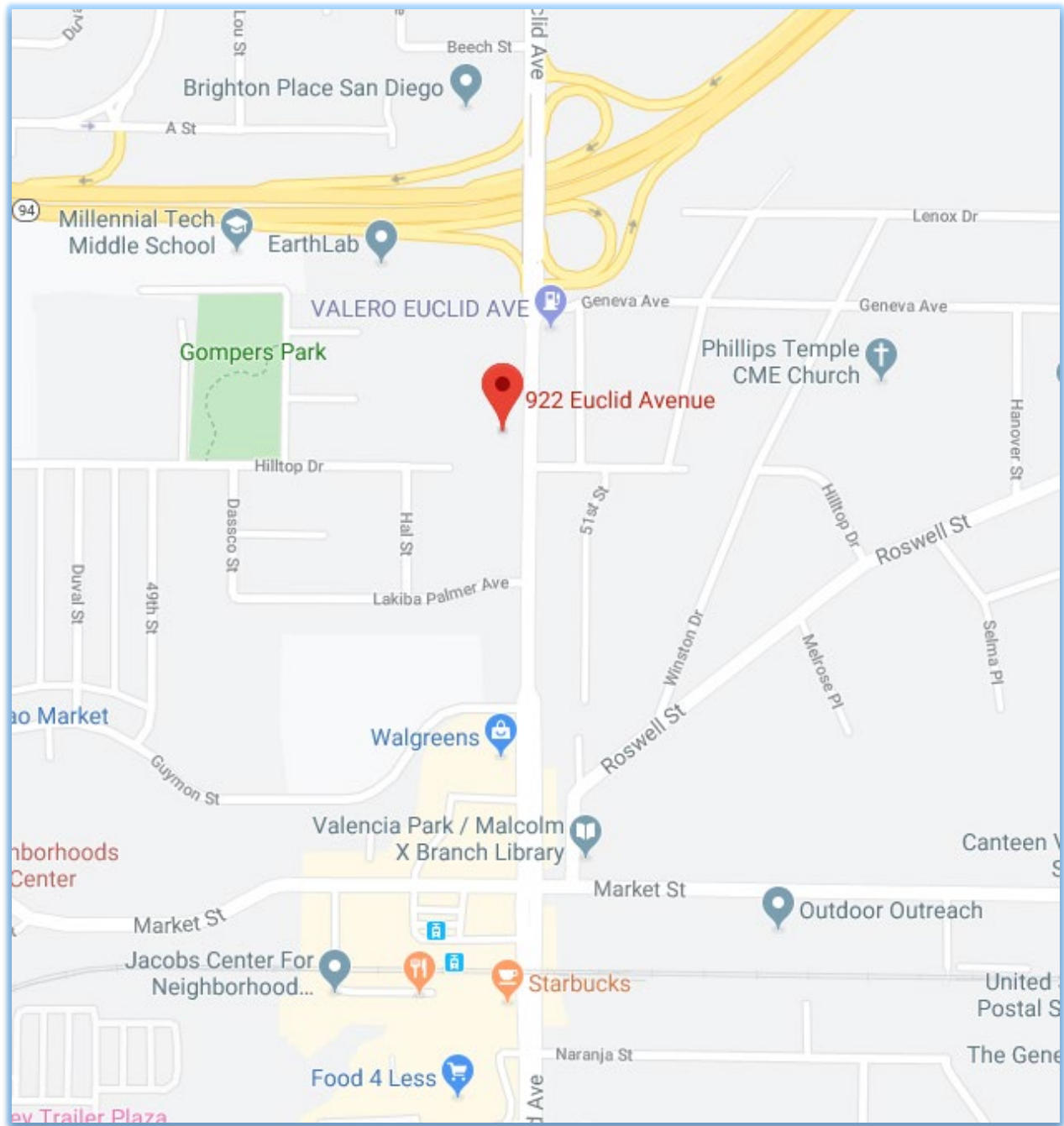
Project Name	Year	Units	Prevailing Wages	Total Development Cost	Cost Per Unit	HC Subsidy Per Unit	Gross Hard Cost Sq. Ft.
<b>Subject- Hilltop Family Housing L.P.</b>	<b>2020</b>	<b>113</b>	<b>Yes</b>	<b>\$54,305,415</b>	<b>480,579</b>	<b>\$73,451</b>	<b>\$279</b>
Civita	2017	203	No	\$99,859,721	\$491,919	0	\$332
Town & Country	2018	145	Yes	\$48,166,994	\$332,186	\$91,358	\$90
Ten Fifty B	2010	229	Yes	\$88,682,000	\$387,258	0	\$447
Stella	2017	80	Yes	\$28,734,448	\$359,181	\$93,750	\$303
Bluewater	2017	80	Yes	\$32,174,500	\$402,182	\$118,356	\$218

**Table 6 – Hilltop Family Housing Affordability & Monthly Estimated Rent Table**

Unit Type	AMI	Number of Units	Maximum TCAC Gross Rents
Studio	30%	14	\$606
One-Bedroom	30%	12	\$649
One- Bedroom	60%	11	\$1,299
Two-Bedroom	40%	5	\$1,040
Two-Bedroom	60%	31	\$1,560
Three-Bedroom	40%	4	\$1,201
Three-Bedroom	60%	16	\$1,802
Four-Bedroom	40%	3	\$1,340
Four-Bedroom	60%	15	\$2,010
Subtotal residential units		111	

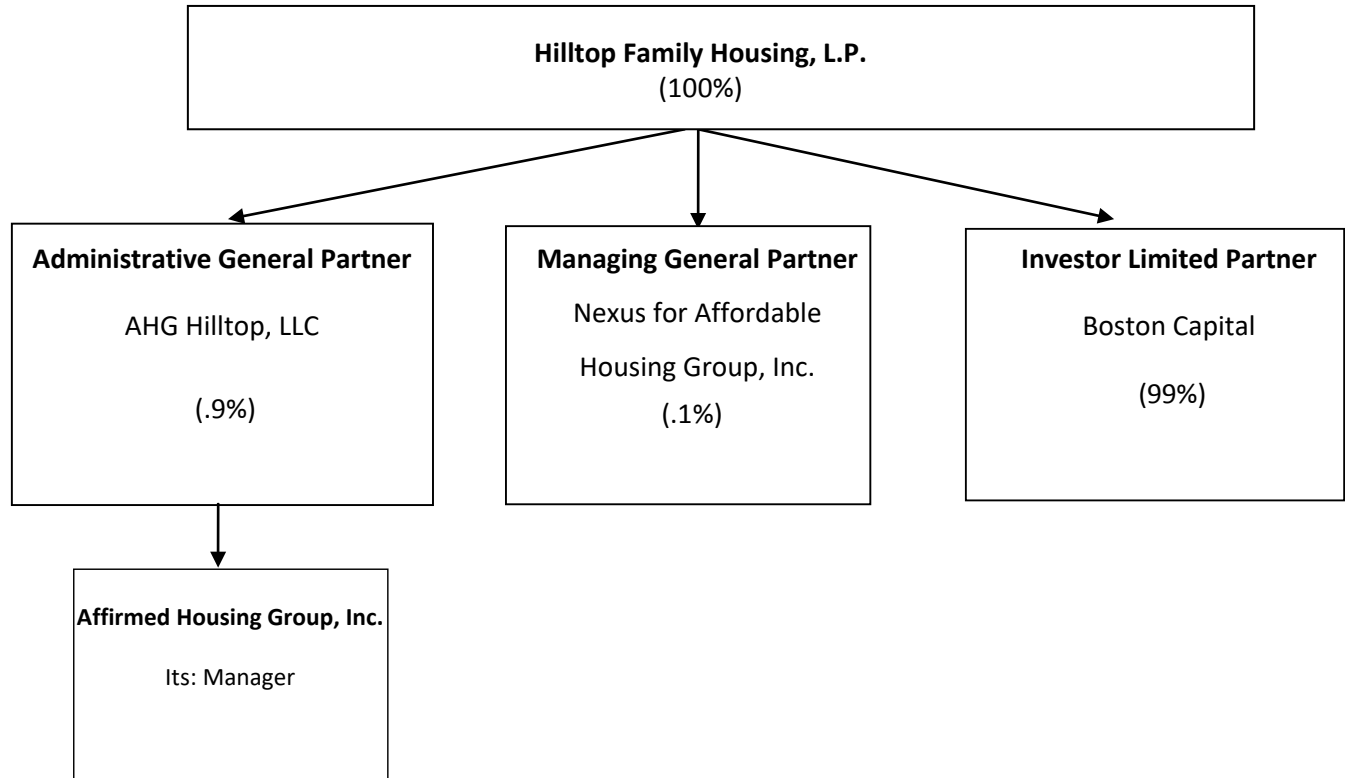
Managers' units (one & two bedrooms)	--	2	--
Total Units		113	

## Attachment 2



**Hilltop Family Housing, LP OWNERSHIP STRUCTURE:****Limited Partnership**

Affirmed Housing Group, Inc., a Delaware for-profit corporation, has formed a Limited Partnership that will be the 100% ownership entity of the affordable housing project. Affirmed Housing Group will own .9% interest, the Investor Limited Partner will have 99% interest in the limited partnership, and the Managing General Partner will own .1% of the limited partnership.

**OFFICERS AND/OR MANAGERS RESPONSIBLE FOR THE PROJECT:**

1. James Silverwood  
President  
Affirmed Housing Group, Inc.  
13520 Evening Creek Dr. N, #160  
San Diego, CA 92128
2. Jimmy Silverwood  
Executive Vice President  
Affirmed Housing Group, Inc.  
13520 Evening Creek Dr. N, #160  
San Diego, CA 92128
3. Jonathan Taylor  
Senior Project Manager  
Affirmed Housing Group, Inc.  
13520 Evening Creek Dr. N, #160  
San Diego, CA 92128

Affirmed Housing Group, Inc. will act as the General Partner in the development of the affordable housing project. Affirmed Housing Group's role in the development will be to obtain all the necessary funding to develop and operate the project, process entitlements, select consultants, general contractor and property management company, oversee architectural design, construction management and other aspects of the development process as well as manage the limited partnership for the life of the project.

# Attachment 4

## Hilltop & Euclid

5012, 5032, 5052 Hilltop Drive, San Diego, CA 92102

113 Family Affordable Units (3 residential bldgs; 1 community bldg) + 8,300 SF Commercial  
+ 47 for sale homes by other developer

4% + State Tax Credits + CivicSD Loan & Land Donation + SDHC Loan + 25 non-PSH PBVs

### SOURCES

Name of Lender/Source	Amount of Funds	Per Unit	%
Permanent Loan	\$ 13,046,340	115,454	24.0%
CivicSD Predevelopment Loan	\$ 2,826,626	25,014	5.2%
CivicSD Loan-Affordable	\$ 3,023,374	26,756	5.6%
SDHC Loan	\$ 8,300,000	73,451	15.3%
Deferred Developer Fee	\$ 1,009,420	8,933	1.9%
Federal Tax Credit Equity	\$ 20,137,617	178,209	37.1%
State Tax Credit Equity	\$ 5,962,037	52,761	11.0%
<b>TOTAL USES</b>	<b>\$ 54,305,414</b>	<b>480,579</b>	<b>100.0%</b>

### USES

Property Acquisition Cost	\$ 1	0	0.0%
<b>Total New Construction Cost</b>	<b>\$ 37,395,648</b>	<b>330,935</b>	<b>68.9%</b>
<b>Hard Cost subtotal</b>	<b>\$ 37,395,648</b>	<b>330,935</b>	<b>68.9%</b>
<b>Construction Contingency</b>	<b>\$ 3,066,443</b>	<b>27,137</b>	<b>5.6%</b>
Architecture & Engineering	\$ 2,559,135	22,647	4.7%
Construction Interest & Fee	\$ 1,695,300	15,003	3.1%
Capitalized Reserves	\$ 365,000	3,230	0.7%
Taxes & Insurance	\$ 180,000	1,593	0.3%
Cost of Issuance	\$ 120,000	1,062	0.2%
Other: Const Mgmt & Deput	\$ 150,000	1,327	0.3%
Escrow & Title	\$ 75,000	664	0.1%
Legal Fees	\$ 365,000	3,230	0.7%
Devel Impact Fees & Permi	\$ 3,000,531	26,553	5.5%
Tax Credit Fees	\$ 309,141	2,736	0.6%
Misc. Soft Costs	\$ 865,066	7,655	1.6%
<b>Soft Cost subtotal</b>	<b>\$ 9,684,173</b>	<b>85,701</b>	<b>17.8%</b>
<b>Soft Cost Contingency</b>	<b>\$ 559,150</b>	<b>4,948</b>	<b>1.0%</b>
<b>Developer Fee</b>	<b>\$ 3,600,000</b>	<b>31,858</b>	<b>6.6%</b>
<b>TOTAL USES</b>	<b>\$ 54,305,415</b>	<b>480,579</b>	<b>100.0%</b>

(\$0)

### FINANCING ASSUMPTIONS

Permanent Loan Amou	\$13,046,340
Permanent Loan Intere	3.80%
Permanent Loan Term	180
Net Operating Income	\$742,480
Debt Service	\$495,761
Debt Coverage Ratio	1.50
Construction Loan Amc	\$27,885,943
Construction Loan Intei	3.50%
Construction Loan Terr	28
Loan to Value	51.35%

### INCOME

Type	Qty.	%AMI	Net Income	Total Income
Studio	7	30%	\$ 470	\$ 3,290
Studio-PBV	7	30%	\$ 1,080	\$ 7,560
1BR	6	30%	\$ 533	\$ 3,198
1BR-PBV	6	30%	\$ 1,232	\$ 7,392
1BR	11	60%	\$ 1,089	\$ 11,979
2BR-PBV	5	40%	\$ 1,495	\$ 7,475
2BR	31	60%	\$ 1,227	\$ 38,037
3BR-PBV	4	40%	\$ 2,180	\$ 8,720
3BR	16	60%	\$ 1,364	\$ 21,824
4BR-PBV	3	40%	\$ 2,629	\$ 7,887
4BR	15	60%	\$ 1,470	\$ 22,050
2BR MGR	1		\$ -	\$ -
3BR MGR	1		\$ -	\$ -
<b>TOTAL</b>	<b>113</b>			<b>\$ 139,412</b>
Annual Residential Income				\$ 1,487,028
Excess PBV Income:				\$ 185,916
Other Income				\$ 9,492
<b>Total Gross Annual Income</b>				<b>\$ 1,682,436</b>
Vacancy @ 5.0%				\$ (83,647)
<b>TOTAL NET ANNUAL INCOME</b>				<b>\$ 1,598,789</b>

### EXPENSES

Administrative	\$ 1,425	\$ 161,000
Management	\$ 849	\$ 95,927
Utilities	\$ 1,177	\$ 133,000
Payroll	\$ 1,258	\$ 142,118
Total Insurance:	\$ 292	\$ 33,000
Maintenance	\$ 1,239	\$ 140,000
Other: Agency Monitoring Fee	\$ -	\$ -
<b>Subtotal</b>	<b>\$ 6,239</b>	<b>\$ 705,045</b>
Resident Services	\$ 637	\$ 72,000
Replacement Reserves	\$ 300	\$ 33,900
Real Estate Taxes	\$ 121	\$ 13,714
Other: SDHC Monitoring Fee	\$ 147	\$ 16,650
<b>ANNUAL EXPENSES</b>		<b>\$ 841,309</b>

### TAX CREDIT ASSUMPTIONS

9% Tie Breaker Score	35.21%
Federal Tax Credits Request	\$2,075,615
Federal Tax Credit Pricing	\$0.9800
State Tax Credits Requested	\$8,110,788
State Tax Credit Pricing	\$0.7425
LP Interest	99.00%
Applicable Rate - 9%	NA
Applicable Rate - 4%	3.07%
50% Test	53.53%

**CONSTRUCTION & PERMANENT FINANCING**  
Hilltop & Euclid

<b>Construction Financing</b>				
<b>Name of Lender/Source</b>	<b>Term (months)</b>	<b>Interest Rate</b>	<b>Amount of Funds</b>	<b>Int. Reserve</b>
Tax-Exempt Construction Loan	28	3.50%	27,885,943	1,045,000
Taxable Construction Loan	28	4.45%	3,329,527	105,000
Federal Tax Credit Equity			16,110,094	
Civic SD Land Donation			-	
CivicSD Predevelopment Loan			2,826,626	
CivicSD Loan-Affordable			2,721,037	
SDHC Loan			7,885,000	
Construction Loan Paydown			(6,452,812)	
<b>Total Funds for Construction</b>			<b>54,305,415</b>	

<b>Permanent Financing</b>				
<b>Name of Lender/Source</b>	<b>Term (months)</b>	<b>Interest Rate</b>	<b>Amount of Funds</b>	<b>Debt Service</b>
Permanent Loan	180	3.80%	13,046,340	634,970
Civic SD Land Donation			-	
CivicSD Predevelopment Loan	660	3.00%	2,826,626	
CivicSD Loan-Affordable	660	3.00%	3,023,374	
SDHC Loan	660	4.00%	8,300,000	
Deferred Developer Fee			1,009,420	
<b>Total Permanent Financing</b>			28,205,760	
<b>Federal Tax Credit Equity</b>			20,137,617	
<b>State Tax Credit Equity</b>			5,962,037	
<b>Total Sources of Project Funds</b>			<b>54,305,414</b>	

CONFIDENTIAL

## DEVELOPMENT BUDGET

## Hilltop &amp; Euclid

	TOTAL PROJECT COST	RESIDENTIAL COST	COMMERCIAL COST	Civic SD Land Donation	CivicSD Loan- Affordable	0	Deferred Developer Fee	SDHC Loan	0		70% PVC for New Construction/ Rehabilitation	30% PVC for Acquisition
<b>LAND COST/ACQUISITION</b>												
Purchase Price		-	-	-	-			-	-	-		
Donated Land (Eastern 1/2 of Site)	1.00	1	-		-			-	-	1		
Land Carry Cost	-	-	-		-			-	-	-		
<b>Total Land Cost or Value</b>	<b>1.00</b>	<b>1</b>	<b>-</b>		<b>-</b>			<b>-</b>	<b>-</b>	<b>1</b>		
Existing Improvements Value	-	-	-		-			-	-	-		-
Off-Site Improvements	-	-	-		-			-	-	-		-
<b>Total Acquisition Cost</b>	<b>-</b>	<b>-</b>	<b>-</b>		<b>-</b>			<b>-</b>	<b>-</b>	<b>-</b>		<b>-</b>
<b>Total Land Cost / Acquisition Cost</b>	<b>1.00</b>	<b>1</b>	<b>-</b>		<b>-</b>			<b>-</b>	<b>-</b>	<b>1</b>		
<b>REHABILITATION</b>												
Abatement/Demolition	-	-	-		-			-	-	-	-	-
Structures	-	-	-		-			-	-	-	-	-
General Requirements	-	-	-		-			-	-	-	-	-
Contractor Overhead	-	-	-		-			-	-	-	-	-
Contractor Profit	-	-	-		-			-	-	-	-	-
Prevailing Wages	-	-	-		-			-	-	-	-	-
General Liability Insurance	-	-	-		-			-	-	-	-	-
Contractor Contingency	-	-	-		-			-	-	-	-	-
<b>Total Rehabilitation Costs</b>	<b>-</b>	<b>-</b>	<b>-</b>		<b>-</b>			<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total Relocation Expenses</b>	<b>-</b>	<b>-</b>	<b>-</b>		<b>-</b>			<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>NEW CONSTRUCTION</b>												
Site Work	6,202,560	6,202,560	-		-			-	-	6,202,560	6,202,560	-
Structures	25,445,071	25,445,071	-		-			-	-	25,445,071	25,445,071	-
General Requirements	1,450,000	1,450,000	-		-			-	-	1,450,000	1,450,000	-
Contractor Overhead	1,908,794	1,908,794	-		-			-	-	1,908,794	1,908,794	-
Contractor Profit	1,104,397	1,104,397	-		-			-	-	1,104,397	1,104,397	-
Prevailing Wages	-	-	-		-			-	-	-	-	-
GL Insurance + Bond Premium	965,276	965,276	-		-			-	-	965,276	965,276	-
Other:	-	-	-		-			-	-	-	-	-
Other: Commercial Space TI's	319,550	-	319,550		-			-	-	-	-	-
<b>Total New Construction Costs</b>	<b>37,395,648.00</b>	<b>37,076,098</b>	<b>319,550</b>		<b>-</b>			<b>-</b>	<b>-</b>	<b>37,076,098</b>	<b>37,076,098</b>	<b>-</b>

## DEVELOPMENT BUDGET

## Hilltop &amp; Euclid

	TOTAL PROJECT COST	RESIDENTIAL COST	COMMERCIAL COST	Civic SD Land Donation	CivicSD Loan- Affordable	-	Deferred Developer Fee	SDHC Loan	-	-	70% PVC for NC/Rehab or 30% PVC for Fed Subsidized NC/Rehab	30% PVC for Acquisition
<b>ARCHITECTURAL FEES</b>												
Design (incl landscape)	1,422,162	1,422,162	-		-			-	-	1,422,162	1,422,162	-
Other:	-	-	-		-			-	-	-	-	-
<b>Total Architectural Costs</b>	<b>1,422,162</b>	<b>1,422,162</b>	<b>-</b>		<b>-</b>			<b>-</b>	<b>-</b>	<b>1,422,162</b>	<b>1,422,162</b>	<b>-</b>
<b>Total Survey and Engineering</b>	<b>1,136,973</b>	<b>1,136,973</b>	<b>-</b>		<b>-</b>			<b>-</b>	<b>-</b>	<b>1,136,973</b>	<b>1,136,973</b>	<b>-</b>
<b>CONST. INTEREST &amp; FEES</b>												
Tax-Exempt Construction Loan Interest	645,000	645,000	-		-			-	-	645,000	645,000	-
Taxable Construction Loan Interest	105,000	105,000	-		-			-	-	105,000		-
Origination Fee	310,000	310,000	-		-			-	-	310,000	310,000	-
Cost of Issuance	120,000	120,000	-		-			-	-	120,000		-
Bond Premium	-	-	-		-			-	-	-	-	-
Taxes	30,000	30,000	-		-			-	-	30,000	30,000	-
GL Insurance	150,000	150,000	-		-			-	-	150,000	150,000	-
Title and Recording	75,000	75,000	-		-			-	-	75,000	75,000	-
Construction Service Fees (Bank)	75,000	75,000	-		-			-	-	75,000	75,000	-
Other: Const Mgmt & Deputy Services	150,000	150,000	-		-			-	-	150,000	150,000	-

<b>Total Const. Interest &amp; Fees</b>	<b>1,660,000</b>	<b>1,660,000</b>	-	-	-	-	-	-	<b>1,660,000</b>	<b>1,435,000</b>	-
<b>PERMANENT FINANCING</b>											
Loan Origination Fee (Bank + Agencies)	160,300	160,300	-	-	-	-	-	-	160,300		
Credit Enhancement/Application Fee	-	-	-	-	-	-	-	-	-		
Title and Recording	-	-	-	-	-	-	-	-	-		
Taxes	-	-	-	-	-	-	-	-	-		
Insurance	-	-	-	-	-	-	-	-	-		
Other:	-	-	-	-	-	-	-	-	-		
Other: Post Construction Interest	400,000	400,000	-	-	-	-	-	-	400,000		
<b>Total Perm. Financing Costs</b>	<b>560,300</b>	<b>560,300</b>	-	-	-	-	-	-	<b>560,300</b>		
<b>LEGAL FEES</b>											
Lender Legal Pd. by Applicant	165,000	165,000	-	-	-	-	-	-	165,000	115,000	-
Other : Partnership & Transaction	200,000	200,000	-	-	-	-	-	-	200,000	-	-
<b>Total Attorney Costs</b>	<b>365,000</b>	<b>365,000</b>	-	-	-	-	-	-	<b>365,000</b>	<b>115,000</b>	-
<b>RESERVES</b>											
Rent Reserves	-	-	-	-	-	-	-	-	-		
Operating Reserve	-	-	-	-	-	-	-	-	-		
*3- Month Operating Reserve	365,000	365,000	-	-	-	-	-	-	365,000		
Other: (Specify)	-	-	-	-	-	-	-	-	-		
<b>Total Reserve Costs</b>	<b>365,000</b>	<b>365,000</b>	-	-	-	-	-	-	<b>365,000</b>		

## DEVELOPMENT BUDGET

### Hilltop & Euclid

	TOTAL PROJECT COST	RESIDENTIAL COST	COMMERCIAL COST	Civic SD Land Donation	CivicSD Loan- Affordable	-	Deferred Developer Fee	SDHC Loan	-	-	70% PVC for NC/Rehab or 30% PVC for Fed Subsidized NC/Rehab	30% PVC for Acquisition
Total Appraisal Costs	6,250	6,250	-		-			-	-	6,250	6,250	-
Total Hard Cost Contingency	3,066,443	3,066,443	-		-			-	-	3,066,443	3,066,443	-
OTHER PROJECT COSTS												
TCAC App/Allocation/Monitoring	309,141	309,141	-		-			-	-	309,141		
Environmental Audit	212,286	212,286	-		-			-	-	212,286	212,286	-
Local Dev. Impact Fees	2,464,921	2,464,921						-	-	2,464,921	2,464,921	-
Permit Processing Fees	535,610	535,610			-			-		535,610	335,610	
Marketing	54,030	54,030			-			-	-	54,030		
Furnishings	430,750	430,750	-					-	-	430,750	430,750	-
Market Study	21,750	21,750	-					-	-	21,750	21,750	-
Accounting/Reimbursables	25,000	25,000	-		-			-	-	25,000	25,000	-
Soft Cost Contingency	559,150	559,150	-		-			-	-	559,150	559,150	-
Other: CivicSD Fees		-	-					-	-	-	-	-
Other: Estimating Services	15,000	15,000	-		-			-	-	15,000		-
Other: Community Outreach	100,000	100,000	-		-			-	-	100,000	100,000	-
Other:		-								-	-	
Total Other Costs	4,727,638	4,727,638	-		-			-	-	4,727,638	4,149,467	-
SUBTOTAL PROJECT COST	50,705,415	50,385,865	319,550		-			-	-	50,385,865	48,407,393	-
	Total Project Cost	Total Residential	Total Commercial	Subtotal Eligible Basis							48,407,393	-
DEVELOPER COSTS												
Developer Overhead/Profit	3,600,000	3,600,000	-		-			-		3,600,000	3,600,000	-
Consultant/Processing Agent	-	-	-		-			-	-	-	-	-
Project Administration	-	-	-		-			-	-	-	-	-
Broker Fees Paid to a Related Party	-	-	-		-			-	-	-	-	-
Construction Oversight by Developer		-	-		-			-	-	-	-	-
Other: (Specify)	-	-	-					-	-	-	-	-
Total Developer Costs	3,600,000.00	3,600,000	-		-			-	-	3,600,000	3,600,000	-
TOTAL PROJECT COSTS	54,305,415	53,985,865	319,550		-			-	-	53,985,865	52,007,393	-
Bridge Loan Expense During Construction											-	-
Total Eligible Basis											52,007,393	-

**PROJECT INCOME INFORMATION**  
**Hilltop & Euclid**

(a) # of Bedrooms	(b) # of Units	(c) Proposed Monthly Rent Less Utilities	(d) Total Monthly Rents (bxc)	(e) Monthly Utility Allow.	(f) Monthly Rent Plus Utilities (c + e)	(g) % of Area Median Income	PBVs Rents	PBV Add Mo. Rent Above TCAC	Total Add. Mo. Rents
Studio	7	\$ 470	\$ 3,290	\$ 17.00	\$ 487	30%	\$ -	\$ -	\$ -
Studio-PBV	7	\$ 680	\$ 4,760		\$ 680	30%	\$ 1,080.00	\$ 400	\$ 2,800
1BR	6	\$ 533	\$ 3,198	\$ 23.00	\$ 556	30%	\$ -	\$ -	\$ -
1BR-PBV	6	\$ 729	\$ 4,374		\$ 729	30%	\$ 1,232.00	\$ 503	\$ 3,018
1BR	11	\$ 1,089	\$ 11,979	\$ 23.00	\$ 1,112	60%	\$ -	\$ -	\$ -
2BR-PBV	5	\$ 1,068	\$ 5,340		\$ 1,068	40%	\$ 1,495.00	\$ 427	\$ 2,135
2BR	31	\$ 1,227	\$ 38,037	\$ 25.00	\$ 1,252	60%	\$ -	\$ -	\$ -
3BR-PBV	4	\$ 1,234	\$ 4,936		\$ 1,234	40%	\$ 2,180.00	\$ 946	\$ 3,784
3BR	16	\$ 1,364	\$ 21,824	\$ 27.00	\$ 1,391	60%	\$ -	\$ -	\$ -
4BR-PBV	3	\$ 1,377	\$ 4,131		\$ 1,377	40%	\$ 2,629.00	\$ 1,252	\$ 3,756
4BR	15	\$ 1,470	\$ 22,050	\$ 32.00	\$ 1,502	60%	\$ -	\$ -	\$ -
2BR MGR	1	\$ -	\$ -	\$ -	\$ -	MKT	\$ -	\$ -	\$ -
3BR MGR	1	\$ -	\$ -	\$ -	\$ -	MKT	\$ -	\$ -	\$ -
Affordable Units	111	Total Rent	\$ 123,919				Total Tranche B:		\$ 15,493

Aggregate Monthly Rents for All Units:	\$ 123,919
Aggregate Annual Rents for All Units:	\$ 1,487,028

Avg Affordability	51%
-------------------	-----

Total Affordable Plus Manager Units:	113
--------------------------------------	-----

Annual Income from Laundry Facilities	\$ 9,492	7.00 per unit per month
Annual Income from Vending Machines	-	
Annual Interest Income	-	
Other Annual Income (Specify)	-	
Total Miscellaneous Income:	9,492	
Total Annual Potential Gross Income:	\$ 1,496,520	

Excess PBV Income:	\$ 185,916
--------------------	------------

Total Gross Annual Income	\$ 1,682,436
---------------------------	--------------

Utility Allowances					
	Studio	1 BR	2 BR	3 BR	4 BR
Space Heating:			-	-	-
Water Heating:			-	-	-
Cooking:			-	-	-
Lighting:			-	-	-
Electricity:			-	-	-
Water:*			-	-	-
AC					
City's Fee					
Total:	17	23	25	27	32

\*Owner paid utilities

**ANNUAL RESIDENTIAL OPERATING EXPENSES**  
**Hilltop & Euclid**

<b>Administrative</b>	Advertising:	1,000	Per Unit	9
	Legal:	6,000		53
	Accounting/Audit:	12,000		106
	Security:	110,000		973
	General Office Costs:	32,000		283
	<b>Total Administrative:</b>	<b>161,000</b>		<b>1,425</b>
<b>Management</b>	<b>Total Management Fee:</b>	<b>95,927</b>		<b>849</b>
<b>Utilities</b>	Fuel:	-		-
	Gas:	10,000		88
	Electricity:	43,000		381
	Water/Sewer:	80,000		708
	<b>Total Utilities:</b>	<b>133,000</b>		<b>1,177</b>
<b>Payroll / Payroll Taxes</b>	On-site Manager(s):	49,920		442
	Maintenance Personnel:	62,400		552
	Other: Payroll Burden/Taxes	29,798		264
	<b>Total Payroll/Payroll Taxes:</b>	<b>142,118</b>		<b>1,258</b>
	<b>Total Insurance:</b>	<b>33,000</b>		<b>292</b>
<b>Maintenance</b>	Painting:	5,000		44
	Repairs:	16,000		142
	Trash Removal:	17,000		150
	Exterminating:	7,000		62
	Grounds:	75,000		664
	Other: Elevator + Fire Monitoring	15,000		133
	Other: Cleaning/Interiors	5,000		44
	<b>Total Maintenance:</b>	<b>140,000</b>		<b>1,239</b>
<b>Other Expenses</b>	Other:			-
	Other:			-
	Other:			-
	Other:			-
	Other:	-		-
	<b>Total Other:</b>	<b>0</b>		<b>-</b>

**Total Expenses**

<b>Total Annual Residential Operating Expenses:</b>	<b>705,045</b>
<b>Total Number of Units in the Project:</b>	<b>113</b>
<b>Total Annual Operating Expenses Per Unit:</b>	<b>6,239</b>
<b>Total 3-Month Operating Reserve:</b>	<b>365,000</b>
<b>Total Annual Internet Expense (site amenity election):</b>	<b>-</b>
<b>Total Annual Service Amenities Budget (from project expenses):</b>	<b>72,000</b>
<b>Total Annual Reserve for Replacement:</b>	<b>33,900</b>
<b>Total Annual Real Estate Taxes:</b>	<b>13,714</b>
<b>Other: SDHC Monitoring Fee</b>	<b>16,650</b>
<b>Other: Bond Issuance Fee</b>	<b>15,000</b>
<b>TOTAL:</b>	<b>856,309</b>

5,200 min per unit

637 per unit

300 per unit

yes non-profit

150

7,578 per unit  
631 per month

**Commercial Income**

Total Annual Commercial/Non Residential Revenue:	-
Total Annual Commercial/Non Residential Expenses:	-
Total Annual Commercial/Non Residential Debt Service:	-
<b>Total Annual Commercial/Non Residential Net Income:</b>	<b>-</b>

CONFIDENTIAL

# 15-YEAR CASH FLOW PROJECTION

Hilltop & Euclid

	Inflation Factor	Year 1 2023	Year 2 2024	Year 3 2025	Year 4 2026	Year 5 2027	Year 6 2028	Year 7 2029	Year 8 2030	Year 9 2031	Year 10 2032	Year 11 2033	Year 12 2034	Year 13 2035
Rental Income	2.5%	1,487,028	1,524,204	1,562,309	1,601,367	1,641,401	1,682,436	1,724,497	1,767,609	1,811,799	1,857,094	1,903,522	1,951,110	1,999,887
PBV INCOME IF APPLICABLE	2.5%	185,916	190,564	195,328	200,211	205,216	210,347	215,606	220,996	226,521	232,184	237,988	243,938	250,036
TOTAL GROSS POTENTIAL REVENUE		1,672,944	1,714,768	1,757,637	1,801,578	1,846,617	1,892,783	1,940,102	1,988,605	2,038,320	2,089,278	2,141,510	2,195,048	2,249,924
Other Income	Vacancy @ 2.5%	83,647 9,492	85,738 9,729	87,882 9,973	90,079 10,222	92,331 10,477	94,639 10,739	97,005 11,008	99,430 11,283	101,916 11,565	104,464 11,854	107,075 12,151	109,752 12,454	112,496 12,766
TOTAL NET RENTAL INCOME		1,598,789	1,638,759	1,679,727	1,721,721	1,764,764	1,808,883	1,854,105	1,900,457	1,947,969	1,996,668	2,046,585	2,097,749	2,150,193
Advertising	3.5%	1,000	1,035	1,071	1,109	1,148	1,188	1,229	1,272	1,317	1,363	1,411	1,460	1,511
Legal	3.5%	6,000	6,210	6,427	6,652	6,885	7,126	7,376	7,634	7,901	8,177	8,464	8,760	9,066
Accounting	3.5%	12,000	12,420	12,855	13,305	13,770	14,252	14,751	15,267	15,802	16,355	16,927	17,520	18,133
Security	3.5%	110,000	113,850	117,835	121,959	126,228	130,645	135,218	139,951	144,849	149,919	155,166	160,597	166,218
Other Admin	3.5%	32,000	33,120	34,279	35,479	36,721	38,006	39,336	40,713	42,138	43,613	45,139	46,719	48,354
Management Fee	3.5%	95,927	99,285	102,760	106,356	110,079	113,932	117,919	122,046	126,318	130,739	135,315	140,051	144,953
Gas	3.5%	10,000	10,350	10,712	11,087	11,475	11,877	12,293	12,723	13,168	13,629	14,106	14,600	15,111
Electricity	3.5%	43,000	44,505	46,063	47,675	49,343	51,071	52,858	54,708	56,623	58,605	60,656	62,779	64,976
Water & Sewer	3.5%	80,000	82,800	85,698	88,697	91,802	95,015	98,340	101,782	105,345	109,032	112,848	116,798	120,885
On-Site Manager	3.5%	49,920	51,667	53,476	55,347	57,284	59,289	61,364	63,512	65,735	68,036	70,417	72,882	75,433
Maintenance Personnel	3.5%	62,400	64,584	66,844	69,184	71,605	74,112	76,706	79,390	82,169	85,045	88,021	91,102	94,291
Other Payroll	3.5%	29,798	30,841	31,920	33,037	34,194	35,391	36,629	37,911	39,238	40,611	42,033	43,504	45,027
Insurance	3.5%	33,000	34,155	35,350	36,588	37,868	39,194	40,565	41,985	43,455	44,976	46,550	48,179	49,865
Painting	3.5%	5,000	5,175	5,356	5,544	5,738	5,938	6,146	6,361	6,584	6,814	7,053	7,300	7,555
Repairs	3.5%	16,000	16,560	17,140	17,739	18,360	19,003	19,668	20,356	21,069	21,806	22,570	23,360	24,177
Trash Removal	3.5%	17,000	17,595	18,211	18,848	19,508	20,191	20,897	21,629	22,386	23,169	23,980	24,819	25,688
Exterminating	3.5%	7,000	7,245	7,499	7,761	8,033	8,314	8,605	8,906	9,218	9,540	9,874	10,220	10,577
Grounds	3.5%	75,000	77,625	80,342	83,154	86,064	89,076	92,194	95,421	98,761	102,217	105,795	109,498	113,330
Fire Monitoring/Elevator	3.5%	20,000	20,700	21,425	22,174	22,950	23,754	24,585	25,446	26,336	27,258	28,212	29,199	30,221
Other: Bond Issuance Fee	3.5%	15,000	15,525	16,068	16,631	17,213	17,815	18,439	19,084	19,752	20,443	21,159	21,900	22,666
Service Amenities Budget	3.0%	72,000	74,160	76,385	78,676	81,037	83,468	85,972	88,551	91,207	93,944	96,762	99,665	102,655
Other: SDHC Monitoring Fee	2.5%	16,650	17,066	17,493	17,930	18,378	18,838	19,309	19,792	20,286	20,794	21,313	21,846	22,392
Real Estate Taxes	2.0%	13,714	13,988	14,268	14,553	14,844	15,141	15,444	15,753	16,068	16,389	16,717	17,052	17,393
Replacement Reserve	0.0%	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900
TOTAL EXPENSES		856,309	884,361	913,376	943,387	974,428	1,006,535	1,039,744	1,074,094	1,109,624	1,146,374	1,184,388	1,223,707	1,264,378
Cash Flow Prior to Debt Service (NOI)		742,480	754,397	766,351	778,334	790,336	802,348	814,361	826,363	838,345	850,294	862,197	874,043	885,816
DEBT SERVICE - Permanent Loan		495,761 0	495,761 0	495,761 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0
FORECASTED CASH AVAILABLE		246,719	258,636	270,590	143,363	155,365	167,377	179,390	191,393	203,374	215,323	227,227	239,072	250,845
Percent of Gross Revenue	8% Max	14.75%	15.08%	15.40%	7.96%	8.41%	8.84%	9.25%	9.62%	9.98%	10.31%	10.61%	10.89%	11.15%
25% Debt Service Test	Yr 1-3 Max	49.77%	52.17%	54.58%	22.58%	24.47%	26.36%	28.25%	30.14%	32.03%	33.91%	35.79%	37.65%	39.51%
Debt Coverage Ratio	1.15 Min	1.50	1.52	1.55	1.23	1.24	1.26	1.28	1.30	1.32	1.34	1.36	1.38	1.40
Partnership Management Fee	3.0%	20,000	20,600	21,218	21,855	22,510	23,185	23,881	24,597	25,335	26,095	26,878	27,685	28,515
Asset Management Fee	3.0%	5,000	5,150	5,305	5,464	5,628	5,796	5,970	6,149	6,334	6,524	6,720	6,921	7,129
Cash Available for Distribution		221,719	232,886	244,068	116,045	127,227	138,396	149,539	160,646	171,705	182,704	193,629	204,466	215,201
Deferred Fee	1,009,420	221,719	232,886	244,068	116,045	127,227	108,090	-	-	-	-	-	-	-
	2.0%	15,754	11,411	6,758	4,573	2,119	-	-	-	-	-	-	-	-
balance		803,455	581,980	344,671	233,198	108,090	-	-	-	-	-	-	-	-
CASH FLOW FOR DISTRIBUTION		-	-	-	-	-	30,305	149,539	160,646	171,705	182,704	193,629	204,466	215,201
Soft loan split	50.00%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,153	\$ 74,769	\$ 80,323	\$ 85,853	\$ 91,352	\$ 96,814	\$ 102,233	\$ 107,601
Annual Payment to CivicSD	41.34%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,265	\$ 30,912	\$ 33,208	\$ 35,494	\$ 37,767	\$ 40,026	\$ 42,266	\$ 44,485
Annual Payment to SDHC	58.66%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,888	\$ 43,858	\$ 47,115	\$ 50,359	\$ 53,585	\$ 56,789	\$ 59,967	\$ 63,116
Annual Payment to Affirmed	50.00%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,153	\$ 74,769	\$ 80,323	\$ 85,853	\$ 91,352	\$ 96,814	\$ 102,233	\$ 107,601

# 15-YEAR CASH FLOW PROJECTION

Hilltop & Euclid

	Inflation Factor	Year 14 2036	Year 15 2037	Year 16 2038	Year 17 2039	Year 18 2040	Year 19 2041	Year 20 2042	Year 21 2043	Year 22 2044	Year 23 2045	Year 24 2046	Year 25 2047	Year 26 2048
Rental Income	2.5%	2,049,885	2,101,132	2,153,660	2,207,501	2,262,689	2,319,256	2,377,238	2,436,669	2,497,585	2,560,025	2,624,025	2,689,626	2,756,867
PBV INCOME IF APPLICABLE	2.5%	256,287	262,694	269,262	275,993	282,893	289,966	297,215	304,645	312,261	320,068	328,069	336,271	344,678
<b>TOTAL GROSS POTENTIAL REVENUE</b>		<b>2,306,172</b>	<b>2,363,826</b>	<b>2,422,922</b>	<b>2,483,495</b>	<b>2,545,582</b>	<b>2,609,222</b>	<b>2,674,452</b>	<b>2,741,314</b>	<b>2,809,846</b>	<b>2,880,093</b>	<b>2,952,095</b>	<b>3,025,897</b>	<b>3,101,545</b>
Vacancy @	5.0%	115,309	118,191	121,146	124,175	127,279	130,461	133,723	137,066	140,492	144,005	147,605	151,295	155,077
Other Income	2.5%	13,085	13,412	13,747	14,091	14,443	14,804	15,174	15,554	15,943	16,341	16,750	17,168	17,598
<b>TOTAL NET RENTAL INCOME</b>		<b>2,203,948</b>	<b>2,259,047</b>	<b>2,315,523</b>	<b>2,373,411</b>	<b>2,432,746</b>	<b>2,493,565</b>	<b>2,555,904</b>	<b>2,619,802</b>	<b>2,685,297</b>	<b>2,752,429</b>	<b>2,821,240</b>	<b>2,891,771</b>	<b>2,964,065</b>
Advertising	3.5%	1,564	1,619	1,675	1,734	1,795	1,857	1,923	1,990	2,059	2,132	2,206	2,283	2,363
Legal	3.5%	9,384	9,712	10,052	10,404	10,768	11,145	11,535	11,939	12,357	12,789	13,237	13,700	14,179
Accounting	3.5%	18,767	19,424	20,104	20,808	21,536	22,290	23,070	23,877	24,713	25,578	26,473	27,400	28,359
Security	3.5%	172,035	178,056	184,288	190,738	197,414	204,324	211,475	218,877	226,537	234,466	242,673	251,166	259,957
Other Admin	3.5%	50,047	51,798	53,611	55,488	57,430	59,440	61,520	63,673	65,902	68,208	70,596	73,067	75,624
Management Fee	3.5%	150,026	155,277	160,712	166,337	172,158	178,184	184,420	190,875	197,556	204,470	211,627	219,034	226,700
Gas	3.5%	15,640	16,187	16,753	17,340	17,947	18,575	19,225	19,898	20,594	21,315	22,061	22,833	23,632
Electricity	3.5%	67,250	69,604	72,040	74,561	77,171	79,872	82,668	85,561	88,556	91,655	94,863	98,183	101,620
Water & Sewer	3.5%	125,116	129,496	134,028	138,719	143,574	148,599	153,800	159,183	164,755	170,521	176,489	182,666	189,060
On-Site Manager	3.5%	78,073	80,805	83,633	86,561	89,590	92,726	95,971	99,330	102,807	106,405	110,129	113,984	117,973
Maintenance Personnel	3.5%	97,591	101,007	104,542	108,201	111,988	115,907	119,964	124,163	128,509	133,006	137,662	142,480	147,466
Other Payroll	3.5%	46,603	48,234	49,922	51,669	53,478	55,349	57,287	59,292	61,367	63,515	65,738	68,038	70,420
Insurance	3.5%	51,611	53,417	55,287	57,222	59,224	61,297	63,443	65,663	67,961	70,340	72,802	75,350	77,987
Painting	3.5%	7,820	8,093	8,377	8,670	8,973	9,287	9,613	9,949	10,297	10,658	11,031	11,417	11,816
Repairs	3.5%	25,023	25,899	26,806	27,744	28,715	29,720	30,760	31,837	32,951	34,104	35,298	36,533	37,812
Trash Removal	3.5%	26,587	27,518	28,481	29,478	30,509	31,577	32,683	33,826	35,010	36,236	37,504	38,817	40,175
Exterminating	3.5%	10,948	11,331	11,727	12,138	12,563	13,002	13,458	13,929	14,416	14,921	15,443	15,983	16,543
Grounds	3.5%	117,297	121,402	125,651	130,049	134,601	139,312	144,188	149,234	154,457	159,863	165,459	171,250	177,243
Fire Monitoring/Elevator	3.5%	31,279	32,374	33,507	34,680	35,894	37,150	38,450	39,796	41,189	42,630	44,122	45,667	47,265
Other: Bond Issuance Fee	3.5%	23,459	24,280	25,130	26,010	26,920	27,862	28,838	29,847	30,891	31,973	33,092	34,250	35,449
Service Amenities Budget	3.0%	105,734	108,906	112,174	115,539	119,005	122,575	126,252	130,040	133,941	137,959	142,098	146,361	150,752
Other: SDHC Monitoring Fee	2.5%	22,952	23,526	24,114	24,717	25,335	25,968	26,618	27,283	27,965	28,664	29,381	30,115	30,868
Real Estate Taxes	2.0%	17,741	18,095	18,457	18,826	19,203	19,587	19,979	20,378	20,786	21,202	21,626	22,058	22,499
Replacement Reserve	0.0%	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900
<b>TOTAL EXPENSES</b>		<b>1,306,446</b>	<b>1,349,961</b>	<b>1,394,972</b>	<b>1,441,531</b>	<b>1,489,690</b>	<b>1,539,507</b>	<b>1,591,037</b>	<b>1,644,339</b>	<b>1,699,476</b>	<b>1,756,510</b>	<b>1,815,507</b>	<b>1,876,534</b>	<b>1,939,663</b>
<b>Cash Flow Prior to Debt Service (NOI)</b>		<b>897,502</b>	<b>909,086</b>	<b>920,551</b>	<b>931,880</b>	<b>943,056</b>	<b>954,058</b>	<b>964,867</b>	<b>975,462</b>	<b>985,821</b>	<b>995,919</b>	<b>1,005,733</b>	<b>1,015,236</b>	<b>1,024,402</b>
DEBT SERVICE - Permanent Loan		634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0
<b>FORECASTED CASH AVAILABLE</b>		<b>262,531</b>	<b>274,115</b>	<b>285,580</b>	<b>296,910</b>	<b>308,085</b>	<b>319,088</b>	<b>329,897</b>	<b>340,492</b>	<b>350,850</b>	<b>360,949</b>	<b>370,763</b>	<b>380,266</b>	<b>389,432</b>
Percent of Gross Revenue	8% Max	11.38%	11.60%	11.79%	11.96%	12.10%	12.23%	12.34%	12.42%	12.49%	12.53%	12.56%	12.57%	12.56%
25% Debt Service Test	Yr 1-3 Max	41.35%	43.17%	44.98%	46.76%	48.52%	50.25%	51.95%	53.62%	55.25%	56.84%	58.39%	59.89%	61.33%
Debt Coverage Ratio	1.15 Min	1.41	1.43	1.45	1.47	1.49	1.50	1.52	1.54	1.55	1.57	1.58	1.60	1.61
Partnership Management Fee	3.0%	29,371	30,252	31,159	32,094	33,057	34,049	35,070	36,122	37,206	38,322	39,472	40,656	41,876
Asset Management Fee	3.0%	7,343	7,563	7,790	8,024	8,264	8,512	8,768	9,031	9,301	9,581	9,868	10,164	10,469
<b>Cash Available for Distribution</b>		<b>225,818</b>	<b>236,300</b>	<b>246,631</b>	<b>256,792</b>	<b>266,764</b>	<b>276,527</b>	<b>286,059</b>	<b>295,339</b>	<b>304,343</b>	<b>313,046</b>	<b>321,423</b>	<b>329,446</b>	<b>337,087</b>
Deferred Fee	1,009,420	-	-	-	-	-	-	-	-	-	-	-	-	-
2.0% balance		-	-	-	-	-	-	-	-	-	-	-	-	-
<b>CASH FLOW FOR DISTRIBUTION</b>		<b>225,818</b>	<b>236,300</b>	<b>246,631</b>	<b>256,792</b>	<b>266,764</b>	<b>276,527</b>	<b>286,059</b>	<b>295,339</b>	<b>304,343</b>	<b>313,046</b>	<b>321,423</b>	<b>329,446</b>	<b>337,087</b>
Soft loan split	50.00%	\$ 112,909	\$ 118,150	\$ 123,316	\$ 128,396	\$ 133,382	\$ 138,263	\$ 143,030	\$ 147,670	\$ 152,171	\$ 156,523	\$ 160,711	\$ 164,723	\$ 168,544
Annual Payment to CivicSD	41.34%	\$ 46,680	\$ 48,847	\$ 50,982	\$ 53,082	\$ 55,144	\$ 57,162	\$ 59,132	\$ 61,051	\$ 62,912	\$ 64,711	\$ 66,443	\$ 68,101	\$ 69,681
Annual Payment to SDHC	58.66%	\$ 66,229	\$ 69,304	\$ 72,334	\$ 75,314	\$ 78,238	\$ 81,102	\$ 83,897	\$ 86,619	\$ 89,260	\$ 91,812	\$ 94,269	\$ 96,622	\$ 98,863
Annual Payment to Affirmed	50.000%	\$ 112,909	\$ 118,150	\$ 123,316	\$ 128,396	\$ 133,382	\$ 138,263	\$ 143,030	\$ 147,670	\$ 152,171	\$ 156,523	\$ 160,711	\$ 164,723	\$ 168,544

# 15-YEAR CASH FLOW PROJECTION

Hilltop & Euclid

	Inflation Factor	Year 27 2049	Year 28 2050	Year 29 2051	Year 30 2052	Year 31 2053	Year 32 2054	Year 33 2055	Year 34 2056	Year 35 2057
Rental Income	2.5%	2,825,788	2,896,433	2,968,844	3,043,065	3,119,142	3,197,120	3,277,048	3,358,974	3,442,949
PBV INCOME IF APPLICABLE	2.5%	353,295	362,127	371,180	380,460	389,971	399,721	409,714	419,957	430,455
<b>TOTAL GROSS POTENTIAL REVENUE</b>		<b>3,179,083</b>	<b>3,258,560</b>	<b>3,340,024</b>	<b>3,423,525</b>	<b>3,509,113</b>	<b>3,596,841</b>	<b>3,686,762</b>	<b>3,778,931</b>	<b>3,873,404</b>
Vacancy @	5.0%	158,954	162,928	167,001	171,176	175,456	179,842	184,338	188,947	193,670
Other Income	2.5%	18,038	18,489	18,951	19,424	19,910	20,408	20,918	21,441	21,977
<b>TOTAL NET RENTAL INCOME</b>		<b>3,038,167</b>	<b>3,114,121</b>	<b>3,191,974</b>	<b>3,271,773</b>	<b>3,353,568</b>	<b>3,437,407</b>	<b>3,523,342</b>	<b>3,611,425</b>	<b>3,701,711</b>
Advertising	3.5%	2,446	2,532	2,620	2,712	2,807	2,905	3,007	3,112	3,221
Legal	3.5%	14,676	15,189	15,721	16,271	16,841	17,430	18,040	18,672	19,325
Accounting	3.5%	29,352	30,379	31,442	32,543	33,682	34,860	36,080	37,343	38,650
Security	3.5%	269,055	278,472	288,219	298,307	308,747	319,553	330,738	342,314	354,295
Other Admin	3.5%	78,271	81,010	83,846	86,780	89,817	92,961	96,215	99,582	103,068
Management Fee	3.5%	234,634	242,846	251,346	260,143	269,248	278,672	288,425	298,520	308,969
Gas	3.5%	24,460	25,316	26,202	27,119	28,068	29,050	30,067	31,119	32,209
Electricity	3.5%	105,176	108,857	112,667	116,611	120,692	124,916	129,288	133,814	138,497
Water & Sewer	3.5%	195,677	202,525	209,614	216,950	224,543	232,403	240,537	248,955	257,669
On-Site Manager	3.5%	122,102	126,376	130,799	135,377	140,115	145,019	150,095	155,348	160,785
Maintenance Personnel	3.5%	152,628	157,970	163,499	169,221	175,144	181,274	187,619	194,185	200,982
Other Payroll	3.5%	72,884	75,435	78,076	80,808	83,637	86,564	89,594	92,729	95,975
Insurance	3.5%	80,717	83,542	86,466	89,492	92,624	95,866	99,221	102,694	106,288
Painting	3.5%	12,230	12,658	13,101	13,559	14,034	14,525	15,034	15,560	16,104
Repairs	3.5%	39,135	40,505	41,923	43,390	44,909	46,481	48,107	49,791	51,534
Trash Removal	3.5%	41,581	43,037	44,543	46,102	47,715	49,386	51,114	52,903	54,755
Exterminating	3.5%	17,122	17,721	18,341	18,983	19,648	20,335	21,047	21,784	22,546
Grounds	3.5%	183,447	189,868	196,513	203,391	210,510	217,877	225,503	233,396	241,565
Fire Monitoring/Elevator	3.5%	48,919	50,631	52,403	54,238	56,136	58,101	60,134	62,239	64,417
Other: Bond Issuance Fee	3.5%	36,689	37,974	39,303	40,678	42,102	43,575	45,101	46,679	48,313
Service Amenities Budget	3.0%	155,275	159,933	164,731	169,673	174,763	180,006	185,406	190,968	196,697
Other: SDHC Monitoring Fee	2.5%	31,640	32,431	33,242	34,073	34,925	35,798	36,693	37,610	38,550
Real Estate Taxes	2.0%	22,949	23,408	23,876	24,354	24,841	25,338	25,845	26,361	26,889
Replacement Reserve	0.0%	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900
<b>TOTAL EXPENSES</b>		<b>2,004,964</b>	<b>2,072,515</b>	<b>2,142,391</b>	<b>2,214,674</b>	<b>2,289,447</b>	<b>2,366,795</b>	<b>2,446,809</b>	<b>2,529,579</b>	<b>2,615,201</b>
<b>Cash Flow Prior to Debt Service (NOI)</b>		<b>1,033,202</b>	<b>1,041,606</b>	<b>1,049,583</b>	<b>1,057,099</b>	<b>1,064,121</b>	<b>1,070,611</b>	<b>1,076,533</b>	<b>1,081,847</b>	<b>1,086,510</b>
DEBT SERVICE - Permanent Loan		634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0	634,970 0
<b>FORECASTED CASH AVAILABLE</b>		<b>398,232</b>	<b>406,636</b>	<b>414,612</b>	<b>422,129</b>	<b>429,150</b>	<b>435,641</b>	<b>441,563</b>	<b>446,876</b>	<b>451,540</b>
Percent of Gross Revenue	8% Max	12.53%	12.48%	12.41%	12.33%	12.23%	12.11%	11.98%	11.83%	11.66%
25% Debt Service Test	Yr 1-3 Max	62.72%	64.04%	65.30%	66.48%	67.59%	68.61%	69.54%	70.38%	71.11%
Debt Coverage Ratio	1.15 Min	1.63	1.64	1.65	1.66	1.68	1.69	1.70	1.70	1.71
Partnership Management Fee	3.0%	43,132	44,426	45,759	47,131	48,545	50,002	51,502	53,047	54,638
Asset Management Fee	3.0%	10,783	11,106	11,440	11,783	12,136	12,500	12,875	13,262	13,660
<b>Cash Available for Distribution</b>		<b>344,317</b>	<b>351,103</b>	<b>357,414</b>	<b>363,215</b>	<b>368,469</b>	<b>373,139</b>	<b>377,186</b>	<b>380,568</b>	<b>383,242</b>
Deferred Fee	1,009,420	-	-	-	-	-	-	-	-	-
	2.0%	-	-	-	-	-	-	-	-	-
balance		-	-	-	-	-	-	-	-	-
<b>CASH FLOW FOR DISTRIBUTION</b>		<b>344,317</b>	<b>351,103</b>	<b>357,414</b>	<b>363,215</b>	<b>368,469</b>	<b>373,139</b>	<b>377,186</b>	<b>380,568</b>	<b>383,242</b>
Soft loan split	50.00%	\$ 172,158	\$ 175,552	\$ 178,707	\$ 181,607	\$ 184,234	\$ 186,570	\$ 188,593	\$ 190,284	\$ 191,621
Annual Payment to CivicSD	41.34%	\$ 71,175	\$ 72,578	\$ 73,882	\$ 75,081	\$ 76,168	\$ 77,133	\$ 77,970	\$ 78,669	\$ 79,221
Annual Payment to SDHC	58.66%	\$ 100,983	\$ 102,974	\$ 104,825	\$ 106,526	\$ 108,067	\$ 109,437	\$ 110,623	\$ 111,615	\$ 112,400
Annual Payment to Affirmed	50.000%	\$ 172,158	\$ 175,552	\$ 178,707	\$ 181,607	\$ 184,234	\$ 186,570	\$ 188,593	\$ 190,284	\$ 191,621

**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 or 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 10% of the units may be affordable at 50% AMI with an additional 30% of the units affordable at 60% AMI. 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 issuer (Housing Authority) 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, 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 (City Council). This process does not make the City financially or legally liable for the bonds or for the project.

[Note: It is uncommon for the members of the City Council to be asked to take two actions at this stage in the bond process---one in their capacity as the City Council (TEFRA hearing and resolution) and another as the Housing Authority (bond inducement). Were the issuer (Housing Authority) a more remote entity, the TEFRA hearing and resolution would be the only opportunity for local elected officials to weigh in on the project.]

- 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 Authority 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.

**DUPLICATE**

Attachment 6

**DISPOSITION AND DEVELOPMENT AGREEMENT  
(Hilltop & Euclid)**

by and between the

**CITY OF SAN DIEGO,  
a California municipal corporation,**

and

**HILLTOP FAMILY HOUSING, L.P.  
a California limited partnership**

DOCUMENT NO **RR-312739**  
FILED **NOV 05 2019**  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

**CITY OF SAN DIEGO**

**DISPOSITION AND DEVELOPMENT AGREEMENT  
(Hilltop & Euclid)**

This Disposition And Development Agreement (“**Agreement**”) is dated as of November 5, 2019, for reference purposes only, and is entered into by and between the City of San Diego, a California municipal corporation (“**City**”), and Hilltop Family Housing, L.P., a California limited partnership (“**Developer**”).

WHEREAS, the City previously approved on June 12, 2018 a prior Disposition and Development Agreement with Developer for the Site described hereinbelow (“**Prior DDA**”).

WHEREAS, on or about June 4, 2019, the City, Developer and other parties entered into a certain Compromise, Settlement & Release (“**Settlement Agreement**”), pursuant to which the City and Developer agreed to rescind the Prior DDA.

WHEREAS, the Prior DDA has now been rescinded, and the City and Developer desire to now enter into this Agreement.

In consideration of the promises and covenants of City and Developer set forth in this agreement, City and Developer agree as follows:

1. **PURPOSES.** The City acts as the Housing Successor to the former Redevelopment Agency of the City of San Diego pursuant to California Health and Safety Code section 34176, and in that capacity City owns that certain real property generally located at the northwest quadrant of the intersection of Hilltop Drive and Euclid Avenue, in the City of San Diego, California, and more specifically defined in Section 2 as the “Site.” The purposes of this Agreement are: (a) for the Developer to process and perform the subdivision, permitting, and mass grading of the Site; (b) for the City to effectuate the California Redevelopment Plan for the Central Imperial Redevelopment Project and convey title to that certain portion of the Site defined in Section 2 as the “Property” to Developer for development of 113 multi-family residential apartments, 111 of which shall be rent-restricted affordable rental units and 2 of which will be manager’s units, along with commercial and retail space, landscaping, public improvements, and parking, all as more specifically defined in Section 2 as the “Project;” (c) for the City to loan to Developer up to \$5,850,000 to pay a portion of Project costs; and (d) for Developer to operate the Project as an affordable multi-family rental housing development in accordance with the “Regulatory Agreement” defined in Section 2. The Project shall be in accordance with the Encanto Neighborhoods Community Plan, all as reflected in the Approvals. All of these purposes are in the vital and best interests of City and the health, safety, and welfare of City residents.

2. **DEFINITIONS.** The following words, terms, and phrases are used in this Agreement with the following meanings:

2.1 **4% Tax Credits.** Tax Credits allocated by CTCAC at the Federal tax credit rate of approximately four percent (4%).

2.2 **9% Tax Credits.** Tax Credits allocated by CTCAC at the Federal tax credit rate of approximately four percent (9%).

2.3 **Actual Project Costs.** The actual aggregate cost amount in each of the categories of expenses for the Project set forth in the Project Budget and all other costs related to construction of the Project that are incurred by Developer as determined by a cost certification performed at Developer's expense by a certified public accountant acceptable to City within three (3) months after issuance of a final Certificate of Occupancy for the entire Project. Actual Project Costs shall not include any costs related to any litigation that might arise with respect to the Project, or any costs that fall outside of the categories in the Project Budget.

2.4 **Additional Government Financing.** Any other financing obtained by Developer from a Government Lender to be applied towards Actual Project Costs.

2.5 **Affiliate.** Any other Person Controlling or Controlled by or under common Control with the specified Person.

2.6 **Affordable Housing Bond Proceeds.** Low and Moderate Income Housing bond proceeds derived from various Redevelopment Project Areas in the City of San Diego, including the Centre City Redevelopment Project Area, Horton Plaza Redevelopment Project Area and the Central Imperial Redevelopment Project Area. Because the Property is located within the Central Imperial Redevelopment Project Area and outside of, but in proximity to, the Centre City and Horton Plaza Redevelopment Project Areas, the City's use of the Affordable Housing Bond Proceeds toward the Project requires that the City Council make a finding under CRL Section 33334.2(g)(1) that such use of the Affordable Housing Bond Proceeds will be of benefit to the Centre City and Horton Plaza Redevelopment Project Areas. The City Council will have made such finding(s) of benefit before the execution of this Agreement.

2.7 **Agreement.** This Disposition and Development Agreement by and between City and Developer, including all of the attached exhibits, which are incorporated into this Agreement by reference.

2.8 **Application.** Any agreement, application, certificate, document or submission (or amendment of any of the foregoing): (a) necessary or appropriate for financing, development, use or operation of the Project, including any application for any building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision or such other instrument or entitlement necessary for the Project; or (b) to enable Developer to seek any Approval or to use or operate the Project in accordance with this Agreement or the Regulatory Agreement.

2.9 **Approval.** Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform or complete the construction of the Project on the Property.

2.10 **Bankruptcy Law.** Title 11 of the United States Code or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

2.11 **Bankruptcy Proceeding.** Any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

2.12 **Builder.** A California licensed general contractor with experience in construction projects similar to the Project.

2.13 **Business Day.** Any weekday on which City is open to conduct regular City functions with City personnel.

2.14 **CEQA.** The California Environmental Quality Act, Public Resources Code section 21000, et seq.

2.15 **CEQA Documents.** Any consistency evaluation, exemption determination, any Negative Declaration (mitigated or otherwise) or any Environmental Impact Report (including any addendum or amendment to, or subsequent or supplemental Environmental Impact Report) required or permitted by any Government, pursuant to CEQA, to issue any Approval or to approve this Agreement or the Project.

2.16 **Certificate of Occupancy.** A Certificate of Occupancy as defined in the Uniform Building Code, published by the International Conference of Building Officials, as adopted by the City from time to time.

2.17 **City.** The City of San Diego, a California municipal corporation, and any assignee of or successor to the rights, powers or responsibilities of the City of San Diego, a California municipal corporation.

2.18 **City Deed of Trust.** A deed of trust in substantially the form of **Exhibit "E"** attached to this Agreement recorded against the Property securing Developer's obligation to repay the City Loan pursuant to the terms of the Developer Note.

2.19 **City Loan.** A residual receipts loan from City to Developer in a maximum principal amount not to exceed five million eight hundred fifty thousand Dollars (\$5,850,000) evidenced by the Developer Note and secured by the City Deed of Trust. Funds provided through the City Loan shall be applied to costs associated solely with the development of the Dwelling Units.

2.20 **City Loan Proceeds Escrow Agreement.** The escrow agreement attached to this Agreement as **Exhibit "W"** for deposit and disbursement of the Affordable Housing Bond Proceeds. The Mayor may, in his or her discretion, revise the City Loan Proceeds Escrow Agreement as needed to accommodate timely funding of the Predevelopment Loan, including substitution of the escrow agent to be used in establishing the escrow account under the City Loan Proceeds Escrow Agreement.

2.21 **City Parties.** Collectively, City, the City Council, and all City elected or appointed officials, employees, agents, and attorneys.

2.22 **City Title Policy.** An ALTA lender's title insurance policy issued by the Title Company, with coverage in the amount of the City Loan, insuring the priority of the City Deed of Trust consistent with the order of recording in Section 8.6.1.

2.23 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a

defense for an Indemnatee or provides a defense under a reservation of rights, then Legal Costs of the Indemnatee) and any judgment.

2.24 **Close of Escrow.** The first date on which the Escrow Agent has filed all of the documents set forth in Section 8.6.1 with the County for recording in the official records of the County in accordance with Section 8.6.1.

2.25 **Commercial Rent.** The amount to be paid by Developer to the City consisting of fifty percent (50%) of Net Rental Operating Income from the Commercial Space. "Net Rental Operating Income" means the total amount of rent and other income received by Developer from or in connection with the Commercial Space, minus ten percent (10%) of that total income amount as an agreed-upon percentage deduction for operating costs that will apply regardless of actual operating costs affecting the Commercial Space. This definition assumes that Developer will lease the Commercial Space to an independent third party at market rate rent. If Developer leases the Commercial Space to a related entity, or the rent or other income paid to Developer for or in connection with the Commercial Space is otherwise not at the market rate, the Net Rental Operating Income will be determined, subject to approval by the Mayor, in accordance with an estimated market rate rent for the Commercial Space as determined by an analysis by a third party consultant selected by the City.

2.26 **Commercial Space.** The portion of the Project to be leased by Developer and used exclusively for retail and commercial uses, as described in the Project Scope attached to this Agreement as **Exhibit "H"**.

2.27 **Construction Contract.** A current agreement between Developer and Builder for construction of the entirety of the Project for a fixed or guaranteed maximum price expressly set forth in such contract and in accordance with all of the terms and conditions of this Agreement, conditioned only upon: (a) Developer's receipt of all Approvals; (b) closing of all financing sources for the Project described in Section 12; and (c) other commercially reasonable conditions.

2.28 **Construction Drawings.** The construction drawings, plans and specifications for the Predevelopment Work and the Project prepared by or for Developer.

2.29 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlating meanings.

2.30 **County.** The County of San Diego, California.

2.31 **CTCAC.** The California Tax Credit Allocation Committee or successor in function.

2.32 **Default.** An Escrow Default, a Monetary Default or a Non-Monetary Default.

2.33 **Default Interest.** Interest at an annual rate equal to the lesser of: (a) six percent (6%) per annum; or (b) the highest rate of interest, if any, that Law allows under the circumstances.

2.34 **Deferred Developer Fee.** If the Developer receives 4% Tax Credits, the amount of One Million Nine Thousand Four Hundred Twenty Dollars (\$1,009,420) of the Developer Fee that will not be paid at or before filing of Form 8609 for the Project with the United

States Internal Revenue Service and is to be paid from net operating income from the completed Project (except as otherwise specifically provided in Section **Error! Reference source not found.** and subject to the requirements of other Lenders and the Tax Credit Investor). If the Developer instead receives 9% Tax Credits, there shall be no Deferred Developer Fee.

2.35 **Developer.** Hilltop Family Housing, L.P., a California limited partnership, and its assignees and transferees permitted by this Agreement.

2.36 **Developer Fee.** If the Developer receives 4% Tax Credits, an aggregate amount not to exceed three million six hundred thousand Dollars (\$3,600,000), inclusive of the Deferred Developer Fee. If the Developer instead receives 9% Tax Credits, an amount not to exceed two million two hundred thousand dollars (\$2,200,000). .

2.37 **Developer Note.** A promissory note in substantially the form of **Exhibit "D"** attached to this Agreement evidencing Developer's obligation to repay the City Loan pursuant to the terms of such note.

2.38 **Developer Official Action.** The official action of the directors, managers, partners or other Persons in Control of Developer in substantially the form attached to this Agreement as **Exhibit "G"** authorizing Developer to enter into and perform this Agreement.

2.39 **Developer Parties.** Collectively, Developer and the directors, officers, employees, agents, shareholders, members, managers, and partners of Developer.

2.40 **Developer Partnership Agreement.** The agreement of limited partnership organizing and establishing Developer as a legal entity.

2.41 **Developer Title Policy.** An extended ALTA owners' policy of title insurance issued by the Title Company, with coverage in an amount reasonably determined by Developer, showing title to the Property vested in Developer consistent with the Title Report. If a survey is required to obtain the Developer Title Policy, such survey must be completed by Developer before the Escrow Closing Date and at Developer's sole cost and expense.

2.42 **Disbursement Agreement.** The agreement for disbursement of the City Loan proceeds in substantially the form attached to this Agreement as **Exhibit "M."**

2.43 **DOF.** The California Department of Finance.

2.44 **Due Diligence Completion Notice.** A written notice from Developer delivered to City, prior to the end of the Due Diligence Period, indicating Developer's unconditional acceptance of the condition of the Property.

2.45 **Due Diligence Investigations.** Developer's due diligence investigations of the Property to determine the suitability of the Property for development and the financial feasibility of the operation of the Project, including investigation of the environmental and geotechnical suitability of the Property, as deemed appropriate in the reasonable discretion of Developer, all at the sole cost and expense of Developer.

2.46 **Due Diligence Period.** The time period that commences on the Effective Date and expires at 5:00 p.m. Pacific Standard Time on the date that is sixty (60) calendar days after the Effective Date. The Due Diligence Period may be extended in the Mayor's discretion for up to an additional thirty (30) calendar days.

2.47 **Dwelling Unit.** Any one of the one hundred and thirteen (113) residential apartment units in the Project.

2.48 **Effective Date.** Defined in Section 3.

2.49 **Eligible Predevelopment Costs.** The expenses for Predevelopment Work as identified in the Project Scope attached to this Agreement as **Exhibit "H"** and the Predevelopment Budget attached to this Agreement as **Exhibit "P"**, and actually incurred by Developer for the Predevelopment Work. Eligible Predevelopment Costs shall not include Developer's administrative costs, fees, home office and/or field overhead, or profit. Eligible Predevelopment Costs are split into two categories as shown in the Predevelopment Budget – General Predevelopment Costs and Public Improvement Related Predevelopment Costs.

2.50 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge relating in any manner to the Project or the Property.

2.51 **Environmental Documents.** The following documents regarding the environmental condition of the Property, which have been provided by to Developer: (a) Phase II Environmental Site Assessment, dated December 24, 2015, prepared by Rincon Consultants, Inc.; (b) Jurisdictional Delineation Report, dated December 2016, prepared by Rincon Consultants, Inc.; and (c) CEQA Consistency Evaluation, dated October 23, 2017, prepared by AECOM.

2.52 **Environmental Law.** All Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the Property, as now or may at any later time be in effect.

2.53 **Escrow.** An escrow conducted by the Escrow Agent for the disposition of the Property and closing of the City Loan to Developer pursuant to this Agreement.

2.54 **Escrow Agent.** Chicago Title Company, a California corporation, or such other Person mutually agreed upon in writing by both City and Developer.

2.55 **Escrow Closing Date.** The date mutually agreed upon in writing between the Parties for the Close of Escrow, which shall be no later than December 31, 2022, subject to extensions in the Mayor's discretion of up to an aggregate of one hundred and eight (180) calendar days.

2.56 **Escrow Closing Statement.** A statement prepared by the Escrow Agent showing, among other things, the Escrow Agent's estimate of all funds to be deposited or received by City or Developer, respectively, and all charges to be paid by City or Developer, respectively, through the Escrow.

2.57 **Escrow Default.** The unexcused failure to submit any document or funds to the Escrow Agent as reasonably necessary to close the Escrow pursuant to the terms and conditions of this Agreement, after all other conditions precedent to the Close of Escrow for the benefit of such Party are satisfied or waived by such Party.

2.58 **Escrow Opening Date.** The first date on which a copy of this Agreement signed by both City and Developer is deposited with the Escrow Agent and the Escrow is opened, as provided in Section 8.

2.59 **Equity Interest.** All or any part of any direct equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly owns or holds any ownership or equity interest in a Person.

2.60 **Event of Default.** The occurrence of any one or more of the following:

2.60.1 *Monetary Default.* A Monetary Default that continues for fifteen (15) calendar days after Notice to the Party in Default specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount or bond, surety or insurance not provided;

2.60.2 *Escrow Closing Default.* An Escrow Default that continues for seven (7) calendar days after Notice to the Party in Default specifying in reasonable detail the document or funds not submitted;

2.60.3 *Bankruptcy or Insolvency.* Developer admits in writing that Developer is unable to pay Developer's debts as they become due or Developer becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Developer's assets or Developer's interest in this Agreement, the Property or the Project (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within ninety (90) days);

2.60.4 *Transfer.* The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Agreement; or

2.60.5 *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Section 2.60.3 or Section 2.60.4, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of

such a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after a Notice of Default, the Party asserted to be in Default shall only be in Default if such Party does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

2.60.6 *Tax Credit Investor Cure Rights.* Following admission of the Tax Credit Investor as limited partner of Developer, a copy of any Notice of Default delivered to Developer shall also be delivered to the Tax Credit Investor at the address provided to the City by such Tax Credit Investor in writing. The Tax Credit Investor shall have the right, but not the obligation, to cure the Event of Default in the time periods provided to Developer.

2.61 **Federal.** Relating or pursuant to the authority of the federal government of the United States of America.

2.62 **General Predevelopment Costs.** The costs identified as General Predevelopment Costs in the Predevelopment Budget attached to this Agreement as **Exhibit "P"**.

2.63 **Good Faith Deposit.** A deposit in the amount of fifty thousand dollars (\$50,000) to provide security for the performance of Developer's obligations under this Agreement, which has been provided to the City prior to execution of this Agreement. The City acknowledges that Developer has previously made the Good Faith Deposit prior to the date of this Agreement.

2.64 **Government.** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City or otherwise) whether now or later in existence.

2.65 **Hazardous Substance.** Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, any matter, waste or substance that is subject to any Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source or in the regulations adopted pursuant to Law; provided, however, Hazardous Substance shall not include any household chemical products in normal quantities used for operation and maintenance of the Project in compliance with Law.

2.66 **Hazardous Substance Discharge.** Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property, or that arises at any time from the construction, installation, use or operation of the Project or any activities conducted at, on, under or from the Property, whether or not caused by a Party.

2.67 **Indemnify.** Where this Agreement states that any Indemnitor shall “Indemnify” any Indemnatee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnatee and defend and hold the Indemnatee harmless from and against such Claim (alleged or otherwise). “**Indemnified**” shall have the correlative meaning.

2.68 **Indemnatee.** Any Person entitled to be indemnified under the terms of this Agreement.

2.69 **Indemnitor.** A Party that agrees to Indemnify any other Person under the terms of this Agreement.

2.70 **Institutional Lender.** Any of the following: (a) a banking corporation (State or Federal), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (State or Federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), Federal or State agency regularly making or guaranteeing mortgage loans, investment bank, a Fortune 500 company, or a corporation established for the purpose of making mortgage loans for affordable rental projects, or (b) any Person that is an Affiliate of or is a combination of any one or more of the Persons described in clause “(a)” of this Section.

2.71 **Insurance Documents.** Copies or originals of insurance policies and endorsements evidencing all insurance coverage required to be obtained or maintained by Developer pursuant to Section 10.

2.72 **Law.** Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Site, Property, Predevelopment Work, or the Project, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Site, Property, Predevelopment Work, or the Project, or otherwise relating to this Agreement or any Party’s rights, obligations or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, including any retroactively-applicable law, subject in all cases, however, to any applicable waiver, variance or exemption.

2.73 **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses and consultant and expert witness fees and expenses.

2.74 **Lender.** The holder of any Security Instrument and such holder’s successors and assigns.

2.75 **Liquidated Damages Amount.** Fifty Thousand Dollars (\$50,000), which shall be paid out of the Good Faith Deposit.

2.76 **Manager Units.** The two (2) Dwelling Units designated for on-site residential managers or maintenance personnel, which shall remain unrestricted in terms of income or affordability levels.

2.77       **Market Rate Parcel.** The portion of the Site excluding the Property. The Market Rate Parcel is anticipated to be sold by the City to a Third Party following completion by Developer of the Predevelopment Work. The Market Rate Parcel is depicted on Exhibit A-3 hereto.

2.78       **Mayor.** The Mayor of City or his or her designee or successor in function.

2.79       **Monetary Default.** Any failure by either Party to pay, deposit or deliver, when and as this Agreement requires, any amount of money, any bond or surety or evidence of any insurance coverage required to be provided under this Agreement, whether to or with a Party or a Third Person.

2.80       **Monitoring Agreement.** The parties acknowledge that this Agreement is subject to the provisions of California Health and Safety Code Section 33418, which provides in pertinent part: "(a) An agency shall monitor, on an ongoing basis, any housing affordable to persons and families of low or moderate income developed or otherwise made available pursuant to any provisions of this part. As part of this monitoring, an Authority shall require Developers or managers of the housing to submit an annual report to the Authority. The annual reports shall include for each rental unit the rental rate and the income and family size of the occupants. The income information required by this section shall be supplied by the tenant in a certified statement of a form provided by the Authority." To satisfy the requirements of California Health & Safety Code Section 33418, and prior to loan closing, Developer shall enter into a reporting and monitoring agreement with the City and Housing Commission in substantially the form attached to this Agreement as **Exhibit "T."** Developer shall pay customary monitoring fees.

2.81       **Non-Monetary Default.** The occurrence of any of the following, except to the extent constituting a Monetary Default or an Escrow Default: (a) any failure of a Party to perform any of such Party's obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement by a Party.

2.82       **Notice.** Any consent, demand, designation, election, notice, or request relating to this Agreement, including any Notice of Default. All Notices must be in writing.

2.83       **Notice of Affordability Restrictions.** A notice in substantially the form of **Exhibit "F"** attached to this Agreement to be recorded against the Property at the Close of Escrow.

2.84       **Notice of Default.** Any Notice claiming or giving Notice of a Default.

2.85       **Notify.** To give a Notice.

2.86       **Parties.** Collectively, City and Developer.

2.87       **Party.** Individually, either City or Developer, as applicable.

2.88       **Performance Schedule.** The schedule for the performance of certain actions by City or Developer set forth in **Exhibit "I"** attached to this Agreement.

2.89 **Permanent Lender.** Any Lender that provides permanent financing to Developer following completion of construction of the Project.

2.90 **Permit Ready.** An Approval that is in a position to be issued to Developer by the applicable Government upon payment of applicable fees and assessments, and the posting of required bonds, the costs of which are included in the final Project Budget approved by City.

2.91 **Permitted Encumbrance.** Any lien or encumbrance affecting the Property shown on the Title Report, and all Laws applicable to the Property, the City Deed of Trust, any Permitted Security Instrument, utility, street or shared driveway easements directly related to the Project, any encumbrance or conveyance made to comply with an Approval for the Project and any other document required or expressly allowed to be recorded against the Property by the express terms of this Agreement or the Regulatory Agreement.

2.92 **Permitted Security Instrument.** Any Security Instrument: (a) that encumbers only the Property or any interest in the Property; (b) a copy of which (recorded or unrecorded) is delivered to City promptly after being signed, with a certification by the Lender that the copy is complete and accurate and stating the Lender's name and notice address; (c) that is held by a Lender, subject to the jurisdiction of the courts of the State, not immune from suit and cannot elect to be immune from suit; and (d) only secures: (i) the repayment of money used to pay or reimburse the Total Project Costs; or (ii) any Refinancing permitted pursuant to the express terms and conditions of this Agreement.

2.93 **Person.** Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

2.94 **Predevelopment Construction Commencement Date.** The date by which the construction of the Predevelopment Improvements by Developer shall commence, which shall be no later than June 30, 2021, subject to extensions of up to ninety (90) days in the aggregate, in the Mayor's discretion.

2.95 **Predevelopment Improvements.** The improvements to be constructed as part of the Predevelopment Work as set forth in the Project Scope attached to this Agreement as **Exhibit "H"**.

2.96 **Predevelopment Work.** All of the items included in "Predevelopment Work" as described in Section 2.a of the Project Scope attached to this Agreement as **Exhibit "H"**.

2.97 **Predevelopment Loan.** The predevelopment loan by the City to Developer in a maximum principal amount not to exceed Two Million Eight Hundred Twenty-Six Thousand Six Hundred Twenty-Six Dollars (\$2,826,626) evidenced by the Predevelopment Note. The proceeds from the Predevelopment Loan shall be used solely to reimburse Developer for Eligible Predevelopment Costs as set forth in Section 12.

2.98 **Predevelopment Loan Guaranty Agreement.** A guaranty agreement in substantially the form attached to this Agreement as **Exhibit "R"** securing Developer's obligation to repay the Predevelopment Loan pursuant to the terms of the Predevelopment Note.

2.99 **Predevelopment Note.** A promissory note in substantially the form attached to this Agreement as **Exhibit "Q"** attached to this Agreement evidencing Developer's obligation to repay the Predevelopment Loan pursuant to the terms of such note.

2.100 **Prevailing Wage Action.** Any of the following: (a) any determination by the State Department of Industrial Relations or the Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State Department of Industrial Relations or the Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code sections 1720 through 1781, as amended from time to time, or any Federal law regarding prevailing wages, including maintaining certified payroll records pursuant to California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity, including pursuant to California Labor Code section 1781 or applicable Federal Law.

2.101 **Prohibited Encumbrance.** Any lien, Security Instrument, mechanic's lien, easement, property interest or other encumbrance recorded or asserted against the Property or the Project that is not a Permitted Encumbrance.

2.102 **Project.** The one hundred and thirteen (113) multi-family residential apartments with appropriate landscaping, retail and commercial space, site improvements, and parking (inclusive of two Manager Units) specifically described in the Project Scope attached to this Agreement as **Exhibit "H"**, subject to the terms and conditions of all Approvals.

2.103 **Project Budget.** The budget set forth in **Exhibit "N"** attached to this Agreement, as may be amended, subject to City approval, to be reflected as the final Project Budget approved by the Mayor in accordance with Section 8.3.4, which is a condition precedent to the Close of Escrow and the funding of the City Loan.

2.104 **Project Commencement Date.** The date within forty-five (45) calendar days following the date of the Close of Escrow when construction of the Project commences.

2.105 **Project Completion Date.** The date that is thirty (30) months following the date of the Close of Escrow.

2.106 **Project Deficit.** Defined in Section 12.8.

2.107 **Project Scope.** The scope of development for the Project, attached to this Agreement as **Exhibit "H"**.

2.108 **Project Surplus.** Defined in Section 12.9.

2.109 **Property.** That certain real property and improvements described in **Exhibit "A - 2"** attached to this Agreement. The Property generally consists of the approximately 4.53 acre portion of the Site located to the east of, and inclusive of, the arroyo dividing the Site as shown on the map included in **Exhibit "A-2"**. No formal legal description currently exists for the Property; however, within ten (10) Business Days of recordation in the official records of the County of the final subdivision map for the Property (which is to be processed by Developer as part of the

Predevelopment Work), Developer shall obtain from the Title Company a formal legal description for the Property, which legal description shall be deemed to supersede and replace all contents of **Exhibit "A-2"** as the description of the Property upon approval and acceptance by the Parties.

2.110 **Public Improvement Related Predevelopment Costs.** The costs identified as Public Improvement Related Predevelopment Costs in the Predevelopment Budget attached to this Agreement as **Exhibit "P"**.

2.111 **Punchlist Work.** Construction of an insubstantial nature that, if not completed, will not delay issuance of a final Certificate of Occupancy (or equivalent approval) for the Project by City or materially interfere with use or occupancy of the Project.

2.112 **Purchase Price.** One dollar (\$1.00).

2.113 **Refinancing.** Any loan secured by a Permitted Security Instrument that Developer obtains from a lender for any of the following purposes: (1) to pay off all or a portion of an existing loan secured by a Permitted Security Instrument, where the Lender providing the new loan will disburse loan proceeds to or on behalf of Developer exceeding the amount of principal and interest under the existing loan being paid, plus the amount of any reasonable and customary fees and costs associated with obtaining such new loan that are actually paid by Developer and not rebated or refunded to Developer, the aggregate amount of such fees and costs not to exceed three percent (3%) of the original principal amount of the new loan; (2) disbursing funds to or on behalf of Developer without paying off all or any portion of any existing loan secured by a Permitted Security Instrument; or (3) any loan extension, modification, or equivalent regarding an existing loan to Developer secured by a Permitted Security Instrument that results in the Lender of the existing loan disbursing additional loan proceeds to or on behalf of Developer in excess of the original principal amount of the loan.

2.114 **Regulatory Agreement.** That certain "Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing (Hilltop & Euclid)" to be entered into by and between City and Developer and recorded against the Property at the Close of Escrow, substantially in the form of **Exhibit "C"** attached to this Agreement. The Regulatory Agreement shall be senior to all Security Instruments, except as explicitly provided in this Agreement.

2.115 **Release of Construction Covenants.** City's written certification that the Project is complete in accordance with the terms and conditions of this Agreement, substantially in the form of **Exhibit "B"** attached to this Agreement.

2.116 **Security Instrument.** Any security instrument, deed of trust, security deed, contract for deed, deed to secure debt or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Property, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned or supplemented from time to time, unless and until paid, satisfied and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Lender (as applicable),

then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a security instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

2.117      **Senior.** Referring to multiple Security Instruments, the Security Instrument that is most senior in lien of the same type. Where Senior is used as a comparative term as against any specified Security Instrument, such term refers to any Security Instrument of the same type that is senior in lien to such specified Security Instrument. If only one Security Instrument of a particular type exists, then that Security Instrument shall be deemed the Senior Security Instrument of such type.

2.118      **Senior Institutional Lender.** The Institutional Lender making the Senior Project Loan.

2.119      **Senior Project Loan.** A loan that Developer shall obtain from a Senior Institutional Lender in an amount that is sufficient to pay and the proceeds of which are to be used and applied solely to pay: (a) the reasonable costs of obtaining such loan; and (b) the excess of the Total Project Costs over the sum of the amount of the proceeds of the other financing sources for construction of the Project described in Section 12, the proceeds of which will be disbursed to or on behalf of Developer during construction of the Project. Such loan shall provide for normal and customary disbursement controls for the payment of Total Project Costs as construction of the Project progresses and normal and customary fees and expenses for a loan of similar size and purpose. Such loan may also provide for all or a portion of the loan to convert to permanent loan status following completion of construction of the Project.

2.120      **Senior Project Loan Documents.** The various documents and instruments made by and between Developer and Senior Institutional Lender that evidence or perfect the Senior Project Loan or the security for repayment of the Senior Project Loan, including any associated Security Instrument(s). The Regulatory Agreement shall be Senior to all Senior Project Loan Documents, and all related Security Instruments.

2.121      **Site.** That certain real property and improvements legally described in **Exhibit "A - 1"** attached to this Agreement.

2.122      **State.** The State of California.

2.123      **Subordination and Inter-Creditor Agreement.** A subordination and/or inter-creditor agreement entered into by and among City, Developer, and Senior Institutional Lender, in accordance with Section 12.12.

2.124      **Tax Credit Equity.** The amount to be paid by the Tax Credit Investor to acquire the Equity Interests in Developer.

2.125      **Tax Credit Investor.** The Person that provides the Tax Credit Equity. In no event may the Tax Credit Investor be an Affiliate of Developer.

2.126      **Tax Credits.** An allocation from CTCAC of State or Federal low income housing tax credits in the amount specified in the Project Budget to finance a portion of the Total Project

Costs, all in accordance with section 42 of the United States Internal Revenue Code of 1986, as amended, all associated United States Internal Revenue Service regulations, State law and all associated CTCAC regulations.

2.127 **Third Person.** Any Person that is not a Party, an Affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

2.128 **Title Report.** The Preliminary Title Report No. LJ-4389833A, dated June 5, 2017, and updated June 29, 2017, issued by Chicago Title, which Developer has received prior to the Effective Date. Within five (5) Business Days of the creation of the legal description for the Property as set forth in Section 2.109, Developer shall obtain from the Title Company a new Title Report which shall include a current commitment for the Developer Title Policy and copies of all documents referenced in that commitment.

2.129 **Title Company.** Chicago Title Company, a California corporation, or such other Person mutually agreed upon in writing by both City and Developer.

2.130 **Total Project Costs.** The cumulative amount of all costs set forth in the Project Budget.

2.131 **Transfer.** Regarding any property, right or obligation, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale or other transfer, whether direct or indirect, of all or any part of such property, right, or obligation or of any legal, beneficial, or equitable interest or estate in such property, right, or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any Equity Interest(s) in the owner of such property, right, or obligation by the holder(s) of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” or “(c)” of this Section 2.131, shall be deemed a Transfer by Developer, even though Developer is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party has received Notice of such occurrence) relating to the Property or any Equity Interest: (i) a mere change in form of ownership with no material change in beneficial ownership and which constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a conveyance only to any Person that, as of the Effective Date, holds an Equity Interest in the Person whose Equity Interest is being transferred; (iv) making of a Permitted Security Instrument; (v) transfer(s) of the outstanding Equity Interests in Developer that, in the aggregate, result in transfer of less than forty percent (40%) of the outstanding Equity Interests in Developer; (vi) issuance of previously unissued or new Equity Interests in Developer that increases the amount of outstanding Equity Interests in Developer by less than ten percent (10%); (vii) the admission of a non-profit public benefit corporation as a managing general partner or manager or member of Developer in order for Developer to qualify for the welfare exemption from property taxation provided under California Revenue and Taxation Code section 214(g); (viii) the transfer by Affirmed Housing Group, Inc. of its general partnership interest in Developer to a limited liability company in which

Affirmed Housing Group, Inc. owns one hundred percent of the membership interests; (ix) grants of easements required for construction of the Project; (ix) actions taken to comply with any Approvals for the Project; (x) a transfer of a limited partnership interest to a Tax Credit Investor and thereafter by the Tax Credit Investor of its limited partnership interest in Developer to a syndicated fund Controlled by the Tax Credit Investor for purposes of syndication of the Tax Credit Equity; (xi) the removal of the general partner of Developer by the Tax Credit Investor in accordance with the Developer Partnership Agreement and replacement of such general partner with a Person approved by the Mayor, which approval shall not be unreasonably withheld; (xii) the grant and exercise of an option and/or right of first refusal from the Tax Credit Investor to the general partner of Developer in accordance with the Developer Partnership Agreement upon the anticipated exit of the Tax Credit Investor from the partnership on or around the expiration of the Tax Credit compliance period; (xiii) the transfer of the Commercial Space from Developer to its Affiliate, subject to Developer and that Affiliate executing an agreement providing for that Affiliate's assumption, on a joint and several basis with Developer, of all obligations with respect to the Commercial Space and the Commercial Rent (as defined the Developer Note) under this Agreement and the Developer Note, as approved by the Mayor in his or her reasonable discretion; or (xiv) any other transfer approved by the Mayor or City Manager, which approval shall not be unreasonably withheld.

2.132      **Unavoidable Delay.** A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including, without limitation, strikes, labor troubles or other union activities, extreme weather events, earthquakes, casualty, war, acts of terrorism, riots, litigation, Government action or inaction, , regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition or insolvency.

3.      **EFFECTIVE DATE.** This Agreement shall not become effective until the first date on which all of the following events have occurred: ("**Effective Date**"): (a) City has received three (3) counterpart originals of this Agreement signed by the authorized representative(s) of Developer; (b) City has received the Developer Official Action signed by the authorized representative(s) of Developer; (c) this Agreement has been approved by the City Council; (d) this Agreement has been signed by the authorized representative(s) of City; and (e) this Agreement has been approved as to form by the City Attorney.

#### 4.      **DEVELOPER DEPOSIT**

4.1      **Delivery.** Developer shall deliver the Good Faith Deposit prior to or concurrently with the execution of this Agreement. The deposit held by the City pursuant to the Exclusive Negotiation Agreement between the Parties with respect to the Project may be credited towards this Good Faith Deposit.

4.2      **Interest.** City shall be under no obligation to pay or earn interest on the Good Faith Deposit, but, if interest shall accrue or be payable thereon, such interest, when received by the City, shall be the property of Developer and shall be promptly paid to Developer upon the return of the Good Faith Deposit to Developer pursuant to this Agreement; to the extent City is entitled to retain the Good Faith Deposit pursuant to this Agreement, any interest earned on the Good Faith Deposit shall be retained by and belong to City as its sole property and may be disposed of by City

as City sees fit.

4.3 **Return or Retention.** The Good Faith Deposit (with interest, if any) shall be returned to Developer within thirty (30) days in the event that Developer is not then in default under this Agreement and the Close of Escrow has occurred. If the City terminates this Agreement under Section 13.1, the Good Faith Deposit (with interest, if any) shall be retained by City as Liquidated Damages.

## 5. **PREDEVELOPMENT WORK AND DUE DILIGENCE.**

5.1 **Predevelopment Work.** Developer shall have commenced the Predevelopment Work prior to execution of this Agreement, and shall perform and complete all Predevelopment Work at and within the times set forth in the Performance Schedule attached to this Agreement as **Exhibit "I"**, which include the deadline for commencement of construction of the Predevelopment Improvements of June 30, 2021. The dates for commencement, performance, and completion of the Predevelopment Work as set forth in the Performance Schedule may each be extended by up to ninety (90) days in the Mayor's sole discretion. Developer shall have access to the Site for the Predevelopment Work pursuant to a Right of Entry Agreement in the form attached to this Agreement as **Exhibit "U"**.

### 5.2 **Due Diligence**

5.2.1 **Time and Expense.** Developer shall complete all Due Diligence Investigations within the Due Diligence Period and shall conduct all Due Diligence Investigations at Developer's sole cost and expense.

#### 5.2.2 **Review of Title.**

(a) **Developer's Title Notice.** Within ten (10) Business Days after the Effective Date, Developer shall deliver to City a written notice confirming Developer's unconditional acceptance of the condition of title to the Property or Developer's disapproval or conditional approval of specific matters in the Title Report. If Developer fails to timely deliver this title notice, Developer shall be deemed to disapprove the condition of title to the Property.

(b) **City's Title Response.** Within five (5) Business Days after receipt of Developer's title notice (unless such notice confirms Developer's unconditional acceptance), City shall deliver to Developer a written response in which City: (i) agrees to cause the removal from the Title Report of any matters disapproved or conditionally approved in Developer's title notice; (ii) agrees to obtain title insurance or other insurance or endorsement in a form reasonably satisfactory to Developer insuring against any matters disapproved or conditionally approved in Developer's title notice; or (iii) elects not take either action described in clauses (i) or (ii) above. If City fails to timely deliver the title response (if necessary), City shall be deemed to elect not to take any action in reference to Developer's title notice. If City elects in the title response to take any action in reference to Developer's title notice, and if Developer then elects to proceed with the purchase of the Property, City shall complete such action before the Escrow Closing Date or as otherwise specified in City's title response.

(c) Developer's Rejection or Waiver. If City elects or is deemed to have elected not to address one or more matters set forth in Developer's title notice to Developer's reasonable satisfaction, then within five Business Days after the earlier of Developer's receipt of City's title response or the expiration of City's deadline to deliver its title response, Developer shall deliver to City a final written notice: (i) rejecting the condition of title to the Property; or (ii) waiving Developer's disapproval or conditional approval of all such matters set forth in Developer's initial title notice and unconditionally accepting the condition of title to the Property. If Developer fails to timely deliver the final title notice, Developer shall be deemed to continue its rejection of the condition of title to the Property.

(d) Termination of Agreement. If Developer's title review pursuant to this Section 5.2.2 results in Developer's ultimate disapproval or deemed disapproval of the condition of title to the Property, then either Party shall have the right, in such Party's sole and absolute discretion, to cancel the Escrow and terminate this Agreement by delivering written notice to the other Party and Escrow Agent before the Due Diligence Period expires. Upon delivery of the written notice of termination, the Parties and Escrow Agent shall proceed in accordance with Section 8.10. If either Party terminates this Agreement in accordance with this Section 5.2.2, such Party shall not incur any resulting liability to the other Party.

(e) Creation of Legal Description. As set forth in Section 2.109 above, a legal description for the Property will be created after the final subdivision map is recorded in the official records of the County. It is anticipated that this will occur after completion of Developer's title review under this Section 5.2.2. Creation of the legal description shall not reopen Developer's title review under this Section 5.2.2., except that to the extent the establishment of the legal description results in creation or disclosure of a new title matter not previously shown on the Title Report, but shown on the updated Title Report issued after creation of the legal description, then Developer's title review shall reopen, but only with respect to that new title matter or matters, if any, and shall occur in accordance with the provisions and deadlines in this Section 5.2.2.

**5.2.3 Developer's Responsibility.** It shall be the sole responsibility of Developer, at Developer's sole cost and expense, to investigate and determine all conditions of the Property and its suitability for the use to which the Property is to be put in accordance with this Agreement. If the conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put under the terms of this Agreement, and Developer nevertheless determines to complete the acquisition of the Property, then it will be the sole responsibility and obligation of Developer to take such action as may be necessary to place the Property in all respects in a condition entirely suitable for its development and use in accordance with this Agreement.

**5.2.4 Due Diligence Completion Notice.** Developer shall deliver a Due Diligence Completion Notice to City prior to the end of the Due Diligence Period. If Developer does not unconditionally accept the condition of the Property by delivery of its Due Diligence Completion Notice indicating such acceptance, prior to the end of the Due Diligence Period, Developer shall be deemed to have rejected the condition of the Property and refused to accept conveyance of title to the Property. If the condition of the Property is rejected or deemed rejected by Developer, then either City or Developer shall have the right to terminate this Agreement, in their respective sole and absolute discretion, without liability to the other Party or any other Person,

by delivery of a Notice of termination to the other Party and Escrow Agent, in which case the Parties and Escrow Agent shall proceed pursuant to Section 8.10.

6. **SUBMISSION OF DEVELOPMENT APPLICATIONS.** Developer shall prepare and submit all required Applications, documents, fees, charges or other items (including deposits, funds or sureties in the ordinary course) required for the Predevelopment Work and construction of the Project, pursuant to all applicable Laws and Approvals, to each Government for review and approval. Further, Developer shall exercise commercially reasonable efforts to complete all Predevelopment Work and obtain all Approvals for the construction of the Project on the Property from each Government in a Permit Ready status, at least five (5) days before the Escrow Closing Date. Prior to commencement of any part of the construction of the Project, Developer shall obtain all Approvals from each Government required for the construction of the Project.

7. **PURCHASE AND SALE OF PROPERTY.**

7.1 Purchase and Sale. City shall sell the Property to Developer, and Developer shall purchase the Property from City, subject to the Permitted Encumbrances and the terms and conditions of this Agreement. Title to the Property shall be transferred by the Grant Deed attached to this Agreement as **“Exhibit O”**.

7.2 “AS-IS” Acquisition. The Close of Escrow shall evidence Developer’s unconditional and irrevocable acceptance of the Property in the Property’s AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, AS OF THE CLOSE OF ESCROW, WITHOUT WARRANTY as to character, quality, performance, condition, title, physical condition, soil conditions, the presence or absence of fill, ocean or tidal impacts, shoring or bluff stability or support, subsurface support, zoning, land use restrictions, the availability or location of utilities or services, the location of any public infrastructure on or off of the Property (active, inactive or abandoned), the suitability of the Property for the Project or other use, the existence or absence of Hazardous Substances affecting the Property and with full knowledge of the physical condition of the Property, the nature of City’s interest in and use of the Property, all Laws applicable to the Property and any and all conditions, covenants, restrictions, encumbrances and all matters of record relating to the Property. Developer represents and warrants to City that: (a) Developer has had ample opportunity to inspect and evaluate the Property and the feasibility of the uses and activities Developer is entitled to conduct on the Property in accordance with this Agreement; (b) Developer is experienced in real estate development; (c) Developer is relying entirely on Developer’s experience, expertise and Developer’s own inspection of the Property in the Property’s current state in proceeding with acquisition of the Property; (d) Developer accepts the Property in the Property’s present condition; (e) to the extent that Developer’s own expertise with respect to any matter regarding the Property is insufficient to enable Developer to reach an informed conclusion regarding such matter, Developer has engaged the services of Persons qualified to advise Developer with respect to such matters; (f) Developer has received assurances acceptable to Developer by means independent of City or City’s agents of the truth of all facts material to Developer’s acquisition of the Property pursuant to this Agreement; and (g) the Property is being acquired by Developer as a result of Developer’s own knowledge, inspection and investigation of the Property and not as a result of any representation made by City or City’s agents relating to the condition of the Property, unless such statement or representation is expressly and

specifically set forth in this Agreement. City expressly and specifically disclaims any express or implied warranties regarding the Property.

7.3 Investigation and Remediation. City has no obligation under this Agreement to investigate or remediate the existence of any violation of Environmental Laws or Hazardous Substance or any Hazardous Substance Discharge affecting the Property before or after the Close of Escrow. If Developer closes the purchase of the Property and encounters any violation of Environmental Laws or Hazardous Substance or any Hazardous Substance Discharge affecting the Property or the Project, Developer shall investigate and remediate such violation or condition in accordance with all applicable Law and Government requirements, all at Developer's sole cost and expense. Nothing in this 7.3 shall preclude Developer from recovering for any Claim from a Person other than a City Party.

7.3.1 Developer Acknowledgement of Receipt of Documents. Developer acknowledges receipt of the Environmental Documents, which to the best knowledge of the City, constitutes all environmental reports, studies, and other environmental documents relevant to the environmental condition of the Property within the City's possession or control. City does not warrant the accuracy of the Environmental Documents or that the Environmental Documents constitute all the documents that may exist regarding the conditions of the Property, and Developer is obligated to conduct its own inquiry to determine if more information is available.

7.3.2 Developer Assumption of Risk. Developer acquires the Property with knowledge that there may be environmental contamination on, in, under or about the Property and that some Hazardous Substances may remain at the Property after the completion of the Project. City shall have no liability for, and shall not defend or indemnify Developer with respect to any liability, loss or claim resulting from the existence of Hazardous Substances on, in, under or about the Property.

7.3.3 Release of City. Developer hereby waives, releases and discharges the City and its members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the City's or Developer's use, maintenance, ownership or operation of the Property, any Hazardous Substances on the Property, or the existence of Hazardous Substances contamination in any state on the Property, however the Hazardous Substances came to be placed there, except with respect to any Environmental Claim arising from City's breach of its maintenance covenant under Section 7.5. Developer acknowledges that it is aware of and familiar with the provisions of section 1542 of the California Civil Code which provides as follows:

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

To the extent of the release set forth in this Section, Developer hereby waives and relinquishes all rights and benefits which it may have under section 1542 of the California Civil Code.

Initials of Authorized  
City Representative

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Initials of Authorized  
Developer Representative

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7.4 Condemnation. If City receives notice that any portion of the Property or any interest in any portion of the Property becomes the subject of any eminent domain proceeding prior to Close of Escrow, including the filing of any notice of intended condemnation or proceedings in the nature of eminent domain commenced by any Government, City shall immediately Notify Developer of such occurrence. If in the reasonable discretion of Developer, the subject condemnation activities will prohibit development of the Project on the Property, then this Agreement shall terminate on the date of the Notice from City to Developer of such condemnation activities and Developer shall be entitled to a refund of the Good Faith Deposit. If this Agreement does not terminate pursuant to the immediately preceding sentence, then this Agreement shall continue in full force and effect in accordance with its terms, and City shall only be obligated to convey that portion of the Property that was not subject to condemnation to Developer at the Close of Escrow and City shall be entitled to receive all of the condemnation award and other compensation regarding such condemnation of all or a portion of the Property.

7.5 Maintenance of Property. City agrees, prior to the commencement of the Predevelopment Work, to continue to maintain the Property in substantially the same condition as the City maintained the Property on the Effective Date. Also, City agrees not to enter into any contracts with respect to the Property that will survive the Close of Escrow, without Developer's prior written consent.

7.6 Delivery of Property Free of Tenants. At the Close of Escrow, City will deliver possession of the Property to Developer free and clear of any contractual or other rights created by or with the consent of City for any Person (other than Developer) to use or occupy the Property.

7.7 City Not to Encumber. City agrees not to place any matters of record against the Property (other than Permitted Exceptions and any matters arising from City's issuance or exercise of any remedy related to any Approval for the Project), prior to the Close of Escrow, without the prior written consent of Developer.

7.8 Escrow. For the purposes of exchanging funds and documents to complete the sale of the Property from City to Developer and the purchase of the Property by Developer from City, pursuant to the terms and conditions of this Agreement.

7.9 Payment of Purchase Price. At least one (1) Business Day preceding the Escrow Closing Date, the Developer shall deposit an amount of money equal to the sum of Purchase Price and all costs payable by Developer regarding the purchase and sale of the Property pursuant to this Agreement into the Escrow.

8. **ESCROW.** The purchase and sale of the Property and the closing of the City Loan shall take place through the Escrow to be administered by Escrow Agent. The Parties shall cause the Escrow to be opened at a mutually agreed upon date selected by the Parties to allow timely Close of Escrow in accordance with the Performance Schedule. Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties. This Section 8 constitutes the joint instructions of the Parties to Escrow Agent for conduct of the Escrow for the purchase and sale of the property and the closing of the City Loan. Developer and City shall submit such further escrow instructions consistent with the provisions of this Agreement as may be reasonably required. In the event of any conflict between the provisions of this Agreement and any further escrow instructions, the provisions of this Agreement shall control.

8.1 **Escrow Agent Authority.** City and Developer authorize Escrow Agent to:

8.1.1 **Charges.** Pay and charge City and Developer for their respective shares of the applicable fees, taxes, charges, or costs payable by either City or Developer regarding the Escrow;

8.1.2 **Settlement/Closing Statements.** Release each Party's Escrow Closing Statement to the other Party;

8.1.3 **Document Recording.** File any documents delivered for recording through the Escrow with the office of the Recorder of the County for recordation in the official records of the County, pursuant to the joint instructions of the Parties; and

8.1.4 **Counterpart Documents.** Utilize documents signed by City or Developer in counterparts, including attaching separate signature pages to one version of the same document.

8.2 **Developer's Conditions Precedent to Close of Escrow.** Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Developer, Developer's obligation to close the Escrow shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Developer) of each of the following conditions precedent on or before the Escrow Closing Date:

8.2.1 **Title Policy.** Title Company is prepared to issue the Developer Title Policy to Developer upon payment of the premium.

8.2.2 **Approvals.** Developer has processed all Approvals required from each Government for construction of the Project on the Property, the terms and conditions of such Approvals are reasonably satisfactory to Developer, and all such Approvals are Permit Ready;

8.2.3 **CEQA Documents.** Adoption, approval, or certification of the CEQA Documents required by each Government. The Developer acknowledges that this condition has been satisfied as of the date of this Agreement.

8.2.4 **Senior Project Loan.** The closing and funding of the Senior Project Loan concurrent with the close of the Escrow;

**8.2.5 Additional Government Financing.** The closing and funding of any Additional Government Financing to be funded at the Close of Escrow in the amount specified in the Project Budget;

**8.2.6 Tax Credit Equity Funding.** The Tax Credit Equity to be funded at the Close of Escrow in the amount specified in the Project Budget, is deposited into the Escrow by the Tax Credit Investor;

**8.2.7 City Escrow Deposits.** City deposits all of the items into Escrow required by Section 8.5;

**8.2.8 Settlement/Closing Statement.** Developer reasonably approves Developer's Escrow Closing Statement; and

**8.2.9 City Pre-Closing Obligations.** City performs all of City's material obligations under this Agreement required to be performed by City prior to the Escrow Closing Date.

**8.3 City's Conditions Precedent to the Close of Escrow.** Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by City, City's obligation to make the City Loan and close the Escrow shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by the Mayor or Mayor's designee in his or her sole discretion) of each of the following conditions precedent on or before the Escrow Closing Date:

**8.3.1 Senior Project Loan.** The closing and funding of the Senior Project Loan concurrent with the close of the Escrow;

**8.3.2 Additional Government Financing.** The closing and funding of any Additional Government Financing to be funded at the Close of Escrow in the amount specified in the Project Budget;

**8.3.3 Tax Credit Equity Funding.** The Tax Credit Equity to be funded at the Close of Escrow in the amount specified in the Project Budget, is deposited into the Escrow by the Tax Credit Investor.

**8.3.4 Approvals.** Developer has processed all Approvals required from each Government for construction of the Project on the Property, the terms and conditions of such Approvals are reasonably satisfactory to City, and all such Approvals are Permit Ready;

**8.3.5 Document Approval.** City has received from Developer and approved all of the documents listed below in this Section 8.3.4 in City's reasonable discretion. Developer shall deliver draft and final versions of each document listed in this Section 8 to City in accordance with the Performance Schedule. Further, Developer shall have all of the following described documents completed and signed by all of the Persons required to make such documents operative (if applicable) and shall have delivered true, accurate and legible copies or originals (as specified in this Agreement) of all such documents to City, at least one (1) Business Day before the Escrow Closing Date:

(a) A copy of the Construction Contract;

- (b) All Insurance Documents;
- (c) A copy of the Developer Partnership Agreement;
- (d) Copies of the Senior Project Loan Documents;
- (e) The final Disbursement Agreement;
- (f) The final Project Budget; and
- (g) The Construction Drawings.

8.3.6 **City Title Policy.** Title Company is prepared to issue the City Title Policy to City upon payment of Title Company's premium for such policy;

8.3.7 **CEQA Documents.** Adoption, approval or certification of the CEQA Documents by each required Government. The City acknowledges that this condition has been satisfied as of the date of this Agreement;

8.3.8 **Subordination and Inter-Creditor Agreement.** The Subordination and Inter-Creditor Agreement has been signed by the authorized representative(s) of Developer, City and Senior Institutional Lender and Developer has received an original of the fully signed agreement;

8.3.9 **Developer Escrow Deposits.** Developer deposits all of the items into Escrow required by Section 8.4;

8.3.10 **Settlement/Closing Statement.** City reasonably approves City's Escrow Closing Statement; and

8.3.11 **Developer Pre-Closing Obligations.** Developer performs all of Developer's material obligations under this Agreement required to be performed by Developer prior to the Escrow Closing Date.

8.4 **Developer's Escrow Deposits.** Developer shall deposit the following items into Escrow and, concurrently, provide a copy of each document deposited into Escrow to City, at least one (1) Business Day prior to the Escrow Closing Date:

8.4.1 **Developer Note.** The Developer Note signed by the authorized representative(s) of Developer;

8.4.2 **Regulatory Agreement.** The Regulatory Agreement signed by the authorized representative(s) of Developer in recordable form;

8.4.3 **City Deed of Trust.** The City Deed of Trust signed by the authorized representative(s) of Developer in recordable form;

8.4.4 **Senior Project Loan Security Instruments.** The Permitted Security Interest securing repayment of the Senior Project Loan, signed by the authorized representative(s) of Developer;

8.4.5 **Subordination and Inter-Creditor Agreement.** The Subordination and Inter-Creditor Agreement signed by the authorized representative(s) of Developer;

8.4.6 **Disbursement Agreement.** The Disbursement Agreement signed by the authorized representative(s) of Developer;

8.4.7 **Other Senior Institutional Lender Agreements.** Any other agreements requested by the Senior Institutional Lender to be entered into by Developer, signed by the authorized representative(s) of Developer; and

8.4.8 **Other Reasonable Items.** Any other documents or funds required to be delivered by Developer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow that have not previously been delivered by Developer.

8.5 **City's Escrow Deposits.** City shall deposit the following items into Escrow and, concurrently, provide a copy of each document deposited into Escrow to Developer, at least one (1) Business Day prior to the Escrow Closing Date:

8.5.1 **Grant Deed.** The Grant Deed signed by the authorized representative(s) of City and Developer;

8.5.2 **City Loan Proceeds.** Not to exceed \$5,850,000 for disbursement pursuant to the Developer Note, Disbursement Agreement, and City Loan Proceeds Escrow Agreement;

8.5.3 **Regulatory Agreement.** The Regulatory Agreement signed by the authorized representative(s) of City in recordable form;

8.5.4 **Notice of Affordability Restrictions.** The Notice of Affordability Restrictions signed by the authorized representative(s) of City in recordable form;

8.5.5 **Subordination and Inter-Creditor Agreement.** The Subordination and Inter-Creditor Agreement signed by the authorized representative(s) of City;

8.5.6 **Disbursement Agreement.** The Disbursement Agreement signed by the authorized representative(s) of City; and

8.5.7 **Other Reasonable Items.** Any other documents or funds required to be delivered by City under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow that have not been previously delivered by City.

8.6 **Closing Procedure.** Upon Escrow Agent's receipt of written confirmation from both Developer and City that each of their respective conditions precedent to the Close of Escrow are satisfied or waived, Escrow Agent shall close the Escrow by doing all of the following:

8.6.1 **Recordation and Distribution of Documents.** Filing with the Recorder of the County for recording in the official records of the County regarding the Property in the following order of priority at Close of Escrow: (a) the Regulatory Agreement; (b) the Notice of Affordability

Restrictions; (c) the Permitted Security Instrument securing the Senior Project Loan; (d) the City Deed of Trust; (e) the Permitted Security Instrument securing any Additional Government Financing; (f) the Subordination and Inter-Creditor Agreement(s); and (g) any other documents to be recorded regarding the Property through the Escrow in accordance with the joint instructions of the Parties. At Close of Escrow, Escrow Agent shall deliver conformed copies of all documents filed for recording in the official records of the County through the Escrow to City, Developer, and any other Person designated in the written instructions of the Parties to receive a conformed copy of each such document. Each conformed copy of a document filed for recording in the official records of the County shall show all recording information. The Parties intend and agree that this Section 8.6.1 shall establish the relative priorities of the documents and interests to be recorded in the official records of the County through the Escrow, by providing for recordation of Senior interests prior in time to junior interests, in the order provided in this Section 8.6.1, subject to the terms and conditions of the Subordination and Inter-Creditor Agreement.

The Regulatory Agreement shall be Senior to all Security Instruments. However, the Mayor may, in his or her sole discretion, allow the Permitted Security Instrument securing any Additional Government Financing to be Senior to the Regulatory Agreement when explicitly required by applicable Law or the program regulations of the Additional Government Financing, consistent with California Health and Safety Code section 33334.14(a)(1). In addition, the Mayor may, in his or her sole discretion, allow the Permitted Security Instrument securing any Additional Government Financing to be Senior to the City Deed of Trust when explicitly required by applicable Law or the program regulations of the Additional Government Financing.

**8.6.2 Distribution of Other Documents.** Delivering originals or copies of all documents to be delivered through the Escrow that are not filed for recording (if any) to the Parties and any other Person designated in the written joint escrow instructions of the Parties to receive an original or copy of each such document.

**8.6.3 Funds.** Distributing all funds held by Escrow Agent pursuant to the Escrow Closing Statements approved in writing by City and Developer, respectively.

**8.7 Close of Escrow.** The Close of Escrow shall occur on or before the Escrow Closing Date. The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to Escrow Agent. The Mayor is authorized to agree to one or more extensions of the Escrow Closing Date on behalf of City up to a maximum time period extension of one hundred and eighty (180) calendar days, in the aggregate, in the Mayor's sole and absolute discretion. If for any reason (other than a Default or Event of Default by such Party) the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination to both the other Party and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Escrow, the Parties and Escrow Agent shall proceed pursuant to Section 8.10. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, pursuant to this Section 8.7, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 8.7 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and

conditions of this Agreement, then the Escrow shall close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

8.8 **Escrow Costs.** Escrow Agent shall notify Developer and City of the costs to be borne by each of them at the Close of Escrow by delivering an Escrow Closing Statement to both City and Developer at least two (2) Business Days prior to the Escrow Closing Date. Developer shall pay the premium charged by the Title Company for the Developer Title Policy, including any endorsements or other supplements to the coverage of the Developer Title Policy that may be requested by Developer, and the premium charged by the Title Company for the City Title Policy, exclusive of any endorsements or other supplements to the coverage of the City Title Policy that may be requested by City that are not also requested by the Senior Institutional Lender for its lender's policy of title insurance regarding the Permitted Security Instrument securing repayment at the Senior Project Loan. Developer shall pay all of the fees and other costs as the Escrow Agent may charge for the conduct of the Escrow, all recording fees, documentary transfer taxes and any and all other charges, fees and all taxes levied by each and every Government relative to the conveyance of the Property through the Escrow.

8.9 **Escrow Cancellation Charges.** If the Escrow fails to close due to City's Default under this Agreement, City shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close due to Developer's Default under this Agreement, Developer shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close for any reason other than the Default of either Developer or City, Developer and City shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively.

8.10 **Escrow Cancellation.** If this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement (other than due to an Event of Default by the other Party), the Parties shall do all of the following:

8.10.1 **Cancellation Instructions.** The Parties shall, within three (3) Business Days following Escrow Agent's written request, sign any reasonable Escrow cancellation instructions requested by Escrow Agent;

8.10.2 **Return of Funds and Documents.** Within ten (10) Business Days following receipt by the Parties of a settlement statement of Escrow or title order cancellation charges from Escrow Agent (if any) or within twenty (20) days following Notice of termination, whichever is earlier: (a) Developer or Escrow Agent shall return to City all documents previously delivered by City to Developer or Escrow Agent regarding this Agreement or the Escrow; (b) City or Escrow Agent shall return to Developer all documents previously delivered by Developer to City or Escrow Agent regarding this Agreement or the Escrow; (c) City or Escrow Agent shall, unless otherwise provided in this Agreement, return to Developer the Good Faith Deposit and all funds deposited in Escrow by Developer, less Developer's share of customary and reasonable Escrow or title order cancellation charges (if any) in accordance with Section 8.9; and (d) Escrow Agent shall, unless otherwise provided in this Agreement, return to City all funds deposited in Escrow by City,

less City's share of customary and reasonable Escrow or title order cancellation charges (if any) in accordance with Section 8.9.

## **9. PROJECT DEVELOPMENT AND USE.**

9.1 Developer's Covenant to Develop the Project. Developer covenants to and for the benefit of City that, after the Close of Escrow, Developer shall commence, pursue, and complete the development of the Project on the Property in accordance with the terms and conditions of this Agreement. Developer covenants and agrees, for itself, its successors and assigns, that the Property shall be improved and developed with the Project, in conformity with the terms and conditions of this Agreement and all applicable Laws and Approvals. The covenants of this Section 9.1 shall run with the land of the Property, until the earlier of: (a) the date of issuance of a Release of Construction Covenants for the Project; or (b) the twentieth (20th) anniversary of the date of the Close of Escrow.

### **9.2 Construction Start and Completion of Project.**

9.2.1 **Commencement.** Developer shall commence construction of the Project within forty-five (45) days of the date of Close of Escrow. Thereafter, Developer shall diligently proceed to pursue and complete the construction of the Project, in a good and workmanlike manner, in accordance with the terms and conditions of this Agreement, all applicable Laws, and all Approvals.

9.2.2 **Completion.** On or before the Project Completion Date, Developer shall do all of the following:

(a) Record a Notice of Completion, in accordance with California Civil Code section 8182, for the entirety of the Project;

(b) Request each applicable Government to inspect the Project, as required by all applicable Approvals or Laws;

(c) Address any defects or deficiencies that may be disclosed by any inspection conducted pursuant to Section 9.2.2(b) to the satisfaction of the applicable Government; and

(d) Request each applicable Government to issue all final Certificates of Occupancy or other Approvals necessary for the occupancy and operation of the completed Project and take such other actions reasonably required to obtain all such Certificates of Occupancy or other Approvals.

9.3 Compliance with Laws. All work performed in connection with the construction of the Project shall comply with all applicable Laws and Approvals.

9.4 Prevailing Wage. The Parties agree that the Project is subject to prevailing wage rate requirements pursuant to San Diego Municipal Code section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861. Developer shall pay prevailing wage rates pursuant to San Diego Municipal Code section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861 for construction work performed pursuant to this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair, and

maintenance work performed pursuant to this Agreement cumulatively exceeding \$15,000, all as further described in **Exhibit "L"** attached to this Agreement.

9.5 Developer Attendance at City Meetings. Developer agrees to have one or more of Developer's employees or consultants who are knowledgeable regarding this Agreement and the construction of the Project, such that such Person(s) can meaningfully respond to City Council or City staff questions regarding the progress of the Project, attend meetings with City staff or meetings of the City Council, when requested to do so by City staff, with reasonable advance Notice to Developer.

9.6 City Right to Inspect Project and Property. Developer agrees that City shall have the right of reasonable access to the Property, without the payment of charges or fees, during normal construction hours, during the period of construction of the Project upon reasonable advance Notice. Any and all City representatives who enter the Property shall at all times be accompanied by a representative of Developer, while on the Property. Developer shall make a representative of Developer available for this purpose at all times during normal construction hours, upon reasonable advance Notice from City. If in City's reasonable judgment it is necessary, Developer agrees that City shall have the further right, from time to time, to retain one or more consultants to inspect the Project and verify compliance by Developer with the provisions of this Agreement. Developer acknowledges and agrees that any such City inspections are for the sole purpose of protecting City's rights under this Agreement, are made solely for City's benefit, City's inspections may be superficial and general in nature, are for the purposes of informing City of the progress of the Project and the conformity of the Project with the terms and conditions of this Agreement, and Developer shall not be entitled to rely on any such inspection(s) as constituting City's approval, satisfaction or acceptance of any materials, workmanship, conformity of the Project with this Agreement or otherwise. Developer agrees to make its own regular inspections of the work of construction of the Project to determine that the progress and quality of the Project and all other requirements of the work of construction of the Project are being performed in a manner satisfactory to Developer.

9.7 Release of Construction Covenants. Developer may request that City inspect the completed Project and issue a Release of Construction Covenants for the Project following: (1) the issuance of a final Certificate of Occupancy for the Project by City; (2) recordation of a Notice of Completion by Developer or its contractor; (3) certification or equivalent by the project architect that construction of the Improvements (excluding any outstanding Punchlist Work) has been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications; (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic's liens that have been recorded or stop notices that have been delivered; (5) evidence reasonably satisfactory to the City that the Property has been developed in accordance with this Agreement, the Scope of Development, and plans approved by the City pursuant to this Agreement; and (6) occurrence of the "Occupancy Date" under the Regulatory Agreement. Following City's receipt of such a written request from Developer for a Release of Construction Covenants, City shall promptly inspect the Project to determine whether or not the Project has been completed in compliance with this Agreement. If City determines that the Project is complete (excluding any outstanding Punchlist Work) and in compliance with this Agreement, City shall issue a Release of Construction Covenants for the Project to Developer. If City determines that the Project is not complete or not in compliance with this Agreement, City

shall send Notice to Developer describing with specificity each non-conformity within thirty (30) calendar days following City's receipt of Developer's written request for a Release of Construction Covenants. The Notice shall also contain City's opinion of the action(s) Developer must take to obtain a Release of Construction Covenants from City. If the reason for Developer's failure to complete the Project is confined to the immediate unavailability of specific items or materials for construction or landscaping at a price reasonably acceptable to Developer or Punchlist Work, City may issue a Release of Construction Covenants upon the delivery by Developer to City of a bond, irrevocable standby letter of credit or other security reasonably acceptable to City in an amount representing the fair value of the work on the Project remaining to be completed, as reasonably determined by City.

9.8 Use of the Property. Developer covenants and agrees for itself, its successors, its assigns, and every successor interest to the Property or any part of the Property, that Developer, such successor, and such assigns shall use the Property only for the uses specified in the Approvals and this Agreement, including all Exhibits to this Agreement, specifically including (i) residential affordable rental units (as further described in the Regulatory Agreement), consisting of the 113 Dwelling Units; (ii) the Commercial Space; (iii) parking; and (iv) all other uses identified in this Agreement and its Exhibits, and the Approvals.

9.9 Use of the Commercial Space. Use of the Commercial Space shall be in accordance with the terms of the Regulatory Agreement. As set forth in more detail in the Developer Note, Developer shall pay Commercial Rent to the City from the Commercial Space.

10. **INSURANCE.** Developer shall obtain and maintain, to protect the City Parties against all insurable Claims relating to this Agreement, the Property, the Predevelopment Work, or the Project, at the sole cost and expense of Developer, all of the insurance coverage described in **Exhibit "J"** attached to this Agreement (or its then reasonably available equivalent) beginning prior to commencement of the Predevelopment Work, and continuing until issuance of a Release of Construction Covenants for the Project. After completion of construction of the Project, the insurance requirements of the Regulatory Agreement apply.

## 11. **INDEMNIFICATION.**

11.1 City Indemnity Obligations. City shall Indemnify the Developer Parties against any Claim to the extent such Claim arises out of any wrongful intentional act or negligence of the City Parties, but only to the extent that City may be held liable under applicable law for such wrongful intentional act or negligence, and exclusive of any violation of law (including the State Constitution) relating to City's approval of, entry into, or performance of this Agreement (in accordance with Developer's assumption of such risks under Section 14.14). Nothing in this Agreement is intended nor shall be interpreted to: (a) waive any limitation on City's liability, any exemption from liability in favor of City, any claim presentment requirement for bringing an action regarding any liability of City or any limitations period applicable to liability of City, all as set forth in Government Code sections 800; *et seq.*, sections 900, *et seq.*, or in any other law, or (b) require City to Indemnify any Person beyond such limitations on City's liability.

11.2 Developer Indemnity Obligations. Developer shall Indemnify the City Parties against any Claim to the extent such Claim arises from or relates to: (a) any wrongful intentional act or negligence of the Developer Parties; (b) any Application made by or at Developer's request;

(c) any agreements that Developer (or anyone claiming by or through Developer) makes with a Third Person regarding this Agreement, the Property or the Project; (d) any worker's compensation claim or determination relating to any employee of the Developer Parties or their contractors; or (e) any Prevailing Wage Action. In addition, notwithstanding any other provision of this Agreement to the contrary, including Sections 7.3.3 and 11.1, Developer shall Indemnify the City Parties against any Environmental Claim.

11.3 Independent of Insurance Obligations. Developer's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Developer's insurance or other obligations under this Agreement. Developer's obligation to Indemnify the City Parties under this Agreement is independent of Developer's insurance and other obligations under this Agreement. Developer's compliance with Developer's insurance obligations and other obligations under this Agreement shall not in any way restrict, limit or modify Developer's obligations to Indemnify the City Parties under this Agreement and are independent of Developer's obligations to Indemnify the City Parties and other obligations under this Agreement.

11.4 Survival of Indemnification and Defense Obligations. The obligations of the Parties under this Agreement to Indemnify each other or other Persons shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to any such obligation under this Agreement to Indemnify each other or other Persons are fully, finally, absolutely and completely barred by applicable statutes of limitations.

11.5 Indemnification Procedures. Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

11.5.1 **Prompt Notice.** The Indemnitee shall promptly Notify the Indemnitor of any Claim.

11.5.2 **Selection of Counsel.** The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a Claim shall be deemed reasonably acceptable to the Indemnitee, except in the event of a potential or actual conflict of interest, such counsel is reasonably determined by the Indemnitee to be incompetent regarding such representation, or the Indemnitor provides a defense to the Indemnitee under a reservation of rights. Even though the Indemnitor shall defend the Claim, Indemnitee may, at Indemnitee's option and Indemnitee's own expense (except where Indemnitor provides a defense to Indemnitee under a reservation of rights, a conflict of interest between Indemnitor and Indemnitee or another Person exists that requires the Indemnitee to be represented by separate legal counsel from Indemnitor's legal counsel, or Indemnitor's legal counsel is reasonably determined by the Indemnitee to be incompetent regarding the representation, in each case, Indemnitor shall pay the Legal Costs of Indemnitee's separate legal counsel), engage separate counsel to advise Indemnitee regarding the Claim and Indemnitee's defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel, subject to applicable conflict of interest and privileged communication limitations.

11.5.3 **Cooperation.** The Indemnitee shall reasonably cooperate with the Indemnitor's defense of the Indemnitee.

11.5.4 **Settlement.** The Indemnitor may only settle a Claim against an Indemnitee with the consent of the Indemnitee. Any settlement shall procure a complete release of the Indemnitee from the subject Claim, shall not require the Indemnitee to make any payment to the claimant and shall provide that neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee admits any liability.

## 12. FINANCING.

12.1 Predevelopment Loan. Subject to the terms and conditions of this Agreement, the Predevelopment Note, and the Predevelopment Loan Guaranty Agreement, City shall disburse Predevelopment Loan proceeds to or for the benefit of Developer in accordance with the terms and conditions of the Disbursement Agreement. The Predevelopment Loan proceeds shall be used solely to reimburse the Developer for seventy five percent (75%) of the General Predevelopment Costs and one hundred percent (100%) of the Public Improvement Related Predevelopment Costs, not to exceed the original principal amount of the Predevelopment Loan.

12.1.1 Conditions Precedent to Disbursement of the City Predevelopment Loan Proceeds. Upon satisfaction of the conditions precedent set forth below, as reasonably determined by the Mayor, City shall disburse the City Predevelopment Loan proceeds to reimburse the Developer for Eligible Predevelopment Costs:

- (a) Predevelopment Note. Execution and delivery of the City Predevelopment Note;
- (b) Predevelopment Loan Guaranty Agreement. Execution and delivery of the City Predevelopment Loan Guaranty Agreement;
- (c) Assignment of Agreements, Plans, Specifications and Entitlements. Execution and delivery of the Assignment of Agreements, Plans, Specifications and Entitlements and consent from each professional providing services for which Developer is seeking reimbursement.

12.1.2 Predevelopment Loan Funding. It is anticipated that the City will fund the Predevelopment Loan using Affordable Housing Bond Proceeds. The Affordable Housing Bond Proceeds will be deposited into an escrow account pursuant to the City Loan Proceeds Escrow Agreement attached to this Agreement as **Exhibit "V"**, to be disbursed in accordance with this Agreement, the Predevelopment Loan Note, and the City Loan Proceeds Escrow Agreement.

12.1.3 Disbursement Request for Predevelopment Loan Proceeds. Disbursement of City Predevelopment Loan Proceeds shall be made in accordance with a Predevelopment Loan disbursement schedule to be mutually agreed upon in writing by the Parties. Developer shall have submitted to City invoices, receipts, canceled checks, or other written documentation satisfactory to the City evidencing that Developer has incurred and is responsible for payment of twenty five percent (25%) of General Predevelopment Costs up to the date of the Disbursement Request ("**Developer's Share**"), which shall not be subject to reimbursement from City Predevelopment Loan proceeds. Developer shall submit to City invoices, receipts, canceled checks, or other written documentation satisfactory to the Mayor evidencing Developer's payment of General

Predevelopment Costs and Public Improvement Related Predevelopment Costs identified in the Predevelopment Budget, less the Developer's Share, together with a written disbursement request.

12.1.4 Repayment of the Predevelopment Loan. At and subject to the Close of Escrow, the amount owing under the City Predevelopment Note shall be included in the principal amount of the City Loan as an Acquisition and Development Cost, and the City Predevelopment Note shall be endorsed as "paid in full" and returned to Developer. If this Agreement is terminated prior to the Closing Date, the outstanding principal balance and accrued interest of the Predevelopment Loan shall be due and payable in full in accordance with the Predevelopment Note.

12.1.5 City Loan. Subject to the terms and conditions of this Agreement, the Developer Note, and the City Deed of Trust, City shall disburse to or for the benefit of Developer an amount not to exceed the original principal amount of the City Loan in accordance with the terms and conditions of the Disbursement Agreement. As an inducement to City to make the City Loan, Developer has agreed to enter into this Agreement and has agreed to the performance of the terms and conditions set forth in this Agreement. Developer shall apply the City Loan proceeds solely toward payment of Total Project Costs in accordance with the Project Budget. All change orders under any contract for construction of the Project exceeding \$50,000 (or series of such change orders) shall require pre-approval by City, which approval shall not be unreasonably withheld. Developer shall not be entitled to apply any portion of the City Loan proceeds to reimburse Developer for any internal management, administrative, or overhead expenses or for any purpose other than paying a portion of the Total Project Costs. City agrees that the City Deed of Trust will be subordinate to the Permitted Security Instrument securing the Senior Project Loan. In the event that Affordable Housing Bond Proceeds remain in the escrow account established pursuant to the City Loan Proceeds Escrow Agreement, the City may fund a portion of the City Loan with Affordable Housing Bond Proceeds through disbursements from that escrow account in accordance with this Agreement, the Developer Note, and the City Loan Proceeds Escrow Agreement. The City Loan proceeds are not pledged to the Senior Institutional Lender nor shall they constitute security for the Senior Project Loan.

12.1.6 City shall not unreasonably withhold or delay approval of any requested change order for which the Senior Institutional Lender's approval is not required, under the terms of the Senior Project Loan Documents, or which has been approved by the Senior Institutional Lender if, within ten (10) working days after receipt of the request, City receives such explanation and/or back-up information as was received and relied upon by the Senior Institutional Lender in connection with its approval of the change order, and if the following conditions are satisfied:

(a) to the extent the change order is limited to a reallocation of budgeted funds among Project Budget line items without any increase in the total Project Budget or the City Loan, (i) the funds in the line item(s) to be reduced remain sufficient for completion of the Project, and (ii) the requested increase in one or more line item(s) is to be used to pay approved costs; and

(b) to the extent the change order involves an increase in the total Project Budget, (i) additional funds in an amount equal to the increase in the total Project Budget will be provided by Developer or the Senior Institutional Lender and (ii) the requested increase in the Project Budget is to be used to pay approved costs.

City will be deemed to have approved a Revision meeting one of the above conditions if the City has not responded with disapproval within fifteen (15) working days after receipt of a reasonable explanation and complete back-up information evidencing the satisfaction of the condition from Developer. Upon approval (or deemed approval) of any change order, the Project Budget shall be replaced by the approved revised Project Budget.

12.1.7 Repayment of City Loan. Developer shall repay the City Loan pursuant to the terms and conditions of the Developer Note. The Developer Note shall be secured by the City Deed of Trust. The City Deed of Trust shall only be subordinate in lien priority regarding the Property to the Regulatory Agreement, the Notice of Affordability Restrictions, all matters identified in Schedule B of the City Title Policy issued to City and the Permitted Security Instrument securing the Senior Project Loan, in accordance with the Subordination and Inter-Creditor Agreement.

12.1.8 No Other City Financial Assistance. City shall be under no obligation to contribute any financial assistance to the construction or operation of the Property or the Project other than the City Loan, regardless of Actual Project Costs or the existence of any Project Deficit.

12.2 Senior Project Loan. The Developer shall obtain the Senior Project Loan such that when the amount of the available proceeds of the Senior Project Loan are combined with the amount of the proceeds of all other financing sources for the construction of the Project, Developer will have sufficient funds to pay all of the Total Project Costs.

12.3 Additional Government Financing. The Developer shall obtain the Additional Government Financing necessary such that when the amount of the available proceeds of the Additional Government Financing are combined with the amount of the proceeds of all other financing sources for the Project, Developer will have sufficient funds to pay all of the Total Project Costs.

12.4 Tax Credit Financing. Commencing in 2020, Developer shall apply for 4% Tax Credits. Developer may attempt an award of 9% Tax Credits for the Project if Developer is able to structure the Project financing with 9% Tax Credits in a manner that does not increase the City Loan. In order to implement the financing of the Project, the Mayor, in his sole and absolute discretion, shall have the authority to make all necessary amendments and/or modifications to this Agreement, including its attachments, to reflect the 4% or 9% Tax Credit financing structure, so long as: (i) the total amount of the City Loan is not increased; (ii) such amendments and/or modifications do not result in any increased financial risk to the City and do not materially impair the City's interests; (iii) such amendments and/or modifications are otherwise consistent with this Agreement; and (iv) such amendments and/or modifications to the form of the Developer Note are non-substantive and only result in changes that reflect the methods of financing set forth in this Section 12. If Developer fails to apply for a 9% or 4% Tax Credits on or before the second round of 2021 in accordance with this Section 12.4, City shall have the right to terminate this Agreement upon fifteen (15) calendar days' Notice to Developer.

12.5 Additional Subordinate Financing. In the event that additional subordinate financing is obtained for this Project, notwithstanding any provision to the contrary in this Agreement or any attachments hereto, City and Developer may mutually agree in writing to include such additional funding sources and to make adjustments to the Project Budget as appropriate and reasonably necessary to reflect such additional subordinate financing.

12.6 Developer Fee. The Developer shall be entitled to receive the Developer Fee for its services related to development of the Project. The portion of the Developer Fee other than the Deferred Developer Fee may only be paid to the Developer in accordance with the following schedule: (a) twenty-five percent (25%) of the Developer Fee at Close of Escrow; (b) an additional twenty-five percent (25%) of the Developer Fee at completion of fifty percent (50%) of construction of the Project; (c) an additional twenty-five percent (25%) of the Developer Fee at completion of one hundred percent (100%) of construction of the Project; (d) twenty percent (20%) of the Developer Fee at completion of initial lease up; and (3) the remaining five percent (5%) of the Developer Fee at filing of Form 8609 for the Project with the United States Internal Revenue Service. The Deferred Developer Fee shall be paid to Developer from net operating income from the completed Project (except as otherwise specifically provided in this Section 12). Notwithstanding any other provisions of this Agreement, to the extent that the Senior Institutional Lender or the Tax Credit Investor have more restrictive requirements regarding the amount or timing of payment of all or any portion of the Developer Fee than those set forth in this Agreement, the more restrictive requirements shall control.

12.7 Residual Receipts Payments. Residual Receipts (as defined in the Developer Note) from the operation of the Project in years 1 through 30 shall be paid first to pay any outstanding amount of Developer Fee, until paid in full, then 50% to Developer and 50% to City and any Additional Government Financing to be repaid from Residual Receipts ("**Additional Government Residual Receipts Financing**"), for allocation between City and other Subordinate Financing to pay each of the City and any Additional Government Residual Receipts Financing, respectively, in the percentages determined by dividing the original principal amounts of their respective loans by the sum of the original principal amounts of all of their loans. Residual Receipts from the operation of the Project in years 31 through 55 shall be paid 30% to Developer and 70% to City and any Additional Government Residual Receipts Financing, for pro rata allocation as described above. Developer's share of Residual Receipts shall first be applied to pay any outstanding amount of Developer Fee, until the amount of the Developer Fee is paid in full.

12.8 Project Deficit. The Parties acknowledge and agree that the City Loan is intended to partially finance the financing "gap" of the Project (the amount needed to pay the excess of the Total Project Costs over the amount of the proceeds of the other financing sources obtained by Developer to pay costs of construction of the Project), but in no event to provide funding (when combined with the amount of the proceeds of the other financing sources obtained by Developer to pay costs of construction of the Project), in excess of the Actual Project Costs. If the Actual Project Costs exceed the amount of the proceeds of the other financing sources obtained by Developer to pay costs of construction of the Project (the difference being a "**Project Deficit**"), Developer shall be solely responsible for paying the Project Deficit and the Parties intend that the amount of the Deferred Developer Fee will be increased by the amount of the Project Deficit; provided, however, that City agrees that Developer may transfer sums among line items within the Project Budget that are unexpended at the completion of the work delineated in such line item to the account and line item for contingencies or another account for another line item in the Project Budget to reduce or eliminate any amount that would otherwise

constitute a Project Deficit. Notwithstanding the foregoing, the City agrees to consent to the allocation from the Contingency line item to any other line item in the Project Budget if a Senior Institutional Lender consents to such allocation.

12.9 Project Surplus. If the Actual Project Costs are less than either the Total Project Costs or the amount of the proceeds of the other financing sources obtained by Developer to pay costs of construction of the Project (in each case, the difference being a “**Project Surplus**”), then the amount of the Project Surplus shall be distributed first to pay the Deferred Developer Fee, then 25% to Developer and 75% to City to reduce the principal balance of the City Loan. Developer’s share of Project Surplus shall first be applied to pay any outstanding amount of Developer Fee, until the amount of the Developer Fee is paid in full.

12.10 Independent Cost Certification. The determination as to whether or not a Project Deficit or Project Surplus has occurred regarding the Project shall be made based on a cost certification performed by an independent certified public account acceptable to the City at Developer’s expense not later than four (4) months following Completion of the Project. The allocation of Project Surplus described in this paragraph shall not apply in favor of the City, or shall be adjusted as reasonably necessary, to the extent that such allocation is prohibited by any established Federal or State law, regulation or policy governing the use of any financing sources issued by Federal or State agencies or will cause an adverse effect under any established Federal or State law, regulation or policy with respect to the calculation of the "tiebreaker" score attributable to the application submitted by Developer to CTCAC seeking an allocation of Tax Credits toward the Project. Upon approval of any revision, the Project Budget shall be replaced by the approved revised Project Budget. City shall use best efforts to respond to any request for approval of a change order or revision within 10 business days, and in any event shall do so within 15 business days.

12.11 Developer Responsibility for Project Costs. Developer acknowledges that the Actual Project Costs may exceed the Total Project Costs or the financing or other funding sources available to Developer for construction of the Project. Developer additionally acknowledges that the financing or other funding sources available to Developer for construction of the Project may be different in type or amount from those set forth in this Agreement. Accordingly, Developer acknowledges and agrees that Developer shall be responsible for paying all of the Actual Project Costs, whether or not the Actual Project Costs exceed Total Project Costs or the financing or other funding sources available to Developer for construction of the Project.

12.12 Subordination and Inter-Creditor Agreement. After Developer has given Notice to City of the identity of the Senior Institutional Lender that has provided a loan commitment to Developer regarding the Senior Project Loan, City, Developer, and Senior Institutional Lender shall negotiate in good faith towards terms and conditions for the Subordination and Inter-Creditor Agreement. The Subordination and Inter-Creditor Agreement shall be subject to reasonable agreement among City, Developer, and Senior Institutional Lender; provided, however, that the Regulatory Agreement shall be Senior to all Security Instruments related to the Senior Project Loan, without exception. Agreement on the form and substance of the Subordination and Inter-

Creditor Agreement among City, Developer, and Senior Institutional Lender shall be express conditions precedent to the Close of Escrow for the benefit of both City and Developer.

12.13 Minor Modifications. If the Senior Institutional Lender or the Tax Credit Investor requires any reasonable minor modification of this Agreement or other document to be provided under this Agreement in reference to making the Senior Project Loan or providing the Tax Credit Equity, as applicable, then City, Developer and the applicable financing party shall negotiate in good faith regarding any such reasonable minor modification of this Agreement or other document to be provided under this Agreement requested by Senior Institutional Lender or the Tax Credit Investor. Notwithstanding the foregoing provisions of this Section 12.13, City shall not be obligated to negotiate regarding any modification that would modify any payment amount, any time period for development or construction of the Project, the duration of or affordability levels or number of affordable units specified in the Regulatory Agreement, the "Maturity Date" under the Developer Note, or any bond, deposit or other security required under this Agreement or other document to be provided under this Agreement. If any modification of this Agreement is agreed to by City, pursuant to this Section 12.13, then City shall sign such modification and deposit such modification in Escrow. Escrow Agent shall only release such modification upon the closing of the Senior Project Loan. Any modification to this Agreement or other document to be provided under this Agreement requested by Senior Institutional Lender shall be expressly subject to a condition precedent that the Senior Project Loan closes.

12.14 Mayor Authority. The authority provided to the Mayor in Section 12.13, includes authority to: (a) make minor non-material modifications to this Agreement pursuant to Section 12.13 and (b) negotiate and enter into a Subordination and Inter-Creditor Agreement on behalf of City pursuant to Section 12.12.

12.15 Only Permitted Encumbrances. Developer shall not record and shall not allow to be recorded against the Property any Security Instrument, lien or other encumbrance that is a Prohibited Encumbrance. Developer shall remove or cause to be removed any Prohibited Encumbrance made or recorded against the Property or shall assure the complete satisfaction of any such Prohibited Encumbrance to the satisfaction of the City, in the City's sole and absolute discretion; provided, however, Developer shall have the right to contest the validity of any tax, assessment, lien or charge in good faith. The covenants of Developer set forth in this Section 12.15 regarding the placement of encumbrances on the Property shall run with the land of the Property and bind successive owners of the Property, until recording of a Release of Construction Covenants for the Project. After completion of construction of the Project, the restrictions on encumbrance under the Regulatory Agreement shall apply.

12.16 City Right to Discharge Prohibited Encumbrances. After sixty (60) calendar days' Notice to Developer of a Prohibited Encumbrance and provided that Developer has not caused such Prohibited Encumbrance to be removed during such time period or is not diligently pursuing removal of such Prohibited Encumbrance, where removal reasonably requires more than sixty (60) calendar days, the City shall have the right, but not the obligation, to satisfy or remove any Prohibited Encumbrance against the Property and receive reimbursement from Developer for any amounts paid or incurred in satisfying or removing any such Prohibited Encumbrance, upon demand. Any amount expended by the City to discharge a Prohibited Encumbrance that is not reimbursed to the City by Developer within thirty (30) calendar days following Notice that such

amount is due shall accrue Default Interest from the date of such Notice, until paid in full. Nothing in this Section 12.16, though, shall require Developer to pay or make provisions for the payment of any tax, assessment, lien or charge that Developer is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest does not subject all or any portion of the Property to forfeiture or sale.

### **13. REMEDIES AND INDEMNITY**

13.1 PRE-CLOSING LIQUIDATED DAMAGES TO CITY. DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, CITY MAY CANCEL THE ESCROW AND TERMINATE THIS AGREEMENT. UPON CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT, CITY SHALL BE RELIEVED OF ALL OBLIGATIONS OF CITY UNDER THIS AGREEMENT, INCLUDING THE OBLIGATION TO MAKE THE CITY LOAN TO DEVELOPER. ANY SUCH ESCROW CANCELLATION AND TERMINATION OF THIS AGREEMENT SHALL BE WITHOUT ANY LIABILITY OF CITY TO DEVELOPER OR ANY OTHER PERSON ARISING FROM SUCH ACTION. CITY AND DEVELOPER ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY CITY, IN THE EVENT OF A CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES CITY WOULD SUFFER, IN THE EVENT OF A CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, CITY AND DEVELOPER AGREE THAT A REASONABLE ESTIMATE OF CITY'S DAMAGES IN SUCH EVENT IS THE LIQUIDATED DAMAGES AMOUNT (AS DEFINED IN SECTION 2.75 OF THIS AGREEMENT). THEREFORE, UPON THE CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT BY CITY DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW, THE ESCROW AGENT SHALL IMMEDIATELY CANCEL THE ESCROW AND THE PARTIES AND ESCROW AGENT SHALL PROCEED IN ACCORDANCE WITH SECTION 8.10. ALSO, DEVELOPER SHALL PAY THE LIQUIDATED DAMAGES AMOUNT TO CITY, WITHIN FIVE (5) DAYS FOLLOWING ESCROW CANCELLATION. RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT SHALL BE CITY'S SOLE AND EXCLUSIVE REMEDY UPON THE CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW; PROVIDED, HOWEVER, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, CITY SHALL HAVE THE RIGHT TO RECOVER CITY'S REASONABLY INCURRED THIRD PARTY LEGAL COSTS INCURRED IN COLLECTING THE LIQUIDATED DAMAGES AMOUNT, IN ADDITION TO THE LIQUIDATED DAMAGES

AMOUNT. THE LIQUIDATED DAMAGES AMOUNT IS IN ADDITION TO RETENTION OF THE GOOD FAITH DEPOSIT.

Initials of Authorized  
City Representative

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Initials of Authorized  
Developer Representative

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13.2 LIMITATION ON DAMAGES. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED.

13.3 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages, subject to the provisions of Section 13.1 and Section 13.2.

13.4 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or the same rights or remedies for any other Default by the other Party.

13.5 No-Fault Termination by City. The Close of Escrow is contingent on all Approvals, including but not limited to, approval of the subdivision maps and Site Development Permit which are necessary to allow sale of the Property to Developer and sale of the Market Rate Parcel to a Third Party. The Unavoidable Delay provisions and any other provisions of this Agreement notwithstanding, if despite Developer's diligent and good faith efforts, Developer fails to obtain the necessary Approvals within the time set forth in the Performance Schedule, the City may terminate this Agreement with fifteen (15) days Notice to Developer. If such failure to obtain the necessary approvals is despite Developer's diligent and good faith efforts, and not a result of any lack of diligence or good faith by Developer, such termination would be a no-fault termination so that termination on the above described basis alone would not trigger Liquidated Damages or retention of the Developer Deposit. Nothing in this paragraph shall be construed as limiting the City's right to retain the Developer Deposit and receive the Liquidated Damages Amount in response to any other uncured Developer Default.

#### 14. GENERAL PROVISIONS

14.1 Compliance with City Standard Contract Provisions. Developer shall comply with the City's standard contract provisions set forth in **Exhibit "K"** attached to this Agreement.

14.2 Notices, Demands, and Communications between the Parties. Any and all Notices submitted by any Party to another Party or Escrow Agent or by Escrow Agent to a Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) or by registered or certified mail through the

United States Postal Service, postage prepaid, return receipt requested, to the address of the recipient Party, as designated below in this Section 14.2 or to the Escrow Agent, as designated in writing by the Escrow Agent. Notices may be sent in the same manner to such other addresses as either Party or Escrow Agent may from time to time designate by Notice in accordance with this Section 14.2. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is dispatched by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service or two (2) calendar days after the Notice is deposited with the United States Postal Service in accordance with this Section 14.2. Any attorney representing a Party may give any Notice on behalf of such Party. Following admission of a Tax Credit Investor as limited partner of Developer, a copy of any Notice delivered to Developer shall be sent to the Tax Credit Investor at the Tax Credit Investor's address provided to City in writing. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To Developer: Hilltop Family Housing, L.P.  
c/o Affirmed Housing Group, Inc.  
13520 Evening Creek Drive North  
Suite 160  
San Diego, CA 92128  
Attn: James Silverwood

With a Copy to: David Cohen  
Katten Muchin  
Roseman LLP  
2029 Century Park East  
Suite 2600  
Los Angeles, CA  
90067-3012

To City: City of San Diego  
401 B Street, Suite 400  
San Diego, CA 92101  
Attention: Hilltop & Euclid Project  
Manager

14.3 Relationship of Parties. The Parties each intend and agree that City and Developer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship or association between them.

14.4 Warranty against Payment of Consideration for Agreement. Developer represents and warrants to City that: (a) Developer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Developer and Third Persons to

whom fees are paid for professional services related to planning, design or construction of the Project or documentation of this Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Developer or any of Developer's agents, employees or representatives to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 14.4 shall entitle City to terminate this Agreement immediately without liability, and cancel the Escrow (if open) upon seven (7) days' Notice to Developer and, if the Escrow is open, to Escrow Agent. Upon any such termination of this Agreement, Developer shall immediately refund any payments made to or on behalf of Developer by City pursuant to this Agreement prior to the date of such termination.

14.5 No Discrimination or Segregation. Developer covenants by and for itself and all Persons claiming under or through Developer that this Agreement is made and accepted upon and subject to the following conditions:

14.5.1 **Standards.** There shall be no discrimination against or segregation of any Person or group of Persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property or the Project, nor shall Developer or any Person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Property or the Project.

14.5.2 **Interpretation.** With respect to familial status, Section 14.5.1 shall not be construed to apply to housing for older persons, as defined in section 12955.9 of the Government Code. With respect to familial status, nothing in Section 14.5.1 shall be construed to affect sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of section 51 and section 1360 of the Civil Code and subdivisions (n), (o), and (p) of section 12955 of the Government Code shall apply to Section 14.5.1.

14.6 Non-liability of City Officials and Employees. No elected official or employee of City shall be personally liable to Developer, or any successor in interest to Developer, in the event of any Default by City under this Agreement or for any amount that may become due to Developer or to Developer's successor on any obligations under the terms of this Agreement, except to the extent resulting from the negligence or willful misconduct of such elected official or employee.

14.7 Inspection of Books and Records. Subject to other rights of the City under this Agreement or Law to obtain or receive information from Developer, City shall have the right at all reasonable times, at City's cost and expense, to inspect the books and records of Developer pertaining to the Property or the Project. City shall not disclose proprietary information of Developer to Third Persons, unless required by law or otherwise resulting from or related to the pursuit of any remedies or the assertion of any rights of City under this Agreement.

14.8 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar

years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

14.9 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

14.10 Governing Law. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

14.11 Unavoidable Delay; Extension of Time for Performance.

14.11.1 **Notice.** Subject to any specific provisions of this Agreement stating that they are not subject to Unavoidable Delay or otherwise limiting or restricting the effects of an Unavoidable Delay (if any), performance by either Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

14.11.2 **Assumption of Economic Risks.** EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND

OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

Initials of Authorized  
City Representative(s)

Initials of Authorized  
Developer Representative(s)

14.12 Tax Consequences. Developer acknowledges and agrees that Developer shall bear any and all responsibility, liability, costs or expenses connected in any way with any tax consequences experienced by Developer related to this Agreement.

14.13 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

14.14 Developer Assumption of Risks of Legal Challenges. Exclusive of Claims for which City has agreed to Indemnify Developer pursuant to Section 11.1, Developer assumes the risk of delays or damages that may result to Developer from each and every Third Person legal action related to: (a) City's approval of this Agreement, even in the event that an error, omission or abuse of discretion by City is determined to have occurred; or (b) any associated Approvals. If a Third Person files a legal action for which Developer assumes the risk under this Section 14.14, Developer shall have the option to either: (1) prior to the Close of Escrow, cancel the Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 8.10; (2) after the Close of Escrow, terminate this Agreement and cause the return of all of the City Loan to City; or (3) at any time, Indemnify City against such Third Person legal action, including all Legal Costs, monetary awards, sanctions and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Should Developer fail to Notify City of Developer's election pursuant to this Section 14.14 at least fifteen (15) days before response to the legal action is required by City, Developer shall be deemed to have elected to cancel the Escrow and terminate this Agreement pursuant to option "(1)" or "(2)," as applicable, under this Section 14.14, without further Notice to or action by either Party. City shall reasonably cooperate with Developer in defense of City in any legal action subject to this Section 14.14, subject to Developer completely performing Developer's indemnity obligations for such legal action. Should Developer elect or otherwise be required to Indemnify City regarding

a legal action subject to this Section 14.14, but fail to or stop providing such indemnification of City, then City shall have the right to immediately terminate this Agreement or cancel the Escrow (or both) by Notice to Developer and Escrow Agent (in the latter case, if the Escrow is open). Nothing contained in this Section 14.14 is intended to be nor shall be deemed or construed to be an express or implied admission that City may be liable to Developer or any other Person for damages or other relief regarding any alleged or established failure of City to comply with any law. Any legal action that is subject to this Section 14.14 (including any appeal periods and the pendency of any appeals) shall constitute an Unavoidable Delay and the time periods for performance by either Party under this Agreement may be extended pursuant to the provisions of this Agreement regarding Unavoidable Delay.

14.15 Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

14.16 Time Declared to be of the Essence. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

14.17 Entire Agreement. This Agreement (including the exhibits attached to this Agreement) integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement.

14.18 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both City and Developer.

14.19 Prohibition against Transfers, Changes in Ownership, Management or Control of Developer, or Assignment. Developer acknowledges and agrees that the qualifications and identity of Developer are of particular importance and concern to City. Developer further acknowledges and agrees that City has relied and is relying on the specific qualifications and identity of Developer in entering into this Agreement and City would not have entered into this Agreement, but for the specific qualifications and identity of Developer. As a consequence, before the recordation of a Release of Construction Covenants for the Project, Transfers by Developer are only permitted with the prior written consent of City, in City's sole and absolute discretion. Developer represents and warrants to City that Developer has not made and agrees that Developer will not create or permit to be made or created any Transfer, except in accordance with this Section 14.19, whether made or created voluntarily, involuntarily or by operation of law. Any Transfer made in contravention of this Section 14.19 shall be voidable at the election of City, in City's sole and absolute discretion. Developer acknowledges and agrees that the restrictions on Transfers set forth in this Section 14.19 are reasonable. Developer agrees to reimburse City for all costs and expenses incurred by City in connection with City's review of each proposed Transfer, including all Legal Costs and other Third Person consultant fees and expenses, up to a maximum amount of \$5,000.

14.20 Exhibit List. All of the exhibits attached to this Agreement are as follows:

Exhibit A	Site and Property Descriptions and Depiction
Exhibit B	Release of Construction Covenants
Exhibit C	Regulatory Agreement
Exhibit D	Developer Note
Exhibit E	City Deed of Trust
Exhibit F	Notice of Affordability Restrictions
Exhibit G	Developer Official Action
Exhibit H	Project Scope
Exhibit I	Performance Schedule
Exhibit J	Insurance Requirements
Exhibit K	City Contract Provisions
Exhibit L	Prevailing Wage Requirements
Exhibit M	Disbursement Agreement
Exhibit N	Project Budget
Exhibit O	Grant Deed
Exhibit P	Predevelopment Budget
Exhibit Q	Predevelopment Note
Exhibit R	Predevelopment Loan Guaranty Agreement
Exhibit S	Assignment of Agreements, Plans, Specifications, and Entitlements
Exhibit T	Reporting and Monitoring Agreement
Exhibit U	Right of Entry
Exhibit V	City Loan Proceeds Escrow Agreement

14.21 No Implied Waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

14.22 Mayor Implementation. City shall implement this Agreement through its Mayor. The Mayor is authorized to enter into agreements and sign documents referenced in this Agreement or reasonably required to implement this Agreement, issue approvals, interpretations or waivers and enter into amendments to this Agreement, all on behalf of City, to the extent that any such action(s) does/do not materially or substantially change the Project scope, materially increase the monetary obligations of City, result in an increase of greater than ten percent (10%) in the amount of the Total Project Costs, or result in an increase of greater than ten percent (10%) in the aggregate principal amount of the loans secured by Security Instruments to which the City Deed of Trust is subordinated. All other actions shall require the consideration and approval of the City Council, unless expressly provided otherwise in this Agreement or by action of the City Council. Nothing in this Section 14.22 shall restrict the submission to the City Council of any matter within the Mayor's authority under this Section 14.22, in the Mayor's sole and absolute discretion, to obtain the City express and specific authorization on such matter. The specific intent of this Section 14.22 is to authorize certain actions on behalf of City by the Mayor, but not to require that such actions be taken by the Mayor without consideration by the City Council.

14.23 Survival of Agreement. All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement.

14.24 Counterparts. This Agreement shall be signed in three (3) triplicate originals, each of which is deemed to be an original. This Agreement includes thirty-eight (48) pages and fourteen (22) exhibits (each exhibit is incorporated into this Agreement by reference) that constitute the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement.

14.25 Facsimile or Electronic Signatures. Signatures delivered by facsimile or electronic means shall be binding as originals upon the Party so signing and delivering; provided, however, that original signature(s) of the authorized representative(s) of each Party shall be required for each document to be recorded.

14.26 Attorney's Fees. If either Party initiates any litigation or other legal proceeding to interpret or enforce any provision of this Agreement, then the prevailing Party in such litigation or proceeding shall be entitled to recover its reasonable attorneys' fees and other legal expenses from the non-prevailing Party, in addition to any other damages or remedies to which the prevailing Party is entitled.

**[Remainder of page intentionally blank. Signatures appear on following page.]**

**SIGNATURE PAGE  
TO  
DISPOSITION AND DEVELOPMENT AGREEMENT  
(Hilltop & Euclid)**

**CITY:**

**DEVELOPER:**

CITY OF SAN DIEGO,  
a municipal corporation

Hilltop Family Housing, L.P.,  
a California limited partnership

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



Erik Caldwell  
Deputy Chief Operating Officer  
Smart and Sustainable  
Communities

By: Affirmed Housing Group, Inc., a Delaware  
corporation

Its: General Partner

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



James Silverwood  
President

Approved as to form:

MARA W. ELLIOTT  
City Attorney

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



Adam Wander  
Deputy City Attorney

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

12/18/19

September 02, 2020

Mr. Colin Miller  
San Diego Housing Commission  
1122 Broadway, Suite 300  
San Diego, California 92101

RE: Orchard at Hilltop Apartments

Dear Mr. Miller:

The San Diego Housing Commission (the "Commission") has retained CSG Advisors, Inc. to analyze the feasibility of the proposed tax-exempt financing for the Orchard at Hilltop Apartments (the "Project"). Our findings are organized as follows:

- Current Project Status and the Proposed Project
- The Proposed Financing
- Project's Projected Financial Status
- Benefits and Risks to the Commission
- Public Purpose
- Negotiation of Additional Public Benefit
- Recommendations

We have based our analysis of the proposed financing on documents provided by Affirmed Housing (the "Developer"), and on additional conversations and documents provided by representatives of the Developer and Commission staff. The documents examined included the Developer's proposed financial schedules and financing commitments from the proposed lender and investor. CSG has not visited the site of the proposed Project.

## **CURRENT PROJECT STATUS AND THE PROPOSED DEVELOPMENT**

The Project will consist of a 113-unit development (the "Development") to be newly-constructed at 922 -1040 Euclid Avenue, San Diego, 92114 (the "Site"). The acquisition of the Site and construction of the Development would be financed from, among other sources, equity raised from the sale of 4% low-income housing tax credits and tax-exempt debt issued by the Housing Authority of the City of San Diego (the "Housing Authority"). 111 units (i.e., excluding two manager's units) will be subject to affordability restrictions as further described herein.

The Site is a parcel of approximately 4.801 acres. The Site is currently vacant. The Site is currently owned by City of San Diego. The Borrower will purchase the Site from the City pursuant to a Disposition and Development Agreement between the City of San Diego and Hilltop Family Housing, LP (the "Borrower") dated November 5, 2019.

On January 14, 2020, the Housing Authority approved a resolution evidencing its official intent to conduct a tax-exempt issuance in the not-to-exceed amount of \$29,000,000 for the Project. The resolution also approved submittal of the application to the California Debt Limit Allocation Committee (“CDLAC”) for an allocation of private activity tax-exempt authority for the Project.

On January 14, 2020, the City Council held a public hearing (“TEFRA”) required pursuant to Section 147(f) of the Internal Revenue Code for tax-exempt issuances. The City Council approved the resulting approving resolution on January 15, 2020. The TEFRA hearing remains valid for a period of one year.

On January 17, 2020, the Housing Authority submitted an application to CDLAC for \$27,885,943 in private activity tax-exempt issuance authority for the Project.

On April 14, 2020, CDLAC awarded \$27,885,943 in private activity tax-exempt allocation to the Housing Authority for the Project.

## **THE PROPOSED FINANCING**

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The Developer proposes that the Housing Authority issue up to \$27,885,943 in “Tax-Exempt Bonds” and up to \$3,500,000 in “Taxable Bonds” (together, the “Bonds”) for the Project. The Bonds would be issued pursuant to an Indenture and Loan Agreement.

The Developer proposes, pursuant to a Term Sheet, dated June 5, 2020, from Boston Capital Finance LLC, that the Bonds would be purchased on a private-placement basis by Boston Capital Finance LLC. Construction draws of tax-exempt and taxable bond proceeds would be funded on and as-needed “draw-down” basis.

Boston Capital Finance LLC would remain the permanent lender for the Project upon stabilization and conversion to permanent financing.

According to projections provided by the Developer, the total development cost (“TDC”) totals approximately \$54,305,391.

### Orchard at Hilltop Apartments: Construction and Permanent Source Summary<sup>1</sup>

	<u>Construction</u>	<u>Permanent</u>
Tax Exempt Bond	27,885,943	13,046,340
Pre-Conversion Bond Redemption	(6,452,809)	0
Taxable Bond	3,329,530	0
Tax Credit Equity (Federal)	16,110,100	20,137,620
Tax Credit Equity (State)	0	5,962,040
San Diego Housing Commission	7,885,000	8,300,000
Civic San Diego Predevelopment Loan	2,826,626	2,826,626
Civic San Diego Affordable	2,721,030	3,023,374
Deferred Developer Fee	0	1,009,420
Accrued Soft Loan Interest	0	0
<b>Total Sources</b>	<b>54,305,420</b>	<b>54,305,420</b>

### Orchard at Hilltop Apartments: Permanent Use Summary<sup>2</sup>

	<u>Permanent</u>
Land and Acquisition Costs	1
Construction Costs	37,395,650
Construction Contingency	3,066,440
Developer Fee	3,600,000
Operating Reserve	365,000
Capitalized Construction Loan Interest	750,000
Other Hard and Soft Costs	9,128,300
<b>Total Uses</b>	<b>54,305,391</b>

### Ownership

The Project will be owned by the Borrower. The Borrower will consist of AHG Hilltop LLC as the Administrative General Partner, and NEXUS For Affordable Housing its Managing General Partner. An entity of Boston Capital Corporation will be the tax credit investor limited partner.

### Tax-Exempt Bond Structure and Credit Enhancement

#### Construction Loan

The Developer proposes that the Housing Authority issue Tax-Exempt Bonds in the maximum amount of \$27,885,943, and Taxable Bonds in the maximum amount of \$3,500,000 in order to finance the acquisition and construction of the Project. Solely revenues pledged under the Indenture and Loan Agreement will secure the payment of principal and interest to the bondholder.

The Bonds would be unrated, without credit enhancement, and would be purchased by Boston Capital Finance LLC on a private placement basis. The Bonds would be funded on a draw-down basis through the construction period. Upon stabilization and conversion, all

<sup>1</sup> Source: Developer projections. Rounding by CSG. Total of Uses and Sources may not equal due to rounding.

<sup>2</sup> Source: Developer projections. Rounding by CSG. Total of Uses and Sources may not equal due to rounding.

outstanding Taxable bonds and a portion the Tax-Exempt Bonds would be redeemed with tax credit equity and other sources available at conversion. *Please note, however, that the Boston Capital Finance Term Sheet currently reflects only \$2,200,000 of Taxable Bonds.*

As unrated, non-credit enhanced Bonds sold on a private placement basis, the Bonds must meet the minimum requirements of the Commission's policies for such issues (e.g., maximum \$100,000 minimum denominations, no more than 15 Bondholders, etc).

The construction period would be 28 months. The Boston Capital Finance LLC Term sheet indicates an initial construction period interest rate for the Tax-Exempt Bonds of 3.50% -- subject to a 3.80% ceiling. The Taxable Bonds will be subject to a 4.45% floor and a 4.80% ceiling. Interest rate during the construction period will be variable, set monthly at an annual rate equal to the sum 1-month LIBOR (with a floor of 1.50%) and 2.00%. As noted, the construction period interest rate will be subject to a 3.80% ceiling. Payments during the construction period would be interest-only.

#### Permanent Loan

Prior to the conversion to the permanent loan, the Borrower proposes to redeem a portion of the outstanding Bonds with available sources (e.g., tax credit equity). Upon satisfaction of certain conditions precedent to conversion to the permanent financing period, a remaining portion of the Tax-Exempt Bonds and all of the Taxable Bonds will have been redeemed. The remaining outstanding Tax-Exempt Bond will convert to a permanent loan.

According to the Boston Capital Finance LLC Term Sheet, the permanent loan would have a term of 15 years and an amortization period of 40 years. The permanent loan will bear a fixed rate of interest. Boston Capital Finance LLC has provided an indicative rate of 3.25% – subject to a floor rate of 3.80% – as of June 05, 2020.

#### **Projected Issuance Date**

The Developer proposes that the Housing Authority issue the Bonds on or about October 02, 2020. The Authority received an allocation of \$27,885,943 from CDLAC at its April 14, 2020 allocation meeting date. The allocation expiration date provided by CDLAC is October 27, 2020.

#### **Commission Financial Involvement**

The Commission will provide a subordinate construction loan in the amount of \$8,300,000. The Commission's loan will be funded by \$4,300,000 of HOME funds and \$4,000,000 from the Affordable Housing Fund (Inclusionary Affordable Housing Funds and Housing Impact Fees). The Commission's loan will mature on July 31, 2077 – approximately 55 years from the completion of the project – and will accrue simple interest at the rate of 4% per annum.

## Affordability Restrictions

Upon implementing the proposed financing, the Project will be subject to the following regulatory restrictions and regulatory terms:

Source of Restriction	Restriction	Expiration Date
California Tax Credit Allocation Committee	26 units at 30% AMI 85 units at 60% AMI	55 years
Tax-Exempt Bond (CDLAC)	26 units at 50% AMI; 85 units at 60% AMI	55 years
San Diego Housing Commission	26 units at 30% AMI 12 units at 40% AMI 73 units at 60% AMI	July 31, 2077 (approx. 55 years)
Civic San Diego	26 units at 30% AMI 85 units at 60% AMI	55 years from Occupancy Date

Because certain of the above restrictions are over-lapping, the most restrictive restrictions will apply.

## PROJECT'S PROJECTED FINANCIAL STATUS

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Under the proposed financing – according to information provided by the Developer and analysis by CSG – annual debt service on the proposed senior permanent loan of \$13,046,340 would total approximately \$634,790. According to preliminary information provided by the Developer and analysis by CSG, stabilized annual cash flow (before reserves) after construction and lease-up (including Issuer fees) would total approximately \$138,077 at a debt coverage ratio (DCR) of 1.22. Cash flow after reserves would total approximately \$104,177 at a DCR of 1.16. The Boston Capital Finance LLC debt coverage minimum is 1.15.

Please note that the Boston Capital Finance LLC Term Sheet indicates a maximum loan amount of \$12,510,000, while the Developer's projections provide for \$13,046,340. The Developer and Boston Capital Finance LLC must reconcile the maximum loan amount.

## THE BENEFITS AND RISKS TO THE COMMISSION

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The proposed financing provides for financing for the acquisition and construction of the Project. By approving a recommendation to the Housing Authority to move forward with the approval process for the proposed tax-exempt Bond financing, the Commission will not obligate the Commission or the Housing Authority to issue the Bonds.

As proposed, the financing will create 111 affordable units in the City of San Diego. These units will remain long-term affordable for approximately 55 years under the Commission's restrictions.

If the Authority issues the Bonds, the Commission would receive a fee at closing of 0.25% of the issue amount (approximately \$78,465 (assuming maximum issuance amount) and an annual fee equal to the greater of \$10,000 and 0.125% of the outstanding Bonds.

## **PUBLIC PURPOSE**

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The proposed financing will result in the creation of 111 affordable family housing units in the City of San Diego. The proposed financing will result in new CDLAC, CTCAC and Commission regulatory restrictions as follows (most restrictive) for 55 years:

- 26 units at 30% AMI
- 12 units at 40% AMI
- 73 units at 60% AMI

## **NEGOTIATION OF ADDITIONAL PUBLIC BENEFIT**

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As noted above, the financing will result in long-term affordability restrictions on 111 units within the Project.

## **RECOMMENDATIONS**

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Based upon analysis of the available information, we recommend that the Commission approve moving forward with the proposed issuance. Our recommendation is based upon the following:

- The financing will create 111 affordable family units in the City of San Diego with long-term affordability covenants.
- The Commission has received tax-exempt authority of \$27,885,943 from CDLAC for the Project.
- Boston Capital Finance LLC and Redstone are currently underwriting the Project.
- The Commission will not be responsible for costs of issuance. The Commission will receive an issuance fee at closing of approximately \$78,465 (assuming maximum issuance amount), and a long-term annual fee equal to the greater of \$10,000 and 0.125% the outstanding Notes.

- The net Tax-Exempt Bond financing and tax credit equity will provide approximately \$13,048,670 for development costs.

### **Contingent Items**

The Commission may choose to move forward with the financing subject to the following contingencies:

- The Project's financial underwriting must be consistent among the Borrower and Boston Capital Finance LLC.
- As of this writing, Boston Capital Finance LLC nor Boston Capital Corporation have provided final credit approval for the financing. The Bonds cannot be issued without these final approvals.
- Final Bonds documents and approving resolution must be approved by the Housing Authority.

Should you require any further information or would like to discuss the Project or the proposed financing in additional detail, please do not hesitate to contact me.

Sincerely,  
CSG Advisors



John Hamilton



DEVELOPERS/CONSULTANTS/SELLERS/CONTRACTORS/  
ENTITY SEEKING GRANT/BORROWERS  
(Collectively referred to as "CONTRACTOR" herein)  
Statement for Public Disclosure

1. Name of CONTRACTOR: Affirmed Housing Group, Inc.
2. Address and ZIP Code: 13520 Evening Creek Dr. N. Ste. 160, San Diego, CA 92128
3. Telephone Number: (858) 679-2828
4. Name of Principal Contact for CONTRACTOR: Jonathan Taylor
5. Federal Identification Number or Social Security Number of CONTRACTOR: 26-0812994
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:

- ☒ 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:  
August 7, 2007
  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:
    - a. If the CONTRACTOR is a corporation, the officers, directors or trustees, and each stockholder owning more than 10 percent of any class of stock.
    - b. 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.

- c. 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.
- d. 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.
- e. 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 percent.(Attach extra sheet if necessary)

Name and Address	Position Title (if any) and percent of interest or description of character and extent of interest
Name: James Silverwood	President/CEO, 100% interest
Address: 13520 Evening Creek Dr. N. Ste. 160 San Diego, CA 92128	
Phone: (858) 386-5175	
Name:	
Address:	
Name:	
Address:	

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 percent interest in the CONTRACTOR (for example, more than 20 percent of the stock in a corporation that holds 50 percent of the stock of the CONTRACTOR, or more than 50 percent of the stock in the corporation that holds 20 percent 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: N/A (see 8)	
Address:	
Name:	
Address:	
Name:	
Address:	

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:

Name and Address	Position Title (if any) and percent of interest or description of character and extent of interest
Name: N/A (see 8)	
Address:	
Name:	
Address:	
Name:	
Address:	

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 any 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: Affirmed Housing Group, a CA Corp.	Sister Company (combined group for reporting financials)
Address: 13520 Evening Creek Dr. N. Ste. 160	
San Diego, CA 92128	
Name:	
Address:	
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.
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:  
TCAC, Civic San Diego Land + Capital, San Diego Housing Commission Capital
16. Provide sources and amount of cash available to CONTRACTOR to meet equity requirements of the proposed undertaking:
- In banks/savings and loans:  
Name: US Bank, Citi, Fidelity  
Address: (Provided upon request – see financials)  
Amount: \$ 2 million

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

Name: US Bank

Address: 4747 Executive Dr., 3<sup>rd</sup> Fl., San Diego, CA 92121

Amount: \$ 750,000 to \$1,500,000

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

Description	Market Value (\$)	Mortgages or Liens (\$)
N/A		

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

Name and Address	Contact Name
Name: US Bank	John Petersen
Address: 4747 Executive Dr., 3 <sup>rd</sup> Fl	
San Diego, CA 92121	
Name: Citibank	
Address: 740 Lomas Santa Fe Dr., Suite 210	Christopher D Meyers
Solana Beach, CA 92075	
Name:	
Address:	

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

☒ No

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

N/A

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

☒ No

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

N/A

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:

Type of Bond	Project Description	Date of Completion	Amount of Bond	Action on Bond
	(Please see attached bond list)			No legal action on any of the bonds

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:

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

Name and Address	Affiliation
Name: N/A	
Address:	
Name:	
Address:	
Name:	
Address:	

- 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 ☒ No

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

N/A

- c. Total amount of construction or development work performed by such contractor or builder during the last three (3) years: \$ N/A

General description of such work:

N/A

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. (Attach extra sheet if necessary)

<b>Project Name</b>	N/A	
<b>Project Owner Contact Information</b>		
	Name	Address
<b>Project Location</b>		
<b>Project Details</b>		
<b>Bonding Company Involved</b>		
	Name	Amount of Contract
<b>Change Order Details</b>		
<b>Change Order Cost</b>		
<b>Litigation Details</b>		
	Location/Date	Outcome Details

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

Identification of Contract or Development	Location	Amount	Date to be Completed
N/A			

e. Outstanding construction-contract bids of such contractor or builder:

Awarding Agency	Amount	Date Opened
N/A		

22. Provide a detailed and complete statement regarding 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:

N/A

23. Does any member of the governing body of SDHC, 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 SDHC, 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

☒ No

If yes, explain:

N/A

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:

N/A

25. Is the proposed CONTRACTOR, and/or are any of the proposed subcontractors, currently involved in any construction-related litigation?

☐ Yes

☒ No

If yes, explain:

N/A

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

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

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)]
- d. Professional Liability (Errors and Omissions) [Attach certificate of insurance showing the amount of coverage and coverage period(s)]
- e. Excess Liability [Attach certificate(s) of insurance showing the amount of coverage and coverage period(s)]
- f. Other (Specify) [Attach certificate(s) of insurance showing the amount of coverage and coverage period(s)]

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 SDHC setting forth the provisions of this nondiscrimination clause.
28. The CONTRACTOR warrants and certifies that it will not, without prior written consent of SDHC, engage in any business pursuits that are adverse, hostile or take incompatible positions to the interests of SDHC, during the term of the PROJECT, DEVELOPMENT, LOAN, GRANT, CONTRACT and/or RENDITION OF SERVICES.
29. CONTRACTOR warrants and certifies that no member, Commissioner, Councilperson, officer, or employee of SDHC, the AUTHORITY and/or the CITY, and no member of the governing body of the locality in which the PROJECT is situated, no member of the governing body in which SDHC 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.

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 state:

Government Complaint	Entity Making	Date	Resolution
N/A			

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?

☐ Yes

☒ No

If yes, please explain, in detail,

N/A

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)
N/A					

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 SDHC.

N/A

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 SDHC.

Over 20 years of experience in affordable housing and 3,500+ units built to date; strong financials and strong relationships with lenders, investors, cities and localities

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

Date	Entity Involved (i.e. City SDHC, etc)	Status (Current, delinquent, repaid, etc.)	Dollar Amount
11/15/2017	Grantville Veteran Housing, LP – Zephyr (ENTITY - SDHC)	Current	\$3,000,000
12/14/2017	Twain Housing, LP – Stella (ENTITY - SDHC)	Current	\$7,500,000
12/22/2017	Fairmount Family Housing, LP – Bluewater (ENTITY - SDHC)	Current	\$9,468,500
12/3/2015	Imperial Urban Housing, LP – Cypress (ENTITY - SDHC)	Current	\$3,450,000

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 ☒ No

If yes, explain:

N/A

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 ☒ No

If yes, explain:

N/A

38. List three local references that would be familiar with your previous construction projects:

- Name: Timothy Elliot, City of Los Angeles Development and Finance Department  
Address: 1200 West 7th Street, Los Angeles CA 90017  
Phone: (213) 808-8596  
Project Name and Description: Vermont Villas – 79 units PSH Veterans & Seniors
- Name: Brad Richter, Assistant Vice President, Planning, Civic San Diego  
Address: 401 B Street, 4th Floor, San Diego, CA 92101  
Phone: (619) 533-7115  
Project Name and Description: Ten Fifty B – high rise with 229 units between two phases
- Name: Harry Williams, City of San Marcos

Address: 1 Civic Center Drive, San Marcos, CA 92069

Phone: (760) 744-1050 ext 3238

Project Name and Description: Eastgate – 40 units, mixed use, new construction project

39. Give a brief statement regarding 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.

N/A

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

Name	Experience
TBD	

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

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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 ("SDHC"), 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 SDHC, 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 SDHC, 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 SDHC, 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 22 day of November, 20 19, at San Diego, California.

CONTRACTOR

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

Signature

President

\_\_\_\_\_  
Title

**CERTIFICATION**

The CONTRACTOR, Affirmed Housing Group, Inc., 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: [Signature]  
Title: President  
Dated: 9/22/2019

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
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.**

**JURAT**

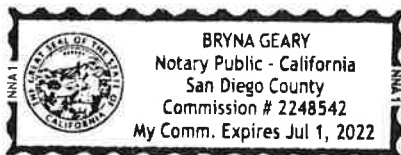
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

Subscribed and sworn to (or affirmed) before me on this 22 day of November, 20 19

by James Silverwood personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

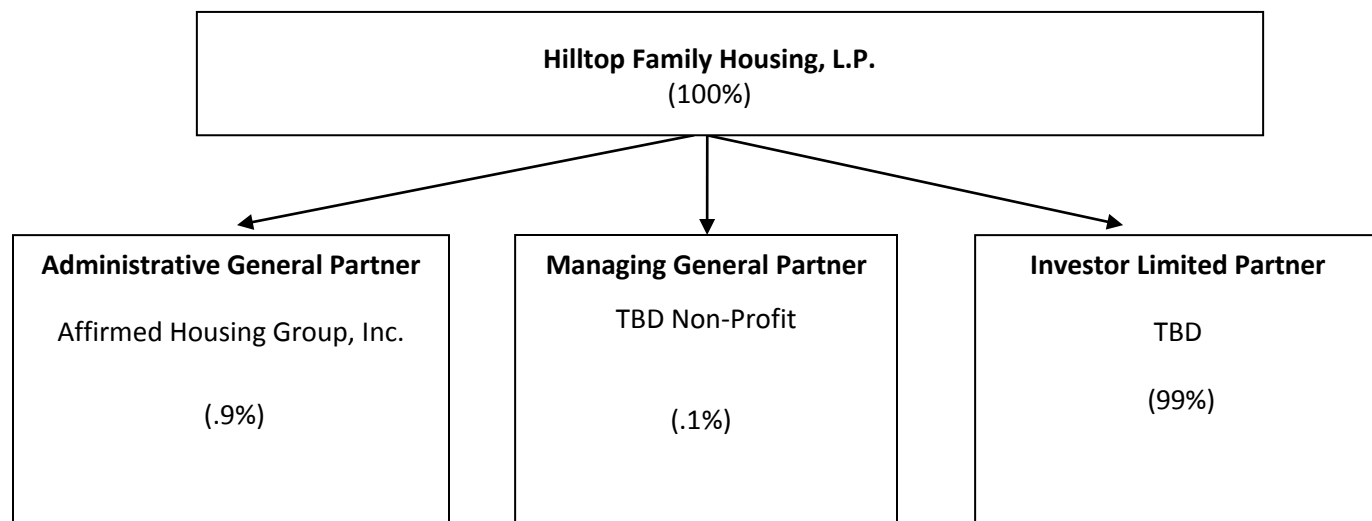


SEAL

[Signature]  
Signature of Notary

**Hilltop Family Housing, LP**  
**OWNERSHIP STRUCTURE:**  
**Limited Partnership**

Affirmed Housing Group, Inc., a Delaware for-profit corporation, has formed a Limited Partnership that will be the 100% ownership entity of the affordable housing project. Affirmed Housing Group will own .9% interest, the Investor Limited Partner will have 99% interest in the limited partnership, and the Managing General Partner will own .1% of the limited partnership.



**OFFICERS AND/OR MANAGERS RESPONSIBLE FOR THE PROJECT:**

- |   |   |
|---|---|
| 1. James Silverwood<br>President<br>Affirmed Housing Group, Inc.<br>13520 Evening Creek Dr. N, #160<br>San Diego, CA 92128                                    | 3. Jonathan Taylor<br>Senior Project Manager<br>Affirmed Housing Group, Inc.<br>13520 Evening Creek Dr. N, #160<br>San Diego, CA 92128    |
| 2. Jimmy Silverwood<br>Vice President of Acquisitions & Development<br>Affirmed Housing Group, Inc.<br>13520 Evening Creek Dr. N, #160<br>San Diego, CA 92128 | 4. Michelle Muniz<br>Application Manager<br>Affirmed Housing Group, Inc.<br>13520 Evening Creek Drive N. Suite 160<br>San Diego, CA 92128 |

Affirmed Housing Group, Inc. will act as the General Partner in the development of the affordable housing project. Affirmed Housing Group's role in the development will be to obtain all the necessary funding to develop and operate the project, process entitlements, select consultants, General Contractor and property management company, oversee architectural design, construction management and other aspects of the development process as well as manage the limited partnership for the life of the project.

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 TAX-EXEMPT MULTIFAMILY HOUSING REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$27,885,943 AND TAXABLE MULTIFAMILY HOUSING REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$3,500,000 TO FINANCE THE ACQUISITION, CONSTRUCTION AND DEVELOPMENT OF A MULTIFAMILY RENTAL HOUSING FACILITY KNOWN AS THE ORCHARD AT HILLTOP, 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, rehabilitation, construction and development of multifamily rental housing; and

WHEREAS, Hilltop Family Housing, L.P., a California limited partnership (Borrower), has requested that the Authority borrow funds and loan the funds to the Borrower to finance Borrower's acquisition, construction and development of a multifamily residential rental housing facility known as "The Orchard at Hilltop" (Project), consisting of 113 apartment units (including two unrestricted manager's units) located at 922-944 Euclid Avenue in the City of San Diego; 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 revenue bonds to finance costs of the acquisition, construction and development of the Project; and

WHEREAS, the Authority intends to issue and sell its Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (The Orchard at Hilltop) Series 2020H-1 (Tax-Exempt Bonds), in an aggregate principal amount not to exceed \$27,885,943, and its Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (The Orchard at Hilltop) Taxable Series 2020H-2 (collectively with the Tax-Exempt Bonds, Bonds), in an aggregate principal amount not to exceed \$3,500,000, to Western Alliance Business Trust, and apply the sale proceeds of the Bonds to fund a loan to the Borrower (Loan); and

WHEREAS, the Authority will fund the Loan, and the Borrower will use the proceeds of the Bonds to finance costs of the acquisition, construction and development of the Project; and

WHEREAS, the City Council of the City of San Diego (Council), by its Resolution No. 312820, effective January 15, 2020, approved the Authority's issuance of the Bonds after publication of a "TEFRA" notice and the holding on January 14, 2020, 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, CDLAC has allocated to the Project \$27,885,943 of volume cap for private activity bonds under section 146 of the Code; and

WHEREAS, the following documents are presented for consideration:

- (1) the form of Indenture of Trust (Indenture), by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee, including the form of the Bonds attached to the Indenture as Exhibit A,
- (2) the form of Loan Agreement (Loan Agreement), by and between the Authority and the Borrower,
- (3) the form of Regulatory Agreement and Declaration of Restrictive Covenants (Regulatory Agreement), by and between the Authority and Borrower,
- (4) the form of Assignment of Deed of Trust Documents (Assignment), by the Authority in favor of Trustee, and
- (5) the form of Bond Purchase Agreement (Bond Purchase Agreement), by and among the Authority, the Purchaser and Authority; and

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

WHEREAS, on December 3, 2018, the Council adopted Resolution No. R-312078, finding that there were no substantial changes proposed to the Project and no substantial changes with respect to the circumstances under which the Project is to be undertaken that would require major revisions in the Program Environmental Impact Report No. 386029/SCH No. 2014051075 (Report) for the Project, and adopting the Addendum to the Report with respect to the Project; the HOME Investment Partnerships Program (HOME) funds will provide a part of the funding for the Project making the project subject to U.S. Department of Housing and Urban Development under 24 CFR Part 58 of the National Environmental Policy Act (NEPA); and the

Housing Commission received final NEPA clearance and authorizations to grant funds on May 2, 2020; NOW, THEREFORE,

BE IT RESOLVED, by the Board of Commissioners of 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, construction and development of the Project through the execution and delivery of the 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 Bonds. For the purpose of financing the acquisition, construction and development of the Project, the Authority approves the issuance of the Tax-Exempt Bonds in any number of subseries in an aggregate principal amount not to exceed \$27,885,943 and the issuance of the Taxable Bonds in any number of subseries in an aggregate principal amount not to exceed \$3,500,000. The Bonds shall be issued 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 Indenture. The Bonds shall be in substantially the respective forms attached as Exhibit A to the Indenture, with such appropriate variations, omissions, insertions, and provisions as are required or permitted by the Indenture. The Bonds 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 Indenture shall be paid and satisfied, solely from the revenues, receipts, and other moneys and assets pledged under the Indenture.

Section 3.     Execution and Delivery of the Bonds. The Bonds shall be executed on behalf of the Authority by the manual or facsimile signature of the Chairman of the Authority (Chairman), the Vice Chairman of the Authority (Vice Chairman), the Executive Director of the Authority (Executive Director), the Executive Vice President of Real Estate and Chief Strategy Officer (Executive Vice President Real Estate) of the San Diego Housing Commission (Housing Commission), the Vice President of Real Estate Finance of the Housing Commission (Vice President Real Estate Finance), or the Executive Vice President and Chief of Staff of the Housing Commission (Executive Vice President Chief of Staff), and attested with the manual or facsimile signature of the Secretary or a Deputy Secretary of the Authority, and the official seal of the Authority, or a facsimile, shall be impressed or imprinted on the Bonds.

Section 4.     Approval of the Indenture. The Indenture, in the form on file in the Housing Commission offices, is approved. The Chairman, the Vice Chairman, the Executive Director, the Executive Vice President Real Estate, the Vice President Real Estate Finance, the Executive Vice President Chief of Staff and the Secretary or a Deputy Secretary of the Authority, or the designee of any such officer (collectively, the Designated Officers) are each authorized to execute and deliver the Indenture 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 Indenture approved in this Resolution.

Section 5.     Approval of Loan Agreement. The 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 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 Loan Agreement approved in this Resolution.

Section 6.     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 7.     Approval of Assignment. The Assignment, in the form on file in the Housing Commission offices, is approved. The Designated Officers are each authorized to execute and deliver the Assignment 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 Assignment approved in this Resolution.

Section 8.     Approval of Bond Purchase Agreement. The Bond Purchase Agreement, in the form on file in the Housing Commission offices, is approved. The Designated Officers are each authorized to execute and deliver the Bond Purchase 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 Bond Purchase Agreement approved in this Resolution.

Section 9.     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 Bonds 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 agreement or no arbitrage certificate), and other documents, including but not limited to those described in any of the documents approved by this Resolution, that they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds and the making of the Loan in accordance with the Act and this Resolution.

Section 10. 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 Bonds and the lending program financed by the Bonds, including without limitation any of the foregoing that may be necessary or desirable in connection with any amendment of such documents, any transfer of the Project, any substitution of security for the Bonds, or any prepayment or redemption of the Bonds, 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 that such officer may deem necessary or desirable to further the purposes of this Resolution.

Section 11. 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 12. 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  
09/11/2020  
Or. Dept.: Housing  
Doc. No.: 2474673

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**INDENTURE OF TRUST**

**by and between the**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO**

**and**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,**

**as Trustee**

**Dated as of October 1, 2020**

**Relating to:**

**\$ \_\_\_\_\_  
Housing Authority of the City of San Diego  
Multifamily Housing Revenue Bonds  
(The Orchard at Hilltop), Series 2020H-1**

**\$ \_\_\_\_\_  
Housing Authority of the City of San Diego  
Multifamily Housing Revenue Bonds  
(The Orchard at Hilltop), Taxable Series 2020H-2**

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## INDENTURE OF TRUST

This **INDENTURE OF TRUST** (as amended, modified or supplemented from time to time, this "Indenture"), dated as of October 1, 2020, made and entered into by and between the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO, a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California (together with its successors and assigns, the "Issuer"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States of America, as trustee (together with any successor trustee hereunder and their respective successors and assigns, (the "Trustee"),

### WITNESSETH:

**WHEREAS**, pursuant to Chapter 1 of Part 2 of Division 24 of the Health and Safety Code of the State of California, as amended (the "Act") the Issuer is empowered to issue its revenue bonds to finance the acquisition, construction and development of multifamily rental housing facilities; and

**WHEREAS**, the Issuer has determined to issue and sell its Multifamily Housing Revenue Bonds (The Orchard at Hilltop), Series 2020H-1, in the original aggregate principal amount of \$\_\_\_\_\_ (the "Tax-Exempt Bonds") and its Multifamily Housing Revenue Bonds (The Orchard at Hilltop), Taxable Series 2020H-2, in the original aggregate principal amount of \$\_\_\_\_\_ (the "Taxable Bonds" and together with the Tax-Exempt Bonds, the "Bonds"), for the purpose of financing the cost of the acquisition, construction and development of a multifamily rental housing facility, consisting of a total of 113 units and related personal property and equipment, and located at 922-944 Euclid Avenue, San Diego, California 92114 (the "Project Facilities") all pursuant to this Indenture and the Loan Agreement, dated as of October 1, 2020 (as amended, modified or supplemented from time to time, the "Loan Agreement"), between the Issuer and Hilltop Family Housing, L.P., a limited partnership duly organized and existing under the laws of the State of California (together with its permitted successors and assigns, the "Borrower"); and

**WHEREAS**, the Issuer is authorized to enter into this Indenture and to do or cause to be done all the acts and things herein provided or required to be done to finance the Project Costs by the issuance of the Bonds, all as hereinafter provided; and

**WHEREAS**, all acts, conditions and things required to happen, exist, and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed in order to make the Bonds, when issued, delivered and authenticated, valid obligations of the Issuer in accordance with the terms thereof and hereof, and in order to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

**WHEREAS**, the Trustee has accepted the trusts created by this Indenture and has accepted its obligations hereunder, and in evidence thereof, this Indenture has been executed and delivered thereby.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE COVENANTS AND UNDERTAKINGS HEREIN EXPRESSED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH IS HEREBY

ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO AGREE AS FOLLOWS:

**GRANTING CLAUSES:**

The Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Holders thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment of the principal of, redemption premium, if any, and interest on the Bonds according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby transfer, pledge and assign, without recourse, to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors in trust and its assigns, in and to all and singular the property described in paragraphs (a), (b), (c) and (d) below (said property being herein referred to as the "Security"), to wit:

(a) All moneys from time to time paid by the Borrower pursuant to the terms of the Loan Agreement, the Notes and the Bond Documents and all right, title and interest of the Issuer (including, but not limited to, the right to enforce any of the terms thereof) under and pursuant to and subject to the provisions of the Loan Agreement and the Notes (but in each instance excluding the Reserved Rights, as defined herein); and

(b) All other moneys and securities from time to time held by the Trustee under the terms of this Indenture, excluding the Rebate Fund and excluding amounts required to be rebated to the United States Treasury under Section 148(f) of the Internal Revenue Code of 1986, as amended, whether or not held in the Rebate Fund; and

(c) Any and all property, rights and interests (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder to the Trustee, which the Trustee is hereby authorized to receive at any and all times and to hold and apply the same subject to the terms of this Indenture; and

(d) All of the proceeds of the foregoing (except the amounts payable to or on behalf of the Issuer on account of its Reserved Rights), including without limitation investments thereof;

TO HAVE AND TO HOLD, all and singular, the Security with all rights and privileges hereby transferred, pledged, assigned and/or granted or agreed or intended so to be, to the Trustee and its successors and assigns in trust forever;

IN TRUST NEVERTHELESS, upon the terms and conditions herein set forth for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds Outstanding, without preference, priority or distinction as to participation in the lien, benefit and protection of this Indenture of one Bond over or from the others, except as herein otherwise expressly provided;

PROVIDED, NEVERTHELESS, and these presents are upon the express condition, that if the Issuer or its successors or assigns shall well and truly pay or cause to be paid the principal of and premium, if any, on such Bonds with interest, according to the provisions set forth in the Bonds, or shall provide for the payment or redemption of such Bonds by depositing or causing to be deposited with the Trustee the entire amount of funds or securities requisite for payment or

redemption thereof when and as authorized by the provisions of Article V (it being understood that any payment with respect to the principal of or interest on Bonds made by the Borrower shall not be deemed payment or provision for the payment of the principal of or interest on Bonds, except Bonds purchased or paid and canceled by the Trustee, all such uncanceled Bonds to remain Outstanding and the principal of and interest thereon payable to the Holders thereof), and shall also pay or cause to be paid all other sums payable hereunder by the Issuer, then these presents and the estate and rights hereby granted shall cease, terminate and become void, and thereupon the Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the Issuer and upon the payment by the Issuer of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the Issuer such instruments of satisfaction or release as may be necessary or proper to discharge this Indenture of record, and if necessary shall grant, reassign and deliver to the Issuer all and singular the property, rights, privileges and interests by it hereby granted, conveyed and assigned, and all substitutes therefor, or any part thereof, not previously disposed of or released as herein provided; otherwise this Indenture shall be and remain in full force;

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Security is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant with the Trustee, for the benefit of the respective Holders from time to time of the Bonds as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.1 Defined Terms.** In addition to terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

**“Accountant”** means \_\_\_\_\_, or such other accounting firm approved in writing by the Controlling Person.

**“Accounts”** means all funds and accounts established under this Indenture from time to time.

**“Act”** means Chapter 1 of Part 2 of Division 24 of the Health and Safety Code of the State of California, as amended.

**“Administrative General Partner”** means AHG Hilltop, LLC, a California limited liability company, the administrative general partner of the Borrower.

**“Advance”** means any disbursement from the Project Fund established under this Indenture made or to be made by the Trustee pursuant to the terms of the Loan Agreement.

**“Affiliate”** means, with respect to any designated Person, each Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another designated Person, pursuant to the organizational document(s) of an entity or by other express, written agreement.

**“Annual Budget”** means, for any Fiscal Year, the capital and operating budget adopted by the Borrower and approved by the Controlling Person, or deemed approved, pursuant to Section 6.24 of the Loan Agreement.

**“Anti-Terrorism Regulations”** shall have the meaning ascribed to such term in Section 6.23 of the Loan Agreement.

**“Approved Buyer”** means (1) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act, as in effect on the date hereof, (2) an institutional “accredited investor” as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act or (3) a trust or custodial arrangement in which all of the beneficial ownership interests would be owned by one or more other Approved Buyers described in clauses (1) or (2) of this definition.

**“Architect”** means Studio E Architects, a California corporation.

**“Architect’s Agreement”** means the contract dated \_\_\_\_\_, 20\_\_ between the Borrower and the Architect, providing for the design of the Improvements and the supervision of the construction thereof, including ongoing monthly inspection of the Improvements, certification of Requisitions and certification of Final Completion, among other things, as the same may be amended, modified or supplemented from time to time.

**“Assignment of Capital Contributions”** means the Assignment of Capital Contributions, dated the date hereof, by the Borrower for the benefit of the Trustee.

**“Assignment of HAP Contract”** means the Assignment of Housing Assistance Payments, dated as of the date hereof, made by the Borrower to the Trustee for the HAP Contracts in effect for the Project Facilities, consented to by HUD.

**“Assignment of Management Agreement and Consent”** means the Assignment of Management Agreement, dated as of the date hereof, by the Borrower to and for the benefit of the Trustee, consented to by the Managing Agent.

**“Assignment of Project Documents”** means the Assignment of Project Documents, dated as of the date hereof, made by the Borrower in favor of the Trustee.

**“Authorized Denomination”** means \$100,000, and any amount in excess of \$100,000, but not in excess of the aggregate principal amount of Bonds then Outstanding.

**“Authorized Person”** means one or more individuals duly authorized to bind the Borrower in connection with the administration of the Project Facilities. The initial Authorized Persons of the Borrower are James M. Silverwood, James P. Silverwood and Nicki Cometa.

**“Bankruptcy Code”** means Title 11 of the United States Code, as amended, and any successor statute or statutes having substantially the same function.

**“Beneficial Owner”** means the Person in whose name a Bond is recorded as beneficial owner of such Bond by the Securities Depository or a DTC Participant or an Indirect Participant on the records of such Securities Depository, DTC Participant or Indirect Participant, as the case may be, or such Person’s subrogee.

**“Bonds”** means, collectively, the Tax-Exempt Bonds and Taxable Bonds.

**“Bond Counsel”** means (i) Jones Hall, A Professional Law Corporation, or (ii) any other attorney, or firm of attorneys, nationally recognized and experienced in legal work relating to the financing of facilities through the issuance of tax-exempt bonds, reasonably acceptable to the Controlling Person.

**“Bond Coupon Rate”** means the lower of (i) the rate of interest accruing from the Issue Date to but excluding the Stabilization Date at a rate equal to the Current Index plus 2.00%, as reset on each Rate Determination Date, and the rate of interest accruing from and after the Stabilization Date to the Maturity Date at a fixed rate of \_\_\_\_% per annum; and (ii) the Maximum Rate.

**“Bond Documents”** means, collectively, the Bonds, this Indenture, the Loan Agreement, the Notes, the Regulatory Agreement, the Tax Certificate, the Purchase Agreement, the Mortgage, the Environmental Indemnity, the Assignment of Management Agreement and Consent, the Issuer Assignment, the Assignment of HAP Contract, the Continuing Disclosure Agreement, the Replacement Reserve Agreement, the Assignment of Project Documents, the General Partner Pledge, the Developer Fee Pledge, the Assignment of Capital Contributions, the Subordination Agreement, the Guaranty of Recourse Obligations, the Guaranty of Debt Service and Stabilization and the Guaranty of Completion, and all other agreements or instruments relating to, or executed in connection with the issuance and delivery of the Bonds, including all modifications, amendments or supplements thereto.

**“Bond Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Bond Proceeds Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

**“Bondholder”** or **“Holder”** or words of similar import, when used with reference to the Bonds, means the registered owner or owners or Beneficial Owner or Beneficial Owners of the Bonds, as applicable.

**“Book-Entry System”** means a book-entry system established and operated for the recordation of Beneficial Owners of the Bonds pursuant to Section 2.11 hereof.

**“Borrower”** shall have the meaning given to such term in the recitals to this Indenture.

**“Business Day”** means any day on which the offices of the Trustee, are open for business and on which The New York Stock Exchange is not closed.

**“Capital Expenditures”** means the capital expenditures relating to any construction, renovation, rehabilitation, repair and replacement of the Improvements or made pursuant to the recommendations of the Engineering Consultant.

**“Capitalized Interest Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

**“Change Order”** means a change made to the Plans and Specifications relating to the Project Facilities, as evidenced by a written change order request in accordance with the terms of the Construction Contract.

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

**“Collateral”** means all property of the Borrower in which the Trustee is granted a security interest to secure payment of the Bonds.

**“Completion Date”** means the date by which the construction of the Improvements must achieve Final Completion. The initial Completion Date is February 1, 2023; provided, however, that at the request of the Borrower and with the prior written approval of the Controlling Person, the Completion Date may be extended one or more times for such periods as the Controlling Person may approve in its sole discretion, upon delivery of such other information and funds as reasonably requested by the Controlling Person or the Majority Owner. The approval of the Controlling Person shall not be unreasonably withheld, conditioned or delayed in connection with any reasonably required extension of the Completion Date as a result of any Force Majeure event.

**“Condemnation Award”** means the total condemnation proceeds actually paid by the condemnor as a result of the condemnation of all or any part of the property subject to the Mortgage less the actual costs incurred, including reasonable attorneys’ fees, in obtaining such award.

**“Construction Contract”** means the contract, dated on or about \_\_\_\_\_, 20\_\_\_\_, between the Borrower and the Contractor, providing for the construction of the Improvements and certification of Requisitions, among other things, as the same may be amended, modified or supplemented from time to time.

**“Contamination”** means the uncontained release, discharge or disposal of any Hazardous Substances at, on, upon or beneath the Project Facilities, whether or not originating at the Project Facilities, or arising from the Project Facilities into or upon any land or water or air, or otherwise into the environment, which may require remediation under any applicable Legal Requirements.

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement dated as of October 1, 2020, between the Borrower and the Trustee, as dissemination agent, as the same may be amended, modified or supplemented from time to time.

**“Contractor”** means \_\_\_\_\_, a \_\_\_\_\_.

**“Control”** (including, with the correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) means, as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such other Person, or of the Person, whether through contract, stock ownership, partnership interests, membership, voting rights, governing boards, committees, divisions or other bodies with one or more common members, directors, trustees or other managers, or otherwise.

**“Controlling Person”** means any entity designated in writing by the Majority Owner to act as a Controlling Person hereunder, in accordance with Article IX hereof. If at any time a Controlling Person has not been designated by the Majority Owner, all references herein and in other Bond Documents to “Controlling Person” shall refer to the Majority Owner. The initial Controlling Person is Boston Capital Finance LLC.

**“Cost of Issuance Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

**“Counsel”** means an attorney, or firm of attorneys, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia, including any Bond Counsel.

**“Current Index”** means the Index that is determined by Indexing Agent on each Rate Determination Date, subject to the limitation that the Current Index shall not be (i) less than 1.50% or more than 1.80% for the Tax-Exempt Bonds and (ii) less than 2.45% or more than 2.80% for the Taxable Bonds.

**“Debt Service Schedule”** means the schedule of debt service payments with respect to the Bonds applicable from and after the Stabilization Date, together with any replacement thereof, each as delivered by Controlling Person pursuant to Section 3.4(e) of this Indenture.

**“Default”** means an event or condition which is, or which after giving notice or lapse of time or both would be, an Event of Default.

**“Default Interest”** means interest payable at the Default Rate.

**“Default Rate”** means a rate per annum equal to ten percent (10%) per annum; provided that such rate shall in no event exceed the Maximum Rate.

**“Depository Agreement”** means that certain Depository Agreement, between Trustee and Western Alliance Bank.

**“Determination of Taxability”** means a determination that the interest accrued or paid on any of the Tax-Exempt Bonds is included in gross income of the Holders or former Holders for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(i) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

(ii) the day on which the Borrower receives notice from the Trustee in writing that the Trustee has received (1) a notice in writing by any Holder or former Holder that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to such Holder or former Holder that asserts in effect that the interest on the Tax-Exempt Bonds received by such Holder or former Holder is included in the gross income of such Holder or former Holder for federal income tax purposes, or (2) an Opinion of Bond Counsel that concludes in effect that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

(iii) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal

Revenue Service that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes; or

(iv) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by Counsel that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Borrower has been given written notice and an opportunity to participate and defend that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

provided, however, no Determination of Taxability shall occur to the extent that the interest on any of the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder for federal income tax purposes solely because such Bond was held by a Person who is a Substantial User or a Related Person.

**“Developer”** means Affirmed Housing Group, Inc., a Delaware corporation, authorized to conduct its business in the State, together with its successors and assigns approved by the Controlling Person.

**“Developer Fee Pledge”** means the Developer Limited Guaranty, Pledge and Security Agreement dated as of the date hereof from Developer in favor of the Trustee.

**“Development Budget”** means the budget for the implementation and completion of the acquisition, construction and equipping of the Project Facilities, initially as attached to the Loan Agreement as Schedule 4, together with any modifications or amendments thereto made in accordance with the Loan Agreement and with the prior written consent of the Controlling Person.

**“DTC Participant”** means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository.

**“Effective Gross Revenues”** of the Borrower means, for the three (3) month period prior to the determination of Stabilized NOI, the annualized aggregate revenues during such period generated from all tenants and others occupying or having a right to occupy or use the Project Facilities or any portion thereof pursuant to leases, including (at the Controlling Person’s reasonable discretion, taking into account whether such income is recurring and is appropriate for a stabilized property), vending machine income, cable TV revenues, laundry service and parking income, as adjusted in the Controlling Person’s reasonable judgment for factors including but not limited to: (i) seasonal fluctuation in the rental rate in the market in which the Project Facilities are located; (ii) evidence of rent deterioration; (iii) concessions, reductions, inducements or forbearances (such as any cash reduction in monthly rent during the term of a lease, any free rent before, during or after the term of a lease, any rent coupons, gift certificates and tangible goods or any other form of rent reduction or forbearance); (iv) economic vacancy at the higher of: (1) [five] percent ([5]%), or (2) actual economic vacancy based on the annualized vacancies of the Project Facilities; (v) 30-day or more delinquencies; (vi) low-income restrictions required by any applicable federal, state or local subsidy program, or any restrictive covenant or regulatory agreement; and (vii) other applicable adjustments as reasonably determined by the Controlling Person; Effective Gross Revenues shall exclude revenues from Section 8 vouchers to the extent such revenues cause the rent on any unit to exceed the maximum allowable tax credit rent designated for such unit.

**“Engineer’s Agreement”** means the agreement, if any, between the Borrower and the structural engineer for the Project Facilities approved by the Controlling Person, relating to the construction of the Improvements, as the same may be amended, modified or supplemented from time to time.

**“Engineering Consultant”** means a consultant licensed to practice in the State and chosen by the Controlling Person.

**“Environmental Audit”** means the written Phase I environmental site assessment for the Project Facilities prepared Rincon Consultants, Inc., dated August 16, 2019 [Add Phase II if necessary].

**“Environmental Completion Conditions”** shall [have the meaning set forth in the Partnership Agreement] [shall mean \_\_\_\_\_].

**“Environmental Indemnity”** means the Environmental Indemnity Agreement dated as of the date hereof, by the Borrower and Guarantor in favor of the Trustee.

**“Environmental Laws”** means all Legal Requirements governing or relating to the protection of the environment, natural resources or human health concerning (i) activities at any of the Project Facilities, (ii) repairs or construction of any Improvements, (iii) handling of any materials at any of the Project Facilities, (iv) releases into or upon the air, soil, surface water or ground water from any of the Project Facilities, and (v) storage, distribution, use, treatment, transport or disposal of any waste at or connected with any activity at any of the Project Facilities, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 42 U.S.C. §§ 9601 et seq., as amended from time to time; the Hazardous Materials Transportation Act 49 U.S.C. §§ 5101 et seq., as amended from time to time; the Resource Conservation and Recovery Act 42 U.S.C. §§ 6901 et seq., as amended from time to time; the Federal Water Pollution Control Act 33 U.S.C. §§ 1251 et seq., as amended from time to time; and comparable State statutes.

**“Environmentally Sensitive Area”** means (i) a wetland or other “water of the United States” for purposes of Section 404 of the federal Clean Water Act or any similar area regulated under any State or local Legal Requirements, (ii) a floodplain or other flood hazard area as defined pursuant to any applicable state Legal Requirements, (iii) a portion of the coastal zone for purposes of the federal Coastal Zone Management Act, or (iv) any other area development of which is specifically restricted under applicable Legal Requirements by reason of its physical characteristics or prior use.

**“EPA”** shall have the meanings ascribed to such term in Section 6.14(e) of the Loan Agreement.

**“Equity Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

**“ERISA”** shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

**“ERISA Affiliate”** shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

**“Event of Default”** means, with respect to this Indenture, any of the events specified in Section 6.1 hereof, or with respect to the Loan Agreement, any of the events specified in Section 7.1 thereof.

**“Executive”** means any Designated Officer, as defined in Resolution Number HA-\_\_\_\_\_ of the Issuer, effective on September 29, 2020, authorizing the issuance of the Bonds.

**“Expenses”** means the aggregate annualized operating expenses (including replacement reserves) of the Project Facilities as reasonably determined by the Controlling Person in an amount equal to the greater of: (i) the actual amount of aggregate annualized Expenses for the three (3) month period prior to the determination of Stabilized NOI, provided that such actual expenses reflect normalized/stabilized operations as reasonably determined by the Controlling Person; and (ii) \$[Underwritten Amount Established at Closing] per annum increased on an annual basis commencing January 1, 2021 by 3%) adjusted to reflect actual cost of utilities, insurance and Impositions (provided that for Impositions constituting real property taxes, if any, the cost shall be based on the full assessed value of the Project after taking into account completion of construction), plus all required deposits into the Replacement Reserve Fund established under the Indenture.

**“Fair Market Value”** means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (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) any commingled investment fund in which the Authority 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.

**“Favorable Opinion of Bond Counsel”** means an opinion of Bond Counsel, addressed to the Issuer, the Trustee and the Majority Owner, with a copy to the Controlling Person, to the effect that a proposed action, event or circumstance (i) does not affect the exclusion from gross income of interest on the Tax-Exempt Bonds for federal income tax purposes, and (ii) does not affect the treatment of interest on the Tax-Exempt Bonds as not being an item of tax preference for purposes of the federal alternative minimum tax, which opinion may be subject to customary assumptions and exclusions.

**“Final Completion”** means, with respect to the Project Facilities, that each of the following conditions has been satisfied:

- (i) the Controlling Person shall have received a copy of the final Plans and Specifications containing all Change Orders and there shall have been no Material

Change Orders other than Material Change Orders approved by the Controlling Person in the exercise of its reasonable discretion;

(ii) the Borrower shall have obtained the Governmental Actions, if any, required by the Legal Requirements and all Governmental Authorities associated with the Project Facilities, including use and occupancy permits (if any are required), and shall have furnished true copies of all such Governmental Actions to the Controlling Person. Temporary certificates of occupancy, as opposed to final certificates of occupancy or their equivalent, shall be acceptable provided (A) that the Punchlist Items do not have a total cost to complete exceeding two percent (2%) of the contract price of the Work, nor an estimated time to complete, as reasonably determined by the Engineering Consultant, exceeding forty-five (45) days (except for items such as landscaping, the completion of which is subject to seasonal conditions), (B) any remaining Punchlist Items do not substantially interfere with or prevent the use and occupancy of the Project Facilities, (C) such Punchlist Items do not include major appliances or materially and adversely affect the systems (including plumbing, electrical, HVAC, mechanical, roofing and sprinklers) serving the Project Facilities or major structural components of the Project Facilities, and (D) adequate reserves, in amounts equal to 110% of the cost of completion of such items as estimated by the Architect and approved by the Engineering Consultant (or 125%, with respect to the items described in subsection (A) as being subject to seasonal conditions) have been deposited into the Project Fund;

(iii) as to any Governmental Actions, no appeal or other action or proceeding challenging any such Governmental Actions shall have been filed or, if filed and decided, there shall have been no appeal (or further appeal) taken and all other statutory appeal periods must have expired, and there shall be no claim, litigation or governmental proceeding pending against the Borrower or the Project Facilities challenging the validity or the issuance of any zoning, subdivision or other land use ordinance, variance, permit or approval, or any Governmental Action of the kind described in this subparagraph (iii). In addition, as to all of such permits, approvals and certificates having statutory, regulatory or otherwise expressly specified and determinable appeal periods, such periods, if any, must have expired without an appeal having been taken (or any such appeal shall have been denied or shall have affirmed the granting of such Governmental Action);

(iv) the Controlling Person shall have received from the Architect, and the Engineering Consultant shall have approved in the exercise of its reasonable discretion, a certificate of the Architect in the form attached as Exhibit A to the form of certificate of completion attached as Schedule 8 to the Loan Agreement and otherwise customary for projects of the scope of the Work for the Project Facilities with respect to completion of the Work at the Project Facilities;

(v) all Work set forth in the Plans and Specifications for the Project Facilities shall have been incorporated into the Improvements at the Project Facilities;

(vi) except for Permitted Encumbrances and Impositions not then due and payable, the Project Facilities shall be free of any and all private or governmental charges, claims or Liens (filed or not) of any nature, excepting only the liens and security interests in favor of the Trustee and any other encumbrances approved by the Controlling Person in writing;

(vii) with respect to all contractors and subcontractors and materialmen (for contracts less than \$50,000, only as required by the Title Company; provided that the Title Company insures over any mechanics' and materialmen's liens arising from such excepted contractors, subcontractors or materialmen), either (i) the Borrower shall have obtained an unconditional waiver and release upon final payment of mechanics' and materialmen's liens (or evidence of an adequate bond or other security acceptable to Controlling Person) if there are no Punchlist Items, or (ii) if there are Punchlist Items, the Borrower shall have obtained an unconditional waiver and release upon progress payment of mechanics' and materialmen's liens (or evidence of an adequate bond or other security acceptable to Controlling Person) for all of the Improvements at the Project Facilities except for the Punchlist Items, and true copies thereof have been delivered to the Controlling Person;

(viii) and an endorsement down dating the Title Policy insuring the Mortgage as a first lien, subject to Permitted Encumbrances;

(ix) the Borrower has, in form and substance acceptable to the Controlling Person, completed the Environmental Completion Conditions.

**"Financing Statements"** means any and all financing statements (including continuation statements) or other instruments filed or recorded to perfect the Security Interest created in this Indenture.

**"First Interest Payment Date"** means the first (1<sup>st</sup>) calendar day of the second month following the Issue Date.

**"First Principal Payment Date"** means the first (1<sup>st</sup>) calendar day of the first month following the Stabilization Date.

**"First Optional Call Date"** means October 1, 2032.

**"First Put Date"** means October 1, 2028.

**"Fiscal Year"** means the annual accounting year of the Borrower, which currently begins on \_\_\_\_\_ 1 of each calendar year.

**"Fitch"** means Fitch, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

**"Force Majeure"** means any acts of God, strikes, walkouts or other labor disputes, riots, civil strife, war, acts of a public enemy, lightning, fires, explosions, storms or floods[, epidemics, pandemics (including without limitation COVID-19), quarantine or similar so called "stay at home" orders] or shortages of labor or materials or other causes of a like nature beyond the control of the Borrower; provided, however, that the unavailability of sources of financing, the insufficiency of funds, the loss of a tenant or changes in market conditions shall not constitute Force Majeure.

**"GAAP"** means generally accepted accounting principles in effect in the United States from time to time, consistently applied.

**“General Partner”** means, collectively, (i) the Administrative General Partner and (ii) the Managing General Partner, together with their respective successors and assigns, as permitted by the Controlling Person and the restrictions described in the definition of “Permitted Transfer” herein.

**“General Partner Pledge”** means the Limited Guaranty, Pledge of Partnership Interests and Security Agreement, dated the date hereof, by the Administrative General Partner in favor of the Trustee.

**“Government Obligations”** means (i) direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, and (ii) obligations issued by a Person controlled or supervised by and acting as an instrumentality of the United States of America, the full and timely payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (i) or (ii) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), which obligations, in either case, are not subject to redemption prior to maturity at less than par at the option of anyone other than the holder thereof.

**“Governmental Action”** means all permits, authorizations, registrations, consents, certifications, approvals, waivers, exceptions, variances, claims, orders, judgments and decrees, licenses, exemptions, publications, filings, and notices to and declarations of or with any Governmental Authority and shall include all permits and licenses required to construct, use, operate and maintain any of the Project Facilities.

**“Governmental Authority”** means any federal, state, or local governmental or quasi - governmental subdivision, authority, or other instrumentality thereof and any entity asserting or exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Borrower and/or the Project Facilities.

**“Guarantor”** means Affirmed Housing Group, Inc., a Delaware corporation, together with its permitted successors and assigns.

**“Guaranty of Completion”** means the Guaranty of Completion, dated as of the date hereof made by the Guarantor in favor of the Trustee.

**“Guaranty of Debt Service and Stabilization”** means the Guaranty of Debt Service and Stabilization dated as of the date hereof made by the Guarantor in favor of the Trustee.

**“Guaranty of Recourse Obligations”** means the Guaranty of Recourse Obligations, dated as of the date hereof, made by the Guarantor in favor of the Trustee.

**“H-1 Note”** means the H-1 Promissory Note of the Borrower relating to the Tax-Exempt Bonds, dated the Issue Date, as endorsed by the Issuer to the Trustee, in the form attached as Exhibit A to the Loan Agreement.

**“H-2 Note”** means the H-2 Promissory Note of the Borrower relating to the Taxable Bonds, dated the Issue Date, as endorsed by the Issuer to the Trustee, in the form attached as Exhibit A to the Loan Agreement.

**“HAP Contract”** means the Housing Assistance Payments Contract # \_\_\_\_\_, between HUD and the Borrower, providing for housing assistance payments to be made to the Borrower.

**“Hazardous Substances”** means any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), asbestos-containing materials (ACMs), lead-containing or lead-based paint (LBP), radon, Mold, medical waste and other bio-hazardous materials and any chemicals, pollutants, materials or substances defined as or included in the definition of “hazardous substances” as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, “regulated substances” within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Laws.

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

**“HUD”** means the United States Department of Housing and Urban Development.

**“Impositions”** means, with respect to the Project Facilities, all taxes including, without limitation, all real and personal property taxes, water charges and sewer rents, any special assessments, charges or claims and any other item which at any time may be or become a lien upon the Project Facilities.

**“Improvements”** means all buildings and other improvements included in the Project Facilities.

**“Indebtedness”** means, collectively, and includes all present and future indebtedness, liabilities and obligations of any kind or nature whatsoever of the Borrower to the Issuer, the Controlling Person, the Trustee or to the Holders from time to time of the Bonds, now existing and hereafter arising, under or in connection with this Indenture or any of the other Bond Documents or any of the Subordinate Debt Documents, including future advances, principal, interest, indemnities, other fees, late charges, enforcement costs and other costs and expenses whether direct or contingent, matured or unmatured and all other obligations of the Borrower to the Controlling Person, the Trustee, the Issuer or the Holders from time to time of the Bonds.

**“Indemnified Parties”** shall have the meaning given to such term in Section 2.5 of the Loan Agreement.

**“Indenture”** shall have the meaning given to such term in the first paragraph hereof.

**“Index”** means the London Inter-Bank Offered Rate for 1-month U.S. Dollar-denominated deposits administered by the ICE Benchmark Administration Limited (formerly administered by the British Bankers Association), or such other person which takes over the administration of that rate which appears on Reuters Screen LIBOR01 Page (or any successor page) as of 11:00 a.m., London time, on the date that is two (2) London Business Days prior to the applicable on the Rate Determination Date. If Indexing Agent determines that use of the Index would violate any applicable law or regulation, or if the Index becomes unavailable, then Indexing Agent, on behalf of Bondholders, will select a replacement index; provided, however, that in the event such an adjustment would cause, in the opinion of Bond Counsel, a re-issuance of the Bonds for federal tax purposes, such adjustment shall not occur until (i) Bond Counsel issues an opinion that such

change or reallocation will not cause interest on the Tax-Exempt Bonds to be included in gross income for federal income tax purposes and (ii) the Issuer shall prepare and file such certificates and forms as directed by Bond Counsel, at the reasonable expense of the Borrower.

**“Indexing Agent”** shall mean the indexing agent appointed by the Majority Owner to determine the Bond Coupon Rate in accordance with the provisions of this Indenture. The initial Indexing Agent shall be the Majority Owner.

**“Indirect Participant”** means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository through a DTC Participant.

**“Insurance and Condemnation Proceeds Account”** means the account within the Project Fund created pursuant to Section 4.1(a) hereof.

**“Insurance Proceeds”** means the total proceeds of insurance actually paid or payable by an insurance company in respect of the required insurance on the Project Facilities, less the actual costs incurred, including reasonable attorneys’ fees, in the collection of such proceeds.

**“Interest Payment Date”** means the first (1<sup>st</sup>) calendar day of each month that the Bonds are Outstanding, commencing on the First Interest Payment Date.

**“Investor Limited Partner”** means Boston Capital Direct Placement, A Limited Partnership, a Massachusetts limited partnership, and its successors and assigns in such capacity pursuant to the Partnership Agreement.

**“Investor Letter”** means that certain Investor Letter, substantially in the form attached hereto as Exhibit B.

**“Issue Date”** means October \_\_\_\_, 2020, the date on which the Bonds are issued and delivered to the purchaser or purchasers thereof.

**“Issuer”** means the Housing Authority of the City of San Diego, a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California, or any successor to its rights and obligations under the Loan Agreement and this Indenture.

**“Issuer Assignment”** means that certain Assignment of Mortgage Documents dated as of October 1, 2020 from the Issuer to the Trustee and acknowledged by the Borrower, as the same may be amended, modified or supplemented from time to time.

**“Lease”** shall have the meaning assigned to such term in the Mortgage.

**“Legal Requirements”** means all statutes, codes, laws, ordinances, regulations, rules, policies, or other federal, state, local and municipal requirements of any Governmental Authority whether now or hereafter enacted or adopted, and all judgments, decrees, injunctions, writs, orders or like action of an arbitrator or a court or other Governmental Authority of competent jurisdiction (including those pertaining to health, safety or the environment).

**“Lien”** means any lien, mortgage, security interest, tax lien, pledge, encumbrance, conditional sale or title retention arrangement, or any other interest in property designed to secure

the repayment of indebtedness, whether arising by agreement or under any statute or law, or otherwise.

**“Loan”** means the loan of proceeds of the Bonds from the Issuer to the Borrower, as evidenced by the respective Notes and pursuant to the terms of the Loan Agreement, in the aggregate principal amount of \$\_\_\_\_\_.

**“Loan Agreement”** shall have the meaning given to such term in the recitals to this Indenture.

**“Local Time”** means pacific time (daylight or standard, as applicable) in Los Angeles.

**“Major Contract”** shall mean any subcontract for labor or materials, or both, in connection with the Improvements which is for an aggregate contract price equal to or greater than \$250,000, whether pursuant to one contract or agreement or multiple contracts or agreements, after taking into account all change orders.

**“Majority Owner”** means any one Person that is the Owner of the Outstanding Bonds; provided, however, if no one Person owns all of the Outstanding Bonds, “Majority Owner” means the Owner or Owners of at least fifty-one percent (51%) in aggregate principal amount of all Outstanding Bonds.

**“Management Agreement”** shall have the meaning ascribed to such term in Section 6.19 of the Loan Agreement.

**“Managing Agent”** means Solari Enterprise, Inc., a California corporation, together with any successor manager of the Project Facilities approved by the Controlling Person and their respective successors and assigns.

**“Managing General Partner”** means NEXUS MGP LLC, a California limited liability company, the managing general partner of the Borrower.

**“Material Change Order”** means, with respect to the Project Facilities, a Change Order which (i) would result in an increase or decrease of \$[100,000] in the aggregate contract price of the Work to be performed on the Project Facilities; (ii) when aggregated with other Change Orders previously effected, would result in an increase or decrease in excess of \$250,000 in the aggregate contract price for the Work to be performed on the Project Facilities; (iii) would reduce the number of apartment units in the Project Facilities; (iv) would materially reduce the aggregate useable square footage of the apartment units or the parking areas in the Project Facilities; (v) would change the number of one, two and three bedroom apartments in the Project Facilities; (vi) would materially alter the scope of the recreational facilities or ancillary facilities of the Project Facilities; (vii) would alter the number of apartment units in the Project Facilities designated for occupancy by low and moderate income tenants; (viii) makes a substitution for any material or product that is of lesser quality, in the Controlling Person’s reasonable determination, than that specified in the Plans and Specifications relating to the Project Facilities; or (ix) would materially adversely impair the value of the Project Facilities once the Work is completed.

**“Material Contract”** means each indenture, mortgage, agreement or other written instrument or contract to which the Borrower is a party or by which any of its assets are bound (including, without limitation, any employment or executive compensation agreement, collective bargaining agreement, agreement relating to an Obligation, agreement for the acquisition,

construction, repair or disposition of real or personal property, agreement for the purchasing or furnishing of services, operating lease, joint venture agreement, agreement relating to the acquisition or disposition of an Affiliate or agreement of merger or consolidation) which (i) evidences, secures or governs any outstanding obligation of the Borrower of \$100,000 or more per annum, or (ii) if canceled, breached or not renewed by any party thereto, would have a material adverse effect on the business operations, assets, condition (financial or otherwise) or prospects of the Borrower.

**“Maturity Date”** means, for the Tax-Exempt Bonds, October 1, 2040, and for the Taxable Bonds \_\_\_\_\_, 20\_\_\_\_.

**“Maximum Rate”** means ten (10) percent per annum; provided that such rate shall in no event exceed the maximum rate allowed by law.

**“Moisture Management Program”** shall have the meaning ascribed to such term in Section 6.14(e) of the Loan Agreement.

**“Mold”** shall have the meaning ascribed to such term in Section 6.14(e) of the Loan Agreement.

**“Monitoring Fee”** shall have the meaning given to such term in Section 2.2(a) of the Loan Agreement.

**“Monthly Tax and Insurance Amount”** means an amount equal to the sum of (i) one-twelfth (1/12th) of the annual Impositions, plus (ii) one-twelfth (1/12th) of the annual insurance premiums for the insurance coverages for the Project Facilities required by Section 6.4 of the Loan Agreement, as any such amounts may be increased if the Controlling Person determines that funds in the Tax and Insurance Escrow Fund will be insufficient to pay Impositions and insurance premiums when due.

**“Moody’s”** means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

**“Mortgage”** means the Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of the date hereof, made by the Borrower to the Issuer and assigned to the Trustee covering the Project Facilities.

**“Notes”** means, collectively, the H-1 Note and the H-2 Note.

**“Obligations”** means any and all obligations of the Borrower for the payment of money including without limitation any and all (i) obligations for money borrowed, (ii) obligations evidenced by bonds, debentures, notes, guaranties or other similar instruments, (iii) construction contracts, installment sale agreements and other purchase money obligations in connection with the performance of work, sale of property or rendering of services, (iv) leases evidencing the acquisition of capital assets, (v) [intentionally omitted], (vi) reimbursement obligations in connection with letters of credit and other credit enhancement facilities, (vii) obligations for unfunded pension liabilities, (viii) guaranties of any such obligation of a third party, and (ix) any such obligations of third parties secured by assets of the Borrower; but excluding obligations

under contracts for supplies, services and pensions allocable to current Expenses during the current or future Fiscal Years in which the supplies are to be delivered, the services rendered or the pension paid.

**“OFAC Violation”** shall have the meanings ascribed to such term in Section 6.23 of the Loan Agreement.

**“Operating Reserve Fund”** means [the fund of that name created pursuant to Section 4.1(a) hereof] [[the Operating Reserve Fund created pursuant to Section 8.5 of the Loan Agreement prior to the occurrence of an Operating Reserve Trigger and thereafter the fund of that name created pursuant to Section 4.1(a) hereof]].

**“Operating Reserve Trigger”** shall have the meaning ascribed to such term in Section 8.5 of the Loan Agreement.]

**“Opinion of Bond Counsel”** means any opinion of Bond Counsel delivered pursuant to this Indenture with respect to the excludability of interest on the Tax-Exempt Bonds from gross income of the Holders thereof for federal income tax purposes or other matters specified in this Indenture. Each such opinion shall be addressed to the Trustee, the Majority Owner, the Controlling Person and the Issuer.

**“Origination Fee”** shall have the meaning given to such term in Section 2.2(a) of the Loan Agreement.

**“Outstanding”** means, when used with reference to the Bonds at any date as of which the amount of outstanding Bonds is to be determined, all Bonds that have been authenticated and delivered by the Trustee hereunder, except:

- (i) Bonds cancelled or delivered for cancellation at or prior to such date;
- (ii) Bonds deemed to be paid in accordance with Section 5.2 hereof;
- (iii) Bonds in lieu of which others have been authenticated under Sections 2.8 and 2.9 hereof; [and]
- (iv) Bonds authorized but not yet drawn-down and delivered to Purchaser; and]

(iv)/(v) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the Holders of a specified percentage of Outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer, the Borrower or any Affiliate of the Borrower; provided, however, that for purposes of any such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being outstanding only Bonds known by the Trustee by actual notice thereof to be so held; provided, further, that if all of the Bonds are at any time held by or for the account of the Borrower or any Affiliate of the Borrower, then such Bonds shall be deemed to be Outstanding at such time for the purposes of this subparagraph (iv)/(v).

**“Partnership Agreement”** means the Amended and Restated Agreement of Limited Partnership of the Borrower dated as of \_\_\_\_\_, 2020, as may be amended, modified or supplemented from time to time.

**“Payment and Performance Bonds”** shall mean dual-obligee payment and performance bonds (or a letter of credit in lieu of such bonds) relating to the Contractor (or, if required by Controlling Person, each contractor that enters into a Major Contract with Borrower), issued by a surety company or companies authorized to do business in the State and acceptable to Controlling Person, and in form and content reasonably acceptable to Controlling Person, in each case in an amount not less than the full contract price; together with a dual obligee and modification rider naming the Controlling Person (or at Controlling Person’s election, the Trustee) and in the form and substance acceptable to Controlling Person which shall be attached thereto.

**“PBGC”** shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

**“Permitted Encumbrances”** means only:

- (i) the Regulatory Agreement;
- (ii) the Mortgage;
- (iii) leases of individual residential units to tenants;
- (iv) liens securing the Subordinate Debt;
- (v) Impositions not yet due and payable or being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person, and any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed;
- (vi) statutory liens of landlords and liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested by appropriate proceedings promptly initiated and diligently conducted if (1) such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided (2) such liens have been bonded or the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person; and
- (vii) the exceptions listed in the Title Policy and any other matters affecting title which are approved in writing by the Controlling Person.

**“Permitted Investments”** means any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein, but only to the extent that the same are acquired at Fair Market Value (except as provided in Section 4.8 hereof):

- (i) Bonds or other obligations of the United States;
- (ii) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;

(iii) Direct obligations issued by the United States or obligations guaranteed in full as to principal and interest by the United States or repurchase agreements with a qualified depository bank or securities dealers fully collateralized by such obligations, maturing on or before the date when such funds will be required for disbursement;

(iv) Obligations of state and local government and municipal bond issuers, which are rated investment-grade by either S&P or Moody's or other non-rated obligations of such issuers guaranteed or credit enhanced by a Person whose long-term debt or long-term deposits or other obligations are rated investment-grade by either S&P or Moody's;

(v) Prime commercial paper rated either "A-1" by S&P or "P-1" by Moody's and, if rated by both, not less than "A-1" by S&P and "P-1" by Moody's;

(vi) Bankers' acceptances drawn on and accepted by commercial banks;

(vii) Interests in any money market fund or trust, the investments of which are restricted to obligations described in clauses (i) through (vi) of this definition or obligations determined to be of comparable quality by the board of directors of such fund or trust, including, without limitation, any such money market fund or trust for which the Trustee, an affiliate of the Trustee, a Qualified Custodian or an affiliate of the Qualified Custodian serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian;

(viii) The depository accounts established pursuant to the Depository Agreement; and

(ix) Such other investments selected by the Borrower as may be authorized by applicable law and consented to by the Controlling Person.

**"Permitted Transfer"** means (i) a transfer by devise or descent or by operation of law upon the death of a direct or indirect owner in the Borrower, so long as such transfer does not result in a change of management or control of the affected entity, (ii) the transfer of a direct or indirect ownership interest in the General Partner for estate planning purposes, so long as such transfer does not result in a change of management or control of the General Partner, (iii) [transfers made for estate planning purposes of any individual's direct or indirect interest (but no more than 49% of the aggregate direct or indirect interest) in AHG Hilltop, LLC, a California limited liability company, to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant], (iv) a transfer of partnership interests in Borrower to the Investor Limited Partner and/or the Special Limited Partner, (v) a transfer of the limited partner interests of the Investor Limited Partner and/or the Special Limited Partner in the Borrower to an Affiliate of such Investor Limited Partner and/or Special Limited Partner, (vi) a transfer of indirect shares or ownership interests in the Investor Limited Partner so long as Investor Limited Partner remains controlled directly or indirectly by an Affiliate of the Investor Limited Partner or Boston Capital Partners, Inc., (vii) a transfer of any shares or ownership interests in the Investor Limited Partner and/or Special Limited Partner after the contributions by the owners of the Investor Limited Partner of all installments of capital contributions required to be made by the Investor Limited Partner under the Partnership Agreement, (viii) [replacement of the General Partner or] transfers of any interests in the General Partner so long as the Guarantor, or [an affiliate] of the Guarantor, controls the Borrower after such transfer occurs, (ix) [replacement of the Managing General Partner with another corporation that is exempt from federal income taxation pursuant to Section 501(c)(3) of the Tax Code], (x)

the removal and replacement of the General Partner pursuant to the Partnership Agreement, (xi) after the payment in full of all capital contributions under the Partnership Agreement, any other transfer, assignment, pledge, hypothecation or conveyance of limited partner interests in, or change in the limited partners of, the Borrower (and the owners of such limited partners) not described above, in accordance with the terms of the Partnership Agreement, or (xii) the extension, amendment or replacement of commercial leases approved by the Controlling Person.

**“Person”** means any individual, for-profit or not-for-profit corporation, partnership, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

**“Plans and Specifications”** means, with respect to the Project Facilities, the plans and specifications for the construction of Improvements prepared by the Architect and more particularly identified on Schedule 5 attached to the Loan Agreement and approved by the Controlling Person, as the same may be amended, modified or supplemented as permitted under the Loan Agreement through Change Orders or otherwise.

**“Principal Payment Date”** means the first (1st) calendar day of each month, commencing on the First Principal Payment Date.

**“Project Costs”** has the meaning given to such term in the Regulatory Agreement.

**“Project Facilities”** means the [9] acres of land and the multifamily apartment housing facilities consisting of a total of 113 units and related personal property and equipment, located at 922-944 Euclid Avenue, San Diego, California 92114, the acquisition, construction and development of which are being financed by the proceeds of the Bonds.

**“Project Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Proposed Budget”** shall have the meaning given to such term in Section 6.24 of the Loan Agreement.

**“Punchlist Items”** means any items necessary at the time of the issuance of a temporary use and occupancy permit to complete fully the construction of the Project Facilities in accordance with the Plans and Specifications for the Project Facilities, or required for the issuance of a final certificate of occupancy or its equivalent.

**“Purchase Agreement”** means the Bond Purchase Agreement, dated October \_\_\_\_, 2020, among the Issuer, the Borrower, and the Purchaser, relating to the initial sale of the Bonds.

**“Purchaser”** means Western Alliance Business Trust, or its designated affiliate, together with its successors and assigns.

**“Qualified Custodian”** means a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000.

**“Qualified Project Costs”** has the meaning given to such term in the Regulatory Agreement.

**“Rate Determination Date”** means the Issue Date and each Interest Payment Date thereafter until the Stabilization Date.

**“Rebate Amount”** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement.

**“Rebate Analyst”** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement and shall be reasonably acceptable to the Controlling Person.

**“Rebate Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Rebate Report”** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement.

**“Record Date”** means with respect to each Interest Payment Date, the Trustee’s close of business on the day before such Interest Payment Date occurs, regardless of whether such day is a Business Day.

**“Redemption Fund”** means the account of that name created pursuant to Section 4.1(a) hereof.

**“Register”** means the register of the record Owners of Bonds maintained by the Trustee.

**“Regulatory Agreement”** means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of October 1, 2020, by and between the Issuer and the Borrower, as the same may be amended, modified or supplemented from time to time.

**“Related Person”** with reference to any Substantial User, means a “related person” within the meaning of Section 147(a)(2) of the Code.

**“Rents”** shall have the meaning assigned to such term in the Mortgage.

**“Repayments”** means all payments of principal and interest on the Loan required to be paid by the Borrower to the Trustee, as the assignee of the Issuer pursuant to the Loan Agreement.

**“Replacement Reserve Agreement”** means the Replacement Reserve and Security Agreement, dated as of the date hereof, made by the Borrower in favor of the Trustee.

**“Replacement Reserve Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Required Equity Funds”** means all installments of equity contributions to be made to the Borrower by the Investor Limited Partner through achievement of Stabilization [and funding of the Operating Reserve Fund], subject to and in accordance with the terms of the Partnership Agreement.

**“Requisition”** means a requisition in the form attached to the Loan Agreement as Exhibit B, together with all invoices, bills of sale, schedules, applications for payment, certifications and other submissions required for the disbursement of the proceeds of the Bonds from the Project Fund pursuant to the terms hereof.

**“Reserved Rights”** means the rights of the Issuer pursuant to Sections 2.2(c), 2.5, 4.2, 6.10, 10.5 and 10.13 of the Loan Agreement and the rights of the Issuer pursuant to other sections of the Loan Agreement providing that notices, reports and other statements be given to the Issuer.

**“Retainage”** means a holdback of \_\_\_\_ percent (\_\_\_\_%) of the hard costs of construction of the Improvements under each contract or subcontract. [Conform to Construction Contract.]

**“Sale”** means the direct or indirect sale, agreement to sell, assignment, transfer, conveyance, hypothecation, lien, mortgage, grant of a security interest in or a deed to secure debt or deed of trust with respect to, encumbrance, lease, sublease or other disposition of the Project Facilities, or any part thereof or interest therein whether voluntary, involuntary, by operation of law or otherwise, other than (i) the leasing of individual residential units to tenants, (ii) the extension, amendment, renewal or replacement of commercial leases currently in effect, and (iii) the grant of easements for utilities and similar purposes in the ordinary course provided, such easements do not impair the use of the Project Facilities or diminish the value of the Project Facilities. “Sale” shall also include the direct or indirect sale, transfer, assignment, pledge, hypothecation or conveyance of legal or beneficial ownership of (a) equity ownership interests in the Borrower, (b) a controlling interest in the aggregate, at any time or times, of the equity ownership interests in the General Partner, or (c) the substitution of a new General Partner in the Borrower without the Controlling Person’s written consent, which it may withhold in its sole discretion; provided, however, that “Sale” shall not include a Permitted Transfer.

**“S&P”** means S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC, a limited liability company organized and existing under the laws of the State of New York, its successors and assigns and, if such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

**“Secondary Market Transaction”** shall have the meaning given to such term in Section 10.12(a) of the Loan Agreement.

**“Securities”** shall have the meaning given to such term in Section 10.12(a) of the Loan Agreement.

**“Securities Depository”** means The Depository Trust Company and any substitute for or successor to such securities depository that shall maintain a Book-Entry System with respect to the Bonds.

**“Securities Depository Nominee”** means the Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the Register the Bonds to be delivered to such Securities Depository during the continuation with such Securities Depository of participation in its Book-Entry System.

**“Security”** shall have the meaning given to such term in the Granting Clauses of this Indenture.

**“Security Interest”** or **“Security Interests”** means the security interests created herein and shall have the meanings set forth in the U.C.C.

**“Special Limited Partner”** means BCCC, Inc., a Massachusetts corporation, and its successors and assigns in such capacity pursuant to the Partnership Agreement.

**“Stabilization”** means the point at which (i) the Improvements have been ninety percent (90%) occupied by qualified tenants meeting the requirements of the Bond Documents in each of the prior three (3) consecutive months; (ii) the ratio of Stabilized NOI in each of the prior three (3) consecutive months to maximum principal, interest, Issuer fees and Trustee fees payable in any month on the amount of Bonds Outstanding equals or exceeds 1.15 to 1.0; (iii) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be then continuing under the Bond Documents; (iv) the Project Facilities shall have achieved Final Completion; (v) the ALTA Survey has been delivered pursuant to Section 6.9(l) of the Loan Agreement; [and (vi) the Borrower shall have deposited an amount equal to approximately \$330,000, or such other amount as approved by the Controlling Person, in the Operating Reserve Fund;] and (vii) \$\_\_\_\_\_ of the Bonds (including all the Taxable Bonds) have been redeemed pursuant to Section 3.4(b)(vii), all as determined or approved by the Controlling Person.

**“Stabilization Date”** means the earlier to occur of: (i) the date specified by the Controlling Person that all of the conditions to achievement of Stabilization have been satisfied; or (ii) February 1, 2023, as the same may be extended pursuant to Section 6.37 of the Loan Agreement.

**“Stabilized NOI”** means, for any period, (x) Effective Gross Revenues for such period less (y) Expenses for such period, as determined or approved by the Controlling Person.

**“State”** means the State of California.

**“Subordinate Debt”** means, collectively, (i) that certain loan in the amount of \$\_\_\_\_\_ from \_\_\_\_\_ to the Borrower and (ii) that certain loan in the amount of \$\_\_\_\_\_ from \_\_\_\_\_ to the Borrower, evidenced and secured by the Subordinate Debt Documents.

**“Subordinate Debt Documents”** means all documents evidencing or securing the Subordinate Debt or otherwise executed and delivered by the Borrower in connection therewith or as a condition of the advance of the proceeds thereof, together with a subordination agreement executed by each lender of such Subordinate Debt, all in form and substance acceptable to the Controlling Person.

**“Subordination Agreement”** means, collectively, each Subordination Agreement dated on or about the Issue Date among the Issuer, the Trustee, the Borrower and a holder of Subordinate Debt, as subordinate lender, as may be amended, modified or supplemented from time to time.

**“Substantial User”** means, with respect to any “facilities” (as the term “facilities” is used in Section 144(a) of the Code), a “substantial user” of such “facilities” within the meaning of Section 147(a) of the Code.

**“Surplus Bond Proceeds”** means all moneys and any unliquidated investments remaining in the Bond Proceeds Account of the Project Fund upon Final Completion and after payment in full of the Project Costs (except for proceeds of the Bonds being retained to pay for Project Costs not then due and payable for which the Trustee shall have retained amounts pursuant to the Loan Agreement).

**“Surplus Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Tax and Insurance Escrow Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Tax Certificate”** means, collectively, the Certificate as to Arbitrage dated the Issue Date executed by the Issuer and Borrower, and the Certificate Regarding Use of Proceeds dated the Issue Date executed by the Borrower, as each may be amended, modified or supplemented from time to time.

**“Tax-Exempt Bonds”** shall have the meaning given to such term in the recitals to this Indenture.

**“Taxable Bonds”** shall have the meaning given to such term in the recitals to this Indenture.

**“Third Party Costs”** means the ongoing fees of the Issuer, the Trustee the Rebate Analysts or any other third party in connection with the Bonds.

**“Title Company”** means the title insurance company insuring the lien of the Mortgage on the Issue Date together with any successor title company approved by the Controlling Person.

**“Title Policy”** means the mortgagee’s title insurance policy relating to the Project Facilities issued by the Title Company to the Trustee, effective on the date of recording of the Mortgage, as the same may be subsequently down-dated or endorsed from time to time, with the approval of the Controlling Person.

**“Trustee”** shall have the meaning given to such term in the first paragraph of this Indenture.

**“U.C.C.”** means the Uniform Commercial Code of the State as now in effect or hereafter amended.

**“Underwriter Group”** shall have the meaning given to such term in Section 10.12 of the Loan Agreement.

**“Underwritten Management Fee”** means \_\_\_% of gross income received from the Project Facilities on account of rents, service fees, late charges, penalties and other charges under Leases.

**“Work”** means the items of construction of the Improvements required to be performed under the Plans and Specifications for the Improvements.

**Section 1.2 Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Indenture:

(a) All terms defined in the Loan Agreement and not defined herein shall have the meaning given to such terms in the Loan Agreement.

(b) Words importing the singular number shall include the plural number and vice versa.

(c) The table of contents, captions, and headings herein are for convenience of reference only and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

(d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(e) All references in this Indenture to particular Articles or Sections are references to Articles or Sections of this Indenture, unless otherwise indicated.

## **ARTICLE II**

### **SOURCE OF PAYMENTS, GENERAL TERMS AND PROVISIONS OF THE BONDS**

**Section 2.1 Ratably Secured.** All Bonds issued hereunder are and are to be, to the extent provided in this Indenture, equally and ratably secured by this Indenture without preference, priority or distinction on account of the actual time or times of the authentication, delivery or maturity of the Bonds so that subject as aforesaid, all Bonds at any time Outstanding shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date.

**Section 2.2 Security.** The Bonds and the interest and any premium thereon shall be limited obligations of the Issuer as provided in Section 10.9 hereof, and shall be secured by and payable from the Security pledged and assigned to the Trustee by the Issuer pursuant to the Granting Clauses hereof.

**Section 2.3 Payment of Bonds and Performance of Covenants.** The Issuer shall promptly pay, but only out of the Security, the principal of, premium, if any, and interest on the Bonds at the place, on the dates and in the manner provided in the Bonds. The Issuer shall promptly perform and observe all covenants, undertakings and obligations set forth herein, in the Bonds or in the other Bond Documents to which the Issuer is a party on its part to be performed or observed. The Issuer shall fully cooperate with the Trustee in the enforcement by the Trustee of any such rights granted to the Issuer under the Loan Agreement and the other Bond Documents to which the Issuer is a party.

#### **Section 2.4 Execution; Limited Obligation.**

(a) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Executive of the Issuer. In case any officer whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such manual or facsimile signatures shall nevertheless be valid and sufficient for all purposes.

(b) The Bonds shall be limited obligations of the Issuer. The Bonds and the interest thereon and redemption premium, if any, shall not be deemed to constitute or create an indebtedness, liability or obligation of the Issuer, the State or any political subdivision or agency thereof within the meaning of any State constitutional provision or statutory limitation or a pledge of the faith and credit or the taxing power of the State or any such political subdivision or agency.

The Bonds and the interest thereon are payable solely from and secured by the Security, all as described in and subject to limitations set forth in this Indenture, for the equal and ratable benefit of the Holders, from time to time, of the Bonds.

**Section 2.5 Certificate of Authentication.** No Bonds shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of authentication, substantially in the form as set forth in the form of Bond referred to in Sections 2.6 and 3.1 hereof, executed by an authorized representative of the Trustee and such certificate on any Bond issued by the Issuer shall be conclusive evidence and the only competent evidence that it has been duly authenticated and delivered hereunder.

**Section 2.6 Form of Bonds.**

(a) The Bonds, the Trustee's certificate of authentication and the form of assignment shall be in substantially the forms set forth as Exhibit A-1 or Exhibit A-2 hereto, as applicable, with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or are required by law and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by the officer of the Issuer executing such Bonds, as evidenced by such officer's execution of the Bonds.

(b) Bonds shall be in either typewritten or printed form, as the Borrower shall direct, on behalf of the Issuer, with approval of the Trustee. Any expenses, including but not limited to expenses of printing, incurred in connection with the preparation of the form of the Bonds shall be paid by the Borrower.

**Section 2.7 Delivery of Bonds.**

(a) Upon the execution and delivery hereof, the Issuer shall execute the Bonds and deliver them to the Trustee, and the Trustee shall authenticate the Bonds and deliver them through the Securities Depository in the manner described in Section 2.11(a) hereof.

(b) Prior to the delivery by the Trustee of the Bonds, there shall be filed with the Trustee:

(i) A duly certified copy of all resolutions adopted and proceedings had by the Issuer authorizing execution of this Indenture, the Loan Agreement and the other Bond Documents to which the Issuer is a party and the issuance of the Bonds; and

(ii) An original executed counterpart of the Bond Documents (and with respect to the Notes, endorsed without recourse by the Issuer to the Trustee); and

(iii) Copies of any Financing Statements required to be filed to perfect the security interests in the Security or under Section 3.2 of the Loan Agreement; and

(iv) A copy of completed IRS Form 8038 to be filed by or on behalf of the Issuer pursuant to Section 149(e) of the Code; and

(v) An original executed counterpart of the Tax Certificate; and

(vi) An Opinion of Bond Counsel or Counsel to the Issuer to the effect that this Indenture, the Loan Agreement and the Purchase Agreement have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding agreements of the Issuer; and

(vii) An approving Opinion of Bond Counsel that the Bonds have been duly authorized and validly issued, that this Indenture creates a valid lien on the Security, that interest on the Tax-Exempt Bonds will be excludable from gross income of the Holders thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax, that the Bonds are not required to be registered under the Securities Act of 1933, as amended, and that the Trust Indenture need not be qualified under the Trust Indenture Act of 1939, as amended; and

(viii) An opinion of Counsel for the Borrower to the effect that the Continuing Disclosure Agreement and the Bond Documents to which it is a party have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower and such other opinions as are required by the Purchase Agreement or reasonably requested by the Controlling Person or the Majority Owner; and

(ix) A pro forma title insurance policy reasonably acceptable to the Controlling Person; and

(x) Reliance letters for, or address of the opinions to, the Controlling Person and Majority Owner of each of the opinions filed with the Trustee; and

(xi) An Investor Letter executed by the Purchaser; and

(xii) Such other documents as may be required by the Issuer, Trustee, Bond Counsel, or Controlling Person.

(c) Upon receipt of the foregoing, the Trustee shall authenticate and deliver the Bonds as provided in the written instructions of the Issuer to the Trustee.

**Section 2.8 Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond of the same maturity, interest rate, principal amount and tenor in lieu of and in substitution for the Bond mutilated, lost, stolen or destroyed; provided, that there shall be first furnished to the Trustee evidence satisfactory to it and the Issuer of the ownership of such Bond and of such loss, theft or destruction (or, in the case of a mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee), together with indemnity satisfactory to the Trustee and the Issuer and compliance with such other reasonable regulations as the Issuer and the Trustee may prescribe. If any such Bond shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Bond the Issuer may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond with their reasonable fees and expenses in connection with this Section (including attorney's fees, costs and expenses, if any).

## **Section 2.9 Exchangeability and Transfer of Bonds; Persons Treated as Owners.**

(a) The Register and all other records relating to the registration of the Bonds and the registration of transfer of the Bonds as provided herein shall be kept by the Trustee.

(b) Subject to paragraph (h) hereof, any Holder of a Bond, in person or by his/her duly authorized attorney, may transfer title to his/her Bond on the Register upon surrender thereof at the principal office of the Trustee, by providing the Trustee with a written instrument of transfer (in substantially the form of assignment attached to the Bond) executed by the Holder or such Holder's attorney, duly authorized in writing, and thereupon, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same aggregate principal amount and tenor as the Bond surrendered (or for which transfer of registration has been effected) and of any Authorized Denomination or Authorized Denominations.

(c) Bonds may be exchanged upon surrender thereof at the principal office of the Trustee with a written instrument of transfer satisfactory to the Trustee executed by the Holder or such Holder's attorney duly authorized in writing, for an equal aggregate principal amount of Bonds of the same tenor as the Bonds being exchanged and of any Authorized Denomination or Authorized Denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds that the Holder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

(d) Such registrations of transfer or exchanges of Bonds shall be without charge to the Holders of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder of the Bond requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Trustee for any such registration of transfer or exchange and all reasonable expenses of the Issuer shall be paid by the Borrower.

(e) 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 either principal or interest shall be made only to or upon the order of the registered owner thereof or his/her duly authorized attorney, but such registration may be changed as hereinabove provided. 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 so paid.

(f) All Bonds issued upon any registration of transfer or exchange of Bonds shall be legal, valid and binding limited obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Bonds surrendered upon such registration of transfer or exchange.

(g) Notwithstanding the foregoing, for so long as the Bonds are held under the Book-Entry System, transfers of beneficial ownership will be effected pursuant to rules and procedures established by the Securities Depository, as more fully described in Section 2.11 hereof.

(h) Notwithstanding anything contained to the contrary herein, the Bonds may be transferred by a Holder to an Approved Buyer upon delivery by the proposed transferee to the Trustee of an Investor Letter executed by such proposed transferee. There shall be not more than 15 Holders of the Bonds (including holders of any participations therein) at any one time without

the prior written consent of the Issuer. The Trustee shall not authenticate or register a Bond unless the foregoing conditions of this paragraph (h) have been satisfied. Failure to comply with such conditions shall cause any purported transfer to be null and void.

**Section 2.10 Non-presentment of Bonds.** In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, if funds sufficient to pay the principal of and interest on such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, all liability of the Issuer and the Borrower to the owner thereof for the payment of such Bond or portion thereof as the case may be, shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee, subject to any applicable escheat laws, to hold such fund or funds uninvested in the Bond Fund, without liability to the Holder of such Bond for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his/her part on, or with respect to, said Bond, or portion thereof.

**Section 2.11 Book-Entry System.**

(a) On the date of issuance and delivery of the Bonds, the Bonds shall be certificated form registered in the name of the initial Purchaser. During any period that the Book-Entry System is in effect one Bond in the aggregate principal amount of the Bonds and registered in the name of the Securities Depository Nominee will be issued and deposited with the Securities Depository and held in its custody. The Book-Entry System will be maintained by the Securities Depository and the DTC Participants and Indirect Participants and will evidence beneficial ownership of the Bonds in Authorized Denominations, with registration of transfers of ownership effected on the records of the Securities Depository, the DTC Participants and the Indirect Participants pursuant to rules and procedures established by the Securities Depository, the DTC Participants and the Indirect Participants. The principal of and interest on each Bond shall be payable to the Securities Depository Nominee or any other person appearing on the Register as the registered Holder of such Bond or his/her registered assigns or legal representatives at the principal office of the Trustee. So long as the Book-Entry System is in effect, the Securities Depository will be recognized as the Holder of the Bonds for all purposes except as otherwise provided herein. Transfer of principal and interest payments or notices to DTC Participants and Indirect Participants will be the responsibility of the Securities Depository, and transfer of principal and interest payments or notices to Beneficial Owners will be the responsibility of the DTC Participants and the Indirect Participants. No other party will be responsible or liable for such transfers of payments or notices or for maintaining, supervising or reviewing such records maintained by the Securities Depository, the DTC Participants or the Indirect Participants. While the Securities Depository Nominee or the Securities Depository, as the case may be, is the registered owner of the Bonds, notwithstanding any other provisions set forth herein, payments of principal of and interest on the Bonds shall be made to the Securities Depository Nominee or the Securities Depository, as the case may be, by wire transfer in immediately available funds to the account of said Holder as may be specified in the Register maintained by the Trustee or by such other method of payment as the Trustee may determine to be necessary or advisable with the concurrence of the Securities Depository.

(b) If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds, or (ii) the Borrower, on behalf of the Issuer, with the consent of the Controlling Person, elects to remove the Securities Depository, then the Borrower, on behalf of the Issuer, with the consent of the Controlling Person, may appoint a new Securities Depository.

(c) If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds or has been removed and the Borrower fails to appoint a new Securities Depository, (ii) the Controlling Person or the Borrower, with the consent of the Controlling Person, determines that continuation of a Book-Entry System of evidence and transfer of ownership of the Bonds would adversely affect the interests of the Beneficial Owners, or (iii) 100% of the Bondholders so elect, the Book-Entry System will be discontinued, in which case the Trustee will deliver replacement Bonds in the form of fully registered certificates in Authorized Denominations in exchange for the Outstanding Bonds as required by the Trustee and the Beneficial Owners.

**Section 2.12 Authority.** The Issuer represents and warrants that (i) it is duly authorized under the laws of the State to issue the Bonds, and to execute, deliver and perform the terms of the Loan Agreement and this Indenture; (ii) all action on its part for the issuance of the Bonds and execution and delivery of the Bond Documents to which it is a party has been duly taken; (iii) the Bonds, upon issuance and authentication, and the Bond Documents to which it is a party upon delivery, assuming that they are the respective legal, valid, binding and enforceable obligations of the other parties thereto, shall be valid and enforceable obligations of the Issuer in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles; (iv) it has not heretofore conveyed, assigned, pledged, granted a security interest in or otherwise disposed of the Security; (v) it has not received any payments under the Loan Agreement; (vi) without making any independent investigation, it has no knowledge of any right of set-off, defense or counterclaim to payment or performance of the terms or conditions of the Loan Agreement; and (vii) to the best knowledge of the Issuer, the execution, delivery and performance of the Bond Documents to which it is a party and issuance of the Bonds are not in contravention of law or any agreement, instrument, indenture or other undertaking to which it is a party or by which it is bound and no other approval, consent or notice from any governmental agency is required on the part of the Issuer.

**Section 2.13 No Litigation.** The Issuer represents and warrants that, to the best knowledge of the Issuer, after due inquiry, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, this Indenture or the other Bond Documents to which the Issuer is a party, or (ii) the exclusion from gross income of interest on the Tax-Exempt Bonds.

**Section 2.14 Further Assurances.** Except for any amendment, modification, supplement, waiver or consent related to the Reserved Rights, the Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement without the prior written consent of the Trustee, which consent shall be governed by Article VIII hereof.

**Section 2.15 Immunities and Limitations of Responsibility of Issuer.** The Issuer shall be entitled to the advice of Counsel, and the Issuer shall be wholly protected as to action taken or omitted in good faith (which shall not include actions taken or omitted that constitute gross negligence or willful misconduct) in reliance on such advice. The Issuer may rely conclusively on any communication or other document furnished to it hereunder and reasonably believed by it to be genuine. The Issuer shall not be liable for any action (a) taken by it in good faith and reasonably believed by it to be within its discretion or powers hereunder, or (b) in good faith omitted to be taken by it because such action was reasonably believed to be beyond its

discretion or powers hereunder, or (c) taken by it pursuant to any direction or instruction by which it is governed hereunder, or (d) omitted to be taken by it by reason of the lack of any direction or instruction required hereby for such action; nor shall it be responsible for the consequences of any error of judgment reasonably made by it. The Issuer shall in no event be liable for the application or misapplication of funds or for other acts or defaults by any Person, except for the willful misconduct of its own members, agents, officers and employees. When any payment or consent or other action by it is called for hereby, it may defer such action pending receipt of such evidence (if any) as it may require in support thereof. The Issuer shall not be required to take any remedial action (other than the giving of notice) unless indemnity in a form acceptable to the Issuer is furnished for any cost or liability to be incurred in connection with such remedial action, other than liability for failure to meet the standards set forth in this Section.

**Section 2.16 No Other Encumbrances; No Dissolution.** The Issuer covenants that, (i) except as otherwise provided herein and in the Loan Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security, and (ii) to the fullest extent permitted by applicable law, for so long as the Bonds are Outstanding, it will not dissolve, terminate or permit itself to be dissolved or terminated without a successor to its obligations hereunder and under the Bonds having assumed its obligations hereunder and under the Bonds.

**Section 2.17 No Personal Liability.** No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the Bonds or the other Bond Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, member, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, member, officer, agent, attorney or employee as such, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into in the Bonds or between the Issuer and the Trustee, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such trustee, member, officer, agent, attorney and employee is, by the execution of this Indenture and as a condition of, and as part of the consideration for, the execution of this Indenture, expressly waived and released.

**Section 2.18 Recycling Transactions.** Notwithstanding any provision of this Indenture or the Bonds to the contrary, the Issuer shall be permitted to direct Note prepayments to be transferred to a custodian or trustee selected by the Issuer, in lieu of application to prepay a like portion of the Bonds, so long as the Issuer simultaneously causes other funds to be applied to prepay such portion of the Bonds. The preceding provisions shall apply only for purposes of preserving or "recycling" private activity bond volume cap in accordance with Section 146(i)(6) of the Code.

### **ARTICLE III INTEREST RATE, PAYMENT AND REDEMPTION OF BONDS**

**Section 3.1 Authorized Amount of Bonds.** No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Tax-Exempt Bonds that may be issued and Outstanding hereunder is expressly limited to \$\_\_\_\_\_. The Tax-Exempt Bonds shall be designated "Housing Authority of the City of San

Diego Multifamily Housing Revenue Bonds (The Orchard at Hilltop), Series 2020H-1.” The total principal amount of Taxable Bonds that may be issued and Outstanding hereunder is expressly limited to \$\_\_\_\_\_. The Taxable Bonds shall be designated “Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (The Orchard at Hilltop), Taxable Series 2020H-2.” The form of Tax-Exempt Bond attached as Exhibit A-1 to this Indenture shall be the form of Tax-Exempt Bonds referred to herein, and the form of Taxable Bond attached as Exhibit A-2 to this Indenture shall be the form of Taxable Bonds referred to herein. The Bonds shall be issued as draw-down Bonds in accordance with Section 3.2(e) below.

### **Section 3.2 Issuance of Bonds.**

(a) The Bonds shall bear interest from the Issue Date until paid or exchanged, as applicable, at the rate set forth in Section 3.3 hereof computed on the basis set forth in the form of the Bonds, and the Bonds shall mature, unless sooner paid, on the Maturity Date, on which date all unpaid principal of and interest on the Bonds shall be due and payable.

(b) The Bonds shall be issued as fully registered bonds without coupons in Authorized Denominations only. The Bonds shall be numbered from R-1 upwards bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Trustee.

(c) The Bonds shall be dated the Issue Date and initially issued as provided herein and in the written instructions from the Issuer. Interest on the Bonds shall be computed from the most recent Interest Payment Date to which interest has been paid or duly provided for or if no interest has been paid or provided for, from the Issue Date. The Bonds shall mature on the Maturity Date, on which date all unpaid principal of and interest on the Bonds shall be due and payable. The Bonds are subject to mandatory sinking fund redemption as provided in Section 3.4(c) hereof.

(d) The principal of and the interest on the Bonds shall be payable in lawful currency of the United States. The principal of the Bonds shall be payable at the principal office of the Trustee upon presentation and surrender of the Bonds; provided, however, that Bonds need not be presented for payment upon redemption pursuant to Section 3.4(c) of this Indenture. Payments of interest on the Bonds will be mailed to the persons in whose names the Bonds are registered on the Register at the close of business on the Record Date next preceding each Interest Payment Date; provided that, any Holder of a Bond or Bonds in an aggregate principal amount of not less than \$250,000 may, by prior written instructions filed with the Trustee (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments be made by wire transfer to an account in the continental United States or other means acceptable to the Trustee.

(e) The Bonds are issued as draw-down Bonds. The Purchaser shall fund the purchase price of the Bonds from time to time, in accordance with the Purchase Agreement, to provide funds for deposit in the Project Fund for the payment of requisitions therefrom. Draws on the Bonds will be allocated, first, to the Tax-Exempt Bonds until fully drawn and, second, to the Taxable Bonds. The initial purchase of Bonds by the Purchaser on the Issue Date will be in an amount equal to not less than \$55,000. The Trustee shall record amounts funded in such manner in the Bond recordkeeping system maintained by the Trustee. The Holders may request exchange of the Bonds for Bonds reflecting the principal draw-down from time to time in accordance with Section 2.9. Upon deposit by the Purchaser of each installment of the purchase price of each draw-down Bond, the aggregate amount of Bonds purchased shall be deemed

Outstanding and shall begin to accrue interest. Notwithstanding anything herein to the contrary, the aggregate purchase price of the Bonds funded by the Purchaser may not exceed the respective authorized amounts set forth in Section 3.1 and no additional amounts may be funded on the Tax-Exempt Bonds after the last day of the third calendar year following Issue Date unless there is delivered a Favorable Opinion of Bond Counsel. The Issuer and the Trustee acknowledge that the Borrower and the Purchaser have agreed pursuant to the Purchase Agreement that under certain circumstances the Bonds may be converted from a draw down bond issue to a fully funded issue, and each of the Issuer and the Trustee agrees to take all actions reasonably required of it in connection with such a conversion of the Bonds to a fully funded bond issue.

**Section 3.3 Interest Rate on Bonds.** The Bonds shall bear interest at the Bond Coupon Rate from the Issue Date to the date of payment in full of the Bonds, calculated in the manner set forth in the applicable form of the Bonds. Interest accrued on the Bonds shall be paid in arrears on each Interest Payment Date and on the Maturity Date and any date of redemption prior to the Maturity Date; provided however, that in the event that principal of or interest payable on the Bonds is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate, as more fully set forth in Section 6.8 hereof. The Indexing Agent will promptly after each Rate Determination Date notify the Issuer, the Trustee, the Borrower and the Controlling Person via electronic mail of the applicable Bond Coupon Rate. The determination of the Bond Coupon Rate by the Indexing Agent, absent manifest error, shall be conclusive and binding on the Bondholders, the Borrower, the Controlling Person and the Trustee.

**Section 3.4 Redemption of Bonds.**

(a) **Optional Redemption of Bonds.** The Bonds are subject to optional redemption in whole but not in part, at the direction of the Borrower upon not less than forty-five (45) days written notice to the Trustee and the Controlling Person (which notice shall be unconditional and irrevocable), in Authorized Denominations on any Interest Payment Date occurring on or after the First Optional Call Date, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed) equal to the principal amount thereof, plus accrued interest thereon to, but not including, the redemption date, as follows.

<u>Redemption Date</u>	<u>Redemption Price</u>
On and after the 12th anniversary of the Stabilization Date, to but excluding the 14th anniversary of the Stabilization Date	103%
On and after the 14th anniversary of the Stabilization Date, to but excluding the 16th anniversary of the Stabilization Date	102
On and after the 16th anniversary of the Stabilization Date, to but excluding the 17th anniversary of the Stabilization Date	101
Thereafter	100

(b) Mandatory Redemption of Bonds.

(i) The Bonds are subject to mandatory redemption from, and to the extent of, amounts on deposit in the Surplus Fund (subject to Section 4.4 hereof) on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture, following the deposit of Surplus Bond Proceeds in the Surplus Fund at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(ii) The Bonds are subject to mandatory redemption in whole or in part on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture after and to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project Facilities are deposited in the Project Fund and are not to be used to repair or restore the Project Facilities at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(iii) The Bonds are subject to mandatory redemption in part on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture, in the amount as specified by the Controlling Person to the Trustee necessary to cause the Project Facilities to meet the requirements of clause (ii) of the definition of "Stabilization," if the Project Facilities have not achieved Stabilization by the Stabilization Date at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(iv) The Bonds are subject to extraordinary mandatory redemption in whole or in part, at the direction of the Controlling Person to the Trustee and the Borrower, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture following receipt by the Trustee of the direction of the Controlling Person, within one hundred eighty (180) days of the occurrence of any of the following events:

(1) the Project Facilities shall have been damaged or destroyed to such an extent that in the judgment of the Controlling Person (A) it cannot reasonably be restored within a period of three (3) consecutive months to the condition thereof immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months, or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

(2) title in and to, or the temporary use of, all or substantially all of the Project Facilities shall have been taken under the exercise of the power of eminent domain by any Governmental Authority or any Person acting under Governmental Authority (including such a taking as, in the judgment of the Controlling Person, results in the Borrower being prevented thereby from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months);

(3) as a result of any changes in the Constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), any material provision of the Loan Agreement or the Bond Documents, in the judgment of the Controlling Person shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein;

(4) unreasonable burdens or excessive liabilities shall have been imposed on the Borrower with respect to the operations of the Project Facilities, including, without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Indenture that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

(5) changes which the Borrower cannot reasonably control or overcome in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Project Facilities for the purposes contemplated by the Loan Agreement shall have occurred or technological changes that the Borrower cannot reasonably overcome shall have occurred that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

(6) legal curtailment of the Borrower's use and occupancy of all or substantially all of the Project Facilities for any reason other than that set forth in (ii) above, which curtailment shall, in the judgment of the Controlling Person, prevent the Borrower from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months; or

(7) the Loan Agreement is terminated prior to its expiration for any reason, including the occurrence of an Event of Default under the Loan Agreement.

(v) The Tax-Exempt Bonds are subject to mandatory redemption in whole at a redemption price equal to 100% of the principal amount of the Tax-Exempt Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture within forty-five (45) days after the occurrence of a Determination of Taxability; provided, however, if mandatory redemption on account of a Determination of Taxability of less than all the Tax-Exempt Bonds would result, in the opinion of Bond Counsel, in the interest on the Tax-Exempt Bonds Outstanding following such mandatory redemption being excludable from the gross income of the Holders of such Tax-Exempt Bonds Outstanding, then the Tax-Exempt Bonds are subject to mandatory redemption upon the occurrence of a Determination of Taxability in the amount specified in such opinion, provided that such redemption must be in an Authorized Denomination.

(vi) The Bonds are subject to mandatory redemption in whole on any Interest Payment Date specified by the Controlling Person on or after the First Put Date, if the Controlling Person directs redemption by providing notice to the Borrower, the Trustee and the Issuer at least one hundred eighty (180) days prior to the Interest Payment Date specified in such

notice on which the Bonds are to be redeemed at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to, but not including, the redemption date. The direction of the Controlling Person to redeem the Bonds shall be irrevocable and shall be binding on the Holders of all of the Bonds and on any transferee(s) of such Holders.

(vii) The Bonds are subject to mandatory redemption in whole on any Interest Payment Date specified by the Controlling Person following Final Completion but not later than the Stabilization Date in the principal amount of \$\_\_\_\_\_ (including all the Taxable Bonds) at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed without premium or penalty plus interest accrued thereon to, but not including, the redemption date.

(c) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory sinking fund redemption in part on each Principal Payment Date, from amounts paid by the Borrower to the Trustee for deposit into the Redemption Fund pursuant to Sections 2.3(d) and 8.4 of the Loan Agreement (in the amount set forth on the Debt Service Schedule), at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(d) Selection of Bonds to be Redeemed. If less than all the Outstanding Bonds shall be called for redemption, the Trustee or, if the Bonds are held in the Book-Entry System, the Securities Depository shall select or arrange for the selection of Bonds to be redeemed by lot or otherwise in accordance with the procedures of the Securities Depository pursuant to its rules and procedures, in Authorized Denominations, provided that any Bond or portion thereof remaining Outstanding shall be in an Authorized Denomination. If the Bonds are held in the Book-Entry System, the Securities Depository shall, acting pursuant to its rules and procedures, reflect in said system the partial redemption and the Trustee shall (i) either exchange the Bond or Bonds held by the Securities Depository for a new Bond or Bonds in the appropriate principal amount, if such Bond is presented to the Trustee by the Securities Depository, or (ii) obtain from the Securities Depository a written confirmation of the reduction in the principal amount of the Bonds held by such Securities Depository.

(e) Debt Service Schedule; Partial Redemption of Bonds; Reamortization; [Conditional Notice of Redemption]. On or before the Stabilization Date, the Controlling Person shall deliver the Trustee and the Borrower a schedule of debt service payments providing for level debt service with respect to the Bonds remaining Outstanding after the Stabilization Date calculated on the basis of the fixed Bond Coupon Rate and a 480-month amortization schedule each commencing on the Stabilization Date with principal payments commencing on the First Principal Payment Date (with all remaining principal payable on the Maturity Date, if applicable). In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the operations office of the Trustee of such Bond by the Holder thereof or his attorney duly authorized in writing (with due endorsement for transfer or accompanied by written instrument of transfer in form satisfactory to the Trustee), the Issuer shall execute and the Trustee shall authenticate and deliver to or upon the order of such Holder, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Holder, of any Authorized Denomination of like tenor, or if less than the minimum Authorized Denomination, an amount necessary to equal the unredeemed portion of the principal amount of the Bond; provided, however, such surrender of Bonds shall not be required for payment of the redemption price pursuant to Section 3.4(c) hereof. For all purposes of this Indenture (including exchange and transfer), the Bond so issued in less than a minimum Authorized Denomination shall be deemed to have been issued in an Authorized Denomination.

Bonds so presented and surrendered shall be canceled in accordance with this Indenture. In the event of a partial redemption of Bonds other than pursuant to Section 3.4(c) hereof, the Debt Service Schedule shall be adjusted to provide for level debt service in respect of the Bonds remaining Outstanding after such partial redemption, on the basis of the number of months remaining in the original 480-month amortization schedule. The Controlling Person shall provide the Trustee and the Borrower with a new Debt Service Schedule reflecting such adjustment promptly following any such partial redemption. [Except for mandatory Bond Sinking Fund redemptions, prior to the date that the redemption notice is first given as aforesaid for the redemption of any Bonds, funds shall be placed on deposit with the Trustee to pay such Bonds and accrued interest thereon to the redemption date and the premium, if any, or such notice shall state that the redemption is conditional on such funds being deposited on or before the redemption date and that failure to make such deposit does not constitute an Event of Default hereunder.]

**Section 3.5 Notice of Redemption.** Notice of redemption shall be mailed by the Trustee by first-class mail, postage prepaid, not less than 20 days nor more than 60 days prior to the redemption date to each Holder of the Bonds to be redeemed in whole or in part at his/her last address appearing on the Register, with a copy to the Controlling Person, but no defect in or failure to give such notice of redemption to any person shall affect the validity of the redemption as to any other person; provided, however, that no notice of redemption shall be required for mandatory sinking fund redemption pursuant to Section 3.4(c) hereof. All Bonds properly called for redemption and for which monies for payment of the redemption price are held by the Trustee will cease to bear interest on the date fixed for redemption, and, thereafter, the Holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Trustee and a new Bond for any portion not redeemed. Notwithstanding the foregoing, with respect to any Bonds held under the Book Entry System, notices of redemption shall be provided in accordance with the rules and procedures established by the Securities Depository, as more fully described in Section 2.11 hereof.

**Section 3.6 Payments Due on Non-Business Days.** In any case where the date of maturity of, interest on or premium, if any, or principal of the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and, in the case of such payment, no interest shall accrue for the period from and after such date.

## **ARTICLE IV FUNDS**

**Section 4.1 Establishment of Funds and Accounts; Applications of Proceeds of the Bonds and Other Amounts.**

- (a) The following are hereby created and established as special trust funds:
  - (i) the Project Fund, consisting of:
    - (A) the Bond Proceeds Account (containing a Tax-Exempt Bond Proceeds Subaccount and Taxable Bond Proceeds Subaccount);
    - (B) the Costs of Issuance Account (containing a Bond Proceeds Subaccount and an Equity Subaccount);

- (C) the Equity Account;
- (D) the Capitalized Interest Account (containing a Bond Proceeds Subaccount and an Equity Subaccount);
- (E) the Insurance and Condemnation Proceeds Account;
- (F) the Subordinate Debt Proceeds Account;
- (ii) the Replacement Reserve Fund;
- (iii) the Tax and Insurance Escrow Fund;
- (iv) the Rebate Fund;
- (v) the Bond Fund;
- (vi) the Surplus Fund;
- (vii) the Redemption Fund;
- (viii) [the Operating Reserve Fund]; and
- (ix) Reserved.

(b) All the Accounts created by subsection (a) of this Section shall be held by the Trustee in trust for application only in accordance with the provisions of this Indenture.

(c) The proceeds of the sale of the Bonds (\$\_\_\_\_\_), [amounts received from the Borrower (\$\_\_\_\_\_)] and the initial installment of Required Equity Funds (\$[\_\_\_\_\_]) shall be applied as follows:

- (i) \$[\_\_\_\_\_], representing a portion of the proceeds of the sale of the Bonds, shall be deposited in the Tax-Exempt Bond Proceeds Subaccount of the Bond Proceeds Account of the Project Fund;
- (ii) a portion of the initial installment of Required Equity Funds in the amount of \$\_\_\_\_\_, shall be deposited in the Capitalized Interest Account of the Project Fund;
- (iii) \$\_\_\_\_\_, representing a portion of the initial installment of Required Equity Funds in the amount of \$\_\_\_\_\_, shall be deposited in the Equity Subaccount of the Costs of Issuance Account of the Project Fund;
- (iv) [\$[\_\_\_\_\_]], representing a portion of the initial installment of Required Equity Funds, shall be deposited in the Tax and Insurance Escrow Account of the Project Fund;]
- (v) [Reserved].

(vi) \$[\_\_\_\_\_], representing a portion of the initial installment of Required Equity Funds, shall be deposited in the Operating Reserve Fund;]

(vii) \$[\_\_\_\_\_], representing the balance of the initial installment of Required Equity Funds, shall be deposited in the Equity Account of the Project Fund;

(viii) \$[\_\_\_\_\_], representing the proceeds of the Subordinate Debt, shall be deposited in the Subordinate Debt Proceeds Account of the Project Fund.

#### **Section 4.2 Bond Fund.**

(a) There is hereby separately created and established with the Trustee the Bond Fund. There shall be deposited in the Bond Fund (i) all Repayments specified in the Loan Agreement to be deposited in the Bond Fund, including all proceeds resulting from the enforcement of the Security or its realization as collateral, and (ii) all other moneys received by the Trustee under the Loan Agreement for deposit by it in the Bond Fund.

(b) Moneys in the Bond Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the payment of the interest on the Bonds, for the payment of principal of the Bonds upon maturity, whether stated or accelerated, or upon mandatory or optional redemption prior to the Maturity Date, and for the payment of the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

(c) After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of any amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Bond Fund shall be paid to the Borrower.

#### **Section 4.3 Project Fund.**

(a) The Trustee shall deposit all amounts specified in Section 4.1 hereof into the specified accounts and subaccounts of the Project Fund. The Trustee will receive and deposit installments of the purchase price of the Tax-Exempt Bonds, as set forth in Section 3.2(e) hereof, into the Tax-Exempt Bond Proceeds Subaccount of the Bond Proceeds Account of the Project Fund. The Trustee will receive and deposit installments of the purchase price of the Taxable Bonds, as set forth in Section 3.2(e) hereof, into the Taxable Bond Proceeds Subaccount of the Bond Proceeds Account. [The Trustee will receive and deposit into the Equity Account amounts received as future installments of Required Equity Funds from the Investor Limited Partner [and the [General Partner]], in accordance with the provisions of the Partnership Agreement and the Assignment of Capital Contributions. [The Trustee shall deposit into the Subordinate Debt Proceeds Account of the Project Fund all future installments of the proceeds of the Subordinate Debt.] The Trustee shall deposit any other amounts received, to the extent not otherwise directed herein, in such Accounts as directed by Controlling Person.

(b) The Trustee is hereby authorized and directed to use moneys in the Project Fund for payment or reimbursement to the Borrower upon the receipt of a fully executed Requisition approved in writing by the Controlling Person in accordance with the provisions of the

Loan Agreement. Except as otherwise consented to in writing by the Controlling Person, through approval of a Requisition or otherwise, moneys in the Project Fund shall be applied for payment or reimbursement of Project Costs and at least 95% of moneys on deposit in the Tax-Exempt Bond Proceeds Subaccount of the Bond Proceeds Account of the Project Fund shall be applied to Qualified Project Costs. After Final Completion of the Project Facilities, but in no event later than the Stabilization Date, all Surplus Bond Proceeds remaining in the Bond Proceeds Account of the Project Fund shall be transferred to the Surplus Fund. All remaining amounts in the Equity Account, and the Subordinate Debt Proceeds Account of the Project Fund upon Stabilization shall be paid to the Borrower upon receipt of the prior written approval of the Controlling Person, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) The Trustee shall and is hereby authorized to transfer funds from the Capitalized Interest Account to the Bond Fund to pay interest on the Bonds accruing up to and including: (i) the Completion Date with respect to amounts in the Bond Proceeds Subaccount; and (ii) achievement of Stabilization with respect to the Equity Subaccount without submission of any Requisition. With respect to any such transfer, the Trustee shall first transfer amounts from proceeds of the sale of the Bonds. The Trustee shall transfer any Surplus Bond Proceeds remaining in the Capitalized Interest Account after Final Completion of the Project Facilities, but in no event later than the Stabilization Date, to the Surplus Fund.

(d) Amounts in the Costs of Issuance Account shall be disbursed by the Trustee on the Issue Date and thereafter only to pay costs of issuance pursuant to a closing memorandum attached to a Requisition signed by the Borrower and the Controlling Person identifying the amount to be paid and the payee. Amounts remaining in the Costs of Issuance Account (including investment proceeds) after the payment of all costs of issuance, and in any event not later than thirty (30) days following the Issue Date, shall be transferred to the applicable subaccount of the Bond Proceeds Account or to the Equity Account of the Project Fund, as applicable.

(e) Moneys representing a Condemnation Award or Insurance Proceeds [in an amount exceeding 5% of the loan amount] shall be deposited into the Insurance and Condemnation Proceeds Account of the Project Fund, and notice of such deposit thereof shall be given by the Trustee to the Controlling Person and the Majority Owner. To the extent there has been a determination pursuant to the Bond Documents to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be expended for such purposes in accordance with the provisions of the Bond Documents. In the event there is a determination pursuant to the Bond Documents not to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be either (i) transferred to the Bond Fund and applied to the redemption of Bonds in accordance with Section 3.4 hereof, or (ii) released to the Borrower if the Borrower obtains an Opinion of Bond Counsel that such release will not affect the excludability of the interest on the Tax-Exempt Bonds from gross income for federal income tax purposes, all in accordance with direction of the Controlling Person to the Trustee and subject to the provisions of the Bond Documents.

(f) The Trustee shall transfer moneys between Accounts as directed in writing by the Controlling Person and consented to by the Borrower, provided that no consent shall be required following the occurrence and during the continuance of a Default or Event of Default hereunder. Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Project Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond

Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine.

**Section 4.4 Surplus Fund.** The Surplus Fund shall receive all Surplus Bond Proceeds transferred thereto in accordance with the provisions of this Indenture. The deposit of Surplus Bond Proceeds in the Surplus Fund shall be, and shall be deemed to be, a joint direction by the Borrower and the Controlling Person to the Trustee to redeem the greatest principal amount of the Bonds possible to be redeemed from such deposit pursuant to Section 3.4(b)(i) hereof on the earliest redemption date on which the Bonds may be redeemed, and on such redemption date (or, if such day is not a Business Day, the immediately preceding Business Day) an amount equal to the principal amount of Bonds to be redeemed plus interest accrued thereon to the redemption date shall be transferred from the Surplus Fund to the Bond Fund and used for such redemption. After such transfer, if and to the extent that there are moneys remaining in the Surplus Fund, such moneys in the Surplus Fund shall be transferred to the Bond Fund and shall be used for payment of interest on or principal of the Bonds.

**Section 4.5 Use of Certain Additional Funds and Accounts.**

(a) **Redemption Fund.**

(i) There shall be deposited in the Redemption Fund (a) all payments specified in Section 8.4 of the Loan Agreement to be deposited in the Redemption Fund, and (b) all other moneys received by the Trustee under the Loan Agreement or this Indenture for deposit by it in the Redemption Fund. Moneys in the Redemption Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the redemption of Bonds pursuant to Section 3.4 hereof. On each Principal Payment Date or redemption date and as otherwise required hereunder or at the written direction of the Controlling Person, the Trustee shall transfer such amounts from the Redemption Fund to the Bond Fund and call and redeem Bonds as provided in Section 3.4 hereof. After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and the payment of any amounts owing to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Redemption Fund shall be paid to the Borrower.

(ii) Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Redemption Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine.

(b) **Tax and Insurance Escrow Fund.** There shall be deposited in the Tax and Insurance Escrow Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to Section 8.2 of the Loan Agreement. Moneys in the Tax and Insurance Escrow Fund shall be applied to payment of Impositions and insurance premiums at the direction of the Controlling Person; provided, however, that upon the occurrence and continuation of an Event of Default hereunder, all money and investments held in the Tax and Insurance Escrow Fund may be disbursed at the direction of the Controlling Person to pay costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine. Upon the payment in full of the Bonds and the fees

and expenses of the Issuer and the Trustee, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower.

(c) Rebate Fund. The Issuer recognizes that investment of the Bond proceeds will be at the written direction of the Borrower but agrees that it will commit no act, or omit any action, that would cause the Tax-Exempt Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the applicable regulations thereunder. There is hereby established with the Trustee a Rebate Fund. Any provisions in this Indenture to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien hereunder. The Issuer and the Trustee will observe the covenants contained in the Tax Certificate as if fully set forth herein.

(d) Replacement Reserve Fund. There shall be deposited in the Replacement Reserve Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to the Replacement Reserve Agreement. Moneys in the Replacement Reserve Fund shall be disbursed by the Trustee upon receipt of a written request therefor executed by the Borrower and approved in writing by the Controlling Person, in accordance with the terms of the Replacement Reserve Agreement; provided that, upon the occurrence and continuation of an Event of Default hereunder, all moneys and investments in the Replacement Reserve Fund (other than moneys held to pay costs required to be paid but not yet payable) may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine. Upon the payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Replacement Reserve Fund shall be paid to the Borrower as soon as practicable.

(e) Reserved,

(f) Operating Reserve Fund. [There shall be deposited in the Operating Reserve Fund all moneys received for such purpose pursuant to Section 8.5 of the Loan Agreement.] [Upon the occurrence of an Operating Reserve Trigger, there shall be deposited in the Operating Reserve Fund all moneys received for such purpose pursuant to Section 8.5 of the Loan Agreement; provided, however, prior to the occurrence of an Operating Reserve Trigger, the Operating Reserve Fund shall be established and maintained by the Borrower, and the funds therein shall be held and disbursed in accordance with Section 8.5 of the Loan Agreement.] [Upon the occurrence of an Operating Reserve Trigger,] Funds shall be disbursed from the Operating Reserve Fund, at the request of the Borrower, but only with the Controlling Person’s written consent, to fund any operating deficits or expenses of the Borrower or for any other operating or capital needs of the Project Facilities. Upon receipt by the Trustee from the Borrower of a written request together with the written approval of the Controlling Person, which approval shall not be unreasonably withheld, conditioned, or delayed, the Trustee shall disburse funds from the Operating Reserve Fund in accordance with such written request. [After the occurrence of the Operating Reserve Trigger, upon the occurrence and during the continuation of an Event of Default, all moneys and investments in the Operating Reserve Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay

any costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine. Interest earnings on amounts held in the Operating Reserve Fund shall be released not more frequently than annually to the Borrower upon its written request and with the prior written consent of the Controlling Person. Upon payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of amounts payable to the United States of America pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Operating Reserve Fund shall be paid to the Borrower.]

#### **Section 4.6 Records.**

(a) The Trustee shall cause to be kept and maintained records pertaining to all funds and accounts maintained by the Trustee hereunder and all disbursements therefrom and shall periodically deliver to the Borrower, with a copy to Controlling Person, monthly statements of activity and statements indicating the investments made with moneys in all such funds during the applicable period. Upon written request, the Trustee shall provide the Borrower and the Controlling Person, within a reasonable period of time, with a report stating the principal amount of Bonds Outstanding and a list of the registered owners of the Bonds as of the date specified by the Borrower or the Controlling Person in its request.

(b) The Trustee shall provide the Borrower and the Controlling Person with a written report, on a monthly basis through the calendar month in which the last obligation of the Bonds is retired, identifying the Permitted Investments in which the moneys held as part of the Accounts were invested during the preceding period and the dates of such investments, together with such other information as the Trustee ordinarily provides to Persons such as the Borrower and the Controlling Person in its regular monthly investment reports.

**Section 4.7 Investment of Funds.** Subject to the provisions of Section 4.8 hereof, moneys held as part of all Accounts hereunder shall be invested and reinvested in Permitted Investments as instructed by the Borrower with the prior written consent of the Controlling Person; provided, however, that any moneys held by the Trustee to pay the principal of or interest that has become payable with respect to the Bonds shall not be invested. All Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the fund and account which was used to purchase the same. The Trustee may act as principal or agent in the making or disposing of any investment and may utilize its investment department or that of its affiliate and charge its standard investment handling fees. All interest accruing thereon and any profit realized from Permitted Investments shall be credited to the respective fund or account and any loss resulting from Permitted Investments shall be similarly charged. The Trustee is authorized to cause to be sold and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any fund or account hereunder is or will be insufficient to make a requested or required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale, so long as the Trustee performs its obligations hereunder in accordance with the terms of this Indenture. Absent specific instructions from the Borrower approved by the Controlling Person to invest cash balances in Permitted Investments hereunder, the Trustee shall invest in Permitted Investments constituting obligations of the U.S. Treasury or its agencies having a term to maturity of not more than thirty (30) days or any money market fund or similar investment fund that purchases and holds exclusively obligations of the United States of America or its agencies that have a term to maturity of not more than thirty (30) days. Notwithstanding the foregoing, upon the written election of the Holders of all of the Outstanding Bonds, after providing written notice

to the Borrower, the Trustee and the Servicer of such election, any or all Accounts established under this Indenture may be maintained on behalf of Holders at a Qualified Custodian and not by the Trustee and all payments required to be made by the Borrower with respect to such Accounts shall be paid directly to such Qualified Custodian.

Except as otherwise provided in Section 4.8, all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Indenture or the Code) at Fair Market Value.

**Section 4.8 Yield Restriction.** Funds in the Replacement Reserve Fund and [Operating Reserve Fund] will not be invested at an overall yield in excess of the yield on the Bonds (as described in the Tax Certificate) unless the Borrower, the Trustee and the Controlling Person receive an Opinion of Bond Counsel that the investment of such funds at an overall yield in excess of such amount does not adversely affect the excludability of interest on the Bonds by the Holders thereof for federal income tax purposes. Investments in Accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code and (unless valuation is undertaken at least annually) investments in the Reserve Fund shall be valued at their present value (within the meaning of section 148 of the Code).

**Section 4.9 Guaranties.** Any amounts realized by the Trustee under the Guaranty of Completion, the Guaranty of Debt Service and Stabilization, the Guaranty of Recourse Obligations or the Environmental Indemnity shall be used or applied or invested by the Trustee as directed in writing by the Controlling Person.

## **ARTICLE V DISCHARGE OF LIEN**

**Section 5.1 Discharge of Lien and Security Interest.** Upon payment in full of all of the Bonds and all other amounts payable under the Loan Agreement and other Bond Documents, these presents and the Security Interests shall cease, determine and be discharged, and thereupon the Trustee shall, upon receipt by the Trustee of a no adverse effect opinion of Counsel and an opinion of Counsel stating that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with, (a) cancel and discharge this Indenture and the Security Interests; (b) execute and deliver to the Issuer and the Borrower, at the Borrower's expense, such instruments in writing as shall be required to cancel and discharge this Indenture and the Security Interests and reconvey to the Issuer and the Borrower the Security, and assign and deliver to the Issuer and the Borrower so much of the Security as may be in its possession or subject to its control, except for moneys and Government Obligations held in the Bond Fund for the purpose of paying Bonds; and (c) mark as cancelled the Notes and satisfy the Mortgage; provided, however, that the cancellation and discharge of this Indenture pursuant to this Section or Section 5.3 hereof shall not terminate the powers and rights granted to the Trustee, with respect to the payment, registration of transfer and exchange of the Bonds; provided, further, that the rights of the Issuer and the Trustee to indemnity, non-liability and payment of all reasonable fees and expenses shall survive the cancellation and discharge of this Indenture pursuant to this Section or Section 5.3 hereof.

**Section 5.2 Provision for Payment of Bonds.** Bonds shall be deemed to have been paid within the meaning of Section 5.1 hereof if:

(a) there shall have been irrevocably deposited in the Bond Fund sufficient money or Government Obligations of such maturities and interest payment dates and bearing such interest as will, in the opinion of a nationally recognized firm of certified public accountants, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon (said earnings also to be held in trust), be sufficient for the payment at their respective maturities or redemption dates prior to maturity of the principal of the Bonds not later than the earliest redemption date possible under Section 3.4 (and any earlier partial redemption date required herein) and interest to accrue thereon, and redemption premium, if any, through such maturity or redemption dates, as the case may be;

(b) there shall have been paid or provision duly made for the payment of all fees and expenses of the Issuer and the Trustee, due or to become due; and

(c) if any Bonds are to be redeemed on any date prior to their maturity, the Trustee shall have received in form satisfactory to it irrevocable instructions from the Borrower to redeem such Bonds on such date and either evidence satisfactory to the Trustee that all redemption notices required by this Indenture have been given or irrevocable power authorizing the Trustee to give such redemption notices has been granted to the Trustee.

(d) Limitations set forth elsewhere herein regarding the investment of moneys held by the Trustee in the Bond Fund shall not be construed to prevent the depositing and holding in the Bond Fund of the Government Obligations described in this Section 5.2 for the purpose of defeasing the lien of this Indenture as to Bonds which have not yet become due and payable. Notwithstanding any other provision of this Indenture to the contrary (but subject to Section 5.2(a) hereof), all funds deposited with the Trustee as provided in this Section may be invested and reinvested, at the direction of the Borrower, in Government Obligations (or in a money market fund that invests solely in Government Obligations and is rated no lower than the second highest category by one of Fitch, Moody's or S&P and, if more than one of such rating agencies then rates such money market fund, is rated no less than the second highest rating category by each of such rating agencies then rating such money market fund) maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations (or money market fund) in the hands of the Trustee pursuant to this Section which is not required for the payment of the Bonds and interest and redemption premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

**Section 5.3 Discharge of this Indenture.** Notwithstanding the fact that the lien of this Indenture upon the Security may have been discharged and cancelled in accordance with Section 5.1 hereof, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with the fact that the lien upon the Security may have been discharged and cancelled, shall nevertheless continue and subsist after payment in full of the Bonds or the deemed payment in full of the Bonds in accordance with Section 5.2 hereof until the Trustee shall have returned to the Borrower all funds held by the Trustee which the Borrower is entitled to receive pursuant to this Indenture after all Bonds have been paid at maturity or redeemed. Upon payment in full or defeasance of the Bonds, payment of amounts payable to the United States pursuant to any rebate requirement and payment of all other amounts owing hereunder and under the Loan Agreement, all remaining amounts held by the Trustee shall be paid to the Borrower.

**ARTICLE VI**  
**DEFAULT PROVISIONS AND REMEDIES**

**Section 6.1    Events of Default.** Any one of the following shall constitute an Event of Default hereunder:

(a) Failure to pay interest on any Bond within five (5) days after the same shall have become due;

(b) Failure to pay the principal of or any premium on any Bond when and as the same shall become due, whether at the stated maturity or redemption date thereof or by acceleration;

(c) Failure to observe or perform any other of the covenants, agreements or conditions on the part of the Issuer included in this Indenture or in the Bonds and the continuance thereof for a period of thirty (30) days after written notice to the Issuer and the Borrower has been given by the Trustee or by the Controlling Person (with a copy to the Trustee) or such longer period to which the Controlling Person may agree in the case of a default not curable by the exercise of due diligence within such thirty (30) day period, if the Borrower, the General Partner or the Investor Limited Partner shall have commenced a cure of such default within such thirty (30) day period and shall be diligently pursuing such cure as quickly as reasonably possible; or

(d) The occurrence of an Event of Default under the Loan Agreement or any other Bond Documents to which the Borrower is a party and continuation of such failure beyond the expiration of any notice, grace or cure period provided in the Loan Agreement or the Bond Documents (as applicable).

(e) The Issuer and the Trustee agree that cure of any default or Event of Default under the Bond Documents made or tendered by the Investor Limited Partner 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 6.2    Acceleration.**

(a) During the continuance of an Event of Default and upon the direction of the Controlling Person, the Trustee immediately shall, by notice in writing sent to the Issuer, the Borrower, the Majority Owner and the Controlling Person, declare the principal of all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement and the Notes to declare all Repayments to be immediately due and payable. In such event, there shall be due and payable on the Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon (including Default Interest, if any) and which will accrue thereon to the date of payment and all unpaid interest on the Bonds on the date of payment, and the acceleration premium described in Section 6.8 hereof (if applicable).

(b) Immediately following any such declaration of acceleration, the Trustee shall cause to be mailed notice of such declaration by first-class mail, postage prepaid, to each

Holder of a Bond at his/her last address appearing on the Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

### **Section 6.3 Other Remedies; Rights of Holders.**

(a) Upon the happening and continuance of an Event of Default hereunder, the Trustee may, with the prior written consent of the Controlling Person, and shall upon the direction of the Controlling Person, with or without taking action under Section 6.2 hereof, pursue any available remedy to enforce the performance of or compliance with any Bond Documents.

(b) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee, the Controlling Person, the Majority Owner or the Holders 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 Majority Owner, the Controlling Person or to the Holders hereunder or now or hereafter existing.

(c) No delay or omission to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Default or 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.

(d) No waiver of any Default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereon.

(e) The Trustee, as the assignee of substantially all right, title and interest of the Issuer in and to the Loan Agreement and the Notes, shall be empowered to enforce each and every right granted to the Issuer under the Loan Agreement and the Notes other than Reserved Rights.

### **Section 6.4 Right of Controlling Person to Direct Proceedings.**

(a) Anything in this Indenture to the contrary notwithstanding, the Controlling Person shall have the right at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

(b) No Holder shall have the right to institute any proceeding for the enforcement of this Indenture unless such Holder has given the Trustee and the Borrower written notice of an Event of Default, the Controlling Person shall have requested the Trustee in writing to institute such proceeding, the Trustee shall have been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, there shall have been offered to the Trustee indemnity satisfactory to it against the cost, expense and liability to be incurred in connection with such request and the Trustee shall have thereafter failed or refused to exercise such powers or to institute such proceeding within sixty (60) days after receipt of notice with no inconsistent direction given during such sixty (60) days by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding. Nothing in this Indenture shall affect or impair any right of enforcement conferred on any Holder by the Act or otherwise to enforce (i) the payment of the principal of, acceleration premium, if any, and interest on Bonds at and after the maturity thereof,

or (ii) the obligation of the Issuer to pay the principal of, acceleration premium, if any, and interest on Bonds to such Holder at the time, place, from the sources and in the manner as provided in this Indenture.

**Section 6.5 Discontinuance of Default Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver 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 and the Trustee shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the Issuer and the Trustee shall continue as if no such proceedings had been taken subject to the limits of any adverse determination.

**Section 6.6 Waiver.** The Trustee, with the consent of the Controlling Person may, and shall upon the written direction of the Controlling Person, waive any Default or Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity of principal; provided, however, that there shall be no such waiver or rescission unless all principal of, acceleration premium, if any, and interest on the Bonds in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Bonds and all fees and expenses of the Trustee and the Issuer shall have been paid or provided for.

**Section 6.7 Application of Moneys.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be deposited in the Bond Fund and, after payment (out of moneys derived from a source other than moneys held for the redemption of Bonds) of (i) the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, including reasonable attorneys' fees, and all other outstanding fees and expenses of the Trustee, and (ii) any sums due to the Issuer under the Loan Agreement (other than Repayments), such moneys shall be applied in the order set forth below:

(a) Unless the principal of all Bonds shall have become or been declared due and payable, all such moneys shall be applied:

**First:** To the payment of all installments of interest then due on the Bonds in order of priority first to installments past due for the greatest period and, if the amount available shall not be sufficient to pay in full any particular installment, then to the ratable payment of the amounts due on such installment;

**Second:** To the payment of the unpaid principal of and acceleration premium, if any, of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), with interest on such Bonds from the respective dates upon which they became due (at the rate borne by the Bonds, to the extent permitted by law) and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such acceleration premium, then to the ratable payment of the amounts due on such date;

**Third:** To the payment of the amounts required to reimburse the Issuer and the Owners of the Bonds for any legal or other out-of-pocket costs incurred by them in connection with exercising their remedies hereunder; and

**Fourth:** The balance shall be paid to the Borrower (subject to any required deposits to the Rebate Fund).

(b) If the principal of all the Bonds shall have become or been declared due and payable, all such moneys shall be applied to the payment of the principal, acceleration premium, if any, and interest then due and unpaid upon the Bonds, without preference or priority as between principal, premium, interest, installments of interest or Bonds, ratably according to the amounts due respectively for principal, premium and interest to the persons entitled thereto.

(c) If the principal on all Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded under this Article then, subject to subsection (b) of this Section in the event that the principal of all the Bonds shall again become or be declared due and payable, the moneys shall be applied in accordance with subsection (a) of this Section.

(d) Notwithstanding anything contained herein to the contrary, the Controlling Person may, with express written consent of the Majority Owner, by written notice to the Trustee direct the application of funds other than in the manner set forth in Section 6.7(a) above, including, without limitation, the application of funds between the principal or acceleration premium or interest on the Bonds.

(e) Whenever moneys are to be applied pursuant to this Section, the Trustee shall fix the date which shall be not more than seven (7) calendar days after such acceleration upon which such application is to be made and upon such date interest on the principal amount of Bonds to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

**Section 6.8 Default Interest and Acceleration Premium.** In the event that principal or interest payable on the Bonds is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate, to the extent permitted by law. This interest shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full. In the event there shall have occurred an acceleration of the Bonds or the Borrower's obligations under the Loan Agreement following an Event of Default on or before the First Optional Call Date, any tender of payment of any amount necessary to pay the Bonds in full shall include the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

## **ARTICLE VII THE TRUSTEE**

**Section 7.1 Appointment of Trustee.** The Trustee is hereby appointed and does hereby agree to act in such capacity, and to perform the duties of the Trustee under this Indenture, but only upon and subject to the following express terms and conditions (and no implied covenants or other obligations shall be read into this Indenture against the Trustee):

(a) The Trustee may execute any of its trusts or powers hereunder and perform any of its duties by or through attorneys, agents, receivers or employees. The Trustee shall be entitled to advice of Counsel concerning all matters hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees. The Trustee may act upon the opinion or advice of Counsel, accountants, engineers or surveyors selected by it in the exercise of reasonable care or, if the same are selected by the Issuer, approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) Except as provided in Section 7.8 hereof, the Trustee shall not be responsible for any recital herein or in the Bonds, or for the recording, re-recording, filing or re-filing of this Indenture, of any Financing Statements or continuation statements, or for insuring the Security or the Project Facilities or collecting any insurance moneys, or for the validity of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of or title to the Project Facilities or otherwise as to the maintenance of the Security. The Trustee shall not be liable to the Borrower, any Holder, any Beneficial Owner or any other Person for any loss suffered in connection with any investment of funds made by it in accordance with Section 4.7 hereof in good faith as instructed by the Borrower in accordance with the provisions of this Indenture, and with the prior written consent of the Controlling Person, as applicable. The Trustee shall have no duty or responsibility to examine or review and shall have no liability for the contents of any documents submitted to or delivered to any Holder in the nature of a preliminary or final placement memorandum, official statement, offering circular or similar disclosure document.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder after such Bonds shall have been delivered in accordance with instructions of the Issuer or for the use by the Borrower of the proceeds of the Bonds advanced to the Borrower as provided in the Loan Agreement. The Trustee may become the owner of Bonds secured hereby with the same rights as any other Holder.

(d) The Trustee shall be protected in acting upon opinions of Counsel and upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any notices, directions, consents, approvals or requests provided to the Trustee pursuant to the terms of this Indenture or any of the Bond Documents shall not be effective until provided in writing. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Holder of any Bond shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) The permissive right of the Trustee to do things enumerated in this Indenture or the Loan Agreement shall not be construed as duties. The Trustee shall only be responsible for the performance of the duties expressly set forth herein and shall not be answerable for other than its gross negligence, bad faith or willful misconduct in the performance of those express duties.

(f) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts, relating to the Project Facilities.

(g) The Trustee shall not be required to give any bond or surety in respect of the execution of said trust and powers or otherwise in respect of this Indenture.

(h) Before taking any action requested hereunder by the Holders which may require it to expend its own funds, the Trustee may require satisfactory security or indemnification for the reimbursement of all expenses to which it may be put by reason of any action so taken. The Trustee shall not be entitled to indemnification as a precondition to giving notices of default or taking other actions at the direction of the Majority Owner or the Controlling Person which do not require the Trustee to expend its own funds or for which funds have been advanced by the Majority Owner or the Controlling Person to the Trustee in advance of its taking such action.

(i) All moneys received by the Trustee, until used or applied or invested as herein provided, shall be held as special trust funds for the purposes specified in this Indenture and for the benefit and security of the Holders of the Bonds as herein provided. Such moneys need not be segregated from other funds except to the extent required by law or herein provided, and the Trustee shall not otherwise be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(j) The Trustee shall not be bound to ascertain or inquire as to the performance of the obligations of the Borrower or the Issuer under the Loan Agreement or this Indenture, and shall not be deemed to have, or be required to take, notice of default under this Indenture (other than under Section 6.1(a) or (b), or Section 6.1(c) hereof if written notice thereof has been received by the Trustee) or the occurrence of a Determination of Taxability, except (i) in the event the Borrower fails to pay any Repayment when due, (ii) in the event of an insufficient amount in the Bond Fund (or any account therein) to make a principal or interest payment on the Bonds, (iii) in the event of written notification of a Determination of Taxability by the Holder of any Bonds, (iv) in the event of written notification of such Default by the Controlling Person, the Majority Owner or two or more Holders with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, or (v) in the event of receipt of an Opinion of Bond Counsel concluding that a Determination of Taxability has occurred, and in the absence of such notice the Trustee may conclusively presume there is no Determination of Taxability and no default except as aforesaid. The Trustee may nevertheless require the Issuer and the Borrower to furnish information regarding performance of their obligations under the Loan Agreement and this Indenture, but is not obligated to do so.

(k) The Trustee shall, prior to any Event of Default and after the curing of all Events of Default which may have occurred, perform such duties and only such duties of the Trustee as are specifically set forth in this Indenture. The Trustee shall, during the existence of any Event of Default which has not been cured, exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his/her own affairs.

(l) In addition to the Trustee's other duties hereunder, the Trustee shall authenticate and cancel Bonds as provided herein, keep such books and records relating to such duties as shall be consistent with prudent industry practice and make such books and records available for inspection by the Issuer and the Borrower at all reasonable times. All Bonds shall be made available for authentication, exchange and registration of transfer at the principal office of the Trustee.

(m) The Trustee shall have no duty to inspect or oversee the construction or completion of the Improvements or to verify the truthfulness or accuracy of the certifications made by the Borrower in any Requisition.

(n) Without limiting the duties of the Trustee expressly set forth herein, the Trustee shall have no obligation or responsibility whatsoever in connection with (i) any federal or state tax-exempt status of the Bonds or the interest thereon; (ii) the consequences of the investment or non-investment of any funds or accounts relating to the Bonds under Section 148 of the Code, or (iii) the calculation of any amount required to be rebated to the United States under Section 148 of the Code.

(o) No provision of this Indenture, the Loan Agreement or the Bonds shall require the Trustee 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.

(p) Whenever in the administration of this Indenture the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee may, in the absence of bad faith on its part and except as otherwise expressly set forth herein, rely upon a written certificate of the Controlling Person or the Majority Owner.

(q) In the absence of a direction from the Controlling Person, if the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders of the Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Indenture, the directions given by the group of Holders which holds the largest percentage of the principal amount of the Bonds shall be controlling and the Trustee shall follow such directions.

(r) The Trustee's immunities and protections from liability and its rights to indemnification in connection with the performance of its duties under this Indenture shall likewise extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and rights to indemnification, together with the Trustee's rights to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture and the final payment of the Bonds.

(s) The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold or deal in any of the Bonds and may join in any action that any Holder may be entitled to take with like effect as if it were not the Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Borrower and may act as depository, trustee or agent for any committee of Holders secured hereby or other obligations of the Borrower, as freely as if it were not the Trustee hereunder. The provisions of this paragraph shall extend to the affiliates of the Trustee.

(t) The Trustee shall have no responsibility or obligation to DTC Participants, to Indirect Participants, or to the Persons for whom they act as nominees with respect to the Bonds, or to any Beneficial Owner of Bonds in respect of the accuracy of any records maintained by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant, the payment by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any amount in respect of the principal of or interest on the Bonds, any notice which is permitted or required to be given under this Indenture, the selection by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any Person to receive payment in the event of a partial redemption of the Bonds, or any consent given or other action taken by the Securities Depository or the Securities Depository Nominee as Holder.

(u) Whether or not expressly so provided, each and every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Section.

## **Section 7.2 Compensation and Indemnification of Trustee; Trustee's Prior Claim.**

(a) The Loan Agreement provides that the Borrower will pay the reasonable fees and expenses of the Trustee under this Indenture and all other amounts which may be payable to the Trustee under this Section, such fees and expenses to be paid when due and payable by the Borrower directly to the Trustee for its own account. Except as set forth in Section 6.7, the Trustee shall not have a lien on the Security for the payment of its fees or expenses and shall not be entitled to pay its fees and expenses from amounts held in the funds and accounts hereunder.

(b) The Borrower shall (i) pay the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), (ii) pay or reimburse the Trustee upon request for all reasonable, actual, out-of-pocket expenses, disbursements and advances incurred or made, in accordance with any of the provisions of this Indenture and the Loan Agreement (including the reasonable compensation and the reasonable expenses and disbursements of its Counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its own gross negligence, willful misconduct or bad faith, and (iii) indemnify the Trustee for, and hold it harmless against, any loss, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of its duties hereunder or under the Loan Agreement, including the reasonable costs and expenses of defending itself against or investigating any claim of liability in the premises, except to the extent that any such loss, liability or expense was due to its own gross negligence, willful misconduct, bad faith, illegal acts or breach of the Bond Documents. "Trustee," for purposes of this Section shall include any predecessor Trustee, but the gross negligence, willful misconduct or bad faith of any Trustee, shall not affect the indemnification of any other Person. The obligations of the Borrower under this Section shall survive the termination of this Indenture.

**Section 7.3 Intervention in Litigation.** In any judicial proceedings to which the Issuer is a party, the Trustee may intervene on behalf of Holders, and shall intervene if requested in writing by the Controlling Person, the Majority Owner or the Holders of at least twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding.

## **Section 7.4 Resignation; Successor Trustees.**

(a) The Trustee and any successor Trustee may resign only upon giving sixty (60) days prior written notice to the Issuer, the Borrower, the Controlling Person and each Holder of Bonds then Outstanding as shown on the Register. Such resignation shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. If no successor is appointed within sixty (60) days after the notice of resignation, the Controlling Person may appoint a Trustee or the resigning Trustee may appoint a successor or petition any court of competent jurisdiction to appoint a successor. Upon appointment of a successor Trustee, the resigning Trustee shall assign all of its right, title and interest in this Indenture and the Security to the successor Trustee. The successor Trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000. Any successor Trustee shall accept in writing its duties and responsibilities hereunder and such writing shall be filed with the Issuer, the Controlling Person and the Borrower.

(b) Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, reorganization or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or any material part of the corporate trust business of the Trustee that includes this Indenture, shall be the successor of the Trustee hereunder without the execution or filing of any paper of any further act on the part of any Person, anything herein to the contrary notwithstanding, provided that such successor Trustee shall be eligible to serve as Trustee under the provisions of this Indenture. If the Trustee is not the successor corporation in any such merger or consolidation, the Trustee shall give notice of such event to the Borrower and shall take such action as may be required to effect a transfer of the trust included in this Indenture to such successor corporation.

**Section 7.5 Removal of Trustee.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer, the Controlling Person and the Borrower and signed by the Majority Owner. During such time that no Event of Default has occurred and is continuing under this Indenture, the Trustee may also be removed by an instrument or concurrent instruments in writing delivered to the Trustee and the Issuer and signed by the Controlling Person, with notice to the Borrower. Such removal shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. Upon such removal, the Trustee shall assign to the successor Trustee all of its right, title and interest in this Indenture and the Security in the same manner as provided in Section 7.4 hereof.

**Section 7.6 Instruments of Holders.**

(a) Any instrument required by this Indenture to be executed by Holders may be in any number of writings of similar tenor and may be executed by Holders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds given in any of the following forms shall be sufficient for any of the purposes of this Indenture:

(i) A certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him/her the execution thereof; and

(ii) A certificate executed by any trust company or bank stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank, as the property of such party, the Bonds therein mentioned.

(b) The Trustee may rely on such an instrument of Holders unless and until the Trustee receives notice in the form specified in clauses (a) (i) or (ii) above that the original such instrument is no longer reliable. In the absence of direction from the Controlling Person, if the Trustee shall receive conflicting directions from two or more groups of Holders, each with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, the directions given by the group of Holders which holds the largest percentage of the principal amount of the Bonds shall be controlling and the Trustee shall follow such directions.

**Section 7.7 Power to Appoint Co-Trustees.**

(a) At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Project Facilities may at the time be located, the Issuer

and the Trustee shall have power to appoint and, upon the request of the Trustee or of the Holders of a majority of the aggregate principal amount of the Bonds then Outstanding, the Issuer shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint one or more persons approved by the Trustee and the Borrower either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the Project Facilities, or to act as separate trustee or separate co-trustees of all or any part of the Project Facilities, and to vest in such person or persons, in such capacity, such title to the Project Facilities or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section.

(b) Any co-trustee or separate trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000. Such co-trustee shall be approved in advance by the Issuer, if such approval is required under applicable law.

(c) The Trustee and co-trustee, if any, may by written instrument between them designate and assign either the Trustee or the co-trustee or both of them to perform all or any part of the responsibilities and duties of the Trustee under this Indenture.

(d) If the Issuer shall not have joined in such appointment within thirty (30) days after the receipt by it of a written request to do so, or in case an Event of Default shall have occurred and be continuing, the Trustee and the Borrower shall have the power to make such appointment.

(e) The Issuer shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

(f) Every co-trustee or separate trustee appointed pursuant to this Section 7.7, to the extent permitted by law or any applicable contract, shall be subject to the following terms, namely:

(i) This Indenture shall become effective at the time the Bonds shall be authenticated and delivered, and thereupon such co-trustee or separate trustee shall have all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of moneys, papers, securities and other personal property.

(ii) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees, or separate trustee or separate trustees, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, 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 co-trustees or separate trustee or separate trustees.

(iii) 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.

(iv) Any co-trustee or separate trustee, to the extent permitted by law, may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(v) The Trustee at any time, by an instrument in writing, with the concurrence of the Issuer, may accept the resignation of 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. 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.

(vi) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(vii) Any moneys, 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.

(g) Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with the security interest in the Security and with such rights, powers, duties, trusts or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as applicable law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee.

(h) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the security interest in the Security and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the same manner as provided for with respect to the appointment of a successor Trustee pursuant to Section 7.4 hereof.

**Section 7.8 Filing of Financing Statements.** The Trustee shall file or record or cause to be filed or recorded all Financing Statements that are required in order fully to protect and preserve the security interests and the priority thereof and the rights and powers of the Trustee in connection therewith, including without limitation all continuation statements for the purpose of continuing without lapse the effectiveness of (i) those Financing Statements which shall have been filed at or prior to the issuance of the Bonds in connection with the security for the Bonds pursuant to the authority of the U.C.C., and (ii) any previously filed continuation statements that shall have been filed as required herein. The Trustee shall also file the financing and continuation statements required under Section 3.2 of the Loan Agreement. The Borrower will pay all costs of filing the Financing Statements and all financing and continuation statements required hereunder and under Section 3.2 of the Loan Agreement.

**ARTICLE VIII**  
**AMENDMENTS, SUPPLEMENTAL INDENTURES**

**Section 8.1 Supplemental Indentures.**

(a) The Issuer and the Trustee, with the prior written consent of the Controlling Person, but without the consent of or notice to any Holders, may enter into an indenture or indentures supplemental to this Indenture that do not materially adversely affect the interest of the Holders for one or more of the following purposes:

(i) to grant to or confer upon the Trustee for the benefit of the Holders, any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders or the Trustee;

(ii) to grant or pledge to the Trustee for the benefit of Holders, any additional security other than that granted or pledged under this Indenture;

(iii) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939 or any similar federal statute then in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States;

(iv) to appoint a successor Trustee or co-trustees in the manner provided in Article VII hereof;

(v) to modify, amend or supplement this Indenture to permit a transfer of Bonds from one Securities Depository to another or the discontinuance of the Book-Entry System and issuance of replacement Bonds to the Beneficial Owners;

(vi) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture that may be defective or inconsistent with any provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which shall not materially adversely affect the interest of the Holders; or

(vii) to make any change herein necessary, in the opinion of Bond Counsel, to maintain the exclusion of the interest on any Outstanding Tax-Exempt Bonds from gross income of the Holders thereof for federal income tax purposes.

(b) When requested by the Issuer, and if all conditions precedent under this Indenture have been met, and there shall have been delivered to the Trustee an opinion of Bond Counsel to the effect that such supplemental indenture is authorized or permitted by this Indenture and complies with its terms and will not adversely affect the excludability of interest on the Tax-Exempt Bonds from the gross income of the Holders thereof for federal income tax purposes, the Trustee will join the Issuer in the execution of such supplemental indenture, but shall not be required to join the Issuer in the execution of any such supplemental indenture unless it is reasonably compensated for additional obligations on the Trustee not initially contemplated and the indemnification rights of the Trustee cover any changes in the Trustee's rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower.

(c) The Trustee shall file copies of all such supplemental indentures with the Borrower. The Trustee shall cause notice of any supplemental indenture described above to be given by first-class mail, postage prepaid, to the Holders of the Outstanding Bonds then shown on the Register.

**Section 8.2 Amendments to Indenture; Consent of Majority Owner, Holders, and Borrower.**

(a) Exclusive of supplemental indentures covered by Section 8.1 hereof and subject to the terms and provisions contained in this Section 8.2 and not otherwise, anything contained in this Indenture to the contrary notwithstanding, no indenture or indentures supplemental hereto for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture shall be effective without delivery of a Favorable Opinion of Bond Counsel, the written consent of the Majority Owner and execution and delivery by the Trustee (acting upon the direction of the Majority Owner) and the Issuer; provided, however, that nothing contained in this Section shall permit, or be construed as permitting, without the prior written consent of the Holders of all Outstanding Bonds, (i) an extension of the maturity of the principal of, or the optional, extraordinary or mandatory redemption date of, or interest on, any Bond, (ii) a reduction in the principal amount of or the rate of interest on, any Bond, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) the creation of a lien on the Security prior to the lien of this Indenture, or (v) a reduction in the aggregate principal amount of the Bonds required for any consent to any supplemental indenture; provided further, however, that without the prior written consent of the Trustee, the Trustee shall not be required to join the Issuer in the execution of any supplemental indenture unless it is reasonably compensated for additional obligations on the Trustee not initially contemplated and the indemnification rights of the Trustee covering any changes in the Trustee's rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower. The giving of notice to and consent of the Holders to any such proposed supplemental indenture shall be obtained pursuant to Section 8.5 hereof.

(b) Anything herein to the contrary notwithstanding, a supplemental indenture, amendment or other document described under this Article that affects any rights or obligations of the Borrower shall not become effective unless and until the Borrower shall have consented to the execution of such supplemental indenture, amendment or other document.

**Section 8.3 Amendments to the Loan Agreement or the Notes Not Requiring Consent of Holders.**

(a) The Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement or the Notes without the prior written consent of the Trustee, the Borrower and the Controlling Person. The Issuer may, with the consent of the Controlling Person, but without the consent of or notice to any other Holders, enter into or permit (and the Trustee shall consent to) any amendment of the Loan Agreement or the Notes acceptable to the Borrower as may be required (i) for the purpose of curing any ambiguity or formal defect or omission that shall not adversely affect the interest of the Holders, (ii) to grant or pledge to the Issuer or Trustee, for the benefit of the Holders any additional security, (iii) to make any change therein necessary, in the opinion of Bond Counsel, to maintain the exclusion of interest on any Outstanding Tax-Exempt Bonds from gross income of the Holders thereof for federal income tax purposes, or (iv) in connection with any other change therein which, in the judgment of the Trustee acting in reliance upon an opinion of Counsel, is not materially prejudicial to the interests of the Trustee and the Holders of the Bonds; provided, however, that without the written consent of the Trustee, the Trustee shall not be required to join in the execution of any such amendment that affects the rights, duties, obligations or immunities of the Trustee or that imposes additional obligations on the Trustee.

(b) The Issuer and the Borrower shall file copies of any such amendments to the Loan Agreement or the Notes with the Trustee and the Controlling Person.

**Section 8.4 Amendments to the Loan Agreement or the Notes Requiring Consent of Holders.** Except as provided in Section 8.3 hereof, the Issuer shall not enter into, and the Trustee shall not consent to, any other modification or amendment of the Loan Agreement or the Notes, nor shall any such modification or amendment become effective, without delivery of a Favorable Opinion of Bond Counsel and the prior written consent of the Majority Owner, such consent to be obtained in accordance with Section 8.5 hereof. No such amendment may, without the consent of the Holders of all the Outstanding Bonds, reduce the amounts or delay the times of payment of Repayments under the Loan Agreement or the Notes. The Issuer and the Borrower shall file copies of all such amendments to the Loan Agreement or the Notes with the Trustee, the Controlling Person and the Majority Owner.

**Section 8.5 Notice to and Consent of Holders.** If consent of the Controlling Person, the Majority Owner or any other Holder is required under the terms of this Indenture for the amendment of this Indenture, the Loan Agreement, the Notes or for any other similar purpose, the Trustee shall cause notice of the proposed execution of the amendment or supplemental indenture to be given by first-class mail, postage prepaid, to the Controlling Person, the Majority Owner or any other applicable Holder then shown on the Register. Such notice shall briefly set forth the nature of the proposed amendment, supplemental indenture or other action and shall state that copies of any such amendment, supplemental indenture or other document are on file at the principal office of the Trustee for inspection by all Holders. If, within forty five (45) days or such longer period as shall be prescribed by the Trustee following the mailing of such notice, the Controlling Person, the Majority Owner or the Holders of all, as the case may be, of the principal amount of the Bonds Outstanding by instruments filed with the Trustee shall have consented to the amendment, supplemental indenture or other proposed action, then the Trustee may execute such amendment, supplemental indenture or other document or take such proposed action and the consent of the Holders shall thereby be conclusively presumed.

## **ARTICLE IX CONTROLLING PERSON; SERVICING**

### **Section 9.1 Majority Owner to Appoint Controlling Person and Indexing Agent.**

The Majority Owner may engage a Person, collaterally assign some or all of its rights hereunder to a Person, or otherwise provide for a Person, at the Majority Owner's sole cost and expense, to act on behalf of the Majority Owner under the Bond Documents as the "Controlling Person" and "Indexing Agent". The Majority Owner may at any time and from time to time terminate or remove and replace any such Controlling Person or Indexing Agent. The Majority Owner shall give written notice to the Trustee, the Issuer and the Borrower of its appointment, termination, removal or replacement of any Controlling Person or Indexing Agent, and the parties may rely on any such notice until any subsequent notice is given. Initially, the Majority Owner will act as Indexing Agent and has engaged Boston Capital Finance LLC to act as the "Controlling Person" hereunder and Boston Capital Finance LLC has accepted such engagement. The Majority Owner is under no obligation to appoint a Controlling Person or an Indexing Agent; if at any time a Controlling Person or Indexing Agent has not been designated by the Majority Owner, all references to the "Controlling Person" or Indexing Agent herein and in the other Bond Documents shall refer to the Majority Owner. Any opinion or certificate provided for herein, in the Loan Agreement or in any other Bond Document that is directed to the Controlling Person or Indexing Agent shall also be directed to, and may be relied upon by, the Majority Owner. The Majority Owner will have no liability to the Issuer, the Borrower, the Trustee or any other Person for any act or omission of the Controlling Person or Indexing Agent unless the Controlling Person is the Majority Owner or such act or omission was expressly approved by the Majority Owner in each particular case.

### **Section 9.2 Servicing.**

(a) The Majority Owner has appointed the Controlling Person to be the servicer of the Loan and the Controlling Person has accepted such appointment. Satisfactory arrangements have previously been made for the payment of servicing fees and expenses in connection with the Controlling Person's servicing obligations hereunder, and the Borrower, the Majority Owner and the Trustee have no obligation for such payments. Without limiting the foregoing, the Controlling Person shall have no right or claim to any transfer or assumption fees, late charges, acceleration premium or Default Interest payable under this Indenture or the Bond Documents; provided, however that, to the extent permitted under the Bond Documents, the Controlling Person shall be entitled to collect from the Borrower its normal and customary incidental fees and charges for any requested review, approval or other action, including, without limitation, in connection with any proposed transfer, loan assumption, easement, subordinate financing, release of collateral, condemnation proceeding, non-disturbance agreement or other similar action, unless such review, approval or other action is performed solely by the Majority Owner.

(b) The Controlling Person shall be responsible for the performance of the following servicing duties:

(i) The Controlling Person shall perform the duties expressly given to the Controlling Person under the Bond Documents and this Indenture.

(ii) The Controlling Person shall prepare monthly bills to the Borrower in accordance with the Bond Documents for payments to the Trustee of principal and interest under the Loan and for deposits into the Tax and Insurance Escrow Fund and the Replacement Reserve Fund. The Controlling Person shall notify the Borrower of the amount payable by the

Borrower to the Trustee. Such notification may be delivered by electronic mail or by facsimile. The Controlling Person shall diligently attempt to collect all of the following, at the times they are due and payable under this Indenture and the Bond Documents:

- (1) The principal and interest due and payable on the Notes;
- (2) The Trustee's fee and Issuer's fee, as applicable;
- (3) Any monthly Replacement Reserve Fund deposit;
- (4) Any Monthly Tax and Insurance Amounts;
- (5) Any other escrow or reserve deposits required by this Indenture or Bond Documents;
- (6) Any assumption or transfer fee required by this Indenture or Bond Documents; and
- (7) Any acceleration premium.

(c) All payments received under this Indenture or Bond Documents shall be applied in the following order unless otherwise instructed by the Majority Owner or expressly set forth in this Indenture or the Bond Documents:

- (i) To the principal and interest due and payable on the Notes;
- (ii) To the Issuer's fee and Trustee's fee, as applicable;
- (iii) To the acceleration premium, if applicable;
- (iv) To required deposits to the Replacement Reserve Fund;
- (v) To required deposits in the Tax and Insurance Escrow Fund;
- (vi) To other escrow or reserve deposits required by this Indenture or the other Bond Documents;
- (vii) To Default Interest and any late fees; and
- (viii) To other amounts due under the Bond Documents.

(d) Any payment received by the Controlling Person from or on behalf of the Borrower under this Indenture or the Bond Documents shall be remitted by the Controlling Person to the Trustee no later than the second (2nd) Business Day after receipt by the Controlling Person, or sooner if so required under this Indenture or Bond Documents. The Controlling Person shall make any remittance to the Trustee by wire transfer in accordance with the instructions received from the Trustee or to any other party entitled to such remittances pursuant this Indenture or the Bond Documents in accordance with the instructions received from the Majority Owner.

(e) The Controlling Person shall review the Tax and Insurance Escrow Fund and the Replacement Reserve Fund on an annual basis and adjust required monthly escrow

payments in accordance with terms of Bond Documents. The Controlling Person shall notify the Majority Owner and the Trustee of such adjustment.

(f) Upon request of the Majority Owner, the Controlling Person shall furnish to the Majority Owner monthly account statements received from the Trustee with respect to the Accounts under this Indenture, including disbursements from the Accounts under this Indenture, loan history schedules, outstanding loan balances and escrow balances.

(g) The Controlling Person shall provide immediate written notice to the Majority Owner of any Event of Default of which it receives notice or has actual knowledge, or any event which, with the giving of notice or the passage of time, or both, would constitute any Event of Default of which it receives notice or has actual knowledge.

(h) The Controlling Person shall refer to the Trustee all Borrower requests for a quote of a payoff amount for the Loan, shall request a copy of any such quote from the Trustee, and shall notify the Majority Owner of the Borrower's request. The Controlling Person shall prepare payoff letters and delinquency and default notices when necessary, as required by the Bond Documents or this Indenture or otherwise as directed by the Majority Owner.

(i) The Controlling Person shall use its best efforts to obtain financial statements and other reports from the Borrower at the times and to the extent required under the Bond Documents and deliver the same to the Majority Owner and, if requested, to the Trustee.

(j) The Controlling Person shall obtain, and shall provide to the Majority Owner a copy of the Borrower's certificates of compliance with the Regulatory Agreement or other evidence of such compliance submitted by the Borrower to the Issuer or the Issuer's designee within thirty (30) days after the later of (i) the date it is required to be submitted to the Issuer or the Issuer's designee, or (ii) the date it is actually so submitted.

(k) The Controlling Person may perform additional duties with respect to the Loan during construction of the Project Facilities or during the period following an Event of Default at the request of the Majority Owner.

(l) The Controlling Person consents to and directs the Trustee to enter into the Depository Agreement and to deposit the Accounts in the deposit accounts established pursuant to the Depository Agreement.

## **ARTICLE X MISCELLANEOUS**

**Section 10.1 Right of Trustee to Pay Taxes and Other Charges.** If any tax, assessment or governmental or other charge upon any part of the Project Facilities is not paid as required, the Trustee may, subject to any indemnity required pursuant to Section 7.1(h) hereof, pay such tax, assessment or governmental or other charge, without prejudice, however, to any rights of the Trustee hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment until paid at the greater of the rate of interest borne by the Bonds or the per annum rate of interest announced from time to time by the bank serving as Trustee as its "prime rate" shall become so much additional indebtedness secured by this Indenture, shall be given a preference in payment over the Bonds, and shall be paid out of the Security.

**Section 10.2 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in 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 Holders, the Controlling Person and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions herein being intended to be and being for the sole and exclusive benefit of the parties hereto, the Holders, the Controlling Person and the Borrower as herein provided.

**Section 10.3 Severability.** If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections of this Indenture, shall not affect the remaining portions of this Indenture or any part thereof.

**Section 10.4 Notices.** Except as otherwise provided herein, all notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered if given or delivered by hand, overnight delivery service or electronic mail (with confirmed receipt) to the address or e-mail address set forth below and shall be deemed to have been given on the date deposited in the mail, if mailed, by first-class, registered or certified mail, postage prepaid, addressed as set forth below. Where required herein, notice shall be given by telephone, and promptly confirmed in writing, and shall be deemed given when given by telephone to the telephone numbers set forth below. The Issuer, the Borrower, the Trustee, the Majority Owner, the Controlling Person and the Investor Limited Partner may, by written notice given hereunder, designate any different addresses, phone numbers and e-mail address to which subsequent notices, certificates, approvals, consents, requests or other communications shall be sent.

The Trustee:	The Bank of New York Mellon Trust Company, N.A. 400 South Hope Avenue, Suite 500 Los Angeles, California 90071 Attention: Corporate Trust Department Telecopier: (213) 630-6215
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The Issuer:	Housing Authority of the City of San Diego 1122 Broadway, Suite 300 San Diego, California 92101 Attention: Executive Director Telecopier: (619) 578-7356
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with copies to (none of which copies shall constitute notice to the Issuer):	Office of the San Diego City Attorney 1200 Third Avenue, Suite 1100 San Diego, California 92101 Attention: Marguerite Middaugh Telecopier: (619) 236-7215
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Jones Hall, A Professional Law Corporation  
475 Sansome Street, Suite 1700  
San Francisco, California 94111

Attention: Josh D. Anzel, Esq.  
Telecopier: (415) 276-2088

The Controlling Person: Boston Capital Finance LLC]  
One Boston Place, 22nd Floor  
Boston, Massachusetts 02108  
Attention: Sean Curry

with a copy to: Kutak Rock LLP  
The Omaha Building  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attention: Sean Gillen

The Borrower: Hilltop Family Housing, L.P.  
c/o Affirmed Housing Group, Inc.  
13520 Evening Creek Drive North, Suite 160  
San Diego, California 92128  
Attention: James Silverwood, President  
Facsimile: (858) 679-9076

with a copy to: Katten Muchin Rosenman LLP  
2029 Century Park East, Suite 2600  
Los Angeles, California 90067  
Attention: David Cohen, Esq.  
Facsimile: (312) 902-1061

The Investor Limited Partner: Boston Capital Direct Placement, A Limited  
Partnership  
c/o Boston Capital, Inc.  
One Boston Place  
Boston, Massachusetts 02108  
Attention: Asset Management

with a copy to: Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109-2835  
Attention: Nathan Bernard, Esq.

**Section 10.5 Binding Effect.** This instrument shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Indenture.

**Section 10.6 Captions.** The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

**Section 10.7 Governing Law.** This Indenture shall be governed by and interpreted in accordance with the laws of the State, without regard to conflict of laws principles.

**Section 10.8 Limited Liability of Issuer.** Notwithstanding anything to the contrary, any liability for payment of money and any other liability or obligation which the Issuer may incur under the Bonds, this Indenture, the Loan Agreement, the Purchase Agreement or any other Bond Document shall not constitute a general obligation of the Issuer but shall constitute limited obligations of the Issuer payable solely from and enforced only against the Security.

**Section 10.9 Execution in Counterparts; Electronic Signatures.** 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. To the fullest extent permitted by applicable law and except for the certificate of authentication on the Bonds (which must be manually signed by an authorized representative of the Trustee) and instruments of transfer of the Bonds, facsimile or electronically transmitted signatures shall constitute original signatures for all purposes under this Indenture.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be executed in its name and on its behalf by its authorized official and the Trustee has caused this Indenture to be executed, in its name by its duly authorized representative, all as of the day and year first above written.

**HOUSING AUTHORITY OF THE CITY OF SAN  
DIEGO**

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

Name: Richard C. Gentry

Title: Executive Director

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as trustee**

By:

\_\_\_\_\_

—  
Name:

Title:

**EXHIBIT A-1  
FORM OF TAX-EXEMPT BOND**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
MULTIFAMILY HOUSING REVENUE BONDS  
(THE ORCHARD AT HILLTOP)  
SERIES 2020H-1**

No. R-\_\_\_\_

<u>DATED DATE</u>	<u>MATURITY DATE</u>	<u>INTEREST RATE</u>	<u>CUSIP NO.</u>
_____, 2020	_____, 20__	Variable until the Stabilization Date and ____% thereafter	[_____]

REGISTERED OWNER:

PRINCIPAL AMOUNT: \_\_\_\_\_ MILLION \_\_\_\_\_ HUNDRED THOUSAND  
DOLLARS (\$\_\_\_\_\_)

The Housing Authority of the City of San Diego (the "Issuer"), a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California, for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, and (B) interest thereon, at the Bond Coupon Rate (as defined in the Indenture), payable on the first Business Day of each month, commencing \_\_\_\_\_, 20\_\_ to the person whose name appears on the registration books on the day before such day (whether or not a Business Day) (a "Record Date") and to pay any other amounts as specified in the Indenture (hereinafter defined).

Principal of, and premium, if any, on this Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), or its successor.

To but excluding the Stabilization Date, interest on this Bond shall be computed on the basis of a 360-day year, for actual days elapsed, and from and after the Stabilization Date, interest shall be computed on the basis of a 360-day year comprised of twelve 30 day months. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee.

This Bond is one of an issue of duly authorized Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (The Orchard at Hilltop), Series 2020H-1, issued in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"), pursuant to the provisions of Chapter 1 of Part 2 of Division 24 of the Health and Safety Code of the State of California (the "Act").

This is a draw-down Bond. The principal amount of this Bond as of any given date shall be equal to (i) the total amount of principal advanced by the Purchaser, less (ii) any payment of principal on the Bonds received by the Holders thereof. Principal amounts advanced by the Purchaser shall be noted on the recordkeeping system maintained by the Trustee.

The proceeds from the Bonds are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of October 1, 2020 (as amended, modified or supplemented from time to time, the "Loan Agreement"), between the Issuer and the Borrower, to finance the acquisition, construction and equipping of a multifamily residential facility located at 922-944 Euclid Avenue, San Diego, CA 92114, and known as "The Orchard at Hilltop" (the "Project Facilities"). The Borrower's payment obligations under the Loan Agreement will be evidenced by the H-1 Note and secured by the Mortgage.

The Bonds are issued under and are equally and ratably secured by an Indenture of Trust, dated as of October 1, 2020 (as amended, modified or supplemented from time to time, the "Indenture"), between the Issuer and the Trustee. All capitalized terms not defined herein shall have the meaning set forth in the Indenture.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

THE BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES, INCOME AND RECEIPTS OF THE ISSUER PLEDGED TO THE PAYMENT THEREOF. THE BONDS DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION OR A LOAN OF CREDIT OF THE STATE, THE SPONSORING POLITICAL SUBDIVISION, OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. THE BONDS DO NOT CREATE A MORAL OBLIGATION ON THE PART OF THE STATE, THE SPONSORING POLITICAL SUBDIVISION OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE AND EACH OF SUCH ENTITIES IS PROHIBITED BY THE ACT FROM MAKING ANY PAYMENTS WITH RESPECT TO THE BONDS. THE ISSUER HAS NO TAXING POWER.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect

to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Controlling Person as provided in the Indenture and authorizes the Controlling Person to exercise such rights and remedies afforded to the Controlling Person on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of an Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The Issuer and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the State to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Notwithstanding any provision of this Bond or the Indenture to the contrary, the Issuer shall be permitted to direct Note prepayments to be transferred to a custodian or trustee selected by the Issuer, in lieu of application to prepay a like portion of this Bond, so long as the Issuer simultaneously causes other funds to be applied to prepay such portion of this Bond. The preceding provisions shall apply only for purposes of preserving or "recycling" private activity bond volume cap in accordance with Section 146(i)(6) of the Code.

Neither the trustees, officers, agents, employees or representatives of the Issuer nor any person executing the Bonds shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until the Trustee shall have executed the Certificate of Authentication appearing hereon.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by

the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of its Executive Director and attested by the manual or facsimile signature of its Secretary all as of the Dated Date hereof.

HOUSING AUTHORITY OF THE CITY OF SAN  
DIEGO

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

Name: Richard C. Gentry

Title: Executive Director

Attest:

\_\_\_\_\_  
Secretary

## **CERTIFICATE OF AUTHENTICATION**

This is to certify that this Bond is one of the Bonds referred to in the within mentioned Indenture.

Date of Authentication:

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as trustee

By: \_\_\_\_\_  
Authorized Signatory

## ASSIGNMENT FOR TRANSFER

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto \_\_\_\_\_ (Tax Identification or Social Security No. \_\_\_\_\_) 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 or substitution in the premises.

\_\_\_\_\_  
Date:

Signature Guaranteed:

\_\_\_\_\_  
Signature

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

**EXHIBIT A-2  
FORM OF TAXABLE BOND**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
MULTIFAMILY HOUSING REVENUE BONDS  
(THE ORCHARD AT HILLTOP)  
TAXABLE SERIES 2020H-2**

No. R-\_\_\_\_\_

<u><b>DATED DATE</b></u>	<u><b>MATURITY DATE</b></u>	<u><b>INTEREST RATE</b></u>	<u><b>CUSIP NO.</b></u>
_____, 2020	_____, 20__	Variable until the Stabilization Date and ____% thereafter	[_____]

REGISTERED OWNER:

PRINCIPAL AMOUNT: \_\_\_\_\_ MILLION \_\_\_\_\_ HUNDRED THOUSAND  
DOLLARS (\$\_\_\_\_\_)

The Housing Authority of the City of San Diego (the "Issuer"), a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California, for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, and (B) interest thereon, at the Bond Coupon Rate (as defined in the Indenture), payable on the first Business Day of each month, commencing \_\_\_\_\_, 20\_\_ to the person whose name appears on the registration books on the day before such day (whether or not a Business Day) (a "Record Date") and to pay any other amounts as specified in the Indenture (hereinafter defined).

Principal of, and premium, if any, on this Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), or its successor.

To but excluding the Stabilization Date, interest on this Bond shall be computed on the basis of a 360-day year, for actual days elapsed, and from and after the Stabilization Date, interest shall be computed on the basis of a 360-day year comprised of twelve 30 day months. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee.

This Bond is one of an issue of duly authorized Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (The Orchard at Hilltop), Taxable Series 2020H-2, issued in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"), pursuant to the provisions of Chapter 1 of Part 2 of Division 24 of the Health and Safety Code of the State of California (the "Act").

This is a draw-down Bond. The principal amount of this Bond as of any given date shall be equal to (i) the total amount of principal advanced by the Purchaser, less (ii) any payment of principal on the Bonds received by the Holders thereof. Principal amounts advanced by the Purchaser shall be noted on the recordkeeping system maintained by the Trustee.

The proceeds from the Bonds are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of October 1, 2020 (as amended, modified or supplemented from time to time, the "Loan Agreement"), between the Issuer and the Borrower, to finance the acquisition, construction and equipping of a multifamily residential facility located at 922-944 Euclid Avenue, San Diego, CA 92114, and known as "The Orchard at Hilltop" (the "Project Facilities"). The Borrower's payment obligations under the Loan Agreement will be evidenced by the H-2 Note and secured by the Mortgage.

The Bonds are issued under and are equally and ratably secured by an Indenture of Trust, dated as of October 1, 2020 (as amended, modified or supplemented from time to time, the "Indenture"), between the Issuer and the Trustee. All capitalized terms not defined herein shall have the meaning set forth in the Indenture.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

THE BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES, INCOME AND RECEIPTS OF THE ISSUER PLEDGED TO THE PAYMENT THEREOF. THE BONDS DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION OR A LOAN OF CREDIT OF THE STATE, THE SPONSORING POLITICAL SUBDIVISION, OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. THE BONDS DO NOT CREATE A MORAL OBLIGATION ON THE PART OF THE STATE, THE SPONSORING POLITICAL SUBDIVISION OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE AND EACH OF SUCH ENTITIES IS PROHIBITED BY THE ACT FROM MAKING ANY PAYMENTS WITH RESPECT TO THE BONDS. THE ISSUER HAS NO TAXING POWER.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect

to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Controlling Person as provided in the Indenture and authorizes the Controlling Person to exercise such rights and remedies afforded to the Controlling Person on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of an Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The Issuer and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the State to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Notwithstanding any provision of this Bond or the Indenture to the contrary, the Issuer shall be permitted to direct Note prepayments to be transferred to a custodian or trustee selected by the Issuer, in lieu of application to prepay a like portion of this Bond, so long as the Issuer simultaneously causes other funds to be applied to prepay such portion of this Bond. The preceding provisions shall apply only for purposes of preserving or "recycling" private activity bond volume cap in accordance with Section 146(i)(6) of the Code.

Neither the trustees, officers, agents, employees or representatives of the Issuer nor any person executing the Bonds shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until the Trustee shall have executed the Certificate of Authentication appearing hereon.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by

the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of its Executive Director and attested by the manual or facsimile signature of its Secretary all as of the Dated Date hereof.

HOUSING AUTHORITY OF THE CITY OF SAN  
DIEGO

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

Name: Richard C. Gentry

Title: Executive Director

Attest:

\_\_\_\_\_  
Secretary

## **CERTIFICATE OF AUTHENTICATION**

This is to certify that this Bond is one of the Bonds referred to in the within mentioned Indenture.

Date of Authentication:

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as trustee

By: \_\_\_\_\_  
Authorized Signatory

## ASSIGNMENT FOR TRANSFER

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto \_\_\_\_\_ (Tax Identification or Social Security No. \_\_\_\_\_) 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 or substitution in the premises.

\_\_\_\_\_  
Date:

Signature Guaranteed:

\_\_\_\_\_  
Signature

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

**EXHIBIT B**  
**FORM OF INVESTOR LETTER**

[Date]

Housing Authority of the City of San Diego  
San Diego, California

The Bank of New York Mellon Trust Company, N.A.  
400 South Hope Avenue, Suite 500  
Los Angeles, California 90071  
Attention: Corporate Trust Department

Re:    \$[ ] Housing Authority of the City of San Diego  
          Multifamily Housing Revenue Bonds  
          (The Orchard at Hilltop)  
          Series 2020H-1

          \$[ ] Housing Authority of the City of San Diego  
          Multifamily Housing Revenue Bonds  
          (The Orchard at Hilltop)  
          Taxable Series 2020H-2

The undersigned, as purchaser (the "Purchaser") of the above-referenced Bonds issued pursuant to the Indenture of Trust dated as of October 1, 2020 (the "Indenture") between the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO (the "Issuer") and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as trustee (the "Trustee"), hereby represents that:

1.       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.

2.       The Purchaser is a "qualified institutional buyer" (a "Qualified Institutional Buyer") under Rule 144A of the Securities Act of 1933, as amended (the "1933 Act"), or an "accredited investor," as defined in Regulation D under the 1933 Act, and, as such, is an Approved Buyer, as defined in the Indenture, and therefore has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the Bonds.

3.       The Bonds are being acquired by the Purchaser for its own account for investment purposes and not with a present view to or for resale thereof. 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. Nothing in the prior sentences, however, shall limit the Purchaser's right to sell and transfer the Bonds at any time subject to the terms of the Indenture.

4.       Any disposition by the Purchaser at this time of all or any part of the Bonds shall be only to an institution or entity that is an Approved Buyer or that Purchaser reasonably believes is an Approved Buyer (or otherwise in accordance with the terms of paragraph 9 of this letter);

provided, however, the Purchaser reserves the right to deposit such Bonds into a trust or custodial arrangement in which all of the beneficial ownership interests would be owned by one or more other Approved Buyers; it being understood and agreed that, under such circumstances, each such beneficial owner, in connection with its acquisition of an interest in such arrangement, would be required to represent to the relevant trustee or custodian that it was acquiring such interest for its own account and for investment purposes, and not with a present view to or for resale.

5. The Purchaser understands that the Bonds are not registered under the 1933 Act and that such registration is not legally required as of the date hereof; and further understands that the Bonds (a) are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of the Bonds by it, and further acknowledges that any current exemption from registration of the Bonds does not affect or diminish such requirements.

6. The Purchaser understands that (a) the Bonds are not secured by any pledge of any moneys received or to be received from taxation by the State of California or any political subdivision thereof and that the Issuer has no taxing power, (b) the Bonds do not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the State of California or any political subdivision thereof; and (c) the liability of the Issuer with respect to the Bonds is limited to the Security as set forth in the Indenture.

7. The Purchaser acknowledges that to its knowledge 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 Purchaser has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower, the Project Facilities and the Bonds and the security therefor so that, as a reasonable investor, the Purchaser has been able to make its decision to purchase the Bonds.

8. The Purchaser has made its own inquiry and analysis with respect to the Bonds and the security therefor, and other material factors affecting the security and payment of the Bonds. The Purchaser is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Bonds.

9. The Purchaser acknowledges that it has the right to sell and transfer the Bonds in Authorized Denominations: (i) to an Affiliate of the Purchaser; (ii) to an institution or entity it reasonably believes is a Qualified Institutional Buyer; (iii) to an Approved Buyer other than a Qualified Institutional Buyer in a transaction that is in compliance with, or exempt from, the registration requirements of the Securities Act and other applicable securities laws and subject to the delivery to the Trustee of a purchaser's letter from the transferee to the same effect as this Purchaser's Letter, with no revisions except as may be approved in writing by the Issuer; or (iv) by deposit into a trust or custodial arrangement as described in paragraph 4 of this letter.

10. In entering into this transaction the Purchaser has not relied upon any representations or opinions made by the Issuer other than representations and statements set forth in the documents and opinions delivered in connection with the issuance of the Bonds, 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 Facilities (including the financing or management thereof), or any other matter pertaining to the merits or risks of the transaction, or the adequacy of the funds pledged to secure repayment of the Bonds.

11. Capitalized terms used herein and not otherwise defined have the meaning given such terms in the Indenture.

\_\_\_\_\_, as

Purchaser

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

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

Its: \_\_\_\_\_

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**LOAN AGREEMENT**

**by and between**

**HILLTOP FAMILY HOUSING, L.P.**

**And the**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO**

**Dated as of October 1, 2020**

**Relating to:**

**\$ \_\_\_\_\_  
Housing Authority of the City of San Diego  
Multifamily Housing Revenue Bonds  
(The Orchard at Hilltop), Series 2020H-1**

**\$ \_\_\_\_\_  
Housing Authority of the City of San Diego  
Multifamily Housing Revenue Bonds  
(The Orchard at Hilltop), Taxable Series 2020H-2**

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The amounts payable to the Housing Authority of the City of San Diego (the "Issuer") and other rights of the Issuer (except for Reserved Rights), under this Loan Agreement have been pledged and assigned to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee") under the Indenture of Trust between the Issuer and the Trustee dated as of October 1, 2020.

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## LOAN AGREEMENT

This LOAN AGREEMENT (as amended, modified or supplemented from time to time, this "Agreement") made as of October 1, 2020, by and between the Housing Authority of the City of San Diego, a public body corporate and politic, duly organized and validly existing under the laws of the State of California (together with its successors and assigns, the "Issuer") and HILLTOP FAMILY HOUSING, L.P., a limited partnership duly organized and validly existing under the laws of the State of California (together with its permitted successors and assigns, the "Borrower"),

### WITNESSETH:

**WHEREAS**, the Issuer is authorized under Chapter 1 of Part 2 of Division 24 of the Health and Safety Code of the State of California, as amended (the "Act") to enter into loan agreements with respect to one or more projects authorized under the Act for such payments and upon such terms and conditions as the Issuer may deem advisable in accordance with the provisions of the Act; and

**WHEREAS**, the Issuer has determined that the public purposes set forth in the Act will be furthered by the issuance, sale and delivery of \$\_\_\_\_\_ in original aggregate principal amount of the Issuer's Multifamily Housing Revenue Bonds (The Orchard at Hilltop), Series 2020H-1 (the "Tax-Exempt Bonds") and \$\_\_\_\_\_ in original aggregate principal amount of the Issuer's Multifamily Housing Revenue Bonds (The Orchard at Hilltop), Taxable Series 2020H-2 (the "Taxable Bonds," and together with the Tax-Exempt Bonds, the "Bonds"), in each case pursuant to an Indenture of Trust (as amended, modified or supplemented from time to time, the "Indenture"), dated as of October 1, 2020, between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (together with any successor trustee under the Indenture and their respective successors and assigns, the "Trustee"), to provide funds to finance the costs of the acquisition, construction and equipping of the Project Facilities (as hereunder defined); and

**WHEREAS**, the proceeds of the Bonds are being applied to finance the acquisition, construction and equipping of a multifamily apartment housing facility consisting of total of 113 units and related personal property and equipment, located at 922-944 Euclid Avenue, San Diego, California 92114 and known as "The Orchard at Hilltop" (the "Project Facilities").

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE UNDERTAKINGS HEREIN SET FORTH AND OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND, THE BORROWER AND THE ISSUER HEREBY AGREE AS FOLLOWS:

### ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. In this Agreement (except as otherwise expressly provided for or unless the context otherwise requires), any capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Indenture.

Section 1.2 Rules of Construction; Time of Day. In this Agreement, unless otherwise indicated, (i) defined terms may be used in the singular or the plural and the use of any gender includes all genders, (ii) the words "hereof", "herein", "hereto", "hereby" and "hereunder" refer to this entire Agreement, and (iii) all references to particular Articles or Sections are references to

the Articles or Sections of this Agreement, (iv) the terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants”, (v) the term “including” shall mean “including, but not limited to,” and (vi) the terms “best knowledge” or “knowledge” shall mean the actual knowledge of any Authorized Person of the Borrower after due inquiry. References to any time of the day in this Agreement shall refer to Eastern standard time or Eastern daylight saving time, as in effect in New York, New York, on such day.

## **ARTICLE 2 LOAN AND PROVISIONS FOR REPAYMENT**

### **Section 2.1   Basic Loan and Repayment Terms.**

(a) The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. The Loan shall be made by depositing the proceeds from the initial sale of the Bonds in accordance with Article IV of the Indenture. Such proceeds shall be disbursed to or on behalf of the Borrower as provided for in this Agreement and the Indenture. The Borrower’s obligation to repay the Loan shall be evidenced by the H-1 Note, in respect of the Tax-Exempt Bonds, and the H-2 Note, in respect of the Taxable Bonds. The forms of the Notes are attached hereto as Exhibit A.

(b) The Borrower hereby agrees to pay the Notes and repay the Loan made pursuant to this Agreement by paying or causing to be paid to the Trustee in immediately available funds for the account of the Issuer for deposit into the Bond Fund or the Redemption Fund, as applicable, two Business Days before the dates, and in the amounts, set forth on the Debt Service Schedule, and two Business Days before any other date that any payment of interest, premium, if any, or principal is required to be made in respect of the Bonds pursuant to the Indenture whether at maturity, upon acceleration or by sinking fund redemption or mandatory redemption, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, a sum which will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or upon mandatory redemption or acceleration or otherwise), premium, if any, and interest on the Bonds, as provided in the Indenture.

(c) It is understood and agreed that the Notes and all payments payable by the Borrower under this Section 2.1 are assigned by the Issuer to the Trustee for the benefit of the Bondholders. The Borrower assents to such assignment. The Issuer hereby directs the Borrower and the Borrower hereby agrees to pay to the Trustee, at the address specified in or in accordance with Section 10.1 hereof, all loan re-payments payable to the Issuer pursuant to the Notes and this subsection.

(d) The Borrower shall have, and is hereby granted, the option to prepay the unpaid principal amount of the Loan, together with interest thereon to the date of redemption of the Bonds, but only pursuant to the provisions of Section 2.3(b) hereof and Section 3.4(a) of the Indenture with respect to voluntary prepayment of the Loan and optional redemption of the Bonds.

### **Section 2.2   Fees.**

(a) On the date of execution and delivery of this Agreement, the Borrower shall pay, or cause to be paid, to Boston Capital Finance, LLC an origination fee equal to \$[331,825] and a construction monitoring fee of \$[28,000], together with the fees and expenses of its counsel.

(b) The Borrower shall pay (as directed by the Controlling Person) two Business Days before each Interest Payment Date, commencing on the First Interest Payment Date and continuing through Final Completion of the Work in respect of the Project Facilities, an amount equal to the costs of the Engineering Consultant incurred by the Controlling Person in the prior month in an amount not to exceed \$2,500 per month (plus travel and reasonable and necessary expenses). If the Borrower fails to requisition such costs, the Controlling Person may direct the Trustee to disburse such amounts as part of any Advance.

(c) The Borrower shall pay the fees and expenses of the Issuer as required under the Regulatory Agreement.

(d) The Borrower shall pay all reasonable fees and expenses of the Trustee and/or a Qualified Custodian.

(e) The Borrower shall pay any and all special servicing fees or costs in accordance with Section 6.34 hereof.

### Section 2.3 Termination; Voluntary Prepayment and Redemption.

(a) Notwithstanding anything to the contrary contained in this Agreement or the other Bond Documents, the Controlling Person's and the Majority Owner's and each Holder's rights, interests and remedies hereunder and under the other Bond Documents shall not terminate or expire or be deemed to have been discharged or released until the earlier to occur of (i) the payment in full of the Bonds, or (ii) defeasance of all of the Bonds. No such termination, expiration or release shall affect the survival of the indemnification provisions of this Agreement, which provisions shall survive any such termination, expiration or release.

(b) The Loan may be prepaid by the Borrower, and the Bonds shall be optionally redeemed pursuant to Section 3.4(a) of the Indenture, on any Interest Payment Date on or after the First Optional Call Date, upon the payment of the redemption price set forth in such Section 3.4(a) of the Indenture.

(c) Acceleration of the obligations of the Borrower hereunder upon an Event of Default prior to the First Optional Call Date, shall constitute an evasion of the prepayment provisions of this Agreement and any tender of payment of an amount necessary to satisfy the entire indebtedness evidenced by this Agreement shall include an acceleration premium, equal to the amount of interest which would have accrued on the amount of Bonds scheduled to be Outstanding from the date of acceleration to, but not including, the First Optional Call Date.

(d) The Borrower shall be required to prepay the Loan at the times and in the amounts necessary to provide funds for the payment of the mandatory redemption of the Bonds pursuant to Section 3.4(b) of the Indenture. In addition, on each Interest Payment Date, the Borrower shall pay to the Trustee for deposit into the Redemption Fund the amount set forth for such purpose on the Debt Service Schedule, which amount shall be applied on each Principal Payment Date to the mandatory sinking fund redemption of the Bonds pursuant to Section 3.4(c) of the Indenture.

(e) Notwithstanding the foregoing, the Borrower shall have the right at any time to defease the Bonds in accordance with the provisions of Article V of the Indenture, without premium.

Section 2.4 Obligations Absolute. The obligations of the Borrower under this Agreement shall be absolute, unconditional and irrevocable, and shall be performed in all material respects in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation the following circumstances: (i) any lack of validity or enforceability of the Bond Documents or any other agreement or document relating thereto; (ii) any amendment or waiver of or any consent to or departure from the Bond Documents or any document relating thereto consented to by Borrower; or (iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Issuer or the Trustee (or any persons or entities for whom the Trustee may be acting) or any other person or entity, whether in connection with this Agreement, the transactions described herein or any unrelated transaction. The Borrower understands and agrees that no payment by it under any other agreement (whether voluntary or otherwise) shall constitute a defense to its obligations hereunder, except to the extent that the Loan evidenced hereby has been indefeasibly paid in full, whether owing under this Agreement or under the other Bond Documents.

Section 2.5 Indemnification. The Borrower covenants to defend, indemnify and hold harmless the Issuer, the Trustee, the Controlling Person, the Majority Owner, and each of their respective Affiliates and each of their and their Affiliates' respective directors, officers, employees, representatives and agents (collectively, the "Indemnified Parties"), except as limited below, from and against any and all claims, damages, losses, liabilities, costs or expenses (including reasonable attorneys' fees for counsel of each of the Indemnified Parties' choice) whatsoever which the Indemnified Parties may incur (or which may be claimed against any of the Indemnified Parties by any person or entity whatsoever) by reason of or in connection with:

(a) the Bonds, Indenture, Loan Agreement, Regulatory Agreement or Tax Certificate, or the execution or amendment hereof or thereof or in connection with the transactions contemplated hereby or thereby, including the issuance, sale or resale, defeasance or redemption of the Bonds;

(b) any breach by the Borrower of any representation, warranty, covenant, term or condition in, or the occurrence of any default under, this Agreement or the other Bond Documents to which Borrower is a party, including all reasonable fees or actual out-of-pocket expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default or any Determination of Taxability;

(c) the involvement of any of the Indemnified Parties in any legal suit, investigation, proceeding, inquiry or action as a consequence, direct or indirect, of the Controlling Person or the Majority Owner's actions taken pursuant to this Agreement or any of the other Bond Documents to which Borrower is a party or any other event or transaction reasonably contemplated by any of the foregoing;

(d) any materially untrue statement made by Borrower and contained or incorporated by reference in any offering or reoffering materials prepared in respect of the Bonds, or any supplement or amendment thereof, or the omission by Borrower to state therein a material fact necessary to make such statements in light of the circumstances in which they are or were made not misleading;

(e) the acceptance or administration of the Bond Documents or the Security Interests thereunder or the performance of Borrower duties under the Bond Documents or any loss or damage to property or any injury to or death of any person that may be occasioned by any

cause whatsoever pertaining to the Project Facilities or the use thereof, including without limitation any lease thereof or assignment of its interest in this Agreement;

(f) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Advances or the Project Facilities, the operation of the Project Facilities, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition or construction of, the Improvements or any part thereof;

(g) 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 Facilities;

(h) any violation or alleged violation of any applicable law or regulation including, without limitation, any Environmental Law or any inspection, review or testing with respect to, or the release of any toxic substance from, the Project Facilities or any part thereof;

(i) the enforcement of, or any action taken by the Issuer or any Indemnified Party, related to remedies under, this Agreement, the Indenture and the other Bond Documents;

(j) any action, suit, claim, proceeding, audit, inquiry, examination, or investigation of a judicial, legislative, administrative or regulatory nature concerning or related to interest payable on the Tax-Exempt Bonds not being excludable from gross income for purposes of federal income taxation or exempt from state income taxation;

(k) any action, suit, claim or demand contesting or affecting the title of the Project Facilities;

(l) the investigation of, preparation for or defense of any litigation, proceeding or investigation in connection with the Project Facilities or the transactions to be consummated in connection therewith of any nature whatsoever, commenced or threatened against the Borrower, the Project Facilities or any Indemnified Party; and

(m) any brokerage commissions or finders' fees claimed by any broker or other party in connection with the Bonds or the Project.

The indemnification shall include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and reasonable attorneys' fees incurred by the Indemnified Parties, provided the Borrower shall not be required to indemnify (i) the Issuer for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct the Issuer or (ii) any of the other Indemnified Parties for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct, gross negligence, illegal acts, or breach of the Bond Loan Documents by any such other Indemnified Party. The obligations of the Borrower under this Section shall survive the termination of this Agreement and the Indenture. Notwithstanding any other provision of this Agreement or the Indenture to the contrary, the Borrower agrees (i) not to assert any claim or institute any action or suit against the Trustee or its employees arising from or in connection with any investment of funds made by the Trustee in good faith as directed by the Borrower, the Controlling Person or the Majority Owner, and (ii) to indemnify and hold the Trustee and its employees harmless against any liability, losses, damages, costs, expenses,

causes of action, suits, claims, demands and judgments of any nature arising from or in connection with any such investment. Nothing in this Section is intended to limit the Borrower's obligations contained in Section 2.1 and 2.2 hereof. Amounts payable to the Issuer hereunder shall be due and payable ten (10) days after demand and will accrue interest at the Default Rate, commencing with the expiration of the ten (10) day period. When the Issuer 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. The obligations of Borrower to the Indemnified Parties under this Section shall not be subject to the recourse limitations of Section 10.13 hereof.

Section 2.6 Amounts Remaining on Deposit Upon Payment of the Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds (or defeasance of the Bonds) and upon payment of amounts payable to the United States pursuant to any rebate requirement and the payment of any other amounts owed hereunder or under the Indenture, all amounts on deposit with the Trustee pursuant to the Indenture, this Agreement or any other Bond Document shall be paid by the Trustee to the Borrower.

### **ARTICLE 3 SECURITY**

Section 3.1 Mortgage and Other Bond Documents. To further secure the Borrower's obligations under this Agreement, the Borrower shall, at its sole expense, execute and deliver, or cause to be executed and delivered, to the Trustee (and where required, duly record) the Mortgage and each of the other Bond Documents.

Section 3.2 Financing Statements. The Borrower hereby authorizes the Trustee, without the signature of the Borrower, to file such financing statements and continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to perfect and maintain perfection of the Issuer's and/or the Trustee's security interests under this Agreement, the Indenture, the Mortgage and the other Bond Documents. The Borrower will pay upon demand the costs of filing the foregoing financing or continuation statements and the Financing Statements required under Section 7.8 of the Indenture in such public offices as the Controlling Person may designate.

### **ARTICLE 4 REPRESENTATIONS OF ISSUER**

Section 4.1 Representation by the Issuer. The Issuer represents and warrants to the Borrower, the Trustee and the Holders from time to time of the Bonds as follows:

(a) The Issuer is a public body, corporate and politic, duly organized and existing under the laws of the State of California, duly authorized to issue the Bonds and to perform its obligations under this Agreement.

(b) This Agreement, when duly accepted and executed by the Issuer and the other parties hereto, will constitute the legal, valid and binding obligation of the Issuer enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws or judicial decisions 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).

(c) To the best knowledge of the Issuer, no litigation is pending or threatened against the Issuer that would prohibit its entering into this Agreement or consummating the transactions contemplated hereby.

(d) The Issuer shall use its best efforts to issue the Bonds and shall use the proceeds thereof to make the Loan subject to the provisions of this Agreement. Nothing in this Loan Agreement shall be construed as requiring the Issuer to provide construction financing or requiring the Issuer to provide sufficient moneys for all the construction and permanent financing needs of the Project Facilities, other than to make the Loan from proceeds of the Bonds as contemplated herein.

(e) To the best knowledge of the Issuer, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending against the Issuer or threatened against the Issuer that (i) affects or seeks to prohibit, restrain or enjoin the issuance of the Bonds, or the execution and delivery of the Bonds or the loaning of the proceeds of the Bonds to the Borrower, or the execution and delivery of the Indenture, the Purchase Agreement, the Issuer Assignment and the Regulatory Agreement, (ii) affects or questions the validity or enforceability of the Bonds, the Indenture or this Agreement, or (iii) questions the tax-exempt status of the Tax-Exempt Bonds.

(f) The Issuer, by resolution duly adopted, has duly authorized the sale, issuance, execution and delivery of the Bonds, the execution and delivery of this Agreement, the Indenture, the Purchase Agreement, the Regulatory Agreement and the Issuer Assignment and the performance of its obligations hereunder and thereunder.

(g) To the best knowledge of the Issuer, the execution and delivery of this Agreement, the Indenture, the Purchase Agreement, and the Regulatory Agreement, the performance by the Issuer of its obligations hereunder and thereunder, and the consummation of the transactions contemplated hereby and thereby do not and will not violate any law, regulation, rule or ordinance or any order, judgment or decree of any federal, state or local court, and do not and will not conflict with or constitute a material breach of, or a material default under any constitutional provision or statute of the state or of any document, instrument or commitment to which the Issuer is a party or by which the Issuer or any of its property is bound.

**Section 4.2 No Liability of Issuer; No Charge Against Issuer's Credit.** Any obligation of the Issuer created by, arising out of, or entered into in contemplation of this Agreement, including the payment of the principal of, premium if any, and interest on the Bonds, shall not impose or constitute a debt or pecuniary liability upon the Issuer, the State or any political subdivision thereof or constitute a charge upon the general credit or taxing powers of any of the foregoing. Any such obligation shall be payable solely out of the revenues and any other moneys derived hereunder and under the Indenture, except (as provided in the Indenture and in this Agreement) to the extent it shall be paid out of moneys attributable to the proceeds of the Bonds or the income from the temporary investment thereof. No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement of the Issuer hereunder against any past, present or future trustee, officer, member, employee or agent of the Issuer, whether directly or indirectly, and all such liability of any such individual as such is expressly waived and released as a condition of

and in consideration for the execution of this Agreement, the making of the loan of the proceeds of the Bonds to the Borrower, and the issuance of the Bonds.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

The Borrower represents and warrants to and for the benefit of the Issuer, the Trustee, the Controlling Person and the Bondholders as of the date hereof, as follows:

Section 5.1 Existence. The Borrower is a California limited partnership, duly organized, validly existing and in good standing under the Legal Requirements of the state of its organization and is duly qualified to do business in the State. The Borrower has furnished to the Issuer, the Trustee and the Controlling Person true and complete copies of its Partnership Agreement and certificate of limited partnership. The Borrower owns and will own no other assets other than the Project Facilities. The Borrower and the General Partner have been, are and will be engaged solely in the business of acquiring, constructing, equipping, financing, owning, managing and operating the Project Facilities and activities incident thereto. The Administrative General Partner of the Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of the State, the manager of which is a Delaware corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware. The Managing General Partner of the Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of the State, the manager of which is a nonprofit public benefit corporation, duly organized, validly existing and in good standing under the laws of the State. The Administrative General Partner has furnished to the Issuer, the Trustee and the Controlling Person true and complete copies of its Operating Agreement and Articles of Incorporation. The Administrative General Partner has and will have no other assets other than its partnership interests in the Borrower.

Section 5.2 Power, Authorization and No Conflicts. The Borrower has all requisite power and authority and the legal right to own and operate its properties and to conduct its business and operations as they are currently being conducted and as proposed to be conducted by it. The execution, delivery and performance by the Borrower of this Agreement and the other Bond Documents and the Subordinate Debt Documents to which the Borrower is a party (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary company and legal action by or on behalf of the Borrower, and (iii) do not contravene the Partnership Agreement, operating agreement, articles of incorporation, bylaws, or certificate of limited partnership of the Borrower or the General Partner, as applicable, or any Legal Requirement applicable to the Borrower or the General Partner or any Material Contract or restriction binding on or affecting the Borrower, the General Partner or any of their respective assets, or result in the creation of any mortgage, pledge, lien or encumbrance upon any of its assets other than as provided by the terms thereof.

Section 5.3 Governmental Authorizations and Other Approvals. The Borrower and the General Partner have all necessary Governmental Actions and qualifications, and have complied with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own, operate and construct the Project Facilities in accordance with the provisions of the Bond Documents. Except as set forth on Schedule 6 hereto, the Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having

expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities (upon completion of construction of the Project Facilities as contemplated in the Plans and Specifications) will comply with all Governmental Actions and Legal Requirements, including all zoning restrictions (including without limitation, use density, setbacks, parking and other similar requirements) or the Borrower has a valid variance for or exemption from such requirements. All Governmental Actions obtained by the Borrower have been validly issued and are in full force and effect. With respect to any Government Actions not yet obtained, the Borrower knows of no reason such Governmental Actions will not be timely obtained in the ordinary course of business and as needed in connection with the construction or operation of the Project Facilities. No such Governmental Action will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project Facilities including any transfer pursuant to foreclosure sale under the Mortgage.

Section 5.4 Validity and Binding Effect. This Agreement and the other Bond Documents and the Subordinate Debt Documents to which the Borrower is a party are the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their respective terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirement affecting creditors' rights generally.

Section 5.5 No Litigation. Except as disclosed on Schedule 1 attached hereto, there is no pending action or proceeding for which Borrower has been served, including eminent domain proceedings, before any Governmental Authority or arbitrator against or involving the Borrower, or to the Borrower's knowledge after due inquiry, the General Partner or the Project Facilities and, to the best knowledge of the Borrower and the General Partner, there is no action or proceeding threatened in writing, including eminent domain proceedings, affecting the Borrower or the General Partner before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower or the General Partner, or the validity or enforceability of this Agreement, the Bonds, the Subordinate Debt Documents or the Bond Documents or the construction, operation or ownership of the Project Facilities, or the exclusion from gross income of interest on the Bonds for purposes of federal income taxation [or the exemption of the Project Facilities from ad valorem real estate taxation under the laws of the State].

Section 5.6 No Violations. The Borrower and the General Partner are in compliance in all material respects with, and not in breach of or default under (a) any applicable Governmental Actions or Legal Requirements with respect to the Project Facilities of any Governmental Authority having jurisdiction, or (b) the Bond Documents, the Subordinate Debt Documents or any other credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject. No event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default by Borrower under any such instrument. The Borrower is not in violation, nor has it received any written notice or other written record of any violation of any Legal Requirements, restrictive covenants or other restrictions applicable to any of the Project Facilities.

Section 5.7 Compliance. The ownership of the Project Facilities, the construction of the Project Facilities, and the use and operation of the Project Facilities as contemplated hereby do and shall, in all material respects, comply with, and are lawful and permitted uses under, the Tax Certificate and the Regulatory Agreement, all applicable building, fire, safety, zoning, subdivision, sewer, Environmental Laws, health, insurance and other Legal Requirements and plan approval conditions of any Governmental Authority. The Borrower has obtained all

Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities and all such Governmental Actions, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities are located wholly within the boundaries of the Issuer's jurisdiction. The Project Facilities will satisfy all requirements of the Act and the Code with respect to multifamily rental housing and/or qualified residential rental facilities, [and the requirements for exemption from ad valorem real estate taxation under the laws of the State].

Section 5.8 Title to Properties; Liens and Encumbrances. The Borrower has good and indefeasible title in fee simple to the Project Facilities, free and clear of all liens or encumbrances except for the Permitted Encumbrances. All such real property, fixtures and equipment necessary to the conduct of the business of the Borrower and the operation of the Project Facilities are and will be in reasonable working order and are suitable for the purposes for which they are and will be used. There exist no liens, encumbrances or other charges against the Project Facilities (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances.

Section 5.9 Utilities and Access. All utility services necessary for the operation of the Project Facilities in the manner contemplated hereby, including water supply, storm and sanitary sewer facilities, gas, electricity and telephone facilities are available within the boundaries of the Project Facilities; and all roads necessary for the full utilization of the Project Facilities in the manner contemplated hereby either have been completed or rights-of-way therefor have been acquired by the appropriate governmental authority or others or have been dedicated to public use and accepted by such Governmental Authority.

Section 5.10 Financial Information.

(a) All of the financial information furnished to the Controlling Person or the Majority Owner with respect to the Borrower, the Guarantor, and the General Partner in connection with this Agreement (i) is complete and correct in all material respects as of the date hereof; and (ii) fairly presents the financial condition of such party as of the date hereof. None of the Borrower, the Guarantor or the General Partner has any material liability or contingent liability not disclosed to the Controlling Person or the Majority Owner in writing; and

(b) Since its formation, each of the Borrower, the Guarantor, and the General Partner has conducted its operations in the ordinary course, and no material adverse change has occurred in the business, operations, assets or financial condition of the Borrower, the Guarantor, or the General Partner.

Section 5.11 ERISA. No employee pension plan maintained by the Borrower or the General Partner or any ERISA Affiliate which is subject to Part 3 of Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") has an accumulated funding deficiency (as defined in Section 302(a) of ERISA), no reportable event (as defined in Section 4043 of ERISA) has occurred with respect to any employee pension plan maintained for employees of the Borrower or any ERISA Affiliate and covered by Title IV of ERISA, no liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by the Pension Benefit Guaranty Corporation ("PBGC") or by a trustee appointed pursuant to Section 4042(b) or (c) of ERISA, and no lien has been attached and no person has threatened to attach a lien to any of the Borrower's, the General Partner's or any ERISA Affiliate's property as a result

of failure to comply with ERISA or as a result of the termination of any employee pension plan covered by Title IV of ERISA. Each employee pension plan (as defined in Section 3(2) of ERISA) maintained for employees of the Borrower, the General Partner or any ERISA Affiliate which is intended to be qualified under Section 401 (a) of the Code, including all amendments to such plan or to any trust agreement, group annuity or insurance contract or other governing instrument, is the subject of a favorable determination by the Internal Revenue Service with respect to its qualification under Section 401(a) of the Code. With respect to any multi-employer pension plan (as defined in Section 3(37) of ERISA) to which the Borrower, the General Partner or any ERISA Affiliate is or has been required to contribute after September 25, 1980, (i) no withdrawal liability (within the meaning of Section 4201 of ERISA) has been incurred by the Borrower, the General Partner or any ERISA Affiliate, (ii) no withdrawal liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by a sponsor or an agent of a sponsor of any such multi-employer plan, (iii) no such multi-employer pension plan is in reorganization (as defined in Section 4241(a) of ERISA), and (iv) neither the Borrower, the General Partner nor any ERISA Affiliate has any unfilled obligation to contribute to any such multi-employer pension plan. As used in this Agreement, "ERISA Affiliate" means (i) any corporation included with the Borrower or the General Partner in a controlled group of corporations within the meaning of Section 414(b) of the Code, (ii) any trade or business (whether or not incorporated or for-profit) which is under common control with the Borrower, or the General Partner within the meaning of Section 414(c) of the Code, (iii) any member of an affiliated service group of which the Borrower, or the General Partner is a member within the meaning of Section 414(m) of the Code, and (iv) any other entity treated as being under common control with the Borrower or the General Partner under Section 414(o) of the Code.

**Section 5.12 Environmental Representations.** Except as set forth on the Environmental Audit delivered to the Controlling Person (a) the Borrower has no actual knowledge of any activity at the Project Facilities, or any storage, treatment or disposal of any Hazardous Substances connected with any activity at the Project Facilities, which has been conducted, or is being conducted, in violation of any Environmental Law; (b) to the best of Borrower's knowledge none of the following conditions which could give rise to material liabilities, material costs for remediation or a material adverse change in the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower exist: (i) Contamination present at the Project Facilities, (ii) polychlorinated biphenyls present at the Project Facilities, (iii) asbestos or materials containing asbestos present at the Project Facilities, (iv) urea formaldehyde foam insulation present at the Project Facilities, or (v) lead-based paint at the Project Facilities, in each case in violation of Environmental Law; (c) no portion of the Project Facilities constitutes an Environmentally Sensitive Area; (d) the Borrower has no knowledge of any governmental investigation of the Project Facilities for the presence of radon; (e) no tanks presently or formerly used for the storage of any liquid or gas above or below ground are present at any of the Project Facilities; (f) no condition, activity or conduct exists on or in connection with the Project Facilities which constitutes a violation of Environmental Laws; (g) no written notice has been issued by any Governmental Authority to the Borrower or the General Partner identifying the Borrower or the General Partner as a potentially responsible party under any Environmental Laws; (h) there exists no investigation, action, proceeding or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanctions or judgment under any Environmental Laws with respect to the Project Facilities; and (i) the Borrower is not required to obtain any permit or approval from any Governmental Authority or to notify any Governmental Authority pursuant to any Environmental Law with regard to the construction of the Project Facilities.

**Section 5.13 Outstanding Obligations and Material Contracts.** Attached hereto as Schedule 2 is (i) a complete list of all Obligations of the Borrower and the General Partner as of

the date of execution and delivery hereof, together with a description of the instruments evidencing, governing or securing such obligations (provided that no description need be provided of the Obligations hereunder) and (ii) a complete list of all other Material Contracts. There exists no default after the expiration of any applicable notice and cure periods under any such instrument that would reasonably be expected to result in a material adverse effect on the business, operations, assets, condition (financial or otherwise) or prospects of Borrower or General Partner. Except for the obligations listed on Schedule 2, neither the Borrower nor the General Partner has incurred any Obligations, secured or unsecured, direct or contingent. Each of the Borrower and the General Partner has complied with all provisions of such Material Contracts in all material respects, to the extent such contract is applicable to such party, and to the best of Borrower's knowledge there exists no default after the expiration of any applicable notice and cure period, under any such Material Contract that would reasonably be expected to result in a material adverse effect on the business, operations, assets, condition (financial or otherwise) or prospects of Borrower or General Partner.

Section 5.14 Solvency. Each of the Borrower, the Guarantor and the General Partner is and, after giving effect to this Agreement and all other agreements of the Borrower, the Guarantor and the General Partner being entered into on the date of execution and delivery of this Agreement, will be solvent (which for this purpose shall mean that it is able to pay its current debts as they come due).

Section 5.15 Full Disclosure. This Agreement, the exhibits hereto and the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person or the Majority Owner by the Borrower, the Guarantor, or the General Partner, or an Affiliate thereof, in connection with the transactions contemplated hereby or by the Bond Documents, do not contain any untrue statement of a material fact with respect to the Borrower, the Guarantor or the General Partner or the Project Facilities and do not omit to state a material fact known to Borrower with respect to the Borrower, the Guarantor or the General Partner or the Project Facilities necessary in order to make the statements contained therein not misleading in light of the circumstances under which they were made. There is no fact known to the Borrower, the Guarantor or the General Partner which materially adversely affects or in the future is reasonably likely to adversely affect the business, operations, properties, assets or financial condition of the Borrower, the Guarantor or the General Partner which has not been set forth in this Agreement or in the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person and the Majority Owner on behalf of any such party by an Affiliate before the date of execution and delivery of this Agreement in connection with the transactions contemplated hereby.

Section 5.16 Bond Documents. Each of the Borrower, the Guarantor and the General Partner has provided the Controlling Person and the Majority Owner with true, correct and complete copies of: (i) all documents executed by the Borrower, the Guarantor or the General Partner in connection with the Bonds, including all amendments thereto and compliance reports filed thereunder; (ii) all management and service contracts entered into by the Borrower in connection with the Project Facilities, including all amendments thereto; (iii) all correspondence, if any, relating to the Bonds from the Trustee, the Issuer, the Securities and Exchange Commission, the Internal Revenue Service or any state or local securities regulatory body or taxing authority or any securities rating agency; and (iv) all material documentation, if any, relating to governmental grants, subsidies or loans or any other loans, lines of credit or other subordinate financing (including, without limitation, the Subordinate Debt) relating to the Borrower or the Project Facilities, whether or not secured by the Project Facilities. Each of the representations and warranties on the Borrower's part made in the Bond Documents to which the Borrower is a

party remain true and correct in all material respects and no Event of Default exists under any covenants on the Borrower's part to perform under the Bond Documents to which the Borrower is a party.

Section 5.17 Illegal Activity. No portion of any of the Project Facilities has been or will be acquired, constructed, fixtured, equipped or furnished with proceeds of any illegal activity conducted by the Borrower.

Section 5.18 Executive Order 13224. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in any of those entities is included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in Executive Order 13224 — Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended. It shall constitute an Event of Default hereunder if the foregoing representation and warranty shall ever become false.

Section 5.19 No Broker. The Borrower has used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 5.20 Construction Contract; Architect's Agreement. The Construction Contract and the Architect's Agreement are each in full force and effect, and the parties thereto are in compliance in all material respects with their respective obligations thereunder. The work to be performed by the Contractor under the Construction Contract is the work called for by the Plans and Specifications, and all Work required to complete the Improvements in accordance with the Plans and Specifications is provided for under the Construction Contract.

Section 5.21 Development Budget. The Development Budget attached hereto as Schedule 4 accurately reflects: (i) all anticipated costs of implementing and completing the Work within the Plans and Specifications and (ii) anticipated uses by source allocations for the purpose of complying with Section 142(a) of the Code.

Section 5.22 Plans and Specifications. The Borrower has furnished the Trustee, the Controlling Person and the Majority Owner with true and complete sets of the Plans and Specifications. The Plans and Specifications so furnished to the Trustee, the Controlling Person and the Majority Owner comply with all Legal Requirements, all Governmental Actions, and all restrictions, covenants and easements affecting the Project Facilities, and have been approved by the Investor Limited Partner and such Governmental Authority as is required for construction of the Project Facilities.

Section 5.23 Survey. To the best of Borrower's knowledge, the survey for the Project Facilities delivered to the Trustee, the Controlling Person and the Majority Owner does not fail to reflect any material matter of survey affecting the Project Facilities or the title thereto.

Section 5.24 Flood Plain. No part of the Project Facilities is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazard or to the extent any part of the Project Facilities is an area identified as an area having special flood hazard, flood insurance in an amount equal to 100% of the appraised insurable value of the Project Facilities has been obtained by the Borrower.

Section 5.25 Rent Roll. To the Borrower's actual knowledge, attached hereto as Schedule 11 is a true, correct and complete rent roll for the Project Facilities (the "Rent Roll"), which includes all leases affecting the Project Facilities. Except as set forth in Schedule 11, to the Borrower's actual knowledge: (i) each lease is in full force and effect; (ii) the tenants under the leases have accepted possession of and are in occupancy of all of their respective demised Project Facilities, have commenced the payment of rent under such leases, and there are no offsets, claims, or defenses to the enforcement thereof; (iii) all rents due and payable under the leases have been paid and no portion thereof has been paid for any period more than thirty (30) days in advance; (iv) the rent payable under each lease is the amount of fixed rent set forth in the Rent Roll, and there is no claim or basis for a claim by tenant thereunder for an adjustment to the rent; (v) no tenant has made any claim against the landlord under the leases (except as disclosed on Schedule 11) which remains outstanding, there are no defaults on the part of the landlord under any lease, and no event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default; and (vi) to the Borrower's best knowledge, there is not present a material default by the tenant under any lease. The Borrower will hold any security deposits under the leases in a non-commingled bank account in the name of the Borrower and meeting the requirements of applicable laws. None of the leases contains any option to purchase or right of first refusal to purchase the Project Facilities or any part thereof. Neither the leases nor the Rents have been assigned or pledged to any Person and no Person has any interest therein except the tenants thereunder.

Section 5.26 Requisition. Each Requisition submitted to the Controlling Person shall constitute an affirmation that the representations and warranties of the Borrower contained in this Agreement and in the other Bond Documents remain true and correct as of the date thereof unless otherwise noted in writing; and except for (i) those representations and warranties, identified by the Borrower with specificity, that specifically relate to an earlier date, and (ii) representations and warranties that are no longer true and correct, but do not constitute an Event of Default.

## **ARTICLE 6 GENERAL COVENANTS**

So long as any amount is due and owing hereunder, the Borrower covenants and agrees, except to the extent the Controlling Person shall otherwise consent in writing to perform and comply with each of the following covenants:

Section 6.1 Conduct of Business; Maintenance of Existence; Mergers. The Borrower and the Administrative General Partner will (i) engage solely in the business of financing, constructing, owning and operating the Project Facilities, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited partnership or limited liability company, as applicable, under the Legal Requirements of the state of its organization, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets, (iv) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, (v) not materially amend any provision of its certificate of limited partnership or its Partnership Agreement, as applicable, relating to its purpose, management or operation without the prior written consent of the Controlling Person except in connection with any Permitted Transfers, and (vi) promptly and diligently enforce its rights under the Partnership Agreement and cause Investor Limited Partner to make its capital contributions as and when required under the Partnership Agreement.

Section 6.2 Compliance with Legal Requirements; Payment of Impositions. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities. The Borrower will pay all Impositions and insurance premiums when due and will make the applicable deposits required by Section 8.2 of this Agreement for such purposes. The Borrower shall make commercially reasonable efforts to direct that copies of all regular Impositions and insurance premiums shall be sent directly by the Governmental Authority or insurer, as applicable, to Controlling Person.

Section 6.3 Maintenance of Governmental Authorizations. The Borrower shall timely obtain any Governmental Actions required for the construction of the Project Facilities not obtained prior to the Issue Date and shall provide copies thereof to the Controlling Person and the Trustee upon receipt. The Borrower will maintain in full force and effect all of its Governmental Actions and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership, construction and operation of the Project Facilities as they are presently being operated and as contemplated by the terms of the Bond Documents. The Borrower will promptly furnish copies of all reports and correspondence relating to a loss or proposed revocation of any such qualification to the Controlling Person.

Section 6.4 Maintenance of Insurance.

(a) At all times throughout the term hereof, the Borrower shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as required by the Controlling Person for facilities of the type and size of the Project Facilities and shall pay, as the same become due and payable, all premiums with respect thereto. The initial insurance requirements are set forth on Schedule 12 hereto.

(b) All insurance required by this Section 6.4 shall be produced and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All property and casualty insurance policies required by Section 6.4(a) hereof shall contain a standard non-contributory mortgagee clause showing the interest of the Trustee as first mortgagee and shall provide for payment to the Trustee of the net proceeds of insurance resulting from any claim for loss or damage [in excess of 5% of the permanent loan amount] thereunder. All policies of insurance required by Section 6.4(a) hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Trustee, with a copy to the Controlling Person. The policy evidencing liability insurance required by Section 6.4(a) hereof shall name the Issuer, the Controlling Person and the Trustee as additional named insureds. The Borrower acknowledges that a security interest in the policies of property and casualty insurance required by Section 6.4(a) and the net proceeds thereof is being granted to the Trustee pursuant to the Mortgage. Upon request of the Trustee, the Borrower will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default hereunder) to the Trustee, the policies of property and casualty insurance required under Section 6.4(a), so and in such manner and form that the Trustee shall at all times, upon such request and until the payment in full of the Bonds, have and hold said policies and the net proceeds thereof as collateral and further security under the Mortgage for application as provided in the Mortgage. The policies under Section 6.4(a) hereof shall contain appropriate waivers of subrogation.

(c) Copies of the policy or certificate (or binder) of insurance required by Section 6.4(a) hereof shall be delivered to the Trustee, with a copy to the Controlling Person on or before the Issue Date. The Borrower shall deliver to the Issuer and the Trustee before the first (1<sup>st</sup>) Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts required by this Section 6.4. Prior to the expiration of each such policy, the Borrower shall furnish the Trustee, with a copy to the Controlling Person, with evidence that such policy has been renewed or replaced or is no longer required by this Agreement. The Borrower shall provide such further information with respect to the insurance coverage required by this Agreement as the Controlling Person may, from time to time, reasonably require.

(d) The net proceeds of the property and casualty insurance carried pursuant to the provisions of Section 6.4(a) hereof shall be applied as provided in the Mortgage and the net proceeds of the liability insurance required by Section 6.4(a) hereof shall be applied, with the prior written consent of the Controlling Person toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.5 Compliance with Other Contracts and Bond Documents. The Borrower will comply in all material respects with all of its covenants and agreements under the Bond Documents to which it is a party, as the same may hereafter be amended or supplemented from time to time, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower acknowledges that the Indenture imposes certain obligations upon the Borrower and the Borrower agrees to discharge such obligations as if they were fully set forth herein (notwithstanding that the Borrower is not a party to the Indenture). The Borrower shall comply in all material respects with all of its covenants and agreements under the Subordinate Debt Documents. The Borrower shall comply in all materials respects with, or cause to be complied in all material respects with, all requirements and conditions of all Material Contracts and insurance policies which relate to the Borrower or the Project Facilities.

Section 6.6 Maintenance of Project Facilities. The Borrower will, at its sole expense and as one of the Expenses (including use of the funds on deposit in the Accounts, in accordance with the terms of the Indenture and the Replacement Reserve Agreement), (i) maintain and preserve the Project Facilities in good working order and repair, fit for the purposes for which they were originally erected; (ii) not permit, commit or suffer any waste or abandonment of the Project Facilities; (iii) not use (and use commercially reasonable efforts to not permit tenants to use) the Project Facilities for any unlawful purpose and use reasonable efforts to not permit any nuisance to exist thereon; (iv) promptly make such repairs or replacements (structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project Facilities in an economical and efficient manner and consistent with customary and prudent practices, standards and procedures applicable to properties of like size and type; (v) perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Governmental Actions and Legal Requirements; (vi) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; (vii) not take (or fail to take) any action, which if taken (or not so taken) would foreseeably increase in any way the risk of fire or other hazard occurring to or affecting the Project Facilities; and (viii) not sell, lease (other than pursuant to residential leases), cause a Sale of or otherwise dispose of any part of the Project Facilities, except as otherwise permitted hereunder and under the other Bond Documents.

Section 6.7 Inspection Rights.

(a) The Borrower will, at any reasonable time, during business hours on business days (so long as no Event of Default has occurred and is continuing), and from time to time, permit the Controlling Person, the Trustee, the Issuer, and the agents or representatives of the Controlling Person, the Trustee and the Issuer, to examine and copy and make abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with the General Partner and the Accountant. Upon reasonable prior notice, and subject to the rights of tenants, the Borrower will permit the Engineering Consultant to inspect, or cause to be inspected, the Project Facilities at any reasonable time on business hours on business days (so long as no Event of Default has occurred and is continuing) as the Controlling Person may direct. The Borrower shall pay or reimburse the Controlling Person on demand for reasonable fees and expenses incurred in connection with such inspections.

(b) After the Engineering Consultant shall have inspected or caused to have been inspected the Project Facilities, the Engineering Consultant shall send written notice to the Controlling Person notifying the Controlling Person of the nature and extent of capital needs of the Project Facilities, if any, which are, in the Engineering Consultant's professional judgment, necessary to maintain and preserve the Project Facilities in accordance with the standards set forth in Section 6.6 hereof, and which are not addressed in the Annual Budget for the Project Facilities. After considering the Engineering Consultant's recommendation, the Controlling Person shall notify the Borrower of the work which the Engineering Consultant recommends be performed in order to comply with the requirements of Section 6.6 hereof and the time period over which, in its professional judgment, such work should be commenced and completed.

(c) The Borrower shall promptly commence and diligently complete the work recommended by the Engineering Consultant within the time period set forth in the report or such later date as reasonably agreed to by the Controlling Person if the work cannot be reasonably commenced or completed within the specified time period. If the Borrower fails to complete the work within such time period, subject to Force Majeure events, the Controlling Person, at the Controlling Person's discretion, may complete such work for and on the Borrower's behalf and may do any act or thing the Controlling Person deems necessary or appropriate to that end. The expenses incurred by the Controlling Person in completing such work shall bear interest at the Default Rate, shall be borne by the Borrower and shall be reimbursed to the Controlling Person immediately upon demand. All work performed by the Borrower shall be performed in a good and workmanlike manner and shall be completely free and clear of any mechanics or materialman's liens, subject to Borrower's right to contest any such liens in accordance with the Bond Documents (provided that Borrower shall bond off any such liens being contested), and encumbrances and shall be subject to the requirements of Section 6.6 hereof.

Section 6.8 Keeping of Books. The Borrower will keep proper books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Borrower in accordance with GAAP, and have a complete audit of such books of record and account made by the Accountant for each Fiscal Year.

Section 6.9 Reporting Requirements. The Borrower will furnish or cause to be furnished to the Controlling Person the following in form satisfactory to the Controlling Person and in such number of copies as the Controlling Person may reasonably require:

(a) [Within] forty-five (45) days after the close of each fiscal quarter[, except for the final quarter,] of each Fiscal Year of the Borrower:

(1) unaudited financial statements for the Borrower and the Project Facilities, including a balance sheet and related statement of income as of the end of such fiscal quarter and for such fiscal quarter and the current Fiscal Year to the end of such fiscal quarter, which shall be internally prepared and presented on a consistent basis;

(2) a certificate signed by an Authorized Person stating that, except as disclosed in such certificate, (i) during such fiscal quarter the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents (including the rules qualifying the interest payable on the Tax-Exemption Bonds for federal tax exemption pursuant to Section 142(d) of the Code and the regulations issued thereunder), except as disclosed in such certificate, (ii) if the Project Facilities have received a tax credit allocation, during such fiscal quarter the Project Facilities have complied with the requirements of Section 42 of the Code and the regulations issued thereunder, and (iii) no Event of Default has occurred or exists;

(b) As soon as available and in any event within [one hundred fifty (150)] days after the close of each Fiscal Year of the Borrower:

(1) audited financial statements for the Borrower, on a consolidated basis, including a balance sheet and related statements of income and changes in financial position as of the end of such Fiscal Year and for such Fiscal Year, which shall be prepared and reported on without qualification by the Accountant in accordance with GAAP, and shall fairly present the financial condition of the Borrower and the Project Facilities as of the end of such Fiscal Year; and

(2) a certificate signed by an Authorized Person stating that (i) during such Fiscal Year the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents, except as disclosed in such certificate, and (ii) no Event of Default has occurred or exists, except as disclosed in such certificate;

(3) an occupancy report stating as of the last day of the month prior to the date of delivery thereof, with respect to each lease of all or any part of the Project Facilities, the tenant's name, the date thereof, the premises demised, the term, the rent, the security deposits, any advance rent payments in excess of one month and any defaults after the expiration of any applicable notice and cure period by the tenant or the Borrower in respect thereof (including, without limitation, the amounts of arrearages); and

(4) notwithstanding the foregoing, if the Issue Date occurred on or after November 15, the Borrower may elect, by written notice to Controlling Person, to include the period from the Issue Date through the end of such Fiscal Year in the subsequent Fiscal Year audited financial statements in lieu of providing audited annual statements for the Fiscal Year in which the Issue Date occurred.

(c) As soon as possible and in any event within twenty-five (25) days after the end of each calendar month, operating statements of the Project Facilities certified by an Authorized Person and containing itemized information regarding all items of expense and income

as well as occupancy reports, a rent roll and, if required by the Controlling Person, other reports such as reports on concessions, security deposits and advance rents, all in such detail as may be reasonably required by the Controlling Person;

(d) Weekly during any period with occupancy of less than 90% and monthly for other periods, an occupancy report for the Project Facilities, certified by an Authorized Person;

(e) Upon receipt thereof by the Borrower, copies of any letter or report with respect to the management, operations or properties of the Borrower submitted to the Borrower by the Accountant in connection with any annual or interim audit of the Borrower's accounts, and a copy of any written response of the Borrower to any such letter or report;

(f) As soon as possible and in any event within fifteen (15) days after receipt of written notice thereof, notice of any pending (for which Borrower has been served) or threatened (in writing) litigation, investigation or other proceeding involving the Borrower, the General Partner, the Guarantor or the Project Facilities; (i) which is reasonably likely to have a material adverse effect on the operations or financial condition of the Borrower, the General Partner, the Guarantor or the Project Facilities; (ii) wherein the potential damages, in the reasonable judgment of the Borrower based upon the advice of counsel experienced in such matters, are not fully covered by the insurance policies maintained by the Borrower (except for the deductible amounts applicable to such policies); or (iii) which challenges the exclusion from gross income of interest on the Tax-Exempt Bonds for purposes of federal income taxation;

(g) As soon as possible, notice of any material adverse change in the operations, financial condition or prospects of the Borrower, the General Partner, the Guarantor or the Project Facilities;

(h) Upon delivery thereof by the Borrower, copies of any reports, certifications, financial information, compliance documents, rebate information, audits and all other items submitted by or on behalf of the Borrower to the Trustee or the Issuer;

(i) Not later than the Completion Date, the certificate of Final Completion set forth as Schedule 8 hereof and not later than the Stabilization Date, the Use of Proceeds Compliance Certificate set forth as Schedule 9 hereof;

(j) As and when required under the Regulatory Agreement, the monthly compliance certificates, the annual copies of IRS Forms 8703 and other reports and notices required to be delivered under the Regulatory Agreement;

(k) Upon receipt thereof by the Borrower, any written notice of the cancellation or expiration (without renewal or replacement) of any insurance required to be maintained by this Agreement;

(l) Not later than the Stabilization Date, a stabilization certificate in the form set forth on Schedule 10 hereto and if construction work resulted in new structures or expansion of foot prints of the existing structures, the Trustee shall have received an as-built ALTA/ACSM Urban Class Survey certified to the Trustee and the Controlling Person;

(m) As soon as possible and in any event within fifteen (15) days after the occurrence of an Event of Default, a statement of the General Partner setting forth the details of such Event of Default and the action which the Borrower proposes to take with respect thereto;

(n) Contemporaneously with the delivery to the Trustee copies of any notices, reports or other information provided to the Trustee under the Bond Documents; and

(o) Copies of IRS Forms 8609 as issued and received by the Borrower; and

(p) [Reserved;]

(q) Upon receipt thereof, copies of all real estate tax bills and insurance bills;

(r) Within ten (10) days of filing thereof, all tax returns of the Borrower and the General Partner; and

(s) Such other information respecting the operations and properties, financial or otherwise, of the Borrower as the Controlling Person may from time to time reasonably request provided, however, this provision shall not permit Controlling Person to request materially different forms of the items set forth in this Section 6.9 or the delivery of such items within shorter or more frequent time periods than as set forth in this Section 6.9.

#### Section 6.10 Tax-Exempt Status.

(a) The Borrower covenants, represents and agrees that it will not take or omit to take or permit any action that, if taken or omitted, respectively, would adversely affect the exclusion of interest on the Tax-Exempt Bonds from gross income 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 Agreement, the Mortgage and the Regulatory Agreement, as may be necessary, in the Opinion of Bond Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the Tax-Exempt Bonds or affecting the Project Facilities.

(b) The Borrower will not make or permit any use, and will not direct the Trustee to make any investment or use of the proceeds of any of the Tax-Exempt Bonds, which would cause any of the Tax-Exempt Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the Regulations thereunder as the same may be applicable to the Tax-Exempt Bonds at the time of such action, investment or use and agrees to take and cause the Issuer and Trustee to take all actions required to comply with the provisions of Section 148 of the Code. The representations contained in the Tax Certificate (which is incorporated herein by reference) are true and correct, and the Borrower and the Issuer will observe the applicable covenants therein as if set forth herein.

(c) The Borrower further covenants and agrees that it will comply with and will take all action reasonably required to insure that the Trustee complies with all applicable requirements of said Section 148 and the rules and regulations of the United States Treasury Department thereunder relating to the Tax-Exempt Bonds and the interest thereon, including the employment of a Rebate Analyst for the calculation of any rebatable amount (the “Rebate Amount”) to the United States Treasury Department. The Borrower agrees that it will cause a qualified rebate analyst reasonably acceptable to the Controlling Person (the “Rebate Analyst”) to calculate the Rebate Amount not later than forty-five (45) days after the fifth (5<sup>th</sup>) anniversary of the Issue Date and each five (5) years thereafter and agrees that the Borrower will pay all costs associated therewith. Within fifteen (15) days of the date of each such calculation, the Borrower

shall promptly (i) deliver a report or letter from the Rebate Analyst setting forth the Rebate Amount, if any, then due and the methods used to calculate such amount (each, a “Rebate Report”) to the Issuer, the Controlling Person and the Trustee, (ii) deliver the Rebate Amount to the Trustee, and (iii) deliver to the Trustee any forms required by the Internal Revenue Service to be submitted with the Rebate Amount, if any, and the addresses to which such forms must be sent.

(d) Neither the Borrower nor any related person shall, pursuant to any arrangement, formal or informal, purchase any of the Tax-Exempt Bonds, unless the Borrower or such related person delivers a Favorable Opinion of Bond Counsel to the Trustee, the Controlling Person and the Issuer.

(e) No changes will be made to the Project Facilities, 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 exclusion from gross income of interest on the Tax-Exempt Bonds for purposes of federal income taxation.

(f) The Borrower will not make any changes in the Project Facilities that would, at the time made, cause the average reasonably expected economic life of the Project Facilities, determined pursuant to Section 147(b) of the Code, to be less than the average reasonably expected economic life of the Project Facilities set forth in such certificates or letters of representation of the Borrower, unless the Borrower files with the Trustee and the Controlling Person a Favorable Opinion of Bond Counsel.

(g) No portion of the proceeds of the Tax-Exempt Bonds will be used to acquire existing property or any interest therein unless such acquisition meets the rehabilitation requirements of Section 147(d) of the Code.

(h) The Project Facilities will be owned, managed and operated as a “qualified residential rental property” as such phrase is utilized in Section 142(d) of the Code. To that end, the Borrower hereby represents and covenants and agrees that it will comply with the terms, conditions and provisions of the Regulatory Agreement.

(i) The Borrower will permit any duly authorized representative of the Trustee, the Department of the Treasury or the Internal Revenue Service and the Controlling Person to inspect the books and records of the Borrower pertaining to the incomes of qualifying tenants residing in the Project Facilities upon reasonable notice (given at least 5 days in advance) and at reasonable times during business hours on business days.

(j) The Borrower will promptly notify the Trustee and the Controlling Person if at any time the dwelling units in the Project Facilities are not available for occupancy as required by the Regulatory Agreement and, upon request, the Borrower will provide the Trustee and the Controlling Person a copy of the compliance certificates required to be filed by the Borrower under and at the times provided by the Regulatory Agreement.

#### Section 6.11 Single Purpose Entities.

(a) The Borrower and the General Partner shall (i) not engage in any business or activity, other than the ownership, construction, operation and maintenance of the Project Facilities and activities incidental thereto; and (ii) not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than, in the case of the Borrower, the Project Facilities and, in the case of the General Partner, a general partnership interest in the Borrower

and, in any case, such personal property as may be necessary for the operation of the Project Facilities and shall conduct and operate its business as presently conducted and operated.

(b) The Borrower and the General Partner shall each (i) not maintain its assets in a way difficult to segregate and identify; (ii) ensure that business transactions between the Borrower and any Affiliate of the Borrower or any Affiliate of the General Partner, as applicable, shall be entered into upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with a third Person other than the General Partner, or any respective Affiliate thereof; (iii) not incur or contract to incur any obligations, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than, in the case of the Borrower, the Obligations evidenced by this Agreement and the other Bond Documents and the Subordinate Debt Documents, or unsecured loans or guaranty payments made by the partners of the Borrower or Guarantor pursuant to the Partnership Agreement, or unsecured trade payables or the Developer Fee; (iv) not make any loans or advances to any third Person (including any Affiliate of the Borrower or the General Partner), except as otherwise permitted under this Agreement or the Bond Documents; (v) do or cause to be done all things necessary to preserve its existence; (vi) not materially amend, modify or otherwise change its partnership certificate, Partnership Agreement, articles of incorporation or bylaws without obtaining the prior written consent of the Controlling Person, not to be unreasonably withheld, conditioned or delayed (and which Controlling Person will endeavor to accept or reject within ten (10) Business Days of request); provided that no consent shall be required for changes or amendments to the Partnership Agreement to the extent such change or amendment is solely required to effect a Permitted Transfer, and provided that any changes with respect to installments of capital contributions which constitute Required Equity Funds or the timing thereof, or that otherwise, except for a change or amendment solely required to effect a Permitted Transfer, materially and adversely affect the rights and interests of the Holders also require Majority Owner consent, which consent shall not be unreasonably withheld, conditioned or delayed; (vii) conduct and operate its business as presently conducted and operated; (viii) maintain its books and records and bank accounts separate from those of its Affiliates; (ix) be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate); (x) file its own tax returns; (xi) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and in any event not less than that required under State law in order to remain a separate legal entity; (xii) not seek or consent to the dissolution or winding up, in whole or in part, of the Borrower or the General Partner; (xiii) not (A) consent to the dissolution or liquidation in whole or in part of the Borrower, or (B) permit the General Partner to dissolve, or (C) consent to the dissolution or liquidation of the General Partner; (xiv) not commingle the funds and other assets of the Borrower with those of the General Partner, any Affiliate thereof or any other Person; and (xv) not enter into any transaction with an Affiliate without the prior written consent of the Controlling Person or as permitted pursuant under the Loan Documents.

#### Section 6.12 Negative Pledge; No Sale.

(a) The Borrower will not create, incur, assume or permit to exist any mortgage, pledge, security interest, encumbrance or other Lien upon the Project Facilities or any property, tangible or intangible, now owned or hereafter acquired (including without limitation property leased to or being acquired by the Borrower under capital leases or installment sale agreements), by the Borrower (the sale with recourse of receivables or any "sale and lease back" of any fixed assets being deemed to be the giving of a lien thereon for money borrowed), other than Permitted Encumbrances.

(b) Other than Permitted Transfers and the making of residential leases or any commercial lease (in respect of the commercial space within the Project Facilities), the Borrower shall not sell, assign, transfer, convey or otherwise dispose of the Project Facilities, or any part thereof, or permit or consent to a Sale without in each instance (i) obtaining the express prior written consent of the Controlling Person, which consent may be withheld or granted (and be subject to the payment of such fees and the satisfaction of other conditions as set forth in Section 1.12 of the Mortgage) in the Controlling Person's sole and absolute discretion; and (ii) complying with the applicable requirements of the Regulatory Agreement.

Section 6.13 Payment of Indebtedness; Accounts Payable; Restrictions on Indebtedness.

(a) The Borrower will pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of the Borrower's Indebtedness under the Bond Documents[, the Subordinate Debt Documents] and all of its other Obligations, whether now existing or hereafter arising, and comply in all material respects with all covenants and agreements set forth in agreements evidencing Obligations of the Borrower.

(b) The Borrower shall pay or cause to be paid the Expenses, and capital expenditures and its other accounts payable with respect to and costs of operation and maintenance of the Project Facilities within thirty (30) days of receipt of an invoice therefor, or when the same shall otherwise be due and payable. The Borrower shall make no distribution of funds to its partners unless no Event of Default has occurred and is continuing, such distribution is in accordance with the provisions of the Partnership Agreement, and all current accounts payable shall have been paid and funds shall have been set aside for the payment of accounts payable becoming due within thirty (30) days of said distribution.

(c) Without obtaining the prior written consent of the Controlling Person, the Borrower will not create, incur, assume, guarantee or be or remain liable for any indebtedness or Obligations other than (i) Indebtedness under the Bond Documents; (ii) Indebtedness in respect of the Subordinate Debt; (iii) current liabilities of the Borrower relating to the Project Facilities incurred in the ordinary course of business but not incurred through the borrowing of money or obtaining of credit; and (iv) any unsecured loans or guaranteed payments from partners or their Affiliates or the Guarantor pursuant to the Partnership Agreement.

Section 6.14 Environmental Covenants.

(a) The Borrower will cause all activities at the Project Facilities during the term of this Agreement to be conducted in full compliance with all applicable Environmental Laws. The Borrower will obtain all Governmental Actions and will make all notifications, as required by Environmental Laws, and will, at all times, comply with the terms and conditions of any such Governmental Actions or notifications. During the term of this Agreement, if requested by the Controlling Person, the Borrower will provide to the Controlling Person copies of (i) applications or other materials submitted by Borrower to any Governmental Authority in compliance with Environmental Laws, (ii) any notifications submitted by Borrower to any Person pursuant to Environmental Laws, (iii) any Governmental Action concerning the Project Facilities granted pursuant to Environmental Laws, (iv) any record or manifest required to be maintained by Borrower pursuant to Environmental Laws, and (v) any correspondence, notice of violation, summons, order, complaint or other document received by the Borrower, its lessees, sub-lessees or assigns, pertaining to compliance with any Environmental Laws.

(b) The Borrower will, at all times during the term of this Agreement, cause Hazardous Substances used at the Project Facilities to be handled, used, stored and disposed in accordance with all Environmental Laws and in a manner which will not cause an undue risk of Contamination.

(c) The Borrower will cause all construction of new structures at the Project Facilities during the term of this Agreement to use design features which safeguard against or mitigate the accumulation of radon or radon products in concentrations exceeding the Environmental Protection Agency's recommended threshold of 4.0pCi/L.

(d) The Borrower shall not install or permit to be installed any temporary or permanent tanks for storage of any liquid or gas above or below ground, except after obtaining written permission from the Controlling Person to do so and in compliance with Environmental Laws.

(e) The Borrower shall implement a moisture management and control program (the "Moisture Management Program") for the Improvements at the Project Facilities to prevent the occurrence of mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduces through the release of spores or the splitting of cells (collectively, "Mold"), at, on or under the Project Facilities, which Moisture Management Program shall include, at a minimum: (a) periodic inspections of the Improvements at the Project Facilities for Mold, (b) removing or cleaning up any Mold and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person, and (c) in the event that the Mold identified at the Improvements at the Project Facilities cannot be removed or cleaned from any impacted building materials (e.g., porous materials such as carpeting, certain types of ceiling materials, etc.) and/or equipment, removing all such impacted building materials and/or equipment from the Project Facilities, all in accordance with the procedures set forth in the United States Environmental Protection Agency's ("EPA") guide entitled "Mold Remediation in Schools and Commercial Buildings", EPA No. 402-K-01-001, dated March 2001 and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person. The Borrower shall include as part of every residential lease a Mold/Mildew Addendum in the form attached hereto as Exhibit C. The Borrower further covenants and agrees that, in connection with any mold remediation undertaken by or on behalf of the Borrower hereunder, the source (e.g., leaking pipe, water damage, water infiltration, etc.) of any Mold at the Improvements at the Project Facilities shall be promptly identified and corrected to prevent the occurrence or re-occurrence of any Mold.

(f) During the continuance of an Event of Default, or if the Controlling Person reasonably believes that there has occurred and is continuing a violation of Environmental Law or that there exists a continuing condition at the Project Facilities that could give rise to any Governmental Action, the Controlling Person may, at its discretion, commission an investigation at the Borrower's reasonable expense of (i) compliance at the Project Facilities with Environmental Laws, (ii) the presence of Hazardous Substances or Contamination at the Project Facilities, (iii) the presence at the Project Facilities of materials which are described in clause (b) of Section 5.12, (iv) the presence at the Project Facilities of Environmentally Sensitive Areas, (v) the presence at the Project Facilities of radon products, (vi) the presence at the Project Facilities of tanks of the type described in paragraph (e) of Section 5.12 or in paragraph (d) of Section 6.14 above, or (vii) the presence of Mold at the Project Facilities. In connection with any investigation pursuant to this paragraph, the Borrower, and its lessees, sub-lessees and assigns, will comply with any reasonable request for information made by the Controlling Person or its

agents in connection with any such investigation. Any response to any such request for information will be full and complete. The Borrower will assist the Controlling Person and its agents to obtain any records pertaining to the Project Facilities or to the Borrower and the lessees, sub-lessees or assigns of the Borrower in connection with an investigation pursuant to this paragraph. The Borrower will permit the Controlling Person and its agents access to all areas of the Project Facilities at reasonable times and in reasonable manners in connection with any investigation pursuant to this paragraph. No investigation commissioned pursuant to this paragraph shall relieve the Borrower from any responsibility for its representations and warranties under Section 5.12 hereof or under the Environmental Indemnity Agreement.

(g) In the event of any Contamination affecting the Project Facilities, whether or not the same originates or emanates from the Project Facilities or any contiguous real estate, or if the Borrower otherwise shall fail to comply with any of the requirements of Environmental Laws, the Controlling Person may, at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Project Facilities and take any and all other actions as the Controlling Person shall deem necessary or advisable in order to remedy said Contamination or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by the Controlling Person, shall be immediately due and payable by the Borrower and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Project Facilities attaching or accruing subsequent to the lien of the Mortgage on the Project Facilities.

Section 6.15 Controlling Person. The Borrower acknowledges and agrees that (i) the Majority Owner has the sole and exclusive right to arrange for servicing of the Loan and to appoint another person or entity to serve as its representative hereunder, under the other Bond Documents and under the Indenture; (ii) the Majority Owner has appointed Boston Capital Finance LLC to serve in the capacity of Controlling Person hereunder, under the other Bond Documents, and under the Indenture; and (iii) the Majority Owner retains the sole and exclusive right to appoint, remove or replace the Controlling Person, without the consent or approval of the Borrower. The Borrower shall comply with the directions of the Controlling Person made on behalf of the Majority Owner.

Section 6.16 Tax Returns. The General Partner will timely file all tax returns for itself and for the Borrower to the extent required under applicable law, pay or cause to be paid when due all taxes imposed on their operations, assets, income or properties, and, upon request, provide to the Controlling Person copies of such returns and receipts for payment of such taxes.

Section 6.17 Leases. The Borrower hereby represents that there are no leases or agreements to lease all or any part of the Project Facilities now in effect. Except for leases to residential tenants in compliance with the Regulatory Agreement and leases for services associated with residential rental properties (such as laundry and cable leases), the Borrower shall not enter into or become liable under, any leases or agreements to lease all or any part of the Project Facilities without the prior written approval thereof and of the prospective tenant by the Controlling Person. Each lease of residential units in the Project Facilities to a residential tenant shall be on a form of lease approved by the Controlling Person and shall be in compliance with the requirements of the Regulatory Agreement.

Section 6.18 Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Issuer, the Trustee or the Controlling Person to carry out

the purposes and provisions of this Agreement and the other Bond Documents, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and to assure the Controlling Person and the Majority Owner of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents and by the Indenture. The Borrower shall obtain any approvals required under the Subordinate Debt Documents in connection with any of the foregoing.

Section 6.19 Management Agreement. The Borrower has entered into a property management agreement in a form approved by the Controlling Person with the Managing Agent (together with any extension and replacements thereof and as the same may be amended, modified or supplemented from time to time the "Management Agreement"). Under the Management Agreement, the Managing Agent shall provide certain management services and shall be entitled to receive as compensation for those services an amount not in excess of the Underwritten Management Fee. Any amounts due the Managing Agent in excess of the Underwritten Management Fee shall be subordinated to the payment by the Borrower of all principal of, premium, if any, and interest due on the Bonds, all Third Party Costs and all required deposits into the Accounts. The Borrower shall not replace the Managing Agent for the Project Facilities without the Controlling Person's prior written approval, and the Management Agreement shall not be terminated or modified without the Controlling Person's prior written approval. In the event the Managing Agent resigns or is removed, the Borrower shall promptly seek a replacement Managing Agent and submit such Managing Agent and its proposed form of Management Agreement to the Controlling Person for approval; if the Borrower has not done so within thirty (30) days of becoming aware of such resignation or removal, the Controlling Person may (but shall not be required to) engage a new Managing Agent on terms satisfactory to the Controlling Person in its sole discretion and at the expense of the Borrower. The sole and exclusive compensation (exclusive of reimbursement for expenses pursuant to the applicable Management Agreement) paid to manage the Project Facilities under the Management Agreement shall be as described in this Section 6.19. The Borrower shall have no employees whatsoever. The Managing Agent shall execute a consent to the Assignment of the Management Agreement pursuant to which the Managing Agent shall confirm the subordination provisions described above and agree that the Management Agreement shall be terminable by the Controlling Person, with or without cause, on thirty (30) days' notice following and during the existence of an Event of Default.

Section 6.20 Determination of Taxability. Neither the Borrower nor the General Partner shall admit in writing to the Issuer or the Trustee or to any Governmental Authority that interest on the Tax-Exempt Bonds has become includable in gross income for purposes of federal income taxation without first providing reasonable advance notice to the Controlling Person and the Majority Owner and permitting the Controlling Person or the Majority Owner, at its sole discretion and at its expense, to contest such conclusion. Promptly after the Borrower first becomes aware of any Determination of Taxability or an event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer, the Trustee, the Controlling Person and the Majority Owner.

Section 6.21 List of Bondholders. Upon the written request of the Controlling Person, the Borrower shall exercise any right it may have under the Indenture to request a list of Bondholders and shall deliver such list to the Controlling Person. Any costs associated with obtaining the list of Bondholders at the Controlling Person's request shall be paid by the Controlling Person.

Section 6.22 Use of Proceeds. The Borrower agrees that the proceeds of the Bonds will be allocated exclusively to pay Project Costs and that, for the greatest possible number of buildings, the Bond proceeds will be allocated on a pro rata basis to each building in the Project Facilities and the land on which such building is located, so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code.

Section 6.23 Compliance With Anti-Terrorism Regulations. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in the Borrower shall at any time during the Term be described in, covered by or specially designated pursuant to or be affiliated with any Person described in, covered by or specially designated pursuant to Executive Order 13224 —Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, or any similar list issued by OFAC or any other department or agency of the United States of America. Notwithstanding the foregoing, the Borrower and the General Partner hereby each confirm that if it becomes aware or receives any notice of any violation of the foregoing covenant and agreement (an “OFAC Violation”), the Borrower or the General Partner, as applicable, will immediately (i) give notice to the Controlling Person of such OFAC Violation, and (ii) comply with all Legal Requirements applicable to such OFAC Violation, including, without limitation, Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Iraqi Sanctions Act, Pub. L. 101-5 13, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 (collectively, the “Anti-Terrorism Regulations”), and the Borrower and the General Partner hereby authorize and consent to the Controlling Person’s taking any and all reasonable steps the Controlling Person deems necessary, in its sole discretion, to comply with all Legal Requirements applicable to any such OFAC Violation, including the requirements of the Anti-Terrorism Regulations. Notwithstanding anything to the contrary in this Section, the Borrower shall not be deemed to be in violation of the covenants and agreements set forth in the first sentence of this Section if the Borrower timely complies with all requirements imposed by the foregoing sentence and all requirements of the Antiterrorism Regulations and all other applicable Legal Requirements relating to such OFAC Violation.

Section 6.24 Adoption of Capital and Operating Budgets.

(a) On or before December 1 of each Fiscal Year, the Borrower shall submit to the Controlling Person for approval a proposed capital and operating budget with respect to the Project Facilities to be effective for the next following Fiscal Year (the “Proposed Budget”). The Controlling Person shall have the right to approve or disapprove any Proposed Budget, which approval shall not be unreasonably withheld, conditioned, or delayed. Third party costs not within the Borrower’s control and costs associated with remediation of emergency conditions shall be permitted variances to the Annual Budget. If any Proposed Budget is not disapproved by the Controlling Person within thirty (30) days following submission by the Borrower, such budget shall be deemed approved. If any budget is disapproved, the Borrower shall thereafter consult with the Controlling Person in an effort to achieve a mutually acceptable Annual Budget for an additional thirty (30) days. To the extent the proposed operating budget is disapproved, the operating budget for the previous Fiscal Year shall remain in effect increased by five percent (5%) over the previous Fiscal Year (except for costs of utilities, Impositions and insurance and other

third-party costs or cost associated with remediation of emergency conditions which shall be permitted variances to the Proposed Budget) until the parties resolve their differences. In addition to, and not in limitation of the foregoing, each Annual Budget may be revised from time to time with approval of Controlling Person, which approval shall not be unreasonably withheld, conditioned, or delayed, to reflect changes to Expenses and proposed Capital Expenditures set forth in the then-current Annual Budget.

(b) Without limiting the generality that each Proposed Budget must be approved by the Controlling Person, each Proposed Budget:

(i) shall be prepared on the basis of sound accounting practices consistently applied;

(ii) shall reflect all amounts projected to be deposited in the Replacement Reserve Fund and the projected revenues and Expenses of the Project Facilities;

(iii) shall reflect all projected Capital Expenditures which are reasonably expected to be made in connection with the Project Facilities during the Fiscal Year covered by such Proposed Budget; and

(iv) shall be in such form as is reasonably acceptable to the Controlling Person and containing such other information as reasonably may be requested by the Controlling Person.

Section 6.25 Borrower's Approval of Indenture. The Borrower understands that the Issuer will, pursuant to the Indenture and as security for the payment of the principal of, acceleration premium, if any, and the interest on the Bonds, assign and pledge to the Trustee, and create a security interest in favor of the Trustee in certain of its rights, title and interest in and to this Agreement (including all payments hereunder) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. The Borrower acknowledges that it has received a copy of the Indenture for its examination and review. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by the applicable provisions of the Indenture. The Borrower agrees that the Trustee shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it notwithstanding the fact that it is not a signatory hereto.

Section 6.26 Conditions Precedent; Payment of Certain Fees, Deposits and Expenses. On the date of execution and delivery hereof, (a) the Controlling Person shall have received, in immediately available funds, an amount equal to the fees set forth in Section 2.2(a) hereof, and the fees of the Engineering Consultant set forth in Section 2.2(b) hereof incurred as of the date of the execution and delivery hereof, and (b) the Trustee shall have received the deposits required to be made in the Accounts on such date pursuant to Article 8 hereof.

Section 6.27 Additional Conditions Precedent. The rights of the Borrower to draw the initial advance of funds from the Project Fund under this Agreement shall be subject to the conditions precedent set forth in Section 9.12 hereof and on Schedule 7 hereof.

Section 6.28 No Amendments. The Borrower shall not materially amend, modify or otherwise change the Subordinate Debt Documents without the prior written consent of the Controlling Person.

Section 6.29 Construction of Improvements. The Borrower shall construct the Project Facilities in a workmanlike manner and substantially in accordance with the Plans and Specifications and in compliance with all applicable Governmental Actions and Legal Requirements. The Borrower shall provide, at the Borrower's expense all manner of materials, labor, implements and cartage of every description for the due completion of construction of the Project Facilities. The Borrower shall take all necessary steps to assure that commencement of construction of the Project Facilities shall begin within thirty (30) days following the Issue Date, shall proceed continuously and diligently and in a commercially reasonable manner, and shall be completed lien free in a timely manner substantially in accordance with the Plans and Specifications and in all instances in compliance with all applicable Governmental Actions and Legal Requirements, on or before the Completion Date, subject to delays caused by a Force Majeure.

Section 6.30 Evidence of Payment of Costs. If requested by the Controlling Person, the Borrower shall furnish, before each advance agreed to be made and on completion of construction, all receipted bills, certificates, affidavits, conditional releases of lien (or evidence that such liens have been bonded over other security reasonably satisfactory to the Controlling Person) and other documents which may be reasonably required by the Controlling Person, as evidence of full payment for all labor and materials incident to the construction of the Project Facilities for each requested draw with copies of unconditional releases of lien from each prior draw and will promptly secure the release of the Project Facilities from all liens by payment thereof or transfer to bond or other security.

Section 6.31 Correction of Deficiencies in Improvements. The Borrower agrees that it will correct any work performed and replace any materials that do not comply with the Plans and Specifications in any material respect unless such deviations are consented to by the Controlling Person. In the event of any dispute between the Borrower and the Controlling Person with respect to the interpretation and meaning of the Plans and Specifications, the same shall be determined by an independent engineer selected by the Borrower from the list of engineers approved by the Controlling Person.

Section 6.32 Loan Rebalancing. If, for any reason, the Controlling Person shall, in the reasonable exercise of the Controlling Person's judgment, determine that the combined total of (i) the remaining proceeds of the Loan, (ii) the capital contributions from Borrower's partners; (iii) any other source of funds shown in the Development Budget attached hereto; and (iv) any other sums deposited by the Borrower with the Trustee are insufficient to pay through completion of the Project Facilities, all of the following sums: (x) all remaining costs of construction, rehabilitation, marketing, ownership, maintenance and leasing of the Project Facilities; and (y) all remaining interest and all other remaining sums which may accrue or be payable under the Bond Documents, then the Controlling Person may require the Borrower to deposit with the Trustee for deposit into the Project Fund, within ten (10) days after written request by the Controlling Person, the projected deficiency, provided that Developer may elect to defer any then available portion of its developer fee before Borrower's obligation is triggered. Any deposit by Borrower to the Project Fund shall be first disbursed in the same manner as the Loan is to be disbursed as provided herein before any further disbursements of the proceeds of the Loan shall be made. Notwithstanding the foregoing, if, at any time, Controlling Person determines, in Controlling Person's reasonable discretion, that it is unlikely that Borrower will receive all or a portion of the sources of funds shown on the Development Budget (other than Loan proceeds), Controlling Person may exclude such amount from its determination of whether the Loan is "in balance" as provided above.

Section 6.33 Use of Loan Proceeds. All labor and materials contracted for and in connection with the construction of the Project Facilities shall be used and employed solely for the Improvements and in said construction and only in accordance with the Plans and Specifications. Moneys disbursed from Accounts held under the Indenture to or for the account of the Borrower under this Agreement shall constitute a trust fund in the hands of the Borrower or other payee and shall be used solely by such payee for the payment of the Qualified Project Costs and for no other purpose unless another use is specifically provided for in this Agreement or consented to in writing by the Controlling Person. Nothing in this paragraph shall be deemed to impose a trust on the undisbursed portion of the Loan or any other amounts held under the Indenture or to impose any duty on the Controlling Person with respect thereto.

Section 6.34 Special Servicing Costs. [The Controlling Person, as servicer of the Loan, may charge the Borrower additional servicing fees and costs for special servicing requests.] The Borrower shall pay as and when due all such special servicing fees or costs.

Section 6.35 Developer Fee. Borrower will not pay any developer fee unless permitted under Section 2 of the Developer Fee Pledge.

Section 6.36 Payment and Performance Bonds. Borrower shall furnish to Controlling Person and shall maintain in effect through Final Completion such Payment and Performance Bonds with respect to the Contractor, or if the Contractor does not obtain such Payment and Performance Bond, such Payment and Performance Bonds shall be obtained with respect to each contractor that enters into a Major Contract; provided, however, that if Payment and Performance Bonds have been provided by any contractor under a Major Contract in accordance with the terms hereof, any subcontractor of such contractor shall not be required to post any Payment and Performance Bonds in respect of such subcontract. Borrower shall take such action and require such performance as Controlling Person deems necessary under the Payment and Performance Bonds. In the event that any payments under any Payment and Performance Bonds are issued jointly to Borrower and Trustee or Borrower and Controlling Person, Borrower shall endorse any such jointly issued payments to the order of Trustee or Controlling Person, as determined by Controlling Person in its discretion, promptly upon Controlling Person's demand. Notwithstanding the foregoing, provided no Default or Event of Default exists and is continuing, the Borrower may request that Controlling Person consent in writing to the release of the Payment and Performance Bonds following achievement of Final Completion.

Section 6.37 Extension of the Stabilization Date. Notwithstanding any provisions in this Agreement to the contrary, the Borrower may, upon 30 days prior written notice to the Controlling Person, extend the deadline for the Project Facilities to achieve Stabilization so long as:

(a) no uncured Default or ongoing Event of Default and the Borrower is then in material compliance with its obligations under the Bond Documents;

(b) the extended deadline for the achievement of Stabilization is no later than six months after the initial Stabilization Date;

(c) and an extension fee equal to \$20,000; and

(d) the Borrower certifies in writing to the Controlling Person that cash flows generated from property operations and/or funds on deposit with the Trustee (or other sources approved by the Controlling Person) will be sufficient to pay debt service during the term of the extension.

Section 6.38 Stabilization Shortfall.

(a) Borrower shall achieve Stabilization as of the Stabilization Date. If Borrower shall not have achieved Stabilization as of the Stabilization Date, Borrower shall elect one of the following options by providing written notice of such election to Controlling Person within five (5) days of the Stabilization Date:

(i) Provided that the Borrower has achieved an average actual ratio of Stabilized NOI in each of the prior three (3) consecutive months to maximum principal, interest, Issuer fees and Trustee fees payable in any month on the amount of Bonds Outstanding equals or exceeds 1.10 to 1.00 for at least three (3) consecutive months prior to the Stabilization Date, Borrower, in consultation with Controlling Person, may deposit with the Servicer either a cash deposit or an unconditional and irrevocable letter of credit in an amount calculated as follows: the difference between 1.15 multiplied by the annualized debt service and the actual Stabilized NOI for the Project Facilities on an annual basis (net of replacement reserve), the result of which shall be divided by the annual mortgage constant appropriate for the interest rate and amortization period of the Bonds. The result will be the amount of the required cash deposit or letter of credit (the "Stabilization Shortfall Amount"). The requirement for a cash deposit or letter of credit will be reviewed on an annual basis and will be increased or decreased as necessary to remain consistent with the above calculation on a going forward basis. Any letter of credit will have an expiration date no earlier than three (3) months beyond the next annual review date and shall be renewable until all conditions in this subsection have been met. The cash deposit or letter of credit will be returned to Borrower at the point at which the Stabilization Shortfall Amount is equal to or less than zero. No deposit shall be required if annualized Stabilized NOI is at least 1.15 times the annualized debt service.

(ii) Redeem the Bonds in part in an amount equal (ii) to the Stabilization Shortfall Amount, subject to imposition of any applicable Economic Losses (as defined in that certain Interest Rate Lock Letter dated \_\_\_\_\_, 2020 between Borrower and the initial Purchaser.

(b) If Borrower shall not have provided written notice of Borrower's election to Controlling Person within five (5) days of the Stabilization Date, or if Borrower shall be unable to comply with the provisions of subsection(a)(i), then Borrower shall redeem the Bonds in part and pay such other sums as set forth in subsection (a)(ii).

**ARTICLE 7  
DEFAULTS AND REMEDIES**

Section 7.1 Defaults. Each of the following, following the expiration of any applicable notice and cure period, shall constitute an event of default hereunder ("Event of Default"):

(a) Failure by the Borrower to pay any amount required to be paid by the Borrower under this Agreement, the Notes or any of the other Bond Documents within five (5) days after such payments are due and payable;

(b) Failure by the Borrower to perform or comply with any of the terms or conditions contained in Section 6.1, 6.11 or 6.12 hereof;

(c) Failure by the Borrower to perform or materially comply with any of the terms or conditions contained in this Agreement and any of the other Bond Documents to which the Borrower is a party, other than as described in paragraphs (a) and (b) above, and subject to Force Majeure events, continuation of such failure for thirty (30) days after written notice from the Trustee or the Controlling Person to the Borrower (with a copy to the Investor Limited Partner), or such longer period to which the Controlling Person may agree in the case of a default not curable by the exercise of due diligence within such thirty (30) day period, if the Borrower, the General Partner or the Investor Limited Partner shall have commenced a cure of such default within such thirty (30) day period and shall be diligently pursuing such cure as quickly as reasonably possible;

(d) Any of the representations or warranties of the Borrower set forth in this Agreement, any of the other Bond Documents or any other document furnished to the Issuer, the Trustee the Controlling Person or the Majority Owner pursuant to the terms hereof proves to have been false or misleading in any material respect when made;

(e) Any provision of this Agreement or any of the other Bond Documents to which the Borrower, the General Partner or any Guarantor is a party for any reason ceases to be valid and binding on the Borrower, the General Partner or the Guarantor, is declared to be null and void, or is violative of any applicable Legal Requirement relating to a maximum amount of interest permitted to be contracted for, charged or received, or the validity or enforceability thereof is contested by the Borrower, the General Partner or any Guarantor or any Governmental Authority, or the Borrower, the General Partner or any Guarantor denies that it has any or further liability or obligation under this Agreement or any of the Bond Documents to which the Borrower, the General Partner or any Guarantor is a party;

(f) The occurrence of an Event of Default as defined in the Indenture or the other Bond Documents or the Subordinate Debt Documents or an act or event (or failure to act or non-occurrence of an act) which, with the passage of time, the giving of notice or both, would constitute an Event of Default under the Indenture or the other Bond Documents or the Subordinate Debt Documents; or the occurrence of a breach under the HAP Contract which causes, or, with the giving of notice, the passage of time, or both, would cause HAP Contract administrator to terminate the payments thereunder;

(g) The Borrower, any Guarantor or the [Administrative] General Partner (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian or the like of the Borrower, any Guarantor or the [Administrative] General Partner, as applicable, or of property of any such party or (ii) admits in writing the inability of the Borrower, any Guarantor or the [Administrative] General Partner to pay its debts generally as they become due, or (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated bankrupt or insolvent, (v) commences a voluntary case under the Bankruptcy Code or files a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or files an answer admitting the material allegations of a petition filed against the Borrower, any Guarantor or the [Administrative] General Partner in any bankruptcy, reorganization or insolvency proceeding, or action of the Borrower, any Guarantor or the [Administrative] General Partner is taken for the purpose of effecting any of the foregoing, or (vi) has instituted against it, without the application, approval or consent of the Borrower, any Guarantor or the [Administrative] General Partner, as applicable, a proceeding in any court of competent jurisdiction, under any Legal Requirements relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking in respect of the Borrower, any Guarantor or the [Administrative] General Partner an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up or liquidation, a composition or arrangement with creditors,

a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the Borrower, any Guarantor or the [Administrative] General Partner or of all or any substantial part of the assets of such party or other like relief in respect thereof under any Legal Requirements relating to bankruptcy or insolvency law, and, if such proceeding is being contested by the Borrower, such Guarantor or the [Administrative] General Partner, as applicable, in good faith, the same (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed and undischarged for a period of sixty (60) days;

(h) The Borrower fails to maintain in full force and effect any insurance required pursuant to this Agreement;

(i) The Project Facilities suffer a loss by fire or other casualty and such loss is not fully insured and any deficiency in the amount of insurance proceeds paid with respect to such loss is not posted with the Trustee within thirty (30) days of the determination of such deficiency;

(j) The Project Facilities fail to achieve (i) Final Completion on or before the Completion Date; [or] (ii) Stabilization on or before the Stabilization Date[, or (iii) to obtain and maintain the exemption from ad valorem real estate taxation under the laws of the State[, provided that no Event of Default shall have occurred under this Section 7.1(i)(iii) if the failure to obtain and maintain the exemption is caused by the act or failure to act of the Managing General Partner and Borrower commences action to replace the Managing General Partner with another 501(c)(3) entity within thirty (30) days];

(k) Any litigation or administrative proceeding ensues, and is not dismissed within thirty (30) days, involving the Borrower, the General Partner, any Guarantor or any instrument, contract or document delivered by the Borrower to the Controlling Person or the Trustee in compliance with this Agreement, and the adverse result of such litigation or proceeding would have, in the Controlling Person's reasonable opinion, a materially adverse effect on the Borrower's, the General Partner's or any Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(l) Any one or more judgments or orders are entered against the Borrower, any Guarantor or the General Partner, and (1) continue unsatisfied and unstayed for thirty (30) days or (2) a judgment lien on any property of the Borrower, any Guarantor or the General Partner is recorded in respect thereof and is not stayed pending appeal by a bond or other arrangement given or obtained by the Borrower, any Guarantor or the General Partner on terms which do not violate any of the Borrower's covenants under this Agreement;

(m) Failure by the Borrower or the Guarantor (1) to make any payment or payments in respect of any Obligation or Indebtedness (unless a bona fide dispute exists as to whether such payment is due), when such payment or payments are due and payable (after the lapse of any applicable grace period), (2) to perform any other material obligation or covenant under any such obligation or obligations or (3) to pay or perform any material obligation or covenant under any Material Contract, any of which (x) results in the acceleration of such Obligation or Indebtedness or enables the holder or holders of such Obligation or Indebtedness or any person acting on behalf of such holder or holders to accelerate the maturity of such obligation or (y) would have, in the Controlling Person's reasonable opinion, a materially adverse effect on either the Borrower's or the Guarantor's ability to pay its obligations and materially comply with the covenants under this Agreement or any of the other Bond Documents;

(n) Construction of the Improvements shall have been discontinued for thirty (30) consecutive working days for any reason whatsoever, except [for Force Majeure events or] such reason as the Controlling Person shall deem reasonable;

(o) If at any time the Borrower shall have been unable for a period of forty-five (45) days to meet the requirements for an Advance under this Agreement, regardless of whether the Borrower has requested an Advance that has not been funded;

(p) The Contractor shall have defaulted under the Construction Contract, which default the Controlling Person, in its sole opinion, shall deem to be substantial, and the Borrower, upon ten (10) days written notice from the Controlling Person, shall have failed to exercise any right or remedy to which it shall be entitled; and

(q) An event of default shall have occurred under the Subordinate Debt Documents.

**Section 7.2 Remedies.** If an Event of Default has occurred and during the continuance of such Event of Default, the Trustee, acting solely at the direction of the Controlling Person, shall:

(a) Declare the principal of all Bonds then Outstanding and the interest accrued thereon to be due and payable; and

(b) Declare the Borrower's obligations hereunder, under the Notes and under the other Bond Documents to be, whereupon the same shall become, immediately due and payable, provided, no such declaration shall be required, and acceleration shall be automatic, upon occurrence of an event set forth in Section 7.1(g) hereof; and

(c) Enter upon the Project Facilities and take possession thereof, together with the Improvements in the course of construction or completed, and all of the Borrower's materials, supplies, tools, equipment and construction facilities and appliances located thereon, and proceed either in the name of the Trustee or in the name of the Borrower as the attorney-in-fact of the Borrower (which authority is coupled with an interest and is irrevocable by the Borrower) as the Controlling Person shall elect, to complete the construction of the Improvements at the cost and expense of the Borrower; if the Controlling Person elects to complete or cause the construction of the Improvements to be so completed, it may do so according to the terms of the Plans and Specifications and as the Controlling Person shall deem expedient or necessary, and the Trustee may enforce or cancel all contracts entered into as aforesaid or make other contracts which in the Controlling Person's reasonable opinion may seem advisable, and the Borrower shall be liable, under this Agreement and under the Notes or any other note given by it pursuant to the provisions hereof, to pay the Trustee upon demand any amount or amounts expended by the Trustee or its representatives for such performance, together with any costs, charges or expenses incident thereto or otherwise incurred or expended by the Trustee or its representatives on behalf of the Borrower in connection with the Improvements, and the amounts so expended with respect to each Note shall bear interest at the default rate specified in such Note, and shall be considered part of the indebtedness evidenced by such Note and secured by the Mortgage; and

(d) In the event the Contractor shall have defaulted as aforesaid, and the Contractor has no surety, the Controlling Person shall proceed to negotiate or invite bidding to procure, within an additional fifteen (15) days, a successor Contractor to complete the Improvements under a performance bond and labor and material payment bond approved by the Controlling Person in the full amount of the new contract price; if the Contractor has a surety, but

the surety refuses or fails to commence completion of the Improvements within fifteen (15) days after notice from the Borrower to do so, the Controlling Person shall proceed, within ten (10) days, to negotiate or invite bidding as herein provided or to take action against the entity; and

(e) (1) Enter upon or take possession of the Project Facilities and call upon or employ suppliers, agents, managers, maintenance personnel, security guards, architects, engineers and inspectors to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury; (2) pay out additional sums (which sums shall be immediately due and payable by the Borrower to the Trustee) and use any property of the Borrower associated with the Project Facilities, or any property of the Borrower in which the Trustee has or obtains an interest for application to or as a reserve for payment of any or all of the following with respect to the protection, management, operation or maintenance of the Project Facilities or the protection of the Trustee's interest therein, and in such connection deliver or disburse the same to such entities in such amounts and with such preferences and priorities as the Controlling Person in its sole discretion shall determine, either with or without vouchers or orders executed by the Borrower: (A) all sums due from the Borrower to the Trustee; (B) premiums and costs of title and any other insurance; (C) leasing fees and brokerage or sales commissions; (D) fees, costs and expenses of the Trustee and its counsel in connection with the enforcement and performance of this Agreement, the other Bond Documents and the other documents contemplated hereby; (E) any taxes (including federal, state and local taxes) or other governmental charges; (F) any sums required to indemnify and hold the Trustee harmless from any act or omission of the Trustee (except such as are grossly negligent, illegal, or due to its willful misconduct) under Section 2.5 hereof, the other Bond Documents or any other document; (G) architectural and engineering costs or any sums due to contractors, subcontractors, mechanics or materialmen for work or services actually furnished on or for the Project Facilities; (H) claims of any Governmental Authority for any required withholding of taxes on wages payable or paid by the Borrower; and (I) other reasonable and actual out-of-pocket costs and expenses which are required to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury or maintain the Trustee's security position before the rights of all others; (3) place additional encumbrances upon the Project Facilities; and (4) employ leasing and sales agents and negotiate and execute leases, sales contracts and financing undertakings in connection with all or any part of the Project Facilities; and

(f) Subject to all Legal Requirements, require the Borrower to transfer all security deposits to the Trustee; and

(g) Exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement, the other Bond Documents or at law or in equity.

Section 7.3 No Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Trustee at the direction of the Controlling Person (or by the Issuer if the same relates to Reserved Rights), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 7.4 No Waiver; Remedies Cumulative. No failure on the part of the Issuer, the Trustee, the Controlling Person or any Bondholder to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 7.5 Set-Off. Upon the occurrence and during the continuation of an Event of Default hereunder, the Trustee is hereby authorized at any time and from time to time without notice to the Borrower or the General Partner (any such notice being expressly waived by the Borrower and the General Partner) and, to the fullest extent permitted by applicable Legal Requirements, to set off and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys at any time held (including any amounts in the Accounts except for the Rebate Fund and the Tax and Insurance Escrow Fund) and other indebtedness at any time owing by the Issuer to or for the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, the Bond Documents or any other agreement or instrument delivered by the Borrower to the Issuer in connection therewith, whether or not the Issuer shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. The rights of the Trustee under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Trustee may have.

Section 7.6 Issuer and Borrower to Give Notice of Default. The Issuer and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Trustee, the Controlling Person and the Investor Limited Partner and to each other written notice of the occurrence of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice, but the Issuer shall not be liable for failing to give such notice.

Section 7.7 Cure by Investor Limited Partner and/or Special Limited Partner. Notwithstanding anything to the contrary contained herein, the Issuer hereby agrees that any timely cure of any default made or tendered by the Investor Limited Partner and/or Special Limited Partner 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; provided, however, that neither the Investor Limited Partner nor the Special Limited Partner shall have any obligation or duty to take any action to cure any default or to cause any default to be cured.

Section 7.8 Default Rate; Acceleration Premium. In the event there shall have occurred an acceleration of the obligations of the Borrower hereunder following an Event of Default on or before the First Optional Call Date, any tender of payment of an amount necessary to satisfy the indebtedness evidenced by this Agreement shall include the acceleration premium set forth in Section 2.3(c) hereof. In addition, in the event that principal or interest payable hereunder is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 7.9 Reserved Rights.

(a) Notwithstanding anything to the contrary contained herein, the Issuer may enforce its Reserved Rights under the Bond Documents and exercise the permitted remedies with respect thereto against the Borrower, subject to the provisions of subparagraph (c) below.

(b) [Reserved].

(c) In the event of an Event of Default in respect of Reserved Rights, nothing in this Section 7.9 shall restrict or in any way limit the right of the Issuer or the Trustee to take any action to enforce Reserved Rights hereunder or the rights of the Issuer or Trustee under the Regulatory Agreement, after written notice thereof to the Borrower, the Controlling Person and

the Majority Owner and the expiration of any applicable cure period, so long as neither the Issuer nor the Trustee takes any action (i) to declare the outstanding balance of the Bonds or the Loan to be due on account of such default, (ii) to have a receiver appointed in respect of the Project Facilities, (iii) to foreclose any liens upon or security interests or to enforce any other similar remedy against any of the property described in the Mortgage, or (iv) to enforce any other similar remedy which would cause such liens or security interests to be discharged or materially impaired thereby. Notwithstanding the foregoing, to the extent this Section conflicts with Regulatory Agreement, the Regulatory Agreement shall control.

## **ARTICLE 8 DEPOSITS TO FUNDS**

Section 8.1 Deposits to and Disbursements from the Replacement Reserve Fund. Pursuant to the Replacement Reserve Agreement, the Borrower shall pay or cause to be paid to the Trustee, for deposit into the Replacement Reserve Fund established by the Indenture, the amounts described in the Replacement Reserve Agreement. The sums contained in the Replacement Reserve Fund from time to time, shall be maintained, disbursed, and applied as provided in the Replacement Reserve Agreement and pursuant to Section 4.5(d) of the Indenture.

Section 8.2 Deposits to Tax and Insurance Escrow Fund.

(a) On the Issue Date, the Borrower shall pay, or cause to be paid, to the Trustee, to be deposited in the Tax and Insurance Escrow Fund, the amount specified in Section 4.1 of the Indenture, if any.

(b) Thereafter, unless otherwise directed by the Controlling Person, two Business Days before each Interest Payment Date, commencing the First Interest Payment Date, and continuing each month thereafter, the Borrower shall pay, or cause to be paid, to the Trustee an amount equal to the Monthly Tax and Insurance Amount for the Project Facilities to be deposited in the Tax and Insurance Escrow Fund.

Section 8.3 Reserved

Section 8.4 Deposits to Redemption Fund. Two Business Days before each Principal Payment Date, commencing on the First Principal Payment Date and continuing thereafter until the date on which the Bonds are no longer Outstanding or have been defeased, the Borrower shall pay to the Trustee the monthly amount shown on the Debt Service Schedule for deposit into the Redemption Fund pursuant to Section 4.5(a) of the Indenture. Following any partial redemption of Bonds (other than pursuant to Section 3.4(c) of the Indenture), the Controlling Person shall adjust the monthly amount due pursuant to this provision to account for any partial redemption of the Bonds in the manner set forth in Section 3.4(e) of the Indenture and shall provide the Borrower and the Trustee with the revised the Debt Service Schedule. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all amounts required to redeem the Bonds pursuant to Section 3.4(b)(vi) of the Indenture on or before the Interest Payment Date specified in the notice of the Controlling Person as provided in Section 3.4(b)(vi) of the Indenture. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all other amounts required to redeem Bonds pursuant to Section 3.4 of the Indenture, as provided therein.

Section 8.5 Deposits to Operating Reserve Fund. [IF OPERATING RESERVE FUND IS HELD UNDER THE INDENTURE: The Borrower [upon achievement of Stabilization,] [upon receipt of the Installment under the Partnership Agreement of the Borrower] shall pay or cause to

be paid to the Trustee, to be deposited in the Operating Reserve Fund, the sum of \$330,000 pursuant to Section 4.1 of the Indenture. Following any disbursement, payment or transfer of moneys from the Operating Reserve Fund, the Borrower shall replenish the Operating Reserve Fund monthly, from and to the extent of revenue from the operation of the Project Facilities available after payment of Expenses, capital expenditures and amounts then due and owing under the Bond Documents, and prior to the payment of any distributions to the Borrower's partners, until such time as the balance on deposit in the Operating Reserve Fund equals \$330,000.] [IF OPERATING RESERVE FUND IS HELD UNDER THE PARTNERSHIP/OPERATING AGREEMENT: Establishment of Operating Reserve Fund. The Borrower shall, [upon the achievement of Stabilization,] [upon receipt of the Installment under the Partnership Agreement of the Borrower] establish and maintain, at a bank approved by Controlling Person, an operating reserve fund (the "Operating Reserve Fund") in the amount of \$330,000. Moneys in the Operating Reserve Fund may be used by the Borrower only to fund any operating deficits of the Borrower, Expenses, or for any other operating or capital needs approved by the Controlling Person and Investor Limited Partner in writing. During the continuance of an Event of Default or in order to prevent an Event of Default, the Operating Reserve Fund shall be applied to by the Borrower, at the direction of the Controlling Person: (i) first to pay current debt service on the Bonds; (ii) second to pay other operating deficits of the Project Facilities; and (iii) thereafter to payment of other amounts owed by the Borrower. Borrower additionally covenants and agrees that promptly following the date that the Investor Limited Partner, or an Affiliate of Investor Limited Partner, is no longer a partner under the Partnership Agreement of the Borrower (the "Operating Reserve Trigger"), the Operating Reserve Fund shall be pledged to the Trustee as additional security for the Bonds, subject to any applicable tax credit restrictions.

Section 8.7 Investment. Funds in the Accounts shall be invested in Permitted Investments upon the direction of the Borrower with the consent of the Controlling Person, as set forth in Section 4.7 of the Indenture. Earnings on the Accounts hereunder shall be held or disbursed as set forth in Article IV of the Indenture. The Trustee shall have the right to invest or withdraw any deposited funds or to direct the liquidation of any investments held in order to pay the amounts required under this Agreement and the other Bond Documents. The Trustee shall not be liable for any loss sustained as a result of any liquidation of any collateral prior to its maturity. Any income or gain realized on such investments shall be credited to and become part of the respective Account and reinvested and applied as provided in the Indenture. Provided that no Default or Event of Default exists, the Borrower from time to time may request the Controlling Person to consent to the disbursement to or upon the order of the Borrower of the investment income previously credited to the Accounts, which consent by the Controlling Person shall not be unreasonably withheld or delayed.

Section 8.8 Security Interest in Accounts. The Borrower hereby assigns and pledges to the Issuer, and grants the Issuer a security interest in, as additional collateral security for the Borrower's obligations to the Issuer hereunder (and the Borrower acknowledges and agrees that the Issuer shall have a continuing security interest in) all of the Borrower's right, title and interest, if any, in all Accounts, all cash, cash equivalents, instruments, investments and other securities at any time held in the Accounts, all proceeds of the foregoing, and all of the Borrower's rights associated with such Accounts, if any. The Issuer hereby directs the Trustee to hold all moneys in the Accounts from time to time as assignee of the Issuer.

Section 8.9 Reports. The Trustee shall provide to the Borrower detailed monthly reports on or before the fifth (5<sup>th</sup>) day of the month following the month to which such report relates showing receipts, disbursements, balances and investments of each Account. Within ten (10) days of a written request of the Borrower to such effect, the Trustee shall deliver to the Borrower

an accounting of receipts, disbursements and balances in one or more of the Accounts as necessary and appropriate to assist the Borrower in complying with its covenants to calculate and pay any rebate amount or yield reduction payments due and owing to the United States of America with respect to the Bonds.

Section 8.10 No Liability of Trustee. In performing any of its duties hereunder, the Trustee shall not incur any liability to anyone for any damages, losses or expenses, except for its gross negligence, bad faith, illegal acts, or willful misconduct; and the Trustee shall not incur any liability with respect to any action taken or omitted in good faith in the performance of its duties and responsibilities under this Agreement.

## **ARTICLE 9 CONSTRUCTION AND FUNDING OF ADVANCES**

Section 9.1 Construction of Project Facilities; Final Completion. [Subject to Force Majeure events, the] Borrower shall commence performance of the Work in respect of the Improvements no later than thirty (30) days' following the Issue Date, and shall achieve Final Completion of such Work in accordance with the Plans and Specifications on or before the Completion Date; provided, however, that at the request of the Borrower and with the prior written approval of the Controlling Person, the Completion Date may be extended one or more times for such periods as the Controlling Person may approve in its sole discretion and upon delivery of such other information and funds as the Controlling Person may require in its sole discretion.

### **Section 9.2 Making The Advances.**

(a) At such time as the Borrower desires to obtain an advance from the Project Fund, an Authorized Person shall complete, execute and deliver a Requisition to the Controlling Person for its approval; no Requisition shall be delivered to the Trustee until it has been approved by the Controlling Person, and each advance by the Trustee of the amounts in the Project Fund shall be subject to the prior approval of the Requisition by the Controlling Person. The Controlling Person shall endeavor to approve or object to any Requisition within ten (10) Business Days of its submission and the submission of all additional information required in connection with such Requisition and shall endeavor to provide specific information concerning the nature of any objection it may have.

(b) Each Requisition shall be submitted to the Controlling Person at least fifteen (15) Business Days prior to the date of the requested Advance, and no more frequently than once each month (excluding the month in which the initial advance is requested). The Borrower shall open and maintain a checking account with a financial institution reasonably satisfactory to the Controlling Person. Except as otherwise provided for herein, the Controlling Person shall direct the Trustee to deposit the proceeds of each Requisition into such account.

Section 9.3 Advances to Contractors; to Others. At its option during the continuance of any Event of Default, the Controlling Person may direct the Trustee to make any or all advances: (a) for costs incurred under any construction contract directly to a contractor, subcontractor or vendor, (b) through the Title Company, or (c) to any Person to whom the Controlling Person in good faith determines payment is due.

Section 9.4 Requisition. Each Requisition shall be in the form set forth on Exhibit B hereto, shall be signed on behalf of the Borrower by an Authorized Person, shall be subject to approval by the Controlling Person prior to payment and shall state with respect to each

disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; (c) that each obligation therein for which such disbursement is being requested has been properly incurred and has not been the basis for any previous disbursement; and (d) that the expenditure of such disbursement, when added to all previous disbursements, will result in not less than ninety-five percent (95%) of all disbursements having been used to pay or reimburse the Borrower for Qualified Project Costs.

Section 9.5 Project Costs. The Development Budget reflects the purposes and the amounts for which funds to be advanced by the Trustee from the Project Fund are to be used. Subject to Section 9.7 hereof, the Controlling Person shall not be required to approve any Requisition requiring disbursement of funds from the Project Fund for any item of Work in an amount exceeding the amount specified for any item in the Development Budget. Subject to Section 9.7 hereof, in no event shall the Controlling Person approve any Advance in an amount exceeding (a) the total cost (as determined by the Controlling Person) of the labor, materials, fixtures, machinery and equipment completed, approved and incorporated into the Project Facilities prior to the date of such Requisition, less (b) Retainage (if required) less (c) the total amount of any advances previously made by the Trustee from the Project Fund for such costs.

Section 9.6 Retainage. The Controlling Person shall approve disbursement of Retainage upon completion of the Work or category of Work by the contractor or subcontractor under the contract for which the Retainage was held. No advance of funds from the Project Fund shall be approved unless all Work done at the date the Requisition for such advance is submitted is done in a good and workmanlike manner and without material defects, as confirmed by the report of the Engineering Consultant.

Section 9.7 Contingency Reserve. The amount allocated to "contingency" in the Development Budget is not intended to be disbursed without, and will only be disbursed upon, the prior reasonable approval of the Controlling Person. The disbursement of a portion of the contingency reserve shall in no way prejudice the Controlling Person from directing the Trustee to withhold disbursement of any further portion of the contingency reserve.

Section 9.8 Stored Materials. The Controlling Person shall approve Requisitions for funds for materials, furnishings, fixtures, machinery or equipment not yet incorporated into the Improvements, provided that any such disbursement shall be subject to and shall be contingent upon the Controlling Person's receiving satisfactory evidence that:

(a) such materials are components in a form ready for incorporation into the Improvements and shall be so incorporated within a period of thirty (30) days; and

(b) such materials are stored at the Project Facilities, or at such other site as the Controlling Person shall approve, and are insured and protected against theft and damage.

Section 9.9 Cost Overruns and Savings.

(a) If the Borrower becomes aware of any change in the costs of the Work which will increase or decrease the projection of the costs reflected on the Development Budget by \$50,000 or more, the Borrower shall promptly notify the Controlling Person in writing and promptly submit to the Controlling Person for its reasonable approval a revised Development Budget. If the Controlling Person otherwise becomes aware of any such change in costs of the Work, the Controlling Person shall have the right to prepare and to authorize disbursements on the basis of a revised Development Budget.

(b) If the revised Development Budget indicates an increase in costs of the Work for the Project Facilities (in excess of the aggregate contingency amount and savings), no further Requisitions for the Work at the Project Facilities need be approved by the Controlling Person unless Developer has deferred additional developer fees or until the Borrower has deposited with the Trustee any required funds necessary to cause the amount remaining on deposit in the Project Fund and any Required Equity Funds yet to be deposited with the Trustee to be sufficient to complete fully the construction of the Improvements in accordance with the Plans and Specifications to the extent applicable, and to pay all other Projected costs in connection with the Work.

(c) If the revised schedule indicates a decrease in costs of the Work for the Project Facilities, no savings may be reallocated by the Borrower unless and until the Borrower has furnished the Controlling Person and the Engineering Consultant with evidence satisfactory to them that the labor performed and materials supplied in connection with such line item of costs have been satisfactorily completed and paid for in full or otherwise sufficiently secured. At such time, such savings may be reallocated by the Borrower, with the consent of the Controlling Person, to other line items.

(d) The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Project Costs will be sufficient to pay all of the Project Costs. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Project Costs as required herein, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement or under the Notes.

#### Section 9.10 Right to Retain the Engineering Consultant.

(a) The Trustee shall have the right to retain, at the direction of the Controlling Person and at the Borrower's reasonable cost and expense, the Engineering Consultant to perform various services on behalf of the Controlling Person, including, without limitation, to make periodic inspections for the purpose of assuring that construction of the Improvements to date is in accordance with the Plans and Specifications, to advise the Controlling Person of the anticipated cost of and time for completion of construction of the Improvements and to review all construction contracts and subcontracts.

(b) The reasonable fees of the Engineering Consultant during the performance of the construction shall be paid by the Borrower in accordance with Section 2.2(b) hereof.

(c) Except to the extent arising from gross negligence, illegal acts, or willful misconduct, none of the Controlling Person, Majority Owner nor the Engineering Consultant shall have any liability to the Borrower on account of (i) the services performed by the Engineering Consultant, (ii) any neglect or failure on the part of the Engineering Consultant to properly perform its services, or (iii) any approval by the Engineering Consultant of construction of the Improvements. Neither the Controlling Person nor the Engineering Consultant assumes any obligation to the Borrower, the General Partner or any other Person concerning the quality of the Work performed or the absence of defects from the Improvements.

Section 9.11 Inspections. The Borrower agrees to provide and cause to be provided to the Controlling Person and its authorized agents, at all times, facilities commonly made available by responsible general contractors for the inspection of the Improvements, and to afford full and

free access to the Controlling Person and its authorized agents to all plans, drawings and records with respect to the construction of the Improvements. The Borrower further agrees to promptly send to the Controlling Person a copy of all construction inspection reports made by the Borrower's Architect or engineer.

Section 9.12 Initial Advances. The right of the Borrower to draw the initial Advance on the Issue Date shall be subject to the satisfaction of the following conditions precedent:

(a) The Borrower shall have delivered the items listed on Schedule 7 attached hereto;

(b) The Borrower shall have delivered evidence as to the obtaining of all approvals, permits and licenses which are then required, if any, or necessary for the construction of the Improvements at the Project Facilities, together with copies of all such approvals, permits and licenses or evidence that no such permits or licenses are required;

(c) The Borrower shall have delivered copies of the Borrower's contracts with the Architect and the Contractor, duly executed by the parties thereto, and to the extent applicable, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be, supplying labor or materials for the construction of the Project Facilities;

(d) The Borrower shall have delivered to the Controlling Person two (2) complete sets of the Plans and Specifications, together with evidence of their approval by all Governmental Authorities having jurisdiction;

(e) The Borrower shall have delivered the Payment and Performance Bonds in respect of the Construction Contract;

(f) The Controlling Person shall have received a report or written confirmation from the Engineering Consultant that (a) the Engineering Consultant has reviewed the Plans and Specifications identified on Schedule 5, (b) the Construction Contract satisfactorily provides for the construction of the Project Facilities, and (c) in the reasonable opinion of the Engineering Consultant construction of the Project Facilities can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose on the Development Budget;

(g) The Borrower shall have delivered to the Controlling Person evidence as to:

(i) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;

(ii) the availability of water supply and storm and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;

(iii) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and

(iv) the obtaining of all Governmental Actions which are required, necessary or desirable for the construction of the Improvements and the access thereto, together with copies of all such Governmental Actions as listed on Schedule 6;

(h) The first installment of the Borrower's Required Equity Funds shall have been delivered to the Trustee and the other deposits required under Section 4.1(c) of the Indenture shall have been made; and

(i) The Controlling Person and the Trustee shall have executed a closing statement for the Bonds in form and substance satisfactory to the Controlling Person and, if any portion of the initial Advance shall be for hard costs of construction, a completed Requisition as described in Section 9.13(d)(i) hereof and the Engineering Consultant approval described in Section 9.13(d)(iii) hereof.

Section 9.13 Subsequent Advances. The right of the Borrower to draw any subsequent advances of funds from the Project Fund shall be subject to the satisfaction of the following conditions:

(a) The Borrower shall have delivered the items listed on Part B of Schedule 7 attached hereto.

(b) If the Improvements shall have been materially injured or damaged by fire, explosion, accident, flood or other casualty, such Improvements are able to be and are diligently being restored in accordance with the terms of the Mortgage;

(c) There shall not be a continuing Event of Default;

(d) The Controlling Person and the Trustee shall have received:

(i) a completed Requisition in the form set forth on Exhibit B hereto, accompanied by the certificates, applications, invoices and other materials required thereby;

(ii) a "date down" endorsement to the Title Policy indicating no change in the state of title not approved by the Controlling Person; and

(iii) approval of the portion of the Requisition applicable to the Work for such Advance by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the Work for which the advance is requested to the date thereof was performed in a good and workmanlike manner and stating that the remaining non-disbursed portion of the Bond proceeds and other available funds and funds projected to be deposited in the Project Fund established under the Indenture is adequate to complete construction of the Improvements in accordance with the Plans and Specifications.

(e) Notwithstanding anything to the contrary set forth in this Agreement, no sums shall be disbursed until the Borrower has delivered a waiver or full, conditional or partial release of liens from all contractors, subcontractors, materialmen or others who may be entitled to a lien, as permitted by law for the work supplied or materials provided and for which payment

is requested, and with respect to all contractors, subcontractors, material men or others entitled to a lien for work done or materials provided and paid from any prior advance funded by reliance on conditional lien waivers, on unconditional waiver or release of lien with respect to such work.

(f) The Controlling Person may withhold or refuse to approve any Requisition hereunder if any mechanic's lien is filed or notice of intention to record or file a mechanic's lien has been filed or given, subject to Borrower's right to contest such lien in accordance with the terms of the Bond Documents, unless Borrower provides a sufficient bond or other security with respect to such lien, provided that Borrower shall bond off any such liens being contested.

(g) In addition to the conditions set forth in this Section 9.13, the Controlling Person's obligation to approve any Requisition for Retainage shall be subject to receipt by the Controlling Person of the Engineering Consultant's certification of completion as to the Work performed under any contract or subcontract for which the Retainage will be disbursed.

(h) If the Plans and Specifications provide for construction of the foundations, including expansion or modification of existing foundations, within thirty (30) days after the completion of construction of the foundations of the Improvements, the Borrower shall deliver a survey certified by a registered engineer or surveyor showing that the foundations are located within the perimeter of the Land and any set back lines and at the location shown on the Plans and Specifications together with, if requested by Controlling Person, a foundation endorsement to the Title Policy in for and substance acceptable to Controlling Person.

(i) All installments of Required Equity Funds then due and payable shall have been deposited with the Trustee;

(j) If at any time during the construction of the Project Facilities, the Controlling Person shall in its sole discretion determine that the remaining undisbursed portion of the Project Fund, any undeferred developer fee, other sums previously deposited by Borrower with the Trustee, and any Required Equity Funds yet to be deposited with the Trustee (other than Required Equity Funds which have not been deposited due to a default by the Borrower under the applicable provisions of the Partnership Agreement), is or will be insufficient to complete fully the construction of the Improvements in accordance with the Plan and Specifications, and to pay all other projected costs in connection with such work, the Borrower will, within seven (7) days after written notice of such determination from the Controlling Person deposit with the Trustee (for deposit into the Equity Account of the Project Fund) such sums of money in cash as the Controlling Person may reasonably require, in an amount sufficient to remedy the condition described in such notice, and sufficient to pay any liens for labor and materials alleged to be due and payable at the time in connection with the Improvements (to the extent not already bonded over or reserved for), and, at the Controlling Person's option, the Controlling Person shall not be obligated to authorize any further advances of the amounts held in the Project Fund by Trustee until the provisions of this Section 9.13(i) have been fully complied with.

(k) No Material Change Order shall have been made without the written approval of the Controlling Person, such approval not to be unreasonably withheld, conditioned or delayed.

(l) Within a reasonable amount of time after receiving written notice from the Controlling Person (or the Engineering Consultant), the Borrower will commence or cause to be commenced the removal of all materials, whether worked or unworked, and all portions of the construction which the Controlling Person (or the Engineering Consultant) may condemn as failing

in a substantial and adverse way to conform with the Plans and Specifications, and will prosecute diligently or cause to be prosecuted diligently such removal. The Borrower further agrees to make good all portions of the construction and other materials damaged by such removal.

Section 9.14 Construction Information and Verification. From time to time, within ten (10) days after the written request of Controlling Person, Borrower shall deliver to Controlling Person any and all of the following information and documents, to the extent applicable to the construction of the Project Facilities and to the extent not previously delivered, that Controlling Person may reasonably request, all in forms reasonably acceptable to Controlling Person, as applicable:

(a) Current Plans and Specifications for the Improvements certified by the Architect as being complete and accurate, and a line item cost breakdown for the proposed construction and/or rehabilitation of the Improvements;

(b) A current, complete and correct list showing the name, address, telephone number and license information of each contractor, subcontractor and material supplier engaged in connection with the construction and/or rehabilitation of the Improvements, and the total dollar amount of each contract and subcontract (including any changes) and the scope of work involved, together with the amounts paid through the date of the list and all other information reasonably requested by Controlling Person;

(c) True and correct copies of the most current versions of all executed contracts and subcontracts with each party identified in the list described in clause (b) above, including any changes;

(d) True and correct copies of all grading, foundation, building and all other construction permits, licenses and authorizations from all applicable Governmental Authorities or third parties necessary for the construction and/or rehabilitation of the Improvements and the operation of, and access to, the Project;

(e) Copies of (i) owner/architect/contractor project meeting minutes; (ii) requests for information (RFI), submittal logs, proposed change orders (PCO), and change order logs; (iii) independent test results, (iv) quality inspection reports; and (v) anticipated cost reports, buy-out logs and Major Contracts, in each case to the extent such items relate to the Project and are in the possession or control of Borrower;

(f) A construction schedule showing the progress of construction or rehabilitation, as the case may be, and the projected sequencing and completion times for uncompleted Work, all as of the date of the schedule; and

(g) Any update to any item described above which Borrower may have previously delivered to Controlling Person.

(h) Borrower expressly authorizes Controlling Person to contact Architect, Contractor or any contractor, subcontractor, material supplier, surety or any Governmental Authority to verify any information disclosed in accordance with this Section 9.14. Controlling Person shall give notice to Borrower of any such contacts, provided that neither Controlling Person nor Trustee shall incur any liability to Borrower by reason of the failure to give such notice, and Borrower's obligations under the Borrower Loan Documents shall not be affected in any manner by any failure to give such notice. The Construction Contract shall require the Contractor

to disclose such information to Trustee and Controlling Person. Any defaulting architect, contractor, subcontractor, material supplier or surety shall be promptly replaced, and Borrower shall promptly deliver all required information and documents to Controlling Person and Trustee regarding each replacement architect, contractor, subcontractor, material supplier and surety. Controlling Person may disapprove any architect, contractor, subcontractor, material supplier, surety or other party whom Controlling Person in its reasonable judgment may deem financially or otherwise unqualified, however, the absence of any such disapproval shall not constitute a representation of qualification.

Section 9.15 Effect of Approval. Approval of any Requisition by the Controlling Person shall not constitute an approval or acceptance of the Work or materials, nor shall such approval give rise to any liability or responsibility relating to: (i) the quality of the work, the quantity of the work, the rate of progress in completion of the Work, or the sufficiency of materials or labor being supplied in connection therewith; and (ii) any errors, omissions, inconsistencies or other defects of any nature in the Plans and Specifications. Any inspection of the work that the Controlling Person may choose to make, whether through any consulting engineer or architect, agent or employee or officer, during the progress of the work shall be solely for the Controlling Person's information and under no circumstances will they be deemed to have been made for the purpose of supervising or superintending the Work, or for the information or protection of any right or interest of any person or entity other than the Controlling Person and the Majority Owner.

## **ARTICLE 10 MISCELLANEOUS**

Section 10.1 Notices. All notices and other communications provided for hereunder shall be in writing and sent by electronic mail (with confirmed receipt) and by reputable overnight mail service or private delivery service addressed as follows:

The Trustee:	The Bank of New York Mellon Trust Company, N.A. 400 South Hope Avenue, Suite 500 Los Angeles, California 90071 Attention: Corporate Trust Department Telecopier: (213) 630-6215
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The Issuer:	Housing Authority of the City of San Diego 1122 Broadway, Suite 300 San Diego, California 92101 Attention: Executive Director Telecopier: (619) 578-7356
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with copies to (none of which copies shall constitute notice to the Issuer):	Office of the San Diego City Attorney 1200 Third Avenue, Suite 1100 San Diego, California 92101 Attention: Marguerite Middaugh Telecopier: (619) 236-7215
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Jones Hall, A Professional Law Corporation  
475 Sansome Street, Suite 1700  
San Francisco, California 94111  
Attention: Josh D. Anzel, Esq.  
Telecopier: (415) 276-2088

The Controlling Person:

Boston Capital Finance LLC  
One Boston Place, 22nd Floor  
Boston, Massachusetts 02108  
Attention: Sean Curry

with a copy to:

Kutak Rock LLP  
The Omaha Building  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attention: Sean Gillen

The Borrower:

Hilltop Family Housing, L.P.  
c/o Affirmed Housing Group, Inc.  
13520 Evening Creek Drive North, Suite 160  
San Diego, California 92128  
Attention: James Silverwood, President  
Facsimile: (858) 679-9076

with a copy to:

Katten Muchin Rosenman LLP  
2029 Century Park East, Suite 2600  
Los Angeles, California 90067  
Attention: David Cohen, Esq.  
Facsimile: (312) 902-1061

The Investor Limited Partner:

Boston Capital Direct Placement, A Limited  
Partnership  
c/o Boston Capital, Inc.  
One Boston Place  
Boston, Massachusetts 02108  
Attention: Asset Management

with a copy to:

Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109-2835  
Attention: Nathan Bernard, Esq.

The above parties may change the address to which notices to it are to be sent by written notice given to the other persons listed in this Section. All notices shall, when sent as aforesaid, be effective when received.

Section 10.2 Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, the Trustee. The Controlling Person and the Majority

Owner are express third party beneficiaries of this Agreement and the rights of the Trustee (as assignee of the Issuer) hereunder, with full rights of enforcement thereof. The Borrower may not assign its interests in or its rights, duties or obligations under this Agreement without the prior written consent of the Controlling Person. The Borrower and the Issuer intend that no person other than the parties hereto, the Majority Owner, the Controlling Person, and their respective successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 10.3 Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the issuance, sale and delivery of the Bonds, the delivery of this Agreement and the payment of any amounts under the Bond Documents.

Section 10.4 Counterparts; Electronic Signature. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement. To the fullest extent permitted by applicable law, facsimile or electronically transmitted signatures shall be treated as original signatures for all purposes hereunder.

Section 10.5 Costs, Expenses and Taxes. The Borrower agrees to pay on the Issue Date and thereafter within thirty (30) days after demand, all reasonable costs and expenses of the Issuer, the Trustee, the Controlling Person and the Majority Owner in connection with the preparation, execution, delivery and administration of this Agreement, the other Bond Documents and any other documents that may be delivered in connection with this Agreement or the other Bond Documents or any amendments or supplements thereto, including, without limitation, the fees and expenses of the Engineering Consultant, the cost of an annual appraisal (but only upon the occurrence and during the continuation of an Event of Default) of the Project Facilities by an appraiser selected by the Controlling Person, and the reasonable fees and expenses of counsel for the Majority Owner and the Controlling Person with respect thereto and with respect to advising the Majority Owner and the Controlling Person as to their respective rights and responsibilities under this Agreement, the other Bond Documents and such other documents, and all costs and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Controlling Person and the Majority Owner) in connection with the enforcement of this Agreement, the other Bond Documents and such other documents.

Section 10.6 Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the Issuer in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable Legal Requirements to be contracted for, charged or received, and if any payments by the Borrower to the Trustee include interest in excess of such a maximum amount, the Trustee shall apply such excess to the reduction of the unpaid principal amount due pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by applicable Legal Requirements, in the event the interest is not collected, is applied to principal or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be

less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by applicable Legal Requirements, any non-principal payment (except payments specifically stated in this Agreement to be "interest") shall be deemed, to the extent permitted by applicable Legal Requirements, to be an expense, fee, premium or penalty rather than interest.

Section 10.7 Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Bond Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 10.8 Complete Agreement. Taken together with the other Bond Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the Borrower, the General Partner, the Guarantor, the Controlling Person, the Trustee, the Issuer and the Holders from time to time of the Bonds, with respect to the subject matter hereof.

Section 10.9 Consent to Jurisdiction; Venue; Waiver of Jury Trial. The Borrower hereby irrevocably (i) agrees that any suit, action or other legal proceeding arising out of or relating to this Agreement or the other Bond Documents may be brought in any federal court located in the State and consents to the jurisdiction of such court in any such suit, action or proceeding; (ii) agrees that any suit, action or other legal proceeding relating to the Bond Documents shall be brought solely in a federal or state court located in the State and (iii) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The Borrower hereby irrevocably consents to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address provided under or pursuant to Section 10.1 hereof. The Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable legal requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Controlling Person and the Majority Owner to serve legal process in any other manner permitted by applicable Legal Requirements. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE BORROWER, MAJORITY OWNER AND CONTROLLING PERSON HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING UNDER THIS AGREEMENT, ANY OF THE OTHER BOND DOCUMENTS OR OTHERWISE IN CONNECTION HEREWITH.**

Section 10.10 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Legal Requirements of the State of California without reference to its principles of conflicts of law.

Section 10.11 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.12 Sale of Bonds and Secondary Market Transaction.

(a) At the Controlling Person or Majority Owner's request (to the extent not already required to be provided by the Borrower under this Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Controlling Person or Majority Owner customarily adheres or which may be reasonably required in the marketplace or by the Controlling Person or Majority Owner in connection with obtaining a rating or one or more sales or assignments of all or a portion of the Bonds 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 Bonds (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that neither the Borrower nor the Issuer 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 including, without limitation, any costs associated with receiving a rating on the Bonds, shall be paid by the Controlling Person or Majority Owner, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower shall, so long as the Loan is still outstanding:

(i) (1) provide financial and other information with respect to the Bonds, and with respect to the Project Facilities, the Borrower, the General Partner, the Managing Agent, or the contractor of the Project Facilities, (2) provide financial statements, audited, if available, relating to the Project Facilities with customary disclaimers for any forward looking statements or lack of audit, and (3) at the expense of the Controlling Person or Majority Owner, 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, termite and other insect infestation reports and other due diligence investigations of the Project Facilities, the Borrower, General Partner, Guarantor, Managing Agent, Contractor and other third parties in connection with the Bonds, as may be reasonably requested from time to time by the Controlling Person or Majority Owner 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 Controlling Person or Majority Owner pursuant to this paragraph (i) and the other information provided pursuant to this Agreement and the other Bond Documents used in connection with a Secondary Market Transaction being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Controlling Person or Majority Owner and the Rating Agencies;

(ii) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project Facilities, the Borrower, General Partner, Guarantor, Managing Agent, Contractor or other third parties and the Bond Documents reasonably acceptable to the Controlling Person or Majority Owner, consistent with the facts covered by such representations and warranties as they exist on the date thereof, including a "bringdown" of the representations and warranties contained in the Bond Documents as of the date thereof and a representation that no default or event of default has occurred and is continuing; and

(iii) execute such amendments to the Bond Documents to accommodate such Secondary Market Transaction so long as such amendment

does not affect the material economic terms of the Bond Documents and is not otherwise adverse to such party in its reasonable discretion.

(b) 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 10.12(c) hereof, with the Controlling Person and Majority Owner 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 Facilities 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.

(c) In connection with a Secondary Market Disclosure Document, the Borrower, General Partner or Guarantor shall provide, or in the case of a Borrower-engaged third party such as the Managing Agent, cause it to provide, information reasonably requested by the Controlling Person or the Majority Owner pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or such third party (and portions of any other sections reasonably requested by the Controlling Person or the Majority Owner pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or the third party). The Borrower shall, if requested by the Controlling Person or the Majority Owner, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or the third party, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project Facilities or the third party) 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 third parties; provided further that the Borrower will be required to cause such third parties to provide similar certification with respect to any information not so certified by the Borrower. Furthermore, the Borrower hereby indemnifies the Majority Owner, the Controlling Person, the Trustee, the Issuer and issuer, sponsor, guarantor and the underwriter group for any securities, and their affiliates, officers, directors, partners, members, agents, attorneys and controlling persons (the “Underwriter Group”) 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.

(d) In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) defend and indemnify the Controlling Person, the Majority Owner, the Trustee, the Issuer, its members, and the Underwriter Group for any liabilities to which the Majority Owner, the Controlling Person, the Issuer, the Trustee or the Underwriter Group may become subject insofar as such 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 Controlling Person, the Majority Owner, the Trustee, the Underwriter Group and other indemnified parties listed above for any

reasonable legal or other actual out-of-pocket expenses reasonably incurred by the Controlling Person, the Majority Owner, the Trustee 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, but shall require such third parties to provide such indemnification with respect to information they certify.

(e) Promptly after receipt by an indemnified party under this Section 10.12 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 10.12 and provided that the Borrower duly provides the defense and indemnity herein described, including payment of all required fees, expenses and liabilities, 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.

(f) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section 10.12 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 this Section 10.12, 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 11(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.

#### Section 10.13 Nonrecourse.

(a) Notwithstanding anything to the contrary contained in this Agreement (other than Sections 10.13(b) through (e) hereof) or the other Bond Documents (other than the Regulatory Agreement and Tax Certificate), the Issuer agrees that, in connection with the exercise of any rights or remedies available to the Issuer under this Agreement or any of the other Bond Documents (other than the Regulatory Agreement, Tax Certificate, Environmental Indemnity and the other guaranty agreements of the Guarantors), the Issuer shall look solely to the enforcement of the lien and security interests created by this Agreement and the other Bond Documents and to the collateral and other security held by the Trustee.

(b) Notwithstanding the preceding subsection, the Borrower and the Guarantor shall have full recourse and personal liability for, and be subject to, judgments and deficiency decrees arising from and to the extent of any loss or damage suffered or incurred by the Issuer, the Trustee, the Majority Owner, the Controlling Person or the Bondholders as a result of the occurrence of any of the following events:

(i) the Borrower fails to pay to the Trustee upon written demand after an Event of Default all Rents to which the Trustee is entitled under Section 2 of the Mortgage and the amount of all security deposits collected by Borrower from tenants then in residence. However, Borrower will not be personally liable for any failure described in this Section 10.13(b)(i) if Borrower is unable to pay to the Trustee all Rents and security deposits as required by the Mortgage because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(ii) the Borrower fails to apply all insurance proceeds or casualty or condemnation proceeds as required by the Bond Documents. However, Borrower will not be personally liable for any failure described in this Section 10.13(b)(ii) if Borrower is unable to apply insurance or casualty or condemnation proceeds as required by the Bond Documents because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(iii) if an Event of Default has occurred and is continuing, the Borrower fails to deliver all books and records relating to the Mortgaged Property or its operation in accordance with the provisions of Section 6.8 or 6.9 of this Agreement;

(iv) the Borrower engages in any willful act of material waste of the Project Facilities;

(v) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof;

(vi) the occurrence of any of the following transfers:

(A) any Person that is not an Affiliate creates a mechanic's lien or other involuntary lien or encumbrance against the Project Facilities and Borrower has not complied with the provisions of this Agreement.

(B) a transfer of property by devise, descent or operation of law occurs upon the death of a natural person in violation of the requirements set forth in the Bond Documents.

(C) the Borrower grants an easement that does not meet the requirements set forth in the Bond Documents.

(D) Borrower executes a Lease that does not meet the requirements set forth in the Bond Documents;

(vii) any act of fraud or willful misconduct or any criminal act of the Borrower, the General Partner or the Guarantor;

(viii) the Borrower's misappropriation of funds or other Collateral; or

(ix) any litigation or other legal proceeding related to the Obligations filed by any of the Borrower, Guarantor, or any of their Affiliates, or any other action of any such Person that delays, opposes, impedes, binders, enjoins or otherwise interferes with or frustrates the efforts of Trustee to exercise any rights and remedies available to Trustee provided herein or in the other Bond Documents.

(c) The Borrower and the Guarantor shall have full recourse and personal liability for all of the Indebtedness (and the limitation on liability in the first sentence of Section 10.13(a) hereof shall be null and void) as a result of the occurrence of any of the following:

(i) a violation of Section 6.11(a), 6.12(b) or 6.13(c) hereof;

(ii) the Borrower's taking any action which adversely affects the exclusion from gross income of interest on the Tax-Exempt Bonds for federal income tax purposes, or the Borrower's omitting or failing to take any action required to maintain the exclusion from gross income of interest on the Tax-Exempt Bonds for federal income tax purposes;

(iii) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof and a court of competent jurisdiction holds or determines that such failure or combination of failures is the basis, in whole or in part, for the substantive consolidation of the assets and liabilities of the Borrower or the General Partner with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code;

(iv) a transfer that is an Event of Default under Section 7.1 hereof occurs (other than a transfer described in Section 10.13(b)(vi) above, for which Borrower will have personal liability for any loss or damage); provided, however, that neither Borrower nor Guarantor will have any personal liability for a transfer consisting solely of the involuntary removal or involuntary withdrawal of the General Partner;

(v) there was fraud or written material misrepresentation by the Borrower or any officer, director, partner, member or employee of the Borrower in connection with the application for or creation of the Indebtedness or there is fraud in connection with any request for any action or consent by the Issuer, Trustee, Controlling Person or the Bondholders;

(vi) the Borrower or the [Administrative] General Partner voluntarily files for bankruptcy protection under the Bankruptcy Code;

(vii) the Borrower or the [Administrative] General Partner voluntarily becomes subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

(viii) the Project Facilities or any part of the Project Facilities becomes an asset in a voluntary bankruptcy or becomes subject to any voluntary reorganization, receivership, insolvency proceeding, or other similar voluntary

proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

(ix) an order of relief is entered against the Borrower or the [Administrative] General Partner pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights in any involuntary bankruptcy proceeding initiated or joined in by a Related Party; or

(x) an involuntary bankruptcy or other involuntary insolvency proceeding is commenced against the Borrower or the [Administrative] General Partner (by a party other than the Trustee or the owner of any Bonds) but only if the Borrower or the [Administrative] General Partner, as applicable, has failed to use commercially reasonable efforts to dismiss such proceeding or has consented to such proceeding. "Commercially reasonable efforts" will not require any direct or indirect interest holders in the Borrower or the General Partner to contribute or cause the contribution of additional capital to the Borrower or the General Partner.

(d) The Borrower and the Guarantor shall have full recourse and personal liability for all of the following:

(i) the performance of and compliance with all of Borrower's obligations under Sections 5.12 and 6.14 of this Agreement (relating to environmental matters) or the Borrower's failure to comply with the provisions of the Environmental Indemnity;

(ii) the costs of any audit under Section 6.8 of this Agreement;

(iii) any costs and expenses incurred by the Issuance and any reasonable and actual costs and expenses incurred by the Trustee, the Controlling Person and the Majority Owner in connection with the collection of any amount for which Borrower is personally liable under this Section 10.13, including reasonable attorneys' fees and costs and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability; and

(iv) Borrower's indemnity obligations pursuant to Section 2.5 and 10.12.

(e) Further, nothing contained in this Section shall be deemed to limit, vary, modify or amend any obligation owed under any guaranty, master lease or indemnification agreement, including the Environmental Indemnity and the other guaranty agreements of the Guarantors, furnished in connection with financing of the acquisition, construction and equipping of the Project Facilities, recourse under which is not, by its terms, expressly limited in accordance with this Section 10.13.

(f) Notwithstanding anything to the contrary, Issuer, Trustee, Controlling Person and Holders shall not be deemed to have waived any right such Persons may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of Borrower's and Guarantor's Obligations under the Bond Documents or to require that all collateral shall continue to secure all Obligations under the Bond Documents.

Section 10.14 Publicity. The Controlling Person or the Majority Owner and their respective affiliates, may with the Consent of the Borrower, use the Borrower's and its affiliates' name(s), logo(s) and photographs related to the Project Facilities in its advertising, marketing and communications materials on a national and/or international basis. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, the Controlling Person or the Majority Owner also may discuss at a high level the types of services and solutions the Controlling Person or the Majority Owner has provided the Borrower. The Controlling Person or the Majority Owner shall also have the right to publicize its involvement in the financing of the Project Facilities, including the right to maintain a sign indicating such involvement at a location at the Project Facilities reasonably acceptable to the Borrower and Controlling Person.

Section 10.15 Determinations by the Majority Owner and Controlling Person. Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Controlling Person or the Majority Owner may be given or is required, or where any determination, judgment or decision is to be rendered by the Controlling Person or the Majority Owner under this 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 Controlling Person or the Majority Owner (or its designated representative) at its sole and absolute discretion. The Trustee may, and shall at the written direction of the Holders of all Outstanding Bonds, by separate instrument delegate, assign, transfer and set over unto the Controlling Person any or all of the rights, remedies, duties and obligations of the Trustee under this Indenture and the other Bond Documents, in which event the Controlling Person shall have each of the rights, remedies, duties and obligations delegated to it as if specifically named herein and in the other Bond Documents, as applicable, and shall be entitled to act in its own name, but if necessary in the name and stead of the Trustee, to enforce each of the remedies provided to the Trustee hereunder or under the other Bond Documents.

Section 10.16 Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Issuer, the Trustee or the Controlling Person to carry out the purposes and provisions of this Agreement and to the other Bond Documents, to make elections or take actions (or, as requested, to refrain from making elections or taking actions) related to the audit procedures involving the Borrower and/or its partners set forth in the Bipartisan Budget Act of 2015 so that the Borrower's members, equityholders, shareholders and partners will be directly responsible for any audit adjustments, changes or modifications rather than the Borrower, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and the other Bond Documents and to assure the Controlling Person and the Majority Owner of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents in connection with any of the foregoing and such approvals shall be in form satisfactory to the Controlling Person.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Agreement to be duly executed and delivered on the day and year first above written.

**HOUSING AUTHORITY OF THE CITY OF SAN  
DIEGO**

By: \_\_\_\_\_  
Name: Richard C. Gentry  
Title: Executive Director

**HILLTOP FAMILY HOUSING, L.P.,**  
a California limited partnership

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

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

By: \_\_\_\_\_  
James Silverwood, President

By: NEXUS MGP LLC,  
a California limited liability company,  
its Managing General Partner

By: NEXUS for Affordable Housing, Inc.,  
a California nonprofit public benefit  
corporation, its Manager

By: \_\_\_\_\_  
Gina C. Onweiler, President

**EXHIBIT A**  
**FORM OF PROMISSORY NOTES**

**H-1 Promissory Note**

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

\$ \_\_\_\_\_

October \_\_\_\_, 2020

FOR VALUE RECEIVED, Hilltop Family Housing, L.P., a limited partnership duly formed and validly existing under the laws of the State of California (the "Borrower"), by this promissory note hereby promises to pay to the order of the Housing Authority of the City of San Diego (the "Issuer") the principal sum of \_\_\_\_\_ and no/100 Dollars (\$ \_\_\_\_\_), together with interest on the unpaid principal amount hereof, from the Issue Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds (as hereinafter defined), and acceleration premium, if any, on the Bonds. All such payments of principal, interest and acceleration premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the principal corporate trust office of The Bank of New York Mellon Trust Company, N.A., or its successor as trustee under the Indenture.

The principal amount and interest shall be payable on the dates and in the amounts set forth on the Debt Service Schedule and on such other dates, that principal and redemption price of, and interest on the Bonds, and the acceleration premium, if any, are payable, subject to prepayment as provided in the Indenture and the Agreement.

This promissory note is the "H-1 Note" referred to in the Loan Agreement, dated as of October 1, 2020 (as the same may be amended, modified or supplemented from time to time, the "Agreement") between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), under the Indenture of Trust, dated as of October 1, 2020 (as the same may be amended, modified or supplemented from time to time, the "Indenture"), by and between the Issuer and Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of \$ \_\_\_\_\_ in aggregate principal amount of the Issuer's Multifamily Housing Revenue Bonds (The Orchard at Hilltop), Series 2020H-1 (the "Bonds"), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

The obligations of the Borrower to pay any and all amounts due on this Note is a non-recourse obligation as provided in Section 10.13 of the Loan Agreement.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Agreement.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of default on this Note.

This Note shall be governed by, and construed in accordance with, the laws of the State of California, without regard to conflict of laws principles.

HILLTOP FAMILY HOUSING, L.P.,  
a California limited partnership

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

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

By: \_\_\_\_\_  
James Silverwood, President

By: NEXUS MGP LLC,  
a California limited liability company,  
its Managing General Partner

By: NEXUS for Affordable Housing, Inc.,  
a California nonprofit public benefit  
corporation, its Manager

By: \_\_\_\_\_  
Gina C. Onweiler, President

**ENDORSEMENT**

Pay to the order of The Bank of New York Mellon Trust Company, N.A., without recourse, as Trustee under the Indenture referred to in the within mentioned Agreement, as security for such Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

HOUSING AUTHORITY OF THE CITY OF SAN  
DIEGO

By: \_\_\_\_\_  
Name:  
Title:

Dated: \_\_\_\_\_, 2020

## **H-2 Promissory Note**

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

\$ \_\_\_\_\_

October \_\_\_\_, 2020

FOR VALUE RECEIVED, Hilltop Family Housing, L.P., a limited partnership duly formed and validly existing under the laws of the State of California (the "Borrower"), by this promissory note hereby promises to pay to the order of the Housing Authority of the City of San Diego (the "Issuer") the principal sum of \_\_\_\_\_ and no/100 Dollars (\$ \_\_\_\_\_), together with interest on the unpaid principal amount hereof, from the Issue Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds (as hereinafter defined), and acceleration premium, if any, on the Bonds. All such payments of principal, interest and acceleration premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the principal corporate trust office of The Bank of New York Mellon Trust Company, N.A., or its successor as trustee under the Indenture.

The principal amount and interest shall be payable on the dates and in the amounts set forth on the Debt Service Schedule and on such other dates, that principal and redemption price of, and interest on the Bonds, and the acceleration premium, if any, are payable, subject to prepayment as provided in the Indenture and the Agreement.

This promissory note is the "H-2 Note" referred to in the Loan Agreement, dated as of October 1, 2020 (as the same may be amended, modified or supplemented from time to time, the "Agreement") between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), under the Indenture of Trust, dated as of October 1, 2020 (as the same may be amended, modified or supplemented from time to time, the "Indenture"), by and between the Issuer and Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of \$ \_\_\_\_\_ in aggregate principal amount of the Issuer's Multifamily Housing Revenue Bonds (The Orchard at Hilltop), Taxable Series 2020H-2 (the "Bonds"), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

The obligations of the Borrower to pay any and all amounts due on this Note is a non-recourse obligation as provided in Section 10.13 of the Loan Agreement.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Agreement.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of default on this Note.

This Note shall be governed by, and construed in accordance with, the laws of the State of California, without regard to conflict of laws principles.

HILLTOP FAMILY HOUSING, L.P.,  
a California limited partnership

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

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

By: \_\_\_\_\_  
James Silverwood, President

By: NEXUS MGP LLC,  
a California limited liability company,  
its Managing General Partner

By: NEXUS for Affordable Housing, Inc.,  
a California nonprofit public benefit  
corporation, its Manager

By: \_\_\_\_\_  
Gina C. Onweiler, President

**ENDORSEMENT**

Pay to the order of The Bank of New York Mellon Trust Company, N.A., without recourse, as Trustee under the Indenture referred to in the within mentioned Agreement, as security for such Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

HOUSING AUTHORITY OF THE CITY OF SAN  
DIEGO

By: \_\_\_\_\_  
Name:  
Title:

Dated: \_\_\_\_\_, 2020

**EXHIBIT B  
FORM OF WRITTEN REQUISITION  
OF THE BORROWER**

BORROWER:

PROJECT :

REQUISITION NO.: \_\_\_\_\_

In the Amount of \$ \_\_\_\_\_

TO: The Bank of New York Mellon Trust Company, N.A.  
400 South Hope Avenue, Suite 500  
Los Angeles, California 90071  
Attention: Corporate Trust Department

Boston Capital Finance, LLC, as Controlling Person  
One Boston Place, 22nd Floor  
Boston, MA 02108  
Attention: Sean Curry

The Borrower hereby requests payments in the following amounts, from the following sources and to be made to the following parties, all as set forth on the Borrower's Request for Payment attached to this Requisition:

<u>Amount</u>	<u>Source</u>	<u>Payable to:</u>
	[identify name of Account & Fund]	[Borrower's account #] [third party payment/wire instructions must be attached]

**Requisition - Contents and Attachments**

- ☐ Borrower's Request for Payment
- ☐ Borrower's Representations and Warranties
- ☐ Updated Loan Balancing (Sources and Uses) & Monthly Requisition Spreadsheet
- ☐ Contractor's Application and Certification for Payment (AIA Form G-702 & G-703)
- ☐ Architect, Contractor, Owner Change Order (Executed AIA G-701(s) added to G-702)
- ☐ Pending Change Order and Change Order Log (dated)
- ☐ Vendor Payee List or equivalent
- ☐ Requisitions and Invoices Supporting Application
- ☐ Contractor's Requisition Certificate
- ☐ Architect's Requisition Certificate
- ☐ Lien Waivers, Conditional for the current Hard cost pay request
- ☐ Lien Waivers, Unconditional for payment thru the prior period pay request
- ☐ Stored Materials Log and documentation (e.g., insurance, bill of sale, invoices, photos) as Applicable
- ☐ Current Project Schedule
- ☐ Other Documents as Requested by the Trustee or Controlling Person

## **Representations and Warranties**

Borrower represents and warrants as of the date of Borrower's execution of this Requisition that, except as previously disclosed in writing to the Controlling Person, the statements below are true and correct:

1. No changes have been made in the Plans and Specifications which require and have not received the prior approval of (i) the Controlling Person under the terms of the Loan Agreement dated as of October 1, 2020 (the "Agreement"), (ii) any Governmental Authority having jurisdiction over the Project Facilities or (iii) any other parties from whom such approval is required.
2. Construction of the Improvements has been performed in accordance with the Plans and Specifications (other than any changes that did not constitute Material Change Orders).
3. As of the date hereof, the Borrower has executed change orders (increasing/decreasing) the cost of construction of the Improvements by \$\_\_\_\_\_ in the aggregate, has notified the Engineering Consultant of such changes and, to the extent necessary, has received any and all necessary approvals from the Controlling Person.
4. Funding of this Requisition shall be in accordance with the terms and provisions of the (i) Agreement, and (ii) the Indenture of Trust dated as of October 1, 2020, with respect to the Bonds.
5. All money requisitioned by the Borrower for construction of the Improvements and disbursed by the Trustee under previously approved requisitions have been paid to the Contractor and, to the Borrower's best knowledge, all subcontractors, vendors and suppliers; all other funds requisitioned by the Borrower and disbursed by the Trustee under previously approved requisitions have been expended for the purpose for which they were requisitioned.
6. All of the information submitted to the Controlling Person and the Trustee in connection with this Requisition is true and accurate in all material respects as of the date of submission.
7. The representations and warranties set forth in the Bond Documents are true and correct in all material respects as of the date hereof with the same effect as if made on this date.
8. The Borrower represents and warrants that (i) no Event of Default has occurred and is continuing on the part of the Borrower or the Guarantor under the terms of the Bond Documents, (ii) except as previously disclosed by the Borrower to the Controlling Person, the Borrower has not received written notice from any Governmental Authority or the Engineering Consultant of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or written notice of any assertion of a claim that the Improvements have not been constructed in accordance with all applicable Legal Requirements, (iii) with the exception of any Permitted Liens and those being contested by the Borrower in accordance with the terms of the Bond Documents, there are no liens against any portion of the Project Facilities or any other asset of the Borrower, and (iv) the Bond Documents are in full force and effect.
9. The Borrower represents and warrants that this Requisition is in the form of requisition required by the Controlling Person.

10. The Borrower represents and warrants that, following payment of the amounts requested under this Requisition, not less than 95% of amounts paid from proceeds of the Bonds have been applied to the payment of Qualified Project Costs.
11. Attached hereto are copies of lien waivers from all such contractors, subcontractors and materialmen requisitioning payment under this Requisition, the originals of which have been delivered to the Title Insurance Company.
12. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Loan Agreement.

Executed this \_\_\_\_ day of \_\_\_\_, 2020.

HILLTOP FAMILY HOUSING, L.P.,  
a California limited partnership

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

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

By: \_\_\_\_\_  
James Silverwood, President

By: NEXUS MGP LLC,  
a California limited liability company,  
its Managing General Partner

By: NEXUS for Affordable Housing, Inc.,  
a California nonprofit public benefit  
corporation, its Manager

By: \_\_\_\_\_  
Gina C. Onweiler, President

Approved:

BOSTON CAPITAL FINANCE LLC, as Controlling  
Person

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

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

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

Dated: \_\_\_\_\_, 2020

**Contractor's Application for Payment**

## **Requisitions and Invoices**

**Contractor's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO: The Bank of New York Mellon Trust Company, N.A. ("Trustee")  
Boston Capital Finance LLC ("Controlling Person")

FROM: \_\_\_\_\_ ("Contractor")

RE: Construction of The Orchard at Hilltop (the "Project Facilities") by Hilltop Family Housing, L.P. ("Borrower").

We are the general contractor for the Project Facilities and, to induce the Controlling Person to approve disbursements of Bond proceeds and other amounts by the Trustee to assist in funding construction of the Improvements and knowing that the Trustee and the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1. In reference to our contract dated \_\_\_\_\_, 20\_\_, with Borrower for construction of the Improvements, and the Plans and Specifications therefor, no amendments, modifications or changes have been made with respect to our contract or the Plans and Specifications except such as have had your prior written approval. There are no pending change orders except as follows:
2. Our Application for Payment No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, which we understand is to be included as an item in the Borrower's requisition to you, is in full compliance with the terms of our contract with Borrower, and, upon the payment of same, we will have no other or additional claim (including claims for so-called "extras") against Borrower on account of our contract or otherwise for and through the period of time ending upon the date of our Application for Payment, for all labor and materials furnished by us through and including the date of our Application for Payment except as follows:
  - a. Retainage not exceeding \_\_% of the value of labor and materials incorporated into the Project Facilities and covered by applications submitted by us on account of the construction of the Improvements for which payment is to be made to us after substantial completion of our contract, as provided therein (the amount of said retainage), as of the end of the period covered by our Application for Payment dated \_\_\_\_\_, 20\_\_, is \$\_\_\_\_\_); and
  - b. [specify other claims, if any]
3. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows: \_\_\_\_\_ [none]
4. We have paid in full all our obligations to subcontractors, workmen, suppliers and materialmen for and with respect to all labor and materials supplied through and including the date of our last Application for Payment, except for an amount equal to \_\_% thereof, which we are holding in accordance with the terms of such obligations and our contract, and all our subcontractors have paid their subcontractors, workmen and materialmen in full for and with respect to all labor and materials supplied through and including the date of our last Application for Payment.

5. To the fullest extent allowed by law, we waive and release any and all rights to claim any lien for labor done or materials furnished up to an amount equal to the amount of our Application for Payment dated \_\_\_\_\_, 20\_\_ plus the amount of all our previously funded applications.

Executed as an instrument under seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[CONTRACTOR]

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

Name:

Title:

## Architect's Requisition Certificate

Application for Payment No. \_\_\_\_\_

TO:            The Bank of New York Mellon Trust Company, N.A. ("Trustee")  
                 Boston Capital Finance LLC ("Controlling Person")

FROM:        Studio E Architects, a California Corporation ("Architect")

RE:            Construction of The Orchard at Hilltop (the "Project Facilities") by Hilltop Family Housing, L.P. ("Borrower")

We are the architect for the Project Facilities and, to induce the Controlling Person to approve disbursements of Bond proceeds and other amounts by the Trustee to assist in funding construction of the Improvements, and knowing that the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1.     We inspected the Project Facilities on \_\_\_\_\_, 20\_\_ and found the status of Work at the Project Facilities on that date and the progress made on the Project Facilities since our last certificate to you dated \_\_\_\_\_, 20\_\_ to be as follows: \_\_\_\_\_  
                 [substantially in accordance with the approved, as amended and approved, plans and specifications], [non-compliant with the approved plans and specifications], [other – describe here]
2.     We delivered the Plans and Specifications for the Project Facilities, copies of which have been delivered to you (the "Plans and Specifications"). We have made no changes to the Plans and Specifications except as you have approved in writing. There are no pending change orders or construction change directives except as provided in the current Pending Change Order and Change Order Log.
3.     All Work to date has been done in accordance with the Plans and Specifications and in a good and workmanlike manner. All materials and fixtures usually furnished and installed or stored on site at the current stage of construction have been furnished, installed or stored on site. All of the Work to date is hereby approved except as follows: \_\_\_\_\_  
                 \_\_\_\_\_
4.     We have examined the requisition being submitted herewith to you by Borrower, which requisition includes an Application for Payment from [\_\_\_\_\_] ("Contractor") respecting construction of the Improvements. The payment so applied for by Contractor does not exceed (when added to the payments heretofore applied for by and paid to Contractor) \_\_% of the value of labor and materials incorporated into the Improvements.
5.     We have been advised that as of this date there remains unexpended funds of \$\_\_\_\_\_ which are available to fund construction costs, from which funds to pay the

aforementioned Application for Payment will be deducted. In our opinion, such unexpended funds, after deduction of funds sufficient to cover both the current Application for Payment and the applicable retainage heretofore withheld and to become due on account of previous Applications, will be sufficient to pay for all construction costs reasonably required to complete the Work, provided that the amount advanced under the current application is, in fact, applied against obligations incurred for labor and materials heretofore furnished on account of construction of the Improvements.

6. All permits, licenses, approvals and the like required to complete construction of the Improvements have been validly issued by the appropriate authorities and are in full force and effect, and there is no violation of any of the provisions thereof or of any Legal Requirements applicable to the Project Facilities of which we have notice or knowledge as of the date hereof except as follows:
7. Access to and egress from the Project Facilities and all improvements to be constructed thereon are in accordance with all applicable Legal Requirements. Water, drainage and sanitary sewerage facilities and telephone, gas and electric services of public utilities are or are due to be installed in the locations indicated on the Plans and Specifications and are adequate to serve the Project Facilities. All necessary approvals for installation of or connection to said facilities or services have been obtained.
8. To the best of our knowledge, there are no petitions, actions or proceedings pending or threatened to revoke, rescind, alter or declare invalid any laws, ordinances, regulations, permits, licenses or approvals for or relating to the Project Facilities.
9. No amendments, modifications or changes have been made to our contract dated \_\_\_\_\_, 20\_\_ with the Borrower except such as have had your prior written approval.
10. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows:\_\_\_\_\_

This certificate is rendered based on our examination of the Project Facilities, the Plans and Specifications, the data comprising the Application for Payment and all other matters which we deem relevant. We are to incur no liability under this certificate except for failure to exercise due professional skill and diligence.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

STUDIO E ARCHITECTS, a California  
Corporation

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

Name:

Title:

**Borrower's Request for Payment**

[attach spreadsheets in form provided by Boston Capital Finance LLC]

**Lien Waivers**

**EXHIBIT C**  
**MOLD/MILDEW ADDENDUM**

This Mold and Mildew Addendum (the "Addendum") dated \_\_\_\_\_, 20\_\_ is attached to and made a part of the lease dated \_\_\_\_\_, 20\_\_ (the "Lease") by and between Hilltop Family Housing, L.P. ("Lessor") and \_\_\_\_\_ ("Resident") for unit number \_\_\_\_\_ (the "Unit") in \_\_\_\_\_.

Resident acknowledges that it is necessary for Resident to provide appropriate climate control, keep the Unit clean, and take other measures to retard and prevent mold and mildew from accumulating in the Unit. Resident agrees to clean and dust the Unit on a regular basis and to remove visible moisture accumulation on windows, walls and other surfaces as soon as reasonably possible. Resident agrees not to block or cover any of the heating, ventilation or air-conditioning ducts in the Unit. Resident also agrees to immediately report to the management office: (i) any evidence of a water leak or excessive moisture in the Unit, as well as in any storage room, garage or other common area; (ii) any evidence of mold- or mildew-like growth that cannot be removed by simply applying a common household cleaner and wiping the area; (iii) any failure or malfunction in the heating, ventilation or air conditioning system in the Unit; and (iv) any inoperable doors or windows. Resident further agrees that Resident shall be responsible for damage to the Unit and Resident's property as well as personal injury to Resident and Occupants resulting from Resident's failure to comply with the terms of this Addendum.

A default under the terms of this Addendum shall be deemed a material default under the terms of the Lease, and Lessor shall be entitled to exercise all rights and remedies at law or in equity. Except as specifically stated herein, all other terms and conditions of the Lease shall remain unchanged. In the event of any conflict between the terms of this Addendum and the terms of the Lease, the terms of this Addendum shall control. Any term that is capitalized but not defined in this Addendum that is capitalized and defined in the Lease shall have the same meaning for purposes of this Addendum as it has for purposes of the Lease.

Resident or Residents:  
(all Residents must sign here)

Lessor:

HILLTOP FAMILY HOUSING, L.P.

\_\_\_\_\_  
Resident's Signature

By: \_\_\_\_\_  
Authorized Representative:

\_\_\_\_\_  
Resident's Name

\_\_\_\_\_  
Resident's Unit No.

---

Resident's Signature

---

Resident's Name

---

Resident's Unit No.

**SCHEDULE 1**  
**SCHEDULE OF LITIGATION**

**SCHEDULE 2**  
**SCHEDULE OF OBLIGATIONS AND MATERIAL CONTRACTS**

**SCHEDULE 3**  
**[INTENTIONALLY OMITTED]**

**SCHEDULE 4  
DEVELOPMENT BUDGET**

**SCHEDULE 5**  
**PLANS AND SPECIFICATIONS**

**SCHEDULE 6**  
**PERMITS AND APPROVALS NOT YET OBTAINED**

[Borrower to provide list]

## **SCHEDULE 7 CONDITIONS TO ADVANCES**

**A. CONDITIONS TO INITIAL ADVANCE.** The right of Borrower to draw the initial advance shall be subject to the fulfillment of the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

**1. Construction Documents.** Each of the Architect's Agreement and the Construction Contract shall have been duly executed and delivered by the respective parties thereto and shall be in full force and effect. The Architect and the Contractor shall have duly executed and delivered to the Controlling Person a consent to the assignment of the Architect's Contract, the Engineer's Agreement and the Construction Contract in form and substance satisfactory to the Controlling Person.

**2. Subcontracts; Other Contracts.** The Borrower shall have delivered to the Controlling Person, and the Controlling Person shall have approved, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be supplying labor or materials for the Project Facilities in the amount of \$[25,000] or more. The Borrower shall have delivered to the Controlling Person correct and complete photocopies of all other executed contracts with contractors, subcontractors, engineers or consultants for the Project Facilities in an amount of \$[50,000] or more, and of all development, management, brokerage, sales or leasing agreements for the Project Facilities.

**3. Validity of Liens.** The Mortgage, the Assignment of Project Documents, the Assignment of Capital Contributions, the Assignment of HAP Contract, the Assignment of Subordinate Debt Documents, the Developer Fee Pledge and the General Partner Pledge shall be effective to create in the Trustee a legal, valid and enforceable lien and security interest in the collateral identified therein. All filing, recordings, deliveries of preserve such liens and security interests shall have been duly effected.

**4. Deliveries.** The following items or documents shall have been delivered to the Controlling Person by the Borrower and shall be in form and substance satisfactory to the Controlling Person.

**(a) Plans and Specifications.** Two complete sets of the Plans and Specifications and approval thereof by any necessary Governmental Authority, with a certification from the Architect that the Improvements to be constructed comply with all Legal Requirements and Governmental Actions and that the Construction Contract satisfactorily provides for the construction of the Improvements.

**(b) Title Policy.** The Title Policy, or a pro forma policy that constitutes a commitment to issue the Title Policy in the form of such pro forma policy, together with proof of payment of all fees and premiums for such policy and true and accurate copies of all documents listed as exceptions under such policy.

**(c) Other Insurance.** Duplicate originals or certified copies of all policies of insurance required hereunder to be obtained and maintained during the construction of the Improvements.

**(d) Evidence of Sufficiency of Funds.** Evidence that the proceeds of the Bonds, the proceeds of the Subordinate Debt together with Required Equity Funds

delivered to the Trustee on the Issue Date or to be delivered after the Issue Date pursuant to the Partnership Agreement, will be sufficient to cover all Project Costs reasonably anticipated to be incurred to complete the Improvements prior to the Completion Date and to carry the Project Facilities through to Stabilization.

**5. Evidence of Access, Availability of Utilities, Project Approvals.** Evidence as to:

- (a) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;
- (b) the availability of water supply and stone and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;
- (c) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and
- (d) the obtaining of all Project Approvals which are required, necessary or desirable for the construction of the Improvements and the access thereto, together with copies of all such Governmental Actions.

**6. Environmental Report.** An environmental site assessment report or reports of one or more qualified environmental engineering or similar inspection firms approved by the Controlling Person, which report or reports shall indicate a condition of the Land and any existing improvements thereon in compliance with all Requirements and in all respects satisfactory to the Controlling Person in its sole discretion and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.

**7. Soils Report.** A soils report for the Project Facilities prepared by a soils engineer approved by the Controlling Person, which report shall indicate that based upon actual surface and subsurface examination of the Project Facilities, the soils conditions are fully satisfactory for the proposed construction and operation of the Improvements and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely. A termite or other insect infestation report prepared by a firm approved by the Controlling Person, which report shall indicate that based upon actual inspection of the Project Facilities either (i) that no termite or other insect infestation at the Project Facilities, or (ii) that termite or insect infestation is present and recommended steps for extermination and remediation of the conditions at the Project Facilities, and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.

**8. Survey and Taxes.** A Survey of the Land (and any existing improvements thereon) and Surveyor's Certificate, and evidence of payment of all real estate taxes and municipal charges on the Land (and any existing improvements thereon) which were due and payable prior to the Issue Date.

**9. Deposit of Funds.** The initial installment of Required Equity Funds and the proceeds of the Subordinate Debt shall have been delivered to the Trustee and deposited in the Project Fund.

**10. Requisition.** A Requisition complying with the provisions of this Agreement and the Indenture.

- 11. Form Lease.** The standard form of lease to be used by the Borrower in connection with the Improvements.
- 12. Engineering Consultant Report.** The Controlling Person shall have received a report or written confirmation from the Engineering Consultant that (i) the Engineering Consultant has reviewed the Plans and Specifications, (ii) the Plans and Specifications have been received and approved by each Governmental Authority to which the Plans and Specifications are required under applicable Legal Requirements to be submitted, (iii) the Construction Contract satisfactorily provides for the construction of the Improvements, and (iv) in the opinion of the Engineering Consultant, construction of the Improvements can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose in the Development Budget.
- 13. Searches.** The Controlling Person shall have received searches from a recognized search firm (which shall be updated from time to time at Borrower's expense upon request by the Controlling Person) that searches of the public record disclosed (a) no conditional sales contracts, security agreements, chattel mortgages, leases of personalty, financing statements or title retention agreements which affect the collateral, (b) no bankruptcy filings on the part of any of the Borrower, the General Partner and the Guarantor (collectively, the "Obligors"), and (c) no litigation with respect to the Project Facilities or any of the Obligors that would materially adversely affect the obligations of the Obligors hereunder.
- 14. Mechanics' Liens.** In the event that for any reason the initial Advance is not funded on the Issue Date, the Controlling Person may withhold or refuse to approve the initial Advance if any mechanic's lien or notice of intention to record or file a mechanic's lien has been filed or given, subject to Borrower's right to contest in accordance with the Bond Documents, and not bonded over or otherwise collateralized to the satisfaction of the Controlling Person, provided that Borrower shall bond off any such liens being contested.
- 15. Notices.** All notices required by any Governmental Authority under applicable Legal Requirements to be filed prior to commencement of construction of the Improvements shall have been filed.
- 16. Appraisal.** The Controlling Person shall have received an Appraisal, in form and substance satisfactory to the Controlling Person.
- 17. Performance; No Default.** The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of the initial advance, and on the date of the initial advance there shall exist no Event of Default.
- 18. Representations and Warranties.** The representations and warranties made by the Obligors in the Bond Documents, the General Partner Pledge, the Developer Fee Pledge or the documents executed by the Guarantor or otherwise made by or on behalf of the Obligors in connection therewith or after the date thereof shall have been true and correct in all respects when made and shall be true and correct in all respects on the date of the initial advance, except as otherwise disclosed with specificity to the Controlling Person.
- 19. Proceedings and Documents.** All proceedings in connection with the transactions contemplated by this Agreement and the other Bond Documents shall be satisfactory to the Controlling Person and their counsel in form and substance, and the Controlling Person shall have received all information and such counterpart originals or certified copies of such documents

and such other certificates, opinions or documents as they or their counsel may reasonably require.

**20. Payment and Performance Bonds.** The Controlling Person shall have received the original Payment and Performance Bonds in form and content and from a surety satisfactory in all respects to the Controlling Person.

**B. CONDITIONS TO SUBSEQUENT ADVANCES.** The right of the Borrower to draw each advance after the initial advance shall be subject to the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. Prior Conditions Satisfied. All conditions precedent to any prior disbursement shall continue to be satisfied as of the date of the Requisition of such subsequent advance.

2. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of such Requisition, and on such date there shall exist no continuing Event of Default.

3. Representations and Warranties. Each of the representations and warranties made by the Borrower in the Bond Documents or otherwise made by or on behalf of the Borrower in connection therewith after the date thereof shall have been true and correct in all respects on the date on when made and shall also be true and correct in all material respects on the date of such Requisition (except as disclosed with specificity by Borrower to the Controlling Person or to the extent of changes resulting from transactions contemplated or permitted by the Bond Documents).

4. No Damage. The Improvements shall not have been materially injured or damaged by fire, explosion, accident, flood or other casualty.

5. Receipt by Controlling Person. The Controlling Person shall have received:

(a) Requisition. A Requisition in meeting the requirements of this Agreement and the Indenture;

(b) Endorsement to Title Policy. At the time of each advance to update the date of and increase the amount of coverage by the amount of such advance, such endorsements (a "Down Date Endorsement") shall be delivered by the Title Insurer, increasing the coverage under the Title Policy by the amount of the approved Requisition plus the amount of any Bond proceeds disbursed from the Capitalized Interest Account of the Project Fund;

6. Foundation Survey; Current Survey. If the Plans and Specifications provide for construction of the foundations, including expansion or modification of existing foundations, within thirty (30) days after completion of construction of the foundations of the Improvements, a survey certified by a registered engineer or surveyor showing that the foundations are located within the perimeter of the Land and any set back lines and at the location shown on the Plans and Specifications, and from time to time. An updated Survey if required by the Title Insurance Company or the Controlling Person;

7. Approval by Engineering Consultant. Approval of the Requisition for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the

Contractor, the construction of the Improvements to the date thereof was performed in a good and workmanlike manner and in accordance with the Plans and Specifications, stating the estimated total cost of construction of the Improvements, stating the percentage of in-place construction of the Improvements, and stating that the remaining non-disbursed portion of the Project Fund and Required Equity Funds allocated for such purpose in the Development Budget is adequate to complete the construction of the Improvements;

8. Contracts. Evidence that one hundred percent (100%) of the cost of the remaining Work is covered by firm fixed price or guaranteed maximum price contracts or subcontracts, or orders for the supplying of materials, with contractors, subcontractors, materialmen or suppliers satisfactory to the Controlling Person, and that the Payment and Performance Bonds have been obtained, as required.

9. Mechanics' Liens. The Controlling Person may withhold or refuse to fund any advance hereunder if any mechanic's lien has been filed or recorded and not bonded over or otherwise collateralized to the satisfaction of the Controlling Person, or if notice of intention to record or file any such lien has been received, subject to Borrower's right to contest in accordance with the Bond Documents, and not bonded over or otherwise collateralized to the satisfaction of the Controlling Person, provided that Borrower shall bond off any such liens being contested.

10. Required Equity Funds. All installments of Required Equity Funds which shall be then due and payable under the Partnership Agreement shall have been deposited with the Trustee.

11. Release of Retainage. In addition to the conditions set forth in this Section, the Controlling Person's obligation to approve any Requisition for Retainage shall be subject to receipt by the Controlling Person of the Engineering Consultant's certification of completion as to the Work performed under any contract or subcontract for which the Retainage will be disbursed.

**SCHEDULE 8**  
**FORM OF FINAL COMPLETION CERTIFICATE**

\_\_\_\_\_, 20\_\_

The Bank of New York Mellon Trust Company, N.A.  
400 South Hope Avenue, Suite 500  
Los Angeles, California 90071  
Attention: Corporate Trust Department

Boston Capital Finance LLC, as Controlling Person  
One Boston Place, 22nd Floor  
Boston, MA 02108  
Attention: Sean Curry

Re: The Orchard at Hilltop (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), and Boston Capital Finance LLC, as Controlling Person, acting on behalf of the Majority Owner of the Bonds issued in connection with the Project Facilities (the "Controlling Person") that "Final Completion" of the Project Facilities (as defined in **the Indenture of Trust** dated as of October 1, 2020 (the "Indenture") by and between the Trustee and Housing Authority of the City of San Diego (the "Issuer") has been attained as of the date hereof and all conditions relating thereto as set forth in the Loan Agreement dated as of October 1, 2020 between the undersigned and the Issuer (the "Loan Agreement") have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture or the Loan Agreement.

The undersigned hereby represents and warrants that:

1. Attached hereto is an original, executed Architect's certificate in the form attached hereto as Exhibit A as required by **clause (iv) of the definition of "Final Completion" contained in the Indenture**.

2. Attached hereto are true, complete and correct copies of all use and occupancy permits issued in connection with the Project Facilities (the "Permits") as referenced in **clause (ii) of the definition of "Final Completion" contained in the Indenture**. The Permits are all of the permits, licenses or approvals required for the occupancy of the Project Facilities as a multifamily residential facility. No appeal, action or proceeding challenging any of the Permits has been filed; there is no pending claim, litigation or governmental proceeding challenging the Permits.

3. Attached hereto is a complete schedule of all Punchlist Items referenced in **clause (ii) of the definition of "Final Completion" contained in the Indenture**. This schedule of Punchlist Items meets the requirements and limitations set forth in the Loan Agreement for Punchlist Items. The undersigned will promptly complete all Punchlist Items.

4. Attached are lien waivers required by **clause (vii) of the definition of "Final Completion" contained in the Indenture**.

5. Attached hereto is an endorsement down dating the Title Policy insuring the Mortgage in favor of the Trustee, subject only to Permitted Encumbrances, as required by **clause (ix) of the definition of "Final Completion" contained in the Indenture.**

6. 7. Attached hereto is evidence of completion of the Environmental Completion Conditions.

8. Attached hereto is evidence of insurance meeting the requirements of **Section 6.4** of the Loan Agreement.

9. Attached hereto is evidence of payment of all Impositions which are due and payable.

HILLTOP FAMILY HOUSING, L.P.,  
a California limited partnership

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

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

By: \_\_\_\_\_  
James Silverwood, President

By: NEXUS MGP LLC,  
a California limited liability company,  
its Managing General Partner

By: NEXUS for Affordable Housing, Inc.,  
a California nonprofit public benefit  
corporation, its Manager

By: \_\_\_\_\_  
Gina C. Onweiler, President

Accepted and agreed to by:

BOSTON CAPITAL FINANCE LLC, as  
Controlling Person

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

Name:

Title:

## **Schedule of Attachments to Completion Certificate**

Architect's Completion Certificate

Occupancy Permits

Schedule of Punchlist Items

Lien Waivers

Endorsement to Title Policy

Insurance Certificates

Evidence of Payment of Impositions

Evidence of Satisfaction of Environmental Completion Conditions

## **EXHIBIT A**

### Form of Architect's Certificate

#### **ARCHITECT'S COMPLETION CERTIFICATE**

The undersigned, an architect duly licensed and registered in the State of California has prepared final working plans and detailed specifications (the "Plans and Specifications") for Hilltop Family Housing, L.P. (the "Borrower") in connection with the construction of improvements on certain real property located in San Diego, California, such improvements or project being known as Hilltop and Euclid Family Housing (the "Improvements").

The undersigned hereby certifies to The Bank of New York Mellon Trust Company, N.A., and Boston Capital Finance LLC that to the best of our knowledge, information and belief: (i) all of the Improvements and the Property have been completed in accordance with the Plans and Specifications, (ii) a [temporary] certificate of occupancy has been issued for the Project[, provided however that there is no work remaining to be done that would impair or delay the permanent occupancy of the Project or any portion thereof and issuance of a permanent certificate of occupancy with respect to the Project, and other permits required for the continued use and occupancy of the Improvements have been issued with respect thereto by the governmental agencies having jurisdiction thereof], and (iii) the Improvements have been constructed in compliance with the Plans and Specifications and are in compliance with the requirements and restrictions of the governmental authorities having jurisdiction, including applicable zoning, building, environmental, fire, and health ordinances, rules and regulations, including without limitation, the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the design and construction requirements of the Fair Housing Act.

STUDIO E ARCHITECTS, a California  
corporation

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

Date: \_\_\_\_\_

**SCHEDULE 9**  
**FORM OF USE OF PROCEEDS COMPLIANCE CERTIFICATE**

\_\_\_\_\_, 20\_\_

The Bank of New York Mellon Trust Company, N.A., as trustee  
400 South Hope Avenue, Suite 500  
Los Angeles, California 90071  
Attention: Corporate Trust Department

Boston Capital Finance LLC, as Controlling Person  
One Boston Place, 22nd Floor  
Boston, MA 02108  
Attention: Sean Curry

Re: The Orchard at Hilltop (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), and Boston Capital Finance LLC, as Controlling Person, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the "Controlling Person") that;

(i) no less than 95% of the Net Proceeds of the Bonds has been or will be spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code.

(ii) not less than 50% of the land and basis of the Project Facilities has been financed with the proceeds of the Bonds for purposes of Section 42(h)(4).

[(iii) the undersigned has expended, within two (2) years of the later of the date the Project Facilities were acquired or the date of issuance of the Bonds, from proceeds of the Bonds or other sources, an amount equal to at least 15% of the "portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the Bonds" for "rehabilitation expenses" within the meaning of Section 147(b) of the Code.]

Attached hereto is a schedule of expenditures evidencing compliance with the foregoing and showing all costs of the Project Facilities, the amounts expended, for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Bonds expended.

Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture of Trust dated as of October 1, 2020 between the Trustee and the Housing Authority of the City of San Diego.

WITNESS WHEREOF, the undersigned has duly executed this Use of Proceeds Compliance Certificate as of the day and year first above written.

HILLTOP FAMILY HOUSING, L.P.,  
a California limited partnership

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

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

By: \_\_\_\_\_  
James Silverwood, President

By: NEXUS MGP LLC,  
a California limited liability company,  
its Managing General Partner

By: NEXUS for Affordable Housing, Inc.,  
a California nonprofit public benefit  
corporation, its Manager

By: \_\_\_\_\_  
Gina C. Onweiler, President

## **Schedule of Attachments to Use of Proceeds Compliance Certificate**

Evidence of Use of Proceeds

**SCHEDULE 10  
FORM OF STABILIZATION CERTIFICATE**

\_\_\_\_\_, 20\_\_

The Bank of New York Mellon Trust Company, N.A.  
400 South Hope Avenue, Suite 500  
Los Angeles, California 90071  
Attention: Corporate Trust Department

Boston Capital Finance LLC, as Controlling Person  
One Boston Place, 22nd Floor  
Boston, MA 02108  
Attention: Sean Curry

Re: The Orchard at Hilltop (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee") and Boston Capital Finance LLC, as Controlling Person, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the "Controlling Person") that the date of Final Completion was \_\_\_\_\_, 20\_\_ and:

The undersigned hereby represents and warrants that:

1. The Improvements have been \_\_\_\_% occupied by credit-worthy qualified tenants meeting the requirements of the Bond Documents in each of the prior \_\_\_\_ (\_\_\_\_) consecutive months.
2. The ratio of Stabilized NOI in each of the prior \_\_\_\_ (\_\_\_\_) consecutive months to maximum principal, interest, Issuer fees and Trustee fees payable in any month [other than the month in which the Maturity Date occurs] on the amount of Bonds Outstanding is \_\_\_\_ to 1.0.
3. No Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be continuing under the Bond Documents, the General Partner Pledge, the Developer Fee Pledge or the Guarantor Documents.
4. The Borrower has at all times been and is currently in compliance with all requirements set forth in the Regulatory Agreement.
5. There have been no disbursements from [insert names of any required reserves] which have not been replenished.
6. [The shall have been redeemed in the amount required to achieve Stabilization as required under Section 3.4(b)(\_\_\_\_) of the Indenture].
7. Stabilization [has/has not] occurred.

8. Attached hereto is \_\_\_\_\_ showing the calculation of Stabilization.

9. Attached hereto is the Use of Proceeds Compliance Certificate required under Section 6.9 of the Loan Agreement.

10. [Attached hereto is an as-built ALTA/ACSM Urban Class Survey, certified to the Trustee and the Controlling Person.]

Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture of Trust dated as of October 1, 2020 between the Trustee and the Housing Authority of the City of San Diego.

HILLTOP FAMILY HOUSING, L.P.,  
a California limited partnership

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

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

By: \_\_\_\_\_  
James Silverwood, President

By: NEXUS MGP LLC,  
a California limited liability company,  
its Managing General Partner

By: NEXUS for Affordable Housing, Inc.,  
a California nonprofit public benefit  
corporation, its Manager

By: \_\_\_\_\_  
Gina C. Onweiler, President

Accepted and agreed to by:

BOSTON CAPITAL FINANCE LLC, as  
Controlling Person

By: \_\_\_\_\_  
Name:  
Title:

## **Stabilization Spreadsheet**

**SCHEDULE 11**  
**RENT ROLL**

## **SCHEDULE 12**

### **INITIAL INSURANCE REQUIREMENTS**

The Project Facilities must be continuously covered by acceptable property insurance policies meeting the minimum requirements described below. This is a general outline of the insurance coverage's required by the Controlling Person, additional coverage may be required at the Controlling Person's discretion.

The named insured in each policy must be the Borrower.

All policies must be written on a per occurrence basis except for boiler and machinery which may be written on a per-accident basis. Each policy must have a cancellation provision requiring the carrier to notify the Trustee, the Majority Owner, and the Controlling Person at least 30 days in advance of any policy reduction or cancellation for any reason.

Use of an Acord form 28, 27 or other form are acceptable as temporary evidence of coverage provided the form states "This is evidence that insurance as identified below has been issued, is in force, and conveys all the rights and privileges afforded under the policy" and uses a cancellation clause section "Should the policy be terminated, the company will give the additional interest identified below 30 days written notice, and will send notification of any changes to the policy that would affect that interest, in accordance with the policy provisions or as required by law" Use of an Acord form stating "...matter of information only..." and "...the issuing insurer will endeavor to mail notice..." are unacceptable.

Blanket Insurance policies are acceptable but must comply with certain requirements. Please see the Blanket Insurance section for details on pages S12-15 through S12-18.

Following completion of construction, terrorism coverage is required for property and general liability and excess/umbrella coverage unless the Majority Owner grants prior written waiver and must meet the same requirements under the property, general liability and excess/umbrella coverage requirements provided in the sections following.

Each Policy must be for a term of not less than one year. All existing or new policies must be paid in full and cannot be financed.

## Carrier Rating Requirement

Each insurance carrier providing property damage and/or liability insurance, whether admitted or non-admitted, must fall into one of the acceptable Financial Size Categories and meet the applicable minimum Financial Strength Rating for A.M. Best and, if the aggregate carrier exposure is greater than \$25 million, the minimum rating from one of the following: Fitch, Inc. Standard & Poor's Rating Services, or Moody's Investors Service. Details are in the chart below:

Aggregate Carrier Exposure	Minimum A.M. Best Financial Strength Rating	AND	Minimum A.M. Best Financial Size Category	AND	Minimum Rating from Fitch Ratings Inc., S&P Global Ratings, or Moody's Investor's Service, Inc.
Less than \$5 million	A-	AND	VII	N/A	Not applicable
Greater than \$5 million & Less than \$25 million	A-	AND	VIII	N/A	Not applicable
Greater than \$25 million	A-	AND	IX	AND	A- or its equivalent by Fitch Ratings Inc.  A- or its equivalent by S&P Global Ratings  A3 or its equivalent by Moody's Investors Service, Inc.

Standard insurance carrier rating requirements and minimum financial size categories are based on the aggregate carrier exposure, which is defined in the chart below.

### **Aggregate Carrier Exposure (for each individual carrier)**

#### ***Property Damage (“All Risk”) Insurance***

Insurance Type

Property damage insurance	Specific Insurance or policy for one property	Required building coverage limits + required Business Income/Rental Value Insurance
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Blanket Insurance or master program from one carrier	Blanket Insurance or master program limit
An individual policy, Blanket Insurance or master program with more than one carrier participating with layered limits	Total limit provided by the carrier in all layers in which the carrier participates

Liability Insurance	Specific Insurance or policy for one Property	Total aggregate limits (general liability + excess/umbrella)
	Liability insurance for multiple properties, or master program from one carrier	Total aggregate limits (general liability + excess/umbrella)

An individual policy, liability insurance policy for multiple properties or master program with more than one carrier participating with layered limits	Total limit provided by the carrier in all layers in which the carrier participates
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<b>What’s Required?</b>	“All Risk” or Cause of Loss-Special Form which includes an agreed value clause or no-coinsurance provision and inflation guard endorsement (where available).
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<b>When Does it Apply?</b>	All property types.
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<b>Maximum Deductible</b>	<b>Replacement Cost</b>	<b>Maximum Deductible*</b>
	Less than \$10 million	\$50,000

Equal to or greater than \$10 million	\$75,000
---------------------------------------	----------

<b>Maximum Deductible for Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b>	<b>Maximum Per Occurrence Deductible*</b>
	Equal to or less than \$5 million	\$50,000

Greater than \$5 million but less than \$7.5 million	\$75,000
--	----------

Greater than \$7.5 million	One percent of the aggregate Replacement Cost of the covered properties, to a maximum deductible of \$250,000
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<b>Amount of Coverage</b>	100% Replacement cost coverage. Replacement cost must be certified annually. The most common resources to determine the estimated replacement cost of the property may include one of the following resources:
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**Insurance Company**-the replacement cost estimate provided by the insurance company that has underwritten or will underwrite the property damage insurance.

**Appraiser**-a qualified commercial real estate appraiser experienced in the market

**Contractor**-reputable commercial contractor with experience constructing and/or reconstructing properties in the area similar for the Project Facilities

**Third Party Vendor**-a third party vendor that specializes in replacement cost calculations or publishes data used for this purpose

\* A higher deductible may be available if certain qualifications are met. Contact the Majority Owner for list of criteria.

## ***Boiler and Machinery Insurance***

<b>What's Required?</b>	Boiler and Machinery Insurance	
<b>When Does it Apply?</b>	Properties with a central HVAC system where steam boilers and/or other pressurized systems are in operation and are regulated by the State where the property is located. The insurance must cover loss or damage from explosion of steam boilers, pressure vessels and/or other steam equipment now or installed at a later date.	
<b>Amount of Coverage</b>	Replacement cost of the building housing the central HVAC system, including the replacement cost of the central HVAC system. If coverage is provided by a different carrier than the property damage policy a joint loss agreement is required by both policies.	
	<b>Replacement Cost of the Property</b>	<b>Maximum per occurrence deductible</b>
<b>Maximum Deductible</b>	Less than \$10 million	\$50,000
	Equal to or greater than \$10 million	\$75,000
	<b>Aggregate Replacement Cost of the covered properties</b>	<b>Maximum per occurrence deductible</b>
	Equal to or less than \$5 million	\$50,000
<b>Maximum Deductible for Blanket Insurance</b>	Greater than \$5 million but less than \$7.5 million	\$75,000
	Greater than \$7.5 million	One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

### ***Business Income/Rent Loss Coverage***

<b>What's Required?</b>	Business Income/Rental Value Insurance, if the business income/rental value insurance is not included in the primary or other property damage policy (for example, it may not be included in the coverage provided by a flood, earthquake, or windpool insurance policy), a separate policy must be obtained to include business income/rental value for such covered losses.	
<b>When Does it Apply?</b>	All property types.	
<b>Amount of Coverage</b>	<b>UPB (unpaid principal balance) and number of stories</b>	<b>Minimum number of months of anticipated gross income</b>
	Mortgages with improvements of 5 stories or more above grade, regardless of UPB	18
	Mortgages with a UPB of \$50 million or greater	18
	All other mortgages	12
<b>Extended Period of Indemnity required</b>	<b>UPB and number of stories</b>	<b>Minimum extended period of indemnity</b>
	Mortgages with improvements of 5 stories or more above grade, regardless of the UPB	90 days
	All other mortgages with a UPB of \$25 million or greater	90 days
	All other mortgages	None required
<b>Maximum Deductible</b>	72 hours	

### ***Earthquake Insurance***

<b>What's Required?</b>	<b>Earthquake Insurance</b>
<b>When Does it Apply?</b>	Project Facilities located in a seismic zone 3 or 4 with a PML of 20% or greater.
<b>Amount of Coverage</b>	See section regarding Earthquake Insurance page S13-20.
<b>Maximum Deductible</b>	See section regarding Earthquake Insurance page S13-20.

### ***Flood Insurance***

<b>What's Required?</b>	Flood Insurance
<b>When Does it Apply?</b>	Flood insurance is required for Project Facilities having improvements located in an area identified as a Special Flood Hazard Area (SFHA).

<b>Amount of Coverage</b>	100% of the full replacement cost. If 100% of the full replacement cost exceeds NFIP coverage limit, additional flood insurance from another insurer is required. Business Income/Rental Value Insurance is also required.
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<b>Deductible for NFIP coverage</b>	Must comply with NFIP deductible for the type of improvement insured.
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<b>Maximum Deductible for private flood insurance</b>	<b>Property replacement cost</b>	<b>Maximum deductible</b>
	Less than \$10 million	\$50,000
	Equal to or greater than \$10 million	\$75,000

<b>Maximum Deductible for flood insurance under Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b>	<b>Maximum per occurrence deductible</b>
	Equal to or less than \$5 million	\$50,000
	Greater than \$5 million but less than \$7.5 million	\$75,000
	Greater than \$7.5 million	One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

## ***Ordinance and Law Coverage***

### **What's Required?**

Ordinance and Law Coverage

### **When Does it Apply?**

All property types that represent nonconforming uses under current building, zoning, or land use laws or ordinances.

1. Loss of Undamaged Portion of the Building-full replacement cost less the damage threshold of the local building ordinance. If threshold is not available, 100% of the full replacement cost of the Project Facilities.

### **Amount of Coverage**

2. Demolition Cost-estimated full demolition expense of the single largest building, or 10% of full replacement cost.
3. Increased Cost of Construction-no less than 10% of full replacement cost.

### **Loss of Income**

Business Interruption/Rent Loss must be endorsed to cover income/rent loss arising out of the increased time necessary to repair or rebuild.

## **Windstorm Coverage**

### **What's Required?**

If the "All Risk" property damage insurance excludes wind-related events, a separate windstorm insurance policy must be obtained meeting the same requirements as the Property Damage ("All Risk") Insurance. If coverage is provided by a state windpool policy, see State Windpool Policy Requirements on page S13-19.

### **When Does it Apply?**

Required for all properties.

### **Amount of Coverage**

100% of replacement cost, either not contain a coinsurance clause or contain a coinsurance clause that is offset or suspended by an Agreed Amount endorsement. If an Agreed Amount endorsement is used the Agreed Amount must be equal to replacement cost.

**For properties in Florida and for all other East Coast and Gulf Coast Properties located within 50 miles of the coast, the maximum deductible per occurrence is 5 percent of the Replacement Cost of the covered properties.**

<b>Maximum Deductible</b>	<b>Property replacement cost</b>	<b>Maximum Deductible</b>
	Less than \$10 million	\$50,000
	Equal to or greater than \$10 million	\$75,000

<b>Maximum Deductible for Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b>	<b>Maximum per occurrence deductible</b>
	Equal to or less than \$5 million	\$50,000
	Greater than \$5 million but less than \$7.5 million	\$75,000
	Greater than \$7.5 million	One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

## ***Commercial Liability Insurance***

**What's Required?** Minimum coverage of \$1 million per occurrence and \$2 million in the annual aggregate in addition to excess/umbrella coverage as indicated below.

**When Does it Apply?** All property types. If a property contains any special hazard that is excluded from the CGL or other liability policy, such as garage operation or swimming pool, supplemental coverage for the hazard must be obtained.

**Maximum Deductible** The maximum deductible or SIR or combined deductible and SIR for all forms of individual liability insurance is \$35,000 per occurrence. The maximum deductible or SIR or combined deductible and SIR for multiple properties is \$50,000 per occurrence.

<b>Amount of Coverage in the annual aggregate for one property</b>	<b>Number of stories</b>	<b>UPB</b>	<b>Minimum per occurrence and annual aggregate</b>
	1 to 3	Equal to or less than \$3 million	None required
	1 to 7	Greater than \$3 million	\$1 million per story
	8 or more	Greater than \$3 million	\$8 million

<b>Amount of Coverage in the annual aggregate for more than one property</b>	<b>Number of properties covered by the policy</b>	<b>Maximum number of stories in any of the covered properties</b>	<b>Minimum umbrella or excess liability in Millions</b>
	2 to 3	3	\$3
	2 to 3	Greater than 3	\$10
	4 to 5	3	\$5
	4 to 5	Greater than 3	\$12
	6 to 10	3	\$7
	6 to 10	Greater than 3	\$15
	11 to 19	3	\$9
	11 to 19	Greater than 3	\$20
	20 or more	3	\$15
	20 or more	Greater than 3	\$30

## ***Liability Insurance Requirements for Seniors Housing Properties***

### **What's Required?**

Minimum coverage of \$1 million per occurrence and \$2 million in the annual aggregate in addition to excess/umbrella coverage as indicated below.

Policy may be written on a "claims made" or "an occurrence-based" policy. If coverage is changed from a "claims made" policy to an "occurrence-based" policy the Borrower must obtain the prior approval of the Majority Owner.

### **Assisted Living Residences, Properties with Assisted Living Care, and Properties that provide Skilled Nursing, Alzheimer's Disease or Dementia Care**

<b>Number of licensed beds</b>	<b>Minimum per claim/occurrence</b>
Less than or equal to 100 beds	\$1 million
Greater than 100 but less than or equal to 500	\$5 million
Greater than 500 but less than or equal to 1,000	\$10 million
Greater than 1,000	\$25 million

### **Maximum Deductible**

Maximum \$100,000 deductible or Self Insured Retention.

### **Additional Insured**

Trustee is not to be named as an additional insured on professional liability insurance policies.

***Vehicle Liability Insurance***

When Does it Apply?	If the Borrower owns, leases, hires, rents, borrows, uses or has another use on its behalf a vehicle in conjunction with the operation of the Project Facilities.
Amount of Coverage	\$1 million per accident.

***Cooperative Fidelity Bond/Crime Insurance***

<b>What's Required</b>	Maintain fidelity bond/crime insurance coverage for the Co-op's employees, officers and board members.
<b>When Does it Apply?</b>	Cooperative Corporations.
<b>Amount of Coverage</b>	Two times the monthly gross association fee plus reserves or Six times the monthly gross association fee.
<b>Maximum Deductible</b>	\$25,000

***Cooperative Directors and Officers Liability Insurance***

<b>What's Required</b>	Maintain directors' and officers' liability insurance.
<b>When Does it Apply?</b>	Cooperative Corporations.
<b>Amount of Coverage</b>	\$1 million per occurrence.
<b>Maximum Deductible</b>	\$25,000

## ***Builder's Risk Insurance***

### **What's Required?**

Builder's Risk Insurance

### **When Does it Apply?**

Required for any additions, alternations, rehabilitations, new construction or repairs to the Project Facilities during any construction. Amount equal to 100% of contracts and materials. Requirement may be met with either an extension of the standard property damage insurance policy or a separate Builder's Risk policy.

### **Amount of coverage**

Coverage must be at least 100% of the sum of the contract or contracts and all materials to complete the work. Policy must cover fire and other perils within the scope of a policy known as a "Causes of Loss-Special Form" or "All Risk" policy.

### **Maximum Deductible**

#### **Replacement Cost of the property**

#### **Maximum per occurrence deductible**

Less than \$10 million

\$50,000

Equal to or greater than \$10 million

\$75,000

### **Maximum Deductible for Blanket Insurance**

#### **Aggregate Replacement Cost of the covered properties**

#### **Maximum per occurrence deductible**

Equal to or less than \$ 5 million

\$50,000

Greater than \$5 million but less than \$7.5 million

\$75,000

Greater than \$7.5 million

One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

### ***Localized Perils Insurance***

<b>What's Required?</b>	Sinkhole, mine subsidence, volcanic eruption or avalanche insurance	
<b>When Does it Apply?</b>	For a property located in an area prone to localized perils, such as sinkhole, mine subsidence, volcanic eruption and avalanche. Sinkholes are particularly common in Florida, mine subsidence may occur in any location where there is, or has been, subterranean mining, but is particularly common in Pennsylvania, Ohio, Illinois and Colorado.	
<b>Amount of Coverage</b>	100% Replacement Cost of the buildings affected by the localized peril	
<b>Maximum Deductible</b>	<b>Replacement Cost of the property</b>	<b>Maximum per occurrence deductible</b>
	Less than \$10 million	\$50,000
	Equal to or Greater than \$10 million	\$75,000
<b>Maximum Deductible for Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b>	<b>Maximum per occurrence deductible</b>
	Equal to or less than \$ 5 million	\$50,000
	Greater than \$5 million but equal to or less than \$7.5 million	\$75,000
	Greater than \$7.5 million	One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

### ***Sewer and Drain Insurance***

<b>What's Required?</b>	Sewer and drain backup insurance
<b>When Does it Apply?</b>	If the Project Facilities are prone to periodic sewer or drain back-ups caused by ground water, public or private water systems or public sewers external to the Project Facilities.
<b>Amount of Coverage and Deductible</b>	Must be consistent with coverage obtained by other lenders in the area.

## Blanket Insurance Guidelines

### ***Blanket Insurance with related Borrowers***

The following are acceptable to determine, support and document that the limits of the blanket insurance policy are appropriate for the insurable value of the Borrower's portfolio:

- The Borrower has provided a Probable Maximum Loss (PML) analysis that addresses the insurable value/risk of its portfolio.
- The Borrower has provided a statement of values that identifies whether its portfolio has insurable value concentrated in geographical locations or concentrated with respect to any given insurable peril.

If the Borrower does not provide a PML or a statement of values as indicated above, the Majority Owner must determine, support and document that the limit provide by the blanket insurance policy is satisfactory. The Borrower shall submit to the Majority Owner and the Controlling Person a statement of values from, prepared by the Borrower or the insurance company issuing the policy. Such a statement of values should include:

- The replacement cost and address of each covered property
- Complete street address for covered properties
- A list of any properties that are contiguous to other covered properties
- The number of stories in each covered property
- Other data relevant to the coverage limits in the blanket insurance policy

In assessing the adequacy of the coverage, the Majority Owner shall consider all of the following guidelines to determine if the property damage insurance coverage provided by the blanket insurance policy is adequate for the subject property and the other properties covered by the blanket insurance policy.

The guidelines below apply to all required property damaged overage that is being provided by a blanket insurance policy, including catastrophic perils such as windstorm, windstorm-related perils, named storms, flood and earthquake.

The per occurrence limit of the blanket insurance policy should, at a minimum, cover 40% of the replacement cost of all properties covered by the policy. Depending on the geographically disbursement of the properties, the physical perils in the area, the number of properties covered and/or other risk factors observed, the per occurrence limit may approach 90%. For example, if the policy covers properties with a replacement cost of \$100 million, generally the minimum coverage should be no lower than \$40 million while the per occurrence limit may approach \$90 million if these is high concentration of properties in an area subject to a catastrophic peril.

The per occurrence limit of the blanket insurance policy must be no less than the largest replacement cost exposure covered by the limit of the blanket insurance policy. Additional coverage, greater than the largest property, may also be appropriate.

Contiguous properties or properties in close proximity to each other should be covered for at least 90% of the total replacement cost. For example, two \$50 million properties next to each other should, at a minimum, be covered with a per occurrence limit of \$90 million. Properties that are 10 or 20 miles (or more) apart may also be considered to be in close proximity to each other if they are located in an area that is prone to hurricanes or another peril that could impact multiple properties that are miles apart. The definition of “close proximity” varies based on the peril covered. Properties that are contiguous, including those that are across the street from each other, must be considered to be in close proximity for most perils.

If the properties are widely dispersed throughout the country (less than 25% concentration in any one Metropolitan Statistical Area (MSA) and a large percentage of the properties are not subject to high-risk factors such as windstorm, windstorm related perils, named storms, flood damage or other perils, a blanket insurance policy covering 40% to 50% of the replacement cost of all assets may be acceptable.

If the properties are concentrated in one MSA, for example, if 25% or more of the assets are in Kansas City, the coverage should increase to account for the concentration of assets in that MSA plus any risks specific to that MSA (such as tornados). If assets are concentrated in more than one MSA (for example, if 30% of the assets are in Kansas City and 35% percent are in Topeka), coverage should again compensate for those risks (such as tornados) in addition to concentration risk.

The coverage provided by the blanket insurance policy should increase:

- If the assets are concentrated in a compact MSA, such as New Orleans

Based on the physical perils in a specific geographic region, for example:

- Properties on the Atlantic and Gulf Coasts are at a high risk of damage from windstorm and/or windstorm perils and/or named storms
- Properties in New Orleans are at a high risk of flood damage, windstorm and/or wind related perils and/or named storms
- Properties in southern California are at a high risk from brush fires

Based on the number of covered assets (the greater the number of properties covered by the policy, the lower the percentage of coverage in relation to the replacement cost of all assets, as the risk of loss is more widely dispersed. For example, a blanket insurance policy covering 100 properties will typically have a lower percentage of coverage than a policy covering 50 properties).

The coverage provided by the blanket insurance policy should increase if the Majority Owner believes additional coverage is appropriate for the circumstances.

In addition, the Borrower may also obtain coverage for the following types of insurance under a limit provided by the blanket insurance policy.

- Business Income/Rental value insurance
- Boiler and machinery insurance

#### Ordinance and law insurance

The coverage under these insurance policies must meet the requirements of the other applicable sections.

However, if the coverage is provided with a blanket insurance policy, the Borrower should, at a minimum, have business income/rental value insurance coverage for no less than the per occurrence percentage determined for the property damage insurance above. For example, if the Majority Owner determines that a per occurrence limit for property damage insurance of 50% of the replacement cost of all properties covered is appropriate, then the limit for business income/rental value insurance should be no less than 50% of the anticipated gross income for all properties covered.

### ***Blanket Insurance with unrelated Borrowers***

Some blanket insurance or master program property damage insurance may be purchased by unrelated borrower, borrower principals, or entities covering unrelated properties. This includes blanket insurance policies that are written for properties and borrowers, borrower principals or entities that are only related through the relationship with the property management company. This is perceived as additional risk in the blanket insurance policies for these properties and requires the Majority Owner to carefully analyze these policies to determine if the Project Facilities are adequately insured.

We must obtain the following information to help in assessing the adequacy of the property damage insurance provided by this type of blanket insurance policy for unrelated entities:

- Name and address of the insurance company or companies
- Carrier ratings of the insurance company or companies
- The per occurrence limit and any sublimits (plus coverage by layer, if applicable)
- Address and replacement cost of the Project Facilities
- Address and replacement cost of other properties controlled by the same borrower or borrower principal that are insured under this policy
- City, state, zip code and replacement cost of all other properties that are covered under the policy
- Number of stories in each property
- Per occurrence limit/cap for the policy
- Deductibles
- Number of borrowers, borrower principals and entities insured

## ***State Windpool Policy Requirements***

### ***Windstorm insurance through a State Windpool***

The following requirements in 1, 2 or 3 below must be met if windstorm coverage can only be obtained from a State Windpool:

1. If the policy issued by the State Windpool does not contain a coinsurance clause, the policy must be written with replacement cost coverage in an amount equal to 100% replacement of the replacement cost of the insurable improvements without any deduction for depreciation.
2. If the policy issued by the State Windpool contains a coinsurance clause that is offset or suspended by an agreed amount provision:
  - The policy must be written with replacement cost coverage in an amount equal to 100% of the replacement cost of the insurable improvements without any deduction for depreciation and
  - The agreed amount must equal the replacement cost
3. If the policy issued by the State Windpool contains a coinsurance clause that is not offset or suspended by an agreed amount endorsement provision, then all of the following are required:
  - The policy must be written with replacement cost coverage in an amount equal to 100% of the replacement cost of the insurable improvements without any deduction for depreciation
  - The replacement cost estimate must meet the requirements for the guide
  - The replacement cost estimate must be dated within 12 months of the request for coinsurance
  - The policy must contain a coinsurance clause less than or equal to 90% (such as 70% or 80%)

In addition, the guarantor must sign an additional guaranty of any losses incurred by the Trustee associated with the Borrower's failure to maintain the required windstorm coverage.

If business income/rental value insurance is not included in the State Windpool insurance policy, a separate business income/rental value insurance policy for windstorm coverage must be obtained.

## ***Earthquake Insurance Requirements***

### ***Earthquake Insurance***

If the Project Facilities are located in a Seismic Risk Zone 3 or 4 and the PML is greater than 20% but less than or equal to 40%, earthquake insurance is required. For Project Facilities for which earthquake insurance is required, the coverage must be the greater of \$1 million or 150% of the difference between the projected loss for the Project Facilities using the actual PML and the projected loss with a 20% PML. A reserve account may be required for certain deductibles based on the Borrower's equity and the maximum deductible.

The Borrower will be required to obtain separate business income/rental value insurance and ordinance and law coverage if earthquake insurance does not provide that coverage for earthquake damage.

For example:

Replacement cost for the property=\$30 million

Actual PML=30%

Minimum required earthquake insurance=\$4.5 million

Replacement Cost X Actual PML	\$30 million X 30%	=	\$9 million
Replacement Cost X 20%	\$30 million X 20%	=	\$6 million
Difference			\$3 million
Difference X 150%	\$3 million X 150%	=	\$4.5 million

### **Maximum Deductibles**

<b>Borrower Equity</b>	<b>Maximum Deductible</b>	<b>Reserve Account</b>
	(a reserve account may be required for certain deductibles)	
Equal to or less than 30%	5% of coverage	Not required
Equal to or less than 30%	10% of coverage	Required for 5% of the coverage amount
Equal to or less than 30%	15% of coverage	Required for 10% of the coverage amount
Greater than 30%	15% of coverage	Not required

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

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**REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

**By and Between**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO**

**and**

**HILLTOP FAMILY HOUSING, L.P.,**

\_\_\_\_\_  
**Dated as of October 1, 2020**  
\_\_\_\_\_

**Relating to:**

**\$ \_\_\_\_\_  
Housing Authority of the City of San Diego  
Multifamily Housing Revenue Bonds  
(The Orchard at Hilltop)  
Series 2020H-1**

**\$ \_\_\_\_\_  
Housing Authority of the City of San Diego  
Multifamily Housing Revenue Bonds  
(The Orchard at Hilltop)  
Taxable Series 2020H-2**

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## REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "**Regulatory Agreement**"), dated as of October 1, 2020, by and between the Housing Authority of the City of San Diego, a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California (together with any successor to its rights, duties and obligations, the "**Authority**") and Hilltop Family Housing, L.P., a California limited partnership (the "**Borrower**").

### W I T N E S S E T H

**WHEREAS**, the Authority is a California housing authority acting under the Housing Authorities Law, Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code (the "**Act**"); and

**WHEREAS**, pursuant to the Act, the Authority is authorized to issue bonds or notes to finance the acquisition, construction and equipping of multifamily rental housing for families and individuals of low income and very low income within the City of San Diego, California (the "**City**"); and

**WHEREAS**, the Authority is a political subdivision (within the meaning of that term in the Regulations of the Department of Treasury and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "**Code**")); and

**WHEREAS**, on September 29, 2020, the legislative body of the Authority adopted a resolution (the "**Resolution**") authorizing the issuance of revenue bonds in connection with financing the acquisition, construction, and equipping of a 113-unit (including two unrestricted manager's units) multifamily rental housing project located in the City; and

**WHEREAS**, in furtherance of the purposes of the Act and the Resolution and as a part of the Authority's plan of financing residential rental housing, the Authority has issued its Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (The Orchard at Hilltop) Series 2020H-1 in the aggregate principal amount of \$\_\_\_\_\_ (the "**Tax-Exempt Bonds**"), and its Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (The Orchard at Hilltop) Series 2020H-2 in the aggregate principal amount of \$\_\_\_\_\_ (collectively with the Tax-Exempt Bonds, the "**Bonds**"), to Western Alliance Business Trust, the proceeds of which will be used to make a loan to the Borrower (the "**Loan**") to enable the Borrower to finance the acquisition, construction and equipping of the Project (as defined herein) for the public purpose of providing decent, safe and sanitary housing for families and individuals of low income and very low income; and

**WHEREAS**, the Authority and the Borrower have entered into a Loan Agreement (as defined herein), providing the terms and conditions under which the Authority will make the Loan to the Borrower to finance the acquisition, construction and equipping of the Project; and

**WHEREAS**, all things necessary to make the Bonds, when issued as provided in the Indenture, the valid, binding, and limited obligations of the Authority according to the import

thereof, and to constitute the Indenture a valid assignment of the amounts pledged to the payment of the principal of, and premium, if any, and interest on the Bonds, have been done and performed, and the creation, execution, and delivery of the Indenture, and the execution and issuance of the Bonds, subject to the terms thereof, in all respects have been duly authorized; and

**WHEREAS**, the Authority has obtained an allocation for the Project of a portion of the State of California's private activity bond volume cap, within the meaning of Section 146 of the Code, in accordance with the procedures established by the California Debt Limit Allocation Committee ("**CDLAC**"); and

**WHEREAS**, the Code and the regulations and rulings promulgated with respect thereto and the Act prescribe that the use and operation of the Project be restricted in certain respects, and in order to ensure that the Project will be owned and operated in accordance with the Code and the Act, the Authority and the Borrower have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, construction, equipping and operation of the Project;

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Authority and the Borrower hereby agree as follows:

**Section 1. Definitions and Interpretation.** The following terms shall have the respective meanings assigned to them in this Section 1, unless the context in which they are used clearly requires otherwise:

**"Adjusted Income"** means the adjusted income of all persons who intend to reside in one residential unit, calculated in the manner determined by the Secretary of the Treasury pursuant to Section 142(d)(2)(B) of the Code.

**"Affiliate"** means (1) a Person whose relationship with the Borrower would result in a disallowance of losses under Section 267 or 707(b) of the Code, (2) a Person who together with the Borrower are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein), (3) a partnership and each of its partners (and their spouses and minor children) whose relationship with the Borrower would result in a disallowance of losses under Section 267 or 707(b) of the Code or (4) an S Corporation and each of its shareholders (and their spouses and minor children) whose relationship with the Borrower would result in a disallowance of losses under Section 267 or 707(b) of the Code.

**"Area"** means the San Diego County, California, Primary Metropolitan Statistical Area.

**"Authority Fee"** means (i) the administrative fee of the Authority payable on the Closing Date in the amount of \$\_\_\_\_\_, which amount is equal to 0.250% of the maximum authorized principal amount of the Bonds, and the ongoing administrative fee payable every 12 months, commencing October 1, 2021, in the amount of \$\_\_\_\_\_ until the Stabilization Date, which amount is equal to 0.125% per annum of the maximum authorized principal amount of the Bonds, and, on the first October 1 following the Stabilization Date and thereafter, the ongoing administrative fee payable every 12 months in an amount equal to 0.125% of the outstanding principal amount of the Bonds on the Stabilization Date, provided, however, that the ongoing administrative fee shall in no event be less than \$10,000.00; and (ii) an annual occupancy monitoring fee, separately from, and in addition to, the annual ongoing administrative fee referred

to in clause (i) of this definition, to the San Diego Housing Commission (the “**Commission**”), for the total number of units monitored by the Commission. The annual occupancy monitoring fee described in clause (ii) of this definition is subject to annual adjustment. The Borrower agrees to pay the Commission, an initial occupancy monitoring fee in the amount set forth in schedules promulgated by Commission from time to time.

“**Bonds**” has the meaning given to it in the recitals hereto.

“**Borrower’s Tax Certificate**” means the Certificate Regarding Use of Proceeds, dated as of the Closing Date, with respect to certain Project Costs, executed by the Borrower delivered to the Authority by the Borrower.

“**CDLAC**” has the meaning given to it in the recitals hereto.

“**CDLAC Resolution**” means Resolution No. 20-072 adopted by CDLAC on April 14, 2020, awarding an allocation of \$27,885,943 for the Project and the Tax-Exempt Bonds, as such resolution may be modified or amended from time to time.

“**Certificate of Continuing Program Compliance**” means the certificate with respect to the Project to be filed by the Borrower with the Authority, which shall be substantially in the form attached hereto as Appendix B.

“**Closing Date**” means the date of delivery of the Bonds.

“**Code**” has the meaning given to it in the recitals hereto.

“**Controlling Person**” has the meaning given to it in the Indenture.

“**Event of Default**” has the meaning given to it in Section 15 hereof.

“**Income Certification**” means the Income Computation and Certification Form in substantially the form attached hereto as Appendix C.

“**Indenture**” means the Indenture of Trust, dated as of October 1, 2020, by and between the Authority and Trustee, pursuant to which the Bonds have been issued, as amended or supplemented from time to time.

“**Inducement Date**” means January 14, 2020, with respect to the Authority’s declaration of intent to issue multifamily housing revenue bonds in an aggregate principal amount not to exceed \$29,000,000 in connection with the Project.

“**Loan**” has the meaning given to it in the recitals hereto.

“**Loan Agreement**” means the Loan Agreement, dated as of October 1, 2020, by and between the Authority and the Borrower, as amended, supplemented or restated from time to time.

“**Low Income Tenants**” means individuals or families with an Adjusted Income that does not exceed 60% of the Median Income for the Area as adjusted in a manner consistent with the determination of lower income families under Section 8 of the United States Housing Act of 1937 and as adjusted for household size as set forth below. In no event, however, will the occupants

of a residential unit be considered to be Low Income Tenants if all the occupants are students, as defined in Section 152(f)(2) of the Code, as such may be amended, no one of which is entitled to file a joint federal income tax return. Currently, Section 152(f)(2) defines a student as an individual enrolled as a full-time student during each of five calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance or is an individual pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

Household Size	Adjustment
1	70%
2	80%
3	90%
4	100%
5	108%
6	116%
7	124%
8	132%

**"Low Income Units"** means the dwelling units in the Project designated for occupancy by Low Income Tenants pursuant to Section 4(a) of this Regulatory Agreement.

**"Median Income for the Area"** means the median gross income for the Area as most recently determined by the Secretary of Treasury pursuant to Section 142(d)(2)(B) of the Code.

**"Mortgage"** has the meaning given to it in the Indenture.

**"Project"** means the Project Facilities and the Project Site.

**"Project Costs"** mean to the extent authorized by the Code, the Regulations and the Act, any and all costs incurred by the Borrower with respect to the acquisition, construction and equipping of the Project, whether paid or incurred prior to or after the 60th day preceding the Inducement Date, including, without limitation, costs for site preparation, the planning of housing and related facilities and improvements, the acquisition of property, the removal or demolition of existing structures, the construction of housing and related facilities and improvements, and all other work in connection therewith, and all costs of financing, including, without limitation, the costs of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, county or entity for expenditures made for the Project) and all other costs approved by Bond Counsel.

**"Project Facilities"** mean the buildings, structures and other improvements on the Project Site that are being financed with proceeds of the Bonds, and all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements.

**"Project Site"** means the parcel or parcels of real property described in Appendix A, which is attached hereto and by this reference incorporated herein, and all rights and appurtenances thereunto appertaining.

**“Qualified Project Costs”** means costs paid with respect to the Project that meet each of the following requirements: (i) the costs are properly chargeable to a 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 Regulations Section 1.103-8(a)(1), provided, however, that only such portion of interest accrued during rehabilitation or construction of the Project (in the case of rehabilitation, with respect to vacated units only) shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs; and provided further that interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed or rehabilitated by an Affiliate (within the meaning of the Code) (whether as a general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out-of-pocket costs incurred by such Affiliate in constructing or rehabilitating the Project (or any portion thereof), (B) any reasonable fees for supervisory services actually rendered by the Affiliate, and (C) any overhead expenses incurred by the Affiliate that are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the rehabilitation or construction of the Project or payments received by such Affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior to the date of a declaration of "official intent" to reimburse costs paid with respect to the Project (within the meaning of Section 1.150-2 of the Regulations) or the date of issue of the Bonds, and (iv) if the Project Costs were previously paid and are to be reimbursed with proceeds of the Tax-Exempt Bonds such costs were (A) costs of issuance of the Tax-Exempt Bonds, (B) preliminary capital expenditures (within the meaning of Regulations Section 1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of construction of the Project that do not exceed 20% of the aggregate issue price of the Tax-Exempt Bonds (as defined in Regulations Section 1.148-1), or (C) were capital expenditures with respect to the Project that are reimbursed no later than 18 months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid).

**“Qualified Project Period”** means the period beginning on the first day on which at least 10% of the dwelling units in the Project are first occupied and ending on the later of (a) the date that is 55 years after the date on which 50% of the dwelling units in the Project are occupied, (b) the first day on which no tax exempt bonds or notes 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 United States Housing Act of 1937 terminates.

**“Regulations”** means the Income Tax Regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time.

**“Stabilization Date”** has the meaning given to it in the Indenture.

**“Tax Credit Investor”** has the meaning given to it under Section 10 hereof.

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

**“Tax-Exempt Bonds”** has the meaning given to it in the recitals hereto.

**“Trustee”** means The Bank of New York Mellon Trust Company, N.A.

**“Very Low Income Tenants”** means individuals or families with an Adjusted Income that does not exceed 50% of the Median Income for the Area as adjusted in a manner consistent with the determination of lower income families under Section 8 of the United States Housing Act of 1937 and as adjusted for household size as set forth below. In no event, however, will the occupants of a residential unit be considered to be Very Low Income Tenants if all the occupants are students, as defined in Section 152(f)(2) of the Code, as such may be amended, no one of which is entitled to file a joint federal income tax return. Currently, Section 152(f)(2) defines a student as an individual enrolled as a full-time student during each of 5 calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance or is an individual pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

Household Size	Adjustment
1	70%
2	80%
3	90%
4	100%
5	108%
6	116%
7	124%
8	132%

**“Very Low Income Units”** means the dwelling units in the Project designated for occupancy by Very Low Income Tenants pursuant to Section 4(j) of this Regulatory Agreement.

Capitalized terms that are not defined herein shall have the meanings assigned to them in the Indenture.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter 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 defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms shall be determined by reference to this Section 1 notwithstanding any contrary definition in the preamble or recitals 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.

**Section 2. Acquisition, Construction and Equipping of the Project.** The Borrower hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Borrower has incurred a substantial binding obligation to acquire, construct and equip the Project, pursuant to which the Borrower is obligated to expend at least 5% of the aggregate net sale proceeds of the Tax-Exempt Bonds.

(b) The Borrower's reasonable expectations respecting the total cost of the acquisition, construction and equipping of the Project and the disbursement of Tax-Exempt Bond proceeds are accurately set forth in the Borrower's Tax Certificate that has been delivered to the Authority.

(c) The Borrower will proceed with due diligence to complete the acquisition, construction and equipping of the Project and expects to expend the full amount of the proceeds of the Loan for Project Costs prior to the date that is three years after the Closing Date.

(d) The statements made in the various certificates delivered by the Borrower to the Authority or Controlling Person are true and correct as of the Closing Date.

(e) The Borrower (and any person related to it within the meaning of Section 147(a)(2) of the Code) will not take or omit to take, as is applicable, any action if such action or omission would in any way cause the proceeds from the sale of the Bonds to be applied in a manner contrary to the requirements of the Indenture, the Loan Agreement or this Regulatory Agreement.

(f) The Borrower shall comply with all applicable requirements of Section 65863.10 of the California Government Code, including, if applicable, the requirements for providing notices in Sections (b), (c), (d) and (e) thereof.

**Section 3. Residential Rental Property.** The Borrower hereby acknowledges and agrees that the Project will be owned, managed and operated as a "qualified residential rental project" (within the meaning of Section 142(d) of the Code) until the expiration of the Qualified Project Period. To that end, and for the term of this Regulatory Agreement, the Borrower hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Project is being acquired, constructed and equipped for the purpose of providing multifamily residential rental property, and the Borrower shall 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 applicable provisions of Section 142(d) of the Code and Section 1.103-8(b) of the Regulations, and the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the dwelling units in the Project will be similarly constructed units, and, to the extent required by the Code and the Regulations, 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; provided that any tenant may, but shall not be obligated to, provide a refrigerator for the unit to be occupied.

(c) None of the dwelling units in the Project will at any time be utilized on a transient basis, or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming

house, nursing home, hospital, sanitarium, rest home, retirement house or trailer court or park; provided that the use of certain units for tenant guests on an intermittent non-compensated basis shall not be considered transient use for purposes of this Regulatory Agreement.

(d) No part of the Project will at any time be owned or used as a condominium or by a cooperative housing corporation, nor shall the Borrower take any steps in connection with a conversion to such ownership or uses. Other than obtaining a final subdivision map on the Project and a Final Subdivision Public Report from the California Department of Real Estate, the Borrower has not and shall not take any steps in connection with a conversion of the Project to a condominium or cooperative ownership except with the prior written approving opinion of Bond Counsel that by reason of any such action the interest on the Tax-Exempt Bonds (if it is outstanding) will not become includable in gross income for federal income tax purposes.

(e) All of the dwelling units (except for the manager's unit described in (g) below) will be available for rental on a continuous basis to members of the general public, and the Borrower has not and 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 to Low Income Tenants, Very Low Income Tenants, or holders of Section 8 certificates or vouchers.

(f) The Project Site consists of a parcel or parcels that are contiguous except for the interposition of a road, street or stream, and all of the Project Facilities will 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 any building in the Project shall be occupied by the Borrower unless the building contains five or more dwelling units, in which case one unit may be occupied by the Borrower or by persons related to or affiliated with the Borrower such as a resident manager or maintenance personnel. Subject to the foregoing limitation, up to a total of one unit in the Project may be occupied by a resident manager or maintenance personnel.

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

(i) The Borrower shall not discriminate on the basis of race, religion, creed, color, ethnic group identification, sex, sexual preference, source of income (e.g. TANF, SSI), mental or physical disability, age, national origin or marital status in the rental, lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

(j) Following the expiration or termination of the Qualified Project Period, Low Income Units and Very Low Income Units shall remain available to the Low Income Tenants and Very Low Income Tenants, respectively, then occupying such units at the date of expiration or termination of the Qualified Project Period at a rent not greater than the rent determined pursuant to Sections 4(a) and 4(j) below, as applicable, until the earliest of any of the following occurs:

(i) The household's income exceeds 140% of the income at which such household would qualify as a Low Income Tenant or a Very Low Income Tenant.

(ii) The household voluntarily moves or is evicted for "good cause." For these purposes, "good cause" means the nonpayment of rent or allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the lease agreement that detrimentally affect the health and safety of other persons or the structure, the fiscal integrity of the Project, or the purposes or special programs of the Project.

(iii) Fifty-five (55) years after the Closing Date.

(iv) The Borrower pays the relocation assistance and benefits to such Low Income Tenants or Very Low Income Tenants, as provided in Section 7264(b) of the Government Code of the State of California.

(k) The Authority may but shall not be required to monitor the Borrower's compliance with the provisions of subparagraph (j) above.

**Section 4. Low Income Units.** Pursuant to the requirements of Section 142(d) of the Code and applicable provisions of the Act, the Borrower hereby represents, as of the date hereof, and warrants, covenants and agrees as follows:

(a) During the Qualified Project Period, not less than 40% of the units in the Project shall be designated as Low Income Units and shall be continuously occupied by or held available for occupancy by Low Income Tenants at monthly rents that do not exceed one-twelfth of the amount obtained by multiplying 30% times 60% of the Median Income for the Area, as adjusted for household size utilizing the percentages set forth above under the definition of Low Income Tenant less a reasonable deduction for utilities paid by the tenant as determined by the Authority and assuming (solely for purposes of the above-described limit on the amount of monthly rent, and not for purposes of determining whether individuals or families are Low Income Tenants for purposes of Section 142(d) of the Code) the following unit sizes and household sizes (collectively, the "**Assumed Unit and Household Sizes**"):

<b>Unit Size</b>	<b>Household Size</b>
Studio	One Person
One-Bedroom	Two Persons
Two-Bedroom	Three Persons
Three-Bedroom	Four Persons
Four-Bedroom	Five Persons

Such Low Income Units shall be of comparable quality and offer a range of sizes and number of bedrooms comparable to those units that are available to other tenants and shall be distributed throughout the Project.

A unit occupied by a Low Income Tenant who, at the commencement of the occupancy, is a Low Income Tenant shall be treated as occupied by a Low Income Tenant until a recertification of such tenant's income in accordance with Section 4(c) below demonstrates that such tenant no longer qualifies as a Low Income Tenant and thereafter such unit shall be treated as any residential unit of comparable or smaller size in the Project occupied by a new resident other than a Low Income Tenant. Moreover, a unit previously occupied by a Low Income Tenant

and then vacated shall be considered occupied by a Low Income Tenant until reoccupied, other than for a temporary period, at which time the character of the unit shall be re-determined. In no event shall such temporary period exceed thirty-one (31) days.

(b) Immediately prior to a Low Income Tenant's occupancy of a Low Income Unit, the Borrower will obtain and maintain on file an Income Certification from each Low Income Tenant occupying a Low Income Unit, dated immediately prior to the initial occupancy of such Low Income Tenant in the Project. In addition, the Borrower will provide such further information as may be required in the future by the State of California, the Authority, the Act, Section 142(d) of the Code and the Regulations, 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 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 obligations issued under Section 142(d) of the Code. The Borrower shall verify that the income provided by an applicant is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a federal income tax return for the most recent tax year, (2) obtain a written verification of income and employment from the applicant's current employer, (3) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income satisfactory to the Authority or (4) such other information as may be reasonably requested by the Authority.

Copies of the most recent Income Certifications for Low Income Tenants shall be attached to the quarterly report to be filed with the Authority as required in (d) below.

(c) Immediately prior to the first anniversary date of the occupancy of a Low Income Unit by one or more Low Income Tenants, and on each anniversary date thereafter, the Borrower shall recertify the income of the occupants of each Low Income Unit by obtaining a completed Income Certification based upon the current income of each occupant of the unit. In the event the recertification demonstrates that such household's income exceeds 140% of the income at which such household would qualify as Low Income Tenants, such household will no longer qualify as Low Income Tenants and, to the extent necessary to comply with the requirements of Section 4(a) above, the Borrower will rent the next available unit of comparable or smaller size to one or more Low Income Tenants.

(d) Upon commencement of the Qualified Project Period, and within 15 days of the last day of each quarter thereafter during the term of this Regulatory Agreement, the Borrower shall advise the Authority of the status of the occupancy of the Project by delivering to the Authority a Certificate of Continuing Program Compliance.

(e) The Borrower shall maintain complete and accurate records pertaining to the Low Income Units, and shall permit any duly authorized representative of the Authority, Controlling Person, Department of the Treasury or Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units.

(f) The Borrower shall submit to the Secretary of the Treasury annually on the anniversary date of the start of the Qualified Project Period, or such other date as is required by the Secretary, a certification that the Project continues to meet the requirements of Section 142(d) of the Code, and shall provide a copy of such certification to the Authority.

(g) The Borrower shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant

to the existing program under Section 8 of the United States Housing Act of 1937, or its successor. The Borrower shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants. The Borrower shall not collect any additional fees or payments from a Low Income Tenant except security deposits or other deposits required of all tenants. The Borrower shall not collect security deposits or other deposits from a Section 8 certificate or voucher holder in excess of those allowed under the Section 8 Program. The Borrower shall not discriminate against applicants for Low Income Units on the basis of source of income (i.e., TANF or SSI), and the Borrower shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (ability to pay shall be demonstrated if an applicant can show that the same percentage or more of the applicant's income has been paid for rent in the past as will be required to be paid for the rent applicable to the Low Income Unit to be occupied, provided that such Low Income Tenant's expenses have not materially increased).

(h) Each lease pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the Income Certification and supporting information supplied by the applicant in determining qualification for occupancy of the Low Income Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease. Each lease will also contain a provision that failure to cooperate with the annual recertification process reasonably instituted by the Borrower pursuant to Section 4(c) above may, at the option of the Borrower, disqualify the unit as a Low Income Unit, or provide grounds for termination of the lease.

(i) Prior to the Closing Date, the Borrower agrees to provide to the Authority a copy of the form of application and lease to be provided to prospective Low Income Tenants. The term of the lease shall be not less than 30 days.

(j) In addition to the requirements set forth in Section 4(a), the Authority shall require that not less than 10% of the units in the Project shall be Very Low Income Units and shall be rented to, or made available for rental to, Very Low Income Tenants on the same terms and conditions, and subject to the same requirements, as are set forth in this Section 4 with respect to the Low Income Units, except that monthly rents shall not exceed one-twelfth of the amount obtained by multiplying 30% times 50% of the Median Income for the Area, adjusted as provided in Section 4(a) above (but without regard to the final paragraph, and immediately subsequent table, thereof).

**Section 5. Tax Status of the Bonds.** The Borrower and the Authority each hereby represents, as of the date hereof, and warrants, covenants and agrees that:

(a) It will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the exclusion from gross income for federal income tax purposes or the exemption from California personal income taxation of the interest on the Bonds and, if it should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof;

(b) It will take such action or actions as may be necessary, in the written opinion of Bond Counsel filed with the Authority and Controlling Person, to comply fully with the Act and all applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued under Section 142(d) of the Code to the extent necessary

to maintain the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds; and

(c) The Borrower, at the Borrower's expense, will file of record such documents and take such other steps as are necessary, in the written opinion of Bond Counsel filed with the Authority and Controlling Person, in order to ensure that the requirements and restrictions of this Regulatory Agreement will be binding upon all owners of the Project, including, but not limited to, the execution and recordation of this Regulatory Agreement in the real property records of the County of San Diego.

(d) The Borrower will not enter into any agreements that would result in the payment of principal of or interest on the Tax-Exempt Bonds being "federally guaranteed" within the meaning of Section 149(b) of the Code.

(e) The Borrower hereby reaffirms the arbitrage certifications made by it in the Certificate as to Arbitrage executed in connection with the Tax-Exempt Bonds, and such certifications are hereby incorporated herein as covenants of the Borrower by this reference.

(f) The Borrower hereby agrees to comply with the requirements of Section 148(f) of the Code and to rebate excess investment earnings to the federal government.

(g) The Borrower hereby covenants to include 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 to obtain the agreement from any transferee to abide by all requirements and restrictions of this Regulatory Agreement.

(h) The Borrower shall assure that the proceeds of the Tax-Exempt Bonds are used in a manner such that the Tax-Exempt Bonds will satisfy the requirements of section 142(d) of the Code relating to qualified residential rental projects.

(i) The Tax-Exempt Bonds upon issuance and delivery shall be considered "private activity bonds" within the meaning of the Code with respect to which CDLAC has transferred a portion of the State of California's private activity bond allocation (within the meaning of section 146 of the Code) equal to the principal amount of the Tax-Exempt Bonds.

(j) The Authority and the Borrower covenant that not less than 95% of the net proceeds of the Tax-Exempt Bonds (within the meaning of section 150(a)(3) of the Code) will be paid for Qualified Project Costs.

(k) The Authority and the Borrower covenant that less than 25% of the proceeds of the Tax-Exempt Bonds shall be used, directly or indirectly, for the acquisition of land.

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

(m) The Borrower shall not take, or permit or suffer to be taken by the Controlling Person, Trustee or otherwise, any action with respect to the proceeds of the Tax-Exempt Bonds that, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Tax-Exempt Bonds would have caused the Tax-Exempt Bonds to be “arbitrage bonds” within the meaning of section 148 of the Code.

(n) In accordance with Section 147(b) of the Code, the average maturity of the Tax-Exempt Bonds does not exceed 120% of the average reasonably expected economic life of the facilities being financed by the Tax-Exempt Bonds.

(o) The Authority and the Borrower covenant that, from the proceeds of the Tax-Exempt Bonds and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Tax-Exempt Bonds, will be used for costs of issuance of the Tax-Exempt Bonds, all within the meaning of section 147(g)(1) of the Code. For this purpose, if the fees of the Agent and the Holder are retained as a discount on the purchase of the Tax-Exempt Bonds, such retention shall be deemed to be an expenditure of proceeds of the Tax-Exempt Bonds for said fees.

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

(q) The Authority and the Borrower covenant that no proceeds of the Tax-Exempt Bonds shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in section 147(d)(3) of the Code, “**Rehabilitation Expenses**”) with respect to such building equal or exceed 15% of the portion of the cost of acquiring such building (and equipment) financed with proceeds of the Tax-Exempt Bonds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if Rehabilitation Expenditures with respect to such structure equal or exceed 100% of the portion of the cost of acquiring such structure financed with the proceeds of the Tax-Exempt Bonds. In compliance with this provision, within two years after the later of the date of the Borrower’s acquisition of the Project or the date of the issuance of the Tax-Exempt Bonds, the Borrower will make Rehabilitation Expenditures in an amount equal to or greater than 15% of the amount of proceeds of the Tax-Exempt Bonds used to acquire any existing buildings and related equipment which are part of the Project.

(r) The Borrower covenants that neither it nor any related party (as used in Section 1.148-1(b) of the Regulations) shall acquire any of the Tax-Exempt Bonds so long as the Borrower is the obligor on the Tax-Exempt Bonds.

The Borrower hereby covenants to notify any subsequent owner of the Project of 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 such restrictions, and to obtain the agreement from any transferee to abide by all requirements and restrictions of this Regulatory Agreement; provided that the covenants contained in this

paragraph shall not apply to the Controlling Person or its designee should the Controlling Person or its designee become the owner of the Project by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan Documents.

**Section 6. Modification of Special Tax Covenants.** The Borrower and the Authority hereby agree as follows:

(a) To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Bond Counsel filed with the Authority and Controlling Person, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement that must be complied with in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements.

(b) To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Bond Counsel filed with the Authority, Trustee and Borrower, 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 approved and signed by the Authority and Borrower, approved by the Controlling Person, and approved by the written opinion of Bond Counsel that such amendment will not affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds.

(c) The Borrower and the Authority shall execute, deliver and, if applicable, file of record any and all documents and instruments, necessary to effectuate the intent of this Section 6, and the Borrower appoints the Authority as its true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower, as is applicable, any such document or instrument (in such form as may be approved in writing by Bond Counsel) if the Borrower defaults in the performance of its obligations under this subsection (c); provided, however, that the Authority shall take no action under this subsection (c) without first notifying the Borrower and the Controlling Person.

**Section 7. Indemnification.** The Borrower hereby releases the Authority, Controlling Person and Trustee and their respective officers and employees from, and covenants and agrees to indemnify, hold harmless and defend the Authority, Controlling Person and Trustee and their respective officers, members, directors, officials, agents and employees and each of them (collectively, the "**Indemnified Parties**" and individually, an "**Indemnified Party**") from and against, any and all claims, losses, costs, damages, demands, expenses, taxes, suits, judgments, actions and liabilities of whatever nature, joint or several (including, without limitation, actual and reasonable out-of-pocket costs of investigation, reasonable attorneys' fees, actual out-of-pocket litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments), made directly or indirectly (a) by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated hereby or otherwise in connection with the Project, Bonds, or execution or amendment of any document relating thereto; (b) arising from any cause whatsoever in connection with the approval of financing for the Project, the making of the Loan or otherwise; (c) arising from any act or omission of the Borrower or any of its agents, servants, employees or licensees, in connection with the Loan or the Project; (d) arising in connection with the issuance and sale, resale or reissuance of the Bonds or any certifications or representations made by any person (other than the Authority or the party seeking indemnification in connection therewith) or the carrying out by the Borrower of any of the transactions contemplated by the

Bonds, the Indenture, the Loan Agreement or this Regulatory Agreement; (e) arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, construction or equipping of, the Project or any part thereof; and (f) arising out of or in connection with the Controlling Person's or Trustee's exercise of their respective powers or duties under the Loan Agreement, this Regulatory Agreement or the Indenture, as applicable, or any other related agreements to which the Controlling Person, or Trustee are a party; except (1) in the case of the foregoing indemnification of the Controlling Person or Trustee or any of their respective officers, members, directors, agents and employees, to the extent such damages are caused by the gross negligence or willful misconduct of such person and (2) in the case of the foregoing indemnification of the Authority or any of its officers, members, directors, officials, agents and employees, to the extent such damages are caused by the willful misconduct of such person.

This indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses and liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except (i) in the case of the foregoing indemnification of the Controlling Person or Trustee or any of their respective Indemnified Parties to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party, and (ii) in the case of the foregoing indemnification of the Authority or any of its Indemnified Parties 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 Borrower, 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 approved by the Borrower (which approval shall not be unreasonably withheld); and the Borrower shall assume the payment of all actual and reasonable fees and expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Authority shall have the right to review and approve or disapprove any such compromise or settlement. The Borrower specifically acknowledges and agrees that it has an immediate and independent obligation to defend each Indemnified Party from any claim that actually or potentially falls within this Section 7 even if such claim is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Borrower by any Indemnified Party and continues at all times thereafter. 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 Borrower shall pay the actual and reasonable fees and expenses of such separate counsel; provided, however, that unless such separate counsel is employed with the approval of the Borrower, which approval shall not be unreasonably withheld, the Borrower shall not be required to pay the fees and expenses of such separate counsel unless the Indemnified Party reasonably determines that a conflict exists between the interests of the Borrower and such Indemnified Party, in which case the Borrower shall pay the actual and reasonable fees and expenses of such separate counsel.

The Borrower also shall pay and discharge and shall indemnify and hold harmless the Authority, Controlling Person and Trustee from (i) any lien or charge upon payments by the Borrower to the Authority, Controlling Person and Trustee hereunder arising out of Borrower's actions or inactions and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Authority shall give prompt notice to the Borrower, and as between the Authority and Borrower, the Borrower shall

have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of Section 10 of this Regulatory Agreement, the Borrower shall remain obligated to indemnify the Indemnified Parties pursuant to this Section 7 for all claims arising from events occurring prior to such transfer, unless at the time of transfer the Authority has consented to indemnification under this Section 7 from such subsequent owner for all claims arising from events occurring prior to such transfer. If the Authority has consented to any transfer of the Project in accordance with the provisions of Section 10 of this Regulatory Agreement, the Borrower shall not be obligated to indemnify the Indemnified Parties pursuant to this Section 7 for actions or inactions of the transferee arising after such transfer, but shall remain obligated to provide indemnity for claims related to actions or inactions occurring prior to such transfer.

In addition to the foregoing, the Borrower will pay upon demand all of the fees and expenses paid or incurred by the Controlling Person, Trustee or Authority in enforcing the provisions hereof.

The provisions of this Section 7 shall survive the term of the Bonds and this Regulatory Agreement.

The obligations of the Borrower under this Section are independent of any other contractual obligation of the Borrower to provide indemnity to the Indemnified Parties, and the obligation of the Borrower to provide indemnity hereunder shall not be interpreted, construed or limited in light of any other separate indemnification obligation of the Borrower. The Indemnified Parties shall be entitled simultaneously to seek indemnity under this Section and any other provision under which they are entitled to indemnity.

All obligations of the Borrower under this Regulatory Agreement for the payment of money, including claims for indemnification and damages, shall not be secured by or in any manner constitute a lien on the Project, and none of the Authority, the Controlling Person or the Trustee shall have the right to enforce such obligations other than directly against the Borrower pursuant to Section 17 of this Regulatory Agreement.

The indemnity provided under this Section 7 shall not require payment of principal or interest on the Loan.

**Section 8. Consideration.** The Authority has issued the Bonds to make the Loan, to finance the Project, all for the purpose, among others, of inducing the Borrower to acquire, construct, equip and operate the Project. In consideration of the issuance of the Bonds by the Authority, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein.

**Section 9. Reliance.** The Authority and the Borrower hereby recognize and agree that the representations, warranties, covenants and agreements set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds, and in the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds and the exemption from California personal income taxation of the interest on the Bonds. In performing its duties and obligations hereunder, the Authority may rely upon statements and certificates of the Borrower, the Low Income Tenants and Very Low Income Tenants, and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Authority 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 Authority, Controlling Person and Trustee under this Regulatory Agreement in good faith and in conformity with such opinion; provided, however, if there are conflicting opinions among the counsel selected by such parties, the opinion of Bond Counsel shall govern the interpretation and enforcement of this Regulatory Agreement.

**Section 10. Sale or Transfer of the Project; Syndication.** The Borrower intends to hold the Project for its own account, has no current plans to sell, transfer or otherwise dispose of the Project, and hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof (other than for individual tenant use as contemplated hereunder), without obtaining the prior written consent of the Authority (except as provided in the next succeeding paragraph) and receipt by the Authority (except as provided in the next succeeding paragraph) of (i) such certifications as deemed necessary by the Authority to establish that the Borrower shall not be in default under this Regulatory Agreement or under the Loan Agreement or, if any such defaults exist, the purchaser or assignee undertakes to cure such defaults to the satisfaction of the Authority; (ii) a written instrument by which the Borrower's purchaser or transferee has assumed in writing and in full the Borrower's duties and obligations under this Regulatory Agreement, (iii) an opinion of counsel for the transferee that the transferee has duly assumed the obligations of the Borrower under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee, (iv) documentation from the transferee reflecting the transferee's experience or, should the transferee choose to have a property manager run the Project, a property manager's experience with owning and/or operating multifamily housing projects such as the Project and with use and occupancy restrictions similar to those contained in this Regulatory Agreement, (v) evidence of satisfaction of compliance with the provisions of Section 27(d)(i) related to notice to CDLAC of transfer of the Project and (vi) an opinion of Bond Counsel addressed to the Authority to the effect that such transfer will not cause interest on the Tax-Exempt Bonds to become includable in the gross income of the recipients thereof for federal income tax purposes.

No transfer of the Project shall operate to release the Borrower from its obligations under this Regulatory Agreement with respect to any action or inaction taken prior to such transfer. Nothing contained in this Section 10 shall affect any provision of the Loan Documents to which the Borrower is a party that requires the Borrower to obtain the consent of the Controlling Person as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower or that gives the Controlling Person the right to accelerate the maturity of the Loan under the Loan Agreement, or to take some other similar action with respect to the Loan, upon the sale, transfer or other disposition of the Project. Notwithstanding anything contained in this Section 10 to the contrary, neither the consent of the Authority nor the delivery of items (i) through (vi) of the preceding paragraph shall be required in the case of a foreclosure or deed in lieu of foreclosure (including, without limitation, a foreclosure or transfer of title by deed in lieu thereof pursuant to the Mortgage), whereby the Controlling Person or any of its designees, or a third-party purchaser from the Controlling Person or any of its designees becomes the owner of the Project, and nothing contained in this Section 10 shall otherwise affect the right of the Controlling Person or any of its designees, or any such third-party purchaser, to foreclose on the Project or to accept a deed in lieu of foreclosure. Delivery of items (i) through (vi) (or, if the Bonds are no longer outstanding, (i) through (v)) of the preceding paragraph and, while the Bonds are outstanding, consent of the Authority (which consent shall not be unreasonably withheld) shall be required for any future transfer of the Project to be made subsequent to any transfer described in the preceding sentence.

It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 10 shall be null, void and without effect, shall cause a reversion of title to the Borrower, and shall be ineffective to relieve the Borrower of its obligations under this Regulatory Agreement. Not less than 30 days prior to consummating any sale, transfer or disposition of any interest in the Project, the Borrower shall deliver to the Authority, Controlling Person and Trustee a notice in writing explaining the nature of the proposed transfer.

Notwithstanding the above, the following transfers will be permitted without the consent of the Authority, subject to the requirement contained in the final sentence of this paragraph: (a) a transfer of partnership interests in Borrower to or by Boston Capital Direct Placement, A Limited Partnership, or its successors and assigns (the "**Tax Credit Investor**"), under the amended and restated partnership agreement of the Borrower (the "**Partnership Agreement**"), or its designees pursuant to the Partnership Agreement; (b) a transfer of the limited partner interests in the Borrower of the Tax Credit Investor to an affiliate of such Tax Credit Investor; (c) a transfer of the limited liability company or limited partnership interests, as applicable, in the Tax Credit Investor to nonaffiliates of such Tax Credit Investor with notice to the Authority, Controlling Person and Trustee; and (d) the removal and replacement of the general partner(s) of the Borrower under the Partnership Agreement (the "**General Partner**") pursuant to the Partnership Agreement. Prior to any transfer of limited liability company or limited partnership interests or removal of the General Partner permitted in (c) and (d) above, the Authority shall receive an opinion of Bond Counsel acceptable to the Authority to the effect that such transfer will not cause interest on the Tax-Exempt Bonds to become includable in the gross income of the recipients thereof for federal income tax purposes.

**Section 11. Term.** Except as provided in Section 3(j) and Section 7 above, which provisions shall continue beyond the Qualified Project Period, and, except as provided in the second paragraph of this Section 11, 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 during the Qualified Project Period, or for such longer period as is provided in Sections 3(j) and 7 above, and in the CDLAC Resolution referred to in Section 27 below, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds and expiration of the Indenture, Loan Agreement and Loan. Notwithstanding any other provisions of this Regulatory Agreement to the contrary, this entire Regulatory Agreement, or any of the provisions or sections hereof, may be terminated prior to the expiration of the Qualified Project Period upon agreement by the Authority, Controlling Person, (if any Bonds are outstanding) and Borrower only if there shall have been received by the Authority and the Controlling Person an opinion of Bond Counsel that such termination will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds or the exemption from State personal income taxation of the interest on the Bonds.

The terms of this Regulatory Agreement to the contrary notwithstanding (except as to the provisions of Section 7), this Regulatory Agreement, and each and all of the terms hereof, shall automatically terminate and be of no further force or effect in the event of (i) an involuntary noncompliance by the Borrower with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency after the Closing Date that prevents the Authority from enforcing the provisions of this Regulatory Agreement, or (ii) foreclosure on the Project or delivery of a deed in lieu of foreclosure (including, without limitation, a foreclosure or transfer of title by deed in lieu thereof pursuant to the Mortgage) or condemnation or a similar event, but only if within a reasonable period thereafter the Bonds are redeemed or retired or amounts received as a consequence of such event are used to provide a project that meets the requirements of the Code set forth in this Regulatory Agreement; 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 on the Project or the delivery of a deed in lieu of foreclosure or a similar event, the Borrower or any Affiliate obtains an ownership interest in the Project for federal income tax purposes. The parties hereto mutually intend the previous sentence to be interpreted in accordance with the minimum requirements of Section 1.103-8(b)(6) of the Regulations.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms. Borrower agrees that the reasonable fees and costs of the Authority, Controlling Person and Trustee and their respective legal counsel in connection with the termination of this Regulatory Agreement shall be paid by the Borrower.

**Section 12. Covenants to Run with the Land.** The Borrower hereby subjects the Project (including the Project Site) to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Authority and the Borrower 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 Borrower'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 13. Burden and Benefit.** The Authority and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower's legal interest in the Project is rendered less valuable thereby. The Authority and the Borrower hereby further declare their understanding and intent that the benefit 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 and by furthering the public purposes for which the Bonds were issued.

**Section 14. 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, development and improvement of the Project Site.

**Section 15. Enforcement.** If the Borrower defaults in the performance or observance of any of its covenants, agreements or obligations set forth in this Regulatory Agreement, and if such default remains uncured for a period of 60 days after notice thereof shall have been given (i) by the Authority to the Borrower, Trustee and Tax Credit Investor or (ii) by the Controlling Person to the Authority, Tax Credit Investor and Borrower (provided, however, that the Authority may at its sole option extend such period if the Borrower provides the Authority and Controlling Person with an opinion of Bond Counsel to the effect that such extension will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds (if outstanding)), then the Authority may declare an "**Event of Default**" to have occurred hereunder and shall provide written notice thereof to the Borrower and Controlling Person, as applicable, and, at the Authority's option, may take any one or more of the following steps:

- (i) by mandamus or other suit, action or proceeding at law or in equity, require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Authority hereunder;
- (ii) have access to and inspect, examine and make copies of all of the books and records of the Borrower 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 Borrower hereunder; or
- (iv) with the consent of the Controlling Person, which consent shall not be unreasonably withheld, declare a default under the Loan Agreement, as applicable, and proceed with any remedies provided therein.

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

The Trustee shall have the right, in accordance with this Section 15 and subject to the applicable provisions of the Indenture, without the consent or approval of the Authority, but with the consent of the Controlling Person, which consent shall not be unreasonably withheld, to exercise any or all of the rights or remedies of the Authority hereunder; provided that prior to taking any such act, the Controlling Person shall give the Authority written notice of its intended action. After the Indenture has been discharged, the 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 Trustee. All fees, costs and expenses of the Controlling Person (including, without limitation, reasonable attorneys' fees) incurred in taking any action pursuant to this Section 15 shall be the sole responsibility of the Borrower.

Notwithstanding anything contained in this Regulatory Agreement, the Indenture or the Loan Agreement to the contrary, the occurrence of an Event of Default shall not be deemed, under any circumstances whatsoever, to be a default under the Loan Documents except as may be otherwise specified, as applicable, in the Loan Documents.

The rights of the Controlling Person under this Section are in addition to all rights conferred upon the Controlling Person under the Indenture and other Loan Documents (as defined in the Indenture), and in no way limit those rights. No breach of any of the provisions of this Regulatory Agreement shall impair, defeat or render invalid the lien of the Mortgage.

The Authority agrees that cure of any Event of Default made or tendered by the Tax Credit Investor 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 16. Recording and Filing.** The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto to be recorded and filed in the real property records of the County of San Diego and in such other places as the Authority and

Controlling Person may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

**Section 17. Payment of Fees.** The Borrower shall pay to the Authority the issuance and annual (ongoing) Authority Fee on the dates and in the amounts set forth in the definition thereof. Notwithstanding any prepayment of the Loan or any discharge of the Indenture, except as set forth in the following paragraph, throughout the term of this Regulatory Agreement, the Borrower shall continue to pay to the Authority the Authority Fee, and, following the occurrence of an Event of Default, to the Authority and Controlling Person reasonable compensation for any services rendered by any of them hereunder and reimbursement for all expenses reasonably incurred by any of them as a result of such Event of Default. The Authority Fee referenced in this section shall in no way limit amounts payable by the Borrower under Section 7 hereof, or arising after an Event of Default in connection with the Authority's or Controlling Person's enforcement of the provisions of this Regulatory Agreement.

In the event that the Bonds are prepaid in part or in full prior to the end of the term of this Regulatory Agreement, the Authority Fee for the remainder of the term of this Regulatory Agreement, at the option of the Authority, shall continue to be payable to the Authority for the number of years remaining under the Regulatory Agreement. At the option of the Authority, the Authority Fee shall be paid by the Borrower at the time of the prepayment of the Bonds and shall be a lump sum amount equal to the present value (based on a discount rate equal to the combined yield on the Bonds, as determined by the Authority at the time of prepayment) of the Authority Fee, calculated based on the amount of the Bonds outstanding immediately preceding such prepayment, for the number of years remaining in the Qualified Project Period under this Regulatory Agreement.

During any period that the Controlling Person or any of its respective agents owns the Project, it shall be responsible to make payments under this Section 17 accruing during such period. The Controlling Person shall not be liable for the payment of any compensation or any fees, costs, expenses or penalties otherwise payable for any period of time that it was not or is not the owner of the Project.

**Section 18. Governing Law.** This Regulatory Agreement shall be governed by the laws of the State of California.

**Section 19. Amendments.** Except as provided in Sections 6(a) and 27(e) hereof, this Regulatory Agreement shall be amended (i) only with the prior written consent of the Controlling Person and (ii) by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of San Diego. The parties hereto acknowledge that for so long as the Bonds are outstanding, the Trustee is a third-party beneficiary to this Regulatory Agreement. Any amendment to this Regulatory Agreement shall be accompanied by an opinion of Bond Counsel to the effect that such amendment will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds.

**Section 20. Notice.** All notices, certificates or other communications shall be sufficiently given and shall be deemed given on the date personally delivered or on the third business day following the date on which the same have been mailed by certified mail, return receipt requested, postage prepaid and addressed as follows:

The Trustee:	The Bank of New York Mellon Trust Company, N.A. 400 South Hope Avenue, Suite 500 Los Angeles, California 90071 Attention: Corporate Trust Department Telecopier: (213) 630-6215
The Authority:	Housing Authority of the City of San Diego 1122 Broadway, Suite 300 San Diego, California 92101 Attention: Executive Director Telecopier: (619) 578-7356
with copies to (none of which copies shall constitute notice to the Authority):	Office of the San Diego City Attorney 1200 Third Avenue, Suite 1100 San Diego, California 92101 Attention: Marguerite Middaugh Telecopier: (619) 236-7215
	Jones Hall, A Professional Law Corporation 475 Sansome Street, Suite 1700 San Francisco, California 94111 Attention: Josh D. Anzel, Esq. Telecopier: (415) 276-2088
The Controlling Person:	Boston Capital Finance LLC] One Boston Place, 22nd Floor Boston, Massachusetts 02108 Attention: Sean Curry
with a copy to:	Kutak Rock LLP The Omaha Building 1650 Farnam Street Omaha, Nebraska 68102 Attention: Sean Gillen
The Borrower:	Hilltop Family Housing, L.P. c/o Affirmed Housing Group, Inc. 13520 Evening Creek Drive North, Suite 160 San Diego, California 92128 Attention: James Silverwood, President Facsimile: (858) 679-9076
with a copy to:	Katten Muchin Rosenman LLP 2029 Century Park East, Suite 2600 Los Angeles, California 90067 Attention: David Cohen, Esq. Facsimile: (312) 902-1061

The Tax Credit Investor: Boston Capital Direct Placement, A Limited Partnership  
c/o Boston Capital, Inc.  
One Boston Place  
Boston, Massachusetts 02108  
Attention: Asset Management

with a copy to: Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109-2835  
Attention: Nathan Bernard, Esq.

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

Any of the foregoing parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, documents or other communications shall be sent. Copies of notices sent by any party hereto shall be sent concurrently to the Trustee.

**Section 21. 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 22. Multiple Counterparts.** This Regulatory Agreement may be 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 23. Compliance by Borrower.** The Trustee shall not be responsible for monitoring or verifying compliance by the Borrower with its obligations under this Regulatory Agreement. The Borrower acknowledges and agrees to all provisions of the Indenture applicable to it, including, without limitation, Section 9.2 thereunder.

**Section 24. General Obligation of Borrower; Limitations on Recourse to Borrower.** Except as provided in Section 7 of this Regulatory Agreement, no subsequent owner of the Project shall be liable or obligated to pay damages for the breach or default of any obligation of or covenant by any prior owner (including the Borrower) under this Regulatory Agreement. Such obligations are the obligations of the person who was the owner at the time the default or breach was alleged to have occurred, and such owner shall remain liable for any and all damages occasioned thereby even after such person ceases to be the owner of the Project, and no person seeking such damages shall have recourse against the Project.

**Section 25. Third-Party Beneficiaries.** The parties to this Regulatory Agreement recognize and agree that the terms of this Regulatory Agreement and the enforcement of those terms are essential to the security of the owners of the Bonds and are entered into for their benefit. The Trustee, on behalf of the owners of the Bonds, and the Controlling Person shall have contractual rights in this Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Authority, or to cause the Authority to enforce, the terms of this

Regulatory Agreement. The Trustee and the Controlling Person are intended to be and shall be third-party beneficiaries of this Regulatory Agreement, and the Trustee and Controlling Person shall have the right (but not the obligation) to enforce the terms of this Regulatory Agreement insofar as this Regulatory Agreement sets forth obligations of the Borrower.

CDLAC is also intended to be and shall be a third-party beneficiary of this Regulatory Agreement to the limited extent that it shall be entitled to enforce, in accordance with Section 15 hereof, the terms of the CDLAC Resolution.

**Section 26. Damage, Destruction or Condemnation of the Project.** In the event that the Project is damaged or destroyed or title to the property, or any part thereof, is taken through the exercise or the threat of the exercise of the power of eminent domain, the Borrower shall comply with all applicable requirements of the other Loan Documents.

**Section 27. CDLAC Requirements.** In addition to other requirements set forth herein and to the extent not prohibited by the requirements set forth in Sections 4 and 5 hereof, the Borrower hereby agrees to comply with each of the requirements of CDLAC set forth in this Section 27, as follows:

(a) The Borrower shall comply with the CDLAC Resolution, which is attached hereto as Appendix 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 Borrower will prepare and submit to the Authority:

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

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

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

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 Borrower to report to the Authority.

(b) The Borrower acknowledges that the Authority shall monitor the Borrower's compliance with the terms of the CDLAC Conditions. The Borrower acknowledges that the

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 (such that the next succeeding year shall be the beginning of each such three-year period) until the end of the Qualified Project Period, a Self-Certification Certificate in the form provided by CDLAC. The Borrower will cooperate fully with the Authority in connection with such monitoring and reporting requirements.

(c) Except as otherwise provided in Section 11 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 Borrower shall notify CDLAC in writing of: (i) any change in ownership of the Project; (ii) any change in the issuer of the Tax-Exempt Bonds; (iii) any change in the name of the Project or the property manager; (iv) any default under the Indenture, the Loan Agreement or this Regulatory Agreement, including, but not limited to, such defaults associated with the Tax-Exempt status of the Tax-Exempt Bonds, and the income and rental requirements as provided in Sections 4 and 5 hereof and the CDLAC Conditions; or (v) termination of this Regulatory Agreement.

(e) CDLAC shall have the right, but not the obligation, to deliver revised CDLAC Conditions to the Borrower after the Closing Date, at any time, that are not more restrictive than the original CDLAC Conditions; provided however, that: (i) any changes in the terms and conditions of the CDLAC Conditions prior to the recordation against the Project in the real property records of the County of San Diego of a regulatory agreement between Borrower 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 Borrower or the Project; and (ii) after recordation of the TCAC Regulatory Agreement, any changes in the terms and conditions of the CDLAC Conditions shall be limited to such changes as are necessary to conform Items 1, 6, 7, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26 and/or 37 of Exhibit A to the CDLAC Conditions to any change in terms and conditions requested by Borrower and approved by CDLAC. The Authority may, in its sole and absolute discretion, require the Borrower to enter into an amendment to this Regulatory Agreement reflecting the revised CDLAC Conditions, which amendment shall be executed by the parties hereto or their successor in title and duly recorded in the official real estate records of the County of San Diego. The Borrower shall pay any costs and expenses in connection therewith and provide CDLAC with a copy of that recorded amendment reflecting the revised CDLAC Conditions.

Any of the foregoing requirements of the CDLAC Conditions contained in this Section 27 may be expressly waived by CDLAC, in its sole discretion, in writing, but (i) no waiver by CDLAC of any requirement of this Section 27 shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement except to the extent the Authority has received an opinion of Bond Counsel that any such provision is not required by the Act and may be waived without adversely affecting the exclusion from gross income of interest on the Tax-Exempt Bonds for federal income tax purposes; and (ii) any requirement of this Section 27 shall be void and of no force and effect if the Authority and the Borrower receive a written opinion of Bond Counsel to the effect that compliance with any such requirement would cause interest on the Tax-Exempt Bonds to cease to be Tax-Exempt or to the effect that compliance with such requirement would be in conflict with the Act or any other state or federal law.

**Section 28. Annual Reporting Covenant.** No later than January 31 of each calendar year (commencing January 31, 2022), the Borrower, on behalf of the 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 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 Bonds are no longer Outstanding or (ii) the proceeds of the Bonds have been fully spent.

IN WITNESS WHEREOF, the Authority and the Borrower have executed this Regulatory Agreement by duly authorized representatives, all as of the date first written hereinabove.

HOUSING AUTHORITY OF THE CITY OF  
SAN DIEGO

By: \_\_\_\_\_  
Richard C. Gentry  
Executive Director

ATTEST:

\_\_\_\_\_  
Scott Marshall  
Deputy Secretary

[signatures continued on next page]

HILLTOP FAMILY HOUSING, L.P.,  
a California limited partnership

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

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

By: \_\_\_\_\_  
James Silverwood, President

By: NEXUS MGP LLC,  
a California limited liability company,  
its Managing General Partner

By: NEXUS for Affordable Housing, Inc.,  
a California nonprofit public benefit  
corporation, its Manager

By: \_\_\_\_\_  
Gina C. Onweiler, President

[Notary Pages]

## **APPENDIX A**

### **LEGAL DESCRIPTION**

The estate or interest in the land described below and which is encumbered is:

[TO COME]

## **APPENDIX B**

### **CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

The undersigned, \_\_\_\_\_, being duly authorized to execute this certificate on behalf of Hilltop Family Housing, L.P., a California limited partnership (the "Borrower"), hereby represents and warrants that:

1. The undersigned has read and is familiar with the provisions of the following documents associated with the Borrower's participation in the Housing Authority of the City of San Diego's (the "Authority") Multifamily Housing Revenue Bonds (The Orchard at Hilltop) Series 2020H-1 and Multifamily Housing Revenue Bonds (The Orchard at Hilltop) Taxable Series 2020H-2 and, such documents including:

(a) the Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") dated as of October 1, 2020 by and between the Borrower and the Authority; and

(b) the Note, dated October \_\_\_, 2020, from the Borrower to the Authority, representing the Borrower's obligation to repay the Loan.

2. As of the date of this certificate, the following percentages of residential units in the Project (i) are occupied by Very Low Income Tenants or Low Income Tenants (as such terms are defined in the Regulatory Agreement) or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the date a Very Low Income Tenant or Low Income Tenant vacated such unit:

		Studio Units	One- Bedroom Units	Two- Bedroom Units	Three- Bedroom Units	Four- Bedroom Units	Total
Occupied by Very Low Income Tenants:	% Unit Nos.:	_____	_____	_____	_____	_____	_____
Held vacant for occupancy continuously since last occupied by a Very Low Income Tenant:	% Unit Nos.:	_____	_____	_____	_____	_____	_____
Occupied by Low Income Tenants:	No. of Units:	_____	_____	_____	_____	_____	_____
Held vacant for occupancy continuously since last occupied by a Low Income Tenant:	No. of Units:	_____	_____	_____	_____	_____	_____

3. The Borrower hereby certifies that to the best of its knowledge the Borrower is not in default under any of the terms of the above documents and no event has occurred which, with the passage of time, would constitute an event of default thereunder, with the exception of the following [state actions being taken to remedy default].

HILLTOP FAMILY HOUSING, L.P.,  
a California limited partnership

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

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

By: \_\_\_\_\_  
James Silverwood, President

By: NEXUS MGP LLC,  
a California limited liability company,  
its Managing General Partner

By: NEXUS for Affordable Housing, Inc.,  
a California nonprofit public benefit  
corporation, its Manager

By: \_\_\_\_\_  
Gina C. Onweiler, President

## APPENDIX C

### INCOME COMPUTATION AND CERTIFICATION

NOTE TO APARTMENT OWNER: This form is designed to assist you in computing Annual Income in accordance with the method set forth in the Department of Housing and Urban Development ("HUD") Regulations (24 CFR 5.609). You should make certain that this form is at all times up to date with the HUD Regulations. All capitalized terms used herein shall have the meaning set forth in the Regulatory Agreement.

Re: \_\_\_\_\_, San Diego, CA \_\_\_\_\_

I/We, the undersigned state that I/we have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the unit being applied for in the above apartment project. Listed below are the names of all persons who intend to reside in the unit:

1 Name of Members of the Household	2 Relationship to Head of Household	3 Social Security Number	4 Age	5 Place of Employment
_____	HEAD	_____	_____	_____
_____	SPOUSE	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

### Income Computation

6. The total anticipated income, calculated in accordance with this paragraph 6, of all persons (except children under 18 years) listed above for the 12-month period beginning the earlier of the date that I/we plan to move into a unit or sign a lease for a unit is \$\_\_\_\_\_.

Included in the total anticipated income listed above are:

(a) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(b) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(c) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (6)(b) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by the Department of Housing and Urban Development;

(d) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount except deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;

(e) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay except lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (excluding payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay);

(f) Welfare assistance. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(1) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(2) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage;

(g) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(h) All regular pay, special pay and allowances of a member of the Armed Forces except the special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

Excluded from such anticipated income are:

(a) Income from employment of children (including foster children) under the age of 18 years;

(b) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(c) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses except payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay;

(d) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(e) Income of a live-in aide, as defined by 24 CFR §5.403;

(f) The full amount of student financial assistance paid directly to the student or to the educational institution;

(g) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(h) (1) Amounts received under training programs funded by the Department of Housing and Urban Development;

(2) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(3) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(4) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the Public Housing Authority or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time;

(5) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(i) Temporary, nonrecurring or sporadic income (including gifts);

(j) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(k) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(l) Adoption assistance payments in excess of \$480 per adopted child;

(m) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(n) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(o) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(p) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR §5.609(c) apply.

7. Do the persons whose income or contributions are included in item 6 above

(a) have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interests in Indian trust land)?

\_\_\_\_\_Yes \_\_\_\_\_No

(b) have they disposed of any assets (other than at a foreclosure or bankruptcy sale) during the last two years at less than fair market value?

\_\_\_\_\_Yes \_\_\_\_\_No

(c) If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than \$5,000?

\_\_\_\_\_Yes \_\_\_\_\_No

(d) If the answer to (c) above is yes, state:

(1) the combined total value of all such assets: \$\_\_\_\_\_;

(2) the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy in the unit that you propose to rent: \$\_\_\_\_\_, and

(3) the amount of such income, if any, that was included in item 6 above:

\$\_\_\_\_\_

8. (a) Are all of the individuals who propose to reside in the unit full-time students\*?

\_\_\_\_\_Yes \_\_\_\_\_No

\*A full-time student is an individual enrolled as a full-time student during each of 5 calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance or is an individual pursuing a full-time course of institutional on farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

(b) If the answer to 8(a) is yes, is at least 2 of the proposed occupants of the unit a husband and wife entitled to file a joint federal income tax return?

\_\_\_\_\_Yes \_\_\_\_\_No

9. Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the rental housing project in which the unit is located (hereinafter the "Borrower"), has any family relationship to the Borrower; or owns directly or indirectly any interest in the Borrower. For purposes of this paragraph, indirect ownership by an individual shall mean ownership by a family member, ownership by a corporation, partnership, estate or trust in proportion to the ownership

or beneficial interest in such corporation, partnership, estate or trust held by the individual or a family member; and ownership, direct or indirect, by a partner of the individual.

10. This certificate is made with the knowledge that it will be relied upon by the Borrower to determine maximum income for eligibility to occupy the unit; and I/we declare that all information set forth herein is true, correct and complete and based upon information I/we deem reliable and that the statement of total anticipated income contained in paragraph 6 is reasonable and based upon such investigation as the undersigned deemed necessary.

11. I/we will assist the Borrower in obtaining any information or documents required to verify the statements made herein, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.

12. I/we acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the Borrower to lease the unit and will entitle the Borrower to prevent or terminate my/our occupancy of the unit by institution of an action for ejection or other appropriate proceedings.

I/we declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_ day of \_\_\_\_\_ in the County of San Diego, California.

---

Applicant

---

Applicant

[Signature of all persons (except children under the age of 18 years)  
listed in number 2 above required]

FOR COMPLETION BY BORROWER ONLY:

1. Calculation of eligible income:
  - a. Enter amount entered for entire household in 6 above: \$
  - b. (1) If the answer to 7(c) above is yes, enter the total amount entered in 7(d)(2), subtract from that figure the amount entered in 7(d)(3) and enter the remaining balance (\$\_\_\_\_\_)
  - (2) Multiply the amount entered in 7(d)(1) times the current passbook savings rate as determined by HUD to determine what the total annual earnings on the amount in 7(d)(1) would be if invested in passbook savings (\$\_\_\_\_\_), subtract from that figure the amount entered in 7(d)(3) and enter the remaining balance (\$\_\_\_\_\_);
  - (3) Enter at right the greater of the amount calculated under (1) or (2) above: \$
  - c. TOTAL ELIGIBLE INCOME  
(Line 1.a plus line 1.b(3)): \$
2. The amount entered in line 1.c:  
\_\_\_\_\_ Qualifies the applicant(s) as a Low Income Tenant(s) \_\_\_ or a Very Low Income Tenant(s) \_\_\_ [check applicable box, if any]  
  
\_\_\_\_\_ Does not qualify the applicant(s) as a Low Income Tenant(s) \_\_\_, or a Very Low Income Tenant(s) \_\_\_ [check applicable box, if any].
3. Number of apartment unit assigned: \_\_\_\_\_  
Bedroom Size \_\_\_\_\_ Rent: \$
4. This apartment unit [was/was not] last occupied for a period of 31 or more consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit qualified them as Low Income Tenants \_\_\_ or Very Low Income Tenants \_\_\_ [check applicable box].
5. Method used to verify applicant(s) income:  
\_\_\_\_\_ Employer income verification.  
\_\_\_\_\_ Copies of tax returns.  
\_\_\_\_\_ Other (\_\_\_\_\_)

---

Manager

INCOME VERIFICATION  
(for employed persons)

The undersigned employee has applied for a rental unit located in a project financed under the Housing Authority of the City of San Diego Multifamily Housing Revenue Bond Program for persons of lower income. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual wages	_____
Overtime	_____
Bonuses	_____
Commissions	_____
Other Income	_____
Total current income	_____

I hereby certify that the statements above are true and complete to the best of my knowledge.

_____ Signature	_____ Date	_____ Title
--------------------	---------------	----------------

I hereby grant you permission to disclose my income to \_\_\_\_\_ in order that they may determine my income eligibility for rental of an apartment located in their project which has been financed under the Housing Authority of the City of San Diego Multifamily Housing Revenue Bond Program.

_____ Signature	_____ Date
--------------------	---------------

Please send to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

INCOME VERIFICATION  
(for self-employed persons)

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding calendar year and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**APPENDIX D**  
**CDLAC RESOLUTION**

[Attached]

## APPENDIX E

### CDLAC COMPLIANCE CERTIFICATE

#### **CERTIFICATION of COMPLIANCE II** **for QUALIFIED RESIDENTIAL RENTAL PROJECT**

Project Name: The Orchard at Hilltop

Name of Bond Issuer: Housing Authority of the City of San Diego

1. Project Name Change: No\_\_\_\_ Yes\_\_\_\_  
(If project name has changed since the award of allocation please note the original project name as well as the new project name.)

If yes provide old and new Project Name \_\_\_\_\_

2. CDLAC Application No.: 20-500

3. Bond Issuer Change: No\_\_\_\_ Yes\_\_\_\_  
(If Bond Issuer has changed since the award as a result of refinance or refunding of an allocation please note the original Issuer as well as the new Issuer.)

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

4. Change in Borrower No\_\_\_\_ Yes\_\_\_\_  
(If Borrower has changed since the award affecting the CDLAC resolution please note the original Borrower as well as the new Borrower.)

If yes provide the Name of the existing and New Borrower \_\_\_\_\_  
Contact Information \_\_\_\_\_

5. Change in Management Company No\_\_\_\_ Yes\_\_\_\_  
If yes provide the Name of the New Management Company \_\_\_\_\_

6. Has the Qualified Project Period commenced? No\_\_\_\_ Yes\_\_\_\_  
No\_\_\_\_ Yes\_\_\_\_ Already Submitted Certification  
If yes please submit the Certificate of Qualified Project Period (one time only)

7. Has the project been completed and placed in service?  
No\_\_\_\_ Yes\_\_\_\_ Already Submitted Certification  
If yes please submit Completion Certification (one time only)

8. Have any of the following events occurred associated with the bond allocation including but not limited to: defaults associated with rents and income requirements, Bond Default or a Qualified Bond Default.  
No\_\_\_\_ Yes\_\_\_\_

If so, please describe and explain?

9. Has a termination of the Regulatory Agreement occurred or is a termination planned in the next year? Has proper noticing occurred?

No \_\_\_\_\_ Yes \_\_\_\_\_

If so, please describe and explain?

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

11. Please indicate the distribution of the CDLAC restricted 10% of the 50% AMI units

Bedroom Type	# of Units in PSR	# of Units in CDLAC Resolution
1 Bedroom	_____	_____
2 Bedroom	_____	_____
3 Bedroom	_____	_____

12. If the Project has committed to and is currently providing the service amenities for a term as specified in the CDLAC resolution, please verify the services are being provided: on a regular and ongoing basis, which are provided free of charge and all hour requirements are being met:

\_\_\_\_\_ After-school Programs  
\_\_\_\_\_ Educational, health and wellness, or skill building classes  
\_\_\_\_\_ Health and Wellness services and programs (not group classes)  
\_\_\_\_\_ Licensed Childcare provided for a minimum of 20 hours per week (Monday-Friday)  
\_\_\_\_\_ Bona-Fide Service Coordinator/ Social Worker

Is the service being offered on an ongoing basis and provided free of charge (childcare excepted)?

No \_\_\_\_\_ Yes \_\_\_\_\_

Are all hour requirements being met?

No \_\_\_\_\_ Yes \_\_\_\_\_

**Attach evidence demonstrating that the above listed services are being provided and have met the requirements in the CDLAC Resolution. Including but not limited to MOUs and or contracts associated with the services rendered, a 12-month schedule (current reporting year) of the services offered, flyers, sign-up sheets, etc.**

"Pursuant to Section 13 of Resolution No. 18-155 (the "Resolution"), adopted by the California Debt Limit Allocation Committee (the "Committee") on \_\_\_\_\_, I, \_\_\_\_\_, an Officer of the Borrower, hereby certify under penalty of perjury that, as of the date of this Certification, the above-mentioned Project is in compliance with the terms and conditions set forth in the Resolution as outlined above. I further certify that I have read and understand the CDLAC Resolution, which specifies that once the Tax-Exempt Bonds are issued, the terms and conditions set forth in the Resolution Exhibit A, shall be

enforceable by the Committee through an action for specific performance, negative points, withholding future allocation or any other available remedy.

---

Signature of Officer

---

Printed Name of Officer

---

Title of Officer

---

Date

## APPENDIX F

### CDLAC COMPLETION CERTIFICATE

#### CERTIFICATE of COMPLETION for QUALIFIED RESIDENTIAL RENTAL PROJECTS

- 1) Project Name: The Orchard at Hilltop  
*(If project name has changed since the award of allocation please note the original project name as well as the new project name.)*
- 2) CDLAC Application No.: 20-500
- 3) Name of Bond Issuer: Housing Authority of the City of San Diego
- 4) Name of Borrower: Hilltop Family Housing, L.P., a California limited partnership  
*(If Borrower has changed name since the award please note the original Borrower as well as the new Borrower.)*
- 5) The undersigned hereby certifies that all work on the Project was substantially completed as of \_\_\_\_\_, 20\_\_

The undersigned hereby further certifies that:

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

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

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

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

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Signature of Officer

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Printed Name of Officer

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Title of Officer

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Phone Number

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**ASSIGNMENT OF DEED OF TRUST DOCUMENTS**

**from**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO**

**to**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as trustee,**

**with the consent of**

**HILLTOP FAMILY HOUSING, L.P.**

**Dated as of October 1, 2020**

**Relating to:**

**\$ \_\_\_\_\_  
Housing Authority of the City of San Diego  
Multifamily Housing Revenue Bonds  
(The Orchard at Hilltop), Series 2020H-1**

**and**

**\$ \_\_\_\_\_  
Housing Authority of the City of San Diego  
Multifamily Housing Revenue Bonds  
(The Orchard at Hilltop), Taxable Series 2020H-2**

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This instrument prepared by and  
when recorded return to:

Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attention: Sean M. Gillen, Esquire

## **ASSIGNMENT OF DEED OF TRUST DOCUMENTS**

This **ASSIGNMENT OF DEED OF TRUST DOCUMENTS**, dated as of October 1, 2020 (as the same may be amended, modified or supplemented from time to time, “Assignment”) from the **HOUSING AUTHORITY OF THE CITY OF SAN DIEGO**, a public body corporate and politic, duly organized and validly existing under the laws of the State of California (together with its successors and assigns, the “Assignor”), to **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, as trustee (together with any successor trustee under the Indenture described below and their respective successors and assigns, the “Assignee”) under the Indenture of Trust dated as of October 1, 2020 (as the same may be amended, modified or supplemented from time to time, the “Indenture”), between the Assignor as Issuer and the Assignee as Trustee,

### **WITNESSETH:**

**WHEREAS**, Hilltop Family Housing, L.P., a limited partnership organized and existing under the laws of the State of California (together with its permitted successors and assigns, the “Borrower”) has:

(i) entered into a Loan Agreement with the Assignor dated as of October 1, 2020 (as the same may be amended, modified or supplemented from time to time, the “Loan Agreement”), evidencing indebtedness in the aggregate principal amount of \$\_\_\_\_\_ (the “Loan”); and

(ii) executed and delivered to the Assignor the Promissory Note dated October 1, 2020 (as the same may be amended, modified or supplemented from time to time, the “Promissory Note”) in the principal amount of \$\_\_\_\_\_ and made to the order of the Assignor, as payee, further evidencing the Loan; and

(iii) executed and delivered to the Assignor a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of October 1, 2020 (as the same may be amended, modified or supplemented from time to time, the “Mortgage”) made to a trustee for the benefit of the Assignor, securing the Promissory Note, recorded in the real property records of San Diego County, California, and relating to the real estate described in Exhibit A hereto; and

**WHEREAS**, the Loan Agreement, the Promissory Note and the Mortgage, together with all financing and continuation statements to perfect the liens and security interests granted thereby, are collectively referred to herein as the “Security Documents”; and

**WHEREAS**, the Assignor desires to assign and transfer to the Assignee all its right, title and interest in and to the Security Documents, excluding the Reserved Rights (as defined in the Indenture) of the Assignor, and the Assignee desires to acquire Assignor’s rights, title and interest as aforesaid under the Security Documents in accordance with the terms hereof, and the Assignee is joining in the execution of this Assignment in order to evidence its acceptance hereof; and

**WHEREAS**, the Borrower is joining in the execution of this Assignment in order to evidence its consent hereto and in order to agree that the Security Documents shall be effective to secure the obligations of the Borrower to the Assignee as more fully set forth therein and herein.

**NOW THEREFORE**, in consideration of issuance of the Bonds and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

Section 1. Definitions. All words and phrases defined in the Indenture have the same meanings in this Assignment, which definitions are incorporated herein by reference, unless a different definition is set forth in this Assignment.

Section 2. Assignment. The Assignor sells, assigns and sets over and transfers to the Assignee all the right, title and interest of the Assignor in, to and under the Security Documents, excluding the Reserved Rights of the Assignor. This Assignment is made and shall be without recourse, warranty or representation of the Assignor.

Section 3. Miscellaneous. In case any one or more of the provisions contained in this Assignment are invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not be affected or impaired thereby.

Section 4. Counterparts; Electronic Signatures. This Assignment may be executed in any number of counterparts, each executed counterpart constituting an original, but all counterparts together constituting only one instrument. To the fullest extent permitted by applicable law, electronically transmitted or facsimile signatures shall constitute original signatures for all purposes under this Assignment.

Section 5. Governing Law. It is the intention of the parties hereto that this Assignment and the rights and obligations of the parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of California, without reference to its conflicts of laws and principles.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed by their duly authorized representatives as of the date first written above.

**ASSIGNOR:**

HOUSING AUTHORITY OF THE CITY OF SAN  
DIEGO

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_

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

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
(here insert name of the officer)

personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**ASSIGNEE:**

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as trustee

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_

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

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
(here insert name of the officer)

personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

The undersigned, being the Borrower referred to in the foregoing Assignment, hereby acknowledges receipt and acceptance thereof and consents and agrees to the Assignment made therein and to the terms and provisions thereof to such Assignment.

**BORROWER:**

HILLTOP FAMILY HOUSING, L.P., a California  
limited partnership

By: Nexus for Affordable Housing Group, Inc., a  
California corporation, its Managing General  
Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_

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

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
(here insert name of the officer)

personally appeared \_\_\_\_\_ who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that  
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**  
[TO BE PROVIDED]

**BOND PURCHASE AGREEMENT**

**by and among**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO,**

**HILLTOP FAMILY HOUSING, L.P.**

**and**

**WESTERN ALLIANCE BUSINESS TRUST**

**Dated October \_\_, 2020**

**Relating to:**

**\$ \_\_\_\_\_**

**Housing Authority of the City of San Diego  
Multifamily Housing Revenue Bonds  
(The Orchard at Hilltop), Series 2020H-1**

**and**

**\$ \_\_\_\_\_**

**Housing Authority of the City of San Diego  
Multifamily Housing Revenue Bonds  
(The Orchard at Hilltop), Taxable Series 2020H-2**

## **BOND PURCHASE AGREEMENT**

WESTERN ALLIANCE BUSINESS TRUST, a statutory business trust duly organized and validly existing under the laws of the State of Delaware (together with its successors, assigns or designees hereunder, the “Purchaser”), hereby offers to enter into the following agreement with HOUSING AUTHORITY OF THE CITY OF SAN DIEGO, a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California (together with its successors and assigns, the “Issuer”), and HILLTOP FAMILY HOUSING, L.P., a limited partnership duly organized and validly existing under the laws of the State of California (together with its permitted successors and assigns, the “Borrower”), for the sale by the Issuer and the purchase by the Purchaser or its designee of the Bonds described below, which are being issued by the Issuer for the benefit of the Borrower. Upon the Issuer’s and the Borrower’s acceptance of this offer and your execution and delivery of this Agreement, this Agreement will be binding upon the Issuer, the Borrower and the Purchaser. This offer is made subject to the Issuer’s and the Borrower’s acceptance, evidenced by your execution and delivery of this Agreement to the Purchaser, at or prior to 1 p.m., eastern time, on October \_\_, 2020 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 in reliance on the representations, warranties and covenants contained herein, the Purchaser hereby agrees to purchase 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 in exchange for delivery by the Purchaser of the initial installment of the Purchase Price for the Bonds set forth as Item 2 in Exhibit B attached hereto. By its acknowledgment and consent hereto, the Purchaser agrees to fund all future installments of the Purchase Price to the Trustee on the dates specified in Exhibit B hereto or such other date as provided in Section 14 hereto.

2.2     The Bonds will (i) be issued pursuant to the Resolution and the Indenture and (ii) have the payment related terms (that is, the dated date, maturity date, interest rate, interest payment dates and redemption provisions) set forth in Item 3 in Exhibit B attached hereto and in the Indenture.

Section 3.     Closing. The Closing will take place at the time and on the date set forth in Item 5 in Exhibit B or at such other time or on such other date as may be mutually agreed upon by the Issuer, the Borrower and the Purchaser. At the Closing, the Issuer will direct the Trustee to deliver the Bonds to or upon the order of the Purchaser 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 at the offices of Jones Hall in San Francisco, California, 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 simultaneously will deliver the Purchase Price for the Bonds, by wire transfer, to the Trustee, in immediately available federal funds, for the account of the Issuer or as the Issuer directs. The Bonds are issued as draw-down Bonds with the Purchase Price as set forth in Section 2.1. The Bonds will be made available to the Purchaser one business day before the Closing at the closing location for purposes of inspection. The Purchaser shall fund the purchase price of the Bonds in installments on the dates and in the amounts set forth on Exhibit B attached hereto, subject to Section 12 hereof, the terms and conditions contained in the Indenture, the Loan Agreement and the other Borrower Documents. The Bonds will be prepared and delivered as fully registered Bonds without coupons in the denominations set forth in the Indenture. The Bonds should be registered by the Trustee in the name of Western Alliance Business Trust.

Section 4.      Representations and Warranties of Issuer.

4.1      The Issuer hereby makes the following representations and warranties to the Purchaser, for its benefit and the benefit of the Holders from time to time of the Bonds, all of which will continue in effect subsequent to the purchase of the Bonds:

(a)      The Issuer is a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California, and is authorized to execute and deliver this Agreement and the other 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 this Agreement and 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 Resolution, this Agreement and the Issuer Documents.

(c)      At the time of its adoption, the Issuer had all necessary power and authority to adopt the Resolution.

(d)      The Issuer has duly adopted the Resolution at a meeting or meetings 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 this Agreement, the Bonds and the Issuer Documents, (ii) performance by the Issuer of the obligations contained in this Agreement, in the Bonds and in the Issuer Documents, and (iii) consummation by the Issuer of all of the transactions contemplated hereby and by the Issuer Documents.

(f)      Assuming the valid authorization, execution and delivery of this Agreement and the Issuer Documents by the other parties hereto and 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 this Agreement, the Issuer Documents or the Bonds, or the consummation by the Issuer of the transactions 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 timely filed after Closing).

(h)      To the best knowledge of the Issuer, the execution and delivery by the Issuer of this Agreement, the Bonds and the Issuer Documents, and the consummation by the Issuer of the transactions contemplated hereby and 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 is 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, (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, or (C) the exclusion of the interest on the Bonds from the gross income of the holders thereof for federal income tax purposes. 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) When delivered to the Purchaser after receipt of payment therefor in accordance with the provisions of this Agreement, the Bonds will be duly authorized, executed, issued, and delivered and will constitute the Issuer's legal, valid and binding special, limited obligations, enforceable in accordance with their 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), and will be entitled to the benefit and security of the Indenture.

(k) Other than the 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.

(l) The Issuer has not taken or omitted to take on or prior to the date hereof any action, that would adversely affect the exclusion of the interest on the Bonds from the gross income of the holders thereof for federal income tax purposes.

(m) To the best knowledge of the Issuer, the Issuer has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the Issuer is an issuer whose arbitrage certifications may not be relied upon.

(n) On the Closing Date, each of the representations and warranties of the Issuer contained herein and in the Issuer Documents shall be true, correct and complete.

(o) The Purchaser has not provided any municipal advisory services to the Issuer within the meaning of Rule 15Ba1-1 of the Securities Exchange Act of 1934, as amended.

4.2 Any certificate signed by any official of the Issuer and delivered to the Purchaser in connection with the delivery of the Bonds will be deemed to be a representation and warranty by the Issuer to the Purchaser for its benefit and for the benefit of the Holders from time to time of the Bonds, as to the statements made therein.

## Section 5. Representations and Warranties of Borrower.

5.1 The Borrower makes the following representations and warranties to the Issuer and the Purchaser for its benefit and for the benefit of the Holders from time to time of the Bonds, as of the date hereof, all of which will continue in effect subsequent to the purchase of the Bonds:

(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. The Administrative General Partner is, and at all times will be, a limited liability company duly organized, validly existing and in good standing under the laws of the State. The Managing General Partner is, and at all times will be, a corporation duly organized, validly existing and in good standing under the laws of the State.

(b) The Borrower has, and on the Closing Date will have, full legal right, power and authority (i) to execute and deliver this Agreement and the Borrower Documents and (ii) to consummate the transactions contemplated by this Agreement and the Borrower Documents. The Managing General Partner has, and on the Closing Date will have, full legal right, power and authority to execute and deliver this Agreement and the Borrower Documents on behalf of the Borrower.

(c) 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 Borrower Documents, (ii) performance by the Borrower of the obligations contained in the Borrower Documents, and (iii) consummation by the Borrower of all transactions contemplated hereby and by the Borrower Documents.

(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 or for the execution and delivery by the Borrower of this Agreement and the Borrower Documents or the consummation by the Borrower of the transactions contemplated hereby or thereby [, including, without limitation, an advisory opinion from the appraisal district regarding an exemption from ad valorem real estate taxation with respect to the Project,<sup>1</sup>] 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 of the interest on the Bonds from the gross income of the holders thereof for purposes of federal income taxation [or the exemption of the Project from ad valorem real estate taxation under the laws of the State<sup>2</sup>].

(f) All information concerning the Project, the Borrower, the Administrative General Partner, the Managing General Partner and the Guarantor submitted to the Purchaser by the Borrower, the Administrative General Partner, the Managing General Partner and the Guarantor, is true and correct in all material respects as of the date hereof and does not omit to state a material fact necessary to make the statements therein not misleading.

(g) 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 threatened against or affecting the Borrower, the Administrative General Partner, the Managing General Partner and the Guarantor or, to the knowledge of the Borrower, any basis therefor (i) in any way affecting the organization and existence of the Borrower, the Borrower, the Administrative General Partner, the Managing General Partner and the Guarantor, (ii) contesting or materially affecting the validity or

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<sup>1</sup> Delete if ad valorem exemption is inapplicable.

<sup>2</sup> Delete if ad valorem exemption is inapplicable.

enforceability of this Agreement, the Borrower Documents or the Guarantor Documents, (iii) contesting the powers of the Borrower or its authority with respect to the Borrower Documents, (iv) contesting the authority of the Managing General Partner 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 of the Borrower, the Administrative General Partner, the Managing General Partner and the Guarantor, (B) the due performance by the Borrower of the Borrower Documents to which it is a party or by the Guarantor of the Guarantor Documents to which the Guarantor is a party, (C) the validity or enforceability of any of the Borrower Documents or the transactions contemplated hereby or by any Borrower Document or Guarantor Document, [or] (vi) in any way contesting the exclusion from the gross income of the holders thereof for purposes of federal income taxation of the interest on the Bonds, [or (vii) in any way contesting the exemption of the Project from ad valorem real estate tax exemption<sup>3</sup>].

(h) This Agreement is, and, when executed and delivered by the Borrower and the other parties hereto, and the Borrower 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.

(i) The execution and delivery by the Borrower of this Agreement and the Borrower Documents and the consummation by the Borrower of the transactions contemplated thereby and hereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under (i) organizational documents 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, commitment or other obligation or instrument to which the Borrower is a party or by which the Borrower or its properties is bound.

(j) The Purchaser has not provided any municipal advisory services to the Borrower within the meaning of Rule 15Ba1-1 of the Securities Exchange Act of 1934, as amended.

5.2 Each of the representations and warranties set forth in this Section will survive the Closing.

5.3 Any certificate signed by the Borrower or the Managing General Partner and delivered to the Purchaser shall be deemed a representation and warranty by the Borrower to the Purchaser for its benefit and for the benefit of the Holders from time to time of the Bonds, as to the statements 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 and the other Issuer Documents.

(b) After all conditions have been met with respect to the issuance of the Bonds (including without limitation the payment of the Purchase Price), the Issuer will cause the Bonds

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<sup>3</sup> Delete if ad valorem exemption is inapplicable.

to be delivered in accordance with this Agreement, and upon receipt of evidence that the Trustee has received the Purchase Price set forth in Section 2.1 hereof, to the address and at the time specified by the Purchaser in conjunction with the Closing.

(c) The Issuer will not knowingly take or omit to take any action 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 included in the gross income of the holders thereof for federal income tax purposes.

(d) Prior to the Closing, the Issuer 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 obligations under the Resolution, this Agreement, the Issuer Documents and the Bonds.

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 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, if any, that would constitute a condition precedent to the performance by it of its obligations under this Agreement and the Borrower Documents[, including, without limitation, the approval of the exemptions for the Project from ad valorem real estate taxation under the laws of the State<sup>4</sup>].

(c) The Borrower will not voluntarily undertake any course of action inconsistent with the satisfaction by the Borrower of the requirements applicable to it, as set forth in this Agreement and the Borrower Documents.

## Section 7. Conditions of Closing.

7.1 The Purchaser has entered into this Agreement in reliance upon representations, covenants and agreements of the Issuer and the Borrower 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 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 will be subject to the performance by the Issuer and the Borrower of their 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) There shall not have occurred any material error, misstatement or omission in the representations and warranties made by either of the Borrower or the Issuer in this

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<sup>4</sup> Delete if ad valorem exemption is inapplicable.

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) Each of the Borrower and the Issuer shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by the Borrower and the Issuer at or prior to Closing.

(c) This Agreement, the Issuer Documents, the Borrower Documents and the Guarantor Documents 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, shall be in form and substance satisfactory to the Originator, and no event of default shall exist under any such documents.

(d) Each of the Subordinate Debt Documents shall have been executed and delivered, shall be in full force and effect, shall be in form and substance acceptable to the Originator, and shall be subject to subordination agreements in form and substance satisfactory to the Originator.

(e) [There shall have been delivered to the Purchaser evidence satisfactory to the Originator that the Project is exempt from ad valorem real estate taxation under the laws of the State and any agreement or arrangements for the payment of any amount in lieu of taxation shall be in form and substance acceptable to the Originator and shall be in full force and effect.<sup>5</sup>]

7.2 On the Closing Date, (a) the Originator shall have received, in immediately available funds, an amount equal to the fees set forth in Section 10, and the costs and expenses of the Originator incurred as of the date of the execution and delivery hereof, and (b) the Trustee shall have received the deposits required to be made in the Accounts.

7.3 In addition to the conditions set forth above, the obligations of the Purchaser to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Originator of the following items:

(a) A certificate of the Borrower, dated the Closing Date and reasonably satisfactory to the Originator, signed by the Managing General Partner, that: (1) each of the attached organizational documents, certificate of good standing, and partner consents (if any), is true, correct and complete and has not been amended, modified or rescinded; (2) each of the Borrower's representations and warranties contained herein and in the other Borrower Documents is true and correct in all material respects on and as of the Closing Date; (3) the Borrower has performed and complied in all material respects with all agreements and conditions required of the Borrower by this Agreement to be performed and complied with by it at or prior to the Closing; and (4) such other matters reasonably requested by the Originator;

(b) A certificate of the Managing General Partner, dated the Closing Date and in form and substance reasonably satisfactory to the Originator, signed by an authorized officer of the Managing General Partner, that (1) each of the attached organizational documents, certificate of good standing, authorizing resolution and evidence of incumbency is true, correct and complete and has not been amended, modified or rescinded; (2) the Managing General Partner (A) is a nonprofit public benefit corporation duly organized, validly existing and is in good standing under the laws of the State of California, with full legal right, power and authority to execute and deliver this Agreement and the other Borrower Documents on behalf of the Borrower as its managing general partner, (B) is an organization described in

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<sup>5</sup> Delete if ad valorem exemption is inapplicable.

Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and (C) is duly qualified to conduct business in the State, with full legal right, power and authority to enter into the transactions contemplated hereby and by the Borrower Documents; (3) the Managing General Partner has, by all necessary corporate action, duly authorized the execution and delivery, on its own behalf and on behalf of the Borrower, as its managing general partner, of this Agreement and the Borrower Documents; (4) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental body is required by or on behalf of the Managing General Partner for the execution and delivery by the Managing General Partner, on behalf of the Borrower, as its managing general partner, of this Agreement and the Borrower Documents and the performance by the Managing General Partner thereunder; (5) the execution and delivery by the Managing General Partner, on its own behalf and/or on behalf of the Borrower, as its managing general partner, of this Agreement and the Borrower Documents and the performance by the Managing General Partner thereunder do not violate the organizational documents of the Managing General Partner, any applicable law, rule or regulation, or any court order by which the Managing General Partner is bound, and such actions do not constitute a default under any agreement, indenture, mortgage, lease, note or other obligation or instrument to which the Managing General Partner is a party or by which it or its properties is bound; (6) 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 its knowledge, threatened against the Managing General Partner nor, to the best knowledge of the Managing General Partner, any basis therefor (i) in any way contesting the existence of the Managing General Partner, (ii) in any way contesting the authority of the Managing General Partner to act on behalf of the Borrower or the authority of the officers of the Managing General Partner to act on behalf of the Managing General Partner [or] (iii) which would have a material adverse effect on the financial condition or operations of the Managing General Partner or the consummation of the transactions on the part of the Managing General Partner or the Borrower contemplated hereby or by any Borrower Document [or (iv) in any way contesting the ad valorem real estate tax exemption of the Project<sup>6</sup>]; and (7) such other matters reasonably requested by the Originator;

(c) A certificate of the Administrative General Partner, dated the Closing Date and in form and substance reasonably satisfactory to the Originator, signed by an authorized officer of the Administrative General Partner, that (1) each of the attached organizational documents, certificate of good standing, authorizing resolution and evidence of incumbency is true, correct and complete and has not been amended, modified or rescinded; (2) the Administrative General Partner (A) is a limited liability company duly organized, validly existing and is in good standing under the laws of the State and (B) is duly qualified to conduct business in the State, with full legal right, power and authority to enter into the transactions contemplated hereby and by the Borrower Documents; (3) the Administrative General Partner has, by all necessary action, duly authorized the transactions contemplated by this Agreement and the Borrower Documents; (4) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental body is required by or on behalf of the Administrative General Partner for the transactions contemplated by this Agreement and the Borrower Documents and the performance by the Administrative General Partner thereunder; (5) the performance by the Administrative General Partner of its obligations hereunder and under the Borrower Documents do not violate the organizational documents of the Administrative General Partner, any applicable law, rule or regulation, or any court order by which the Administrative General Partner is bound, and such actions do not constitute a default under any agreement, indenture, mortgage, lease, note or other obligation or instrument to which the Administrative General Partner is a party or by which it or its properties is bound; (6) 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 its knowledge, threatened against the Administrative General Partner nor, to the best knowledge of the Administrative General Partner, any basis therefor (i) in any way contesting the existence of the Administrative General

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<sup>6</sup> Delete if ad valorem exemption is inapplicable.

Partner, (ii) in any way contesting the authority of the Administrative General Partner or the authority of the officers of the Administrative General Partner to act on behalf of the Administrative General Partner, (iii) in any way contesting the ad valorem real estate tax exemption of the Project, or (iv) which would have a material adverse effect on the financial condition or operations of the Administrative General Partner or the consummation of the transactions on the part of the Administrative General Partner or the Borrower contemplated hereby or by any Borrower Document; and (7) such other matters reasonably requested by the Originator;

(d) A certificate of the Guarantor, dated the Closing Date and in form and substance reasonably satisfactory to the Originator, signed by an authorized officer of the Guarantor, that, as applicable, (1) each of the attached organizational documents, good standing certificate, authorizing resolution and evidence of incumbency is true, correct and complete and has not been modified, amended or rescinded; (2) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental body is required by or on behalf of the Guarantor for the execution and delivery by the Guarantor of the Guarantor Documents and the performance by the Guarantor thereunder; (3) the execution and delivery by the Guarantor of the Guarantor Documents and the performance by the Guarantor thereunder do not violate any applicable law, rule, or regulation or any court order by which the Guarantor is bound, and such actions do not in any material respect constitute a default under any agreement, indenture, mortgage, lease, note or other obligation or instrument to which the Guarantor is a party or by which it is bound; (4) 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 Guarantor, threatened against the Guarantor, nor any basis therefor, which would have a material adverse effect upon the financial condition of the Guarantor or the consummation of the transactions on the part of the Guarantor contemplated by the Guarantor Documents; and (5) such other matters reasonably requested by the Originator;

(e) Opinions of counsel to the Borrower, the Managing General Partner, the Administrative General Partner and the Guarantor dated the date of issuance of the Bonds and addressed to the Issuer, the Trustee and the Purchaser as to the matters on Exhibit C attached hereto;

(f) A tax opinion of Bond Counsel from Jones Hall, dated the date of issuance of the Bonds and addressed to the Purchaser, the Originator, the Trustee and the Issuer, in form and substance acceptable to the Purchaser and the Originator with respect to the Series 2020H-1 Bonds;

(g) A supplemental opinion of Bond Counsel, dated the date of issuance of the Bonds and addressed to the Purchaser, the Originator, the Trustee and the Issuer, in form and substance acceptable to the Purchaser.

(h) An opinion of counsel to the Issuer, or of Bond Counsel acting in such capacity, dated the date of issuance of the Bonds and addressed to the Trustee, the Purchaser, the Originator and the Purchaser, in form and substance acceptable to the Purchaser and the Originator;

(i) A pro forma mortgagee title insurance policy issued by the Title Company to the Trustee, dated effective as of the date of recording of the Deed of Trust, in form, scope and substance satisfactory to the Originator, insuring the lien of the Deed of Trust in an amount equal to the initial face amount of the Bonds, subject only to such liens and encumbrances as the Originator may approve;

(j) Evidence of the insurance required under the Loan Agreement, including, without limitation, flood insurance to the extent that any portion of the Improvements is located

in a Special Flood Hazard area as defined by the United States Department of Housing and Urban Development;

(k) A certified legal description and as-built ALTA/ACSM Land Title Survey of the land included in the Project by a surveyor approved by the Originator in form and substance acceptable to the Originator;

(l) Evidence in such form as the Purchaser may reasonably require of (i) satisfactory subdivision of the Project and zoning for all buildings and improvements; (ii) the valid issuance of all necessary permits and licenses to construct and operate the buildings and improvements, including without limitation all permits and licenses required under applicable law with respect to subdivision, zoning, safety, building, occupancy, fire protection, environmental, energy and similar matters; (iii) the availability of all utility and municipal services required for the operation of the buildings and improvements; and (iv) the availability of means of access to and from such property, by means of public ways or easements benefiting such property;

(m) Evidence reasonably satisfactory to the Originator that building permits have been provided or will be provided upon the payment of fees;

(n) A budget detailing the costs of the proposed construction of the Project, and plans and specifications detailing the scope of such construction, all satisfactory to the Originator;

(o) Copies of a contract with a property manager, satisfactory to the Originator, for the management of the property, plus consents of the assignments of all such contracts to the Trustee by such property manager;

(p) Copies of contracts with an architect and a general contractor or prime contractors, satisfactory to the Originator, for the performance of the construction, plus consents of the assignments of all such contracts to the Trustee by each professional;

(q) A report or written confirmation from the Engineering Consultant that (a) the Engineering Consultant has reviewed the final plans and specifications, (b) the construction contract(s) satisfactorily provide for the construction of the Project, and (c) in the opinion of the Engineering Consultant, construction of the Project can be completed within twenty-eight (28) months following Closing for an amount not greater than the amounts allocated for such purpose on the submitted budget;

(r) An environmental audit satisfactory to the Originator in scope, form and substance, and performed and certified to the Purchaser and the Originator by an environmental engineer satisfactory to the Originator;

(s) For each of the Borrower, the Administrative General Partner, the Managing General Partner and the Guarantor, a certified copy of its organizational documents as in effect on the date of closing, including copies of all filed documents, which shall, with respect to the Borrower and the Administrative General Partner, contain provisions denoting its single purpose entity status, and evidence that all action necessary for the valid execution, delivery and performance by the Borrower, the Administrative General Partner, the Managing General Partner and the Guarantor of this Agreement and the other Borrower Documents or the Guarantor Documents, as applicable, to which it is or is to become a party shall have been duly and effectively taken;

(t) A certificate of the Borrower, dated the Closing Date and signed by the Managing General Partner, in form and substance reasonably satisfactory to the Originator and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion;

(u) A non-arbitrage certificate of the Issuer, in form and substance acceptable to Bond Counsel;

(v) A certificate of the Trustee, dated the Closing Date, in form and substance satisfactory to the Originator, signed by an authorized officer of the Trustee, that (1) the Trustee has all necessary power and authority to accept the trusts granted under the Indenture and to perform its duties under the Trustee Documents; (2) the Trustee Documents have been duly authorized, executed and delivered by an authorized officer of the Trustee; (3) the Bonds have been authenticated by an authorized representative of the Trustee and delivered to or at the direction of the Originator; and (4) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental agency or body is required on behalf of the Trustee for the execution and delivery by the Trustee of the Trustee Documents or the performance by the Trustee of its obligations thereunder;

(w) A properly completed and executed IRS Form 8038 as to the Bonds to be filed with the IRS promptly following the Closing Date;

(x) Evidence of the consent of HUD to the assignment to and assumption by the Borrower of the Housing Assistance Payments Agreement for the Project and of final approval by HUD of the rentals to be charged by the Borrower following completion of the rehabilitation of the Project; and

(y) Such other documents, certificates, approvals, assurances and opinions as the Purchaser or the Originator may reasonably request.

7.4 If any of the conditions set forth in Sections 7.1, 7.2 or 7.3 has 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 (but with the consent of the Purchaser and the Originator as to any condition subject to their approval or receipt). If this Agreement is terminated pursuant to this Section, no party will have any rights or obligations to the other parties hereto, 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 or at the direction of the Purchaser. The Bonds so delivered will be in the form required 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 Issuer or the Borrower will deliver or cause to be delivered to the Originator at the place set forth in Item 5 in Exhibit B, or at such other place or places as you and the Originator may mutually agree upon, the materials described in Section 7.3.

(c) The Purchaser will deliver to the Trustee, for the account of the Issuer or as the Issuer directs, an amount equal to the initial installment of the Purchase Price of the Bonds, by wire transfer to the Trustee, in immediately available federal funds, to be deposited in the funds and accounts set forth in the Indenture upon the issuance of the Bonds, and applied as set forth in the Indenture.

Section 9. Termination of Agreement. The Purchaser may terminate this Agreement, without liability therefor, by notifying the Borrower and the Issuer 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 causing interest on the Bonds to be includable in gross income of the holders thereof for purposes of federal income taxation or to be an item of tax preference for purposes of the federal alternative minimum tax; 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 Bonds or the interests in the Loan Agreement or other financing documents 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, the Borrower Documents or the Guarantor Documents which cannot, without undue expense, be obtained prior to the Closing Date.

(c) [Any legislation is enacted by the State Legislature in the State which, in the reasonable judgment of the Purchaser, has the purpose or effect of limiting or reducing the expected exemption of the Project from ad valorem real estate taxation, or any judicial or administrative determination calling into question the availability of the exemption is handed down.<sup>7</sup>]

Section 10. Fees and Expenses; Costs of Issuance. The Borrower shall pay or cause to be paid all costs of issuance of the Bonds, including all reasonable expenses incident to the performance of the Purchaser's obligations hereunder in connection with its purchase of the Bonds, including, but not limited to, (i) the fees set forth in Section 2.2(a) of the Loan Agreement, (ii) the cost of the preparation, printing or other reproduction of the Resolution, this Agreement, the Issuer Documents, the Borrower Documents and the Guarantor Documents, in reasonable quantities for distribution, (iii) the cost of producing, authenticating and delivering the Bonds, (iv) the fees and disbursements of Bond Counsel, Issuer's counsel, Purchaser's counsel and Trustee's counsel, (v) the fees and expenses, including without limitation all initial and continuing fees and expenses, of the Trustee and all paying agents, transfer agents and bond registrars and (vi) the fees and expenses, including travel expenses, incurred by your representatives in connection with the issuance, sale and delivery of the Bonds.

Section 11. Indemnification.

11.1 The Borrower agrees to pay, defend, protect, indemnify, save and hold harmless the Issuer, the Trustee, the Purchaser, the Originator, the Purchaser (the "Principal Indemnified Parties") and each affiliate, member, officer, director, official, employee and agent of the Issuer, the Trustee, 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 (a "Control Person") (collectively referred to herein 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

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<sup>7</sup> Delete if ad valorem exemption is inapplicable.

way relating to the Bonds, the loan of the proceeds of the Bonds, the Loan Agreement, the Indenture, this Agreement or any document related to the Bonds, the loan of the proceeds of the Bonds (the “Transaction Documents”) or any transaction or agreement, written or oral, pertaining to the foregoing; provided the Borrower shall not be required to so indemnify any Indemnified Party to the extent, but only to the extent, caused by the willful misconduct or gross negligence of such Indemnified Party.

11.2 The Borrower also agrees to pay, defend, protect, indemnify, save and hold harmless the Trustee, the Purchaser, the Originator, the Purchaser and each affiliate, member, officer, director, official, employee and agent of such parties from and against all Liabilities directly or indirectly arising from or relating to any fraud or misrepresentations or omissions contained in the proceedings of the Issuer pertaining to the financial condition of the Borrower; provided, however that the foregoing indemnity of an Indemnified Party pursuant to Section 11.1 and this Section 11.2 shall not apply to any loss to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party or any affiliate, member, officer, director, official, employee, agent or Control Person of said Indemnified Party or of the Principal Indemnified Party with which said party is affiliated.

11.3 Any Indemnified Party shall notify the Borrower of the existence of any Liability to which this indemnification obligation would apply and shall give to the Borrower an opportunity to defend the same at the Borrower’s expense and with counsel reasonably satisfactory to the Indemnified Party, provided that the Indemnified Party shall at all times also have the right to fully participate in the defense but not to take any action to settle the same without the approval of the Borrower which approval shall not be unreasonably withheld. Each Indemnified Party shall have the right to engage separate counsel in any such action or proceeding and participate in the investigation and defense of the action or proceeding and the Borrower shall be obligated to pay the reasonable fees and expenses of such separate counsel if the Indemnified Party reasonably determines that a conflict of interest exists between the interests of the Indemnified Party and the interests of the Borrower. If the Borrower shall, after this notice and within a period of time necessary to preserve any and all reasonable defenses to any claim asserted, fail to assume the defense or to employ counsel for that purpose satisfactory to the Indemnified Party, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter on behalf of, for the account of, and at the risk, cost and expense of, the Borrower.

11.4 In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in Section 11.1 or 11.2 hereof is for any reason held to be unavailable, the Borrower and the Purchaser shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Parties may be subject, so that the Purchaser is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Purchaser 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 Purchaser be responsible for any amount in excess of the fees paid by the Borrower to the Purchaser in connection with the issuance and administration of the Bonds and provided further that the Borrower shall not be required to contribute for Liabilities to an Indemnified Party arising from the gross negligence or willful misconduct of such Indemnified Party. No person guilty of fraudulent misrepresentation (within the meaning of Section 10(b) of the Securities Act of 1933) shall be entitled to contribution from any person who was not guilty of such misrepresentation.

11.5 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 that the Borrower may otherwise have under law or any other Borrower Document 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.

11.6 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 Borrower Document.

11.7 The Borrower shall be subrogated to an Indemnified Party's rights of recovery to the extent of any liabilities satisfied by Borrower. Such Indemnified Party shall execute and deliver such instruments and papers as are necessary to assign such rights and assist in the exercise thereof.

Nothing herein shall be construed to create recourse debt to the Borrower or any of its partners for the Loan or the Bonds, except as set forth in Section 10.13 of the Loan Agreement.

Section 12. Miscellaneous.

12.1 All notices, demands and formal actions hereunder will be in writing and mailed, telecopied or delivered to the following addresses or such other address as any of the parties shall specify:

If to the Purchaser	Western Alliance Business Trust One East Washington Street, Suite 2400 Phoenix, Arizona 85004 Attention: Philipp Smaczny
With a copy to:	Boston Capital Finance LLC One Boston Place, 22nd Floor Boston, Massachusetts 02108 Attention: Sean Curry
and:	Kutak Rock LLP 1650 Farnam Street Omaha, Nebraska 68102 Attention: Sean Gillen
If to the Issuer:	Housing Authority of the City of San Diego 1122 Broadway, Suite 300 San Diego, California 92101 Attention: Executive Director
With copies to (none of which cop-ies shall constitute notice to the Issuer):	Office of the San Diego City Attorney 1200 Third Avenue, Suite 1100 San Diego, California 92101 Attention: Marguerite Middaugh
and:	Jones Hall, A Professional Law Corporation 475 Sansome Street, Suite 1700 San Francisco, California 94111 Attention: Josh D. Anzel, Esq.
If to the Borrower:	Hilltop Family Housing, L.P. c/o Affirmed Housing Group, Inc. 13520 Evening Creek Drive North, Suite 160 San Diego, California 92128

Attention: James Silverwood, President

With a copy to: Katten Muchin Rosenman LLP  
2029 Century Park East, Suite 2600  
Los Angeles, California 90067  
Attention: David Cohen, Esq.

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 except as provided herein with respect to the Purchaser and the Holders of the Bonds.

12.3 This Agreement may not be assigned by the Issuer or the Borrower. This Agreement may be assigned by the Purchaser upon written notice of such assignment from the Purchaser to the Issuer and the Borrower. The Purchaser may designate the entity in whose name the Bonds are to be registered at Closing by providing registration information to the Trustee on or prior to the Closing Date.

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 Issuer and 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. To the fullest extent permitted by applicable law, electronically transmitted or facsimile signatures shall constitute original signatures for all purposes under this Agreement.

12.7 This Agreement supersedes and replaces all prior negotiations, agreements and understandings between the parties hereto in relation to the sale of the Bonds.

12.8 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.

12.9 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.

12.10 This Agreement will be governed by and construed in accordance with the laws of the State applicable to agreements to be performed wholly therein, without regard to conflict of laws principles.

12.11 The obligations of the Purchaser hereunder shall be without recourse to any shareholder, trustee, officer, employee, agent or manager of the Purchaser and no shareholder, trustee,

officer, employee, agent or manager of the Purchaser shall be personally liable for the payment of any obligation of the Purchaser hereunder. In the event any legal actions or proceedings are brought in respect of such obligations, any judgment against the Purchaser shall be enforced only against the assets of the Purchaser and not against any property of any trustee or manager of the Purchaser.

12.12 As an inducement to the agreement of the Purchaser to purchase the Bonds pursuant to the terms of this Agreement, the Borrower agrees not to obtain or seek to obtain financing or credit of any kind or nature whatsoever from any other sources in lieu of the financing to be provided by the issuance of the Bonds by the Issuer and the purchase of the Bonds by the Purchaser. In the event of a breach of this covenant, the Purchaser shall be entitled to all remedies available to it, at law and in equity, including specific performance and damages. As a further inducement, the Borrower agrees to indemnify and hold harmless the Purchaser and the Purchaser from any and all litigation or claims arising out of transactions contemplated herein, except for any litigation or claims directly resulting from the gross negligence or willful misconduct of the Purchaser and the Purchaser.

12.13 The Issuer and the Borrower acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Agreement is an arm's length commercial transaction between the Issuer and the Purchaser, (ii) in connection with such transaction, the Purchaser is acting solely as a principal and not as an advisor (including, without limitation, a Municipal Advisor (as such term is defined in Section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)), agent or a fiduciary of the Issuer or the Borrower, (iii) the Purchaser has not assumed a fiduciary responsibility in favor of the Issuer or the Borrower with respect to the offering of the Bonds or the process leading thereto (whether or not the Purchaser, or any affiliate of the Purchaser, has advised or is currently advising the Issuer or the Borrower on other matters) or any other obligation to the Issuer or the Borrower except the obligations expressly set forth in this Agreement, (iv) the Purchaser has financial and other interests that differ from those of the Issuer and the Borrower, and (v) each of the Issuer and the Borrower has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the offering of the Bonds.

Section 13. Definitions. Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture.

Section 14. Contingency Draw Down. In the event either the Originator or the Borrower, with the consent of the Originator, determines that legislative, judicial or other developments have occurred or other circumstances have emerged which could result in interest on the Bonds not being excluded from gross income for federal income tax purposes, or otherwise determines that it is in the requesting party's best interest to cause the remaining authorized amount of the Bonds to be fully funded (the "Remaining Authorized Amount") in order to assure that interest on the Bonds will remain excluded from gross income for federal income tax purposes, and, in the case of such determination by the Borrower, such action will resolve the uncertainty with respect to the exclusion of interest on the Bonds from gross income for federal income tax purposes and will not jeopardize receipt of previously committed unfunded debt or equity funding for the Project, then the Majority Owner may provide a written letter of direction (a "Draw-Down Notice") to the Trustee, with a copy to the Borrower and the Purchaser, to cause the Remaining Authorized Amount of the Bonds to be funded. The Draw-Down Notice, if given, shall take effect on the fifth (5th) Business Day following the date of such notice (or such greater number of Business Days to which the Originator, Borrower and the Purchaser may agree in writing, with written notice to the Trustee) and contain substantially the following words: "***The Majority Owner elects to fund the Remaining Authorized Amount of the Bonds (\$\_\_\_\_\_ ) to be funded effective \_\_\_\_\_ (the "Draw-Down Date").***" The Draw-Down Notice will be delivered in the manner provided for notices under the Indenture and the Loan Agreement. After the delivery of a Draw-Down Notice, the Purchaser shall advance proceeds of the Bonds in the Remaining Authorized Amount to the Trustee for deposit in the Bond Proceeds Account of the Project

Fund and, if applicable, the Capitalized Interest Account of the Project Fund, to be held and disbursed pursuant to the Indenture and the Loan Agreement. The Borrower agrees to pay to the Trustee, on the Draw-Down Date, an amount of funds to be agreed upon by the Originator and the Borrower prior to the Draw-Down Date to cover the expected interest costs for the period between the Draw-Down Date and the date of each expected draw in accordance with the then-approved draw schedule set forth on Exhibit D hereto (the “Capitalized Interest Deposit”), to be deposited by the Trustee into the Capitalized Interest Account of the Project Fund.]

{signatures on following pages}

If the foregoing accurately sets forth our mutual understanding concerning the subject matter hereof, kindly indicate acceptance by executing this Agreement and returning this executed Agreement to the undersigned.

**WESTERN ALLIANCE BUSINESS TRUST**

By: \_\_\_\_\_  
Name:  
Title:

Accepted as of the date first above written:

**HOUSING AUTHORITY OF THE CITY OF  
SAN DIEGO**

By: \_\_\_\_\_  
Name: Richard C. Gentry  
Title: Executive Director

**HILLTOP FAMILY HOUSING, L.P., a  
California limited partnership**

By: Nexus for Affordable Housing Group, Inc., a  
California corporation, its Managing General  
Partner

By: \_\_\_\_\_  
Name:  
Title:

## **EXHIBIT A**

### **Glossary of Terms**

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

“1939 Act” means the Trust Indenture Act of 1939, as amended.

“Accounts” means all of the funds and accounts to be established under, and defined in, the Indenture, including the Project Fund (and within such Project Fund, the Bond Proceeds Account, the Costs of Issuance Account, the Equity Account, the Capitalized Interest Account and the Insurance and Condemnation Proceeds Account), the Replacement Reserve Fund, the Tax and Insurance Escrow Fund, the Rebate Fund, the Surplus Fund, the Bond Purchase Fund, the Redemption Fund, [the Transition and IRP Reserve Fund,] [the Operating Reserve Fund,] [the Additional Collateral Fund] and [the Developer Fee Reserve Fund.]

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

“Administrative General Partner” means AHG Hilltop, LLC, a California limited liability company, the administrative general partner of the Borrower.

“Agreement” means this Bond Purchase Agreement, as amended from time to time.

“Assignment of Capital Contributions” means that certain Assignment of Capital Contributions to be dated as of October 1, 2020, from the Borrower to the Trustee.

“Assignment of HAP Contract” means that certain Assignment of HAP Contract to be dated as of October 1, 2020, from the Borrower to the Trustee, with the consent of HUD.

“Assignment of Management Agreement and Consent” shall mean that contain Assignment of Management Agreement to be dated as of October 1, 2020, from the Borrower to the Trustee, together with the consent of the manager of the Project.

“Assignment of Project Documents” means that certain Assignment of Project Documents to be dated as of October 1, 2020, from the Borrower to the Trustee.

“Bonds” means, collectively, the Series 2020H-1 Bonds and the Series 2020H-2 Bonds.

“Borrower” means Hilltop Family Housing, L.P., a limited partnership duly organized, validly existing and in good standing under the laws of the State, together with its permitted successors and assigns hereunder.

“Borrower Documents” means, collectively, this Agreement, the Loan Agreement, the Regulatory Agreement, the Deed of Trust, the Note, the Environmental Indemnity, the Assignment of Project Documents, the Assignment of HAP Contract, Assignment of Capital Contributions, the HAP Contract, the Assignment of Management Agreement and Consent, the Replacement Reserve, the Interest Rate Lock Letter, the Continuing Disclosure Agreement, the Subordination Agreement and all other agreements, documents and certificates as may be required to be executed and delivered by the Borrower to carry out, give effect to, and consummate the transactions contemplated by this Agreement or by the other Borrower Documents.

“Closing” means the proceeding at which the actions described in Section 8 are performed.

“Closing Date” means the date on which the Closing takes place.

“Controlling Person” means any entity designated in writing by the Purchaser to act as a Controlling Person, in accordance with Article IX of the Indenture, initially Originator.

“Deed of Trust” means that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (With Power of Sale) to be dated as of October 1, 2020, from the Borrower to a trustee for the benefit of the Issuer and assigned to the Trustee.

“Engineering Consultant” means an engineering consultant approved by the Controlling Person.

“Environmental Indemnity” means that certain Environmental Indemnity Agreement to be dated as of October 1, 2020, from the Borrower and the Guarantor for the benefit of the Trustee.

“General Partner” means, together, Administrative General Partner and Managing General Partner.

“General Partner Pledge” means that certain Limited Guaranty, Pledge of Partnership Interests and Security Agreement to be dated as of October 1, 2020 from the General Partner to the Trustee.

“Guarantor” means Affirmed Housing Group, Inc., a Delaware corporation, together with its permitted successors and assigns.

“Guarantor Documents” means, collectively, the Guaranty of Recourse Obligations to be dated as of October 1, 2020 from the Guarantor for the benefit of the Trustee, the Guaranty of Completion to be dated as of October 1, 2020 from the Guarantor for the benefit of the Trustee, the Guaranty of Debt Service and Stabilization to be dated as of as of October 1, 2020 from the Guarantors for the benefit of the Trustee, the Environmental Indemnity, and the Interest Rate Lock Letter.

“HAP Contract” means that certain Housing Assistance Payment Contract, dated \_\_\_\_\_, 2020, between the Borrower and HUD.

“HUD” means the United States Department of Housing and Urban Development.

“Indenture” means that certain Indenture of Trust to be dated as of October 1, 2020, between the Issuer and the Trustee.

“Interest Rate Lock Letter” means that certain letter dated \_\_\_\_\_, 2020 among the Purchaser, the Borrower and the Guarantor with respect to the interest rate on the Bonds following Stabilization.

“Issuer” means Housing Authority of the City of San Diego, a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California, together with its successors and assigns.

“Issuer Assignment” means, collectively, the Issuer’s endorsement of the Note and that certain Assignment of Deed of Trust Documents to be dated as of October 1, 2020, from the Issuer to the Trustee.

“Issuer Documents” means, collectively, the Indenture, the Loan Agreement, the Regulatory Agreement, the Issuer Assignment and this Agreement.

“Loan Agreement” means that certain Loan Agreement to be dated as of October 1, 2020, between the Issuer and the Borrower.

“Managing General Partner” means Nexus for Affordable Housing Group, Inc., a California nonprofit public benefit corporation, the managing general partner of the Borrower.

“Note” means the promissory note of the Borrower to be dated the date of issuance of the Bonds from the Borrower to the Issuer and endorsed to the Trustee.

“Originator” means Boston Capital Finance LLC, a Massachusetts limited liability company.

“Project” means that certain 113-unit multifamily housing facility with related amenities and site improvements and related personal property and equipment located in San Diego, California, the acquisition, construction and equipping of which are being financed with the proceeds of the Bonds.

“Purchaser” means Western Alliance Business Trust, 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, 2020, among the Issuer, the Trustee and the Borrower.

“Replacement Reserve” means that certain Replacement Reserve and Security Agreement dated as of October 1, 2020, between the Borrower and the Trustee.

“Resolution” means the resolutions adopted by the Issuer on [September 29], 2020, relating to the transactions contemplated by this Agreement.

“Series 2020H-1 Bonds” means Issuer’s \$ \_\_\_\_\_ and Multifamily Housing Revenue Bonds (The Orchard at Hilltop Project), Series 2020H-1.

“Series 2020 \_\_ Bonds” means Issuer’s \$ \_\_\_\_\_ and Multifamily Housing Revenue Bonds (The Orchard at Hilltop Project), Taxable Series 2020H-2.

“State” means the State of California.

“Subordinate Debt” means, collectively, (i) that certain loan in the original principal amount of up to \$5,850,000 from the City of San Diego to the Borrower and (ii) those certain loans in the original principal amount of up to \$ 8,550,000 from the San Diego Housing Commission to the Borrower.

"Subordinate Debt Documents" means all applicable documents evidencing or securing the Subordinate Debt or otherwise executed and delivered by the Borrower in connection therewith or as a condition of the advance of the proceeds thereof, together with a subordination agreement executed by the lender of such Subordinate Debt, all in form and substance acceptable to the Controlling Person and the Issuer with respect to any subordination agreement to be executed by the Issuer.

“Title Company” means \_\_\_\_\_.

“Trustee” means The Bank of New York Mellon Trust Company, N.A., a national banking association, in its capacity as trustee under the Indenture, 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.

“Trustee Documents” means the Indenture, the Loan Agreement, the Regulatory Agreement and all other agreements, documents and certificates as may be required to be executed and delivered by the Trustee to carry out, give effect to, and consummate the transactions contemplated by this Agreement and the other Trustee Documents.

## EXHIBIT B

### Terms of Bonds

1. Title of Bonds: \$ \_\_\_\_\_ Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (The Orchard at Hilltop) Series 2020H-1 and \$ \_\_\_\_\_ Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (The Orchard at Hilltop) Taxable Series 2020H-2.
2. Purchase Price of Bonds: \$ \_\_\_\_\_.
3. Basic Bond Terms:
  - (a) Date of the Bonds: October \_\_\_, 2020.
  - (b) Interest Payment Dates: First day of each month commencing November 1, 2020.
  - (c) Aggregate Principal Amount of Bonds: \$ \_\_\_\_\_.
  - (d) Maturity Date for Bonds:

Series 2020H-1: October 1, 2060.

Series 2020H-2: [February 1], 2023.
  - (e) Bondholder right to demand redemption:

Bondholders will have a right to require redemption of Bonds in whole at par on or after: [October 1], 2038.
  - (f) Interest Rate for Bonds:

Series 2020H-1: variable prior to Stabilization; \_\_\_% per annum thereafter.

Series 2020H-2: variable.
  - (g) Special Redemption Provisions:
    - (i) sinking fund: on a quarterly basis to be deposited into the Redemption Fund on the dates and in the amounts shown on the debt service schedule delivered pursuant to the Indenture.
    - (ii) optional prepayment: The Bonds are subject to optional redemption in whole but not in part, at the direction of the Borrower upon not less than forty-five (45) days written notice to the Trustee and the Controlling Person (which notice shall be unconditional and irrevocable), in Authorized Denominations on any Interest Payment Date occurring on or after the First Optional Call Date, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed) equal to the principal amount thereof, plus accrued interest thereon to, but not including, the redemption date, as follows.

<u>Redemption Date</u> <sup>8</sup>	<u>Redemption Price</u>
On and after the 12th anniversary of the Stabilization Date, to but excluding the 14th anniversary of the Stabilization Date	103%
On and after the 14th anniversary of the Stabilization Date, to but excluding the 16th anniversary of the Stabilization Date	102%
On and after the 16th anniversary of the Stabilization Date, to but excluding the 17th anniversary of the Stabilization Date	101%
Thereafter	100%

(iii) a special mandatory redemption: an amount of all of the Series 2020H-2 Bonds and \$\_\_\_\_\_ in principal amount of the Series 2020H-1 Bonds will be subject to special mandatory redemption as a condition to Stabilization (as defined in the Indenture).]

(iv) mandatory redemption: as set forth in the Indenture.

(h) Draw-down Installments

<u>Purchase Date</u>	<u>Amount</u>
_____, 20__	\$ _____
_____, 20__	_____
_____, 20__	_____
_____, 20__	_____]

#### 4. Certain Required Funded Accounts:

- (a) Tax and Insurance Escrow – deposits to commence upon Closing and thereafter, two (2) Business Days before each Interest Payment Date commencing with the First Interest Payment Date.
- (b) Replacement Reserve - deposits to commence upon Stabilization.
- (c) Operating Reserve \$330,000.
- (d) [Developer’s Fee Reserve \$\_\_\_\_\_.]

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<sup>8</sup> To be confirmed

- (e) Project Fund - funds sufficient to pay all estimated costs of construction shall be deposited into the Indenture at Closing or be paid pursuant to the Assignment of Capital Contributions and/or Subordinate Debt Documents.

5. Time of Closing: 1 p.m., eastern time.

- (a) Date of Closing: On or before October \_\_, 2020.
- (b) Place of Closing: Offices of Jones Hall, San Francisco, California.
- (c) Delivery of Bonds: Physical.

## EXHIBIT C

### **Matters to be Covered by Opinions of Counsel to the Borrower, the Managing General Partner, the Administrative General Partner, and the Guarantor**

1. Organization and Qualification. The Borrower is duly formed and validly existing as a limited partnership under the laws of the State of California. The Managing General Partner is duly formed and validly existing as a nonprofit public benefit corporation under the laws of the State of California. The Administrative General Partner Member is duly formed and validly existing as a limited liability company under the laws of the State of California. The Guarantor is duly formed and validly existing as a corporation under the laws of the State of Delaware.

2. Authority and Authorization. Each of the Borrower and the Managing General Partner has all requisite power and authority to execute and deliver the Borrower Documents to which it is a party and to perform its obligations under the Borrower Documents to which it is a party, and all such action has been duly and validly authorized by all necessary action on its part. The Guarantor has all requisite power and authority to execute and deliver the Guarantor Documents and to perform its obligations under the Guarantor Documents, and all such action has been duly and validly authorized by all necessary action on its part.

3. Execution and Binding Effect. The Borrower Documents to which the Borrower is a party have been duly and validly executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with the terms thereof, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights. The Guarantor Documents have been duly and validly executed and delivered by the Guarantor and constitute the legal, valid and binding obligation of the Guarantor, enforceable in accordance with the terms thereof, except as such, enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights.

4. Authorization and Filings. No authorization, consent, approval, license, exemption or other action by, and no registration, qualification, designation, declaration or filing with, any governmental authority is or will be necessary in connection with the execution and delivery of the Borrower Documents or the Guarantor Documents, or the consummation of the transactions contemplated or performance of or compliance with the terms and conditions thereof, other than the recordings and filings referred to in paragraphs 7, 8 and 9 below.

5. Absence of Conflicts. Neither the execution and delivery of the Borrower Documents and the Guarantor Documents, nor consummation of the transactions therein contemplated, nor performance of or compliance with the terms and conditions thereof will (a) violate any Legal Requirement, (b) conflict with or result in a breach of or a default under the partnership agreement of the Borrower, the bylaws of the Managing General Partner, the operating agreement of the Administrative General Partner, or the bylaws of the Guarantor, or, to the best of counsel's knowledge after due inquiry, any agreement or instrument to which any of such parties is a party or by which any of such parties or any of their properties (now owned or hereafter acquired) may be subject or bound or (c) to the best of counsel's knowledge after due inquiry, result in the creation or imposition of any lien, charge, security interest or encumbrance upon any property (now owned or hereafter acquired) of the Borrower, other than the liens created by the Borrower Documents.

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 TAX-EXEMPT MULTIFAMILY HOUSING REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$27,885,943 AND TAXABLE MULTIFAMILY HOUSING REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$3,500,000 TO FINANCE THE ACQUISITION, CONSTRUCTION AND DEVELOPMENT OF A MULTIFAMILY RENTAL HOUSING FACILITY KNOWN AS THE ORCHARD AT HILLTOP, 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, rehabilitation, construction and development of multifamily rental housing; and

WHEREAS, Hilltop Family Housing, L.P., a California limited partnership (Borrower), has requested that the Authority borrow funds and loan the funds to the Borrower to finance Borrower's acquisition, construction and development of a multifamily residential rental housing facility known as "The Orchard at Hilltop" (Project), consisting of 113 apartment units (including two unrestricted manager's units) located at 922-944 Euclid Avenue in the City of San Diego; 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 revenue bonds to finance costs of the acquisition, construction and development of the Project; and

WHEREAS, the Authority intends to issue and sell its Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (The Orchard at Hilltop) Series 2020H-1 (Tax-Exempt Bonds), in an aggregate principal amount not to exceed \$27,885,943, and its Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (The Orchard at Hilltop) Taxable Series 2020H-2 (collectively with the Tax-Exempt Bonds, Bonds), in an aggregate principal amount not to exceed \$3,500,000, to Western Alliance Business Trust, and apply the sale proceeds of the Bonds to fund a loan to the Borrower (Loan); and

WHEREAS, the Authority will fund the Loan, and the Borrower will use the proceeds of the Bonds to finance costs of the acquisition, construction and development of the Project; and

WHEREAS, the City Council of the City of San Diego (Council), by its Resolution No. 312820, effective January 15, 2020, approved the Authority's issuance of the Bonds after publication of a "TEFRA" notice and the holding on January 14, 2020, 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, CDLAC has allocated to the Project \$27,885,943 of volume cap for private activity bonds under section 146 of the Code; and

WHEREAS, the following documents are presented for consideration:

- (1) the form of Indenture of Trust (Indenture), by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee, including the form of the Bonds attached to the Indenture as Exhibit A,
- (2) the form of Loan Agreement (Loan Agreement), by and between the Authority and the Borrower,
- (3) the form of Regulatory Agreement and Declaration of Restrictive Covenants (Regulatory Agreement), by and between the Authority and Borrower,
- (4) the form of Assignment of Deed of Trust Documents (Assignment), by the Authority in favor of Trustee, and
- (5) the form of Bond Purchase Agreement (Bond Purchase Agreement), by and among the Authority, the Purchaser and Authority; and

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

WHEREAS, on December 3, 2018, the Council adopted Resolution No. R-312078, finding that there were no substantial changes proposed to the Project and no substantial changes with respect to the circumstances under which the Project is to be undertaken that would require major revisions in the Program Environmental Impact Report No. 386029/SCH No. 2014051075 (Report) for the Project, and adopting the Addendum to the Report with respect to the Project; the HOME Investment Partnerships Program (HOME) funds will provide a part of the funding for the Project making the project subject to U.S. Department of Housing and Urban Development under 24 CFR Part 58 of the National Environmental Policy Act (NEPA); and the

Housing Commission received final NEPA clearance and authorizations to grant funds on May 2, 2020; NOW, THEREFORE,

BE IT RESOLVED, by the Board of Commissioners of 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, construction and development of the Project through the execution and delivery of the 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 Bonds. For the purpose of financing the acquisition, construction and development of the Project, the Authority approves the issuance of the Tax-Exempt Bonds in any number of subseries in an aggregate principal amount not to exceed \$27,885,943 and the issuance of the Taxable Bonds in any number of subseries in an aggregate principal amount not to exceed \$3,500,000. The Bonds shall be issued 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 Indenture. The Bonds shall be in substantially the respective forms attached as Exhibit A to the Indenture, with such appropriate variations, omissions, insertions, and provisions as are required or permitted by the Indenture. The Bonds 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 Indenture shall be paid and satisfied, solely from the revenues, receipts, and other moneys and assets pledged under the Indenture.

Section 3.     Execution and Delivery of the Bonds. The Bonds shall be executed on behalf of the Authority by the manual or facsimile signature of the Chairman of the Authority (Chairman), the Vice Chairman of the Authority (Vice Chairman), the Executive Director of the Authority (Executive Director), the Executive Vice President of Real Estate and Chief Strategy Officer (Executive Vice President Real Estate) of the San Diego Housing Commission (Housing Commission), the Vice President of Real Estate Finance of the Housing Commission (Vice President Real Estate Finance), or the Executive Vice President and Chief of Staff of the Housing Commission (Executive Vice President Chief of Staff), and attested with the manual or facsimile signature of the Secretary or a Deputy Secretary of the Authority, and the official seal of the Authority, or a facsimile, shall be impressed or imprinted on the Bonds.

Section 4.     Approval of the Indenture. The Indenture, in the form on file in the Housing Commission offices, is approved. The Chairman, the Vice Chairman, the Executive Director, the Executive Vice President Real Estate, the Vice President Real Estate Finance, the Executive Vice President Chief of Staff and the Secretary or a Deputy Secretary of the Authority, or the designee of any such officer (collectively, the Designated Officers) are each authorized to execute and deliver the Indenture 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 Indenture approved in this Resolution.

Section 5.     Approval of Loan Agreement. The 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 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 Loan Agreement approved in this Resolution.

Section 6.     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 7.     Approval of Assignment. The Assignment, in the form on file in the Housing Commission offices, is approved. The Designated Officers are each authorized to execute and deliver the Assignment 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 Assignment approved in this Resolution.

Section 8.     Approval of Bond Purchase Agreement. The Bond Purchase Agreement, in the form on file in the Housing Commission offices, is approved. The Designated Officers are each authorized to execute and deliver the Bond Purchase 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 Bond Purchase Agreement approved in this Resolution.

Section 9.     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 Bonds 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 agreement or no arbitrage certificate), and other documents, including but not limited to those described in any of the documents approved by this Resolution, that they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds and the making of the Loan in accordance with the Act and this Resolution.

Section 10. 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 Bonds and the lending program financed by the Bonds, including without limitation any of the foregoing that may be necessary or desirable in connection with any amendment of such documents, any transfer of the Project, any substitution of security for the Bonds, or any prepayment or redemption of the Bonds, 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 that such officer may deem necessary or desirable to further the purposes of this Resolution.

Section 11. 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 12. 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  
09/11/2020  
Or. Dept.: Housing  
Doc. No.: 2474673

6. Litigation. There is no pending or, to the best of counsel's knowledge after due inquiry, threatened proceeding by or before any governmental authority against or affecting the Borrower, the Managing General Partner, the Administrative General Partner, the Guarantor or the Project which, if adversely decided, would have a material adverse effect on the business, operations, condition (financial or otherwise) or prospects of the Borrower, the Managing General Partner, the Administrative General Partner, or the Guarantor or on the ability of the Borrower or the Guarantor to perform their respective obligations under the Borrower Documents and the Guarantor Documents, as applicable, or on the operation of the Project.

7. Validity of Liens. The Deed of Trust is in appropriate form for recording and, when recorded in the San Diego County Recorder, will create in favor of the Trustee a valid lien upon and security interest in the Project.

8. Perfection of Security Interests. The Borrower Documents and, when filed with the Secretary of State of the State of California, and in the real estate records of San Diego County, California, the UCC financing statements, will create in the Trustee valid and perfected security interests in the collateral described therein.

9. Remedies. The Borrower Documents and the Guarantor Documents do not omit essential remedies that in the opinion giver's experience are generally found in similar documents for mortgage loans in the State of California.

10. [Real Estate Tax Exemption. The Project qualifies for the exemption from ad valorem real estate taxes.<sup>9</sup>]

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<sup>9</sup> Delete if ad valorem exemption is inapplicable.



The City of San Diego  
**Item Approvals**

**Item Subject:** Final Bond Authorization for Hilltop & Euclid Family Housing.

<b>Contributing Department</b>	<b>Approval Date</b>
DOCKET OFFICE	09/03/2020

<b>Approving Authority</b>	<b>Approver</b>	<b>Approval Date</b>
HOUSING COMMISSION FINAL DEPARTMENT APPROVER	MARSHALL, SCOTT	09/03/2020
EXECUTIVE VICE PRESIDENT	DAVIS, JEFF	09/03/2020
CITY ATTORNEY	MIDDAUGH, MARGUERITE	09/15/2020