




MEMORANDUM

To: Bret Bartolotta, City Attorney's Office

From: J.P. Correia, San Diego Housing Commission 

Date: October 24, 2012

Subject: Ninth and Broadway Apartments, Related Entity Letter

The San Diego Housing Commission acts as the administrator for multifamily housing revenue bonds issued by the Housing Authority of City of San Diego. The Housing Authority is a related entity of the City of San Diego.

On November 27, 2012, the Housing Commission will seek Housing Authority approval for the issuance of up to \$23,000,000 in multifamily housing revenue bonds (Bonds) to finance the acquisition and rehabilitation of a multifamily residential rental housing facility known as Ninth and Broadway Apartments (Project). The proposed Bonds will be special, limited obligations of the Housing Authority, payable solely from the operating revenues and assets comprising the Project. The proposed bond issuance has been structured as a private placement and no Official Statement or other offering document will be used to market the Bonds to investors.

The attached letter has been prepared in accordance with Municipal Code §22.4101 (*et. seq.* (Code)). In preparing the bond documents for this transaction, the Housing Commission and the financing team have not relied upon any information provided by the City.

Should you have any questions, please contact me at 619-578-7575.



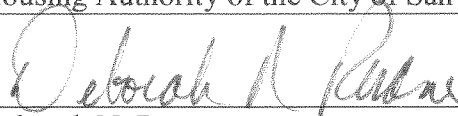
Related Entity Letter

The San Diego Housing Commission (Housing Commission), as administrator for the Housing Authority of the City of San Diego (Housing Authority), acknowledges that pursuant to Municipal Code §22.4101 *et. seq.* (Code), the Disclosure Practices Working Group (Group) has the responsibility to review the form and content of information disclosed by the City in connection with securities issued by Related Entities (as defined in the Code). To help the Group fulfill this responsibility, the Housing Commission submits this letter for approval by the Group. The Housing Commission understands and agrees that it will not docket the Preliminary Official Statement or any other offering document for consideration by the City Council prior to submitting this letter to the Group.

The Housing Commission understands that it is responsible for preparing this letter because the Housing Authority is a Related Entity of the City of San Diego. The Housing Commission makes the following certification related to the proposed multifamily housing revenue bonds for the rental housing facility known as Ninth and Broadway Apartments:

☒ The Housing Commission did not request, and did not receive, any information from a City employee that we intend to include in a Preliminary Official Statement or other offering document that is being prepared in connection with the securities being offered by the Housing Authority.

Related Entity: Housing Authority of the City of San Diego

Authorized Officer: 
Deborah N. Ruane
Senior Vice President

Dated: October 24, 2012

INDENTURE

by and between the

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO,
as Issuer**

and

**U.S. BANK NATIONAL ASSOCIATION,
as Bondowner Representative**

dated as of December 1, 2012

**relating to:
\$23,000,000 aggregate principal amount of
Housing Authority of the City of San Diego
Multifamily Housing Revenue Bonds
(9th and Broadway Apartments), 2012 Series C
consisting of:
\$1,595,000 2012 Series C-1 (Convertible Term Loan) and
\$21,405,000 2012 Series C-2 (Construction Loan)**

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EXHIBIT A	FORM OF BOND
EXHIBIT B	FORM OF INVESTOR'S LETTER

INDENTURE

This Indenture, dated as of December 1, 2012 (this "Indenture"), is by and between the Housing Authority of the City of San Diego, a public body, corporate and politic, duly organized and existing under the laws of the State of California (herein called the "Issuer"), and U.S. Bank National Association, a national banking association organized under the laws of the United States of America, and being qualified to accept and administer the obligations and duties of the Bondowner Representative hereunder, as Bondowner Representative (herein called the "Bondowner Representative").

RECITALS:

WHEREAS, the Issuer has determined to engage in a program of financing the acquisition and construction of multifamily rental housing pursuant to Chapter 1 of Part 2 of Division 24 (commencing with Section 34200) of the Health and Safety Code of the State of California (the "Act"), and has determined to borrow money for such purpose by the issuance of revenue bonds as authorized by the Act; and

WHEREAS, all conditions, things and acts required by the Act, and by all other laws of the State of California, to exist, have happened and have been performed precedent to and in connection with the issuance of the Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-1 (Convertible Term Loan) and Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-2 (Construction Loan) (collectively, the "Bonds") exist, have happened, and have been performed in due time, form and manner as required by law, and the Issuer is now duly authorized and empowered, pursuant to each and every requirement of law, to issue the Bonds for the purpose, in the manner and upon the terms herein provided; and

WHEREAS, the Issuer and the Bondowner Representative duly entered into a construction and convertible term loan agreement, dated as of December __, 2012 (the "Agreement" or the "Loan Agreement") with Broadway Upper Tower Associates, L.P., a California limited partnership (the "Borrower"), specifying the terms and conditions of the lending of the proceeds of the Bonds (the "Loan") to the Borrower for the financing of a portion of the costs of the acquisition and construction of 121 units of multifamily rental housing to be located on floors eight through seventeen of a building to be constructed at 929 9th Avenue in the City of San Diego, California (the "Project), and the repayment by the Borrower of the Loan; and

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

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

AGREEMENT:

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of, and the interest and premium, if any, on, all Bonds at any time issued and outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and for and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the owners thereof, and for other consideration the receipt and sufficiency of which are hereby acknowledged, the Issuer covenants and agrees with the Bondowner Representative, for the equal and proportionate benefit of the respective registered owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS AND GENERAL PROVISIONS

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.01 shall, for all purposes of this Indenture and of the Loan Agreement and of any indenture supplemental hereto or agreement supplemental thereto, have the meanings herein specified, as follows:

The term **"Accredited Investor"** shall mean an "accredited investor" as defined in Sections 501(a)(1) through (3) of Regulation D promulgated under the Securities Act of 1933, as amended.

The term **"Act"** shall mean Chapter 1 of Part 2 of Division 24 (commencing with Section 34200) of the California Health and Safety Code.

The term **"Administrator"** shall mean the San Diego Housing Commission, or any substitute administrator appointed by the Issuer as agent of the Issuer in the administration of the Regulatory Agreement.

The term **"Agreement"** or **"Loan Agreement"** shall mean the Construction and Convertible Term Loan Agreement, dated as of December 1, 2012, among the Bondowner Representative, the Issuer and the Borrower, pursuant to which the Issuer agrees to loan the proceeds of the Bonds to the Borrower, as originally executed or as it may from time to time be supplemented or amended in accordance with its terms.

The term **"Authorized Amount"** shall mean Twenty-Three Million Dollars (\$23,000,000), the authorized maximum principal amount of the Bonds.

The term **"Authorized Borrower Representative"** shall mean any person who at the time and from time to time may be designated as such, by written certificate furnished to the Issuer and the Bondowner Representative containing the specimen signature of such person and signed on behalf of the Borrower by the Vice President of the member/manager of the general partner of the Borrower, which certificate may designate an alternate or alternates.

The term **"Authorized Issuer Representative"** shall mean the Chairman of the Issuer, the Vice Chairman of the Issuer, the Executive Director of the Issuer, the Vice President of Real Estate of the San Diego Housing Commission, the Real Estate Programs Director of the San Diego Housing Commission or the Executive Vice President and Chief of Staff of the San Diego Housing Commission and any other officer or employee of the Issuer designated to act in such capacity by a Certificate of the Issuer containing the specimen signature of either of such persons, which certificate may designate an alternate or alternates.

The term **"Bond Counsel"** shall mean (a) Quint & Thimmig LLP, or (b) any attorney at law or other firm of attorneys selected by the Borrower and acceptable to the Issuer of nationally recognized standing in matters pertaining to the federal tax status of interest on bonds issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America, but shall not include counsel for the Borrower.

The term **"Bond Documents"** has the meaning given such term in the Loan Agreement.

The term **"Bond Fund"** shall mean the fund established pursuant to Section 5.02 hereof.

The term **"Bondowner Representative"** shall mean (a) initially, U.S. Bank National Association, a national banking association organized under the laws of the United States of America; or (b) any successor thereto under Section 8.08 hereof; or (c) subject to the provisions of Section 8.07, any entity that is the owner of a majority in principal amount of the Bonds then Outstanding or a Person selected by the owners of a majority in principal amount of the Bonds then Outstanding.

The term **"Bonds"** means, collectively, the Series C-1 Bonds and the Series C-2 Bonds.

The term **"Bond Year"** means the one-year period beginning on December 1 in each year and ending November 30 in the following year, except that the first Bond Year shall begin on the Closing Date and end on November 30, 2013.

The term **"Borrower"** shall mean Broadway Upper Tower Associates, L.P., a California limited partnership.

The term **"Business Day"** shall mean any day other than a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city in which the Bondowner Representative's Principal Office is located are authorized or obligated by law or executive order to close.

The term **"Certificate of the Issuer"** shall mean a certificate of the Issuer signed by an Authorized Issuer Representative.

The term **"Certified Resolution"** shall mean a copy of a resolution of the Issuer certified by the Secretary of the Issuer to have been duly adopted by the Issuer and to be in full force and effect on the date of such certification.

The term **"Closing Date"** shall mean December __, 2012, the date of initial delivery of the Bonds and funding of the initial advance of the principal amount of the Bonds and the Loan (in the amount referenced in Section 3.01(vii)).

The term **"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.

The term **"Construction Note"** means the Construction Note in the initial principal amount of up to \$21,405,000, and identified as such in the Loan Agreement.

The term **"Convertible Term Note"** means the Convertible Term Note in the original principal amount of up to \$1,595,000, and identified as such in the Loan Agreement.

The term **"Debt Service"** means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

The term **"Deed of Trust"** shall mean the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of December __, 2012, executed by the Borrower for the benefit of the Issuer, for the purpose of securing the obligations of the Borrower under the Notes and the Loan Agreement (except as otherwise provided in the Loan

Agreement), as such deed of trust is originally executed or as from time to time supplemented and amended in accordance with its terms and the terms of the Loan Agreement.

The term “**Default Rate**” has the meaning given to such term in the Loan Agreement.

The term “**Event of Default**” as used herein, other than with respect to defaults under the Loan Agreement, shall have the meaning specified in Section 7.01 hereof; and as used in the Loan Agreement shall have the meaning specified in Section 15.1 thereof.

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

The term “**Holder**,” “**holder**” or “**Bondholder**” or “**owner**” or “**Bondowner**” shall mean the Person in whose name any Bond is registered.

The term “**Indenture**” shall mean this Indenture, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture entered into pursuant to the provisions hereof.

The term “**Interest Payment Date**” shall mean the first calendar day of each month, commencing January 1, 2013.

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

(a) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America) or obligations the timely payment of the principal of and interest on which are fully guaranteed by the United States of America, including instruments evidencing an ownership interest in securities described in this clause (a);

(b) obligations, debentures, notes or other evidences of indebtedness issued or guaranteed by any of the following: Federal Home Loan Bank System, Export-Import Bank of the United States, Federal Financing Bank, Federal Land Banks, Government National Mortgage Association, Federal Home Loan Mortgage Corporation or Federal Housing Administration;

(c) repurchase agreements (including those of the Bondowner Representative) fully secured by collateral security described in clause (a) or (b) of this definition, which collateral (i) is held by the Agent or a third party agent approved by the Bondowner Representative during the term of such repurchase agreement, (ii) is not subject to liens or claims of third parties and (iii) has a market value (determined at least once every fourteen (14) days) at least equal to the amount so invested;

(d) certificates of deposit of, or time deposits or deposit accounts in, any bank (including the Bondowner Representative) or savings and loan association (i) the debt obligations of which (or in the case of the principal bank of a holding company, the debt obligations of the bank holding company of which) have been rated "A" or better by S&P, or (ii) which are fully insured by the Federal Deposit Insurance Corporation, or (iii) which are secured at all times, in the manner and to the extent provided by law, by collateral security (described in clause (a) or (b) of this definition) of a market value (valued at least quarterly) of no less than the amount of money so invested;

(e) investment agreements of financial institutions or insurance companies, in each case having uninsured, unsecured and unguaranteed obligations rated "AA-" or better by S&P, provided, however, that any such investment may be provided by a financial institution or insurance company having uninsured, unsecured and unguaranteed obligations not rated "AA-" or better by S&P, if such investment is unconditionally insured, guaranteed or enhanced by an entity whose uninsured, unsecured and unguaranteed obligations are rated "AA-" or better by S&P;

(f) shares in any investment company registered under the federal Investment Company Act of 1940 whose shares are registered under the federal Securities Act of 1933 and whose only investments are government securities described in clause (a) or (b) of this definition and repurchase agreements fully secured by government securities described in clause (a) or (b) of this definition and/or other obligations rated "AAA" by S&P, including investment companies and master repurchase agreements from which the Bondowner Representative or an affiliate derives a fee for investment advising or other service;

(g) tax-exempt obligations of any state of the United States, or political subdivision thereof, which are rated "A" or better by S&P or mutual funds invested only in such obligations;

(h) units of a taxable or nontaxable government money-market portfolio composed of U.S. Government obligations and repurchase agreements collateralized by such obligations;

(i) commercial paper rated "A" or better by S&P;

(j) corporate notes or bonds with one year or less to maturity rated "A" or better by S&P;

(k) a money market account or savings account with the Bondowner Representative; or

(l) any other investment approved by the Bondowner Representative.

The term "**Issuance Costs**" means all costs and expenses of issuance of the Bonds, including, but not limited to: (a) Bond purchaser's discount and fees; (b) counsel fees, including Bond Counsel and Borrower's counsel, as well as any other specialized counsel fees incurred in

connection with the issuance of the Bonds or the Loan; (c) the Issuer's fees and expenses incurred in connection with the issuance of the Bonds, including fees of any advisor to the Issuer, and the Issuer administrative fee for processing the request of the Borrower to issue the Bonds; (d) Bondowner Representative's fees and expenses, and Bondowner Representative's counsel fees and expenses; (e) paying agent's and certifying and authenticating agent's fees related to issuance of the Bonds; (f) accountant's fees related to issuance of the Bonds; (g) publication costs associated with the financing proceedings; and (h) costs of engineering and feasibility studies necessary to the issuance of the Bonds.

The term "**Issuer**" shall mean the Housing Authority of the City of San Diego, the issuer of the Bonds hereunder, and its successors and assigns as provided in Section 11.01.

The term "**Loan**" shall mean, collectively, the Construction Loan and the Convertible Term Loan made by the Issuer to the Borrower pursuant to, and as such terms are defined in, the Agreement, all for the purpose of financing the construction by the Borrower of the Project.

The term "**Loan Agreement**" shall mean the Agreement, as defined herein.

The term "**Loan Documents**" has the meaning given such term in the Loan Agreement.

The term "**Maximum Lawful Rate**" shall mean the highest per annum rate of interest permissible to be borne by the Bonds under the Act and any other applicable laws of the State of California.

The term "**Notes**" means, collectively the Construction Note and the Convertible Term Note evidencing the Loan, in the forms executed by the Borrower on the Closing Date, and as they may be amended in accordance with the terms of the Loan Agreement and this Indenture.

The term "**Opinion of Counsel**" shall mean a written opinion of counsel, who may be counsel for the Issuer, Bond Counsel or counsel for the Bondowner Representative.

The term "**Outstanding**," when used as of any particular time with reference to Bonds, shall, subject to the provisions of Section 11.08(e), mean all Bonds theretofore authenticated and delivered by the Bondowner Representative under this Indenture except:

(a) Bonds theretofore canceled by the Bondowner Representative or surrendered to the Bondowner Representative for cancellation;

(b) Bonds for the payment or redemption of which moneys or securities in the necessary amount (as provided in Section 10.01) shall have theretofore been deposited with the Bondowner Representative (whether upon or prior to the maturity or the redemption date of such Bonds); and

(c) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Bondowner Representative pursuant to the terms of Section 2.05.

The term "**Person**" shall mean an individual, a corporation, a partnership, a limited partnership, a limited liability company, a limited liability partnership, a trust, an unincorporated organization or a government or any agency or political subdivision thereof.

The term "**Principal Office**" shall mean the office of the Bondowner Representative located at the address set forth in Section 11.06 hereof, or at such other place as the Bondowner Representative shall designate by notice given under said Section 11.06.

The term **"Principal Payment Date"** shall mean any date on which principal of the Loan is due and payable under either of the Notes, as provided in the Loan Agreement and the Notes.

The term **"Program Fund"** shall mean the fund established pursuant to Section 3.03 hereof.

The term **"Project"** means the 121 units of multifamily rental housing to be acquired and constructed by the Borrower with proceeds of the Loan, to be located on the eighth through seventeenth floors of the building located at 929 9th Avenue in the City of San Diego, California, including fixtures or equipment, as it may at any time exist, and any structures, buildings, fixtures or equipment acquired in substitution for, as a renewal or replacement of, or a modification or improvement to, all or any part of such facilities, and shall include a leasehold interest in the real property on which such housing is to be located.

The term **"Project Costs"** has the meaning given such term in the Regulatory Agreement.

The term **"Qualified Institutional Buyer"** shall mean (a) a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended, or (b) one of the following: (i) a bank as defined in Section 3(a)(2) of the Securities Act of 1933 as amended (the "Act"), a bank holding company or a wholly owned subsidiary of a bank holding company, or a savings and loan association or other institution as defined in Section 3(a)(5)(a) of the Act acting in its individual capacity; or (ii) an insurance company as defined in Section 2(13) of the Securities Exchange Act of 1934.

The term **"Qualified Project Costs"** has the meaning given such term in the Regulatory Agreement.

The term **"Regulations"** means the Income Tax Regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any predecessor statute to the Code.

The term **"Regulatory Agreement"** shall mean the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 1, 2012, by and between the Issuer and the Borrower, as in effect on the Closing Date and as thereafter amended in accordance with its terms.

The term **"Responsible Officer"** of the Bondowner Representative shall mean any officer of the Bondowner Representative assigned to administer its duties hereunder.

The term **"Revenues"** shall mean all amounts pledged hereunder to the payment of principal of, premium, if any, and interest on the Bonds, including, but not limited to, repayments of the Loan required or permitted to be made by the Borrower pursuant to Sections 2.1, 2.2 (other than Section 2.2(e)), 2.3 or 2.4 of the Loan Agreement; but such term shall not include payments to the United States, the Issuer, the Administrator or the Bondowner Representative pursuant to Sections 2.2(e), 2.5, 2.6, 2.7, 2.8, 12.9, 14.2, 16.2 or 16.3, or Article 10 of the Loan Agreement or Sections 6.08 or 8.06 hereof or Sections 4A, 7 or 17 of the Regulatory Agreement.

The term **"S&P"** shall mean Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business division, or its successors and assigns or, if such entity shall be

dissolved or liquidated or shall no longer perform the functions of a securities rating agency, any other nationally recognized rating agency designated by the Bondowner Representative.

The term **"Series C-1 Bonds"** shall mean the Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-1 (Convertible Term Loan), issued and outstanding hereunder.

The term **"Series C-2 Bonds"** shall mean the Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-2 (Construction Loan), issued and outstanding hereunder.

The term **"Supplemental Indenture"** or **"Indenture Supplemental hereto"** shall mean any indenture hereafter duly authorized and entered into between the Issuer and the Bondowner Representative in accordance with the provisions of this Indenture.

The term **"Tax Certificate"** means the Certificate as to Arbitrage of the Borrower and the Issuer dated the Closing Date.

The term **"Unassigned Rights"** means those certain rights of the Issuer under the Loan Agreement and the Regulatory Agreement to indemnification and to payment or reimbursement of fees and expenses of the Issuer, its right to enforce the Regulatory Agreement pursuant to the terms of such agreement, its right to inspect and audit the books, records and premises of the Borrower and of the Project, its right to collect attorneys' fees and related expenses, its right to enforce the Borrower's covenant to comply with applicable federal tax law and State of California law (including the Act and the rules and regulations of the Issuer), its right to receive notices and to grant or withhold consents or waivers under the Regulatory Agreement and this Indenture, its right to amend this Indenture and the Regulatory Agreement in accordance with the provisions hereof and thereof, and its right to approve any amendment to Section 2.6(b) of the Loan Agreement, and to Section 16.17 of the Loan Agreement that conflicts with Section 2.05 of this Indenture.

The terms **"Written Consent," "Written Demand," "Written Direction," "Written Election," "Written Notice," "Written Order," "Written Request"** and **"Written Requisition"** of the Issuer or the Borrower shall mean, respectively, a written consent, demand, direction, election, notice, order, request or requisition signed on behalf of the Issuer by an Authorized Issuer Representative, or on behalf of the Borrower by an Authorized Borrower Representative.

Section 1.02. Rules of Construction. (a) The singular form of any word used herein, including the terms defined in Section 1.01, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders.

(b) All references herein to "Articles," "Sections" and other subdivisions hereof are to the corresponding Articles, Sections or subdivisions of this Indenture as originally executed; and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Indenture.

ARTICLE II

THE BONDS

Section 2.01. Authorization. There are hereby authorized to be issued bonds of the Issuer designated as "Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-1 (Convertible Term Loan)," in the aggregate principal amount of up to \$1,595,000, and "Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-2 (Construction Loan)," in the aggregate principal amount of up to \$21,405,000. No Bonds may be issued under this Indenture except in accordance with this Article.

Notwithstanding anything herein to the contrary, the maximum principal amount of one of the series of the Bonds may be increased so long as (a) the maximum principal amount of the other series of the Bonds is decreased by a like amount, so that the maximum principal amount of the Bonds that may be Outstanding under this Indenture shall in no event exceed the Authorized Amount, and (b) if the weighted average maturity of the Bonds will increase as a result of the change in maximum principal amounts of the two series of the Bonds, the Bondowner Representative shall first obtain an opinion of Bond Counsel addressed to the Issuer and the Bondowner Representative to the effect that the change in maximum principal amounts will not, in itself, adversely affect the exclusion from gross income of the owners of the Bonds of the interest on the Bonds. Any increase in the maximum amount of a series of Bonds (and the corresponding decrease in the maximum principal amount of the other series of the Bonds) shall be evidenced by a written instrument executed by all of the owners of the Bonds then Outstanding and by an Authorized Borrower Representative which specifies the amount of the increase and the series of the Bonds to which it pertains (and the series of Bonds to which the corresponding decrease pertains), delivered to the Bondowner Representative, with a copy to the Issuer (which may be evidenced by a supplement to the Loan Agreement and amendments to the Notes and the Bonds).

Section 2.02. Terms of Bonds. The Bonds shall be in substantially the form set forth in Exhibit A hereto with necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture, including any Supplemental Indenture.

The Bonds shall be issuable only as fully registered Bonds, without coupons, in the form of a single Bond for each series of the Bonds in the principal amount equal to the aggregate of the purchase price of the respective series of the Bonds advanced from time to time by the owner(s) of the Bonds (which principal amounts shall be, on the Closing Date, the amount referenced in Section 3.01(vii)). The Bonds shall be dated the Closing Date and shall be subject to redemption prior to maturity as provided in Article IV. The Series C-1 Bonds shall mature on June 1, 2030, and the Series C-2 Bonds shall mature on June 1, 2016.

Interest shall be paid on the Outstanding principal amount of the Series C-1 Bonds, from the Closing Date until the maturity date of the Series C-1 Bonds, on each Interest Payment Date occurring during such period, at a rate equal to, and calculated in the same manner as, the interest payable on the Convertible Term Note.

Interest shall be paid on the Outstanding principal amount of the Series C-2 Bonds, from the Closing Date until the maturity date of the Series C-2 Bonds, on each Interest Payment Date occurring during such period, at a rate equal to, and calculated in the same manner as, the interest payable on the Construction Note.

Each Bond shall bear interest from the date to which interest has been paid on the Bonds next preceding the date of its authentication, unless it is authenticated as of an Interest Payment

Date for which interest has been paid, in which event it shall bear interest from such Interest Payment Date, or unless it is authenticated on or before the first Interest Payment Date, in which event it shall bear interest from the Closing Date.

The payment or prepayment of principal of and interest or premium, if any, on each respective series of the Bonds shall be identical with and shall be made on the same terms and conditions as the payment of principal of and interest or premium, if any, on the corresponding Note, as determined in accordance with the Loan Agreement and such Note. Any payment or prepayment made by the Borrower of principal and interest or premium, if any, on the Convertible Term Note shall be deemed to be like payments or prepayments of principal and interest or premium, if any, on the Series C-1 Bonds. Any payment or prepayment made by the Borrower of principal and interest or premium, if any, on the Construction Note shall be deemed to be like payments or prepayments of principal and interest or premium, if any, on the Series C-2 Bonds.

Payments or prepayments actually made by the Borrower to the Bondowner Representative shall be deemed to have been constructively received by the Holder as payments or prepayments on the Bonds on the date of receipt of such payments by the Bondowner Representative, and interest with respect to each principal payment or prepayment shall cease to accrue upon receipt of such payment by the Bondowner Representative. Payments or prepayments of principal, interest or premium, if any, shall be remitted immediately by the Bondowner Representative to the Holder.

The Issuer hereby acknowledges that the Borrower is obligated to pay late fees, loan related fees and other charges under the Notes (and as otherwise provided in the Loan Agreement) to the Bondowner Representative, which amounts are paid for the benefit of the Bondowner Representative and shall be retained by the Bondowner Representative for its own account.

Section 2.03. Payment of Bonds. Payment of the principal of and interest on any Bond shall be made in lawful money of the United States to the Person appearing on the Bond registration books of the Issuer (maintained by the Bondowner Representative) as the registered owner thereof on the applicable Interest Payment Date, such principal and interest to be paid by check mailed on the Interest Payment Date by first class mail, postage prepaid, to the registered owner at its address as it appears on such registration books, except that at the request of any registered owner of Bonds, payments of principal and interest on such Bonds may be made by wire transfer to the account within the United States designated by such owner to the Bondowner Representative in writing.

Section 2.04. Execution of Bonds. The Bonds shall be signed in the name and on behalf of the Issuer with the manual or facsimile signature of an Authorized Issuer Representative. The Bonds shall then be delivered to the Bondowner Representative for authentication by the Bondowner Representative. In case any officer who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been authenticated or delivered by the Bondowner Representative or issued by the Issuer, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issuance, shall be as binding upon the Issuer as though the officers who signed the same had continued to be such officers of the Issuer. Also, any Bond may be signed on behalf of the Issuer by an Authorized Issuer Representative although on the nominal date of such Bond any such person shall not have been an Authorized Issuer Representative.

Only such of the Bonds as shall bear thereon a certificate of authentication in the form set forth in Exhibit A, manually executed by the Bondowner Representative, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture and such certificate of the

Bondowner Representative shall be conclusive evidence that the Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

Section 2.05. Transfer of Bonds. (a) Any Bond may, in accordance with the terms of this Indenture but in any event subject to the provisions of Section 2.05(b) hereof, be transferred upon the books of the Bondowner Representative, required to be kept pursuant to the provisions of Section 2.06, by the Person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Principal Office of the Bondowner Representative, accompanied by a written instrument of transfer in a form acceptable to the Bondowner Representative, duly executed. Whenever any Bond shall be surrendered for transfer, the Issuer shall execute and the Bondowner Representative shall authenticate and deliver a new Bond to the transferee.

(b) The following shall apply to all sales and transfers of the Bonds after the initial sale and delivery of the Bonds:

(i) the Bonds, in the form attached hereto as Exhibit A, shall be physical certificated instruments, and shall not be held in a book-entry only system unless approved in advance in writing by the Issuer in its sole discretion;

(ii) the Bonds may only be transferred in whole, to a Qualified Institutional Buyer, to an Accredited Investor, or to an affiliate of the Bondowner Representative;

(iii) each transferee of the Bonds shall deliver to the Issuer an investor's letter substantially in the form of Exhibit B hereto wherein the transferee agrees, among other matters, not to sell participating interests in the Bonds without the prior written consent of the Issuer except as permitted by Section 2.05(e) below; and

(iv) the Bondowner Representative shall not authenticate or register a Bond unless the conditions of this Section 2.05(b) have been satisfied.

The Bondowner Representative shall not allow any transfer of the Notes or the Loan, or any interest or interests therein, except in connection with a transfer of a like amount of the Bonds or an interest or interests in the Bonds.

(c) The Bondowner Representative shall require the payment by the Bondholder requesting any such transfer of any tax, fee or other governmental charge required to be paid with respect to such transfer, but any such transfer shall otherwise be made without charge to the Bondholder requesting the same. The cost of printing any Bonds and any services rendered or any out-of-pocket expenses incurred by the Bondowner Representative in connection therewith shall be paid by the Borrower.

(d) The Bondowner Representative shall indemnify and defend the Issuer against any claim brought by any transferor or transferee of the Bonds in respect of the Bonds, this Indenture or any of the Loan Documents in the event that the Bondowner Representative permits a transfer of the Bonds, the Notes, the Loan or any interest or interests in any of the foregoing in violation of the restrictions in Section 2.05(b) above.

(e) Notwithstanding the foregoing provisions of this Section 2.05, an owner of the Bonds may, in its discretion (and without the consent of the Issuer), sell participation interests in the Bonds that it owns, so long as (i) any such sale is only made to an affiliate of the Bondowner, to a Qualified Institutional Buyer or to an Accredited Investor, and (ii) the document or documents relating to the sale contain a provision to the effect that the buyer understands that it

has no rights whatsoever against the Issuer in respect of any such interest in any Bond, with the Issuer's obligations hereunder and under the Bond being only to the registered owner of the applicable Bond. The owner of the Bond in which a participation is sold shall indemnify and hold harmless the Issuer from any claim or action whatsoever against the Issuer in any way related to the Bonds, this Indenture or the Loan Documents brought by any entity to which it sold an interest in the Bonds.

Section 2.06. Bond Register. The Issuer hereby appoints the Bondowner Representative as registrar and authenticating agent for the Bonds. The Bondowner Representative will keep or cause to be kept at its Principal Office sufficient books for the registration and transfer of the Bonds, which shall at all reasonable times during regular business hours upon reasonable notice be open to inspection by the Issuer and the Borrower; and, upon presentation for such purpose, the Bondowner Representative as registrar shall, under such reasonable regulations as it may prescribe, transfer or cause to be transferred, on said books, Bonds as hereinbefore provided.

Section 2.07. Replacement of Bonds. Upon receipt of evidence reasonably satisfactory to the Issuer of the loss, theft, destruction or mutilation of any of the Bonds, or of any replacement Bonds, and, in the case of any such loss, theft, or destruction, upon the delivery of an indemnity agreement reasonably satisfactory to the Issuer or, in the case of any mutilation, upon the surrender and cancellation of such mutilated Bond, the Issuer, at the expense of the Holder of such Bond, will issue and the Bondowner Representative will authenticate a new Bond, of like tenor and series, in lieu of such lost, destroyed or mutilated Bond.

ARTICLE III

ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

Section 3.01. Authentication and Delivery of the Bonds. Upon the execution and delivery of this Indenture, the Issuer shall execute the Bonds and deliver them to the Bondowner Representative. Thereupon, and upon satisfaction of the conditions set forth in this Section, and without any further action on the part of the Issuer, the Bondowner Representative shall authenticate the Bonds in an aggregate principal amount not exceeding \$21,405,000 with respect to the Series C-1 Bonds and \$1,595,000 with respect to the Series C-2 Bonds, and shall deliver the Bonds pursuant to the Written Order of the Issuer hereinafter mentioned. Prior to the authentication and delivery of any of the Bonds by the Bondowner Representative, there shall have been delivered to the Bondowner Representative each of the following:

(i) a Certified Resolution authorizing issuance and sale of the Bonds and execution and delivery by the Issuer of the Indenture, the Loan Agreement and the Regulatory Agreement;

(ii) an original executed counterpart of the Loan Agreement;

(iii) the original executed Notes, each endorsed without recourse by the Issuer to Bondowner Representative;

(iv) an original executed counterpart of, the Deed of Trust Assignment (as defined in the Loan Agreement), and of the Deed of Trust and the other Loan Documents;

(v) one or more opinions of Bond Counsel with respect to the due execution and delivery of the Indenture, Loan Agreement and Bonds and the exclusion from gross income of the Bondowners of interest on the Bonds for federal income tax purposes;

(vi) an original executed counterpart of the Regulatory Agreement;

(vii) a Written Order of the Issuer to the Bondowner Representative to authenticate and deliver the Bonds as directed in such Written Order, upon payment to _____ Title Company, for the account of the Issuer, of the initial advance of the principal of the Series C-2 Bonds by the initial Bond purchaser of \$_____;

(viii) an Investor's Letter in the form of Exhibit B hereto, signed by the initial owner of the Bonds; and

(ix) an opinion of counsel to the Borrower addressed to the Issuer to the effect that the Loan Documents to which the Borrower is a party and the Regulatory Agreement are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, subject to such exceptions and qualifications as are acceptable to the Bondowner Representative and the Issuer.

Section 3.02. Application of Proceeds of Bonds. The proceeds received on the Closing Date by the Issuer from the sale of the Bonds shall be deposited with the Bondowner Representative, who shall deposit any portion of such proceeds which are not to be concurrently disbursed to or for the account of the Borrower into the Program Fund created pursuant to Section 3.03. The Bondowner Representative shall deposit any portion of any

future advance of the purchase price of the Bonds which is not to be concurrently disbursed to or for the account of the Borrower into the Program Fund.

Section 3.03. Program Fund. (a) There is hereby created and established with the Bondowner Representative a fund which shall be designated the "Program Fund." Upon the initial delivery of the Bonds, there shall be deposited in the Program Fund the amount specified in Section 3.01(vii). If required under the provisions of Section 3.02, the Bondowner Representative shall deposit any future advances of the purchase price of the Bonds to the Program Fund. The Borrower also may be required to remit moneys to the Bondowner Representative for deposit to the Program Fund pursuant to the Loan Agreement. Amounts deposited or held in such fund shall be applied only as provided in this Section.

(b) \$_____, representing the initial advance by the owners of the Series C-2 Bonds of the purchase price of the Series C-2 Bonds, shall be disbursed by the Bondowner Representative via wire transfer from the Bondowner Representative to _____ Title Company (to pay Project Costs).

(c) Subject to Section 2.01 hereof, the Issuer hereby authorizes and directs the disbursement by the Bondowner Representative to the Borrower of the remaining (i) \$_____ principal amount of the Series C-2 Bonds, and (ii) the \$1,595,000 principal amount of the Series C-1 Bonds represented by future advances of the purchase price of the respective series of the Bonds and any amounts from time to time on deposit in the Program Fund in accordance and upon compliance with the provisions of Sections 3 and 4, as applicable, of the Loan Agreement. The Bondowner Representative shall provide, upon written request of the Issuer, a written notice to the Issuer describing the date of each disbursement of the purchase price of each series of the Bonds and the amount of each disbursement thereof made by the Bondowner Representative.

(d) Neither the Bondowner Representative nor the Issuer shall be responsible for the application by the Borrower of monies disbursed to the Borrower in accordance with this Section 3.03.

(e) From and after the earlier of the Construction Note Maturity Date (as defined in the Loan Agreement) or the date which is three years after the Closing Date, no further advances of the purchase price, or disbursements of the proceeds, of the Bonds shall occur.

(f) During the period when the Bondowner Representative and/or its affiliates are the Holders of all of the Bonds, the Program Fund need not be separately established or administered but rather the Bondowner Representative may hold and administer any amounts to be deposited in such fund in the manner it customarily employs for administration and servicing of amounts to be loaned to borrowers, so long as at all times the Bondowner Representative can determine the amounts attributable to each series of the Bonds and the Loan and any investment earnings thereon.

ARTICLE IV

REDEMPTION OF BONDS

Section 4.01. Circumstances of Redemption. The Bonds are subject to redemption upon the circumstances, on the dates and at the prices set forth as follows:

(a) The Series C-1 Bonds shall be subject to redemption in whole or in part on any date, at a price equal to the Outstanding principal amount of Series C-1 Bonds plus interest accrued thereon to the date fixed for redemption, together with any applicable premium, upon prepayment of the Convertible Term Note in whole or in part in accordance with the provisions of the Loan Agreement.

(b) The Series C-2 Bonds shall be subject to redemption in whole or in part on any date, at a price equal to the Outstanding principal amount of Series C-2 Bonds plus interest accrued thereon to the date fixed for redemption, together with any applicable premium, upon prepayment of the Construction Note in whole or in part in accordance with the provisions of the Loan Agreement.

(c) The Bonds shall be subject to redemption in whole on any date at a price equal to the Outstanding principal amount of Bonds plus interest accrued thereon to the date fixed for redemption, together with any applicable premium, upon acceleration of the Loan in whole following an Event of Default (as defined in the Loan Agreement).

(d) The Series C-1 Bonds shall be subject to redemption in whole or in part on any date at a price equal to the principal amount thereof to be redeemed plus accrued interest to the redemption date, together with any applicable premium, from the proceeds of any mandatory prepayment of the Convertible Term Note under the terms of the Convertible Term Note or the Loan Agreement.

(e) The Series C-2 Bonds shall be subject to redemption in whole or in part on any date at a price equal to the principal amount thereof to be redeemed plus accrued interest to the redemption date, together with any applicable premium, from the proceeds of any mandatory prepayment of the Construction Note under the terms of the Construction Note or the Loan Agreement.

The premium due in connection with any of the foregoing redemption provisions shall be an amount equal to the amount paid on the respective Note in connection with such redemption that is in excess of the principal and interest on the respective series of the Bonds otherwise due on the redemption date. Notwithstanding any other provision hereof, prepayments of amounts due under the Convertible Term Note shall be applied solely to the redemption of the Series C-1 Bonds, and prepayments of the Construction Note shall be applied solely to the redemption of the Series C-2 Bonds.

The Bondowner Representative is hereby authorized and directed, and hereby agrees, to fix the date for any such redemption, and, if moneys provided from the sources contemplated by this Indenture, the Loan Agreement and the applicable Note are available, to redeem the applicable Bonds so called on the date so fixed by the Bondowner Representative. If there is more than one Bondowner of a series of Bonds to be redeemed in part as of any date of redemption, Bonds of such series shall be redeemed pro rata among the Bondowners. So long as there is only one Bondowner of a series of Bonds to be redeemed in part, the Bondowner need not surrender its Bond in connection with any redemption of such series of the Bonds. The Bondowner Representative shall give written notice of such redemption to the Issuer.

Section 4.02. No Notice of Redemption. No notice of redemption of the Bonds need be given to the Holders of the Bonds.

Section 4.03. Effect of Redemption. The Bonds so called for redemption shall, on the redemption date selected by the Bondowner Representative, become due and payable at the redemption price specified herein, and if moneys provided from the sources contemplated by this Indenture and the Loan Agreement for payment of the redemption price are then held by the Bondowner Representative, interest on the Bonds so called for redemption shall cease to accrue, said Bonds shall cease to be entitled to any lien, benefit or security under this Indenture, and the holders of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds fully redeemed pursuant to the provisions of this Article IV shall be destroyed by the Bondowner Representative, which shall thereupon deliver to the Issuer, upon the Issuer's written request, a certificate evidencing such destruction.

ARTICLE V

REVENUES

Section 5.01. Pledge of Revenues. The Issuer is duly authorized pursuant to law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues and other assets purposed to be pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture. The Issuer has duly authorized the execution and delivery of the Bonds and the Indenture under the terms and provisions of the Act and a resolution adopted by the Board of Commissioners of the Issuer and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability against the Issuer of the Bonds and the Indenture. The Issuer has taken all necessary action and has complied with all provisions of the Act required to make the Bonds and this Indenture the valid, legal and binding limited obligations of the Issuer.

All of the Revenues are hereby irrevocably pledged to the punctual payment of the principal of, and interest and any premium on, the Bonds. The Issuer also hereby irrevocably transfers, grants a security interest in and assigns to the Bondowner Representative, for the benefit of the holders from time to time of the Bonds all of the Issuer's right, title and interest in (a) the Revenues; (b) all other amounts payable to Issuer under, or pursuant to, the Notes and the other Loan Documents, including but not limited to all proceeds of any title insurance policy, casualty insurance policy or other insurance policy, all proceeds of any condemnation or other taking and all revenues, proceeds, payments and other amounts received from any foreclosure (or action in lieu of foreclosure) or other enforcement action taken pursuant to the Deed of Trust or any other Loan Document (other than amounts paid pursuant to Sections 12.9 or 16.2 of the Loan Agreement (solely as they relate to the indemnification of the Issuer and its officers, boardmembers, employees, attorneys and agents), or Section 2.6(b) of the Loan Agreement); (c) all amounts from time to time on deposit in any fund or account created hereunder, under the Loan Agreement or under any other Loan Document and held by the Bondowner Representative; (d) the Deed of Trust; (e) the Loan Agreement (except for the Unassigned Rights, including the rights of the Issuer under Sections 4A, 7 and 17 of the Regulatory Agreement and Sections 12.9 or 16.2 of the Loan Agreement (solely as they relate to the indemnification of the Issuer and its officers, boardmembers, employees, attorneys and agents), and Section 2.6(b) of the Loan Agreement); (f) the Notes; (g) the other Loan Documents; (h) all amendments, modifications, supplements, increases, extensions, replacements and substitutions to or for any of the foregoing; and (i) all proceeds of the foregoing, whether voluntary or involuntary. The Issuer hereby acknowledges and agrees that, as a result of the assignment and pledge provided for in this Section 5.01, the Issuer has assigned and pledged to Bondowner Representative, and Bondowner Representative shall have the sole right to hold and exercise, all of the rights and remedies (other than the Unassigned Rights) given to Issuer under the Loan Agreement, the Notes, the Deed of Trust and the other Loan Documents (except as expressly set forth in the Regulatory Agreement, which allows the Issuer to independently pursue remedies thereunder), including, but not limited to, the following: (i) the right to administer and service the Loan and to amend, modify, supplement, terminate, release and/or reconvey the Loan and the Loan Documents; (ii) the right to enforce the terms and provisions of the Loan Documents; (iii) the right to record and/or file all documents, instruments and agreements which Bondowner Representative deems necessary or desirable to create, preserve, protect and/or release the liens created by the Deed of Trust and the other Loan Documents; and (iv) the right to collect, hold and disburse amounts to be collected, held and/or disbursed under the Loan Documents, including, but not limited to, principal, interest, fees (other than fees payable to the Issuer), prepayment premiums, default interest, late payment charges, real estate tax impounds, insurance impounds, operating reserve deposits, replacement reserve

deposits, title insurance proceeds, casualty insurance proceeds, other insurance proceeds, condemnation and other taking awards and proceeds and other amounts.

All Revenues and all amounts on deposit in the funds and accounts created hereunder or under the Loan Agreement and the other Loan Documents and held by the Bondowner Representative shall be held for the benefit of the holders from time to time of the Bonds, but shall nevertheless be disbursed, allocated and applied solely for the uses and purposes hereinafter set forth in this Article V.

Neither the Issuer (or any Commissioner thereof) nor any person executing the Bonds, nor the Bondowner Representative, is liable personally on the Bonds or subject to any personal liability or accountability by reason of their issuance. The Bonds are limited obligations of the Issuer and are not a debt, nor a pledge of the faith and credit, of the State of California or any of its political subdivisions, and none of such entities is liable on the Bonds, nor are the Bonds payable out of any funds or properties other than those of the Issuer explicitly pledged hereunder for the payment thereof. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation. The issuance of the Bonds shall not directly or indirectly or contingently obligate the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

The Issuer shall not be liable for payment of the principal of or interest on the Bonds or any other costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Indenture, the Bonds or any other documents, except only to the extent amounts are received for the payment thereof from the Borrower under the Loan Agreement or the other Loan Documents.

Section 5.02. Bond Fund. There is hereby created and established with the Bondowner Representative a separate fund which shall be designated the "Bond Fund," which fund shall be applied only as provided in this Section.

The Bondowner Representative shall deposit in the Bond Fund from time to time, upon receipt thereof, all Revenues, including (i) income received from the investment of moneys on deposit in the Bond Fund, and (ii) any other Revenues, including insurance proceeds, condemnation awards and other Loan payments or prepayments received from or for the account of the Borrower. The Bondowner Representative shall provide notice to the Issuer, upon written request of the Issuer, of the amounts received by the Bondowner Representative which constitute Revenues or are otherwise deposited to the Bond Fund, and of any failure by the Borrower to make timely payments on the Notes.

Moneys in the Bond Fund shall be used solely for the payment of the principal of and premium, if any, and interest on the Bonds as the same shall become due, whether at maturity or upon redemption or acceleration or otherwise.

On each date on which principal of or interest on the Bonds is due and payable, the Bondowner Representative shall pay such amount from the Bond Fund (to the extent of the funds contained therein).

So long as the Bondowner Representative and/or its affiliates are the Holders of all of the Bonds, no Revenues shall be deposited into the Bond Fund, and instead all such Revenues, including any payments or prepayments of principal, interest or premium, if any, on the Notes actually made by the Borrower to the Bondowner Representative shall be deemed to be like payments or prepayments of principal, interest or premiums (if any) on the Bonds (and no such payments or prepayments shall be required to be deposited into the Bond Fund).

Section 5.03. Investment of Moneys. Except as otherwise provided in this Section, any moneys in any of the funds and accounts to be established by the Bondowner Representative pursuant to this Indenture shall be invested by the Bondowner Representative in Investment Securities selected and directed in writing by the Borrower with the prior written consent of the Bondowner Representative, with respect to which payments of principal thereof and interest thereon are scheduled or otherwise payable not later than one day prior to the date on which it is estimated that such moneys will be required by the Bondowner Representative. In the absence of such directions, the Bondowner Representative shall invest such monies in Investment Securities described in clause (k) of the definition thereof. The Bondowner Representative shall have no liability or responsibility for any loss resulting from any investment made in accordance with this Section 5.03.

Except as otherwise provided in the next sentence, 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. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code shall be valued at their present value (within the meaning of Section 148 of the Code).

For the purpose of determining the amount in any fund or account, all Investment Securities credited to such fund or account shall be valued at the lower of cost or par (which shall be measured exclusive of accrued interest) after the first payment of interest following purchase.

Any interest, profit or loss on such investment of moneys in any fund or account shall be credited or charged to the respective funds or accounts from which such investments are made. The Bondowner Representative may sell or present for redemption any obligations so purchased whenever it shall be necessary in order to provide moneys to meet any payment, and the Bondowner Representative shall not be liable or responsible for any loss resulting from such sale or redemption.

The Bondowner Representative may make any and all investments permitted under this Section 5.03 through its own trust or banking department or any affiliate and may pay said department reasonable, customary fees for placing such investments. The Bondowner Representative and its affiliates may act as principal, agent, sponsor, advisor or depository with respect to Investment Securities under this Section 5.03.

The Issuer (and the Borrower by its execution of the Loan Agreement) acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Issuer or the Borrower the right to receive brokerage confirmations of security transactions as they occur, the Issuer and the Borrower will not receive such confirmations to the extent permitted by law.

During the period that the Bondowner Representative and/or its affiliates are the Holders of all of the Bonds, the Bondowner Representative may hold all funds commingled in a single fund, uninvested, or apply such funds as otherwise agreed between the Bondowner Representative and the Borrower, provided that at all times the Bondowner Representative can determine the amounts attributable to the Bonds and the Loan and any investment earnings thereon.

Section 5.04. Enforcement of Obligations. Upon the occurrence of an Event of Default actually known to a Responsible Officer of the Bondowner Representative, the Bondowner

Representative also shall be entitled (but not required, unless (i) requested to do so by the holders of a majority in principal amount of the Bonds then Outstanding and (ii) if required by the Bondowner Representative, provided with indemnification to its satisfaction against the costs, expenses and liabilities incurred in compliance with such request) to take all steps, actions and proceedings reasonably necessary in its judgment: (a) to enforce the terms, covenants and conditions of, and preserve and protect the priority of its interest in and under, the Agreement, the Deed of Trust and the other Loan Documents, (b) to require compliance with all covenants, agreements and conditions on the part of the Issuer contained in this Indenture with respect to the Revenues, and (c) to be reimbursed for its expenses (including attorney's fees) by the Borrower in taking any action referred to in the preceding clauses (a) or (b).

ARTICLE VI

COVENANTS OF THE ISSUER

Section 6.01. Payment of Principal and Interest. The Issuer shall punctually pay, but only out of Revenues as herein provided, the principal and the interest (and premium, if any) to become due in respect of every Bond issued hereunder at the times and places and in the manner provided herein and in the Bonds, according to the true intent and meaning thereof. When and as paid in full, all Bonds shall be delivered to the Bondowner Representative and shall forthwith be destroyed.

Section 6.02. Paying Agents. The Issuer, with the written approval of the Bondowner Representative, may appoint and at all times have one or more paying agents in such place or places as the Issuer may designate, for the payment of the principal of, and the interest (and premium, if any) on, the Bonds; provided, however, that so long as U.S. Bank National Association and/or one or more of its affiliates are the registered owners of all of the Bonds then Outstanding, the Bondowner Representative shall have the sole right to appoint, remove and/or replace any paying agent(s) for the Bonds. It shall be the duty of the Bondowner Representative to make such arrangements with any such paying agent as may be necessary and feasible to assure, to the extent of the moneys held by the Bondowner Representative for such payment, the availability of funds for the prompt payment of the principal of and interest and premium, if any, on the Bonds presented at any place of payment. The paying agent initially appointed hereunder is the Bondowner Representative.

Section 6.03. Preservation of Revenues; Amendment of Documents. The Issuer (a) shall not take any action to interfere with or impair the pledge and assignment hereunder of Revenues and the assignment to the Bondowner Representative of rights of the Issuer under the Agreement, the Deed of Trust and the other Loan Documents, or the Bondowner Representative's enforcement of any rights hereunder or thereunder; provided that the Issuer may take actions under or pursuant to the Unassigned Rights, (b) shall not take any action to impair the validity or enforceability of the Agreement, the Deed of Trust or the other Loan Documents, and (c) shall not waive any of its rights under or any other provision of or permit any amendment of the Agreement, the Deed of Trust or the other Loan Documents, without the prior written consent of the Bondowner Representative; provided that such consent of the Bondowner Representative shall not be required if the Bondowner Representative shall have received an opinion of Bond Counsel to the effect that such amendment (i) is required to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes or compliance by the Bonds or the Project with the Act and the laws of the State of California; and (ii) will not adversely affect the interests of the Bondholders.

The Bondowner Representative may give such written consent, and may itself take any such action or consent to a waiver of any provision of or an amendment or modification to or replacement of the Agreement, the Deed of Trust, the Regulatory Agreement, any of the other Loan Documents, or any other document, instrument or agreement relating to the security for the Bonds, only if (i) such action or such waiver, amendment, modification or replacement (a) is authorized or required by the terms of this Indenture, the Agreement, the Deed of Trust, the applicable Loan Documents or the Regulatory Agreement, or (b) will not, based on an Opinion of Counsel furnished to the Bondowner Representative, materially adversely affect the interests of the holders of the Bonds or result in any impairment of the security hereby given for the payment of the Bonds, or (c) has first been approved by the written consent of all of the holders of the Bonds then Outstanding; and (ii) the Bondowner Representative shall have first obtained an opinion of Bond Counsel to the effect that such action or such waiver, amendment, modification or replacement will not adversely affect the exclusion of interest on the Bonds

from gross income for federal income tax purposes or conformance of the Bonds and the Project with the Act or the laws of the State of California relating to the Bonds.

Section 6.04. Compliance with Indenture. The Issuer shall not issue, or permit to be issued, any Bonds secured or payable in any manner out of Revenues other than in accordance with the provisions of this Indenture; it being understood that the Issuer reserves the right to issue obligations payable from and secured by sources other than the Revenues and the assets assigned herein. The Issuer shall not suffer or permit any default to occur under this Indenture, but shall faithfully observe and perform all the covenants, conditions and requirements hereof. So long as any Bonds are Outstanding, the Issuer shall not create or suffer to be created any pledge, lien or charge of any type whatsoever upon all or any part of the Revenues, other than the lien of this Indenture.

Section 6.05. Further Assurances. Whenever and so often as requested so to do by the Bondowner Representative, the Issuer (at the sole cost and expense of the Borrower) shall promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and promptly do or cause to be done all such other and further things, as may be necessary or reasonably required in order to further and more fully vest in the Bondowner Representative and the holders of the Bonds all of the rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred upon them by this Indenture and to perfect and maintain as perfected such rights, interests, powers, benefits, privileges and advantages.

Section 6.06. No Arbitrage. The Issuer shall not take, nor permit nor suffer to be taken by the Bondowner Representative or otherwise, any action with respect to the gross proceeds of the Bonds which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of the issuance of the Bonds would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code and Regulations promulgated thereunder.

Section 6.07. Limitation of Expenditure of Proceeds. The Issuer shall assure, solely by the execution and delivery of the Loan Agreement by the Issuer and the Borrower, that not less than 97 percent of the amount advanced as the purchase price of the Bonds, plus premium (if any) paid on the purchase of the Bonds by the original purchaser thereof from the Issuer, less any original discount, are used for Qualified Project Costs and that less than 25 percent of such amount is used for land or an interest in land. The Bondowner Representative shall have no obligation to monitor the Issuer's compliance with or to enforce the terms of this Section.

Section 6.08. Rebate of Excess Investment Earnings to United States. The Issuer hereby covenants, solely by the execution and delivery of the Regulatory Agreement (see Section 2(q) thereof) by the Issuer and the Borrower, to cause the Borrower to calculate or cause to be calculated excess investment earnings to the extent required by Section 148(f) of the Code and the Borrower shall cause payment of an amount equal to excess investment earnings to the United States in accordance with the Regulations, all at the sole expense of the Borrower.

Section 6.09. Limitation on Issuance Costs. The Issuer shall assure, solely by the execution and delivery of the Loan Agreement by the Issuer and the Borrower, that, from the proceeds of the Bonds received from the original purchaser thereof and investment earnings thereon, an amount not in excess of two percent (2%) of the face amount of the Bonds shall be used to pay for, or provide for the payment of, Issuance Costs. For this purpose, if the fees of such original purchaser are retained as a discount on the purchase of the Bonds, such retention shall be deemed to be an expenditure of proceeds of the Bonds for said fees.

Section 6.10. Federal Guarantee Prohibition. The Issuer shall take no action nor permit nor suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

Section 6.11. Prohibited Facilities. No portion of the proceeds of the Bonds shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises. No portion of the proceeds of the Bonds shall be used for an office unless the office is located on the premises of the facilities constituting the Project and unless 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.

Section 6.12. Use Covenant. The Issuer shall not use or knowingly permit the use of any proceeds of Bonds or any other funds of the Issuer, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 142(d) of the Code by reason of such Bond not meeting the requirements of Section 142(d) of the Code.

Section 6.13. Immunities and Limitations of Responsibility of Issuer. The Issuer shall be entitled to the advice of counsel (who, except as otherwise provided, may be counsel for any Bondholder), and the Issuer shall be wholly protected as to action taken or omitted under the Bond Documents in good faith 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 under the Bond Documents 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 under the Bond Documents because such action was reasonably believed to be beyond its discretion or powers hereunder, or (c) taken by it under the Bond Documents pursuant to any direction or instruction by which it is governed hereunder, or (d) omitted to be taken by it under the Bond Documents 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 with respect to the foregoing matters. The Issuer shall in no event be liable under the Bond Documents for the application or misapplication of funds or for other acts or defaults by any Person, except its own 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 expense 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. The Issuer shall be entitled to reimbursement from the Borrower for its expenses reasonably incurred or advances reasonably made, with interest at the rate of interest on the Bonds, in the exercise of its rights or the performance of its obligations hereunder, to the extent that it acts without previously obtaining indemnity. No permissive right or power to act which the Issuer may have shall be construed as a requirement to act; and no delay in the exercise of a right or power shall affect its subsequent exercise of the right or power.

The Borrower has indemnified the Issuer against certain acts and events as set forth in Sections 12.9 and 16.2 of the Loan Agreement and Section 7 of the Regulatory Agreement. Such indemnities shall survive payment of the Bonds and discharge of the Indenture.

ARTICLE VII

DEFAULT

Section 7.01. Events of Default; Acceleration; Waiver of Default. Each of the following events shall constitute an “Event of Default” hereunder:

(a) failure to pay the principal of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise;

(b) failure to pay any installment of interest on any Bond when such interest installment shall become due and payable;

(c) the occurrence of an Event of Default under the Loan Agreement; and

(d) failure by the Issuer to perform or observe any other of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, and the continuation of such failure for a period of thirty (30) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Issuer and the Borrower by the Bondowner Representative, or to the Issuer, the Borrower and the Bondowner Representative by the holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds at the time Outstanding.

No default specified in (d) above shall constitute an Event of Default unless the Issuer or the Borrower shall have failed to correct such default within the applicable period; provided, however, that if such default described in (d) above shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer or the Borrower within the applicable period and diligently pursued until the default is corrected not to exceed one hundred eighty (180) days (provided that a default by reason of nonpayment of Bondowner Representative’s fees and expenses may only be waived by the Bondowner Representative). With regard to any alleged default concerning which notice is given to the Borrower under the provisions of (d) above, the Issuer hereby grants the Borrower full authority for the account of the Issuer to perform any covenant or obligation the non-performance of which is alleged in said notice to constitute a default in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts and with power of substitution.

Upon the occurrence of an Event of Default described in (a), (b) or (c) above, unless the principal of all the Bonds shall have already become due and payable, the Bondowner Representative may, and upon the written request of the owners of a majority of the Bonds at the time Outstanding in the case of an Event of Default described in (d) above, the Bondowner Representative shall, by notice in writing to the Issuer, declare the principal of all the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding. Upon any such declaration of acceleration, the Bondowner Representative shall fix a date for payment of the Bonds.

The preceding paragraph, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, and before the first to occur of (a) the date of entry of any judgment or decree for the payment of the moneys due as hereinafter provided or (b) the date 5 days prior to the date fixed for foreclosure of the Deed of Trust or the liens of any of the other Loan Documents, there shall have been deposited with the

Bondowner Representative a sum sufficient to pay all the principal of the Bonds matured or required to be redeemed prior to such declaration and all matured installments of interest (if any) upon all the Bonds, with interest on such overdue installments of principal, all other amounts owing under the Loan Documents, and the reasonable fees and expenses of the Bondowner Representative, its agents and counsel, and any and all other defaults actually known to a Responsible Officer of the Bondowner Representative (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Bondowner Representative or provision deemed by the Bondowner Representative to be adequate shall have been made therefor, then, and in every such case, the declaration shall be rescinded and annulled; but no such rescission, annulment or waiver shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

Section 7.02. Institution of Legal Proceedings by Bondowner Representative. If one or more of the Events of Default shall occur, the Bondowner Representative in its discretion may, and upon the written request of the holders of a majority in principal amount of the Bonds then Outstanding and upon being indemnified to its satisfaction against the costs, expenses and liabilities to be incurred in compliance with such request, the Bondowner Representative shall (subject to Section 7.08 hereof) proceed to protect or enforce its rights and/or the rights of the holders of Bonds under the Act or under this Indenture, the Agreement and/or the other Loan Documents, by foreclosure of the Deed of Trust by exercise of the power of private sale thereunder or by judicial action, by foreclosure of or other realization upon the security interests in personal property created pursuant to the Loan Documents by strict foreclosure, judicial action or other remedies permitted by applicable Laws, by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained herein or therein, or in aid of the execution of any power herein or therein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Bondowner Representative shall deem most effectual in support of any of its rights or duties hereunder; provided that any such request from the Bondholders shall not be in conflict with any rule of law or with this Indenture, expose the Bondowner Representative to personal liability or be unduly prejudicial to Bondholders not joining therein.

Section 7.03. Application of Moneys Collected by Bondowner Representative. Any moneys collected by the Bondowner Representative pursuant to Section 7.02 shall be applied in the order following, at the date or dates fixed by the Bondowner Representative and, in the case of distribution of such moneys on account of principal (or premium, if any) or interest, upon presentation of the Bonds and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First: For payment of all amounts due to the Bondowner Representative under Section 8.06.

Second: For deposit in the Bond Fund to be applied to payment of the principal of all Bonds then due and unpaid, the premium (if any) and interest thereon; ratably to the Persons entitled thereto without discrimination or preference.

Third: For payment of all other amounts due to any Person hereunder or under the Loan Agreement or the other Loan Documents (other than payments on the Bonds).

Section 7.04. Effect of Delay or Omission to Pursue Remedy. No delay or omission of the Bondowner Representative or of any holder of Bonds to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every power and remedy given by this Article VII to the Bondowner Representative or to the holders of Bonds may be exercised from time to time

and as often as shall be deemed expedient. In case the Bondowner Representative shall have proceeded to enforce any right under this Indenture, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely to the Bondowner Representative, then and in every such case the Issuer, the Bondowner Representative and the holders of the Bonds, severally and respectively, shall be restored to their former positions and rights hereunder in respect to the trust estate; and all remedies, rights and powers of the Issuer, the Bondowner Representative and the holders of the Bonds shall continue as though no such proceedings had been taken.

Section 7.05. Remedies Cumulative. No remedy herein conferred upon or reserved to the Bondowner Representative or to any holder of the Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.06. Covenant to Pay Bonds in Event of Default. The Issuer covenants that, upon the happening of any Event of Default, the Issuer will pay to the Bondowner Representative upon demand, but only out of Revenues, for the benefit of the holders of the Bonds, the whole amount then due and payable thereon (by declaration or otherwise) for interest or for principal, or both, as the case may be, and all other sums which may be due hereunder or secured hereby, including reasonable compensation to the Bondowner Representative, its agents and counsel, and any expenses or liabilities incurred by the Bondowner Representative hereunder. In case the Issuer shall fail to pay the same forthwith upon such demand, the Bondowner Representative, in its own name and as trustee of an express trust, and upon being indemnified to its satisfaction, shall be entitled to institute proceedings at law or in equity in any court of competent jurisdiction to recover judgment for the whole amount due and unpaid, together with costs and reasonable attorneys' fees, subject, however, to the condition that such judgment, if any, shall be limited to, and payable solely out of, Revenues and any other assets pledged, transferred or assigned to the Bondowner Representative under Section 5.06 as herein provided and not otherwise. The Bondowner Representative shall be entitled to recover such judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of this Indenture, and the right of the Bondowner Representative to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture.

Section 7.07. Bondowner Representative Appointed Agent for Bondholders. The Bondowner Representative is hereby appointed the agent of the holders of all Bonds Outstanding hereunder for the purpose of filing any claims relating to the Bonds.

Section 7.08. Power of Bondowner Representative to Control Proceedings. In the event that the Bondowner Representative, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the written request of the holders of a majority in principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the holders of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Bondowner Representative shall not, unless there no longer continues an Event of Default hereunder, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the holders of at least a majority in principal amount of the Bonds Outstanding hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

Section 7.09. Limitation on Bondholders' Right to Sue. No holder of any Bond (except the Bondowner Representative, if it is a holder of Bonds) issued hereunder shall have the right

to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such holder shall have previously given to the Bondowner Representative written notice of the occurrence of an Event of Default hereunder; (b) the holders of at least a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Bondowner Representative to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said holders shall have tendered to the Bondowner Representative indemnity satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Bondowner Representative shall have refused or omitted to comply with such request for a period of thirty (30) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Bondowner Representative.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any holder of Bonds (except the Bondowner Representative, if it is a holder of Bonds) of any remedy hereunder; it being understood and intended that no one or more holders of Bonds (except the Bondowner Representative, if it is a holder of Bonds) shall have any right in any manner whatever by its or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of the Outstanding Bonds.

The right of any holder of any Bond to receive payment of the principal of (and premium, if any) and interest on such Bond out of Revenues, as herein and therein provided, on and after the respective due dates expressed in such Bond, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except as otherwise provided or allowed pursuant to Sections 5.04, 7.02 and/or 7.08 of this Indenture.

Section 7.10. Limitation of Liability to Revenues. Notwithstanding anything in this Indenture contained, the Issuer, in its capacity as issuer of the Bonds, shall not be required to advance any moneys derived from any source, other than the Revenues, for any of the purposes mentioned in this Indenture, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. The Bonds are limited obligations of the Issuer, and are payable from and secured by the Revenues only. The Issuer, in its capacity as issuer of the Bonds, shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with the Loan Agreement, the Bonds or this Indenture, except only (a) to the extent amounts are received for the payment thereof from the Borrower under the Loan Agreement; or (b) it has taken action resulting in a material breach by it of its covenants or obligations under this Indenture, the Loan Agreement or the Bonds.

ARTICLE VIII

THE BONDOWNER REPRESENTATIVE AND AGENTS

Section 8.01. Duties, Immunities and Liabilities of Bondowner Representative. The Bondowner Representative shall perform such duties and only such duties as are specifically set forth in this Indenture and no additional covenants or duties of the Bondowner Representative shall be implied in this Indenture. The Bondowner Representative shall, during the existence of any Event of Default (which has not been cured or waived), 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 reasonable persons familiar with such matters would exercise or use under similar circumstances in the conduct of their own affairs.

No provision of this Indenture shall be construed to relieve the Bondowner Representative from liability for its own negligence, negligent actions or its own negligent failure to act, except that:

(a) the duties and obligations of the Bondowner Representative shall be determined solely by the express provisions of this Indenture, the Bondowner Representative shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Bondowner Representative; and in the absence of bad faith on the part of the Bondowner Representative, the Bondowner Representative may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Bondowner Representative conforming to the requirements of this Indenture;

(b) At all times, regardless of whether or not any Event of Default shall exist, (1) the Bondowner Representative shall not be liable for any error of judgment made in good faith by a Responsible Officer or officers or by any agent or attorney of the Bondowner Representative appointed with due care unless the Bondowner Representative was negligent in ascertaining the pertinent facts; and (2) the Bondowner Representative shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer, accompanied by an opinion of Bond Counsel as provided herein or in accordance with the directions of the holders of not less than a majority, or such other percentage as may be required hereunder, in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Bondowner Representative, or exercising any trust or power conferred upon the Bondowner Representative under this Indenture;

(c) The Bondowner Representative shall not be required to take notice or be deemed to have notice of (i) any default hereunder or under the Loan Agreement, except defaults under Section 7.01(a) or (b) hereof, unless a Responsible Officer of the Bondowner Representative shall be specifically notified in writing of such default by the Issuer or the owners of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then Outstanding, or (ii) any default under the Regulatory Agreement unless a Responsible Officer of the Bondowner Representative shall be specifically notified in writing of such default by the Issuer;

(d) Before taking any action under Article VII hereof or this Section at the request or direction of the Bondholders, the Bondowner Representative may require that a satisfactory indemnity bond be furnished by the Bondholders, for the reimbursement of all costs and expenses to which it may be put and to protect it against all liability

which may be incurred in compliance with such request or direction, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken;

(e) Upon any application or request by the Issuer to the Bondowner Representative to take any action under any provision of this Indenture, the Issuer shall furnish to the Bondowner Representative a Certificate of the Issuer stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and an Opinion of Counsel stating that in the opinion of such Counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished;

(f) The Bondowner Representative may execute any of the powers hereunder or perform any duties hereunder either directly or through agents or attorneys and the Bondowner Representative shall not be responsible for any negligence or misconduct on the part of any agent or attorney appointed with due care by it hereunder (but this provision shall not prohibit any action against any such agent or attorney for their negligent acts);

(g) Neither the Issuer nor the Borrower shall be deemed to be agents of the Bondowner Representative for any purpose, and the Bondowner Representative shall not be liable for any noncompliance of any of them in connection with their respective duties hereunder or in connection with the transactions contemplated hereby;

(h) The Bondowner Representative shall be entitled to rely upon telephonic notice for all purposes whatsoever so long as the Bondowner Representative reasonably believes such telephonic notice has been given by a Person authorized to give such notice;

(i) The immunities extended to the Bondowner Representative also extend to its directors, officers, employees and agents;

(j) Under no circumstances shall the Bondowner Representative be liable in its individual capacity for the obligations evidenced by the Bonds, it being the sole obligation of the Bondowner Representative to administer, for the benefit of the Bondholders, the various funds and accounts established hereunder;

(k) No permissive power, right or remedy conferred upon the Bondowner Representative hereunder shall be construed to impose a duty to exercise such power, right or remedy;

(l) The Bondowner Representative shall not be liable for any action taken or not taken by it in accordance with the direction of a majority (or other percentage expressly provided for herein with respect to a particular action) in aggregate principal amount of Bonds Outstanding related to the exercise of any right, power or remedy available to the Bondowner Representative;

(m) The Bondowner Representative shall have no duty to review any financial statements, budgets or other financial information filed with it by or on behalf of the Borrower under or pursuant to the Loan Agreement; and

(n) The Bondowner Representative acknowledges that in order to preserve the tax-exempt status of the Bonds, the Borrower must comply with requirements for rebate of excess investment earnings to the federal government to the extent applicable. The Bondowner Representative agrees to use commercially reasonable efforts to send the Borrower, with a copy to the Issuer, a notification or reminder of its obligation to rebate excess investment earnings by December 1 of each fifth year, commencing December 1, 2017 (or, if earlier, such notice shall be sent on the date of payment in full of the Bonds, with any such rebate due not more than sixty (60) days following payment in full of the Bonds). However, in no event shall the Bondowner Representative be liable to the Issuer or the Borrower for the failure to so notify or remind the Borrower.

None of the provisions contained in this Indenture shall require the Bondowner Representative to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties or in the exercise of any of its rights or powers. Whether or not therein expressly so provided, every provision of this Indenture, the Loan Agreement, the Regulatory Agreement or any other document relating to the conduct, powers or duties of, or affecting the liability of, or affording protection to, the Bondowner Representative shall be subject to the provisions of this Article VIII.

Section 8.02. Right of Bondowner Representative to Rely Upon Documents, Etc.
Except as otherwise provided in Section 8.01:

(a) The Bondowner Representative may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond or other paper or document believed by it to be genuine and to have been signed and presented by the proper party or parties;

(b) Any consent, demand, direction, election, notice, order or request of the Issuer mentioned herein shall be sufficiently evidenced by a Written Consent, Written Demand, Written Direction, Written Election, Written Notice, Written Order or Written Request of the Issuer, and any resolution of the Issuer may be evidenced to the Bondowner Representative by a Certified Resolution;

(c) The Bondowner Representative may consult with counsel (who may be counsel for the Issuer, counsel for the Bondowner Representative or Bond Counsel) and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel;

(d) Whenever in the administration of this Indenture the Bondowner Representative shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Bondowner Representative, be deemed to be conclusively proved and established by a Certificate of the Issuer; and such Certificate of the Issuer shall, in the absence of negligence or bad faith on the part of the Bondowner Representative, be full warrant to the Bondowner Representative for any action taken or suffered by it under the provisions of this Indenture upon the faith thereof; and

(e) The Bondowner Representative shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Bondowner Representative, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

Section 8.03. Bondowner Representative Not Responsible for Recitals. The recitals contained herein and in the Bonds shall be taken as the statements of the Issuer, and the Bondowner Representative assumes no responsibility for the correctness of the same or for the correctness of the recitals in the Loan Agreement or the Regulatory Agreement. The Bondowner Representative shall have no responsibility with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the Bonds. The Bondowner Representative makes no representations as to the value or condition of any assets pledged or assigned as security for the Bonds, or as to the right, title or interest of the Issuer therein, or as to the security provided thereby or by this Indenture, the Loan Agreement, the Deed of Trust or the other Loan Documents, or as to the compliance of the Project with the Act, or as to the tax-exempt status of the Bonds, or as to the technical or financial feasibility of the Project, or as to the validity or sufficiency of this Indenture as an instrument of the Issuer or of the Bonds as obligations of the Issuer. The Bondowner Representative shall not be accountable for the use or application by the Issuer of any of the Bonds authenticated or delivered hereunder or of the use or application of the proceeds of such Bonds by the Issuer or the Borrower or their agents.

Section 8.04. Intervention by Bondowner Representative. The Bondowner Representative may intervene on behalf of the Bondholders in any judicial proceeding to which the Issuer is a party and which, in the opinion of the Bondowner Representative and its counsel, has a substantial bearing on the interests of owners of the Bonds and, subject to the provisions of Section 8.01(d), shall do so if requested in writing by the owners of a majority in aggregate principal amount of all Bonds then Outstanding.

Section 8.05. Moneys Received by Bondowner Representative. All moneys received by the Bondowner Representative shall, until used or applied as herein provided, be held exclusively (subject to other provisions of this Indenture governing disposition of monies in funds and accounts) for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law or as otherwise provided herein. The Bondowner Representative shall be under no liability for interest on any moneys received by it hereunder except such as it may agree with the Issuer to pay thereon. Any moneys held by the Bondowner Representative may be deposited by it in its banking department and invested in Investment Securities.

Section 8.06. Compensation and Indemnification of Bondowner Representative and Agents. The Borrower is required under the Loan Agreement: (1) to pay to the Bondowner Representative certain fees and other compensation as set forth therein and under the other agreements related to the Bonds to which it is a party; (2) to reimburse the Bondowner Representative upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bondowner Representative in accordance with any provision of this Indenture or other agreement related to the Bonds to which the Bondowner Representative is a party or incurred in complying with any request made by the Issuer with respect to the Bonds (including the reasonable compensation and the expenses and disbursements of its agents and counsel); (3) to indemnify the Bondowner Representative and to hold it harmless as set forth therein and in the other agreements related to the Bonds to which it is a party; and (4) to indemnify the Bondowner Representative for any reasonable fees incurred during a period of default hereunder.

If any property, other than cash, shall at any time be held by the Bondowner Representative subject to this Indenture, or any Supplemental Indenture, as security for the Bonds, the Bondowner Representative, if and to the extent authorized by a receivership, bankruptcy or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Indenture as such security for the Bonds, shall be entitled but

not obligated to make advances for the purpose of preserving such property or of discharging tax liens or other prior liens or encumbrances thereon. The rights of the Bondowner Representative to compensation for services and to payment or reimbursement for expenses, disbursements, liabilities and advances shall have and is hereby granted a lien and a security interest prior to the Bonds in respect of all property and funds held or collected by the Bondowner Representative as such, except funds held by the Bondowner Representative for the benefit of the holders of particular Bonds owned by other than the Bondowner Representative and/or its affiliates, which amounts shall be held solely for the benefit of those Bondholders and used only for the payment of principal of and premium, if any, and interest on the Bonds. The Bondowner Representative's rights to immunities, indemnities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and final payment of the Bonds.

Section 8.07. Qualifications of Bondowner Representative. The Bondowner Representative hereunder shall be U.S. Bank National Association or a corporation, limited liability company, partnership or banking association organized and doing business under the laws of the United States or of a state thereof. No change in the Bondowner Representative shall be made except upon the written direction of the owners of a majority in the principal amount of the Bonds Outstanding (any replacement Bondowner Representative that is not either affiliated with the then Bondowner Representative or that is not the owner of a majority in principal amount of the then Outstanding Bonds, to be reasonably acceptable to the Issuer). The Issuer shall have no right to remove or replace the Bondowner Representative.

Any successor Bondowner Representative shall acknowledge its acceptance of its obligations under this Indenture by a written instrument delivered to the Issuer, the Borrower and, if the successor is not the sole owner of all of the Bonds then Outstanding, the owners of the Bonds.

Section 8.08. Merger or Consolidation of Bondowner Representative. Any corporation or association into which the Bondowner Representative may be merged or with which it may be consolidated, or any corporation or association resulting from any merger or consolidation to which the Bondowner Representative shall be a party, or any corporation or association succeeding to the bond purchase program business of the Bondowner Representative, shall be the successor of the Bondowner Representative hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding, provided that such successor Bondowner Representative shall be eligible under the provisions of Section 8.07 (other than the parenthetical contained therein).

Section 8.09. Dealing in Bonds. The Bondowner Representative, in its individual capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds, and may join in any action which any Bondholder may be entitled to take with like effect as if it did not act in any capacity hereunder. The Bondowner Representative in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer, and may act as depository, trustee or agent for any committee or body of Bondholders secured hereby or other obligations of the Issuer as freely as if it did not act in any capacity hereunder.

Section 8.10. Indemnification of Issuer by Bondowner Representative. The Bondowner Representative acknowledges that notwithstanding any other provision of this Indenture, the Bondowner Representative is acting as an independent contractor and not as the agent of Issuer in servicing and administering the Bonds and the Loan. The Bondowner Representative agrees to indemnify, hold harmless and defend Issuer and its respective Commissioners, officers, agents and employees against all loss, costs, damages, expenses, suits,

judgments, actions and liabilities of whatever nature (including, without limitation, attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments) directly or indirectly resulting from or arising out of or related to any act or omission on the part of the Bondowner Representative under the Bond Documents caused by the negligence or willful misconduct of the Bondowner Representative.

If a third party makes a claim against the Issuer that may be subject to indemnification pursuant to this Section 8.10, the Issuer shall give prompt written notice of such claim to the Bondholder Representative; provided, however, that the failure to provide such notice shall not release the Bondholder Representative from any of its obligations hereunder except only to the extent the Bondholder Representative is prejudiced by such failure. The Bondholder Representative shall be entitled to assume and control the defense of such claim at its expense through counsel of its choice, provided that such counsel is reasonably satisfactory to the Issuer. The Issuer shall cooperate with the Bondholder Representative, at the expense of the Bondholder Representative, in such defense and make available to the Bondholder Representative any witnesses, pertinent records, materials and information in the Issuer's possession as reasonably required by the Bondholder Representative. The Issuer shall have no right to settle or compromise any claim or consent to the entry of any judgment against the Issuer which is the subject of indemnification hereunder without the prior written consent of the Bondholder Representative; and the Bondholder Representative shall have no right to settle or compromise any claim against the Issuer or consent to the entry of any judgment against the Issuer without the prior written consent of the Issuer.

ARTICLE IX

MODIFICATION OF INDENTURE

Section 9.01. Modification of Indenture. With the prior written consent of all of the holders of the Bonds at the time Outstanding, evidenced as provided in Section 11.08, the Issuer and the Bondowner Representative may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any Supplemental Indenture; provided, however, that, no such Supplemental Indenture shall reduce the aforesaid percentage of holders of Bonds whose consent is required for the execution of such Supplemental Indentures. Upon receipt by the Bondowner Representative of a Certified Resolution authorizing the execution of any such Supplemental Indenture, and upon the filing with the Bondowner Representative of evidence of the consent of Bondholders, as aforesaid, the Bondowner Representative shall join with the Issuer in the execution of such Supplemental Indenture, unless (i) such Supplemental Indenture affects the Bondowner Representative's own rights, duties or immunities under this Indenture or otherwise, in which case the Bondowner Representative may in its discretion, but shall not be obligated to, enter into such Supplemental Indenture; or (ii) such Supplemental Indenture affects the rights or obligations of the Borrower hereunder or under the Loan Agreement, in which case the Bondowner Representative shall enter into such Supplemental Indenture only if the Bondowner Representative has received the Borrower's written consent thereto.

It shall not be necessary for the consent of the Bondholders under this Section to approve the particular form of any proposed Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Promptly after the execution by the Issuer and the Bondowner Representative of any Supplemental Indenture pursuant to the provisions of this Section, the Bondowner Representative (unless at the time the Bondowner Representative and/or one or more of its affiliates are the owners of all of the Bonds then Outstanding) shall give Bondholders and the Borrower, by first class mail, a notice setting forth in general terms the substance of such Supplemental Indenture. Any failure of the Bondowner Representative to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Indenture.

Section 9.02. Effect of Supplemental Indenture. Upon the execution of any Supplemental Indenture pursuant to the provisions of this Article IX, this Indenture shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Bondowner Representative and all holders of Outstanding Bonds shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Indenture shall be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.03. Opinion of Counsel as to Supplemental Indenture. Subject to the provisions of Section 8.01, the Bondowner Representative shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel as conclusive evidence that any Supplemental Indenture executed pursuant to the provisions of this Article IX is authorized and permitted by this Indenture.

Section 9.04. Notation of Modification on Bonds; Preparation of New Bonds. Bonds authenticated and delivered after the execution of any Supplemental Indenture pursuant to the provisions of this Article IX may bear a notation, in form approved by the Bondowner

Representative and the Issuer, as to any matter provided for in such Supplemental Indenture, and if such Supplemental Indenture shall so provide, new Bonds, so modified as to conform, in the opinion of the Bondowner Representative and the Issuer, to any modification of this Indenture contained in any such Supplemental Indenture, may be prepared and authenticated by the Bondowner Representative and delivered without cost to the holders of the Bonds then Outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

ARTICLE X

DISCHARGE OF INDENTURE

Section 10.01. Discharge of Indenture. If the entire indebtedness on all Bonds Outstanding shall be paid and discharged in any one or more of the following ways:

(a) by the payment of the principal of (including redemption premium, if any) and interest on all Bonds Outstanding; or

(b) by the delivery to the Bondowner Representative, for cancellation by it, of all Bonds Outstanding;

and if all other sums payable hereunder by the Issuer shall be paid and discharged, then and in that case this Indenture shall cease, terminate and become null and void, and the Bondowner Representative shall forthwith execute proper instruments acknowledging satisfaction of and discharging this Indenture. The fees, expenses and charges of the Bondowner Representative (including reasonable counsel fees) must be paid in order to effect such discharge. The satisfaction and discharge of this Indenture shall be without prejudice to the rights of the Bondowner Representative to charge and be reimbursed by the Borrower for any expenditures which it may thereafter incur in connection herewith.

The Issuer or the Borrower may at any time surrender to the Bondowner Representative for cancellation by it any Bonds previously authenticated and delivered which the Authority or the Borrower lawfully may have acquired in any manner whatsoever, and such Bonds upon such surrender and cancellation shall be deemed to be paid and retired.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Successors of Issuer. All the covenants, stipulations, promises and agreements in this Indenture contained, by or on behalf of the Issuer, shall bind and inure to the benefit of its successors and assigns, whether so expressed or not. If any of the powers or duties of the Issuer shall hereafter be transferred by any law of the State of California, and if such transfer shall relate to any matter or thing permitted or required to be done under this Indenture by the Issuer, then the body or official who shall succeed to such powers or duties shall act and be obligated in the place and stead of the Issuer as in this Indenture provided.

Section 11.02. Limitation of Rights to Parties and Bondholders. Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any Person other than the Issuer, the Bondowner Representative, the Borrower and the holders of the Bonds issued hereunder any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Issuer, the Bondowner Representative, the Borrower and the holders of the Bonds issued hereunder.

Section 11.03. Waiver of Notice. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 11.04. Destruction of Bonds. Whenever in this Indenture provision is made for the cancellation by the Bondowner Representative and the delivery to the Issuer of any Bonds, the Bondowner Representative shall, in lieu of such cancellation and delivery, destroy such Bonds and deliver a certificate of such destruction to the Issuer.

Section 11.05. Separability of Invalid Provisions. In case any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, but this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

Section 11.06. Notices. It shall be sufficient service of any notice, request, demand or other paper on the Issuer, the Bondowner Representative or the Borrower if the same shall, except as otherwise provided herein, be duly made by U.S. certified mail, return receipt requested, postage prepaid, by a nationally-recognized overnight delivery service or by telecopier (promptly confirmed by mail or overnight delivery service as described above), in each case addressed to the appropriate party at the address for such party set forth below:

The Issuer:	Housing Authority of the City of San Diego 1122 Broadway, Suite 300 San Diego, California 92101 Attention: Executive Director
The Bondowner Representative:	U.S. Bank National Association 4747 Executive Drive, 3 rd Floor San Diego, California 92121 Attention: Loan Administrator

with a copy to: U.S. Bank National Association
4747 Executive Drive, 3rd Floor
San Diego, California 92121
Attention: Paul Shipstead

The Borrower: Broadway Upper Tower Associates, L.P.
c/o BRIDGE Housing Corporation
345 Spear Street, Suite 700
San Francisco, California 94105
Attention: Rebecca Hlebasko

with a copy to: U.S. Bancorp Community Development
Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MORMCD
St. Louis, Missouri 63102
Attention: LIHTC Asset Management

and a copy to: Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102
Attention: Jill Goldstein, Esq.

Except as provided in the immediately succeeding sentence, any notice given in accordance with this Section 11.06 shall be deemed to have been duly given upon actual receipt or refusal to accept delivery. The Issuer, the Bondowner Representative and the Borrower may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, which shall be effective 7 days after such notice is given as provided herein.

Section 11.07. Authorized Representatives. Whenever under the provisions of this Indenture the approval of the Issuer or the Borrower is required for any action, and whenever the Issuer or the Borrower is required to deliver any notice or other writing, such approval or such notice or other writing shall be given, respectively, on behalf of the Issuer by the Authorized Representative or on behalf of the Borrower by the Authorized Borrower Representative, and the Issuer, the Bondowner Representative and the Borrower shall be authorized to act on any such approval or notice or other writing and neither party hereto nor the Borrower shall have any complaint against the others as a result of any such action taken.

Section 11.08. Evidence of Rights of Bondholders. (a) Any request, consent or other instrument required by this Indenture to be signed and executed by Bondholders may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Bondholders in person or by agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the ownership of any Bonds, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Bondowner Representative and of the Issuer if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument or writing acknowledged to him the execution thereof.

(c) The ownership of Bonds shall be proved by the Bond register maintained pursuant to Section 2.06 hereof. The fact and the date of execution of any request, consent or other instrument and the amount and distinguishing numbers of Bonds held by the person so executing such request, consent or other instrument may also be proved in any other manner which the Bondowner Representative may deem sufficient. The Bondowner Representative may nevertheless, in its discretion, require further proof in cases where it may deem further proof desirable.

(d) Any request, consent or vote of the holder of any Bond shall bind every future holder of the same Bond and the holder of any Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Bondowner Representative or the Issuer in pursuance of such request, consent or vote.

(e) In determining whether the holders of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned by the Issuer or the Borrower or any affiliate of the Borrower or by any other direct or indirect obligor on the Bonds, or by any Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Issuer or any other direct or indirect obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided that, for the purpose of determining whether the Bondowner Representative shall be protected in relying on any such demand, request, direction, consent or waiver, only Bonds which the Bondowner Representative knows to be so owned shall be disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this subsection (e) if the pledgee shall establish to the satisfaction of the Bondowner Representative and the Issuer the pledgee's right to vote such Bonds and that the pledgee is not a Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Issuer or any other direct or indirect obligor on the Bonds. In case of a dispute as to such right, any decision by the Bondowner Representative taken upon the advice of counsel shall be final and binding upon all holders and pledgees of all Bonds.

(f) In lieu of obtaining any demand, request, direction, consent or waiver in writing, the Bondowner Representative may call and hold a meeting of the Bondholders upon such notice and in accordance with such rules and regulations as the Bondowner Representative considers fair and reasonable for the purpose of obtaining any such action.

Section 11.09. Waiver of Personal Liability. No officer, agent, Commissioner or employee of the Issuer, and no officer, official, agent or employee of the State of California or any department, board or agency of any of the foregoing, shall be individually or personally liable for the payment of the principal of or premium or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such person from the performance of any official duty provided by law or by this Indenture.

Section 11.10. Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the date provided therefor in this Indenture and, in the case of any payment, no interest shall accrue for the period from and after such date.

Section 11.11. Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to

be an original; and all such counterparts shall together constitute but one and the same instrument.

Section 11.12. Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in such State.

Section 11.13. Successors. Whenever in this Indenture either the Issuer or the Bondowner Representative is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Issuer or the Bondowner Representative shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 11.14. CUSIP Numbers. Neither the Bondowner Representative nor the Issuer shall be liable for any defect or inaccuracy in any CUSIP number that may appear on any Bond or in any redemption notice. The Bondowner Representative may, in its discretion, include in any redemption notice a statement to the effect that any CUSIP numbers on the Bonds have been assigned by an independent service and are included in such notice solely for the convenience of the Bondholders and that neither the Issuer nor the Bondowner Representative shall be liable for any inaccuracies in such numbers.

IN WITNESS WHEREOF, the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO has caused this Indenture to be signed in its name and U.S. BANK NATIONAL ASSOCIATION, in token of its acceptance of the duties of the Bondowner Representative hereunder, has caused this Indenture to be signed in its name, all as of the day and year first above written.

HOUSING AUTHORITY OF THE CITY OF
SAN DIEGO

By: _____
Richard C. Gentry,
Executive Director

U.S. BANK NATIONAL ASSOCIATION, as
Bondowner Representative

By: _____
Its: _____

[Signature page to Indenture for 9th and Broadway Apartments)

19048.25:J11879

EXHIBIT A
FORM OF BOND

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THE TRANSFERABILITY HEREOF IS RESTRICTED BY THE TERMS OF THE INDENTURE DESCRIBED HEREIN.

Up to \$_____*

HOUSING AUTHORITY OF THE CITY OF SAN DIEGO
MULTIFAMILY HOUSING REVENUE BOND
(9TH AND BROADWAY APARTMENTS), 2012 SERIES C-__ (____ LOAN)

Dated Date	Maturity Date
December __, 2012	

REGISTERED OWNER: U.S. BANK NATIONAL ASSOCIATION

PRINCIPAL SUM: Up to _____ DOLLARS*

The Housing Authority of the City of San Diego, a public body, corporate and politic, duly organized and existing under the laws of the State of California (herein called the "Issuer"), for value received, hereby promises to pay (but only out of Revenues as hereinafter provided) to the Registered Owner identified above or registered assigns, the sum of up to _____ dollars* (\$_____*) together with interest on the unpaid Outstanding Balance (as hereinafter defined) at the interest rate referenced in the Indenture referred to below, until the Issuer's obligation to pay the Outstanding Balance shall be discharged. The Outstanding Balance shall mean the purchase price of the Bonds (defined below) which has been advanced by the purchaser thereof under the Indenture, and has not been repaid by the Issuer as of the date of calculation of the Outstanding Balance, subject to the provisions of the second paragraph of Section 2.01 of the Indenture.

All capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement or the Indenture hereinafter mentioned.

This Bond shall mature on the Maturity Date set forth above, and the entire unpaid principal balance of and any accrued interest on this Bond shall be paid in full on or before such date. Interest shall be due and payable on each Interest Payment Date in accordance with the requirements of the Indenture.

In the event the Issuer fails to make the timely payment of any monthly payment, and such payment remains unpaid for a period of ten (10) days subsequent to the established payment date, the Issuer shall pay interest on the then Outstanding Balance at the Default Rate, as defined in the Indenture referred to below. Additional amounts shall be remitted to the owner of this Bond as required by the Indenture, arising by reason of payments due under the _____ Note (as defined below) and the Loan Agreement referenced below in excess of the principal and interest due on this Bond.

* Subject to the provisions of the second paragraph of Section 2.01 of the Indenture referenced herein.

This Bond is one of a duly authorized issue of bonds of the Issuer designated as "Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-__ (_____) Loan)" (the "Bonds"), in the initial aggregate principal amount of up to \$_____,* authorized to be issued pursuant to Chapter 1 of Part 2 of Division 24 of the Health and Safety Code of the State of California (herein called the "Act"), and issued under and secured by an Indenture, dated as of December 1, 2012 (the "Indenture"), between the Issuer and U.S. Bank National Association, as Bondowner Representative (the "Bondowner Representative"). Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights thereunder of the owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Bondowner Representative and of the rights and obligations of the Issuer thereunder, to all of the provisions of which Indenture the holder of this Bond, by acceptance hereof, assents and agrees.

THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE EXCLUSIVELY FROM REVENUES AND RECEIPTS UNDER THE INDENTURE. THE BONDS DO NOT CONSTITUTE A DEBT OF THE ISSUER OR OF THE STATE OF CALIFORNIA OR OF ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER (OTHER THAN WITH RESPECT TO THE AMOUNTS SPECIFICALLY PLEDGED THEREFOR UNDER THE INDENTURE), OR OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF. THE BONDS SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF OR A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER, BUT SHALL BE A SPECIAL, LIMITED OBLIGATION OF THE ISSUER PAYABLE SOLELY FROM THE SOURCES DESCRIBED IN THE INDENTURE. THE ISSUER HAS NO TAXING POWER.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT OR FUTURE OFFICER, COMMISSIONER, EMPLOYEE OR AGENT OF THE ISSUER, OR OF ANY SUCCESSOR TO THE ISSUER, AS SUCH, EITHER DIRECTLY OR THROUGH THE ISSUER OR ANY SUCCESSOR TO THE ISSUER, UNDER ANY RULE OF LAW OR EQUITY, STATUTE OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, COMMISSIONER, EMPLOYEES OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND.

The Bonds are limited obligations of the Issuer and, as and to the extent set forth in the Indenture, are payable solely from, and secured by a pledge of and lien on, the Revenues (as that term is defined in the Indenture), consisting primarily of amounts paid by Broadway Upper Tower Associates, L.P., a California limited partnership (the "Borrower") pursuant to a Construction and Convertible Term Loan Agreement, dated as of December __, 2012 (the "Loan Agreement"), among the Bondowner Representative, the Issuer and the Borrower, to finance the acquisition and construction of a multifamily rental housing project by the Borrower in the City of San Diego, California. The loan of the proceeds of the Bonds under the Loan Agreement (the "Loan") will be evidenced by a promissory note (the "_____" Note") of the Borrower. The Indenture also authorizes the issuance of up to \$_____* principal amount of the Issuer's Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-__ (_____) Loan), which bonds are secured on a parity with the Bonds under the Indenture, except that any payment on or prepayment of the

* Subject to the provisions of the second paragraph of Section 2.01 of the Indenture referenced herein.

_____ Note (as such term is defined in the Indenture) will be applied solely to the payment of such other series of bonds.

The Bonds shall be subject to redemption in accordance with the Indenture. Without limitation on the generality of the foregoing, the Bonds shall be subject to redemption prior to maturity, at a price equal to the principal amount of Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption, together with any premium required under the Indenture (a) in whole or in part on any Interest Payment Date, upon prepayment of the _____ Note in whole or in part; (b) in whole following acceleration of the Loan upon the occurrence of an Event of Default under and as defined in the Loan Agreement; and (c) in whole or in part on any date from the proceeds of any mandatory prepayment of the _____ Note under the terms of the _____ Note or the Loan Agreement.

No notice of redemption of Bonds need be given to the registered owners of the Bonds, and the owner of this Bond, by acceptance hereof, expressly waives any requirement for any notice of redemption.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture. The Indenture provides that in certain events such declaration and its consequences may be rescinded by the holders of at least a majority in aggregate principal amount of the Bonds then outstanding.

The Bonds are issuable only as fully registered Bonds without coupons in a single instrument.

This Bond is transferable by the registered owner hereof, in person, or by its attorney duly authorized in writing, at the Principal Office of the Bondowner Representative, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new fully registered Bond will be issued to the transferee in exchange herefor. The Issuer and the Bondowner Representative may treat the registered owner hereof as the absolute owner hereof for all purposes, and the Issuer and the Bondowner Representative shall not be affected by any notice to the contrary.

The Indenture contains provisions permitting the Issuer and the Bondowner Representative to execute supplemental indentures adding provisions to, or changing or eliminating any of the provisions of, the Indenture, subject to the limitations set forth in the Indenture.

The Issuer hereby certifies that all of the conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of California (including the Act) and that the amount of this Bond, together with all other indebtedness of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of California.

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

IN WITNESS WHEREOF, the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO has caused this Bond to be executed in its name by the manual or facsimile signature of its Executive Director and its official seal to be impressed or printed hereon and attested to by the manual or facsimile signature of its Secretary, all as of the Dated Date stated above.

HOUSING AUTHORITY OF THE CITY OF
SAN DIEGO

By: _____
Executive Director

Attest:

By _____
Deputy Secretary

FORM OF CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture and has been authenticated and registered on this date:

Date: _____

U.S. BANK NATIONAL ASSOCIATION,
as Bondowner Representative

By: _____

Its: _____

FORM OF ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and do(es) hereby irrevocably constitute and appoint

_____, attorney,
to transfer the same on the registration books of the Bondowner Representative, with full power
of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a
eligible guarantor.

NOTICE: The signature on this assignment must
correspond with the name(s) as written on
the face of the within Bond in every
particular without alteration or enlargement
or any change whatsoever.

EXHIBIT B
FORM OF INVESTOR'S LETTER

Housing Authority of the City of San Diego
San Diego, California

U.S. Bank National Association,
as Bondowner Representative
San Diego, California

Re: Housing Authority of the City of San Diego Multifamily Housing Revenue
 Bonds (9th and Broadway Apartments), 2012 Series C

Ladies and Gentlemen:

The undersigned (the "Purchaser"), being the purchaser of the above-referenced bonds (the "Bonds") hereby certifies, represents and warrants for the benefit of the Housing Authority of the City of San Diego (the "Issuer") and the Bondowner Representative (as such term is defined in the Indenture referenced in paragraph (a) below) that:

(a) The Purchaser acknowledges that the Bonds were issued for the purpose of making a mortgage loan to assist in the financing of the acquisition and construction of a certain multifamily rental housing project located in San Diego, California (the "Project"), as more particularly described in that certain Construction and Convertible Term Loan Agreement, dated as of December __, 2012 (the "Loan Agreement") by and among the Bondowner Representative, the Issuer and Broadway Upper Tower Associates, L.P., a California limited partnership (the "Borrower"). The Purchaser further acknowledges that the Bonds are secured by a certain Indenture dated as of December 1, 2012 (the "Indenture"), between the Issuer and U.S. Bank National Association, as Bondowner Representative.

(b) The Purchaser hereby certifies that it is a Qualified Institutional Buyer or an Accredited Investor (as such terms are defined in the Indenture), or the Purchaser is otherwise a permitted transferee of the Bonds under Section 2.05(b) of the Indenture, and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of tax-exempt municipal obligations, to be able to evaluate the risks and merits of the investment represented by the Bonds.

(c) The Bonds are being acquired by the Purchaser for its own account. The Purchaser does not presently intend to make a public distribution of, or to transfer, all or any part of the Bonds, or any participating interest in the Bonds, except as may be permitted by Section 2.05 of the Indenture. 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.

(d) The Purchaser understands that the Bonds have not been registered under the Securities Act of 1933, as amended. The Purchaser agrees that it will comply with any applicable State or federal securities laws then in effect with respect to any disposition by it of the Bonds, and acknowledges that any current exemption from registration of the Bonds does not affect or diminish such requirements.

(e) The Purchaser acknowledges that it is familiar with the conditions, financial and otherwise, of the Borrower and understands that the Borrower has no significant assets other than the Project for payment of the Bonds. Further, the Purchaser understands that the Bonds involve a high degree of risk. Specifically, and without in any manner limiting the foregoing, the Purchaser understands and acknowledges that, among other risks, the Bonds are payable solely from the Revenues (as defined in the Indenture). The Purchaser has made such inquiry with respect to all of the foregoing as it believed to be desirable for its purposes and acknowledges that its 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 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.

(f) It is acknowledged that any written information with respect to the Bonds furnished to the Purchaser by the Issuer or by any other party to the transaction does not purport to fully disclose all information pertinent to the Bonds.

(g) The Purchaser is not now and has never been controlled by, or under common control with, the Borrower. The Borrower has never been and is not now controlled by the Purchaser. The Purchaser has entered into no arrangements with the Borrower or with any affiliate in connection with the Bonds, other than as disclosed in writing to the Issuer. The Purchaser hereby agrees to deliver to the Issuer a copy of any agreement between the Purchaser and the Borrower or any affiliate of the Borrower relating to the Bonds.

(h) 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.

(i) In entering into this transaction the Purchaser has not relied upon any representations or opinions made by the Issuer relating to the legal consequences or other aspects of the transactions, nor has it looked to, nor expected, the Issuer to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the 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 the Bondowner Representative to secure repayment of the Bonds. The Purchaser understands and acknowledges that, after the Conversion Date (as defined in the Loan Agreement) the obligations of the Borrower under the Loan Agreement are not fully recourse obligations against the general assets of the Borrower, but are secured only by the assets of the Borrower referred to therein.

(j) The Purchaser understands that 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 or taxing district thereof, including, without limitation, the Issuer; that the Bonds will never represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the State of California or any political subdivision thereof; that no right will exist to have taxes levied by the State of California or any political subdivision thereof for the payment of principal and interest on the Bonds; and that the liability of the Issuer with respect to the Bonds is subject to further limitations as set forth in the Bonds and the Indenture.

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

(l) The Purchaser acknowledges that it has the right to sell and transfer the Bonds, subject to compliance with the transfer restrictions set forth in Section 2.05 of the Indenture, including the requirement for the delivery to the Issuer and the Bondowner Representative of an investor's letter in the same form as this Investor's Letter, including this paragraph (l). Failure to deliver such investor's letter shall cause the purported transfer to be null and void.

(m) The Purchaser agrees to indemnify and hold harmless the Bondowner Representative and the Issuer, each Commissioner, officer, director, partner or employee of the Bondowner Representative or the Issuer, and each person who controls the Bondowner Representative or the Issuer 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 (collectively called the "Indemnified Parties"), against any and all losses, claims, damages, liabilities or expenses (including any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions) whatsoever arising out of (i) any sale, transfer or other disposition of the Bonds, or any interest therein, by Purchaser in violation of the provisions hereof, or (ii) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact related to the Bonds or any omission or alleged omission of any material fact related to the Bonds made or furnished or omitted by the Purchaser, as the case may be; provided, however, that the Purchaser shall not be liable to an Indemnified Party in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in any written information furnished by such Indemnified Party. No Indemnified Parties other than the Issuer and its Commissioners, officers and employees shall be indemnified hereunder for any losses, claims, damages or liabilities resulting from the negligence of such Indemnified Parties. No Indemnified Party shall be indemnified hereunder for any losses, claims, damages or liabilities resulting from the willful misconduct of such parties.

(n) The Purchaser acknowledges that one or more individuals with an ownership interest in the Borrower or one or more of its partners may have made campaign contributions to one or more councilmembers of the City of San Diego, California.

(o) The Purchaser acknowledges that the Bonds are exempt from the requirements of Rule 15c2-12 of the Securities and Exchange Commission and that the Issuer has not undertaken to provide any continuing disclosure with respect to the Bonds.

(p) The Purchaser acknowledges that interest on a Bond is not excludable from gross income of the owner thereof for federal income tax purposes for any period during which such Bond is owned by a person who is a substantial user of the facilities financed by the Bonds or any person considered to be related to such substantial user (within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended).

Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Indenture.

[PURCHASER]

By: _____

Name: _____

Title: _____

**CONSTRUCTION AND CONVERTIBLE TERM
LOAN AGREEMENT**

AMONG

HOUSING AUTHORITY OF THE CITY OF SAN DIEGO,

U.S. BANK NATIONAL ASSOCIATION

AND

BROADWAY UPPER TOWER ASSOCIATES, L.P.

Dated as of _____, 2012

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CONSTRUCTION AND CONVERTIBLE TERM

LOAN AGREEMENT

This Construction and Convertible Term Loan Agreement ("**Agreement**") is dated as of _____, 2012, and is among 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 ("**Issuer**" and "**Lender**"), **U.S. BANK NATIONAL ASSOCIATION**, a national association ("**U.S. Bank**"), in its capacity as "Bondowner Representative", and **BROADWAY UPPER TOWER ASSOCIATES, L.P.**, a California limited partnership ("**Borrower**"). Pursuant to that certain Assignment of Deed of Trust and Loan Documents (the "**Assignment**") dated as of even date herewith, by and between Issuer and U.S. Bank, in its capacity as "Bondowner Representative" (in such capacity, "**Bondowner Representative**") under that certain Indenture dated as of December 1, 2012 ("**Indenture**"), executed by and between Issuer and Bondowner Representative, Issuer shall, concurrently with the execution of this Agreement, assign and transfer to Bondowner Representative all of Issuer's right, title and interest in, to, and under (but not its obligations as "Issuer" under) the Loan Documents (as defined below), excluding any right expressly reserved to Issuer as "Unassigned Rights" (as defined in the Indenture). Upon the execution and delivery of the Assignment, (a) all references to "Lender" under this Agreement shall mean Bondowner Representative and its respective successors and assigns, and (b) Issuer shall be referred to as "Issuer." In its capacity as "Bondowner Representative", U.S. Bank shall have the sole right to exercise, grant, make and/or issue all of the rights, powers, elections, determinations, approvals, consents, remedies, duties and functions of "Lender" hereunder. Any deliveries or payments required to be made hereunder by Borrower to Lender shall be made to Bondowner Representative unless the terms of the Indenture or this Agreement expressly and specifically provide otherwise.

RECITALS

A. Borrower owns or will own, concurrently with the Closing Date under this Agreement, a leasehold interest in certain real property (the "**Land**") located in the County of San Diego, State of California, legally described on **Exhibit A** attached to this Agreement and incorporated herein.

B. Borrower intends to construct one hundred twenty-one (121) affordable housing apartment units which shall be situated on the eighth (8th) through seventeenth (17th) levels of an apartment development known as "9th and Broadway Apartments". The development will include subterranean levels of parking ("Subterranean Parking"), ground level retail space ("Commercial Space") and an additional apartment development which will be located on the second (2nd) through ____ (____) levels of the development ("Lower Tower Apartments"). The Lower Tower Apartments will be developed by Lower Tower Borrower, which is an affiliate of Borrower. The Subterranean Parking and Commercial Space will be developed and owned by Borrower and Lower Tower Borrower, as tenants-in-common. The real property and improvements referred to herein as the Subterranean Parking is more particularly described on **Exhibit A-1** attached to this Agreement. The real property and improvements referred to herein as the Commercial Space is more particularly described on **Exhibit A-2**.

C. Subject to the terms and conditions of this Agreement, Lender is willing to make a loan from the proceeds of the Bonds (as defined in Recital D below) to Borrower in the aggregate amount of ///[\$23,000,000]///, which consists of a Construction Loan to the Borrower in a maximum principal amount not to exceed ///[\$21,405,000]///, as evidenced by the Construction Note, and a Convertible Term Loan to the Borrower in a maximum principal amount not to exceed ///[\$1,595,000]///, as evidenced by the Convertible Term Note. The amount of the Loans has been determined based on the assumption that Borrower will receive certain Credits, as further described in this Agreement.

D. Issuer, in order to raise sufficient funds to make the Loan to Borrower, has determined to issue its Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-1 (Convertible Loan) and Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-2 (Construction Loan) (collectively, the “Bonds”) pursuant to the terms of the Indenture.

E. Borrower has commitments for additional financing for the acquisition and construction of the Project from the following sources:

1. Subordinate loans and other funding as described on the Construction Funds Schedule, described on *Exhibit F*.
2. Capital contributions from the Partners in the anticipated amount of \$ _____, as further described on *Exhibit E*.

F. Pursuant to the Notes and this Agreement, Lender is requiring that Borrower maintain certain covenants, make certain covenants and representations, provide Lender with certain financial information and agree to certain other conditions to obtaining the Loans as more fully set forth in this Agreement.

1. **Definitions and Interpretation.**

1.1 **Defined Terms.** The following terms when used in this Agreement shall, except where the context otherwise requires, have the following meanings.

“Acceptable Leases” means, with respect to the Units, legally valid, binding and enforceable written lease agreements with bonafide tenants (excluding specifically Guarantor, employees, Affiliates, and General Partner), providing for initial lease terms of not less than six months nor more than twelve months and complying with all Laws, and all requirements set forth in the Subordinate Loan Documents, Section 6.18 of this Agreement and the Internal Revenue Code.

“Accessibility Laws” means any federal, state or local law, statute, code, ordinance, rule, regulation or requirement, including, without limitation, the United States Americans With Disabilities Act of 1990, as amended (the “ADA”), relating to accessibility to facilities or properties for disabled, handicapped and/or physically challenged persons, or other persons covered by the ADA.

“Advance” means (i) any portion of the Loans advanced by Lender to or for the benefit of Borrower in accordance with this Agreement; (ii) any advance by Lender of any portion of the Loans to protect the Project or the lien of the Loan Documents, including any Protective Advance; and (iii) any other advance by Lender of any portion of the Loans required or permitted under this Agreement.

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

“Agreement” means this Construction and Convertible Term Loan Agreement, including amendments hereof and supplements hereto executed by Lender and Borrower, or otherwise required hereunder.

“Anti-Terrorism Law(s)” means any laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, the Laws comprising or implementing the Bank Secrecy Act, and the Law administered by the United States Treasury Department’s Office of Foreign

Asset Control (as any of the foregoing Laws may from time to time be amended, renewed, extended, or replaced).

“Applicable Percentage” means the applicable percentage used for LIHTC under Section 42 of the Internal Revenue Code.

“Appraisal” means an appraisal meeting the Required Appraisal Standard.

“Architect” means Studio E Architects or any other licensed architect, space planner or design professional approved by Lender that Borrower may engage from time to time to design any portion of the Project, including the preparation of Plans.

“Architect’s Agreement” means the Standard Form Agreement Between Owner and Architect dated _____, executed by and between Borrower, as owner, and Architect, as architect, and any replacement architect’s agreement approved by Lender.

“Assignment of Property Management Agreement” means the Assignment of Property Management Agreement dated as of the date hereof, by and between Borrower and Lender, with the consent of the Property Manager.

“Assignment of Contract Rights” means the Collateral Assignment of Contract Rights dated as of the date hereof, made by General Partner in favor of Lender.

“Assignment of Construction and Development Documents” means, collectively, the Assignment and Subordination of Architect’s Agreement, dated as of the date hereof, from Borrower to Lender and consented to by Architect, the Assignment and Subordination of Engineer’s Agreement, dated as of the date hereof, from Borrower to Lender and consented to by Engineers and the Assignment and Subordination of Construction Contract, dated as of the date hereof, from Borrower to Lender and consented to by the General Contractor.

“Bank-Controlled Account” means the bank-controlled account in Borrower’s name held by the Lender into which the Funding Sources, including any portion of the Loans which Lender elects to deposit in the Bank-Controlled Account, will be deposited.

“Bond Documents” means, collectively, the Indenture, the Regulatory Agreement, the Deed of Trust Assignment, the UCC-1 and UCC-2 financing statements, the Tax Certificate and any other document (other than the Loan Documents) now or hereafter executed by Borrower, Issuer, and/or Bondowner Representative in connection with the Bonds.

“Bondowners” has the meaning set forth in the Indenture.

“Bondowner Representative” has the meaning given that term in the first paragraph of the Agreement.

“Bonds” has the meaning given that term in Recital D.

“Borrower” has the meaning set forth in the introductory paragraph of this Agreement.

“Borrower’s Organizational Documents” means the following, including any amendments and supplements:

The certificate of limited partnership of Borrower and Borrower's Partnership Agreement.

"Budget" means the line item budget for the hard and soft Project Costs for the Project as approved by Lender and attached hereto as **Exhibit B**, as modified from time to time in accordance with this Agreement.

"Business Day" means a day other than a Saturday, a Sunday or a day on which lenders in the city in which the principal office of Lender is located are authorized or obligated by law or executive order to close.

"Capital Contributions" shall mean capital contributions to the Borrower in the aggregate amount of \$_____ as further described on **Exhibit E**.

"CC&Rs" shall mean that certain ///[Declaration of Covenants, Conditions and Restrictions]/// for the Project executed by Borrower and Lower Floors Borrower in a form acceptable to Lender, in Lender's sole discretion.

"Change Orders" means changes in the Plans pursuant to Section 6.4 of this Agreement which have been executed in accordance with the Construction Contract.

"City" means the City of San Diego, California.

"Closing Date" means _____, 2012.

"Collateral" means (a) all real and personal property, tangible and intangible, and the products and proceeds thereof, that secures the Loans, including but not limited to, the Project, the Personal Property, the Capital Contributions, and the Credits (to the fullest extent that a collateral interest can be granted therein), and (b) all accessions to, substitutions for and replacements, products and proceeds of any of the foregoing, including, but not limited to, proceeds of any insurance policies, claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing.

"Commencement Date" means the date that is thirty (30) days following the Closing Date.

"Commercial Space" means the approximately _____ square feet of commercial space in the Project.

"Compensation" has the meaning set forth in Section 9.1(g).

"Completion" means the conditions set forth in 6.1 have been satisfied.

"Completion Date" means December 1, 2014, by which date Borrower is required to complete the Project pursuant to Section 6.1.

"Compliance Certificate" means the Compliance Certificate attached as **Exhibit J** which the Borrower is required to provide annually.

"Condemnation" has the meaning set forth in Section 9.1(b).

"Conditions to Conversion" has the meaning set forth in Section 14.2.

“Construction Contract” means the contract between Borrower and General Contractor, or any other contract that Borrower from time to time may execute, with Lender’s consent, pursuant to which Borrower engages General Contractor to construct or rehabilitate all or any portion of the Improvements.

“Construction Documents” means any Architect’s Agreement, Construction Contract, the Plans and any other contract or agreement, public or private, regarding the construction, development and/or rehabilitation of the Project.

“Construction Equity Deposits” means the portion of Capital Contributions scheduled to be available to pay for items in the Budget as shown on **Exhibit E**. Construction Equity Deposits shall not include any Capital Contributions that are intended to repay the Loans.

“Construction Funds Schedule” means the anticipated amount, timing, and disbursement of Funding Sources as set forth on **Exhibit F**.

“Construction Loan” means the construction period loan made by Lender to Borrower in the aggregate principal amount of up to ///[\$21,405,000]///.

“Construction Loan Fee” means the fee payable with respect to the Construction Loan on or before the Closing Date in the amount of ///[\$107,025]///.

“Construction Loan Rate” means, subject to Section 2.2(d), the LIBOR Based Rate.

“Construction Note” has the meaning set forth in Recital C.

“Contingency Reserve” means the line item established in the Budget to pay costs of the Project that are in excess of specific line items in the Budget, whether as a result of price increases, changes in the Plans or otherwise.

“Contingent Monetary Liabilities” means, with respect to either (i) Borrower, or (ii) the Guarantor and its Subsidiaries, as the case may be, all of any such Person’s liabilities and obligations for moneys borrowed, for payments of moneys owed on claims which have been liquidated in amount, and for payment of moneys which are contingent upon and will not mature unless and until the occurrence of some event or circumstance, including but not limited to such Person’s liability under or with regard to guaranties and indemnities, purchase agreements, letters of credit, and recourse indebtedness on projects sold to other Persons.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person whether through ownership of voting securities, beneficial interests, by contract or otherwise. The definition is to be construed to apply equally to variations of the word “Control” including “Controlled,” “Controlling” or “Controlled by.” A Person shall be deemed to Control another Person if the controlling Person owns 10% or more of any class of voting securities (or other ownership interests) of the Controlled Person or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the Controlled Person, whether through ownership of stock, by contract or otherwise.

“Conversion” means Conversion of the Convertible Term Note to a Limited Recourse Obligation and is not related to amortization of the Convertible Term Note.

“Conversion Election Notice” means the Notice to be provided by Borrower to Lender in the form attached as **Exhibit I**, as further described in Section 14.3.

“Conversion Date” has the meaning set forth in Section 14.3.

“Conversion Fee” means the fee in the amount of \$_____ payable by Borrower to Lender in accordance with Section 14.2.

“Convertible Term Loan” means the convertible term loan made by Lender to Borrower in an aggregate principal amount not to exceed ///[\$1,595,000]///.

“Convertible Term Loan Fee” means the fee payable on or before the Closing Date in the amount of ///[\$7,975]///.

“Convertible Term Loan Rate” means, subject to Section 2.2(d), (a) at all times prior to the Fixed Rate Commencement Date, the LIBOR Based Rate, and (b) from and after the Fixed Rate Commencement Date, the Fixed Rate.

“Convertible Term Note” has the meaning set forth in Recital C.

“Corporate Guarantor” means BRIDGE Housing Corporation, a California nonprofit public benefit corporation.

“Corporate Guarantor Organizational Documents” means the following, including any amendments and supplements: the articles of incorporation of Corporate Guarantor and the bylaws of Corporate Guarantor.

“County” means San Diego, the County in which the Project is located.

“Credit Agency” means California Tax Credit Allocation Committee, the allocator of LIHTC in the State of California.

“Credits” means the LIHTC.

“Debt Service” means, for any period, the sum of (a) all principal and interest payments which are due and payable under the Loan Documents during the period (or, if monthly payments of principal and interest (i.e., “amortization payments”) have not commenced prior to the start of such period, all principal and interest payments which would be due and payable under the Loan Documents for an equivalent period following the commencement of required payments of principal and interest payments (i.e., “amortization payments”) under the Loan Documents (even if such amortization payments have not actually commenced under the Loan Documents prior to the actual period of calculation)) (but excluding any amounts required to be paid under Section 2.5 for changes in capital adequacy regulations), plus (b) all required payments under the Subordinate Loan Documents during such period.

“Debt Service Coverage Ratio” means, for any period, the ratio of (i) Net Operating Income for such period divided by (ii) Debt Service for such period.

“Deed of Trust” means the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith, encumbering the Project, executed by Borrower for the benefit of Lender to secure the Loans, including any amendments, modifications and/or supplements thereto.

“Deed of Trust Assignment” means that certain Assignment of Deed of Trust and Related Documents dated as of even date herewith, by Issuer, in favor of Bondowner Representative.

“Default” means an event that, with giving of notice or passage of time or both, would constitute an Event of Default.

“Default Rate” means the lesser of five percent (5%) per annum in excess of the Loan Rate or the maximum lawful rate of interest which may be charged, if any (computed on the basis of a 360-day year, actual days elapsed).

“Designated Representative” means the Person(s) authorized by Borrower to deliver certificates, Draw Requests and other documents on behalf of Borrower to Lender in accordance with the Loan Documents, pursuant to Section 16.28 of this Agreement.

“Developer” means BRIDGE Housing Corporation, a California nonprofit public benefit corporation.

“Developer Fee” means the developer fee payable to Developer pursuant to the Development Services Agreement, provided that no more than the Permitted Developer Fee Payment as set forth on *Exhibit H* shall be made during the term of the Construction Loan.

“Developer Fee Subordination Agreement” means the Assignment of Development Services Contract and Developer Fee Subordination Agreement of even date herewith between Borrower, Lender and Developer.

“Development Agreement” means the Disposition and Development Agreement, dated _____, between Borrower and the Redevelopment Agency of the City of San Diego (“RDA”), including, without limitation, a first amendment dated as of _____, by and between Borrower and the RDA and a second agreement dated as of _____, by and between Borrower and the City as successor agency to the RDA, and all other amendments and modifications thereof and supplements thereto executed by such parties and approved by Lender.

“Development Items” means engineering reports, land planning maps or plats, soils tests, environmental reports, surveys, marketing materials and brochures, building permits, licenses, easements, utility access or supply agreements, governmental or private agreements, indemnities, waivers, rights to reimbursements, abatements or benefits of whatsoever nature regarding the Project, to the extent assignable, and other documents prepared and existing for the development of the Project available on the Closing Date, with subsequent submissions to Lender of reports and studies not required to be available on the Closing Date, if requested by Lender.

“Development Services Agreement” means the ///[Development Services Agreement]///, dated as of _____, between Borrower and Developer.

“Disbursement” means disbursements by Lender of (a) Advances of proceeds of the Loan; (b) Construction Equity Deposits; (c) proceeds of the Subordinate Loan(s); and (d) other funds on deposit in the Bank Controlled Account.

“Distribution” in respect of any Person means: (a) dividends or other distributions on or in respect of any of the stock, partnership interest, membership interest, or other equity interests of such Person; and (b) the redemption, repurchase or other acquisition of any capital stock or other equity interests of such Person or of any warrants, rights or other options to purchase any such capital stock or other equity interests.

“Draw Request” means the Borrower’s Letter of Draw Request in the form attached hereto as **Exhibit C-1**, together with an updated Budget, including a summary spreadsheet, an Application and Certificate for Payment (AIA Document G702 and G703), and a Draw Request Certification.

“Draw Request Certification” means a certification from Borrower to accompany all Draw Requests under this Agreement, in the form of **Exhibit C-2** attached hereto.

“Draw Request Spreadsheet” means a breakdown of the Project Costs expended as of the date of the Draw Request in the form of **Exhibit C-3** attached hereto.

“Engineering Contracts” means, collectively, _____.

“Engineers” means, collectively, _____.

“Environmental Indemnity Agreement” means the Environmental and ADA Indemnification Agreement of even date herewith executed by Borrower and Guarantor for the benefit of Lender.

“Environmental Laws” means all federal, state, regional, county and local statutes, regulations, ordinances, rules, regulations and policies, all court and administrative orders and decrees and arbitration awards, and the common law, which pertain to environmental matters or contamination of any type whatsoever, including but not limited to those relating to the presence, manufacture, processing, use, distribution, treatment, storage, disposal, generation or transportation of Hazardous Substances; air, water (including surface water, groundwater, and stormwater) or soil (including subsoil) contamination or pollution; the presence or release of Hazardous Substances, protection of wildlife, endangered species, wetlands or natural resources; health and safety of employees and other persons; and notification requirements relating to the foregoing, including, without limitation, the following statutes, and regulations adopted thereunder: the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. (“**CERCLA**”); the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq. (“**RCRA**”); the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. (“**TSCA**”); the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; and the Occupational Safety and Health Act, 19 U.S.C. § 6251 et seq.; California Health and Safety Code §25100 et seq., as each of the foregoing may be amended from time to time. A release of Hazardous Substance includes (a) any intentional, unintentional, knowing or unknowing presence, spilling, leaking, pumping, pouring, emitting, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing any Hazardous Substance at, on or into the indoor or outdoor environment or otherwise in, onto, from or about the air, water (including surface waters and groundwater), soils, subsoils or any other surface or media on-site or off-site, and (b) the abandonment or discarding of barrels, drums, containers, underground tanks, or any other receptacles ever containing any Hazardous Substances.

“Environmental Liability” means any claim, demand, obligation, cause of action, allegation, order, violation, damage, injury, judgment, penalty or fine, cost of enforcement, cost of remedial action, diminution in value or any other cost or expense whatsoever, including reasonable attorneys’ fees and disbursements, resulting from the presence or use of Hazardous Substances, the violation or alleged violation of any Environmental Law, or the imposition of any Environmental Lien.

“Environmental Lien” means a Security Interest in favor of any third party for: (a) any liability under an Environmental Law; or (b) damages arising from or costs incurred by such third party in response to a Release or threatened Release of any Hazardous Substance or constituent into the environment.

“Environmental Reports” means the following reports prepared by _____ with respect to the Project: _____.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the Department of Labor regulations promulgated thereunder.

“Event of Default” means an Event of Default as set forth or described in Section 15.1 of this Agreement.

“Excess Costs” has the meaning set forth in Section 4.8(b)(1).

“Extension Fee” means the non-returnable fee in the amount of 20 basis points of the aggregate principal balance of the Loans payable by Borrower to the Lender upon each exercise of an Option to Extend.

“Fees” means the Loan Fees, the Conversion Fee, each Extension Fee and any other fees now or hereafter due and payable by Borrower in accordance with any or all of the Loan Documents.

“First Option to Extend” means the option to extend the Construction Loan as described in Section 2.7.

“Fiscal Year” means Borrower’s fiscal year, ending on December 31st of each calendar year; provided the same may not be changed without the prior written consent of the Lender.

“Fixed Rate” means _____ percent (____%).

“Fixed Rate Commencement Date” means June 1, 2015.

“Force Majeure” means any act of God; acts of terrorism; strikes, shortage or unavailability of labor or materials; lockouts or labor difficulty, explosion; sabotage; accident; riot or civil commotion; act of war; fire or other casualty; legal requirements; and causes beyond the reasonable control of Borrower.

“Funding Sources” means the Loans, the Subordinate Loan, and the Construction Equity Deposits.

“GAAP” means generally accepted accounting principles consistently applied and maintained throughout the period indicated and consistent with the audited financial statements delivered to Lender pursuant to Article V. Whenever any accounting term is used herein and is not otherwise defined, it shall be interpreted in accordance with GAAP.

“General Contractor” means _____.

“General Partner” means Broadway Upper Tower LLC, a California limited liability company, and any other person or entity that owns a general partner interest in Borrower.

“General Partner Organizational Documents” means the following, including any amendments and supplements: the articles of organization of General Partner and General Partner’s operating agreement.

“Governmental Agency” means any governmental or quasi-governmental agency, board, bureau, commission, department, court, administrative tribunal or other instrumentality or authority, and any public utility authorized by federal, state or local laws or regulations as having jurisdiction over Borrower or the Project or the development of the Project.

“Grants” means any grants listed on the Construction Funds Schedule.

“Ground Lease” has the meaning set forth on the Ground Lease Rider attached as *Exhibit M*.

“Guarantor” means, collectively, the Corporate Guarantor and any other Person who now or hereafter partially or fully guarantees the payment and performance of any indebtedness or other obligation to Lender under any Loan Document.

“Guaranty” means the Repayment and Completion Guaranty.

“Hazardous Substances” means any substance or material defined in or governed by any Environmental Laws as a dangerous, toxic or hazardous pollutant, contaminant, chemical waste, material or substance, and also including urea-formaldehyde, polychlorinated biphenyls, dioxin, radon, mold, fungi, lead, lead based paint, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, including, but not limited to crude oil or any fraction thereof, methane gas, natural gas, natural gas liquids, gasoline and synthetic gas, or any other waste, material, substance, pollutant or contaminant which would subject the owner or operator of the Project to any damages, penalties or liabilities under any applicable Environmental Laws.

“HUD” refers to the U.S. Department of Housing and Urban Development.

“Impositions” means all of the following: (a) all general and special real property taxes and assessments imposed on the Project; (b) all other taxes and assessments and charges of every kind that are assessed upon the Project (or upon the owner and/or operator of the Project) and that create or may create a lien upon the Project (or upon any Personal Property or fixtures used in connection with the Project), including without limitation non-governmental levies and assessments pursuant to applicable covenants, conditions or restrictions; and (c) all license fees, taxes and assessments imposed on Lender (other than Lender’s income or franchise taxes) which are measured by or based upon (in whole or in part) the amount of the obligations secured by the Project.

“Improvements” means the Units and all other improvements and fixtures now existing or to be constructed on the Land in accordance with the Plans.

“In Balance” has the meaning set forth in Section 4.8(a).

“Indebtedness” means in all cases without duplication, all items of indebtedness or liability of Borrower or Guarantor other than the Obligations, at any time which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of a consolidated balance sheet of Borrower or each Guarantor as of the date of determination, including: (a) indebtedness for borrowed money; (b) obligations under direct or indirect guaranties of indebtedness or obligations of others referred to in clause (a) or (b) above; (c) any indebtedness secured by any Security Interest on the property of such

entity; (d) liabilities in respect of unfunded vested benefits under any Plan for which the minimum funding standards of Section 302 of ERISA have not been met; and (e) Contingent Monetary Liabilities.

“Initial Disbursement” has the meaning set forth in Section 3.2.

“Initial Maturity Date” means the initial maturity date of the Construction Note which is June 1, 2015.

“Initial Money Market Rate” means the rate per annum, determined solely by the Lender, on the first day of the term of the Convertible Term Note or the most recent repricing date or as mutually agreed upon by the Borrower and the Lender, as the rate at which the Lender would be able to borrow funds in Money Markets for the amount of the Convertible Term Note and with an interest payment frequency and principal repayment schedule equal to the Convertible Term Note and for a term as may be arranged and agreed upon by the Borrower and the Lender, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation. The Borrower acknowledges that the Lender is under no obligation to actually purchase and/or match funds for the Initial Money Market Rate of the Convertible Term Note.

“Initial Operating Reserve Deposit” means \$_____ [amount equal to six (6) months debt service to be added], the amount to be deposited in the Operating Reserve Account on or before the Conversion Date in accordance with Section 10.3.

“Insurance Escrow Account” has the meaning set forth in Section 10.5.

“Insurance Premium” means “Insurance Premium” as defined in Section 10.5.

“Interest Reserve” means the line item in the Budget, if any, allocated to pay interest on the Loan.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the United States Treasury Department or Internal Revenue Service, to the extent applicable to the Credits. All references herein to sections, paragraphs or other subdivisions of the Internal Revenue Code or the regulations promulgated thereunder shall be deemed to be references to correlative provisions of any predecessor or successor code or regulations promulgated thereunder.

“Investor” means, collectively, U.S. Bancorp Community Development Corporation, a Minnesota corporation, ///[USB California Low-Income Tax Credit Fund, L.L.C., a Missouri limited liability company]///, and its permitted successors and assigns.

“Issuance Date” means the date on which the Bonds are issued.

“Land” has the meaning given to such term in the Recitals.

“Laws” means all statutes, laws, ordinances, rules, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or other Governmental Agency, including, without limitation, all building, zoning, planning, subdivision, fire, traffic, safety, health, disability, labor, discrimination, environmental, air quality, wetlands, shoreline and flood plain laws, ordinances, regulations and rules and (ii) all government and private covenants, conditions and restrictions applicable to the Project.

“Lease” means any lease, sublease or sub-sublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect), pursuant to which any Person is granted a possessory interest in, or right to use or occupy, all or any portion of any space in the Project, and every modification, amendment or other agreement relating to such lease, sublease, sub-sublease or other agreement entered into in connection with such lease, sublease, sub-sublease or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

“Lender” has the meaning given to such term in the introductory paragraph.

“Lender Parties” means Issuer, Bondowner Representative, Project Inspector and any of their respective Affiliates, agents, directors, officers and employees.

“LIBOR Based Rate” means for any day, a rate of interest per annum equal to the sum of (i) the LIBOR Rate in effect on such day plus (ii) the LIBOR Margin.

“LIBOR Breakage Costs” means any loss or expense which Lender sustains or incurs as a consequence of (i) any prepayment (whether voluntary, involuntary or required pursuant to the terms hereof) of any Loan on a day that is not a Reprice Date or (ii) the conversion (for any reason whatsoever, whether voluntary or involuntary) of the interest rate from a LIBOR Based Rate to an alternate index selected by Lender as more particularly set forth in Section 1.4 hereof with respect to the outstanding principal balance of such Loan on a date other than a Reprice Date, all including, without limitation, such loss or expenses arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain a LIBOR Based Rate Loan hereunder.

“LIBOR Margin” means one hundred fifty (150) basis points.

“LIBOR Rate” means for each calendar month during the term of this Agreement, the one-month LIBOR Rate quoted by Lender from Reuters Screen LIBOR01 Page or any successor thereto designated by Lender, which shall be that one-month LIBOR Rate in effect two (2) New York Banking Days prior to the Reprice Date adjusted for any reserve requirement and any subsequent costs arising from a change in government regulations, such rate rounded up to the nearest one-sixteenth percent and such rate to be reset monthly on each Reprice Date. If the initial Advance occurs other than on the Reprice Date, then the initial one-month LIBOR Rate shall be that one-month LIBOR rate quoted by Lender two (2) New York Banking Days prior to the date of the initial Advance, which rate shall be in effect until the next Reprice Date. Lender’s internal records of applicable interest rates shall be determinative in the absence of manifest error.

“Lien(s)” means any mortgage, deed of trust, deed to secure debt, lien (statutory or otherwise, but excluding liens for ad valorem taxes that are not delinquent), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, encumbrance, charge or transfer, or any agreement to enter into or create any of the foregoing, on or affecting all or any portion of the Project or any interest therein, or any direct or indirect interest in Borrower, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialman’s, construction and other similar Liens and encumbrances.

“LIHTC” refers to federal low income housing tax credits under Section 42 of the Internal Revenue Code.

“LIHTC Documents” means the tax credit reservation letter from the Credit Agency, the Carryover Agreement between the Borrower and the Credit Agency, the application to the Credit Agency to obtain the LIHTC, the Tax Credit LURA, any other documents required for the Credit Agency to allocate at least \$_____ of LIHTC to Borrower, and any other documents related to the allocation of LIHTC to Borrower that are reasonably requested by Lender.

“Limited Partners” means the Investor and all other limited partners of Borrower.

“Limited Recourse Obligation” means that an obligation that is a non-recourse obligation of Borrower, subject only to the Non-Recourse Exceptions.

“Loan Documents” means the documents listed on *Exhibit G*.

“Loan Fees” means the Construction Loan Fee and the Convertible Term Loan Fee.

“Loan Rate” means the Construction Loan Rate or the Convertible Term Loan Rate, as applicable.

“Loans” means, collectively, the loans to be made by the Lender to Borrower pursuant to this Loan Agreement.

“Lower Floors Borrower” means Broadway Tower Associates, L.P., a California limited liability company.

“Material Adverse Occurrence” means any occurrence of whatsoever nature (including, without limitation, any adverse determination in any litigation, arbitration or governmental investigation or proceeding) which Lender shall determine could materially adversely affect the then present or prospective financial condition or operations of Borrower, General Partner or any Guarantor, the availability of the Credits, the value of the Improvements or the Project, or any other material Collateral securing repayment of the Loan, or impair the ability of Borrower, General Partner or any Guarantor to perform its obligations as and when required under any of the Loan Documents, as determined by Lender in its sole discretion.

“Material Change Order” has the meaning set forth in Section 6.4.

“Maturity Date” means (a) for the Construction Note, the Initial Maturity Date, as such date may be extended in accordance with Sections 2.7 and 2.8 below, and (b) for the Convertible Term Note, June 1, 2030.

“Money Market Rate At Prepayment” means that zero-coupon rate, calculated on the Prepayment Date, and determined solely by the Lender, as the rate at which the Lender would be able to borrow funds in Money Markets for the prepayment amount matching the maturity of a specific prospective Note payment or repricing date, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation. A separate Money Market Rate at Prepayment will be calculated for each prospective interest and/or principal payment date.

“Money Markets” means one or more wholesale funding markets available to and selected by the Lender, including negotiable certificates of deposit, commercial paper, Eurodollar deposits, bank notes, federal funds, interest rate swaps or others.

“Net Operating Income” means, for any period, (a) the actual gross revenues received by Borrower from the Project during such period (including any rental assistance payments) but excluding: (i) insurance proceeds (other than rental loss insurance proceeds), (ii) condemnation proceeds, (iii) amounts paid from Reserves for capital expenditures, (iv) proceeds of the Loans, (v) proceeds of any Subordinate Loans, (vi) Capital Contributions, (vii) security and cleaning deposits made by any tenant (except to the extent such deposits are applied against rent or other amounts then payable by the tenant under the applicable lease), and (viii) similar items and items of a nonrecurring nature, (b) as reduced by Project Expenses for such period.

“Net Present Value” shall mean the amount which is derived by summing the present values of each prospective payment of principal and interest which, without such full or partial prepayment, could otherwise have been received by the Lender over the shorter of the remaining contractual life of the Convertible Term Note or next repricing date if the Lender had instead initially invested the Convertible Term Note proceeds at the Initial Money Market Rate. The individual discount rate used to present value each prospective payment of interest and/or principal shall be the Money Market Rate at Prepayment for the maturity matching that of each specific payment of principal and/or interest.

“New York Banking Day” means any date (other than Saturday or Sunday) on which commercial banks are open for business in New York, New York.

“Non-Recourse Exceptions” has the meaning set forth in Section 14.5.

“Notes” shall mean the Construction Note and the Convertible Term Note (each, individually, the “Note”).

“Obligations” means collectively: (i) Borrower’s obligations for the payment of the Loans, interest and other charges, and all Fees; (ii) the performance of all other obligations of Borrower contained herein; (iii) the payment and performance of each and every obligation of Borrower and each Guarantor contained in any other Loan Document; and (iv) the performance of each and every obligation of Borrower and Guarantor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part hereof, the Notes or any other Loan Document.

“OFAC” means the U.S. Treasury Department, Office of Foreign Assets Control.

“OFAC List” means the “Specially Designated Nationals and Blocked Persons List” that is maintained by OFAC and any other similar list maintained by OFAC, the Department of Treasury or included in any Executive Order of the President of the United States. The OFAC List is accessible through the internet website www.treas.gov/ofac/t11sdn.pdf.

“Official Records” means the Official Records of the County of San Diego, California.

“Operating Account” means the account or accounts maintained by Borrower into which the Project’s gross revenues are deposited.

“Operating Budget” means a detailed listing of all anticipated annual income and expenses from and for managing, maintaining and operating the Project (or any portion thereof) for its first full or partial Fiscal Year of operation and for each succeeding Fiscal Year of operation, prepared by Borrower and in form and substance acceptable to Lender.

“Operating Reserve Account” has the meaning set forth in Section 10.3.

“Operating Reserve Agreement” means the Operating Reserve and Security Agreement dated as of the date hereof, between Borrower and Lender.

“Operating Statement” means a current, detailed statement of income and expenses from and for managing, maintaining and operating the Project (or any portion thereof), in form and substance acceptable to Lender, certified as true, correct and complete by the general partner of Borrower, and expressly showing all variations from the Operating Budget for the period covered thereof.

“Partners” means the General Partner and the Limited Partners.

“Partnership Agreement” means the Amended and Restated Agreement of Limited Partnership Agreement of Broadway Upper Tower Associates, L.P. by and among the General Partner, the Limited Partners, and _____ (as withdrawing limited partner).

“Permitted Developer Fee Payment” means the portion of the Developer Fee which is scheduled to be paid to the Developer in accordance with the schedule set forth on *Exhibit H*.

“Permitted Encumbrances” means the Liens, charges and encumbrances on title to the Land listed on Schedule B, II to the Title Policy on the Closing Date, approved by Lender and such other matters affecting title thereafter approved by Lender in writing.

“Permitted Liens” means, collectively, all liens on the Personal Property approved by Lender in writing.

“Permitted Transfer” has the meaning assigned to such term in Section 6.20(c).

“Person” means any entity, whether an individual, trustee, corporation, partnership, limited liability company, trust, unincorporated organization, governmental or quasi-governmental agency, board, bureau, commission, department, court, administrative tribunal or other instrumentality or authority, and public utility.

“Personal Property” means all of Borrower’s right, title and interest, whether now existing or hereafter acquired, in and to all furniture, furnishings, fixtures, machinery, equipment, inventory and other personal property of every kind, tangible and intangible, now or hereafter (i) located on or about the Project, (ii) used or to be used in connection with the Project, or (iii) relating or arising with respect to the Project.

“Plan” means each employee benefit plan covered by Title IV of ERISA whether now in existence or hereafter instituted, of Borrower or any ERISA Affiliate.

“Plans” means the plans and specifications for the development, construction and/or rehabilitation of the Improvements, all recreational features, all parking spaces, and all common improvements to be completed on the Land, as approved by Lender, in its sole discretion, together with any amendments or modifications thereof consented to by Lender.

“Prepayment Date” has the meaning set forth in Section 2.4.

“Prepayment Fee” has the meaning set forth in Section 2.4.

“Pro Forma Rents” means annual minimum or base rental rates provided to Lender as adjusted upward from time to time to reflect rents for comparable properties, but not to exceed the rents permitted under Section 42 of the Internal Revenue Code.

“Prohibited Person” means any Person identified on the OFAC List or with whom a US citizen or entity organized under the laws of a state in the United States may not engage in transactions or have dealings with by any Requirements of Law, including, without limitation, embargo, sanctions or other prohibitions of United States law, regulation or Executive Order of the President of the United States.

“Project” means the construction of the Improvements as shown on the Plans, together with the Improvements and the Land.

“Project Agreements” means, collectively, all agreements entered into by Borrower in connection with the Project, including but not limited to the Construction Documents and Development Agreement.

“Project Costs” means all costs of any nature incurred (or to be incurred) in connection with the Project.

“Project Expenses” means, for any period, all costs and expenses incurred by Borrower during the applicable period in connection with Borrower’s ownership, management, regular maintenance, operation and leasing of the Project during such period, all as determined by Lender in its sole discretion. For purposes of determining Net Operating Income, Lender shall include as Project Expenses for any monthly period (or portion thereof), in such monthly period, 1/12th of the annual Impositions, 1/12th of the annual insurance premiums for all insurance carried and/or required to be carried by Borrower with respect to the Project, 1/12th of the annual amounts then payable in respect of required deposits to Reserves and such portion of such other non-monthly expenses as the Lender may deem appropriate in its sole discretion. For purpose of determining whether a Debt Service Coverage Ratio has been met for any period, the following assumptions shall be used in computing Project Expenses: (a) the Debt Service on the Convertible Term Note for such period will be calculated based upon the assumption that regularly scheduled monthly payments of principal and interest had been payable during such period (which assumed monthly payments will be used even if the regularly scheduled monthly payments of principal and interest have not commenced as of the start of the calculation period) which will be payable under the Convertible Term Note once regularly scheduled monthly payments of principal and interest commence thereunder; (b) annual real estate taxes shall be computed based on the higher of the real estate taxes projected to be paid in the first year after Completion, assuming full real estate taxes on the completed Project or the actual real estate taxes (including any assessments or similar items), and (c) property management fees shall be calculated based on the greater of ___% of gross income or the actual property management fee.

“Project Financing Statements” means the UCC-1 financing statement(s) required pursuant to this Agreement.

“Project Inspector” means any third-party engineering or consulting firm hired by the Lender to advise and assist Lender in connection with the Project.

“Property Management Agreement” means that certain Property Management Agreement, dated of _____, between Borrower and the Property Manager, pursuant to which Borrower has engaged such Property Manager to manage the Project.

“Property Manager” means _____, the initial property manager of the Project and any successor approved by the Lender.

“Protective Advance” means all necessary costs and expenses (including attorneys’ fees and disbursements) incurred by Lender (a) in order to remedy an Event of Default under the Loan Documents, which Event of Default, by its nature, may impair any portion of the Collateral for the Loans or the value of the Collateral, interfere with the enforceability or enforcement of the Loan Documents, or otherwise materially impair the payment of the Loans or the performance of other Obligations (including, without limitation, the costs of unpaid insurance premiums, foreclosure costs, costs of collection, costs incurred in bankruptcy proceedings and other costs incurred in enforcing any of the Loan Documents); or (b) in respect of the operation of the Project following a foreclosure under the Deed of Trust.

“Recordable Documents” means, collectively, the Deed of Trust, the Deed of Trust Assignment, the Regulatory Agreement and the Subordination Agreement.

“Regulations” means, collectively, all Treasury Regulations (including temporary regulations) in effect from time to time adopted pursuant to the Internal Revenue Code.

“Regulatory Agreement” means the “Regulatory Agreement” as defined in the Indenture.

“Replacement Reserve Account” has the meaning set forth in Section 10.2.

“Replacement Reserve Agreement” means the Replacement Reserve and Security Agreement between Borrower and Lender of even date herewith.

“Reprice Date” means the first day of each month.

“Required Accounts” has the meaning set forth in Article 10.

“Required Appraisal Standard” means an appraisal that is: (A) addressed to Lender, (B) prepared by an MAI licensed appraiser, acceptable to Lender, (C) prepared in conformance with the regulations promulgated by the appropriate federal regulatory agency pursuant to Section 1110 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3339), as amended, and the regulations thereunder, and (D) approved by Lender’s internal appraisal group.

“Requirements of Law” means the requirements of: (a) the organizational documents of a Person, and (b) any law, rule, regulation, ordinance, code, decree, treaty, ruling or determination of an arbitrator, court or other Governmental Agency, or any Executive Order issued by the President of the United States, in each case applicable to or binding upon such Person or to which such Person, any of its properties or the conduct of its business is subject including, without limitation, laws, ordinances and regulations pertaining to the zoning, occupancy and subdivision of real property.

“Reserves” means the Interest Reserve, Contingency Reserve, Operating Reserve Account and the Replacement Reserve Account, and any other reserves required by Lender under this Agreement.

“Residential Lease” means any lease for a Unit.

“Restoration Conditions” has the meaning set forth in Section 9.1(d) of this Agreement.

“Second Option to Extend” means the option to extend the Construction Loan as described in Section 2.7.

“Secretary of State” means the Secretary of State of the State of California.

“Security Deposit Account” has the meaning set forth in Section 10.1.

“Security Deposits” has the meaning given to such term in Section 10.1.

“Security Documents” means, collectively, the documents identified as Security Documents on *Exhibit G* and any other mortgage, deed of trust, security agreement or assignment now, heretofore or hereafter executed to secure the Obligations of Borrower or Guarantor to the Lender under any Loan Document.

“Security Interest” means lien, pledge, mortgage, deed of trust, encumbrance, charge or security interest of any kind whatsoever (including, without limitation, the lien or retained security title of a conditional vendor) whether arising under a security instrument or as a matter of law, judicial process or otherwise or the agreement by Borrower, Guarantor or any of its or their Subsidiaries to grant any lien or security interest or to pledge, mortgage or encumber any asset.

“Shortfall Funds” has the meaning set forth in Section 9.1(d).

“Stored Materials” means any and all materials, equipment, fixtures or articles of Personal Property purchased by Borrower to be placed or affixed in, on or to the Land or Improvements in connection with the construction of work with respect to the Project which have not yet been incorporated in the Project.

“Subordinate Deed of Trust” means the deeds of trust granted by Borrower to secure the obligation of Borrower to repay the Subordinate Loan.

“Subordinate Lenders” means the entities making the Subordinate Loans.

“Subordinate Loan(s)” shall mean the loans from the Subordinate Lenders as listed on the Construction Funds Schedule.

“Subordinate Loan Documents” means the Subordinate Note(s), the Subordinate Deed(s) of Trust (s) and all other documents executed in connection with the Subordinate Loan, executed copies of which have been delivered to Lender on or before the Closing Date.

“Subordinate Note(s)” means the promissory note(s) issued by Borrower to the Subordinate Lender(s) as evidence of Borrower’s obligation to repay the Subordinate Loan(s).

“Subordination Agreement” means the Subordination Agreement by and among Borrower, Lender and the City of San Diego as successor agency to the Redevelopment Agency of the City of San Diego, in a form acceptable to Lender, in Lender’s sole and absolute discretion, which subordinates the Subordinate Loan Documents and the Development Agreement to the liens and charges of the Loan Documents and the Regulatory Agreement.

“Subsidiary” means any corporation or other entity of which more than 50% of the outstanding capital stock or interests having ordinary voting power to elect a majority of the board of directors or the board of governors or otherwise to Control the activities of such entity (irrespective of whether or not at the time other class or classes of the equity of such entity shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned by Borrower, any Guarantor and any one or more of their respective Subsidiaries, or by one or more other Subsidiaries.

“Sworn Construction Cost Statement” means an itemized, certified statement of actual and estimated costs of the Project, in the form of *Exhibit D* attached hereto and hereby made a part hereof, signed and sworn to by Borrower, General Contractor and the Architect, as the same may be amended or supplemented with the approval of Lender from time to time, and consistent with the items enumerated in the Budget.

“Tax Certificate” means that certain certificate as to arbitrage dated as of the date of the issuance of the Bonds, executed by Issuer and Borrower, relating to the Bonds.

“Tax Credit LURA” means the Low-Income Housing Tax Credit Land Use Restriction Agreement to be executed by Borrower and the Credit Agency.

“Tax Escrow Account” means the account held by Lender into which Borrower will deposit funds pursuant to Section 10.4.

“Taxes” means any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings, and any and all liabilities with respect to the foregoing, but excluding Excluded Taxes and Other Taxes.

“Title Company” means _____.

“Title Policy” means an ALTA extended coverage mortgagee’s title insurance policy (2006 LP-10 ALTA Loan Policy of Title Insurance, or equivalent or other form satisfactory to Lender), with such endorsements as Lender may require, issued by the Title Company in the amount of the Total Loan Amount insuring the lien of the Deed of Trust to be a first and prior lien upon the Project as security for all Advances of the Loans pursuant to the terms of this Agreement, subject only to the Permitted Encumbrances and insuring against any lien claims that could arise out of the construction of the Improvements.

“Total Loan Amount” means \$23,000,000, being the maximum aggregate amount of the Loans that the Lender is (subject to the conditions set forth herein) obligated to make.

“UCC” means Uniform Commercial Code or, as applicable, the Uniform Commercial Code enacted in the applicable jurisdiction.

“Units” means, collectively, the 121 residential living units included within the Project, and “Unit” means any one of them.

“USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

1.2 Singular and Plural Terms. Any defined term used in the plural in any Loan Document shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3 Accounting Principles. Any accounting term used and not specifically defined in any Loan Document shall be construed in conformity with, and all financial data required to be submitted under any Loan Document shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to Lender.

1.4 References and Other Terms. Any reference to any Loan Document or other document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include) without limitation”.

1.5 Exhibits Incorporated. All exhibits to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

1.6 Inconsistency. In the event of any inconsistency between the provisions of this Agreement and the provisions of any of the other Loan Documents, the provisions of this Agreement govern.

2. The Loans; Payments; Fees.

2.1 Principal. Subject to the terms and conditions hereof, Lender agrees to lend to Borrower and Borrower agrees to borrow from Lender in accordance with the terms of this Agreement, the proceeds of the Loans, from time to time in accordance with the terms hereof, for the purpose of developing and constructing the Project; provided, however, that Lender shall not be obligated to make any Advance if, after giving effect to such Advance, the Advances made by Lender would exceed the Total Loan Amount.

2.2 Interest.

- (a) Borrower shall pay to Lender interest on the Convertible Term Note computed at the Convertible Term Loan Rate. Borrower shall pay to Lender interest on the Construction Note at the Construction Loan Rate.
- (b) If the interest and/or charges in the nature of interest, if any, provided for by this Agreement or by any other Loan Document shall contravene any legal or statutory limitation applicable to the Loans, Borrower shall pay only such amounts as would legally be permitted; provided, however, that if the defense of usury and all similar defenses are unavailable to Borrower, Borrower shall pay all amounts provided for herein. If, for any reason, amounts in excess of the amounts permitted by applicable usury laws shall have been paid, received, collected or applied hereunder, whether by reason of acceleration or otherwise, then any excess amounts shall be applied to the principal of the Loans, without prepayment penalty, unless all such principal has been fully paid, in which event the excess amount shall be refunded to Borrower.
- (c) Interest at the Loan Rate shall accrue on each and every Advance from and after the date it is made by Lender to Borrower. Interest accrued on the Notes, computed at the Loan Rate, shall be payable on the first day of each calendar month, commencing on the first day of the next calendar month following the date the initial Advance is made. Interest computed at the Loan Rate shall be computed on the basis of a 360 day year, but shall be charged for the actual number of days principal is unpaid.

- (d) If (i) all unpaid Advances made by Lender under a Note have not been repaid on or before the applicable Maturity Date under such Note, or (ii) an Event of Default occurs pursuant to this Agreement or any other Loan Document or (iii) all amounts due under the Loan Documents otherwise become due and payable in accordance with the terms and conditions of the Loan Documents, then the entire unpaid balance of all Advances made by Lender and all other Obligations shall (without notice to or demand upon Borrower), at the sole option of Lender, become immediately due and payable in full, together with all unpaid, accrued interest thereon. From and after that date until all Advances are paid in full, interest at the Default Rate shall be payable on the first day of each calendar month or at Lender's option, on demand.
- (e) If Borrower fails to make any required payment of principal and/or interest on either Note (other than the balloon payment at the Maturity Date) on or before the fifth (5th) day following the due date thereof, Borrower shall pay to Lender, in addition to interest at the Default Rate, a late payment charge equal to five percent (5%) of the amount of the overdue payment, for the purpose of reimbursing Lender for a portion of the expense incident to handling the overdue payment. This late charge shall apply individually to all payments past due and there will be no daily prorated adjustment. This provision shall not be deemed to excuse a late payment or be deemed a waiver of any other rights Lender may have including the right to declare all amounts owing under the Notes (including principal and interest) to be immediately due and payable in full. Borrower agrees that this "late payment charge" is a provision for liquidated damages and represents a fair and reasonable estimate of the damages Lender will incur by reason of the late payment considering all circumstances known to Borrower and Lender on the date hereof. Borrower further agrees that proof of actual damages will be difficult or impossible.

2.3 Payments. All payments and prepayments of principal of, and interest on, the Notes and all Fees, expenses and other Obligations under the Loan Documents payable to Lender shall be made, without deduction, set off, or counterclaim, in immediately available funds not later than 2:00 p.m., local time in San Diego, California on the dates due, to Lender at the office specified by it from time to time, for the benefit of Lender, except as otherwise specifically provided in this Agreement. Funds received on any day after 2:00 p.m., local time in San Diego, California shall be deemed to have been received on the next Business Day. Whenever any payment to be made hereunder, under the Notes or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the payment shall be made on the next succeeding Business Day and the extension of time shall be included in the computation of any interest and fees. Borrower authorizes Lender, in Lender's sole discretion (but without any obligation to do so), to charge any of Borrower's accounts maintained at Lender, including the Bank Controlled Account, for the amount of any payment or prepayment on the Notes or other amounts owing pursuant to any of the other Loan Documents. Borrower hereby authorizes Lender, at the sole discretion of Lender (but without any obligation to do so), to make an Advance in order to pay, on behalf of Borrower, any amount due under the Notes or pursuant to any of the other Loan Documents without further action on the part of Borrower and regardless of whether Borrower is able to comply with the terms, conditions and covenants of this Agreement at the time of such Advance.

- (i) So long as no Event of Default has occurred and is continuing, all payments received by Lender (including the proceeds of Advances for such payments) for application to the

Obligations shall be applied first to pay any past due amounts in the order below, and only after all past due amounts have been paid in full, the payments then shall be applied in the order below for current amounts due:

First, to make the payment required under Section 10.4, if any, to fund the Tax Escrow Account, if not already funded from other sources.

Second, to make the payment required under Section 10.5, if any, to fund the Insurance Escrow Account;

Third, to any unpaid interest on the Notes then due under the Loan Documents (but excluding any late payment charges owed to the Lender);

Fourth, to the unpaid principal balance then due on the Notes under the Loan Documents;

Fifth, to any costs and expenses due under the Loan Documents, and any Fees due to Lender including any LIBOR Breakage Costs;

Sixth, to make any required payment currently required to fund the Reserves, if not funded from other sources;

Seventh, to the unpaid principal balance of the Notes; and

Eighth, to any other Obligations then due.

(ii) After an Event of Default has occurred and is continuing, all amounts received by Lender for application to the Obligations shall be applied in the order determined by Lender in its sole and absolute discretion.

All amounts received by Lender (whether as the result of payment transmitted by Borrower or otherwise) on account of payment of interest on or principal of the Notes, or other payments due under this Agreement or any other Loan Documents, as the case may be, shall be applied by Lender pursuant to this Section 2.3. Lender shall not be obligated hereunder or under any of the other Loan Documents to re-advance to Borrower any sums paid by Borrower, whether paid voluntarily or involuntarily.

2.4 Prepayments.

- (a) The Borrower shall be entitled to prepay the Notes at any time upon twenty days prior written notice to the Lender. In such event of a prepayment of all or part of the principal amount of the Convertible Term Note, the Borrower shall be required to pay the Lender, upon prepayment of all or part of the principal amount before final maturity, a prepayment indemnity ("Prepayment Fee") equal to the greater of zero, or that amount, calculated on any date of prepayment ("Prepayment Date"), which is derived by subtracting: (a) the principal amount of the Convertible Term Note or portion of the Convertible Term Note to be prepaid from (b) the Net Present Value of the Convertible Term Note or portion of the Convertible Term Note to be prepaid on such Prepayment Date; provided, however, that the Prepayment Fee shall not in any event exceed the maximum prepayment fee permitted by applicable law.

- (b) In calculating the amount of the Prepayment Fee, the Lender is hereby authorized by the Borrower to make such assumptions regarding the source of funding, redeployment of funds and other related matters, as the Lender may deem appropriate. If the Borrower fails to pay any Prepayment Fee when due, the amount of the Prepayment Fee shall thereafter bear interest until paid at the Default Rate (computed on the basis of a 360-day year, actual days elapsed). Any prepayment of principal shall be accompanied by a payment of interest accrued to date thereon; and the prepayment shall be applied to the principal installments in the inverse order of their maturities. All prepayments shall be in an amount of at least \$100,000 or, if less, the remaining entire principal balance of the Note being prepaid.
- (c) Notwithstanding any other prepayment limitations in the Notes, the Borrower may prepay the principal balance of the Convertible Term Note not more than twice during the term of the Convertible Term Note without the prior consent of the Lender and without paying the Prepayment Fee, so long as the aggregate amount of the prepayments does not exceed \$478,500 (30% of the original principal balance of the Convertible Term Note) and the prepayment in any calendar year does not exceed \$239,250 (15% of the original principal balance of the Convertible Term Note). Any prepayment in the aggregate in excess of \$478,500 or any prepayments in excess of \$478,500 in a calendar year or any prepayments in excess of two shall be subject to the Prepayment Fee. Prepayments made without the Prepayment Fee pursuant to this paragraph are not subject to the \$100,000 minimum prepayment restriction. If the prepayment is due to Borrower's failure to comply with the Lender's minimum Debt Service Coverage requirement, as of the date of prepayment the remaining principal balance of the Notes (after the prepayment) will be re-amortized over the remaining term of the original amortization period.
- (d) BORROWER HEREBY EXPRESSLY (I) WAIVES ANY RIGHTS IT MAY OTHERWISE HAVE TO PREPAY THE CONVERTIBLE TERM NOTE, IN WHOLE OR IN PART, WITHOUT PENALTY, UPON ACCELERATION OF THE MATURITY DATE, AND (II) AGREES THAT IF, FOR ANY REASON, A PREPAYMENT OF ALL OR ANY PORTION OF THE PRINCIPAL AMOUNT OF THE CONVERTIBLE TERM NOTE IS MADE UPON OR FOLLOWING ANY ACCELERATION OF THE MATURITY DATE BY LENDER ON ACCOUNT OF ANY EVENT OF DEFAULT BY BORROWER INCLUDING, WITHOUT LIMITATION, ANY TRANSFER, DISPOSITION, OR FURTHER ENCUMBRANCE PROHIBITED OR RESTRICTED BY THE DEED OF TRUST SECURING THE PAYMENT OF THE CONVERTIBLE TERM NOTE, THEN BORROWER SHALL BE OBLIGATED TO PAY CONCURRENTLY WITH THAT PREPAYMENT THE PREPAYMENT FEE SPECIFIED IN THE FOREGOING PARAGRAPHS. BY EXECUTING THIS NOTE, BORROWER HEREBY DECLARES THAT LENDER'S AGREEMENT TO MAKE THE LOAN EVIDENCED BY THE CONVERTIBLE TERM NOTE AT THE INTEREST RATE AND FOR THE TERM SET FORTH IN THE CONVERTIBLE TERM NOTE CONSTITUTES ADEQUATE CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY BORROWER, FOR THIS WAIVER AND AGREEMENT.

The unpaid principal balance of the Construction Note and accrued interest thereon may be prepaid in full or in part, without premium or penalty (except as provided in Section 2.4 hereof). Any partial prepayment shall be applied by Lender to the Notes, subject to Section 2.3 hereof.

2.5 Capital Adequacy / Yield Protection.

If there shall occur any adoption or implementation of, or change to, any Requirements of Law, or interpretation or administration thereof, which shall have the effect of imposing on Lender (or Lender's holding company) any increase or expansion of or any new: tax (excluding taxes on its overall income and franchise taxes), charge, fee, assessment or deduction of any kind whatsoever, or reserve, capital adequacy, special deposits or similar requirements against credit extended by, assets of, or deposits with or for the account of Lender or other-conditions affecting the extensions of credit under this Agreement; then Borrower shall pay to Lender such additional amount as Lender deems necessary to compensate Lender for any increased cost to Lender attributable to the extension(s) of credit under this Agreement and/or for any reduction in the rate of return on Lender's capital and/or Lender's revenue attributable to such extension(s) of credit. As used above, the term "Requirements of Law" shall expressly include any federal, state or international law, governmental or quasi-governmental rule, regulation, policy, guideline or directive (including but not limited to the Dodd-Frank Wall Street Reform and Consumer Protection Act and enactments, issuances or similar pronouncements by the Lender for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices or any similar authority and any successor thereto) that applies to Lender. Lender's determination of the additional amount under this paragraph shall be binding in the absence of manifest error, and such amount(s) shall be payable within 15 days of demand and, if recurring, as otherwise billed by Lender.

2.6 Loan Fees.

- (a) On the Closing Date, Borrower shall pay to Bondowner Representative the Construction Loan Fee and the Convertible Term Loan Fee, which fees are fully earned when paid and shall be non-refundable. On or before the Conversion Date, Borrower shall pay to Bondowner Representative the Conversion Fee, which fee is fully earned when paid and shall be non-refundable.
- (b) Borrower shall pay to Issuer the fees payable to Issuer under Section 4A(a) of the Regulatory Agreement, as and when such fees are due and payable to Issuer under the Regulatory Agreement.

2.7 First Option to Extend. Upon written request of the Borrower given to Lender not less than 30 days and not more than 60 days before the initial Maturity Date of the Construction Note, the Lender will extend the Maturity Date of the Construction Note to December 1, 2015 ("First Extended Maturity Date of Construction Note"), provided that as of the initial Maturity Date of the Construction Note, all of the following conditions precedent have been satisfied:

- (a) No Event of Default and no other event or condition which, upon the giving of notice or the passage of time, or both, would become an Event of Default, shall have occurred and be continuing, as of the date of the request for extension or as of the extension of the Maturity Date;

- (b) All Capital Contributions required to be made under Exhibit E of this Agreement;
- (c) The Loans are In Balance, as determined by the Lender;
- (d) Completion has occurred;
- (e) The Extension Fee and all other amounts due to Lender shall have been paid by Borrower to Lender;
- (f) All representations and warranties made by the Borrower in this Agreement and the other Loan Documents shall be materially true and correct as if made on and as of the date of the extension of such Maturity Date;
- (g) There shall have been no Material Adverse Occurrence, as determined by Lender, in Lender's sole discretion;
- (h) Borrower and Guarantor shall have executed and delivered to Lender an amendment to the Construction Note and such other documents as Lender may reasonably require in connection with such extension, all of which shall be in form and substance acceptable to Lender;
- (i) Borrower, at its sole cost and expense, shall have delivered to Lender an endorsement to (or reissuance of) the existing Title Policy, bringing current the effective date of the coverage, stating that the coverage afforded by the Title Policy shall not be affected because of the extension and insuring that there have been no additional liens or other additional exceptions to title against the Project from and after the date hereof, unless consented to in writing by Lender; and
- (j) Borrower shall have provided to Lender projections, operating statements, current leasing reports and rent rolls as required by Lender, demonstrating that the Conditions to Conversion can be reasonably achieved prior to the First Extended Maturity Date of the Construction Note (as determined by Lender, in its sole discretion);
- (k) Borrower shall have delivered to Lender such amendments to the Loan Documents as Lender may reasonably require to reflect such extension of such Maturity Date; and
- (l) Borrower shall have delivered to Lender all other documents, instruments, agreements, certificates and opinions of counsel reasonably required by Lender in connection with such extension.

2.8 Second Option to Extend. Upon written request of the Borrower given to Lender not less than 30 days and not more than 60 days before the First Extended Maturity Date of Construction Note, the Lender will extend the Maturity Date of the Construction Note to June 1, 2016 ("Second Extended Maturity Date of Construction Note"), provided that as of the First Extended Maturity Date of the Construction Note, all of the following conditions precedent have been satisfied:

- (a) No Event of Default and no other event or condition which, upon the giving of notice or the passage of time, or both, would become an Event of Default, shall

have occurred and be continuing, as of the date of the request for extension or as of the extension of the Maturity Date;

- (b) Borrower shall have repaid the Construction Note in an amount sufficient to reduce the outstanding principal balance to an amount not to exceed \$_____;
- (c) All Capital Contributions required to be made under Exhibit E of this Agreement have been made;
- (d) The Loans are In Balance, as determined by the Lender;
- (e) Completion has occurred;
- (f) The Extension Fee and all other amounts due to Lender shall have been paid by Borrower to Lender;
- (g) All representations and warranties made by the Borrower in this Agreement and the other Loan Documents shall be materially true and correct as if made on and as of the date of the extension of such Maturity Date;
- (h) There shall have been no Material Adverse Occurrence, as determined by Lender, in Lender's sole discretion;
- (i) Borrower and Guarantor shall have executed and delivered to Lender an amendment to the Construction Note and such other documents as Lender may reasonably require in connection with such extension, all of which shall be in form and substance acceptable to Lender;
- (j) Borrower, at its sole cost and expense, shall have delivered to Lender an endorsement to (or reissuance of) the existing Title Policy, bringing current the effective date of the coverage, stating that the coverage afforded by the Title Policy shall not be affected because of the extension and insuring that there have been no additional liens or other additional exceptions to title against the Project from and after the date hereof, unless consented to in writing by Lender;
- (k) Not fewer than ninety percent (90%) of the residential units within the Project shall have been lease to, and occupied by, residential tenants under leases executed by Borrower in accordance with this Agreement;
- (l) The Debt Service Coverage Ratio for the Project shall not exceed 1.15 to 1.00, as determined by Lender, in Lender's sole and absolute discretion;
- (m) Borrower shall have provided to Lender projections, operating statements, current leasing reports and rent rolls as required by Lender, demonstrating that the Conditions to Conversion can be reasonably achieved prior to the Second Extended Construction Note Maturity Date (as determined by Lender, in its sole discretion);

- (n) Borrower shall have delivered to Lender such amendments to the Loan Documents as Lender may reasonably require to reflect such extension of such Maturity Date; and
- (o) Borrower shall have delivered to Lender all other documents, instruments, agreements, certificates and opinions of counsel reasonably required by Lender in connection with such extension.

3. **Conditions to Closing and Disbursements.**

3.1 **Conditions to Closing.** On or prior to the Closing Date, Borrower shall provide to Lender each of the following, in form and substance acceptable to Lender:

- (a) Two (2) sets of the Plans or electronic versions acceptable to Lender, including all mechanical, electrical, structural and other specialized drawings that are signed by licensed engineers of the respective disciplines normally responsible for such drawings, in addition to the Architect, together with evidence of all necessary or appropriate approvals of any Governmental Agency required in connection with the Project.
- (b) A copy of the Sworn Construction Cost Statement for the Project, including the names of each subcontractor and material supplier. If requested by Lender, Borrower shall also furnish to Lender a copy of each contract with each of the subcontractors and material suppliers.
- (c) A written report in form and substance acceptable to Lender from Project Inspector with respect to its review of the Plans and Sworn Construction Cost Statement.
- (d) A signed copy of the Assignment of Construction and Development Documents.
- (e) A copy of the complete Architect's Agreement.
- (f) A copy of the Construction Contract which is consistent with the cost allocations established under the Budget and otherwise in form and substance satisfactory to Lender.
- (g) A schedule listing all subcontracts relating to the Project having a contract sum in excess of \$100,000, and any other engineering, architectural, and construction contracts, subcontracts and schedules relating to the Project as Lender may require.
- (h) Four (4) copies or electronic versions acceptable to Lender of a current, certified ALTA/ACSM Survey of the Land, which shall be prepared in accordance with Lender's standard requirements therefore (a copy of the requirements having previously been delivered to Borrower).
- (i) The following Project related documents: (i) a flood zone certification from a consultant acceptable to Lender indicating that the Project is not located in a flood plain or any other flood-prone area as designated by any governmental agency; provided, however, that if the Project is so located, Borrower shall

provide proof of flood insurance acceptable to Lender; (ii) copies of all permits, licenses, approvals and other authorizations of any Governmental Agency required in connection with the Project, including grading and excavation permits and evidence that the Land is in compliance with all platting and subdivision laws, (iii) all applicable wetlands and stormwater management permits and regulations applicable to the Project have been obtained (or waived in writing) and complied with so that the Project, including without limitation its design, engineering and construction, will not be adversely affected by the application and enforcement of the permits and/or regulations; and (iv) a soils report for the Land.

- (j) The Environmental Reports addressed to Lender or, in the event the Environmental Reports are not addressed to the Lender, the Environmental Reports together with a reliance letter addressed to Lender in compliance with Lender's requirements. The Environmental Reports shall include a Phase I environmental site assessment prepared by a licensed and registered environmental engineer or other qualified party satisfactory to Lender, stating that no Hazardous Substances are present in, on, under or around the Project, and that no condition or circumstance warranting further investigation now exists, except as approved in writing by Lender. Borrower shall also provide copies of all environmental documents prepared, adopted, certified or filed by or with any Governmental Agency in connection with the Project, including, without limitation, any initial study or environmental impact report, prepared, adopted, certified or filed by or with any Governmental Agency. If there is an underground storage tank on the Project, evidence of compliance with all Laws related to underground storage tanks and, if required by Lender, evidence that the storage tanks have been removed in accordance with applicable Laws and any Environmental Remediation, if any, completed.
- (k) Evidence of insurance, together with "paid" receipts, if required by Lender, indicating that all insurance currently required under the terms of *Exhibit L*, attached hereto, is in place.
- (l) Borrower's estimated schedule for construction of the Improvements in accordance with the Plans, and an estimated draw schedule for disbursement of the proceeds of the Loans.
- (m) Evidence of zoning and other land use compliance, including a letter from an appropriate officer of the City regarding zoning and building code compliance, prepared in accordance with Lender's standard requirements.
- (n) A certificate addressed to Lender from the Architect certifying that the Plans comply with Accessibility Laws and other Requirements of Law and that the Improvements, when completed, will comply with Accessibility Laws and other Requirements of Law, in form acceptable to Lender.
- (o) A copy of Borrower's Organizational Documents, certified as true, correct and complete by the General Partner of Borrower authorized to do so, together with (i) a current certificate of good standing from the jurisdiction in which Borrower was organized (and from the jurisdiction in which the Land is located, if different from the jurisdiction in which Borrower was organized), and (ii) resolutions

and/or consents of those parties necessary to authorize the transaction contemplated hereby.

- (p) A copy of General Partner's Organizational Documents, certified as true, correct and complete by an officer of General Partner authorized to do so, together with (i) a current certificate of good standing from the jurisdiction in which General Partner was organized (and from the jurisdiction in which the Land is located, if different from the jurisdiction in which General Partner was organized), and (ii) resolutions and/or consents of those parties necessary to authorize the transaction contemplated by this Agreement.
- (q) A copy of Corporate Guarantor's Organizational Documents, certified as true, correct and complete by an officer of Corporate Guarantor authorized to do so, together with (i) a current certificate of good standing from the jurisdiction in which Corporate Guarantor was organized, and (ii) resolutions and/or consents of those parties necessary to authorize the transaction contemplated hereby.
- (r) The most current available financial statements of Borrower, General Partner, and Guarantor, signed and certified as true, correct and complete by an authorized representative thereof, together with any tax returns or other financial information required by Lender.
- (s) The payment of (i) all Fees due to Lender as of closing and (ii) all costs and expenses incurred by Lender in connection with the making of the Loans and the negotiation, preparation and closing of the Loan Documents.
- (t) An Appraisal in form and substance acceptable to Lender.
- (u) A proposed Operating Budget for the Project for its first year of operation.
- (v) Letters addressed to Lender from the suppliers confirming the availability of water, storm and sanitary sewer, gas, electric and telephone utilities for the Project.
- (w) The Title Policy.
- (x) Copies of any closing instruction letter and settlement statement, when applicable.
- (y) An original executed opinion of counsel to Borrower, the General Partner and the Guarantor, addressed to Lender and in form and substance satisfactory to Lender, opining as to the due formation, qualification and good standing of Borrower, the General Partner and the Corporate Guarantor, the due authorization by Borrower, the General Partner and the Corporate Guarantor of the execution, delivery and performance of the Loan Documents, the due execution and delivery of the Loan Documents, and the enforceability of the Loan Documents, and covering such other matters as Lender may require.
- (z) A signed copy of the Property Management Agreement and the Assignment and Subordination of Property Management Agreement and a copy of each agreement relating to the management, operation or maintenance of the Project

and of each agreement which cannot be cancelled by thirty (30) days' or less notice.

- (aa) A signed copy of the Development Services Agreement.
- (bb) All other agreements, documents and/or exhibits which may be required, in Lender's judgment, to assure compliance with the requirements of this Agreement.
- (cc) Written evidence that the Title Company has recorded the Recordable Documents in the Official Records of the County of San Diego, California.
- (dd) (i) The LIHTC Documents with evidence that the commitment by the Credit Agency to allocate credits in an amount acceptable to Lender is in full force and effect, confirming the reservation or allocation to Borrower of sufficient LIHTC to support the Investor's investment in an amount no less than the aggregate amount of the Capital Contributions.
- (ee) Investor shall have made the First Capital Contribution and all such funds shall have been delivered to Lender for deposit into the Bank Controlled Account or applied directly by the Title Company on the Closing Date to pay Project Costs set forth on the Budget and in accordance with an escrow settlement statement approved by Lender.
- (ff) Copies of all documents evidencing, securing, guaranteeing and otherwise related to the Subordinate Loan (collectively, the "Subordinate Loan Documents"), each fully executed and each in a form acceptable to Lender in its sole and absolute discretion.
- (gg) Written evidence in a form acceptable to Lender, including all corresponding draw requests submitted to Subordinate Lender, that at least \$_____ in Subordinate Loan proceeds have been disbursed to Borrower and applied to pay Project Costs set forth on the Budget.
- (hh) A fully executed copy of the CC&Rs in a form and substance acceptable to Lender, in its sole and absolute discretion.
- (ii) Borrower and Subordinate Lender shall have duly executed and delivered to Lender (i) the Subordination Agreement and (ii) an intercreditor agreement in a form and substance acceptable to Lender, in its sole and absolute discretion.

3.2 Conditions Precedent to Initial Disbursement. Subject to the terms and conditions of this Agreement, Lender agrees to approve the disbursement of proceeds of the Loans (each disbursement of funds to be referred to as a "**Disbursement**") for Project Costs set forth on a Draw Request. Lender's approval of the initial Draw Request (the "**Initial Disbursement**") shall be subject to the satisfaction of all of the conditions for closing set forth in Section 3.1 and receipt of the following by Lender, each in form and substance acceptable to Lender and satisfaction of the following conditions precedent, unless the requirement is waived in writing by the Lender:

- (a) Written evidence that the Project Financing Statements have been filed with the Secretary of State or other appropriate office, together with evidence that the

Collateral covered thereby is subject to no prior Liens, other than Permitted Liens or Permitted Encumbrances, as applicable.

- (b) Unless otherwise waived in writing by Lender, Lender shall have available unexpended Loan Proceeds or Funding Sources deposited by Borrower in the Bank-Controlled Account so that the Loans will remain “In Balance”, taking into account the amount of interest due on the Loans through the Maturity Date.
- (c) A Draw Request for costs, expenses and fees which have been actually incurred by Borrower and are directly connected with the Project. Borrower shall provide the Draw Request and copies of all supporting invoices, purchase orders, and lien waivers to the Title Company and to Lender’s Project Inspector.
- (d) Any Development Items and any other documents and assurances as Lender may reasonably request.
- (e) Borrower shall establish the Operating Account with Lender.

3.3 Conditions Precedent to All Disbursements. Lender’s approval of any Disbursement (including the Initial Disbursement) shall be further subject to the satisfaction of each of the following conditions at the time of each requested Disbursement:

- (a) No Event of Default shall remain uncured and no event shall have occurred or condition exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default, and Lender shall have received a certificate to that effect signed by the Designated Representative. No Event of Default shall result from the making of the Disbursement.
- (b) The representations and warranties set forth in this Agreement shall be true and correct as of the date of the Disbursement as if made on and as of such date.
- (c) No Material Adverse Occurrence shall have occurred and be continuing on the date of the Draw Request or the date of the Disbursement.
- (d) No litigation, arbitration or governmental investigation or proceeding shall be pending, or to the knowledge of Borrower threatened, against Borrower or affecting the operations of Borrower which, if determined adversely to Borrower, would constitute a Material Adverse Occurrence.
- (e) As of the date immediately prior to any requested Disbursement and after giving effect to the requested Disbursement, the Loans will be In-Balance under Section 4.8 and in Lender’s judgment Borrower can finish the Project and pay for it without obtaining additional funds (other than sources of funds identified in the Construction Funds Schedule).
- (f) Borrower shall have made payment to General Contractor for the amounts covered by all prior Draw Requests.
- (g) Lender shall have received a conditional waiver of mechanic’s lien and/or materialman’s lien, executed by the General Contractor in the amount of the lienable costs of the Project payable from the requested advance, together with

unconditional waivers of mechanic's lien and/or materialman's lien executed by General Contractor and each Contractor to which any portion of the immediately preceding advance has been paid.

- (h) Lender shall have determined in its reasonable discretion, based upon its own inspections or the Project Inspector's inspections or other evidence satisfactory to it, that the Project is being constructed in a good and workmanlike manner by appropriate means in accordance with the Plans and that all required Governmental Agency inspections and approvals have been obtained as and when necessary or desirable.
- (i) There have been no occurrences which would result in a loss or material reduction in the amount of any of the Credits.
- (j) Borrower shall have satisfied all of the terms and conditions of this Agreement.
- (k) Lender shall have received a Draw Request, together with all documentation required by Section 4.7, and copies of the Draw Request shall have been delivered to the Project Inspector.
- (l) All proceeds of the Subordinate Loan shall have been disbursed to the extent that funding is required pursuant to the Construction Funds Schedule to pay Project Costs set forth on the Budget.
- (m) All amounts then due and owing in respect of the Capital Contributions required to be made in accordance with the Partnership Agreement on or prior to the date of the requested Disbursement shall have been paid or otherwise provided for to the reasonable satisfaction of Lender.
- (n) Lender shall have received a report from its Project Inspector approving the subject Draw Request in form and substance satisfactory to Lender.
- (o) Lender shall have received prior to each Disbursement, a current ALTA Endorsement No. 122 (Downdate Endorsement) to the Title Policy or such other documentation acceptable to Lender as may be required for the Title Company to issue an endorsement to and continuation of the Title Policy covering the amount of the requested Advance, and all Advances made to date, reflecting there have been no mechanics' or materialman's liens filed since the date of the issuance of the Title Policy, and updating the effective date of the Title Policy to the relevant Advance date. All endorsements must be satisfactory to Lender and are at the sole cost and expense of Borrower.
- (p) Neither the Project, the Improvements, to the extent then constructed, nor any part thereof shall have been materially damaged, destroyed, condemned or threatened with condemnation until the Restoration Conditions have been satisfied.
- (q) No order or notice shall have been made by, or received by, Borrower from any Governmental Agency stating that the construction or rehabilitation is or will be in violation of any Requirements of Law affecting the Project.

- (r) No Lien for work or services performed in or on the Project or materials or equipment delivered thereto shall have been recorded against the Project or delivered to Borrower or Lender, unless such Lien has been bonded over to the satisfaction of Lender.

3.4 Conditions Precedent to Final Disbursement. In addition to continued compliance with the conditions set forth in Sections 3.1, 3.2, and 3.3 hereof, Lender's approval of the final Disbursement shall be subject to the satisfaction of the following conditions precedent, each of which Borrower shall satisfy as promptly as is reasonably possible:

- (a) Lender shall have received written evidence that the Improvements shown on the Plans are complete or will be complete upon the making of the final Disbursement, as described in Section 6.1, including but not limited to (i) a Certificate of Substantial Completion on Form AIA G704 or such other form as Lender may reasonably require; and (ii) a final certificate of occupancy issued by the appropriate Governmental Agency.
- (b) Receipt by Lender of an ALTA Endorsement 100 or such title insurance endorsements as Lender may require to the Title Policy insuring that the Improvements have been completed free of any Liens and that no encroachments exist over any building, zoning, easement, right of way or property boundary lines, other than encroachments permitted by valid easements approved by Lender.
- (c) Receipt by Lender of executed Form AIA G706/706A with final lien waivers attached or such other form reasonably required by Lender or Title Company and written lien waivers releases from General Contractor and all suppliers of labor and materials to the Project.
- (d) Receipt by Lender of a written report from the Project Inspector stating that it has conducted inspections of the Project and that the Project has been fully completed in a good workmanlike manner and substantially in accordance with the Plans and the requirements of all Governmental Agencies.
- (e) Receipt by Lender of written evidence that all Project Costs, upon making the final Disbursement, shall have been paid in full.
- (f) If required by Lender, receipt by Lender of final as-built Plans for the Improvements.
- (g) Receipt by Lender of a certificate satisfactory to Lender from the Architect confirming that the Property complies with all Accessibility Laws.
- (h) If required by Lender, receipt by Lender of a final ALTA as-built survey of the Land and Improvements showing the location of all completed Improvements on the Land.
- (i) Receipt by Lender of a recorded notice of completion for the Improvements complying with California Civil Code Section 8182.

- (j) Receipt by Lender of written evidence that all insurance required pursuant to Article 9 has been obtained and all Insurance Premiums have been paid.
- (k) Receipt by Lender of all LIHTC Documents that have not been received and any amendments or updates to the LIHTC Documents.

4. **Disbursement.**

4.1 **General.** Provided no Default or Event of Default has occurred and is continuing, the proceeds of the Loans shall be advanced by the Lender for the benefit of Borrower in accordance with the terms and conditions set forth in this Section 4. The proceeds of the Convertible Term Note shall be disbursed before the proceeds of the Construction Note are disbursed. All proceeds of the Loans advanced by the Lender shall constitute a loan made to Borrower under this Agreement, evidenced by the Notes and secured by the Loan Documents. Lender reserves the right to make Advances of amounts on the Notes which are allocated to any of the designated items in the Budget for soft or hard costs related to the Project, and construction with respect to the Improvements or for such other purposes or in such different proportions as Lender may, in its sole discretion, deem necessary or advisable. Borrower may not reallocate items in the Budget without the prior written consent of Lender in each instance; provided, however, Lender will not unreasonably withhold its consent to a requested reallocation if the Budget remains In Balance and the reallocation effects changes that are not in excess of: (a) as to any single line item, the lesser of \$20,000 or 10% of the line item, and (b) as to the aggregate of all line items in the Budget not more than 5% of total Budget, but in no event greater than \$50,000. Notwithstanding the foregoing, any reallocation of the Reserves including the Contingency Reserves shall be subject to the prior written approval of Lender.

4.2 **No Waiver.** No Advance shall constitute a waiver of any condition precedent to the obligation of any Lender to make any further Advance, or preclude Lender from thereafter declaring the failure of Borrower to satisfy any condition precedent to be an Event of Default. All conditions precedent to the obligation of Lender to make any Advance are imposed hereby solely for the benefit of Lender, and no other party may require satisfaction of any condition precedent or shall be entitled to assume that Lender will make or refuse to make any Advance in the absence of strict compliance with the conditions precedent.

4.3 **Advances for Sums Due to Lender.** Lender will advance to itself, when due, from the proceeds of the Loans, without further order or request from Borrower, all interest payable to Lender under the terms hereof or of the Notes (so long as the conditions to such Advance have been satisfied, or waived by Lender, and sufficient funds remain in the Interest Reserve), and may, at Lender's option, without any obligation to do so, advance to itself all other sums due or to become due to Lender under this Agreement or under any of the other Loan Documents, including but not limited to its fees, attorneys' fees, Project Inspector fees, Appraisal fees, internal Appraisal review fees and other fees, administrative fees and expenses, syndication and transfer costs, and all other out-of-pocket costs and expenses incurred by Lender in connection with this Agreement and with the Loans. Lender shall also have the right, but not the obligation, to advance and directly apply the proceeds of the Loans to the satisfaction of any of Borrower's other obligations hereunder or under any of the other Loan Documents.

If the total amount of the Loans exceeds the amount needed to fully pay all items set forth on the Budget approved by Lender, Lender shall not be required to advance, and Borrower shall not be entitled to receive, the excess.

4.4 Advances for Developer Fee. Notwithstanding anything herein to the contrary, Lender shall not be obligated to advance any proceeds of the Loans in payment of or reimbursement for any portion of the Developer Fee payable to Borrower as shown on the Budget, so long as any Default or Event of Default has occurred and remains uncured. In addition, payments for Developer Fee shall not exceed the Permitted Developer Fee Payment.

4.5 Disbursement for Materials Not Incorporated Into the Project. When a Draw Request includes a request to pay for Stored Materials not yet installed or incorporated into the Project, Lender shall not be required to consent to the disbursement for Stored Materials, provided that Lender may, at its sole discretion consent to Disbursement for Stored Materials if: (a) Borrower provides Lender and the Project Inspector with (i) copies of related bills of sale, receipts, invoices and bills of lading demonstrating that Borrower has good title to the Stored Materials free of any encumbrances, (ii) satisfactory evidence that (a) the place of storage for such Stored Materials is on the Land or in a secure or bonded warehouse located in the jurisdiction in which the Land is situated and is readily accessible, and (b) the owner of such facility has received written instruction such that the Lender shall have access and the right to remove the Stored Materials, (iii) satisfactory evidence that the materials are adequately secured and insured, with Lender identified as an additional insured and loss payee, (iv) a copy of the Stored Materials log, and (v) photographs of the Stored Materials; (b) to the extent requested by Lender, Borrower shall also provide copies of UCC searches against Borrower, the materials vendor, the General Contractor, and the warehouseman, if applicable, indicating no liens or claims which may affect the Stored Materials; (c) all Stored Materials shall be clearly tagged with the Borrower's name and stored separately to avoid commingling, and shall be incorporated into the Project as promptly as possible and in any event within sixty (60) days after the date of the Disbursement for the Stored Materials; and (d) Borrower shall provide Lender, the Project Inspector and any applicable Governmental Agency or testing authority having jurisdiction over the Project with access to inspect, test or otherwise examine the Stored Materials.

4.6 Payments From Interest Reserve. To the extent that there is insufficient Net Operating Income to pay interest when due on the Notes and there are sufficient funds in the Interest Reserve line item to pay such amounts, Lender shall make Advances of Loan proceeds from the Interest Reserve available once each month to pay interest.

4.7 Draw Requests. Borrower shall deliver a Draw Request to Lender on a monthly basis together with evidence of the Project Costs funded during the preceding month (whether from proceeds of the Loans or otherwise). Draw Requests must be submitted at least ten (10) Business Days prior to the date of the requested Advance. Borrower shall also concurrently deliver a copy of the Draw Request directly to the Project Inspector. Each Draw Request shall include:

- (a) Borrower's signed Letter of Draw Request.
- (b) Borrower's signed Draw Request Certification.
- (c) An updated Draw Request Spreadsheet.
- (d) Original AIA Forms G702/703 from the General Contractor and, if applicable, any subcontractors and any material suppliers, signed and notarized by the General Contractor, and any subcontractors and material suppliers, including a certification by the Architect.

- (e) An itemized payee list including a summary and copies of all invoices included in the Draw Request which shall not be more than 90 days old, together with any supplemental items required by Lender, including invoices for soft costs.
- (f) Lien waivers as required by Section 3.3.
- (g) Such other information as is required by Lender to support the Draw Request.

Upon receipt of a Draw Request, Lender shall cause the Project Inspector to inspect the Improvements (if the inspection has not already been scheduled or completed prior to Lender's receipt of the Draw Request) and to confirm progress of construction work with respect to the costs of the work. If Lender determines that construction is proceeding on schedule in accordance with the Plans and otherwise in the manner required by this Agreement and that all conditions to the requested Disbursement shall have been fulfilled, Lender shall make the Disbursement on the date requested by Borrower or as close to the requested date as is commercially reasonable (not to be less than ten (10) Business Days from delivery to Lender of the Draw Request and all items required pursuant to this section).

4.8 Loans "In-Balance".

- (a) Notwithstanding anything in this Agreement or the Loan Documents to the contrary, Borrower shall at all times cause the Loans to be In Balance, and Lender shall have no obligation to fund any Disbursement or perform any other act unless and until the Loans are In Balance. The Loans shall be deemed to be "**In Balance**" only when the maximum principal amount of the Loans, less the sum of the funded Advances, plus the sum of (a) the undisbursed portion of the Construction Equity Deposits, (b) the undisbursed portion of the Subordinate Loans, and (c) any other available Funding Sources for the Project described on the Construction Funds Schedule (as determined by Lender), shall equal or exceed the amount reasonably estimated by Lender to pay for all work done or to be done and all materials furnished and to be furnished for the completion of the Project in each category of cost referred to in the Budget, including installation of all fixtures, equipment, and all other finish materials required for use, occupancy and operation of the Project, and to pay interest on the Loans, including but not limited to any interest through the Maturity Date of the Construction Loan (taking into account any extension of the Maturity Date if the Maturity Date of the Construction Note has been extended) and all other costs required to be paid by Borrower in connection with the Project.
- (b) If at any time and for any reason the Loans are not In Balance in accordance with this Section, Borrower shall, within five (5) days of receiving written or verbal notice from Lender or Title Company, do one or more of the following:
 - (i) provide satisfactory evidence to Lender that Borrower has previously paid any excess or additional costs for the Project (collectively, the "**Excess Costs**") or otherwise provided for the insufficiency with funds from a source other than the Loans, Subordinate Loans, or Construction Equity Deposits; or
 - (ii) reallocate, subject to Lender's approval, sufficient funds to pay the Excess Costs from funds allocated to "Contingency" in the Budget; or

(iii) Pay to the Lender an amount equal to the Excess Costs which shall be deposited in the Bank Controlled Account.

Lender shall have no obligation to make any further Disbursements until Borrower has paid or otherwise provided for the Excess Costs as required above.

4.9 Cost Savings. Upon completion of all work, materials and service described in any line item in the Budget and the payment in full for all work, materials and services covered by such line item in the Budget, then, upon Borrower's request, any remaining undisbursed amounts allocated to that line item may be reallocated to the "Contingency" line item in the Budget and be available for Disbursement in accordance with the terms of this Agreement.

4.10 Retainage. Lender shall withhold retainage equal to the percentage required under the Construction Contract, as approved by Lender, intended for payment of hard costs as required by the Budget. All amounts retained by Lender shall be disbursed upon satisfaction of all conditions to the final Disbursement set forth in Section 3.4.

4.11 Contingency. Lender shall not have any obligation to consent to any Disbursement from funds allocated in the Budget to the "Contingency" line item, or to consent to any reallocation to any other line item of funds allocated in the Budget to the "Contingency" line item.

4.12 Budget. Lender shall have no obligation to consent to any request for any Disbursement for any budgeted item of cost designated to be paid from proceeds of the Loans in any greater amount in the aggregate than the aggregate amount budgeted for that item in the Budget.

4.13 Subcontractor Verification. Borrower hereby grants Lender (and the Title Company) the right to contact and obtain information from the General Contractor and all subcontractors and material suppliers, including the right to obtain copies of all subcontracts and material supply contracts, and to verify and determine the status of performance and payment with respect to the Construction Contract or any subcontract or material purchase order.

4.14 Waiver of Disbursement Conditions. Lender may in its sole discretion waive any condition to the funding of a Disbursement. Any waiver of any condition to the funding must be expressly made and signed by an authorized officer of Lender. Lender shall not have made or be deemed to have made any waiver of any condition to the funding of any Disbursement as provided herein. The approval of any Draw Requests by Lender shall not constitute approval by Lender of any work, costs or expenses for which the Disbursement is made, or of any design, manufacturing, structural or other defect in any such work. The approval of any Disbursement prior to fulfillment of one or more conditions thereof shall not be construed as a waiver of any condition, and Lender reserves the right to require fulfillment of any and all conditions prior to approving any subsequent Disbursement.

4.15 All Disbursements Secured by Loan Documents. It is expressly agreed that any Advances made by Lender, from time to time, for whatever purposes, no matter to whom made, shall, as and when made, be deemed authorized by Borrower and made pursuant to this Agreement, and shall become and remain secured by the Loan Documents and considered part of the obligations secured thereby. These provisions shall apply whether or not Lender is then obligated to approve any Disbursement, and whether or not Lender has approved the Disbursements, or an Event of Default exists under any of the Loan Documents,

4.16 No Liability for Disbursements. Under no circumstances shall Lender be responsible or liable to any Person, including without limitation, Borrower for or on account of any disbursement of, or the failure to disburse, any of the proceeds of the Loans (or any portion thereof). The foregoing shall be in addition to all other limitations on the responsibility and liability of Lender set forth in this Agreement.

4.17 Offsite Materials. In the event that any Requisition includes the cost of materials stored at a location other than the Property ("*Offsite Materials*"), such Requisition shall include each of the following:

- (a) evidence that the Offsite Materials have been segregated from other materials in the facility and have been appropriately marked to indicate Borrower's ownership thereof and Lender's security interest therein; and
- (b) evidence that the Offsite Materials are insured as required hereunder.

4.18 Site Improvements.

- (a) As used herein and in the other Loan Documents, the term "Improvements" shall include site improvements.
- (b) Proceeds of the Loans allocated to the payment of the costs of Improvements that are site improvements shall be applied to the payment of the claims of claimants (as defined in Civil Code Section 3085). No portion of such proceeds of the Loans shall be paid to Borrower in the absence of satisfactory evidence that all such claims have been paid or that the time for recording claims of liens has expired and no such claims have been recorded. The foregoing shall not be construed as imposing on Lender any obligation or duty to any third party or as creating any third party beneficiary of the foregoing covenants and agreements.
- (c) If Lender reasonably believes that a mechanic's lien with respect to Improvements that are site improvements has or may have gained priority over the Deed of Trust pursuant to Civil Code Section 3137, then upon written demand, Borrower shall immediately, and in any case before the completion of the Improvements, procure a payment and performance bond in accordance with the requirements of Civil Code Section 3139 and record the same in the official records of the County. Borrower hereby appoints Lender as its attorneys in fact for procuring and recording such payment and performance bonds. Such appointment is coupled with an interest and is irrevocable. Upon demand, Borrower shall pay to Lender the cost of procuring and recording such payment and performance bonds. Any sums so advanced to procure and record such bonds shall be advanced to protect the security of the Deed of Trust and shall be secured thereby.

4.19 Subordinate Loan Proceeds. Borrower shall have delivered, concurrently with any request for Subordinate Loan proceeds, the copy of such draw request, together with supporting documentation. Lender may withhold its consent to any requested disbursement of Subordinate Loan proceeds unless, with respect to such disbursement, Borrower has satisfied and complied with all terms and conditions which would be required to be satisfied by Borrower under this Agreement of such disbursement were being funded with Loan proceeds. The proceeds of the Subordinate Loan shall not be

deemed disbursed to Borrower and applied to Project Costs unless Lender approves such costs.

5. **General Representations, Warranties and Covenants.**

As a material inducement to Lender's entry into this Agreement, Borrower represents and warrants to Lender as of the date hereof (except as otherwise disclosed to and consented to by Lender prior to the date of this Agreement) that:

5.1 **Formation, Qualification and Compliance.**

- (a) Borrower is (a) a limited partnership validly existing and in good standing under the laws of the State of California, (b) has all requisite authority to conduct its business and own and lease its properties, and (c) is qualified and in good standing in every jurisdiction in which the nature of its business makes qualification necessary or where failure to qualify could have a material adverse effect on its financial condition or the performance of its obligations under the Loan Documents. Borrower is in compliance with all Laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished or will accomplish by the date required by applicable Laws, all filings, registrations and qualifications with, any Governmental Agency that are necessary for the transaction of its business. Borrower shall not amend, modify, supplement or restate Borrower's Organizational Documents without the prior written consent of Lender, except as otherwise expressly permitted herein, nor shall Borrower cancel or terminate Borrower's Organizational Documents without the prior written consent of Lender.
- (b) The General Partner (a) is a limited liability company validly existing and in good standing under the laws of the State of California, (b) has all requisite authority to conduct its business and own and lease its properties, and (c) is qualified and in good standing in every jurisdiction in which the nature of its business makes qualification necessary or where failure to qualify could have a material adverse effect on its financial condition or the performance of its obligations under the Loan Documents. General Partner is in compliance in all material respects with all Laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished or will accomplish by the date required by applicable Laws, all filings, registrations and qualifications with, any Governmental Agency that are necessary for the transaction of its business. General Partner shall not amend, modify, supplement or restate General Partner's Organizational Documents without the prior written consent of Lender, nor shall General Partner cancel or terminate General Partner's Organizational Documents without the prior written consent of Lender.
- (c) Intentionally Omitted.
- (d) The Corporate Guarantor (a) is a nonprofit public benefit corporation validly existing and in good standing under the laws of the State of California, (b) has all requisite authority to conduct its business and own and lease its properties, and (c) is qualified and in good standing in every jurisdiction in which the nature of

its business makes qualification necessary or where failure to qualify could have a material adverse effect on its financial condition or the performance of its obligations under the Guaranty. Corporate Guarantor is in compliance in all material respects with all Laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished or will accomplish by the date required by applicable Laws, all filings, registrations and qualifications with, any Governmental Agency that are necessary for the transaction of its business.

5.2 Execution and Performance of Loan Documents. Each of Borrower, General Partner and Guarantor has all requisite authority to execute and deliver, and to perform its obligations under, the Loan Documents and the Regulatory Agreement. Borrower shall timely perform its obligations under the Loan Documents and the Regulatory Agreement and shall not cause or permit the occurrence of any default under the documents to which it is a party.

- (a) The execution and delivery by each of Borrower, General Partner and Guarantor of, and the performance by each of Borrower, General Partner and Guarantor of its respective obligations under, each Loan Document and the Regulatory Agreement that it has executed have been authorized by all necessary action on the part of Borrower, General Partner and Guarantor and do not and will not:
 - (i) require any consent or approval not heretofore obtained of any Person having any interest in Borrower, the Guarantor or the General Partner;
 - (ii) violate any provision of, or require any consent or approval not previously obtained under, any applicable governing document applicable to Borrower, Guarantor or the General Partner;
 - (iii) result in or require the creation of any lien, claim, charge or other right of others of any kind (other than under the Loan Documents) on or with respect to any property now or hereafter owned or leased by Borrower, Guarantor or the General Partner;
 - (iv) violate any provision of any Law presently in effect; or
 - (v) constitute a breach or default under, or permit the acceleration of obligations owed under, any contract, any loan document (including any Subordinate Loan Document), lease or other agreement or document to which Borrower, Guarantor or General Partner is a party or by which Borrower, General Partner, or Guarantor, or any of their respective property, is bound.
- (b) Neither Borrower, the General Partner nor Guarantor is in default in any respect under the Loan Documents, under the Regulatory Agreement or under any Law, contract, loan agreement, lease or other agreement or document to which Borrower, Guarantor, or General Partner is a party or by which Borrower, General Partner, or Guarantor, or any of their respective property, is bound.
- (c) No approval, license, exemption or other authorization from, or filing, registration or qualification with, any Governmental Agency is required in connection with:

(i) the execution and delivery by Borrower, General Partner or Guarantor of, or the performance by Borrower, General Partner and Guarantor of their respective obligations under, the Loan Documents and the Regulatory Agreement; and

(ii) the creation of the liens described in the Security Documents.

5.3 Financial and Other Information. All financial information furnished to Lender with respect to Borrower, Guarantor, and General Partner in connection with the Loans: (a) is complete and correct in all material respects, (b) accurately presents the financial condition of the applicable party and (c) has been prepared in accordance with GAAP or in accordance with such other principles or methods as are reasonably acceptable to Lender. All other documents and information furnished to Lender in connection with the Loans are true and correct in all material respects. Neither Borrower, Guarantor nor General Partner has any material liability or contingent liability not disclosed to Lender in writing prior to the date of this Agreement and there is no material lien, claim, charge or other right of others of any kind (including liens or retained security titles of conditional vendors) on any property of any Person not disclosed in the financial statements or otherwise disclosed to Lender in writing prior to the date of this Agreement.

5.4 No Material Adverse Occurrence. There has been no Material Adverse Occurrence since the dates of the latest financial statements furnished to Lender prior to the date of this Agreement. Since those dates, none of Borrower, Guarantor or General Partner has entered into any material transaction not disclosed in the financial statements or otherwise disclosed to Lender in writing prior to the date of this Agreement.

5.5 Tax Liability. Borrower has filed all required federal, state and local tax returns and has paid all taxes due (including interest and penalties, but subject to lawful extensions disclosed to Lender in writing) other than taxes being promptly and actively contested in good faith and by appropriate proceedings. Borrower is maintaining adequate reserves for tax liabilities (including contested liabilities) in accordance with GAAP or in accordance with such other principles or methods as are reasonably acceptable to Lender.

5.6 Budget; Source of Funds. The Budget is based on information deemed reliable by Borrower and represents Borrower's best estimate of all costs required to acquire and complete the Project. Borrower has no knowledge, after due inquiry, that any source of funds for the Project will not be received in the amounts and at the times described in the Construction Funds Schedule.

5.7 No Litigation. There are no actions or proceedings pending or, to the best of Borrower's knowledge, threatened against or affecting Borrower, Guarantor or the General Partner, or any of their properties, or any circumstance existing which would in any manner materially adversely affect the priority or enforceability of the Loan Documents and the liens and Security Interests created pursuant thereto, or the ability of Borrower, the General Partner, or any Guarantor to perform any of their obligations under the Loan Documents, except as disclosed to Lender in writing prior to the execution of this Agreement. There are no condemnation proceedings or moratoria pending or threatened against the Project that would impair the construction, use, sale, value or occupancy of the Project.

5.8 Documents. Borrower has delivered to Lender true and complete copies of all Project Agreements, together with all modifications thereto. Except as otherwise disclosed to Lender in writing, all such agreements are in full force and effect and no party is in default under any such

agreement. Borrower has delivered to Lender true and complete copies of (i) the form of lease to be used for each Unit, (ii) every contract and other document that grants rights to, or imposes obligations on, Borrower in connection with the Project, and has fully disclosed to Lender in writing the material terms of all oral agreements granting or imposing any such rights or obligations.

5.9 Name and Principal Place of Business. Borrower presently uses no trade name other than its actual name. Borrower's principal place of business is 345 Spear Street, Suite 700, San Francisco, California 94105.

5.10 Business Loans; Regulation U. The Loans, including interest rates, fees and charges as contemplated hereby, collectively constitute business loans. The proceeds of the Loans shall be used for proper business purposes and consistently with all Requirements of Law. Borrower is not in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of the Loans shall be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

5.11 Investment Company Act; ERISA. The Borrower does not currently maintain, and never has maintained, any employee benefit plan described in Section 3(3) of ERISA that is subject to ERISA or that would be subject to ERISA if it covered more than one employee of the Borrower and if the exclusions contained in Section 4 of ERISA did not apply. The Borrower is not currently, and never has been, part of a group of companies that is required to be aggregated and treated as one employer under Section 414 of the Code.

5.12 Non-Foreign Status. Neither Borrower nor any General Partner is a "foreign person" within the meaning of Internal Revenue Code Sections 1445 and 7701 (i.e., it is not a nonresident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder). Borrower understands that the foregoing information may be disclosed to the Internal Revenue Service by Lender, its agents, successors and assigns, and that any false statement could be punished by fine, imprisonment or both.

5.13 Continuing Nature of Representations and Warranties. Borrower acknowledges, understands, and agrees that the representations and warranties set forth in this Agreement shall be deemed to be continuing during all times when the Loans remain outstanding and, except to the extent that Borrower discloses non-compliance to Lender in writing and Lender waives the non-compliance in writing, the representations and warranties in this Agreement shall be restated and made effective as of each date a Disbursement is requested and made in accordance herewith.

5.14 No Reliance on Lender for Advice. Borrower represents that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the Loan Documents; that it understands the risks inherent in these transactions; and that it has not relied on Lender for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Loan Documents and the Subordinate Loan Documents or otherwise relied on Lender for any advice.

6. **Project Representations, Warranties and Covenants.**

As a material inducement to Lender's entry into this Agreement, Borrower covenants and agrees with Lender and represents and warrants to Lender as of the date hereof and during the term of this Agreement (except as otherwise disclosed to and consented to by Lender in writing prior to the date of execution of this Agreement) that:

6.1 **Completion of Improvements.** Borrower shall commence before the Commencement Date and thereafter diligently proceed with the construction of the Project. In any event, Borrower shall complete the construction of the Improvements on or before the Completion Date. The Improvements shall be considered complete for purposes of this Agreement only when:

- (a) the Improvements are substantially completed in accordance with the Plans, as approved by Lender, are paid for in full and are free of all mechanics, labor, materialmen and other similar liens;
- (b) a certificate of substantial completion for the Improvements has been signed by Borrower, the General Contractor and the Architect and delivered to Lender, and no punchlist items remain to be completed or, if punchlist items remain to be completed, funds have been escrowed for their completion in an amount acceptable to Lender;
- (c) Borrower has delivered to Lender copies of all licenses and permits needed to occupy and operate the Project;
- (d) Lender has received acceptable evidence that all Requirements of Law and all private restrictions and covenants relating to the Improvements have been complied with or satisfied and that unconditional certificates of occupancy for the Improvements (including, without limitation, each Unit) have been issued by all appropriate Governmental Agencies;
- (e) Borrower is in possession of the entire Project;
- (f) copies of all warranties from suppliers covering materials, equipment and appliances included within the Project have been delivered to Lender;
- (g) evidence that all insurance required hereby is in full force and effect has been delivered to Lender; and
- (h) streets and offsite utilities located within or pertaining to the Project have been completed to the satisfaction of all Governmental Agencies.

The Completion Date shall be extended for a period equal to the period of any delay caused by Force Majeure, provided Borrower furnishes Lender with written notice of the Force Majeure event within ten (10) Business Days from the occurrence of the delay. In no event, however, shall the Completion Date be extended beyond the earlier of (i) the date occurring ninety (90) days after the Completion Date for the Improvements, (ii) any date that the Investor has established for completion as a condition to making its Construction Equity Deposits, or (iii) any outside date for completion of the Improvements set forth in any Subordinate Loan Document or Project Agreement.

6.2 Offsite Improvements. Borrower shall promptly commence and diligently complete all offsite improvements of the public streets, walks, sewers, utilities and like areas and facilities adjoining the Land, if any, and provide utilities and other facilities, in accordance with the requirements of all Governmental Agencies.

6.3 Conformity with Plans. Borrower represents that the Plans comply with all Laws, including but not limited to all Accessibility Laws. Borrower shall cause the Improvements to be constructed in conformity with the Plans and in such a manner so they will not encroach upon or overhang any easement, right of way or land of others. If any aspect of the Project is not in substantial conformity with the Plans or encroaches upon easements, rights of way or land of others, Lender shall have the right to stop the work and order repair or reconstruction in accordance with the Plans and to withhold further Disbursements until the Project is in substantial compliance with the Plans and/or does not so encroach. Upon written notice from Lender (or Borrower's discovery irrespective of notice) that any aspect of the Project is not in substantial conformity with the Plans or encroaches upon easements, rights of way or land of others, Borrower shall promptly commence correcting the deviation or encroachment and shall prosecute the work diligently to completion, which in no event shall be later than thirty (30) days after the notice or discovery.

6.4 Change Orders. Borrower agrees that the Plans shall not be modified except pursuant to Change Orders. All Change Orders:

- (a) shall be in writing on AIA Form 701 or other form approved by Lender, numbered in sequence, signed by Borrower, Architect, and Contractor and any other entity required pursuant to the Construction Contract and, with regard to Material Change Orders, submitted to Lender prior to the proposed effectiveness thereof and accompanied by working drawings and a written narrative of the nature of and reason for the nature of and reason for the proposed change and shall be approved by Investor if required under Borrower's Partnership Agreement;
- (b) shall contain an estimate by Borrower of all increases and decreases in itemized Project Costs that would be caused by the change, as well as the aggregate amount of all changes in estimated Project Costs (both increases and decreases) previously made;
- (c) shall contain a certification by Borrower stating the aggregate amount, including both increases and decreases, of all changes in Project Costs reflected in Change Orders for which Lender's approval has not been obtained or has not been required hereunder;
- (d) shall include a description of the impact of such proposed Change Order on the construction schedule;
- (e) shall be certified by Borrower to be in compliance with all applicable Laws and other requirements; and
- (f) shall be subject to Lender's prior written approval if the Change Order (i) would change the number of Units within the Project as shown on the Plans; (ii) would affect any structural component of the Project, (iii) would involve changes in the Budget which require Lender's approval under Section 4.1, or (iv) would delay

the Completion of the Project beyond the Completion Date (each change requiring Lender's approval under this subparagraph (f) being referred to herein as a "**Material Change Order**").

6.5 Entry and Inspection. Upon reasonable notice to Borrower (which notice may be written or oral), Lender and its agents shall have:

- (a) the right of free access during normal business hours to the Project and all sites away from the Project where materials for the Project are stored,
- (b) the right to inspect during Borrower's normal business hours all labor performed and materials furnished for the Project; and
- (c) the right to inspect during Borrower's normal business hours, and copy, all documents pertaining to Borrower and the Project.

6.6 Project Information. From time to time during the course of the Project, within ten (10) days following Lender's written demand therefore, Borrower shall furnish Lender with reports of Project Costs, an updated Draw Request Spreadsheet, progress schedules and contractors' cost breakdowns for the Project, itemized as to trade description and item, showing the names of the contractor(s) and/or subcontractor(s), and including any indirect costs such as real estate taxes, legal and accounting fees, insurance, architects' and engineers' fees, financing costs, interest during construction and contractor's overhead.

6.7 Governmental Requirements. Borrower has obtained all building permits and similar permits, licenses, approvals and other authorizations of Governmental Agencies required in connection with the ownership, development and use of the Land and the Project, and all the permits, licenses and approvals remain in full force and effect. Borrower is and shall continue to be during the term of this Agreement in compliance with all Laws relating to the Project and all licenses, exemptions, approvals and other requirements of Governmental Agencies required in connection with the Project and the development of the Project, including each of the following as applicable:

- (a) zoning, land use and planning requirements, including requirements arising from, or relating to the adoption or amendment of, any applicable general plan;
- (b) subdivision and parcel map requirements;
- (c) environmental requirements;
- (d) requirements in connection with use, occupancy and building permits; and
- (e) requirements of public utilities.

6.8 Project Agreements. Borrower shall employ the General Contractor as general contractor for the Project pursuant to the Construction Contract. Borrower shall not terminate, or modify in any material respect, any Construction Contract without Lender's prior written consent, which shall not be unreasonably withheld. Borrower shall not enter into any other agreement with respect to the construction and/or development of the Project without the prior written consent of Lender. Within ten (10) days after Lender's written demand therefore, Borrower shall deliver to Lender lists of all contractors and subcontractors employed in connection with the Project. Each

list shall show the name, address and telephone number of each contractor and subcontractor, a general statement of the nature of the work to be done, the labor and materials to be supplied, the names of material suppliers, if known, the approximate dollar value of labor, work and materials itemized with respect to each contractor, subcontractor and materialman, and the unpaid portion and status of the work or whether the materials have been delivered. Lender and its agents shall have the right (but not the obligation) to directly contact the General Contractor, each contractor, subcontractor and material supplier to verify the facts disclosed by any such list. The General Contractor shall furnish a payment and performance bond from a surety acceptable to Lender naming the Lender as a dual obligee in the amount of 100% of the total amount payable under the Construction Contract and otherwise in form and content satisfactory to Lender.

6.9 Project Inspector. Borrower hereby agrees to pay or reimburse Lender for the reasonable costs charged by the Project Inspector in connection with review and approval of all Plans, contracts, budgets and related matters, inspection of the Project, and approval of Draw Requests. Without limiting the foregoing, the Project Inspector may be engaged to complete pre-closing review of the Plans and Budget to determine the adequacy thereof, and/or complete monthly inspections to review status of construction, compare construction draws to construction progress, review invoices, and make recommendation for payment. Based on the Project Inspector's recommendation, the Budget may be adjusted by Lender. Notwithstanding anything in this Agreement to the contrary, Borrower understands and agrees that all inspections are for the sole purpose of protecting Lender and are made solely for Lender's benefit; that inspections may be superficial and general in nature, primarily to inform Lender of the progress of construction; and, that in any event, Borrower shall not be entitled to rely on any inspections(s) for evaluating workmanship, conformance to Plans or otherwise. Borrower agrees to make its own inspections of the construction to determine that the quality of the construction and all other requirements of the work of construction are being performed in a manner satisfactory to Borrower. Lender shall have no obligations to share with Borrower any inspection reports.

6.10 Property Management Agreements. Borrower shall at all times employ the Property Manager for the Project and will not amend, modify or terminate the Property Management Agreement without the prior written consent of Lender. The Lender shall have the right to approve any change in the Property Manager.

6.11 Access; Roads; Easement. All roads and other accesses necessary for the construction of the Improvements and full utilization thereof for their intended purposes have been completed or the necessary rights of way therefore have either been acquired or have been dedicated to public use and accepted by the applicable Governmental Agency(ies) (US) and all necessary steps have been taken to assure the complete construction and installation thereof by a date sufficient to ensure timely Completion in accordance with this Agreement. The Land physically abuts, and has the legal right of access to, a public road and no curb cut approvals or other approvals from a Governmental Agency are required for Borrower to have the right of access from the Land to the public road. To the best of Borrower's knowledge, Borrower is in compliance with all covenants, conditions, restrictions, easements, rights of way and other rights of third parties relating to the Project.

6.12 Parking. All parking required by any Governmental Agency for the Project is located on the Land.

6.13 No Encroachments. The Improvements do not and will not encroach upon any set back line, sideyard line, or any recorded or visible easement (or other easement of which Borrower is aware or has reason to believe may exist) which exists with respect to the Land.

6.14 Lots; Plat. The Land consists of one or more separate and legal lots for real estate tax, zoning, subdivision, conveyance and all other purposes, none of which lots include any property (i) not subject to the Deed of Trust, or (ii) owned by anyone other than Borrower.

6.15 Subdivision Plat. Borrower shall not record any subdivision plat for the Land without the express prior written consent of Lender, which may be withheld in Lender's sole and absolute discretion.

6.16 Hazardous Substances. Except as otherwise previously disclosed to Lender in writing, Borrower has no knowledge of the presence on, under or about the Project, now or in the past, of any Hazardous Substances, or of the transportation to or from the Project of any Hazardous Substances. Borrower agrees to construct and/or rehabilitate, operate and maintain the Project strictly in compliance with all Environmental Laws. Borrower has provided Lender with true and correct copies of all Environmental Reports and will provide Lender with copies of any amendments or updates thereto and with any additional reports prepared with respect to the environmental condition of the Project. Except as specifically disclosed in the Environmental Reports, Borrower: (a) has not received any notice or otherwise learned of any Environmental Liability relating to the Project which would individually or in the aggregate constitute a Material Adverse Occurrence as to Borrower arising in connection with (i) any non-compliance with or violation of the requirements of any Environmental Law, or (ii) the release or threatened release of any Hazardous Substance or other substance into the environment; (b) has no knowledge of any threatened or actual liability in connection with the release or threatened release of any Hazardous Substance or other substance into the environment relating to the Project which would individually or in the aggregate constitute a Material Adverse Occurrence; or (c) has not received any notice or otherwise learned of any federal or state investigation evaluating whether any remedial action is needed to respond to a release or threatened release of any Hazardous Substances into the environment where such liability individually or in the aggregate for all such liabilities would constitute a Material Adverse Occurrence as to Borrower. Borrower has not received any notice of any violation of any Environmental Laws relating to the Project where the violation would constitute a Material Adverse Occurrence as to Borrower.

6.17 Title/Liens. On the Closing Date and at all times thereafter until Borrower's obligations hereunder are satisfied in full, Borrower will have a leasehold interest in the Land and a fee simple interest in the improvements built on the Land, subject only to the Permitted Encumbrances. Borrower shall maintain the lien of the Deed of Trust as a valid first priority lien on the Project and agrees that it will not suffer or permit any liens (other than the Permitted Encumbrances and Subordinate Loan Documents) or mechanics' liens to be claimed or filed or otherwise asserted against the Project and will promptly discharge the same in case of the filing of any claims for lien or proceedings for the enforcement thereof, and will pay all special assessments which have been placed in collection and all real estate taxes and assessments of every kind upon the Land, before the same become delinquent. In the event that any claim of lien is asserted against the Project or any claim is asserted against Lender by any Person furnishing labor or materials to the Project, Borrower shall immediately give notice of the same to Lender and shall, promptly and in any event within ten (10) Business Days, (a) pay and discharge the same, or (b) effect the release thereof by delivering to Lender a surety bond complying with the requirements of applicable Laws for the release of the lien or claim. Notwithstanding the

foregoing, Lender shall have the right but not the obligation, to accept a cash deposit or other security in lieu of the surety bond described in clause (b) of the immediately preceding sentence. If Borrower shall fail promptly to discharge claims, taxes or assessments asserted against Borrower or the Property and cause any judgment or decree to be satisfied and any lien to be released, then and in any such event Lender may, at its election (but shall not be required to), procure the release and discharge of any such claim and any judgment or decree thereon and, further, in its sole discretion effect any settlement or compromise of the same. Any amounts expended by Lender in connection therewith, including premiums paid or security furnished in connection with the issuance of any surety bonds, shall be a Protective Advance. In settling, compromising, discharging or providing indemnity or security for any claim for lien, tax or assessment, Lender shall not be required to inquire into the validity or amount thereof. In no event shall Lender be liable to any contractor, design professional, subcontractor, materialman or any other Person providing, furnishing or delivering services, labor, equipment or material to the Project.

6.18 Leases.

- (a) Except as specifically provided below, each Lease of all or any part of the Project is subject to Lender's written approval as to form and substance prior to execution and delivery. Borrower shall obtain the written approval of Lender (and all other parties whose approval is required) of Borrower's standard form of residential Lease or rental agreement prior to its use by Borrower. Borrower shall not materially modify the lease form approved by Lender without Lender's prior written consent and the approval of all other parties whose consent is required.
- (b) Notwithstanding the foregoing, Borrower may enter into residential Leases (and amendments) in the ordinary course of business with bona fide third party residential tenants without Lender's prior written consent if Borrower uses the lease form approved by Lender and complies with all of the following:
 - (i) Within 15 days after Lender's written request therefore, Lender receives a copy of the executed Lease (accompanied by all financial information and certificates obtained by Borrower pertaining to the tenant, including any documentation required for the Unit to qualify for LIHTC, provided Borrower's release of the information does not result in any violation of any applicable clearhousing or privacy laws, or regulations).
 - (ii) The Lease meets the requirements of Investor and the Credit Agency.
 - (iii) The Lease reflects an arm's-length transaction.
 - (iv) The Lease conforms to the Pro Forma Rents.
 - (v) The Lease does not affect more than one residential Unit within the Improvements and any new Lease is for a minimum term of six months and a maximum term of 12 months, unless otherwise agreed in writing by Lender.
 - (vi) As to any units in the Project other than the manager's unit, the Lease meets the standards of, and the tenant qualifies as an eligible tenant

pursuant to, Section 42 of the Internal Revenue Code and any related regulatory agreement.

- (c) Lender may consider any executed Lease it receives to be unsatisfactory if the Lease fails to meet any of the requirements of this Agreement. If this happens, or if Borrower at any time fails to submit to Lender any executed lease (and accompanying information) at the time required by this Section, or if any Event of Default has occurred and is continuing, Lender may require Borrower to submit all future leases for Lender's approval prior to execution.
- (d) Borrower has disclosed to Lender any and all Leases affecting the Project or any portion of or interest in it. Following Completion, upon the request of Lender, (i) Borrower shall promptly deliver to Lender copies of tenant income certificates, leasing schedules and reports, and other leasing information provided to the Investor, and (ii) if there are commercial tenants occupying any part of the Project, Borrower shall promptly obtain and deliver to Lender estoppel certificates, subordination agreements, and/or subordination, nondisturbance, and attornment agreements in form and substance acceptable to Lender, executed by such non-residential tenants as Lender from time to time may require.
- (e) Lender's approval of any Lease is for the sole purpose of protecting Lender's security and preserving Lender's rights under the Loan Documents. No approval by Lender will result in a waiver of any default of Borrower. In no event will Lender's approval of any Lease be a representation of any kind by Lender with regard to the Lease, its enforceability or the financial capacity of any tenant thereunder or guarantor thereof.
- (f) Borrower shall perform all obligations required to be performed by it as landlord under any Lease affecting all or any part of the Project or any space within the Improvements.
- (g) Upon Lender's request, Borrower shall provide copies of all initial tenant files with all information and verifications required by the Credit Agency and any third party file review. In addition, Borrower shall, if requested by Lender, provide Lender copies of all annual reporting regarding compliance with LIHTC requirements provided to the Credit Agency and copies of tenant files to the extent necessary to demonstrate compliance with the Credit Agency's LIHTC compliance rules.

6.19 Title Insurance Endorsements. Borrower shall deliver to Lender, at Borrower's sole expense and in form and content reasonably satisfactory to Lender, all endorsements and binders to the Title Policy reasonably required by Lender from time to time.

6.20 Sale or Lease of Project. Except for Permitted Transfers, Borrower shall not sell, lease or otherwise transfer all or any part of the Project or the Personal Property (or any interest therein) other than (a) the lease of residential Units for a term of one-year or less, or (b) disposition of Personal Property to the extent permitted under Section 7.2 below, without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion.

- (a) Transfers requiring Lender's prior written consent shall include, without limitation, the following:

- (i) involuntary transfers and transfers by operation of law;
- (ii) liens and assignments as security for obligations, whether voluntary or involuntary; and
- (iii) the issuance, sale, assignment, disposition, encumbering or other transfer of any direct or indirect ownership interest in Borrower, Guarantor, or the General Partner, whether voluntary or involuntary, by operation of law or otherwise, other than Permitted Transfers.

(b) No sale, lease or other transfer shall relieve Borrower from primary liability for its obligations under the Loan Documents or relieve any Guarantor from any liability under any Guaranty, and Borrower shall deliver to Lender all documents reasonably required by Lender to evidence its continuing liability.

(c) Notwithstanding anything to the contrary contained herein, the following transactions are hereby deemed to be expressly permitted hereunder and shall, for purposes of the Loan Documents, constitute the “*Permitted Transfers*”:

(i) Issuance of limited partner interests in Borrower as contemplated in the Partnership Agreement;

(ii) The transfer by the initial Investor approved by Lender of its ownership interests in Borrower to any other entity which is an Affiliate of the initial Investor or which is controlled directly by the initial Investor; provided that, notwithstanding any such transfer, the initial Investor shall remain primarily obligated to make all Capital Contributions to Borrower in accordance with and subject to the Partnership Agreement;

(iii) The removal of any General Partner by the Investor approved by Lender, pursuant to the terms of the Partnership Agreement, and the concurrent replacement of the removed entity with an Affiliate of the Investor approved by Lender (or a designee of Investor approved by Lender); provided that the prior written consent of Lender shall have first been obtained (which consent may be conditioned upon the satisfaction of any conditions imposed by Lender), including without limitation, a requirement that the substitute Partner provide guaranties in form and substance satisfactory to Lender.

(iv) The Subordinate Loan.

6.21 Utilities. The Project is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Project for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Project are located either in the public right of way abutting the Project (which are connected so as to serve the Project without passing over other property) or in recorded easements serving the Project and described in the Title Policy.

7. **Covenants Regarding Maintenance, Operation, Preservation and Repair of Project.**

7.1 Maintenance Alteration and Repair. Borrower shall maintain the Project (and all abutting grounds, sidewalks, roads, parking and landscape areas) in good condition and repair, shall operate the Project in a businesslike manner, shall prudently preserve and protect both its own

and Lender's interests in connection with the Project, shall not commit or permit any waste or deterioration of the Project, shall not abandon any portion of the Project, and shall not otherwise act, or fail to act, in such a way as to unreasonably increase the risk of any damage to the Project or of any other impairment of Lender's interests under the Loan Documents. Borrower shall not remove, demolish or materially alter any Improvement (except as contemplated in the Plans), except to make non-structural repairs which preserve or increase the Project's value, and shall promptly restore, in a good and competent manner, any Improvement (or other aspect or portion of the Project) that is damaged or destroyed from any cause. All construction work on the Project, and any other work on the Project shall be done in compliance with the requirements for the Credits.

7.2 Personal Property. Borrower shall not install in, or use in connection with, the Project any Personal Property which any Person other than Lender has the right to remove or repossess under any circumstances, or on which any Person other than Lender has a lien (other than Permitted Liens). Borrower shall not cause or permit the removal from the Project of any items of Personal Property (other than tools and equipment used in the development of the Project) unless: (i) no Event of Default remains uncured, and (ii) Borrower promptly substitutes and installs on the Project other items of equal or greater value in the operation of the Project, all of which items shall be free of liens (other than Permitted Liens) and shall be subject to the lien of the Deed of Trust, and Borrower executes and delivers to Lender all documents required by Lender in connection with the attachment of the liens to the Personal Property. Borrower shall keep detailed records of each such removal and shall make the records available to Lender upon written request from time to time.

7.3 Taxes and Impositions. Borrower shall pay all Impositions prior to delinquency. If permitted by law, Borrower may pay any Imposition in installments (together with any accrued interest). Borrower shall maintain the Tax Escrow Account if required by Section 10.4.

- (a) Right to Contest. Borrower shall not be required to pay any Imposition so long as (a) its validity is being actively contested in good faith and by appropriate proceedings and (b) Borrower has demonstrated to Lender's reasonable satisfaction that leaving the Imposition unpaid pending the outcome of the proceedings could not result in conveyance of the Project in satisfaction of the Imposition or otherwise impair Lender's interests under the Loan Documents; provided that Lender may require Borrower to furnish Lender with a bond or other security satisfactory to Lender in an amount not less than 150% of the applicable claim.
- (b) Evidence of Payment; Tax Reporting Service. Borrower shall (a) deliver to Lender, within thirty (30) days following the due date of any Imposition, evidence of payment reasonably satisfactory to Lender and, (b) upon written notice by Lender upon an Event of Default or Borrower's failure to pay any installment of taxes from time to time, Lender may engage, at Borrower's expense, a tax reporting service for the Project.

On or before the Conversion Date and thereafter within ninety (90) days after the end of each tax year, there shall be provided to Lender letters from all Governmental Agencies having real property taxing power over or other similar jurisdiction over the Project to the effect that the Project is and will remain exempt from all real property taxation for the immediately succeeding

tax year or, if different, the immediately succeeding real property taxation assessment, levy and collection cycle for the taxing authority.

7.4 Assessment Districts. Unless otherwise required by applicable Law and except as set forth in the Development Agreement, Borrower shall not, without Lender's prior written consent, cause or suffer to become effective, or otherwise consent to the formation of, any assessment district, or any other comparable or similar district, area or territory which includes the Project or any part of the Project which would require the Project to pay taxes higher than would otherwise be payable or require minimum tax payments or cause or otherwise consent to the levying of special taxes, assessments or payments in lieu against the Project or any part thereof, the levying of assessments by any assessment district against the Project or any part thereof, or the levying of assessments, taxes and/or other Impositions by any district, area or territory.

8. **Other Covenants.**

While any obligation of Borrower or Guarantor under the Loan Documents remains outstanding, the following provisions shall apply, except to the extent that Lender otherwise consents in writing:

8.1 Lists of Personal Property. Borrower shall deliver to Lender from time to time, within ten (10) days of Lender's request therefore, a list of all Personal Property then in existence.

8.2 Further Assurances. Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under the Loan Documents, to protect and further the validity, priority and enforceability of the Security Documents, to subject to the Security Documents any property intended by the terms of any Loan Document to be covered by the Security Documents, or otherwise to carry out the purposes of the Loan Documents and the transactions contemplated thereunder.

8.3 Intentionally Omitted.

8.4 Subordinate Loan Documents/Affordability Requirements. Borrower shall timely perform its obligations under the Subordinate Loan Documents. Borrower agrees that:

- (a) Lender and its counsel shall (at the cost of Borrower) be provided an opportunity to review and approve the Subordinate Loan Documents prior to the execution and delivery thereof.
- (b) The terms and conditions upon which the Subordinate Loan will be made will be pursuant to the understandings memorialized in the commitment of Subordinate Lender (as further described below) as provided to and approved by Lender and its counsel as of the date of this Agreement.
- (c) The Subordinate Loan Documents shall be the only documents, agreements and understandings with respect to the Subordinate Loan, other than the usual and customary UCC financing statements, which Lender and its counsel shall (at the cost of Borrower) have been given an opportunity to review and approve.
- (d) For all purposes of this Agreement, all documents relating to the Subordinate Loan shall be considered to be part of the Subordinate Loan Documents.

- (e) Borrower acknowledges and agrees that Subordinate Lender shall be required to enter into the Subordination Agreement at or prior to the time the Subordinate Loan Documents are expected to be executed and delivered.
- (f) As additional conditions to closing the Loan, Lender shall have received in form and substance satisfactory to Lender (i) fully-executed Subordinate Loan Documents relating to its Subordinate Loan and identifying all closing and funding conditions related thereto, and (ii) a fully executed Subordination Agreement among Borrower, Subordinate Lender and Lender, vesting in Lender (or its assignees or designees), certain rights under certain circumstances to assume Borrower's position with respect to the applicable Subordinate Loan commitment and the transactions relating to the Subordinate Loan.
- (g) If required in writing by Lender within ninety (90) days after the end of each calendar year, Borrower shall deliver to Lender its certificate signed by a Designated Representative to the effect that at all times during the then ended annual period, the Project was in full and complete compliance with the Subordinate Loan Documents and with all local, state and federal affordability requirements applicable to the Project, as well as any rent limitations imposed in connection with the credits allocated to the Project, subject in all cases to applicable cure periods. The certificate shall also contain a statement to the effect that for the immediately preceding annual period, no default or Event of Default shall have occurred under any of the Subordinate Loan Documents and that as of the end of the immediately preceding annual period and as of the date of the certificate, no conditions, circumstances, or occurrences exist that would result in, or would, with the passage of time or giving of notice (or both), reasonably be expected to result in a default.
- (h) Borrower shall not enter into any new Subordinate Loan Documents, or amend, modify, supplement, cancel or terminate any Subordinate Loan Documents without the prior written consent of Lender.

8.5 Capital Contributions. The Partnership Agreement shall obligate the Investor to make Capital Contributions in at least the amounts and at the times set forth in **Exhibit E**. Borrower and the General Partner shall take all actions necessary to cause the Investor to make the Capital Contributions described on **Exhibit E** in a timely manner. Borrower and General Partner shall take all actions necessary to satisfy any conditions necessary for the timely payments of the Capital Contributions, the proceeds of which shall be promptly deposited by Borrower in the Bank Controlled Account, to be disbursed by Lender pursuant to this Agreement.

8.6 Single Asset Borrower. Borrower's sole business purpose shall be to own and operate the Project. Borrower (i) shall conduct business only in its own name and under any trade name for the Project, (ii) shall not engage in any business or have any assets unrelated to the Project, (iii) shall not have any Indebtedness other than as permitted by this Agreement, (iv) shall have its own separate books, records, and accounts (with no commingling of assets), (v) shall hold itself out as being an entity separate and apart from any other person or entity, (vi) shall observe limited partnership formalities independent of any other entity, and (vii) shall not change its name, identity, or organizational structure, unless Borrower shall have obtained the prior written consent of Lender to the change, and shall have taken all actions necessary or requested by Lender to file

or amend any financing statement or continuation statement to assure perfection and continuation of perfection of Security Interests under the Loan Documents.

8.7 HAP Contract. Borrower hereby agrees to notify Lender as soon as possible after Borrower commences communication with HUD in connection with any housing assistance payment contract relating to the Project, including without limitation, contracts for project based housing assistance payments made pursuant to Section 8 of the United States Housing Act of 1937, as amended (each a “**HAP Contract**”). Borrower further agrees that (i) Lender (and its counsel) shall be given a reasonable opportunity to review and provide comments on any draft HAP Contract or draft amendment to HAP Contract prior to its execution and delivery by the parties thereto, and (ii) concurrently with the execution and delivery of any HAP Contract, Borrower shall execute and deliver to Lender, in form and substance satisfactory to such parties, an absolute, unconditional and irrevocable assignment of Borrower’s right, title and interest in, to, and under the HAP Contract, together with the right and power to enforce the same. Borrower shall not modify, terminate or surrender any HAP Contract (in whole or in part) without the prior, written consent of Lender, which consent shall not be unreasonably withheld. Borrower agrees to promptly notify Lender of the results of any HUD inspection of the Project.

8.8 Reappraisal Requirements. Borrower agrees that Lender shall have the right to obtain, at Borrower’s expense, an appraisal of the Project prepared by an appraiser selected by and acceptable to Lender and in conformance with governmental regulations applicable to Lender and approved by Lender at any time that: (a) an Event of Default has occurred hereunder, (b) any condemnation, damage or destruction of the Project occurs, or (c) such appraisal is required by then current banking laws or regulations. In the event that Lender shall elect to obtain such an appraisal, Lender may immediately commission an appraiser, at Borrower’s cost and expense, to prepare the appraisal and Borrower shall fully cooperate with Lender and the appraiser in obtaining the necessary information to prepare the appraisal. Provided that no Event of Default then exists, Borrower shall not be required to pay for more than one appraisal in any twelve (12) month period. In the event that any appraisal shall determine that the then outstanding principal balance of the Loans, together with the undisbursed portion of the Loans which Bank may be obligated to disburse to Borrower in accordance with the terms and conditions hereof, is greater than 80 percent of the fair market value of the Project and Borrower fails to prepay, within 30 days after written notice from Bank to Borrower, the outstanding principal balance of the Loans to the extent necessary to reduce the sum of said principal balance and such amounts Lender may be obligated to disburse to Borrower hereunder down to 80 percent of the fair market value, such event shall constitute an Event of Default. In the event such appraisal is required by reason of the damage or destruction of a portion of the Project, the fair market value shall be calculated on the Project after restoration of the Improvements, but subject only to then existing Leases which will remain in full force and effect following such restoration.

8.9 Other Tax Covenants.

- (a) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act (as defined in the Indenture) or impair the exclusion from gross income for federal income tax purposes of the interest on the Bonds. The Borrower intends to utilize the portion of the Project financed with proceeds of the Bonds as multifamily rental housing during the Qualified Project Period (as defined in the Regulatory Agreement).

- (b) Not in excess of two percent (2%) of the proceeds of the Loans will be used to pay costs of issuance of the Bonds.
- (c) The acquisition, construction and operation of the Project in the manner presently contemplated and as described herein and in the Regulatory Agreement will not conflict with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto. The Borrower will cause the Project to be constructed and operated in all material respects in accordance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.
- (d) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the Project; that it is familiar with the provisions of all of the documents and instruments relating to the financing of the Project to which it is a party; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner except to issue the Bonds in order to provide funds for the Loans.
- (e) The Borrower intends to hold the Project for its own account, has no current plans to sell and has not entered into any agreement to sell the Project.
- (f) [Intentionally Omitted].
- (g) All of the proceeds from the Loans plus any income from the investment of the proceeds of the Loans will be used to pay or reimburse the Borrower for Project Costs (as defined in the Regulatory Agreement), and at least 97% of the proceeds of the Loan will be used to pay or reimburse the Borrower for Qualified Project Costs (as defined in the Regulatory Agreement) and less than 25% of such amount will be used to pay or reimburse the Borrower for the cost of land or any interest therein. The Borrower shall assure that the proceeds of the Loans are expended so as to cause the Bonds to constitute a “qualified residential rental bond” within the meaning of Section 142(d) of the Code.
- (h) The Borrower has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on any of the Bonds to be included in the gross income of the owners thereof for purposes of federal income taxation, except for any owner that is a “substantial user” of the Project or a “related person” within the meaning of Section 147(a) of the Code (as defined in the Indenture).
- (i) The Borrower covenants that it shall not take, or permit or suffer to be taken by the Bondowner Representative or otherwise, any action with respect to the proceeds of the Bonds which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Bonds would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

9. **Covenants Regarding Insurance and Condemnation.**

9.1 **Insurance, Casualty and Condemnation.** In addition to any provisions regarding or requiring property, casualty or other insurance and the application of any proceeds thereof which may be found in the Deed of Trust or any other Loan Document:

- (a) **Policies Required.** While any obligation of Borrower or any Guarantor under any Loan Document remains outstanding, Borrower shall maintain at Borrower's sole expense, with insurers reasonably approved by Lender, the policies of insurance, in form and substance reasonably satisfactory to Lender, identified in ***Exhibit L*** attached hereto and all other insurance reasonably required by Lender from time to time for commercial loans made for residential rental properties. All insurance shall meet all of the requirements set forth in ***Exhibit L*** and shall provide that it may not be cancelled or materially modified without thirty (30) days' prior written notice to Lender. No insurance shall include deductible amounts to which Lender has not previously consented in writing. Certificates of insurance for the required policies (and/or original policies, if required by Lender) shall be delivered to Lender annually and otherwise from time to time within ten (10) days after demand therefore. All policies insuring against damage to the Improvements shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than thirty (30) days prior to the expiration of each policy, Borrower shall deliver to Lender evidence of renewal or replacement of the policy reasonably satisfactory to Lender.
- (b) **Claims and Proceedings.** Borrower shall give Lender immediate notice of any casualty to any portion of the Project, and of the institution or, if Borrower obtains actual knowledge of any threatened institution, the threatened institution, of any proceeding for the condemnation or other taking for public or quasi-public use of any portion of the Project (collectively, "***Condemnation***"), and shall provide Lender with copies of all documents in Borrower's possession which pertain to any casualty or Condemnation. Borrower shall take all action reasonably required by Lender in connection therewith to protect the interests of Borrower and Lender, and Lender shall be entitled (without regard to the adequacy of its security) to participate in any action, claim, adjustment or proceeding and to be represented therein by counsel of its choice.
- (c) **Delivery of Proceeds to Lender.** In the event that, notwithstanding the "lender's loss payable endorsement" requirement set forth in ***Exhibit L***, the proceeds of any casualty insurance policy described herein are paid to Borrower, Borrower shall deliver such proceeds to Lender immediately upon receipt for deposit in the Bank Controlled Account.
- (d) **Application of Casualty Insurance Proceeds.** Any proceeds collected (the "***Proceeds***") under any casualty insurance policy described in this Agreement shall be disbursed to Borrower as provided below, but only upon fulfillment of each of the following conditions (the "***Restoration Conditions***") within sixty (60) days following the occurrence of the damage for which the Proceeds are collected:

- (i) Borrower shall have demonstrated to Lender's reasonable satisfaction that the Proceeds (together with amounts deposited by Borrower

pursuant to subparagraph (ii)) will be adequate to repair the Improvements to the condition which existed immediately prior to such damage or destruction and to restore the fair market value of the Project, within a time period reasonably determined by Lender and at least six months prior to the Maturity Date, to at least the value the Project had immediately prior to sustaining the damage. Such demonstration shall include delivery to Lender of (A) plans and specifications reasonably satisfactory to Lender and (B) a construction contract in form and content, and with a contractor, reasonably satisfactory to Lender.

(ii) To the extent that the Proceeds are insufficient to accomplish the restoration required above, Borrower shall have delivered funds to Lender (the “**Shortfall Funds**”) in the amount of the shortfall, which funds shall be assigned to Lender as security for Borrower’s obligations hereunder and held and disbursed in the same manner as the Proceeds.

(iii) Borrower shall have executed such documents as Lender requires to evidence and secure Borrower’s obligation to use all amounts disbursed for the diligent restoration of the Project, including a contract with a Project Inspector selected by Lender and engaged by the Lender at Borrower’s expense, to inspect the progress of the repair.

(iv) No Event of Default, or event that with notice or the passage of time or both would constitute an Event of Default, shall then exist.

Any Proceeds and Shortfall Funds to be disbursed to Borrower shall be held by Lender in the Bank Controlled Account and disbursed in accordance with the disbursement procedures and related provisions set forth in this Agreement (if any) and all other disbursement provisions then customarily required by Lender. Any amounts remaining undisbursed following Completion shall be returned to Borrower up to the amount of any Shortfall Funds deposited by Borrower, and any other amounts remaining shall either be paid to Borrower or applied by Lender against any obligations to Lender that are secured by a lien on the Project, as Lender elects in its absolute discretion.

In the event that Borrower fails to fulfill the Restoration Conditions within sixty (60) days following the date on which the damage occurs, the Proceeds shall be applied by Lender against any obligations to Lender that are secured by a lien on the Project, and the selection of which obligations to apply the Proceeds against shall be made by Lender in its absolute discretion.

- (e) In the event the Improvements cannot be so rebuilt or restored then the applicable provisions of the Loan Documents relating to reappraisals, remargining and prepaying (in whole or in part) the Loans shall be employed to determine to what extent, if any, the Loans are to be remargined and prepaid, whether as a result of decreased value, decreased Project revenues, reduced cash flows or otherwise but giving credit for business interruption insurance, if any.
- (f) Restoration. Nothing in this Section 9.1 shall be construed to excuse Borrower from repairing and restoring all damage to the Project in accordance with other Loan Document provisions, regardless of whether insurance proceeds are available or sufficient for such purpose.

- (g) Treatment of Compensation. Borrower hereby assigns to Lender, as security for all obligations to Lender secured by a lien on the Project, all amounts payable to Borrower in connection with any Condemnation, and any proceeds of any related settlement (collectively, “**Compensation**”). Borrower shall deliver all Compensation to Lender immediately upon receipt. In the event that Lender chooses, in its absolute discretion, to waive the Event of Default described in Section 15.1(g), any Compensation received by Lender shall be (i) disbursed to Borrower for repairs and reconstruction in accordance with the rights, procedures and other provisions set forth in this Agreement for the application of casualty insurance proceeds (including, without limitation, requirements with respect to Borrower’s deposit of Shortfall Funds) and/or (ii) applied by Lender against obligations to Lender secured by a lien on the Project in such order as Lender shall determine in its absolute discretion.

10. **Covenants Regarding Required Accounts; Security Agreement.**

During the term of the Loans, Borrower shall maintain the following accounts (“**Required Accounts**”):

10.1 Tenant Security Deposit Account. Borrower shall maintain an account at Lender (the “**Security Deposit Account**”) into which Borrower shall deposit all Security Deposits required for residential tenants of the Project under the terms and conditions of their Leases with Borrower pursuant to the provisions hereof. Withdrawals from the Security Deposit Account shall be solely for the purpose of returning Security Deposits to residential tenants in accordance with the terms and conditions of their Leases.

10.2 Replacement Reserve Account. Borrower shall, commencing on the first day of the first calendar month following the Conversion Date, make on-going monthly deposits into the Replacement Reserve Account strictly in accordance with the Replacement Reserve Agreement. The Replacement Reserve Agreement shall be a bank-controlled account held and disbursed strictly in accordance with the Replacement Reserve Agreement.

10.3 Operating Reserve Account. Borrower shall, if required in the Budget or otherwise required by Lender, make, as of the Closing Date, the Initial Operating Reserve Deposit and on-going deposits into the Operating Reserve Account strictly in accordance with the Operating Reserve Agreement. The Operating Reserve Account shall be a bank controlled account held and disbursed in accordance with the terms of the Operating Reserve Agreement.

10.4 Tax Escrow Account. Upon the occurrence of an Event of Default and any time thereafter, Lender may require Borrower to deposit with Lender in the Tax Escrow Account, an amount each month equal to 1/12th of the aggregate amount which Lender estimates will be required to pay the annual amount required to pay Impositions. The purpose of these provisions is to provide sufficient funds on hand for Lender to pay the Imposition charges. If the funds so deposited are insufficient to pay the Impositions when the same shall become due and payable, Borrower shall provide such additional funds as may be necessary to pay the Impositions in full. If Borrower is not required to make payments into the Tax Escrow Account, Borrower shall provide evidence to Lender that the Impositions have been paid within ten (10) days after making such payment.

10.5 Insurance Escrow Account. Upon the occurrence of an Event of Default and at any time thereafter, Lender may require Borrower to deposit with Lender in the Insurance Escrow

Account, which account shall be maintained at Lender, an amount each month equal to 1/12th of the amount which Lender estimates will be required to make the aggregate annual payments of the premiums for the policies of insurance required by this Agreement ("**Insurance Premiums**"). The purpose of these provisions is to provide sufficient funds on hand for Lender to pay all the Insurance Premiums 30 days before the date on which they become past due. Borrower shall provide any additional funds as are necessary to make up any deficiencies in amounts necessary to pay the Insurance Premiums when due. If Borrower is not required to make payments into the Tax Escrow Account, Borrower shall provide evidence to Lender at least 30 days before the term of the existing insurance expires, that the Insurance Premiums have been paid.

10.6 Operating Account. Borrower agrees to open and maintain the Operating Account for the Project at the Lender.

10.7 Bank Controlled Account. Borrower shall maintain the Bank Controlled Account at the Lender for the deposit of the Subordinate Loan and Funding Sources other than the Loans.

10.8 Security Agreement for Required Accounts. Borrower shall open and maintain at Lender the Required Accounts under the terms and conditions set forth above together with any successor accounts and all subaccounts of any of the foregoing as well as such other accounts as Lender may reasonably request and which are commercially customary for similar projects. As additional security for Borrower's obligations under the Loan Documents, Borrower hereby grants to Lender a first lien security interest in each of the Required Accounts, whether now existing or hereafter established, and all funds from time to time on deposit therein. Borrower shall maintain each Required Account free and clear of any claim, lien or other encumbrance other than the security interest granted to Lender hereunder. Upon the occurrence of an Event of Default, Borrower grants to Lender a full right of set-off with respect to all or any portion of the funds on deposit in the Required Accounts and any and all interest accrued thereon, if any, which right may be exercised at any time following the occurrence of an Event of Default. Lender may, to the maximum extent permissible by law, apply any or all of the funds in the Required Accounts, including accrued interest, if any, toward the unpaid balance of the Loans and/or to any other amounts which may be due and owing under the Loan Documents. The parties acknowledge and agree that each of the Required Accounts is a "deposit account" within the meaning of 9-102(a)(29) of the UCC. The parties further acknowledge and agree that California constitutes the "Lender's jurisdiction" with respect to the perfection, the effect of perfection or non-perfection, and the priority of a security interest in a deposit account maintained at a Lender under 9-304(b)(1) of the UCC. Lender shall at all times have "control" of the Required Accounts and all assets now or hereafter credited thereto within the meaning of Section 9-106 of the UCC or Section 9-104(a) of the UCC for purposes of maintaining its first and prior perfected security interest therein.

11. Financial Covenants.

11.1 Required Debt Service Coverage Ratio. From and after Conversion Date, Borrower shall maintain on an annual basis a Debt Service Coverage Ratio of 1.15 (or more) to 1.00 based on the operating data and Project performance for the immediately preceding calendar year; provided that, in the event the Debt Service Coverage Ratio falls below 1.15 to 1.00 for any calendar year the same shall not, in and of itself, constitute an Event of Default hereunder so long as the remainder of the requirements of this Section are timely satisfied. In the event the Debt Service Coverage Ratio for any annual period is less than 1.05 to 1.00, Borrower agrees to prepare and submit to Lender within forty-five (45) days after the Debt Service Coverage Ratio test has not

been met a corrective action plan in form and substance satisfactory to Lender explaining in sufficient detail why the Debt Service Coverage Ratio was less than 1.05 to 1.00 for the immediately preceding calendar year and what steps will be taken and diligently pursued to ensure that the required 1.15 to 1.00 Debt Service Coverage Ratio will be met for the then current calendar year. In the event the Debt Service Coverage Ratio is less than 1.00 to 1.00 for any annual period, Borrower agrees that, within thirty (30) days of notice of any shortfall, Borrower shall deposit from sources other than revenues from the Project an amount in immediately available funds equal to the amount required, on an annualized basis to achieve the required minimum 1.00 Debt Service Coverage Ratio by including the amount of the deposit in the numerator, which amounts are hereby pledged to and shall be held by Lender in a blocked account for use in Lender's sole and absolute discretion, including without limitation, to pay debt service and operating expenses to the extent revenues from the Project are insufficient to pay the same. Once the Debt Service Coverage Ratio for any subsequent annual period is restored to at least 1.05 to 1.00 without taking the amount of the deposit into account, then any amounts held by Lender in the pledged account may be released to or on the written order of Borrower; provided that no such release shall in the reasonable judgment of Lender adversely affect Borrower's ability to achieve and maintain the required minimum 1.05 Debt Service Coverage Ratio in the future. Any failure to timely provide a written corrective action plan or make a required deposit or the making of a prohibited distribution (as described in Section 11.2) shall constitute an immediate Event of Default hereunder. Notwithstanding anything herein to the contrary, failure to maintain a Debt Service Coverage Ratio of at least 1.00 to 1.00 for any two (2) consecutive year period shall result in an immediate Event of Default hereunder notwithstanding any corrective action plans or the making of any deposits hereunder.

11.2 Limitation on Distributions. No Distribution of Net Operating Income shall be made to Borrower, Guarantor, or any Partner or Affiliate of Borrower or Guarantor for any purpose on or prior to the Conversion Date, other than Permitted Developer Fee Payments in strict accordance with the Budget and Developer Fee Subordination Agreement. After the Conversion Date, no Distributions of Net Operating Income shall be made to Guarantor, or any Partner or Affiliate of Borrower or Guarantor during any period when the Debt Service Coverage Ratio for the Project is less than 1.00 to 1.00. In the event the Debt Service Coverage Ratio is at least 1.00 to 1.00 for any calendar year period, Distributions of Net Operating Income from the Project (after payment of debt service and provided that all required Reserves are fully funded) shall be permitted, but only to the extent that, on a pro forma basis, the Debt Service Coverage Ratio for the calendar year period would have not been less than 1.00 to 1.00 had the amount of the then proposed Distribution been treated as a reduction in the amount of operating income generated by the Project for purposes of determining Net Operating Income for the same period.

11.3 Limitations on Additional Indebtedness and Other Transactions. Borrower and General Partner shall not, without the prior written consent of Lender, in Lender's sole discretion, incur any Indebtedness of any kind, secured or unsecured, other than the Loans and the Subordinate Loans, provided that in the instance of the Subordinate Loans, the Master Subordination Agreement shall remain in full force and effect and of record in the real property records of the County at all times while any portion of the Loans or the amounts payable under or in respect of the Loan Documents remain unpaid.

12. Reporting Requirements.

12.1 Financial and Covenant Compliance Reporting Requirements.

- (a) Borrower shall furnish and, as appropriate, cause Guarantor to furnish, to Lender the following in form reasonably acceptable to Lender:

REPORTING PARTY	REQUIRED STATEMENT	TO BE RECEIVED BY
1. Borrower	Annual audited financial statement prepared in accordance with GAAP (CPA Compiled, at a minimum), and certified by each reporting party, which shall include balance sheets and income statements	Within 120 days of the end of each Fiscal Year during the term of the Loan
2. Borrower	After Completion and for the first twelve (12) months following the Conversion Date, the monthly (i) rent roll, (ii) Operating Statement, (iii) balance sheet, and (iv) leasing status report for the Project (to be prepared and certified by reporting party)	Within 10 days of the end of each calendar month from Completion through the date that is twelve (12) months of the Conversion Date
3. Borrower	Commencing with the first quarter following the first anniversary of the Conversion Date, quarterly (i) rent roll, (ii) Operating Statement, (iii) balance sheet, and (iv) leasing status report, for the Project (to be prepared and certified by reporting party)	Within 30 days of the end of each calendar quarter, commencing with the first calendar quarter ending after the first anniversary of the Conversion Date and continuing during the term of the Loan
4. Borrower	Annual Operating Statement (to be prepared and certified by reporting party) for the prior Fiscal Year	Within 120 days following the end of each Fiscal Year during the term of the Loan
5. Borrower	Proposed Operating Budget for upcoming Fiscal Year	At least 30 days prior to the commencement of each Fiscal Year
6. Borrower	Annual federal tax returns, including K-1's (to be prepared and certified by reporting party)	Within 30 days of filing, and in any event no later than November 30 of each year during the term of the Loan
7. Guarantor	Annual audited financial statement prepared in accordance with GAAP, which shall include balance sheets and including a certification by each reporting party	Within 120 days after the end of each Fiscal Year during the term of the Loan until the Conversion Date
8. Guarantor	Annual federal tax returns (to be prepared and certified by the reporting party)	Prior to the Conversion Date, within 30 days of the filing, in any event no later than November 30 of each year during the term of the Loan

9. Borrower	Evidence that Impositions have been paid in accordance with Section 10.4	Annually at least 10 days before payment is due
10. Borrower	Evidence that Insurance Premiums have been paid in accordance with Section 10.5	Annually at least 10 days before payment of the Insurance Premiums are due

- (b) Electronic Submissions. Subject to Lender's consent as to format and delivery method, Borrower may submit records to Lender in accordance with this Section in an electronic format (pdf, cd, etc.).

12.2 Notice of Certain Matters. Borrower shall give notice to Lender, within ten (10) days after Borrower obtains actual knowledge thereof, of each of the following:

- (a) any litigation or claim affecting or relating to the Project and involving an amount in excess of \$25,000; and any litigation or claim that might subject Borrower, Guarantor, or the General Partner to liability in excess of \$100,000, whether covered by insurance or not;
- (b) any dispute between Borrower and any Governmental Agency relating to the Project, the adverse determination of which might materially affect the Project, or any threat of any eminent domain action against the Property or any part thereof;
- (c) any trade name hereafter used by Borrower and any change in Borrower's principal place of business;
- (d) any circumstance that renders the Budget materially inaccurate with respect to any estimated Project Cost;
- (e) any aspect of the Project that is not in substantial conformity with the Plans;
- (f) any Event of Default or event which, with the giving of notice or the passage of time or both, would constitute an Event of Default;
- (g) any default by Borrower or any other party under any Construction Document, or the receipt by Borrower of any notice of default under any Construction Document;
- (h) the creation or imposition of any mechanics' lien or other lien against the Project;
- (i) any default by Borrower under any Bond Document, or the receipt by Borrower of any notice of default under any Bond Document;
- (j) any default by Borrower under any Subordinate Loan Document, or the receipt by Borrower of any notice of default under any Subordinate Loan Document;
- (k) any default under the Development Agreement or the Ground Lease;
- (l) the presence of any Hazardous Substances on, under or about the Project; any enforcement, clean-up, removal or other action or requirement of any

Governmental Agency relating to any Hazardous Substances; and the existence of any occurrence or condition on any property in the vicinity of the Project that could cause any portion of the Project to be subject to any restrictions relating to Hazardous Substances;

- (m) any Material Adverse Occurrence;
- (n) receipt of any notice or any other information of any action by the Credit Agency or any Limited Partner relating to a reduction in the amount of Credits available to the Project, noncompliance with the Tax Credit LURA or any adverse change in the facts and circumstances necessary for the Limited Partners to make the Capital Contributions;
- (o) any changes to Borrower's Organizational Documents, General Partner's Organizational Documents, or Guarantor's Organizational Documents; and
- (p) any changes in the terms or amount of the Subordinate Loan.

12.3 Additional Reports and Information. Borrower shall maintain complete books of account and other records reflecting the operations of the Project in accordance with generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to Lender. Borrower shall deliver to Lender, in form and substance reasonably satisfactory to Lender and within ten (10) days of Lender's written request therefore from time to time, (a) copies of all financial statements and reports that Borrower sends to its partners, (b) copies of all reports which are available for public inspection or which Borrower is required to file with any Governmental Agency, and (c) all other information relating to Borrower, Guarantor, the General Partner, the Project or the Loans reasonably required by Lender from time to time. Borrower and General Partner shall also deliver to Lender copies of all applications, approvals and other communications and correspondence relating to the Credits.

12.4 Keeping Guarantor Informed. Borrower shall keep Guarantor informed of Borrower's financial condition and business operations, the condition and all uses of the Project, including all changes in condition or use, and any and all other circumstances that might affect Borrower's ability to pay or perform its obligations under the Loan Documents. In addition, Borrower must deliver to Guarantor all of the financial information relating to Borrower or the Project described in Section 12.1 within the times given in that Section.

12.5 Partnership Agreement. Except as required in connection with a Permitted Transfer, neither Borrower nor the General Partner shall amend, modify, supplement or restate their governing documents without the prior written consent of Lender, nor shall either Borrower or General Partner cancel or terminate their respective governing documents without the prior written consent of Lender.

12.6 Prohibited Transactions. Borrower shall not, without the prior written consent of Lender, engage directly or indirectly in any off balance sheet, hedge or derivative transactions, including without limitations, interest rate swaps and interest rate caps except with Lender and its Affiliates and subsidiaries. In addition to the foregoing, Borrower shall not cause or allow the proceeds of the Loans to be invested except in a federally insured account without the prior written consent of Lender.

12.7 Tax Certificate. Borrower shall timely comply with all of its obligations under the Tax Certificate (which Tax Certificate is hereby incorporated herein as fully as if set forth at length herein).

12.8 Cooperation in Enforcement of Regulatory Agreement. The Borrower hereby covenants and agrees as follows:

- (a) to comply with all provisions of the Regulatory Agreement;
- (b) to advise the Issuer and the Administrator (as defined in the Regulatory Agreement) in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of the Borrower set forth in the Regulatory Agreement;
- (c) upon written direction by the Issuer, to cooperate fully and promptly with the Issuer in enforcing the terms and provisions of the Regulatory Agreement; and
- (d) to file in accordance with the time limits established by the Regulatory Agreement all reports and certificates required thereunder, and the Certification to the Secretary of the Treasury required by Section 4(d) the Regulatory Agreement.

The Issuer shall not incur any liability in the event of any breach or violation of the Regulatory Agreement by the Borrower, and the Borrower agrees to indemnify the Issuer from any claim or liability for such breach pursuant to Section 7 of the Regulatory Agreement.

12.9 Indemnification of the Issuer and Bondowner Representative.

- (a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Issuer, the City of San Diego and the Bondowner Representative, and each of their respective officers, governing members, directors, officials, employees, attorneys and agents (collectively, the “Indemnified Parties”), against any and all losses, damages, claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under or any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:
 - (i) the Loan Documents or the Regulatory Agreement, or the execution or amendment of any thereof or in connection with transactions contemplated thereby, including the issuance and sale of the Bonds;
 - (ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Loans or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or rehabilitation of, the Project or any part thereof;

- (iii) any lien or charge upon payments by the Borrower to the Issuer and/or the Bondowner Representative hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer in respect of any portion of the Project;
- (iv) any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof;
- (v) the defeasance and/or redemption, in whole or in part, of the Bonds;
- (vi) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any closing certificate, offering statement or disclosure or continuing disclosure document for the Bonds or any of the documents relating to the Bonds to which the Borrower is a party, or any omission or alleged omission from any offering statement or disclosure or continuing disclosure document for the Bonds of any material fact necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;
- (vii) any declaration of taxability of interest on the Bonds, or allegations (or regulatory inquiry) that interest on the Bonds is taxable, for federal tax purposes; and
- (viii) the Bondowner Representative's acceptance or administration of the Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which it is a party;

except (A) in the case of the foregoing indemnification of the Bondowner Representative or any its officers, members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party, or (B) in the case of the foregoing indemnification of the Issuer or any of its officers, members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party; and provided that this Section is not intended to give rise to a right of the Issuer or the Bondowner Representative to claim payment of the principal and accrued interest with respect to the Loan as a result of an indemnified third party claim. 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 shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or

proceeding and participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if in the judgment of such Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Loan Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless such Indemnified Party has consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

- (b) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to Sections 2.6, 16.2 and 16.3 hereof shall survive the final payment or defeasance of the Bonds and in the case of the Bondowner Representative any resignation or removal. The provisions of this Section shall survive the termination of this Loan Agreement.

12.10 Tax Exempt Status of the Bonds.

- (a) It is the intention of the Issuer and the Borrower that interest on the Bonds shall be and remain excludable from gross income for federal income taxation purposes, and to that end the covenants and agreements of the Borrower in this Section are for the benefit of the Bondowners and the Issuer.
- (b) The Borrower covenants and agrees that it will not knowingly and willingly use or permit the use of any of the funds provided by the Issuer or the Bondowner Representative hereunder or any other funds of the Borrower, directly or indirectly, in such manner as would, or enter into, or allow any “related person” (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, that would, or take or omit to take any other action that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code or “federally guaranteed” within the meaning of Section 149(b) of the Code and applicable regulations promulgated from time to time thereunder.
- (c) In the event that at any time the Borrower is of the opinion or becomes otherwise aware that for purposes of this Section it is necessary to restrict or to limit the yield on the investment of any moneys held under the Indenture or otherwise by the Bondowner Representative, the Borrower shall determine the limitations and so instruct the Bondowner Representative in writing and cause the Bondowner Representative to comply with those limitations under the Indenture.
- (d) The Borrower will take such action or actions as may be reasonably necessary in the opinion of Bond Counsel or of counsel to the Issuer, or of which it otherwise becomes aware, to fully comply with Section 148 of the Code.

- (e) The Borrower further agrees that it shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g. AFDC, SSI), physical disability, national origin or marital status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the construction, operation or management of the Project, to the extent required by applicable State or federal law.
 - (f) The Borrower further warrants and covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with provisions contradictory to, or in opposition to, the provisions, of this Loan Agreement and of the Regulatory Agreement, and that in any event, the requirements of this Loan Agreement and the Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.
 - (g) [Intentionally Omitted].
 - (h) The Borrower will use due diligence to complete the acquisition and construction of the Project and reasonably expects to expend the full authorized principal amount of the Loans within twenty-four months of the date of this Loan Agreement.
 - (i) The Borrower will calculate or cause to be calculated, at the times required by the Code, any rebate due to the federal government in respect of the Bonds, and will make timely payment of any rebate amount due to the federal government.
- 12.11 Useful Life. The Borrower hereby represents and warrants that, within the meaning of Section 147(a)(14) of the Code, the average maturity of the Bonds does not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the facilities being financed with the proceeds of the Bonds.
- 12.12 Federal Guarantee Prohibition. The Borrower shall take no action, nor permit nor suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.
- 12.13 Prohibited Facilities. The Borrower represents and warrants that no portion of the proceeds of the Loan will be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily 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 Loan will 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 minimus* amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.
- 12.14 Bond Documents and Subordinate Loan Documents. Borrower shall not enter into any new Bond Document or Subordinate Loan Document, or amend, modify, supplement, cancel or terminate any Bond Document or Subordinate Loan Document, without the prior written consent of Lender.

13. **LIHTC and Other Credit Covenants.**

13.1 **Compliance with Credit Requirements.** Borrower and the General Partner shall take all actions required to preserve its entitlement to and eligibility for the Credits. Borrower and the General Partner shall give Lender prompt notice of any notice from a state or federal authority that adversely affects Borrower's or General Partner's entitlement to the Credits or the amount of the Credits. Borrower and the General Partner shall also provide Lender with prompt notice of any alleged setoff or defense to any Limited Partner's obligations to make the additional Capital Contributions required by the Partnership Agreement. Borrower and the General Partner will comply with all state and federal laws, regulations and rulings regarding the Credits including, but not limited, to all regulations and rulings issued by the Internal Revenue Service and the Credit Agency. Without limiting the foregoing, Borrower shall timely file all certifications and reports required by the Credit Agency to the extent feasible, Borrower shall provide copies of the certificates and reports and the LIHTC documents in an electronic format reasonable required by Lender, in connection with the Credits and shall deliver copies of those certifications and reports to Lender concurrently with filing the same. Borrower shall timely submit applications for the 8609 for the LIHTC. If Borrower does not submit the application for the 8609 or any other documents required to obtain the Credits on a timely basis, Borrower authorizes Lender to submit the required documentation on Borrower's behalf. Lender may contact the Borrower's accountant or Lender may engage a different accountant to complete the necessary submissions at Borrower's expense. Nothing herein shall obligate Lender to prepare or submit any required documentation to obtain the Credits.

13.2 **Compliance and Cooperation in Enforcement of Tax Credit LURA and Regulatory Agreement.** Borrower hereby covenants and agrees as follows:

- (a) to comply with all applicable provisions of Section 42 of the Internal Revenue Code, the Tax Credit LURA, and the Regulatory Agreement;
- (b) to advise Lender in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of Borrower set forth in the Tax Credit LURA and the Regulatory Agreement;
- (c) upon written direction by Lender, to cooperate fully and promptly in enforcing the terms and provisions of the Tax Credit LURA and Regulatory Agreement;
- (d) to file in accordance with the time limits established by the Tax Credit LURA and Regulatory Agreement, as applicable, all reports and certificates required thereunder, and provide Lender a recorded copy thereof;
- (e) to promptly provide Lender copies of all Form 8609s received by Borrower; and
- (f) to immediately provide Lender copies of all Form 8823s that Borrower receives from the Credit Agency or other evidence of non-compliance with LIHTC requirements that Borrower receives from a Governmental Agency, together with the Borrower's plan for correcting the non-compliance and when corrected, evidence of the correction.

Lender shall not incur any liability in the event of any breach or violation of the Tax Credit LURA or the Regulatory Agreement, and Borrower agrees to indemnify Lender from any claim or liability for breach or purported breach thereof.

14. **Conversion.**

14.1 **Conversion.** The Convertible Term Note will convert to a Limited Recourse Obligation on the Conversion Date established by Lender in the Conversion Election Notice attached as ***Exhibit I***. Conversion does not have any impact on the payment terms of the Convertible Term Note.

14.2 **Conditions to Conversion.** “***Conditions to Conversion***” means, collectively, the following conditions:

- (a) Borrower shall have paid to Lender all principal, interest, fees, premiums and other amounts then due and payable to Lender under the Notes and the other Loan Documents;
- (b) The Construction Note shall have been repaid in full;
- (c) Completion shall have occurred in accordance with the Plans (as Completion is determined in accordance with this Agreement), free and clear of all liens (other than mechanics’ liens being contested by Borrower in strict compliance with this Agreement);
- (d) During each month of the three (3)-month period immediately preceding the Conversion Date, at least 90% of the residential units within the Project shall have been leased to, and occupied by, third-party residential tenants under Leases constituting Acceptable Leases and in strict compliance with the terms and conditions of the Regulatory Agreement and Tax Credit LURA;
- (e) During each month of the three (3)-month period immediately preceding the Conversion Date, the Debt Service Coverage Ratio for the Project shall have been 1.15 (or more) to 1.00; provided, however, that Borrower may cause this condition precedent to be satisfied by making a prepayment of principal under the Convertible Term Note prior to the Conversion Date in an amount sufficient, in Lender’s sole judgment, to cause the Project to satisfy the Debt Service Coverage Ratio requirement (as well as prepayment penalties and rate lock breakage fees associated therewith);
- (f) All representations and warranties made by Borrower in the Loan Documents shall be true and correct on and as of the Conversion Date as if made on and as of the Conversion Date (and, if required by Lender, Lender shall have received a certificate of Borrower to that effect);
- (g) As of the Conversion Date, no Event of Default and no other event or condition which, upon the giving of notice or the passage of time, or both, would become an Event of Default, shall have occurred and be continuing;
- (h) Borrower shall have paid to Lender all reasonable costs and expenses incurred by Lender in connection with the conversion of the Convertible Term Loan;
- (i) All documents, agreements, instruments and other items required to be delivered or provided pursuant to this Agreement (including without limitation an assignment of all property management contracts relating to the Project,

contemporaneously accompanied by consents to the amendments by all property managers, all in form and substance satisfactory to Lender) or any of the Loan Documents or any such requirement shall have been waived in writing by the party in interest;

- (j) There shall have been delivered to Lender a final, as built survey showing the location of all completed improvements at the Project in form and substance satisfactory to Lender;
- (k) Borrower, at Borrower's sole cost and expense shall have delivered to Lender, and Lender shall have approved, a final rewrite of the Title Policy;
- (l) The Project shall be exempt under California Revenue and Taxation Code Section 214(a), from the payment of real property taxes and assessments;
- (m) Borrower shall have deposited with Lender into the Operating Reserve Account, the Initial Operating Reserve Deposit (as defined in the Operating Reserve Agreement);
- (n) All amounts owing in respect of the Capital Contributions shall have been paid or otherwise provided for by the Investor to the reasonable satisfaction of Lender in the amounts and at the times set forth in *Exhibit E*;
- (o) Borrower shall have paid to Lender the Conversion Fee; and
- (p) On and as of the Conversion Date, none of the following shall have occurred:
 - (i) any material adverse change in the business, operations, or financial condition of Borrower, the General Partner or any Guarantor;
 - (ii) any material diminution in the value of the Collateral for the Convertible Term Loan, as determined by Lender in comparison to the date of Lender's most recent analysis of the Collateral;
 - (iii) any violation of Environmental Laws or other adverse environmental conditions which cannot be adequately resolved to Lender's satisfaction; provided that Lender shall be under no duty or obligation to make any environmental investigations or assessments of any kind nor shall any knowledge or liability be imputed to or imposed upon Lender for undertaking or failing to undertake any such investigations or assessments;
 - (iv) any change in the management, ownership or control of Borrower, General Partner or Guarantor or in the Project or any security for the Convertible Term Loan unless otherwise permitted by the Loan Documents or approved in writing by Lender; or
 - (v) any failure by Borrower to disclose any facts, circumstances or conditions which could have a material adverse impact upon Lender.

14.3 Conversion Notices. Borrower shall, at least thirty (30) days prior to the proposed Conversion Date, give Lender written notice ("**Conversion Election Notice**") that Borrower has

elected to convert the Convertible Term Loan from the construction loan phase to the permanent loan phase. The Conversion Election Notice shall be accompanied by (a) a rent roll covering the Project for the prior six (6) consecutive, full calendar months immediately preceding the date of the Conversion Election Notice, certified by Borrower as true, correct and complete, (b) Operating Statements for the Project for each of those six (6) consecutive, calendar months, and (c) computations and other supporting documentation evidencing satisfaction of all financial covenants set forth in this Agreement and the other Loan Documents and the other Conditions to Conversion requiring (in the judgment of Lender) computation and/or supporting documentation, and certified in each instance by Borrower to be true, correct and complete. If Lender, based upon the information described above, and such other information as it may reasonably require Borrower to deliver to it as evidence of satisfaction of the Conditions to Conversion, shall concur that the Conditions to Conversion have been fully satisfied, Lender shall give written notice ("Conversion Notice") of such determination to Borrower. The Conversion Notice shall establish the effective date of the conversion of the Convertible Term Loan ("**Conversion Date**").

14.4 Conversion Default. If all of the Conditions to Conversion are not satisfied on or before the Construction Note Maturity Date, as it may have been extended under Section 2.7 and 2.8, an Event of Default shall automatically be deemed to have occurred under this Agreement.

14.5 Effect of Conversion on Recourse Status; Exceptions. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, if the Conditions to Conversion are timely satisfied on or before the Conversion Date and Lender has executed the Conversion Election Notice, then, from and after the Conversion Date, the Convertible Term Loan shall be a Limited Recourse Obligation and Borrower shall not be liable for the payment of any portion of the Convertible Term Loan evidenced by the Convertible Term Note or any other Loan Document; provided, however, that the foregoing shall in no way affect any liability of Borrower to Lender for (a) loss or damage of any kind resulting from waste, fraud or willful misrepresentations; (b) any rental income or other income arising with respect to the Project received by Borrower after Lender has given notice to Borrower of the occurrence of an Event of Default or any such occurrence of which Borrower has notice; (c) diminution of the fair market value, as of the date referred to in (b), above, of any personalty and fixtures removed by Borrower after such date; (d) all legal costs and expenses reasonably incurred by Lender after the giving to Borrower of notice of the occurrence of an Event of Default or for any violation or alleged violation of law described under subparagraphs (h) and/or (i) below; (e) any amounts owing to Lender under indemnity provisions contained in the Loan Documents; (f) any amounts owing to Lender under any Hazardous Substances, access and/or other indemnities; (g) the amount, if any, by which the sum of all amounts realized by Lender through the sale (or other reasonable disposition) of all assets pledged and/or assigned to Lender under the Security Documents is exceeded by the obligations secured thereunder, but only to the extent that any deficiency is directly attributable to Borrower's failure to insure any such asset(s) in accordance with the requirements of the Loan Documents; (h) any loss or damage of any kind resulting from violations or alleged violations of criminal laws or as a result of criminal activity whether or not in the nature of conspiracy, (i) failure of Borrower to deliver to Lender the Forms 8609 issued by the Credit Agency for the Project on or before the one (1) year anniversary of the Conversion Date, and/or (j) any loss or damage of any kind resulting from violation or alleged violation of the Fraud Enforcement and Recovery Act of 2009 or any portion thereof (the "**Non-Recourse Exceptions**"). Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, any payment obligations under this Agreement or any other shall be non-recourse to the Limited Partners of Borrower.

14.6 Release of Guaranty. The Guaranty shall remain in full force and effect until the Conversion Date at which time the liability of Guarantor shall be limited to the Non-Recourse Exceptions.

14.7 No Liability for Failure to Convert the Convertible Term Loan. Under no circumstances shall Lender be responsible or liable to any Person (including without limitation, Borrower or the Guarantor) for or on account of any failure to satisfy the Conditions to Conversion or for the failure of the Convertible Term Loan to convert from the construction phase to the permanent phase. The foregoing shall be in addition to all other limitations on the responsibility and liability of Lender set forth in this Agreement or in any of the Loan Documents.

15. **Defaults and Remedies.**

15.1 Events of Default. The occurrence of any of the following, whatever the reason therefore, shall constitute an Event of Default:

- (a) Borrower fails to make any payment of principal and/or interest under either of the Notes when the payment first becomes due and payable; or
- (b) Borrower fails to perform any other obligation for the payment of money (other than as described in any other subparagraph of this Section 15.1) under any Loan Document executed by Borrower within three (3) Business Days after Lender gives Borrower written notice that the obligation was not performed; or
- (c) Borrower fails to pay insurance premiums or charges, or fails to pay real estate taxes or similar charges, as and when required by this Agreement; or
- (d) Borrower or General Partner fails to timely perform any other obligation (other than as described in any other subparagraph of this Section 15.1) under this Agreement or any of the Loan Documents executed by Borrower or the General Partner, and, to the extent the failure is capable of being cured, the failure is not cured within thirty (30) days after the earlier of (i) the date Lender gives Borrower written notice that the obligation was not performed, or (ii) the date Borrower or the General Partner first obtains knowledge of the failure to perform; provided that, if cure cannot reasonably be effected within the 30-day period, the failure shall not be an Event of Default so long as Borrower or General Partner promptly (in any event, within ten (10) days after receipt of the notice) commences cure, and thereafter diligently (in any event within sixty (60) days after receipt of the notice) prosecutes such cure to completion; provided further, however, that if a specific cure period is separately provided for the breach or failure under this Agreement or any of the other Loan Documents, then that cure period shall apply, and no additional cure period shall be provided under this Section 15.1(d); or
- (e) Guarantor fails to timely perform any obligation under any Guaranty executed by the Guarantor in connection with the Loans; or
- (f) Any representation or warranty in this Agreement or any other Loan Document proves to have been incorrect in any material respect when made or at the time of any disbursement of the proceeds of the Loans; or

- (g) All or any material portion of the Project is condemned, seized or appropriated by a Governmental Agency; or
- (h) The Project is materially damaged or destroyed by fire or other casualty, unless Borrower fulfills the Restoration Conditions set forth in the insurance provisions of this Agreement within sixty (60) days of such damage or destruction and thereafter diligently restores the Project in accordance with this Agreement; or
- (i) Work on the Project ceases for thirty (30) consecutive days for any reason other than Force Majeure, provided that the same do not, in the aggregate and in Lender's reasonable judgment, threaten to delay the Completion of the Project beyond the required Completion Date set forth in this Agreement; or
- (j) Any contractor for the Project whose contract exceeds \$100,000 in value, including the General Contractor, materially breaches such contract, and the breach continues beyond any applicable notice and cure period, and Borrower fails to enter into an agreement with a substitute contractor acceptable to Lender within the Budget allocation for such contract, within thirty (30) days after such event; or
- (k) Borrower, any Partner or any Guarantor is dissolved, liquidated or terminated, or all or substantially all of the assets of Borrower, General Partner or any Guarantor are sold or otherwise transferred without Lender's prior written consent, or, except as permitted in the Deed of Trust, there is any transfer of the ownership interests of Borrower, General Partner or prior to the Conversion Date any Guarantor; or
- (l) Borrower, any Partner or any Guarantor is the subject of an order for relief by a bankruptcy court, files a voluntary petition for bankruptcy or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Borrower, any Partner or any Guarantor applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed for Borrower, any Partner or any Guarantor without the application or consent of Borrower, the applicable Partner or the applicable Guarantor, as the case may be, and the appointment continues undischarged or unstayed for sixty (60) days; or Borrower, any Partner, or any Guarantor, institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Borrower, any Partner or any Guarantor, as the case may be, and continues undismissed or unstayed for sixty (60) days; or Borrower, any Partner, or any Guarantor shall suffer a material adverse change in financial condition; or any judgment, writ, warrant of attachment or execution, or similar process, is issued or levied against any property of Borrower, any Partner, or any Guarantor and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or
- (m) Any Guaranty is repudiated, revoked or terminated without Lender's prior written consent; or any Guarantor claims that its Guaranty is ineffective or

unenforceable, in whole or in part and for any reason, with respect to amounts then outstanding or amounts that might in the future be outstanding; or

- (n) Borrower is enjoined or otherwise prohibited by any Governmental Agency from constructing and/or occupying the Improvements and the injunction or prohibition continues unstayed for thirty (30) days or more for any reason; or
- (o) Any Bond Document is amended, modified or terminated without Lender's prior written consent; or a default occurs under any Bond Document, subject to any applicable cure period set forth therein; or
- (p) Any Subordinate Loan Document, the Development Agreement, or the CC&Rs is amended, modified or terminated without Lender's prior written consent; or any of these documents is cancelled; or
- (q) Borrower defaults in any other obligation to Lender other than in connection with the Loans, subject to any applicable cure period(s); or
- (r) Any Construction Equity Deposit shown on *Exhibit E* is not made within ten (10) days of the date the Construction Equity Deposit is scheduled to be made as shown on *Exhibit E*; or
- (s) Any Guarantor (if a natural person) dies, unless, within ninety (90) days after such Guarantor's death, the estate of the deceased Guarantor or another substitute guarantor approved by Lender shall have assumed all of Guarantor's obligations under Guarantor's Guaranty pursuant to a written assumption agreement duly authorized, executed and delivered by the assuming guarantor of Lender and otherwise in form and substance acceptable to Lender; or
- (t) Any default or event of default occurs under any Subordinate Loan Document, any Project Agreement, the Development Agreement, the CC&Rs or any other Loan Document; or
- (u) Any failure to timely provide an annual report or written statement or to timely make a required deposit as required in connection with the failure to maintain the Debt Service Coverage Ratio; or the making of a prohibited distribution as described in this Agreement; or
- (v) Any default occurs under the Tax Credit LURA or Regulatory Agreement which is not cured within any applicable time period provided therein, or Borrower fails to remain in compliance with the requirements for the LIHTC; or
- (w) The Ground Lease is amended, modified or supplemented without the prior written consent of Lender, in Lender's sole and absolute discretion; or the Ground Lease is cancelled or terminated; or a default occurs under the Ground Lease; or
- (x) An "Event of Default" occurs under that certain Construction and Convertible Term Loan Agreement dated as of even date herewith, executed by and between Bondowner Representative and Lower Floors Borrower ("Lower Floors Loan

Agreement”) or under any other “Loan Document” (as defined in the Lower Floors Loan Agreement; or

- (y) If applicable, the occurrence of a default by Borrower or a termination event with respect to Borrower under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Borrower and Lender in connection with the Loans; or
- (z) There occurs any sale, transfer, conveyance, mortgage, pledge, encumbrance or other disposition of the Project or any sale, transfer, pledge, assignment or change in control with respect to Borrower or its General Partner, or any of them, not constituting a Permitted Transfer; or
- (aa) The occurrence of any Material Adverse Occurrence in the business or financial condition of Borrower or any event that materially increases Lender’s risk or materially impairs the Collateral; or
- (bb) There is a loss or material reduction in the Credits projected under the Partnership Agreement that could result in a removal of the General Partner or a repurchase of the Investor’s interest under the Partnership Agreement; or
- (cc) The Conditions to Conversion are not satisfied on or before the date set forth in Section 14.4; or
- (dd) (i) Any court or agency issues a final determination that all or any part of the Subordinate Loan, or the disbursement of all or any part of the Subordinate Loan proceeds to the Borrower is invalid or unenforceable, or (ii) any court or agency directs Lender or Borrower to return to the Subordinate Lender or another successor entity to the Redevelopment Agency of City of San Diego all or any part of the Subordinate Loan proceeds or prohibits the use of all or any part of the Subordinate Loan proceeds.

15.2 Rights and Remedies. Upon the occurrence of an Event of Default, Lender may exercise any or all of the following rights and remedies, consecutively or simultaneously, and in any order:

- (a) Make one or more Advances of the proceeds of the Loans without liability to make any subsequent Advance;
- (b) Suspend and/or terminate the obligation of Lender to make Advances without notice to Borrower;
- (c) Declare the entire unpaid principal balance of the Notes to be immediately due and payable, together with all accrued and unpaid interest thereon, without notice to or demand on Borrower;
- (d) Exercise any or all remedies specified herein and in the other Loan Documents, including (without limiting the generality of the foregoing) the right to foreclose the Deed of Trust, and/or any other remedies which it may have at law, in equity or under statute;

- (e) Cure the Event of Default on behalf of Borrower, and, in doing so, enter upon the Project, and expend such sums as it may deem desirable, including reasonable attorneys' fees, all of which shall be deemed to be Advances hereunder, even though such Advances may cause the outstanding principal balance of the Loans to exceed the aggregate face amount of the Notes, and all of which Advances shall bear interest at the Default Rate provided herein and shall be due and payable by Borrower on demand; and/or
- (f) Lender may declare an Event of Default under any agreement to which Lender and Borrower are parties and terminate any Bank-Provided Swap Transaction, whether or not the agreement concerns the transactions contemplated by this Agreement, and may effectuate any remedies provided for in the agreement.

The occurrence of any event described in Section 15.1(l) shall automatically, without notice or other action on Lender's part, cause all Obligations to be immediately due and payable in full.

In addition to the other remedies set forth herein and in the other Loan Documents, Borrower hereby irrevocably authorizes Lender, at any time while an Event of Default continues, to set off any sum due to or incurred by Lender against all accounts, deposits and credits (including, without limitation, agency, custody, safekeeping, securities, investment, brokerage and revocable trust accounts and any of the Borrower's other property in Lender's possession) of Borrower with, and any and all claims of Borrower against, Lender or Lender's affiliates. Such right shall exist whether or not Lender shall have made any demand hereunder or under any other Loan Document, whether or not said sums, or any part thereof, or deposits and credits held for the account of Borrower is or are matured or unmatured, and regardless of the existence or adequacy of any Collateral, guaranty or any other security, right or remedy available to Lender. Lender agrees that, as promptly as is reasonably possible after the exercise of any setoff right, it shall notify Borrower of its exercise of such setoff right; provided, however, that the failure of Lender to provide such notice shall not affect the validity of the exercise of such setoff rights. Nothing in this Agreement shall be deemed a waiver or prohibition of or restriction on Lender with respect to all rights of banker's lien, setoff and counterclaim available pursuant to law.

15.3 Completion of Project by Lender . In addition, if an Event of Default occurs prior to the completion of the Improvements, then Lender may (but shall not be obligated to), in addition to, or in concert with, the other remedies referred to above, take over and complete such construction work in accordance with the Plans, with such changes therein as Lender may, in its discretion, deem appropriate, all at the risk, cost and expense of Borrower. Lender may assume or reject any contracts entered into by Borrower in connection with the Project, may enter into additional or different contracts for work, services, labor and materials required, in the judgment of Lender, to complete the Project, may pay, compromise and settle all claims in connection with the construction work with respect to the Improvements. All sums, including attorneys' fees, and charges or fees for supervision and inspection of the construction work with respect to the Improvements and for any other necessary or desirable purpose in the discretion of Lender expended by Lender in completing or attempting to complete the construction work with respect to the Improvements (whether aggregating more, or less, than the aggregate face amount of the Notes), shall be deemed additional Advances made by Lender to Borrower hereunder, and Borrower shall be liable to Lender, on demand, for the payment of such sums, together with interest on such sums from the date of their expenditure at the rates provided herein. Lender may, in its discretion, at any time abandon work on the Project, after having commenced such work,

and may recommence such work at any time, it being understood that nothing in this Section shall impose any obligation on Lender either to complete or not to complete the construction work with respect to the Improvements. For the purpose of carrying out the provisions of this Section, Borrower irrevocably appoints Lender its attorney-in-fact, with full power of substitution, to execute and deliver all such documents, to pay and receive such funds, and to take such action as may be necessary, in the judgment of Lender, to complete the Project. This power of attorney is coupled with an interest and is irrevocable. Lender, however, shall have no obligation to undertake any of the foregoing, and, if Lender does undertake any of the same, it shall have no liability for the adequacy, sufficiency or completion thereof.

15.4 Cumulative Remedies; No Waiver. Lender's rights and remedies under the Loan Documents are cumulative and in addition to all rights and remedies provided by Law from time to time. The exercise by Lender of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice Lender in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by Lender to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of any Loan Document shall be construed as a waiver of any subsequent breach of the same provision. Lender's consent to or approval of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary Lender's consent to or approval of any subsequent act. Lender's acceptance of the late performance of any obligation shall not constitute a waiver by Lender of the right to require prompt performance of all further obligations; Lender's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of Lender's right to proceed with the exercise of its remedies for any unfulfilled obligations; and Lender's acceptance of any partial performance shall not constitute a waiver by Lender of any rights relating to the unfulfilled portion of the applicable obligation.

16. **Miscellaneous.**

16.1 **Nonliability of Lender.** Borrower acknowledges and agrees that:

- (a) the relationship between Borrower and Lender is and shall remain solely that of Borrower and Lender, and Lender neither undertakes nor assumes any responsibility to review, inspect, supervise, approve or inform Borrower of any matter in connection with the Project, including matters relating to: (i) the Plans, (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them, or (iii) the progress of the Project and its conformity with the Plans; and Borrower shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, approval or information supplied to Borrower by Lender in connection with such matters is solely for the protection of Lender and that neither Borrower nor any third party is entitled to rely on it;
- (b) notwithstanding any other provision of any Loan Document: (i) Lender is not a partner, joint venturer, alter-ego, manager, controlling Person or other business associate or participant of any kind of Borrower and Lender does not intend to ever assume any such status; and (ii) Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower;

- (c) Lender shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any Person or property resulting from any construction on, or occupancy or use of, the Project (except to the extent proximately caused by Lender's gross negligence or willful misconduct), whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Borrower or any of Borrower's agents, employees, independent contractors, licensees or invitees; or (iii) any accident on the Project or any fire or other casualty or hazard thereon; and
- (d) By accepting or approving anything required to be performed or given to Lender under the Loan Documents, including any certificate, financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by Lender to anyone.

16.2 Indemnity. Borrower shall defend (by counsel satisfactory to Lender), indemnify and save and hold harmless Lender and its directors, officers, agents and employees from and against all claims, demands, actions, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising from or relating to (i) the making of the Loans, except for violation of banking laws or regulations by Lender; (ii) any claim, demand or cause of action that any Person has or asserts against Borrower, any Guarantor, the General Partner or any Limited Partner; (iii) any act or omission of Borrower, any contractor, subcontractor or material supplier, engineer, architect or other Person with respect to the Project; or (iv) the ownership, occupancy or use of the Project. Borrower's obligations under this Section shall not be construed to include any obligation of Borrower set forth in the Environmental Indemnity Agreement. Notwithstanding the foregoing, Borrower shall not be obligated to indemnify Lender with respect to any loss, liability, cost or expense which is determined by a final decision of a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of Lender or any employee, contractor or agent of Lender. Borrower's obligations under this Section shall survive the cancellation of the Notes and the release and reconveyance of the Security Documents.

16.3 Reimbursement of Lender. Borrower shall reimburse Lender immediately upon written demand for all costs reasonably incurred by Lender (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of Lender) in connection with the negotiation, preparation, execution, delivery, administration, modification, performance and enforcement of the Loan Documents (other than the Environmental Indemnity Agreement, the obligations under which are separate from those under the other Loan Documents) and all related matters, including the following: (a) Lender's commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Loan Document other than (i) Lender's defense of any action in which Borrower is awarded a judgment against Lender and (ii) Lender's prosecution of any action against Borrower in which Lender fails to obtain a judgment against Borrower; and (b) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which Lender is indemnified under the Loan Documents; provided, that attorneys' fees payable hereunder shall be determined on the basis of rates then generally applicable to the attorneys (and all paralegals, accountants and other staff employed by such attorneys) employed by Lender, which may be higher than the rates such attorneys (and all paralegals, accountants and other staff employed by such attorneys) charge Lender in certain matters. Such reimbursement obligations shall bear interest following written demand at the Default Rate, and shall be secured

by the Security Documents. Such reimbursement obligations shall survive the cancellation of the Notes and the release and reconveyance of the Security Documents.

16.4 Obligations Unconditional and Independent. Notwithstanding the existence at any time of any obligation or liability of Lender to Borrower, or any other claim by Borrower against Lender, in connection with the Loans or otherwise, Borrower hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Borrower's obligations under the Loan Documents, or (b) to claim that the existence of any such outstanding obligation, liability or claim excuses the nonperformance by Borrower of any of its obligations under the Loan Documents.

16.5 Notices. Any notice required or permitted to be given by Borrower or Lender under this Agreement shall be in writing and will be deemed given (a) upon personal delivery or upon confirmed transmission by telecopier or similar facsimile transmission device, (b) on the first Business Day after receipted delivery to a courier service which guarantees next-business-day delivery, or (c) on the third Business Day after mailing, by registered or certified United States mail, postage prepaid, in any case to the appropriate party at its address set forth below:

If to Lender at:

U.S. Bank National Association
4747 Executive Drive, 3rd Floor
San Diego, California 92121
Attention: Paul Shipstead
Fax: (858) 334-0798

with a copy to:

U.S. Bank National Association
4747 Executive Drive, 3rd Floor
San Diego, California 92121
Attention: Loan Administration Manager
Fax: (858) 334-0798

If to Borrower at:

Broadway Upper Tower Associates, L.P.
c/o BRIDGE Housing Corporation
345 Spear Street
Suite 700
San Francisco, California 94105
Attention: Rebecca Hlebasko
Fax: _____

Addresses for notice may be changed from time to time by written notice to all other parties. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

16.6 Survival of Representations and Warranties. All representations and warranties of Borrower, the Guarantor and the General Partner in the Loan Documents shall survive the making of the Loans and have been or will be relied on by Lender notwithstanding any investigation made by Lender.

16.7 Signs. Lender may place reasonable signs on the Project during the term of the Loans stating that financing is being provided by Lender and any other participant in the Loans.

16.8 No Third Parties Benefited. This Agreement is made for the purpose of setting forth rights and obligations of Borrower and Lender, and no other Person shall have any rights hereunder or by reason hereof.

16.9 Binding Effect; Assignment of Obligations. This Agreement shall bind, and shall inure to the benefit of, Borrower and Lender and their respective successors and assigns. Borrower shall not assign any of its rights or obligations under any Loan Document without the prior written consent of Lender, which consent may be withheld in Lender's absolute discretion. Any such assignment without such consent shall, at Lender's option, be void.

16.10 Counterparts. Any Loan Document, other than the Notes, may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

16.11 Prior Agreements; Amendments; Consents. This Agreement (together with the other Loan Documents) agreement between Lender and Borrower with respect to the Loans, and all prior negotiations, understandings and agreements between Lender and Borrower with respect to the Loans are superseded by this Agreement and the other Loan Documents. No modification of any of the Loan Documents (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given.

16.12 Governing Law. All of the Loan Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

16.13 Severability of Provisions. No provision in any of the Loan Documents that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of the Loan Documents are hereby declared to be severable.

16.14 Headings. Article and section headings are included in the Loan Documents for convenience of reference only and shall not be used in construing the Loan Documents.

16.15 Conflicts. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, this Agreement shall prevail; provided however that, with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

16.16 Time of the Essence. Time is of the essence in all of the Loan Documents.

16.17 Transfers and Participations. Lender may transfer, and/or grant participations in, without notice to or the consent of Borrower or any other Person, the Loans, the Loan Documents at any time, in whole or in part. Lender may, without notice to or the consent of, Borrower or any other

Person, furnish any transferee or participant or any prospective transferee or participant with all documents and information relating to Borrower, any Partner, any Guarantor, the Loans and/or the Loan Documents or any of them that Lender deems advisable in connection therewith. Borrower's indemnity obligations under the Loan Documents shall also apply with respect to any actual or prospective transferee and/or participant and the directors, officers, agents and employees of any such transferee and/or participant. Borrower, its Partners and the Guarantor or any of its or their respective Affiliates or subsidiaries shall not be given an opportunity to be a transferee, assignee, purchaser or participate under any circumstances without the prior written consent of Lender, which may be withheld in its sole and absolute discretion. In the event of any such transfer, assignment, sale or participation, Lender and the parties to such transaction shall share in the rights and obligations of Lender as set forth in the Loan Documents only as and to the extent they agree among themselves. In connection with any such transfer, assignment, sale or participation, Borrower further agrees that the Loan Documents shall be sufficient evidence of the obligations of Borrower to each transferee, assignee, purchaser, or participant, and upon written request by the Lender, Borrower shall enter into such amendments or modifications to the Loan Documents, with notice to the Issuer, as may be reasonably required by Lender in order to evidence any such transfer, assignment, sale or participation, as the case may be. Borrower shall not have any right to consent to any transfer and/or grant of participations in the Loans or the Loan Documents. There are no restrictions on the type of assignee/participant to whom Lender may transfer its interest. Lender may provide information to prospective transferees in advance of a transfer without Borrower's consent. Nothing contained in this Section 16.17 shall constitute a waiver, as between Issuer and Bondowner Representative, of any limitation contained in Section 2.25 of the Indenture.

16.18 Environmental Indemnity Agreement. In consideration of Lender's entry into this Agreement, Borrower and Guarantor shall deliver to Lender the Environmental Indemnity Agreement. Notwithstanding any other provision of any or Loan Document, Borrower's and Guarantor's obligations under such Environmental Indemnity Agreement shall not be secured by the Deed of Trust or any other real property now or hereafter assigned to Lender as security for any Loan Document.

16.19 Guaranties Unsecured. The Security Documents shall secure Borrower's obligations under the Loan Documents. Notwithstanding the fact that the Loan Documents may now or hereafter include one or more Guaranties and/or other documents creating obligations of Persons other than Borrower, and notwithstanding the fact that any of the Security Documents may now or hereafter contain general language to the effect that it secures the "Loan Documents," none of the Security Documents shall secure any Guaranty, or any other obligation of any Person other than Borrower, unless such document specifically describes such Guaranty or other obligation as being secured thereby.

16.20 Rights to Share Information. Lender shall have the right to discuss the affairs of Borrower with any Partner, any Guarantor and/or other third parties and to discuss the course of construction, lease-up, operation and management of the Project, the financial condition of Borrower, any Guarantor and the Project, and to disclose any information received by Lender regarding Borrower, any Guarantor or the Project or any Partner of Borrower with any other Partner of Borrower, any Guarantor and/or other third parties, singularly or together, as Lender may choose in its sole and absolute discretion. The Borrower specifically agrees that Lender may obtain information about the Project and the Borrower directly from the Investor, including but not limited to information about the status of Capital Contributions, Credits, Project Costs, and

Project Expenses. In addition, Lender may provide information regarding the Project and the Borrower directly to the Investor.

16.21 Pledge to Federal Reserve. Anything in this Agreement or the Loan Documents to the contrary notwithstanding, without notice to or consent of any party or the need to comply with any of the formal or procedural requirements of this Agreement or the Loan Documents, the Lender and/or any eligible transferee, assignee, purchaser or participant may (to the fullest extent permitted under applicable law) at any time and from time to time pledge and assign any or all of its right, title and interest in, to and under all or any of the Loans and/or the Loan Documents to a Federal Reserve Bank.

16.22 Waiver of Right to Designate Application of Payment. Borrower hereby waives any and all rights it may have under California Civil Code Section 2822 to marshal assets or to designate any amount received or collected by the Lender from Borrower, any Guarantor or any other party in repayment of the Loans against any particular portion of the Loans. If, for any reason, the foregoing waiver is found to be invalid or unenforceable, Borrower hereby irrevocably elects to designate all amounts received by the Lender from any source other than guarantor(s) who are guaranteeing only a portion of the Loan (collectively, the "Partial Payment Guarantors") as payment toward the portion of the Obligations of Borrower evidenced by the Notes which is not guaranteed by such Partial Payment Guaranty, and only after such amount has been paid in full, against the balance of the Loans.

16.23 Waiver of Right to Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

16.24 Rights in Deposit and Securities Accounts. Borrower grants to Lender a security interest in each of Borrower's deposit accounts and securities accounts now or hereafter maintained with Lender or any affiliate of Lender, including without limitation all accounts held jointly with someone else, excluding however all (a) IRA and Keogh accounts, and (b) all trust accounts for which the grant of a security interest would be prohibited by law. Borrower hereby authorizes Lender to charge any such account for the amount of any Obligation on its due date, but Lender's failure to so charge any such account shall in no way affect the obligation of Borrower to make any such payment. The rights granted under this Section are in addition to all other rights and remedies that Lender or its Affiliates may have, including any statutory or common law rights of setoff.

16.25 USA PATRIOT Act Notice. Lender (for itself and not on behalf of any other party) hereby notifies Borrower that, pursuant to the requirements of the USA Patriot Act, it is required

to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the USA Patriot Act.

16.26 Compliance With Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering

Laws. Borrower shall (a) ensure, and cause each Affiliate to ensure, that no person who owns a controlling interest in or otherwise controls Borrower or any Affiliate is or shall be listed on the “Specially Designated Nationals and Blocked Person List” or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury, or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loans to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause each Affiliate to comply, with all applicable Bank Secrecy Act, USA Patriot Act, or any other Anti-Terrorism Law and regulations, as amended. Without limiting the foregoing, Borrower agrees that it will not: (i) permit a Prohibited Person to own an equity interest in or Control of Borrower; (ii) lease space to any tenant who is known to Borrower to be a Prohibited Person or who is known to Borrower, after reasonable inquiry, to be owned or Controlled by a Prohibited Person; (iii) lease space to any tenant who is known to Borrower to be engaged in transactions or dealings with a Prohibited Person or a Person owned or Controlled by a Prohibited Person; or (iv) engage in transactions or have dealings with a Prohibited Person or a Person known by Borrower, after reasonable inquiry, to be owned or Controlled by a Prohibited Person. Upon Lender's written request, from time to time during the term of the Loans, Borrower shall certify in writing to the Lender that the representations, warranties and obligations made herein remain true and correct and have not been breached. Borrower shall notify the Lender immediately in writing if any of such representations, warranties or covenants are no longer true or have been breached or if Borrower has a reasonable basis to believe that they may no longer be true or have been breached. In connection with such an event, Borrower shall comply with all Requirements of Law and directives of Governmental Agencies and, at the Lender's written request, provide to the Lender copies of all notices, reports and other communications exchanged with, or received from, Governmental Agencies relating to such an event. Borrower shall also reimburse the Lender for any expense incurred by the Lender in evaluating the effect of such an event on the Project and the Lender's interest in the Project and in complying with all Requirements of Law applicable to Borrower, any Affiliate of Borrower, or the Lender as the result of the existence of such an event and for any penalties or fines imposed upon Borrower or the Lender as a result thereof. Borrower agrees to execute and deliver to the Lender, from time to time, such further documents and certifications as may be reasonably requested, necessary to Borrower to implement, enforce, investigate, and undertake the warranties, representations, covenants and promises made herein. In connection therewith, Borrower agrees to provide to Lender the names, tax identification numbers, addresses, and jurisdiction of organization for entities referred to herein, including all equity owners of Borrower (which shall include all holders of an equity interest, each grantor/settler of a trust if the trust is a revocable trust or if the grantor/settler has retained powers, and each trustee and beneficiary of a trust with respect thereto), and, within a reasonable time, any modifications or changes therein or thereto.

16.27 Tax Shelter Disclosure. None of Borrower, Guarantor or any Affiliate or Subsidiary of any of the foregoing intends to treat the Loans or the transactions contemplated by this Agreement and the other Loan Documents as being a “reportable transaction” (within the meaning of Regulation Section 1.6011-4). If Borrower, or any other party determines to take any action inconsistent with such intention, Borrower shall promptly notify Lender thereof in writing. If Borrower so notifies Lender, Borrower acknowledges that Lender may treat the Loans as part

of a transaction that is subject to Regulation Section 301.6112-1, and Lender will maintain the lists and other records, including the identity of the applicable party to the Loans as required by such Regulation.

Designated Representative(s). Borrower hereby represents that the person or persons signing this Agreement on behalf of Borrower are hereby authorized to act as Borrower's authorized representatives for purposes of dealing with Lender on behalf of Borrower in respect of any and all matters in connection with this Agreement, the other Loan Documents and the Loans. In addition, the Borrower may designate by appropriate action in written form acceptable to Lender, additional individuals who are authorized to act on behalf of Borrower (together with the person(s) signing this Agreement, the "Designated Representatives"). Each Designated Representative, acting alone, shall have the power to give and receive all notices, monies, approvals and other documents and instruments, and to take any other action on behalf of Borrower. All actions by any Designated Representative shall be final and binding on Borrower. Lender may rely on the authority given to the Designated Representatives until actual receipt by Lender of a duly authorized partnership resolution substituting a different person or persons as the Designated Representatives.

16.29 Limited Liability of Issuer. The Housing Authority of the City of San Diego, in its capacity as Issuer of the Bonds, shall not be liable to Borrower for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Agreement, the Bonds or any of the other Loans Documents, except only to the extent amounts are received for the payment thereof from the Borrower under this Agreement. All obligations and any liability of the Housing Authority of the City of San Diego, in its capacity as Issuer of the Bonds, shall be further limited as further expressly provided in Sections 5.01, 6.13, 7.10 and 11.09 of the Indenture.

16.30 Adjustment of Interest Rate Upon Loss of Tax Exclusion. The interest rates applicable under the Notes and with respect to the Bonds are based on the assumption that interest income paid on the Bonds and received by the owners of the Bonds will be excludable from gross income under Section 103 of the Code and applicable State law, except for the Bonds when owned by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code (as defined in the Indenture). In the event that (i) Lender receives a written opinion from a nationally recognized bond counsel to the effect that, in such counsel's opinion, interest on the Bonds will not be excluded from gross income of such owners for federal income tax purposes, other than as a result of the Bonds being held by a "substantial user" or a "related party" to such "substantial user" as used in Section 147(a) of the Code; or (ii) any owner receives notice from the Internal Revenue Service or other government agency that interest payable on the Bonds is not excludable from gross income of such owner for federal income tax purposes, or that the Internal Revenue Service is challenging the tax-exempt status of the interest on the Bonds, then the interest rate on the Notes, the Bonds and on all obligations under this Agreement shall be increased to a rate equal to the Prime Rate in effect from time to time plus 2.00%. In addition, the owner shall be paid, promptly upon demand, an amount equal to the difference between the amount of interest payable on the Notes from the date on which such loss of tax exemption on the Bonds shall be applicable to the date on which the interest rate on the Notes was increased and the amount of interest that would have been payable on the Notes during such period had the Notes borne interest during such period at such higher rate. If, following any increase in interest rates pursuant to this Section, a final determination is made, to the satisfaction of such owner, that interest paid on the Bonds was, at all times prior to the determination, and will continue to be, excludable from the owner's gross income under Section 103 of the Code and applicable state

law, that owner shall promptly refund to the Borrower any additional interest paid by the Borrower pursuant to this Section.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Construction and Convertible Term Loan Agreement to be duly executed as of the date first written above.

BORROWER:

BROADWAY UPPER TOWER ASSOCIATES, L.P.,
a California limited partnership

By: Broadway Upper Tower LLC,
a California limited liability company,
its general partner

By: BRIDGE Housing Corporation-
Southern California,
a California nonprofit public benefit
corporation, its sole member/manager

By: _____
Kimberly McKay
Vice President

BONDOWNER REPRESENTATIVE:

U.S. BANK NATIONAL ASSOCIATION,
a national banking association

By:

Paul Shipstead
Vice President

[Signature Page to Construction and Term Loan Agreement]

LENDER:

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

By: _____
Name: _____
Title: _____

[Signature Page to Construction and Term Loan Agreement]

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
BUDGET

EXHIBIT C-1

BORROWER'S LETTER OF DRAW REQUEST

[DATE]

_____, Loan Administrator
U.S. Bank National Association
4747 Executive Drive
San Diego, California 92121

Project Name: _____
Borrower: _____
Draw #: _____

Dear _____:

Reference is hereby made to that certain Construction and Convertible Term Loan Agreement dated _____, 20__ (the "***Loan Agreement***"), executed among the Borrower, the Housing Authority of the City of San Diego ("***Lender***") and U.S. Bank National Association (the "***Borrower Representative***"). Any defined terms not otherwise described herein shall have the same definitions as in the Loan Agreement.

Pursuant to the Loan Agreement, the Borrower hereby requests a Disbursement in the amount listed as the Requested Amount on the attached Draw Request Certification (the "Requested Amount"). The Borrower acknowledges that the approval of this Draw Request by the Lender is subject to all of the terms and conditions precedent for a Disbursement, including without limitation, inspection of the Project by Project Inspector, verification of matters set forth in the Draw Request Certification, and the available Funding Sources.

Included with this letter is the following:

- Draw Request Certification
- An updated Budget
- Payee listing with copies of invoices and vendor names for which payment is being requested.

The Borrower requests that the Requested Amount be funded in the following Operating Account:

Name of Bank: _____
ABA Routing #: _____
Account #: _____
Account Name: _____
Reference: _____
Notify: _____

The Borrower has executed this Draw Request Letter as of _____, 20____.

BROADWAY UPPER TOWER ASSOCIATES, L.P.,
a California limited partnership

By: Broadway Upper Tower LLC,
a California limited liability company,
its general partner

By: BRIDGE Housing Corporation-
Southern California,
a California nonprofit public benefit
corporation, its sole member/manager

By: _____
Kimberly McKay
Vice President

EXHIBIT C-2

Draw Request Certification

Disbursement No. _____

The undersigned, as Designated Representative of Borrower, hereby requests a Disbursement in the amount, and on the date, set forth below, pursuant to the Construction and Convertible Term Loan Agreement dated _____ (the "***Loan Agreement***"), among **BROADWAY UPPER TOWER ASSOCIATES, L.P.**, a California limited partnership (the "***Borrower***"), HOUSING AUTHORITY OF THE CITY OF SAN DIEGO ("***Lender***") and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association (the "***Borrower Representative***"). Capitalized terms used and not otherwise defined herein has the meanings set forth for them in the Loan Agreement.

REQUESTED AMOUNT: _____

REQUESTED DATE: _____

Borrower hereby represents and warrants to Lender that:

- a) The requested Disbursement shall be applied to pay Project Costs in accordance with the itemized Payment Request attached hereto.
- b) The Funding Source(s) to be used for this disbursement are as follows:

Source: _____

Amount: \$ _____

- c) At the date hereof, no suit or proceeding at law or in equity, and no investigation or proceeding of any governmental body, has been instituted, or, to the knowledge of Borrower, is threatened, which in either case, if adversely determined, could materially and adversely affect the Project, or the financial or other condition of, or the business operations of, Borrower.
- d) At the date hereof, no Event of Default under the Loan Agreement or under any of the other Loan Documents has occurred and is continuing, and no event has occurred which, upon the service of notice and/or the lapse of time, would constitute an Event of Default thereunder////, except the following:////
- e) The representations and warranties set forth in the Loan Agreement are hereby reaffirmed and restated, and Borrower represents and warrants to Lender that the same are true, correct and complete on the date hereof as if made on and as of the date hereof////, except as to the following:////
- f) No material adverse change has occurred in the financial condition or in the assets or liabilities of Borrower or Guarantor(s) from those set forth in the latest financial statements for each furnished to Lender////, except the following:////
- g) The progress of construction of the Project is such that it can be completed on or before the Completion Date specified in the Loan Agreement for the cost originally represented to Lender////, except for the following: **[Insert description of any changes.]**////

- h) The Loan, as of the date hereof, is "In Balance" as required by the Loan Agreement, and the undisbursed proceeds of the Funding Sources, including the advance requested herein, are adequate and sufficient to pay for all labor, materials, equipment, work, services and supplies necessary for the completion of the Project, including the installation of all fixtures and equipment required for the operation of the Project, except for the following Project cost increases:
- i) The labor, materials, equipment, work, services and supplies described herein have been performed upon or furnished to the Project in full accordance with the Plans, which have not been amended except as expressly permitted by the Loan Agreement.
- j) There have been no changes in the costs of the Project from those set forth on the Sworn Construction Cost Statement, as amended by any amendment thereto heretofore delivered by Borrower to Lender (and approved by Lender, if such approval is required by the Loan Agreement).
- k) All bills for labor, materials, equipment, work, services and supplies furnished in connection with the Project, which could give rise to a mechanic's lien if unpaid, have either been paid or will be paid out of the requested advance.
- l) All claims for mechanics' or materialmen's liens which shall have arisen or could arise for labor, materials, equipment, work, services or supplies furnished in connection with the Project through the last day of the period covered by the requested advance have been effectively waived in writing, or will be effectively waived in writing when payment is made, and such written waivers shall be delivered to Lender or its disbursing agent.
- m) All funds advanced under the Loan Agreement to date have been utilized as specified in the Draw Requests pursuant to which the same were advanced, exclusively to pay costs incurred for or in connection with acquiring, constructing and developing the Land and the Project, and Borrower represents that no part of the Funding Sources have been paid for labor, materials, equipment, work, services or supplies incorporated into or employed in connection with any project other than the Project, as that term is defined in the Loan Agreement. Borrower further represents that all funds covered by this Draw Request are for payment for labor, materials, equipment, work, services or supplies furnished solely in connection with the Project.
- n) All changes in the Plans, if any, have been made in accordance with the Loan Agreement.
- o) No notice or any other information has been received relating to a reduction in the amount of Credits available to the Project, and there has been no adverse change in the facts and circumstances necessary for the General Partner to receive the Capital Contributions.

Borrower authorizes and requests Lender to charge the total amount of this Draw Request against the Funding Sources and to advance from the proceeds of the Loan or other Funding Source, as applicable, the funds hereby requested, and to make or authorize disbursement of funds to or for the account of the persons or firms and Borrower in amounts up to, but not exceeding, the amounts listed herein, subject to the requirements of and in accordance with the procedures provided in the Loan Agreement and/or any separate disbursing agreement relating to the Loan. The advance made pursuant to this Draw Request is acknowledged to be an accommodation to Borrower and is not a waiver by Lender of any defaults or events of default under the Loan Documents or any other claims of Lender against Borrower, Guarantor(s) and/or the General Contractor.

The advances and disbursements on the attached sheets are hereby approved and authorized by Borrower.

SIGNATURE PAGE
FOR
DRAW REQUEST CERTIFICATION

BORROWER:

BROADWAY UPPER TOWER ASSOCIATES, L.P.,
a California limited partnership

By: Broadway Upper Tower LLC,
a California limited liability company,
its general partner

By: BRIDGE Housing Corporation-
Southern California,
a California nonprofit public benefit
corporation, its sole member/manager

By: _____
Kimberly McKay
Vice President

DATE: _____, 20__

EXHIBIT C-3
DRAW REQUEST SPREADSHEET

EXHIBIT D

SWORN CONSTRUCTION COST STATEMENT

COMPLETION INSTRUCTIONS

Pages 1	- :	<u>Certifications:</u>	Please complete all blank spaces and have the Borrower, General Contractor, and Architect sign. Please note that changes in costs may, pursuant to this Construction and Convertible Term Loan Agreement, necessitate notifying Lender of the changes.
Pages	- :	<u>Total Project Costs:</u>	This section identifies by category all costs necessary to complete the project. Note that item number 1 is the total from the Direct Costs portion of the Sworn Construction Cost Statement. If certain categories are not needed, enter zero or delete the category. The information on this form will be used, in essentially the same format, on the Draw Request form.
Pages	- :	<u>Direct Costs:</u>	<p>This section of the Sworn Construction Cost Statement identifies the direct, or hard, costs of construction. The Number and Title columns for Divisions 1-16 follow MASTER-FORMAT, the master list of titles and numbers for the construction industry (U.S. copyright held by the Construction Specifications Institute). Divisions 0, 17, and 18 are for items not specified in Divisions 1-16, but generally included in construction contracts. Items not listed may be added (please number per MASTER-FORMAT) and unnecessary items may be deleted. The Number, Title and Amount information on this form should be used, in essentially the same format, on the general contractor's requests for payment (AIA form G702).</p> <p>The Contractor, Sub. or Vendor column must show the names of persons responsible for performing, or providing the work or materials in the corresponding Title column.</p> <p>In the Amount column, show the amount corresponding to the item in the Title column. If any contract covers more than one Title item, break the contract amount out to show the cost of each Title item.</p> <p>In the Basis column, enter estimate, bid or contract to show the basis for the amount entered.</p>

**SWORN CONSTRUCTION COST STATEMENT
TOTAL PROJECT COSTS**

BORROWER: _____ **DATE:** _____
GENERAL CONTRACTOR: _____ **PROJECT:** _____
PROJECT ARCHITECT: _____ **LOCATION:** _____

1.	DIRECT COSTS (From attached Sworn Construction Cost Statement Direct Costs)	\$	
2.	LAND AND LAND IMPROVEMENTS		
2.1	Land Acquisition	\$	
2.2	Utilities and Hook-ups	\$	
2.3	Offsite Street Improvements	\$	
2.4	Offsite Utility Extensions	\$	
			\$ _____
3.	BORROWER'S ADMINISTRATIVE		
3.1	Insurance	\$	
3.2	Real Estate Taxes and Assessments	\$	
3.3	Overhead	\$	
			\$ _____
4.	FINANCING		
4.1	Interest Reserve	\$	
4.2	Construction Loan Fee	\$	
4.3	Brokerage Fees	\$	
			\$ _____
5.	LEGAL AND TITLE		
5.1	Legal Fees	\$	
5.2	Title Insurance	\$	
5.3	Closing Costs	\$	
5.4	Disbursement Fees	\$	
6.	PROFESSIONAL FEES		
6.1	Surveys	\$	
6.2	Soils Testing and Reports	\$	
6.3	Environmental Reports	\$	
6.4	Appraisal	\$	
6.5	Architectural and Engineering	\$	
6.6	Lender's Inspecting Architect	\$	
7.	MARKETING		
7.1	Marketing Studies	\$	
7.2	Promotion and Advertising	\$	
7.3	Model Furnishings	\$	
			\$ _____
8.	TENANT IMPROVEMENTS (if not included in Direct Costs)	\$	
9.	LEASE-UP/SALES		
9.1	Commissions	\$	
9.2	Utility Costs	\$	
9.3	Building Maintenance	\$	
			\$ _____
10.	CONTINGENCY	\$	
	TOTAL PROJECT COSTS	\$	

SWORN CONSTRUCTION COST STATEMENT

DIRECT COSTS

BORROWER: _____

DATE: _____

GENERAL CONTRACTOR: _____

PROJECT: _____

PROJECT ARCHITECT: _____

LOCATION: _____

NUMBER	TITLE	CONTRACTOR, SUB OR VENDOR	AMOUNT	BASIS
DIVISION 0	DOCUMENTS			
00600	Bonds and Certificates			
	Insurance			
	Permits			
DIVISION 1	GENERAL REQUIREMENTS			
01500	Construction Facilities and Temporary Controls			
01600	Material and Equipment			
01700	Contract Closeout			
01800	Maintenance			
DIVISION 2	SITEWORK			
02010	Subsurface Investigation			
02050	Demolition			
02100	Site Preparation			
02200	Earthwork			
02500	Paving and Surfacing			
02600	Utility Piping Materials			
02700	Sewerage and Drainage			
02800	Site Improvements			
02900	Landscaping			
DIVISION 3	CONCRETE			
03100	Concrete Formwork			
03200	Concrete Reinforcement			
03250	Concrete Accessories			
03300	Cast-In-Place Concrete			
03400	Precast Concrete			
03500	Cementitious Decks and Toppings			
DIVISION 4	MASONRY			
04200	Unit Masonry			
04400	Stone			
DIVISION 5	METALS			
05100	Structural Metal Framing			
05200	Metal Joists			

NUMBER	TITLE	CONTRACTOR, SUB OR VENDOR	AMOUNT	BASIS
05300	Metal Decking			
05500	Metal Fabrications			
05580	Sheet Metal Fabrications			
05700	Ornamental Metal			
DIVISION 6	WOOD AND PLASTICS			
06100	Rough Carpentry			
06170	Prefabricated Structural Wood			
06200	Finish Carpentry			
06400	Architectural Woodwork			
DIVISION 7	THERMAL AND MOISTURE PROTECTION			
07100	Waterproofing			
07200	Insulation			
07250	Fireproofing			
07300	Shingles and Roofing Tiles			
07400	Manufactured Roofing and Siding			
07600	Flashing and Sheet Metal			
07800	Skylights			
DIVISION 8	DOORS AND WINDOWS			
08100	Metal Doors and Frames			
08200	Wood and Plastic Doors			
08300	Special Doors			
08400	Entrances and Storefronts			
08500	Metal Windows			
08700	Hardware			
08800	Glazing			
08900	Glazed Curtain Walls			
DIVISION 9	FINISHES			
09250	Gypsum Board			
09300	Tile			
09500	Acoustical Treatment			
09550	Flooring			
09900	Painting			
09950	Wall Coverings			
DIVISION 10	SPECIALTIES			
10200	Louvers and Vents			
10400	Identifying Devices			
10520	Fire Protection Specialties			
10600	Partitions			
10800	Toilet and Bath Accessories			
DIVISION 11	EQUIPMENT			
11160	Loading Dock Equipment			

NUMBER	TITLE	CONTRACTOR, SUB OR VENDOR	AMOUNT	BASIS
11400	Food Service Equipment			
11450	Residential Equipment			
11480	Athletic, Recreational Equipment			
11680	Office Equipment			
DIVISION 12	FURNISHINGS			
12300	Manufactured Casework			
12500	Window Treatment			
12600	Furniture and Accessories			
DIVISION 13	SPECIAL CONSTRUCTION			
13120	Pre-Engineered Structures			
13200	Liquid and Gas Storage Tanks			
13300	Utility Control Systems			
13900	Fire Suppression & Supervisory Systems			
DIVISION 14	CONVEYING SYSTEMS			
14200	Elevators			
14500	Material Handling Systems			
DIVISION 15	MECHANICAL			
15050	Basic Mechanical Materials			
15300	Fire Protection			
15400	Plumbing			
15500	Heating, Ventilating and A/C			
15550	Heat Generation			
15650	Refrigeration			
15850	Air Handling			
15950	Controls			
DIVISION 16	ELECTRICAL			
16050	Basic Electrical Materials			
16400	Service and Distribution			
16500	Lighting			
16600	Special Systems			
16700	Communications			
16900	Controls			
DIVISION 17	TENANT IMPROVEMENTS			
17100	Partitions			
17200	Wall Coverings			
17300	Ceiling Treatment			
17400	Floor Covering			
17500	Built-ins			
17600	Electrical			
DIVISION 18	OTHER			
18100	Supervision and Overhead			

NUMBER	TITLE	CONTRACTOR, SUB OR VENDOR	AMOUNT	BASIS
18200	Contractors Fees			
18300	Contingency			
TOTAL DIRECT COSTS				

SWORN CONSTRUCTION COST STATEMENT

DATE:

LENDER: **Housing Authority of the City of San Diego**

BONDOWNER REPRESENTATIVE: **U.S. Bank National Association**

BORROWER: **Broadway Upper Tower Associates, L.P.**

GENERAL CONTRACTOR:

PROJECT ARCHITECT:

PROJECT:

The undersigned Borrower, being first duly sworn, as the borrower and the owner of the Project, deposes and says, in connection with the development, construction and completion of the Project: that this Sworn Construction Cost Statement includes a true, correct and complete listing of all costs for material, supplies, equipment, labor, and other work and services of any kind necessary to achieve Completion (as that term is defined in the Construction and Convertible Term Loan Agreement (the “*Loan Agreement*”) among Borrower, Lender and Bondowner Representative) of the Project; that listed herein are the names of all persons, parties and entities having contracts or subcontracts relating to development, construction or completion of the Project, or which are otherwise entitled to receive payment for materials, supplies, equipment, labor, or other work or services of any kind with respect to the Project, and the amounts previously paid, now due, or to become due to each of said parties; and that there is no amount previously paid, now due or to become due to any party not listed herein, or in excess of the amount listed herein, for material, supplies, equipment, labor, or other work or services of any kind relating to the Project.

The undersigned further deposes and says, also in connection with the development, construction and completion of the Project, that any change or increase in the total cost of the Project as shown herein, or in the amount payable to any party listed herein, will be immediately communicated in writing to Lender, and will be subject to approval by Lender, if such approval is required by the Loan Agreement; that all parties named herein will guarantee their materials provided or work performed in connection with the Project to be free from defects for at least one (1) year after Completion of the Project; that the purpose of the foregoing is to induce Lender to advance the proceeds of a loan of up to \$_____, secured by a mortgage, deed of trust, security deed or trust indenture upon the Project; and that, upon payment of the specific unpaid items listed herein, Borrower will indemnify and save harmless Lender as to any other claim and as to any lien for any material, supplies, equipment, labor, and other work or services of any kind relating to the Project.

BROADWAY UPPER TOWER ASSOCIATES, L.P.,
a California limited partnership

By: Broadway Upper Tower LLC,
a California limited liability company,
its general partner

By: BRIDGE Housing Corporation-
Southern California,
a California nonprofit public benefit
corporation, its sole member/manager

By: _____
Kimberly McKay
Vice President

SIGNATURES OF PERSONS AUTHORIZED
TO SIGN DRAW REQUESTS OF PERSONS
AUTHORIZED TO SIGN DRAW REQUESTS

Subscribed and sworn to before me this _____ day of _____ 20____.

Notary Public

My commission expires: _____

_____ County, _____

GENERAL CONTRACTOR

The undersigned, being first duly sworn, as General Contractor for the Project, deposes and says that it has entered into a _____ Construction Contract ("Contract"), dated _____, by and between Broadway Upper Tower Associates, L.P., a California limited partnership ("Borrower") and itself for the construction of the Project; that this Sworn Construction Cost Statement includes a true, correct and complete listing of all costs for material, supplies, equipment, labor, and other work and services of any kind required to construct and complete the Project in accordance with the terms and conditions of the Contract; that listed herein are the names of all persons, parties and entities having contracts or subcontracts relating to the work covered by the Contract, or which are otherwise entitled to receive payment for providing any material, supplies, equipment, labor, or other work or services of any kind in connection with the Project pursuant to the Contract, and the amounts previously paid, now due, or to become due to each of said parties; that there are no other contracts or subcontracts relating to the work covered by the Contract outstanding; and that there is no amount previously paid, now due, or to become due to any party not listed herein, or in excess of the amount listed herein, for material, supplies, equipment, labor, or other work or services of any kind provided or to be provided in connection with the construction and completion of the Project pursuant to the Contract.

The undersigned further deposes and says that any change or increase in the total cost to construct the Project under the Contract, or in the amount payable to any party listed herein in connection with the Contract, will be immediately communicated by it in writing to borrower and to U.S. Bank National Association ("Bondowner Representative"); that all parties named herein in connection with the Contract will guarantee that their materials provided or work performed in connection with the Project will be free from defects for at least one (1) year after Completion (as that term is defined in the Construction Loan Agreement between Borrower, Bondowner Representative and Housing Authority of the City of San Diego ("Issuer")) of the Project; that the purpose of the foregoing is to induce Bondowner Representative to approve the advance to Borrower the proceeds of an up to \$23,000,000 loan, secured by a deed of trust upon the Project; and that, upon payment of the specific unpaid items listed herein, the undersigned General Contractor will waive all claims of priority to said deed of trust and will indemnify and save harmless Bondowner Representative and Issuer as to any other claim or priority of lien for any material, supplies, equipment, labor, or other work or services of any kind furnished to construct the Project in accordance with the terms and conditions of the Contract.

By _____

Its _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires: _____

County, _____

PROJECT ARCHITECT

This firm has prepared the plans for the Project, including drawings, specifications, details and manuals ("Plans"), which are identified by our Project No. _____, and which are dated _____, and revised _____, and which are described in the Construction and Convertible Term Loan Agreement among Broadway Upper Tower Associates, L.P., a California limited partnership, Housing Authority of the City of Los Angeles, and U.S. Bank National Association relating to the Project. This firm has reviewed this Sworn Construction Cost Statement and hereby certifies to U.S. Bank National Association and Housing Authority of the City of San Diego that the costs shown herein accurately reflect the costs of completing the Project in accordance with the Plans.

By _____

Its _____

Subscribed and sworn to before me this _____ day of _____, 2____.

Notary Public

My commission expires: _____

_____ County, _____

EXHIBIT E

SCHEDULE OF REQUIRED CAPITAL CONTRIBUTIONS

Capital Installments

Limited Partner Capital Equity Installments	Amount of Capital Contribution	Capital Contribution Due Date	Construction Equity Deposit
First Capital Contribution	\$_____	Date of Issuance of Bonds	
This Capital Contribution shall be used, to the extent not required for other Partnership purposes as specified by the Investor, to pay \$_____ of Developer Fee and the remainder will be used to pay construction costs.			
Second Capital Contribution	\$_____	On or before the Completion Date	
This Capital Contribution shall be used solely to pay down the Construction Loan.			
Third Capital Contribution	\$_____	On or before the Construction Note Maturity Date	
This Capital Contribution shall be used to pay down the Construction Loan.			
Fourth Capital Contribution	\$_____	Payable upon satisfaction of the Fourth Contribution Conditions	

This Capital Contribution shall be used to fund Developer Fee.

General Partner Capital Contributions	Amount of Capital Contribution	Capital Contribution Due Date
First Capital Contribution	\$_____	Date of issuance of Bonds

EXHIBIT F
CONSTRUCTION FUNDS SCHEDULE

I.	LOANS		
	<u>Lender/Program</u>	<u>Loan Amount</u>	<u>Required Funding Date</u>
	City of San Diego	\$19,612,000	TBD
	<u>///[AHP?]/</u>		
II.	GRANTS		
	<u>Source of Grant</u>	<u>Grant Amount</u>	<u>Required Funding Date</u>
	n/a		
III.	EQUITY		
	<u>Funder</u>	<u>Amount</u>	<u>Required Funding Date</u>
	Investor	\$ _____	To be funded in accordance with Exhibit E

EXHIBIT G
LOAN DOCUMENTS

General Loan Documents

1. Construction and Convertible Term Loan Agreement
2. Construction Note
3. Convertible Term Note
4. Repayment and Completion Guaranty
5. Environmental and ADA Indemnification Agreement
6. Operating Reserve and Security Agreement
7. Replacement Reserve and Security Agreement
8. Subordination Agreement
9. Assignment of Development Services Agreement and Developer Fee Subordination Agreement
10. Intercreditor Agreement
11. Ground Lease Estoppel
12. California Judicial Reference Agreement

Security Documents

13. Deed of Trust
14. Deed of Trust Assignment
15. Collateral Assignment of Contract Rights
16. Assignment and Subordination of Construction Contract
17. Assignment and Subordination of Architect's Contract
18. Assignment and Subordination of Engineer's Contract
19. Assignment of Declarant's Rights Under Covenants, Conditions, and Restrictions
20. Assignment of Partnership Interests, Capital Contributions and Credits
21. Assignment of Property Manager Agreement

EXHIBIT H

Permitted Developer Fee Payments

Source of Payment

Amount Permitted

Timing of Payment

TBD

EXHIBIT I

Conversion Election Notice

The undersigned hereby certifies to Lender and Bondowner Representative that as of the date hereof, _____, 20____, the Conditions to Conversion set forth in Section 14.2 of the Construction and Convertible Term Loan Agreement (the "Agreement") dated _____ among Broadway Upper Tower Associates, L.P., a California limited partnership ("Borrower"), Housing Authority of the City of San Diego ("Lender") and U.S. Bank National Association ("Bondowner Representative") have been satisfied as of the date hereof including but not limited to:

1. Borrower has paid to Lender all interest, fees, premiums and other amounts then due and payable to Lender on account of and under the Notes, the Loan Documents, including any principal reduction of the Convertible Term Note to maintain a projected 1.15 Debt Service Coverage Ratio in accordance with Section 9.3 of the Agreement.
2. The Construction Note has been repaid in full.
3. The Improvements have been completed in accordance with the Plans (as such completion is determined in accordance with this Agreement), free and clear of all liens (other than mechanics' liens being contested by Borrower in strict compliance with this Agreement).
4. During each of month of the 3-month period immediately preceding the date hereof, at least 90% of the residential units within the Project have been leased to, and occupied by, third-party residential tenants under leases constituting Acceptable Leases and in strict compliance with the terms and conditions of the Regulatory Agreement and Tax Credit LURA.
5. During each month of the 3-month period immediately preceding date hereof, the Debt Service Coverage Ratio for the Project shall have been 1.15 (or more) to 1.00.
6. All representations and warranties made by Borrower in the Loan Documents are true and correct on and as of the Conversion Date as if made on and as of the date hereof.
7. As of the date hereof no Event of Default and no other event or condition which, upon the giving of notice or the passage of time, or both, would become an Event of Default, shall have occurred and be continuing.
8. Borrower has paid to Lender all reasonable costs and expenses incurred by Lender in connection with the conversion of the Convertible Term Loan.
9. All documents, agreements, instruments and other items required to be delivered or provided pursuant to the Agreement (including without limitation an assignment of all property management contracts relating to the Project, contemporaneously accompanied by consents to such amendments by all property managers, all in form and substance satisfactory to Lender) or any of the Loan Documents have been delivered to Lender.
10. An as built survey showing the location of all completed improvements at the Project in form and substance satisfactory to Lender has been delivered to Lender.
11. Borrower has delivered to Lender, and Lender has approved, a final rewrite of the Title Policy.

12. The Project is exempt under California Revenue and Taxation Code Section 214(a), from the payment of real property taxes and assessments.
13. Borrower has deposited with Lender into the Operating Reserve Account, the Initial Operating Reserve Deposit (as defined in the Operating Reserve Agreement).
14. All amounts due and owing from the Investor as of the date hereof in respect of the Capital Contributions have been paid.
15. There has been no material adverse change in the business, operations, or financial condition of Borrower, the General Partner or any Guarantor.
16. There has been no material diminution of value of the Collateral for the Convertible Term Loan.
17. There has been no violation of Environmental Laws or there has been no other adverse environmental conditions which cannot be adequately resolved to Lender's satisfaction.
18. There has been no change in the management, ownership or Control of Borrower, General Partner or Guarantor or in the Project or any security for the Convertible Term Loan unless otherwise permitted by the Loan Documents or approved in writing by Lender.
19. Borrower has disclosed all facts, circumstances or conditions which could have a material adverse impact upon Lender.
20. Borrower has paid to Lender the Conversion Fee.
21. The following items have been delivered to Lender and are true, correct and complete as of the date hereof: (i) a written certification by Borrower to Lender stating that all of the Conditions to Conversion have been fully satisfied, (ii) a rent roll covering the Project for each month of the 3-month period immediately preceding the date of such notice, certified by Borrower as true, correct and complete, (iii) Operating Statements for the Project for each of those 3 prior consecutive calendar months, and (iv) computations and other supporting documentation evidencing satisfaction of all financial covenants set forth in this Agreement and the other Loan Documents and the other Conditions to Conversion requiring computation and/or supporting documentation, and certified in each instance by Borrower to be true, correct and complete.

Date: _____

BORROWER:

BROADWAY UPPER TOWER ASSOCIATES, L.P.,
a California limited partnership

By: Broadway Upper Tower LLC,
a California limited liability company,
its general partner

By: BRIDGE Housing Corporation-Southern
California,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Kimberly McKay
Vice President

By: _____
Name: _____
Title: _____

Conversion Date

Lender hereby concurs that the Conditions to Conversion have been satisfied (or waived by Lender) and that the Conversion Date is _____.

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

[Signature Page to Conversion Election Notice]

COMPLIANCE CERTIFICATE

This image shows a single sheet of white paper with horizontal blue or grey ruling lines, typical of notebook paper. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

With respect to the Credits:

1. The LIHTC Documents are in full force and effect.
2. There have been no occurrences which would result in a loss or material reduction in the amount of any Credits.
3. The Borrower has not received a Form 8823 or any other notice of non-compliance from the Credit Agency or any other Governmental Agency.
4. The Form 8609 has been or is anticipated to be received by the date required in the Partnership Agreement.
5. Borrower has provided Lender with all required LIHTC Documents.

6. If required by the Internal Revenue Code, the Tax Credit LURA has been recorded in the appropriate filing office.

Dated: _____, 20__

BROADWAY UPPER TOWER ASSOCIATES, L.P.,
a California limited partnership

By: Broadway Upper Tower LLC,
a California limited liability company,
its general partner

By: BRIDGE Housing Corporation-Southern California,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Kimberly McKay
Vice President

EXHIBIT K
INTENTIONALLY OMITTED

EXHIBIT L

COMMERCIAL REAL ESTATE STANDARD INSURANCE REQUIREMENTS

I. PROPERTY INSURANCE

A. DURING CONSTRUCTION

An ORIGINAL (or certified copy) Builder's All-Risk, Completed Value, Non-Reporting Form Policy or Acord 28 Certificate of Insurance naming the borrowing entity as an insured, reflecting coverage of 100% of the replacement cost, and written by a carrier approved by Lender with a current A.M. Best's Insurance Guide Rating of at least A- IX (which is authorized to do business in the state in which the property is located) that affirmatively includes the following:

1. Mortgagee Clause naming Housing Authority of the City of San Diego and U.S. Bank National Association, collectively, as Mortgagee ISAA ATIMA, with a 30-day notice to Lender in the event of cancellation, non-renewal or material change; OR
2. Lender's Loss Payable Endorsement (ISO 1218 or similar) with a 30-day notice to Lender in the event of cancellation, non-renewal or material change
3. Replacement Cost Endorsement
4. No Exclusion for Acts of Terrorism (United States Certified Acts of Terrorism coverage – TRIPRA)
5. No Coinsurance Clause
6. Flood Insurance
7. Coastal and Other Wind Coverage
8. Collapse and Earthquake Coverage
9. Vandalism and Malicious Mischief Coverage
10. Boiler and Machinery Coverage (aka Electrical and Mechanical Breakdown)
11. Demolition, Increased Cost of Construction Coverage
12. In-Transit Coverage
13. Partial Occupancy Permitted
14. Borrower's coverage is primary and non-contributory with any insurance or self-insurance carried by U.S. Bank National Association

15. Waiver of Subrogation against any party whose interest are covered in the policy
16. Delay in Completion or Delay in Rents/Startup Coverage
17. Coverage to be effective upon the date of the Notice to Proceed, the date of site mobilization or the start of any shipment of materials, machinery or equipment to the site, whichever is earlier, and to remain in effect until replaced by permanent All Risk Property Insurance described below, or until such other time as may be mutually agreed upon by U.S. Bank National Association and Borrower.
18. Coverage shall be non-cancellable through term of project with automatic extension provision of at least 60 days.

B. UPON COMPLETION

An ORIGINAL (or certified copy) All-Risk Hazard Insurance Policy or Acord 28 Certificate of Insurance naming the borrowing entity as an insured, reflecting coverage of 100% of the replacement cost, and written by a carrier approved by Lender with a current A.M. Best's Insurance Guide Rating of at least A-IX (which is authorized to do business in the state in which the property is located) that affirmatively includes the following:

1. Mortgagee Clause naming the Housing Authority of the City of San Diego and U.S. Bank National Association, collectively, as Mortgagee ISAA ATIMA with a 30-day notice to Lender in the event of cancellation, non-renewal or material change; OR
2. Lender's Loss Payable Endorsement (ISO 1218 or similar) with a 30-day notice to Lender in the event of cancellation, non-renewal or material change
3. Replacement Cost Endorsement
4. No Exclusion for Acts of Terrorism (United States Certified Acts of Terrorism coverage – TRIPRA)
5. No Coinsurance Clause
6. Boiler and Machinery Coverage (aka Electrical and Mechanical Breakdown)
7. Sprinkler Leakage Coverage
8. Vandalism and Malicious Mischief Coverage
9. Flood Insurance
10. Loss of Rents Insurance in an amount of not less than 100% of one year's Rental Value of the Project. "Rental Value" shall include:
 - a) The total projected gross rental income from tenant occupancy of the Project as set forth in the Budget,

- b) The amount of all charges which are the legal obligation of tenants and which would otherwise be the obligation of Borrower, and
 - c) The fair rental value of any portion of the Project which is occupied by Borrower.
- 11. One year's business interruption insurance in an amount acceptable to Lender.
- 12. Collapse and Earthquake Coverage
- 13. Coastal & Other Wind Coverage
- 14. Extra Expense Coverage
- 15. Borrower's coverage is primary and non-contributory with any insurance or self-insurance carried by U.S. Bank National Association
- 16. Waiver of Subrogation against any party whose interest are covered in the policy
- 17. Demolition and Increased Cost of Construction

II. LIABILITY INSURANCE

An ORIGINAL Acord 25 Certificate of Liability Insurance naming the borrowing entity as an insured, providing coverage on an "occurrence" rather than a "claims made" basis and written by a carrier approved by the Lender, with a current A.M. Best's Insurance Guide Rating of at least A- IX. (which is authorized to do business in the state in which the property is located) that affirmatively includes the following:

- 1. Combined general liability policy limit of at least \$5,000,000.00 each occurrence and aggregate applying liability for Bodily Injury, Personal Injury, Property Damage, Contractual, Products and Completed Operations which combined limit may be satisfied by the limit afforded under the Commercial General Liability Policy, or by such Policy in combination with the limits afforded by an Umbrella or Excess Liability Policy (or policies); provided, the coverage afforded under any such Umbrella or Excess Liability Policy is at least as broad in all material respects as that afforded by the underlying Commercial General Liability Policy. Such policies must contain a Separations of Insureds / Severability of Interest clause.
- 2. No Exclusion for Acts of Terrorism (United States Certified Acts of Terrorism coverage – TRIPRA)
- 3. Aggregate limit to apply per location
- 4. Borrower's coverage is primary and non-contributory with any insurance or self-insurance carried by U.S. Bank National Association
- 5. Waiver of Subrogation against any party whose interest are covered in the policy

6. Additional Insured Endorsement naming Housing Authority of the City of San Diego and U.S. Bank National Association as an additional insureds with a 30-day notice to Lender in the event of cancellation, non-renewal or material change. A Severability of Interests provision should be included.

EXHIBIT M

GROUND LEASE RIDER

The following changes are made to the Loan Agreement which precedes this Rider:

A. The following definitions are added to Section 1:

“Event of Ground Lessee Bankruptcy” means either of the following actions taken by or with respect to Borrower, if the Loan is secured by an interest under a Ground Lease:

- (i) Borrower pursuant to or within the meaning of the Bankruptcy Code (A) commences a voluntary case, or (B) consents to the entry of an order for relief against it in an involuntary case.
- (ii) A court of competent jurisdiction enters an order or decree under the Bankruptcy Code that is for relief against Borrower in an involuntary case.

“Event of Ground Lessor Bankruptcy” means either of the following actions taken by or with respect to Ground Lessor:

- (i) Ground Lessor pursuant to or within the meaning of the Bankruptcy Code (A) commences a voluntary case, or (B) consents to the entry of an order for relief against it in an involuntary case.
- (ii) A court of competent jurisdiction enters an order or decree under the Bankruptcy Code that is for relief against Ground Lessor in an involuntary case.

“Fee Estate” means the fee simple estate of Ground Lessor in the Land.

“Ground Lease” means the Ground Lease dated as of _____, by and between Borrower, as Tenant, and the City of San Diego, as Landlord, pursuant to which Borrower leases the Land, as such lease may from time to time be amended, modified, supplemented, renewed and extended.

“Ground Lessee” means the lessee under the Ground Lease.

“Ground Lessee Default” means either of the following:

- (i) A default by Borrower in making any payment of Ground Rent, additional rent or other sum of money payable by Borrower to Ground Lessor under the Ground Lease on the date such payment is due and payable.
- (ii) A default by Borrower in performing or observing any of the terms, covenants or conditions of the Ground Lease other than the payments referred to in clause (i) required to be performed or observed by ground lessee.

“Ground Lessor” means the lessor from time to time under the Ground Lease.

“Ground Lessor Default” means a default by Ground Lessor in performing or observing any of the terms, covenants or conditions of the Ground Lease required to be performed or observed by Ground Lessor.

“Ground Rent” means the base or minimum rent payable in fixed monthly or other periodic installments under the Ground Lease.

“Leased Premises” means the Land and any other real property leased by Borrower pursuant to the Ground Lease, if applicable.

“Leasehold Estate” means Borrower's interest in the Land and any other real property leased by Borrower pursuant to the Ground Lease, if applicable, including all of the following:

- (i) All rights of Borrower to renew or extend the term of the Ground Lease.
- (ii) All amounts deposited by Borrower with Ground Lessor under the Ground Lease.
- (iii) Borrower's right or privilege to terminate, cancel, surrender, modify or amend the Ground Lease.
- (iv) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances with respect to the Ground Lease.

“Lender's Assumption Notice” is defined in Section 6. 19(e)(ii).

- B. The first sentence of Section 6.17 is deleted and replaced with the following and all references to the Project or Land in the balance of Section 6.17 shall be deemed references to the Leasehold Estate:

Borrower represents that each of the following is true:

- (a) The Ground Lease is in full force and effect in accordance with its terms.
- (b) Borrower has not waived, canceled or surrendered any of its rights under the Ground Lease.
- (c) Borrower is the sole owner of, and has good and marketable title to, the Leasehold Estate.
- (d) The Leased Premises and the Property are free and clear of all liens, encumbrances and other matters affecting title, other than the Permitted Encumbrances.
- (e) There is no existing Ground Lessee Default and no event has occurred which, with the passage of time or the giving of Notice, or both, would constitute a Ground Lessee Default.
- (f) To the best of Borrower's knowledge after due inquiry and investigation, there is no existing Ground Lessor Default and no event has occurred which, with the

passage of time or the giving of Notice, or both, would constitute a Ground Lessor Default.

C. Section 12.2(o) is hereby added:

- (o) a true and correct copy of each notice, demand, complaint or request from Ground Lessor under, or with respect to, the Ground Lease.

D. Section 12.7 is hereby added:

12.7 Notice of Renewal of Lease. Borrower shall deliver to Lender, notice of Borrower's intention to exercise each option to renew or extend the term of the Ground Lease at least 90 days, but not more than 150 days, before the last day on which the option may be timely exercised. If Borrower intends to renew or extend the term of the Ground Lease, it must deliver to Lender, together with the Notice of such decision, a copy of the notice of renewal or extension it delivers to Ground Lessor. If Borrower does not intend to renew or extend the term of the Ground Lease or, if Borrower fails to deliver its Notice of exercise of its option to renew or extend the term of the Ground Lease at least 90 days before the last day on which the option may be timely exercised, Lender will have the right, but not the obligation, to renew or extend the term of the Ground Lease for and on behalf of Borrower.

E. The following Section 6.22 is hereby added:

6.22 Borrower's Obligations to Comply with Ground Lease.

- (a) Borrower must pay the Ground Rent and all other sums of money due and payable at any time and from time to time under the Ground Lease as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Ground Lease for the payment of any such sum.
- (b) If the Ground Lease does not provide for a grace period for the payment of a sum of money, Borrower must make the payment on or before the date on which the payment becomes due and payable. Borrower will deliver evidence of the payment to Lender within 10 days after receipt of a written request from Lender for evidence of the payment.
- (c) Borrower must at all times fully perform, observe and comply with all other terms, covenants and conditions of the Ground Lease to be performed, observed or complied with by Borrower as Ground Lessee under the Ground Lease.

F. The following Section 6.23 is hereby added:

6.23 Covenants to Protect Leasehold Estate.

- (a) Borrower will not, without the written consent of Lender (which may be given or withheld by Lender in Lender's Discretion), take any of the following actions:
 - (i) Surrender the Leasehold Estate to Ground Lessor or terminate or cancel the Ground Lease.

- (ii) Amend, modify or change the Ground Lease, either orally or in writing, or waive any of Borrower's rights under the Ground Lease.
 - (iii) Subordinate the Ground Lease or the Leasehold Estate to any mortgage, deed of trust or other Lien on Ground Lessor's fee estate.
 - (iv) Except as otherwise provided in Sections 16.6(b) through 16.6(d), reject or assume the Ground Lease or assign the Leasehold Estate pursuant to Section 365(h) of the Bankruptcy Code.
- (b) Borrower absolutely and unconditionally transfers and assigns to Lender all of Borrower's rights to surrender, terminate, cancel, modify and change the Ground Lease, and any such surrender, termination, cancellation, modification or change made without the prior written consent of Lender will be void ab initio and have no legal effect.

G. The following Section 15.5 is hereby added:

15.5 Lender's Right to Cure Ground Lessee Defaults.

- (a) At any time after Lender receives notice of a Ground Lessee Default, Lender may (but will not be obligated to), make any payment, perform any obligation and take any other action Borrower would have the right to pay, perform or take under the Ground Lease which Lender deems necessary or desirable to cure the Ground Lessee Default.
- (b) After Lender receives notice of a Ground Lessee Default, Lender and its authorized agents will have the right at any time or from time to time to enter the Land and Improvements, or any part thereof, to such extent and as often as Lender, in Lender's discretion, deems necessary or desirable in order to cure the Ground Lessee Default, subject to the rights of the tenants and occupants of the Mortgaged Property.
- (c) Lender may exercise its rights under this Section immediately after receipt of notice of a Ground Lessee Default and without regard to any grace period provided to Borrower in the Ground Lease to cure the Ground Lessee Default.
- (d) For purposes of exercising its rights under this Section, Lender will be fully protected for any action taken or omitted to be taken by Lender, in good faith, in reliance on any written notice from Ground Lessor stating that a Ground Lessee Default has occurred and is continuing even though Borrower may question or deny the existence or nature of the Ground Lessee Default.
- (e) All expenditures made by Lender pursuant to this Section to cure a Ground Lessee Default will become an additional Obligation of Borrower.

H. The following Section 15.6 is hereby added:

15.6 Ground Lessee's Bankruptcy.

- (a) Borrower assigns to Lender, as additional security for the Indebtedness, Borrower's right to reject the Ground Lease under Section 365(h) of the Bankruptcy Code after the occurrence of an Event of Ground Lessee Bankruptcy, subject to Sections 15.6(b) through 15.6(d).
- (b) If, after the occurrence of an Event of Ground Lessee Bankruptcy, Borrower decides to reject the Ground Lease, Borrower shall give Lender Notice, at least 10 days in advance, of the date on which Borrower intends to apply to the court with jurisdiction respecting an Event of Ground Lessee Bankruptcy or an Event of Ground Lessor Bankruptcy for authority and permission to reject the Ground Lease. Lender shall have the right, but not the obligation, within 10 days after receipt of Borrower's notice, to deliver to Borrower a Notice ("Lender's Assumption Notice") in which (i) Lender demands that Borrower assume the Ground Lease and assign the Ground Lease to Lender, or its designee, in accordance with the Bankruptcy Code, and (ii) Lender agrees to cure or provide adequate assurance of prompt cure of all Ground Lessee Defaults reasonably susceptible of being cured by Lender and of future performance under the Ground Lease.
- (c) If Lender timely delivers Lender's Assumption Notice to Borrower, Borrower may not reject the Ground Lease and must, within 15 days after receipt of Lender's Assumption Notice, comply with the demand contained in clause (i) of Lender's Assumption Notice.
- (d) If Lender does not timely deliver Lender's Assumption Notice to Borrower, Borrower will have the right to reject the Ground Lease.

I. The following Section 15.7 is hereby added:

15.7 Ground Lessor's Bankruptcy.

- (a) If, after the occurrence of an Event of Ground Lessor Bankruptcy, Ground Lessor rejects the Ground Lease pursuant to Section 365(h) of the Bankruptcy Code, then each of the following requirements applies:
 - (1) Borrower, immediately after obtaining notice of the rejection, must deliver a copy of the notice to Lender.
 - (2) Borrower will not, without Lender's prior written consent (which may be given or withheld in Lender's sole and absolute discretion), elect to treat the Ground Lease as terminated pursuant to Section 365(h) or any other applicable provision of the Bankruptcy Code.
 - (3) The Security Instrument and the Lien created by the Security Instrument will extend to and encumber Borrower's retained rights under the Ground Lease that are appurtenant to the Leased Premises for the balance of the term of the Ground Lease and for any renewal or extension of those rights under the Ground Lease.
 - (4) Borrower transfers and assigns to Lender, as additional security for the Indebtedness, Borrower's rights, after Ground Lessor's rejection of the

Ground Lease, to treat the Ground Lease as terminated, and any termination of the Ground Lease made by Borrower without Lender's prior written consent will be void ab initio and have no legal effect.

- (b) Borrower transfers and assigns to Lender, as additional security for the Indebtedness, all of Borrower's rights to damages caused by Ground Lessor's rejection of the Ground Lease after the occurrence of an Event of Ground Lessor Bankruptcy and all of Borrower's rights to offset such damages against rent payable under the Ground Lease. As long as no Event of Default has occurred and is continuing, Lender agrees that it will not enforce its rights under the preceding sentence, but will permit Borrower to exercise such rights with Lender's prior written consent.
- (c) Any amounts received by Lender as damages arising out of Ground Lessor's rejection of the Ground Lease will be applied in the manner set forth in Section 2.14.

J. The following new Section 16.29 is hereby added:

16.29 New Lease. If (i) the Ground Lease is canceled or terminated for any reason before the natural expiration of its term, and (ii) Lender (or its designee) obtains from Ground Lessor a new lease in accordance with the term of the Ground Lease, then Borrower will have no right, title or interest in and to such new lease or the leasehold estate created by the new lease.

K. The following new Section 16.30 is hereby added:

16.30 Appointment of Lender as Borrower's Attorney-In-Fact.

- (a) Borrower makes, constitutes and appoints Lender as Borrower's attorney-in-fact, in Borrower's name, place and stead, with full power of substitution, to take all actions and to sign all documents and instruments which Lender, in Lender's Discretion, considers to be necessary or desirable to do each of the following:
 - (1) Prevent or cure a Ground Lessee Default.
 - (2) Perform or carry out any of Borrower's covenants.
 - (3) Renew or extend the term of the Ground Lease.
 - (4) Appoint arbitrators and conduct arbitration proceedings pursuant to the Ground Lease.
 - (5) Request and obtain estoppel certificates from Ground Lessor pursuant to the Ground Lease.
- (b) Borrower gives and grants to Lender, as Borrower's attorney-in-fact, full power and authority to do and perform every act and sign every document and instrument necessary and proper to be done in the exercise of the foregoing power as fully as Borrower might or could do, and Borrower ratifies and confirms all acts that Lender, as Borrower's attorney-in-fact, will lawfully do or cause to be done by virtue of this power of attorney. This power of attorney, being coupled with an interest, will be irrevocable as long as any of the Indebtedness remains unpaid.

EXHIBIT N

U.S. BANK RIDER

This Rider is attached to and made a part of the Loan Agreement evidencing and setting forth terms and conditions of a loan (the "Loan") in the amount of \$23,000,000 made by U.S. Bank National Association, a national banking association existing under the laws of the United States of America, whose mailing address is 4747 Executive Drive, 3rd Floor, San Diego, California 92121 (hereinafter called "Lender") to Broadway Upper Tower Associates, L.P., a California limited partnership (the "Borrower") for the acquisition, construction, development and permanent financing of 9th and Broadway Upper Tower Apartments (the "Project"). Words with initial capital letters used but not defined herein shall have the respective meanings assigned thereto in the Loan Agreement.

U.S. Bancorp Community Development Investment Corporation, a Minnesota corporation ///[and USB California Low-Income Tax Credit Fund, L.L.C., a Missouri limited liability company (collectively,)]/// "Investor Limited Partner") has been admitted to the Borrower as its limited partner upon the execution of a certain Amended and Restated Partnership Agreement (referred to herein as the "Partnership Agreement"), together with certain other documents relating thereto.

Upon satisfaction of certain conditions, including the delivery of this Rider, Investor Limited Partner will make certain equity contributions to Borrower pursuant to the terms and conditions set forth in the Partnership Agreement. Lender understands and acknowledges that Investor Limited Partner will be relying upon the information and agreements contained in this Rider.

The parties hereto agree that the following covenants, terms, and conditions shall be part of and shall modify or supplement each of the documents evidencing or securing the Loan (collectively, the "Loan Documents") while this Rider remains in full force and effect in accordance with its terms, and that in the event of any inconsistency or conflict between the covenants, terms and conditions of the Loan Documents and this Rider, the following covenants, terms and conditions shall control and prevail while this Rider remains in full force and effect in accordance with its terms.

1. **Non-recourse Obligation.** Following conversion of the Loan to the permanent phase in accordance with and subject to the conditions of the Loan Documents, the Loan shall be a nonrecourse obligation of Borrower subject only to Section _____. Except to the extent set forth in Section _____, at no time during such period shall Borrower's general partners have any liability under the Loan Documents. At no time shall Investor Limited Partner have any liability under the Loan Documents.

2. **General Partner Change.** Notwithstanding the general partner's pledge and assignment of its partnership interests made to benefit Lender under the Loan Documents, the withdrawal, removal, and/or replacement of the general partner of Borrower pursuant to the terms of the Partnership Agreement shall not, in and of itself, constitute a default under any of the Loan Documents, and any such actions shall not, in and of themselves, result in acceleration of the maturity of the Loan; provided that any substitute general partner shall be named only with prior, written notice to Lender; and provided further that any such substitute general partner shall be reasonably acceptable to Lender and be selected with reasonable promptness. In addition, at the end of the Compliance Period, the transfer by the Limited Partner of its interest in the Borrower to the General Partner (or an Affiliate thereof approved by Lender) (as defined in the Partnership Agreement) shall not constitute a default under the Loan Documents or accelerate the maturity of the Loan thereunder; provided that Lender shall be provided prior, written notice of the intention to effect such transfer; and provided further still that no other default or event of default shall then be existing under the Loan Documents or any of them. The Lender shall not charge a transfer fee in connection with such permitted transfers;

however, Lender shall be entitled to be reimbursed by Borrower for actual out of pocket costs and expenses related thereto, including without limitation, the reasonable fees and expenses of Lender's counsel.

3. **Transfer of Limited Partner Interests.** The interests of the Investor Limited Partner shall be freely transferable to any Affiliate (as defined in the Loan Documents) of the Investor Limited Partner without the consent or approval of but only with prior, written notice to Lender. The transfer, sale or assignment of limited partnership interests in Borrower to any entity in which the Investor Limited Partner or an Affiliate thereof, has an ownership interest, directly or indirectly, and manages directly or indirectly the affairs of such entity shall be a permitted transfer and shall not require the consent or approval of the Lender; provided however that in the event of non-payment of capital contribution obligations by the transferee pursuant to the terms and conditions of the Partnership Agreement, the Investor Limited Partner shall remain liable for the amount of such unpaid capital contribution obligations. The Lender shall not charge a transfer fee in connection with such permitted transfers; however, Lender shall be entitled to be reimbursed by Borrower for actual out of pocket costs and expenses related thereto, including without limitation, the reasonable fees and expenses of Lender's counsel.

4. **Replacement of Property Management Agent.** The Lender acknowledges that the Investor Limited Partner has the right to require removal of the property management agent pursuant to the Partnership Agreement and the Lender shall not unreasonably withhold its consent to such replacement of the property management agent; provided that in each instance, Lender shall be entitled to receive a collateral assignment of the property management agreement which shall contain a usual and customary subordination from the property management agent, all in form and substance satisfactory to Lender.

5. **Notice.** All notices to Borrower's Investor Limited Partner shall be sent to the following address unless otherwise directed by the Investor Limited Partner in writing:

U.S. Bancorp Community Development Investment Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, Missouri 63103
Attn.: Director of LIHTC Asset Management
Phone: (314) 335-2600

With a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102
Attention: Beth Ascher, Esq.

6. **Notice and Cure Rights.** Lender will give the Investor Limited Partner a copy of any written notice (at the Investor Limited Partner's address set forth above) that it gives to Borrower under the Loan Documents. Lender will allow the Investor Limited Partner ten (10) days after giving the Investor Limited Partner notice to cure a monetary default under the Loan Documents other than payments due at maturity. Lender will allow the Investor Limited Partner up to thirty (30) days after giving the Investor Limited Partner notice to cure any non-monetary default under the Loan Documents; provided however that, in the event a non-monetary default is not susceptible to being cured within such thirty (30) days, Lender will allow the Investor Limited Partner an additional period of up to ninety (90) days to cure such default provided the Investor Limited Partner has commenced to cure such default and

is diligently and continuously proceeding to cure such default through the end of such ninety (90) day period. If the Investor Limited Partner makes any such payment or otherwise offers cure of a default, Lender will accept or reject such action as curing such default on the same basis as if such payment or cure were made directly by Borrower.

Nothing in this Paragraph 6 shall reduce or otherwise limit the rights, remedies or other actions available to the Investor Limited Partner against the Borrower with respect to such default pursuant to the Partnership Agreement or otherwise, including, but not limited to, its rights of removal under Section 9.2 of the Partnership Agreement or its rights of repurchase under Section 5.13 of the Partnership Agreement; provided that, it is understood, acknowledged and agreed that any such actions against the Borrower, if taken by the Investor Limited Partner under the Partnership Agreement or otherwise, shall not, in and of themselves, constitute cure of any default under the Loan Documents or any of them. It is specifically agreed that the Lender shall not require the Investor Limited Partner to cure any default of Borrower which is not susceptible of cure by Investor Limited Partner, but in such event, Lender shall have all of its rights by reason of such uncured default of Borrower.

7. Insurance and Condemnation Proceeds. Lender will permit insurance and condemnation proceeds to be used to rebuild and restore the Project provided that (i) sufficient funds are provided to effectively rebuild the Project to a lawful multifamily housing complex substantially similar to the Project as it existed prior to event of casualty or condemnation then giving rise to such proceeds and the need to rebuild or restore the Project; provided that in the event the Project cannot be so rebuilt or restored then the applicable provisions of the Loan Documents relating to reappraisals, remargining and prepaying (in whole or in part) the Loan shall be employed to determine to what extent, if any, the Loan is to be remargined and prepaid, whether as a result of decreased value, decreased Project revenues, reduced cash flows or otherwise but giving credit for business interruption insurance, if any; (ii) Lender shall hold all such proceeds and disburse them based on such reasonable conditions as Lender may impose and (iii) if rebuilding or restoring the Project is reasonably expected to exceed the maturity date of the Loan, Lender will use its best efforts to extend the loan maturity date to the anticipated date of completion of restoration or rebuilding of the Project.

Notwithstanding the foregoing, any such proceeds not to be used to pay costs of rebuilding and restoring the Project (in the event the Project cannot be rebuilt or restored as described in (i) of this Paragraph 7) shall be used to remargin and prepay the Loan and to pay costs associated therewith, including without limitation, any prepayment premium, breakfunding, yield maintenance, termination or breakage fees or other similar amounts, to the extent such amounts are actually owed pursuant to the Loan Documents.

The provisions of this Paragraph 7 shall not apply during such time as an Event of Default has occurred under the Loan Documents and has not been cured pursuant the terms thereof.

8. Disbursement Requirements. The parties agree that any equity contributions made by the Investor Limited Partner following the conversion of the Loan to the permanent phase in accordance with and subject to the conditions of the Loan Documents shall not be required to be disbursed through the Lender.

9. Debt Service Coverage Ratio. Notwithstanding anything to the contrary in the Loan Documents, the Borrower's failure to maintain any Debt Service Coverage requirement required under the Loan Documents shall not, in any such case, and in and of itself, constitute an event of default under the Loan Documents unless the Debt Service Coverage Ratio with respect to the Project falls below 1.00 to 1.00 ("Debt Service Coverage Failure") for a period of three (3) consecutive Fiscal Years; so long as (a) all payments in respect of the Loan and under the Loan Documents are paid in full when due; (b) if there

is a Debt Service Coverage Failure for any Fiscal Year, Borrower agrees to prepare and submit to Lender within forty-five (45) days after written notice of such event a corrective action plan describing (i) the underlying cause for such Debt Service Coverage Failure and (ii) the steps that will be taken and diligently pursued to ensure that the required Debt Service Coverage Ratio with respect to the Project will be met for the then current Fiscal Year. Notwithstanding anything to the contrary in the Loan Documents during the above-described consecutive three-year period, the Borrower shall not be required to make any deposit with respect to any Debt Service Coverage Failure. However, an Event of Default shall occur if there is a Debt Service Coverage Failure for three consecutive Fiscal Years.

In addition, notwithstanding anything to the contrary in the Loan Documents (including in any provision relating to Debt Service Coverage Ratio requirements in excess of breakeven operations), the Borrower shall be entitled to make the distributions as described in Exhibit A-5 of the Partnership Agreement at all times during the Loan term.

10. **Termination of Assignments.** Notwithstanding anything to the contrary in the Loan Documents, any assignment, pledge or security interest held by the Lender in the (a) interest of the Borrower's general partner, (b) capital contributions of the Borrower and/or (c) development services agreement (including any developer fee payable thereunder) shall terminate immediately upon the conversion of the Loan to the permanent phase in accordance with and subject to the conditions of the Loan Documents without further action on the part of the Borrower or any other party.

11. **Equity Pay-in Schedule.** Notwithstanding anything to the contrary in the Loan Documents, any and all terms of the Loan Documents relating to the requirement of the Investor Limited Partner to make capital contributions to the Borrower (including as set forth in any assignment of capital contributions to Lender) shall be expressly subject to the terms and conditions of the Partnership Agreement, and specifically, to the terms and conditions required to be met by the Borrower in connection with each equity contribution as set forth in the Partnership Agreement.

12. **Investor Limited Partner Approvals.** Notwithstanding anything to the contrary in the Loan Documents, the prior written approval of the Investor Limited Partner shall be required for any withdrawal from or disbursement of funds from the replacement reserve account, operating reserve account, or any other reserve account pledged to Lender and maintained with Lender; provided that notwithstanding the foregoing, no prior written approval of the Investor Limited Partner shall be required during such time as (a) a monetary default has occurred and is continuing under the terms of the Loan Documents, and (b) real estate tax payments or require insurance premium payments with respect to the Project remain unpaid to the extent required pursuant to the Loan Documents.

13. **Amendments.** Any amendment of the Partnership Agreement that (a) does not, in the reasonable discretion of the Investor Limited Partner, materially and adversely affect the Lender, (b) solely effects a transfer of the Investor Limited Partner's interest which is permitted pursuant to Section 3 hereof or (c) memorializes an upward or downward credit adjuster which is contemplated under the terms and conditions of the Partnership Agreement at closing, shall, in any such case, not require the consent or approval of the Lender, however, the Lender shall be provided notice and copies of any such amendments. Notwithstanding anything to the contrary in the Loan Documents, Lender shall not amend or waive any term or provision of the Loan Documents or consent to a departure therefrom by Borrower in any manner which adversely affects Investor Limited Partner's rights under the Partnership Agreement, without the prior written consent of Investor Limited Partner, which consent shall not be unreasonably withheld, conditioned or delayed; provided that notwithstanding the foregoing, no prior written approval of the Investor Limited Partner shall be required during the continuance of an Event of Default under the Loan Documents.

14. **Termination of Rider.** This Rider shall terminate and be of no further force or effect, without further action on the part of any party, if (a) U.S. Bancorp Community Development Corporation or an Affiliate thereof (collectively, “USBCDC”) is (a) no longer the Investor Limited Partner in the Borrower and (ii) is not the general partner, managing member, or non-member manager of the Investor Limited Partner in the Borrower or (b) the entity (or an Affiliate thereof) which holds more than 50% of the ownership interest in USBCDC is no longer the same entity (or an Affiliate thereof) which holds more than 50% of the ownership interest in Lender.

15. **Counterparts.** This Rider may be executed in counterparts.

16. **Intended Beneficiaries.** The parties intend that the USBCDC and the Lender are the sole beneficiaries of this Rider, and that no person other than USBCDC and the Lender may directly or indirectly rely upon or enforce the provisions of this Rider, whether as a third party beneficiary or otherwise.

17. **Defaults.** Notwithstanding anything to the contrary in the Loan Documents, an Event of Default in the Partnership Agreement shall not constitute an Event of Default under the Loan Documents unless the Investor Limited Partner has provided the Lender with written notice thereof and such written notice further states that the Investor Limited Partner has not waived (and will not waive) such Event of Default.

18. **Loan Balancing.** Notwithstanding anything to the contrary in the Loan Documents, the Investor Limited Partner may, but shall at no time during the term of the Loan, be required to make any advance of cash to the Borrower to pay Project costs to bring the Loan In Balance (as defined in the Loan Documents), or otherwise in any way remedy the failure of the Loan to be In Balance.

[Remainder of page left blank intentionally.]

IN WITNESS WHEREOF, the undersigned duly authorized signatories of the respective parties have caused this Rider to be executed and delivered as of _____, 20____.

BROADWAY UPPER TOWER ASSOCIATES, L.P.,
a California limited partnership

By: Broadway Upper Tower LLC,
a California limited liability company,
its general partner

By: BRIDGE Housing Corporation-
Southern California,
a California nonprofit public benefit
corporation, its sole member/manager

By: _____
Kimberly McKay
Vice President

U.S. BANK NATIONAL ASSOCIATION,
a national banking association

By:

Paul Shipstead
Vice President

U.S. BANCORP COMMUNITY DEVELOPMENT
CORPORATION,
a Minnesota corporation

By: _____
Name: _____
Title: _____

USB CALIFORNIA LOW-INCOME TAX
CREDIT FUND, L.L.C.,
a Missouri limited liability company

By: _____
Name: _____
Title: _____

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Quint & Thimmig LLP
575 Market Street, Suite 3600
San Francisco, CA 94105-2874
Attention: Paul J. Thimmig, Esq.

**REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

by and between the

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO,
as Issuer**

and

**BROADWAY UPPER TOWER ASSOCIATES, L.P.,
a California limited partnership,
as Borrower**

dated as of December 1, 2012

**relating to:
\$23,000,000 aggregate principal amount of
Housing Authority of the City of San Diego
Multifamily Housing Revenue Bonds
(9th and Broadway Apartments), 2012 Series C
consisting of:
\$1,595,000 2012 Series C-1 (Convertible Term Loan), and
\$21,405,000 2012 Series C-2 (Construction Loan)**

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REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Regulatory Agreement"), dated as of December 1, 2012, is by and between the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO, a public body, corporate and politic, duly organized and existing under the laws of the State of California (together with any successor to its rights, duties and obligations, the "Issuer"), and BROADWAY UPPER TOWER ASSOCIATES, L.P., a California limited partnership (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the "Borrower").

R E C I T A L S :

WHEREAS, the Legislature of the State of California enacted Chapter 1 of Part 2 of Division 24 (commencing with Section 34200) of the Health and Safety Code (the "Act") to authorize housing authorities to, among other actions, issue revenue bonds to finance the acquisition and construction of multifamily rental housing for families and individuals of low income; and

WHEREAS, the Issuer is a public body (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 July 10, 2012, the Issuer adopted its Resolution No. 1559 (the "Inducement Resolution") authorizing the issuance of revenue bonds under the Act in connection with the financing of the acquisition and construction of a multifamily residential rental housing project to be located in the City of San Diego, California, constituting floors eight through seventeen of a building to be constructed on the site described in Exhibit A hereto and known as 9th and Broadway Apartments (the "Project") which housing project shall be subject to the terms and provisions hereof; and

WHEREAS, in furtherance of the purposes of the Act and the Inducement Resolution and as a part of the Issuer's plan of financing residential housing, the Issuer has issued its revenue bonds designated "Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-1 (Convertible Term Loan)" and "Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-2 (Construction Loan)," in the aggregate principal amount of \$23,000,000 (collectively, the "Bonds") pursuant to the terms of an Indenture of even date herewith (the "Indenture"), between the Issuer and U.S. Bank National Association, as Bondowner Representative (the "Bondowner Representative"), the proceeds of which Bonds were loaned to the Borrower (the "Loan") pursuant to the terms of a Construction and Convertible Term Loan Agreement, dated as of December __, 2012 (the "Loan Agreement"), among the Bondowner Representative, the Issuer and the Borrower; and

WHEREAS, the Issuer hereby certifies that all things necessary to make the Bonds, when issued as provided in the Indenture, the valid, binding and limited obligations of the Issuer 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 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 constructed, used and operated in accordance with the Code and the Act, the Issuer and the Borrower have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition and construction of the Project.

A G R E E M E N T :

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and for other good and valuable consideration the receipt and sufficiency of which hereby are acknowledged, the Issuer and the Borrower hereby agree as follows:

Section 1. Definitions and Interpretation. Capitalized terms used herein shall have the respective meanings assigned to them in this Section 1 unless the context in which they are used clearly requires otherwise:

"Act" Chapter 1 of Part 2 of Division 24 (commencing with Section 34200) of the Health and Safety Code of the State of California.

"Adjusted Income" The adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) as calculated in the manner prescribed pursuant to Section 8 of the United States Housing Act of 1937, or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act.

"Administrator" The San Diego Housing Commission, or its designee, or any successor Administrator appointed by the Issuer.

"Affiliated Party" (a) a Person whose relationship with the Borrower would result in a disallowance of losses under Section 267 or 707(b) of the Code, (b) 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), (c) 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, and (d) 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" The Primary Metropolitan Statistical Area in which the Project is located, as promulgated by HUD.

"Authorized Borrower Representative" Any person who, at any time and from time to time, is designated as the Borrower's authorized representative by written certificate furnished to the Issuer and the Bondowner Representative containing the specimen signature of such person and signed on behalf of the Borrower by the Vice President of the member/manager of the general partner of the Borrower, which certificate may designate an alternate or alternates.

"Bond Counsel" (a) Quint & Thimmig LLP, or (b) any other attorney or firm of attorneys of nationally recognized standing in matters pertaining to the tax status of interest on bonds issued by states and their political subdivisions, who is selected by the Issuer.

"Bond Issuance Date" Has the same meaning as the term "Closing Date" herein.

"Bonds" Collectively, the Issuer's Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-1 (Term Loan) and the Issuer's Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-2 (Construction Loan), all as issued under the Indenture.

"Bondowner Representative" The entity acting as such under the Indenture and the Loan Agreement, initially being U.S. Bank National Association.

"Borrower" Broadway Upper Tower Associates, L.P., a California limited partnership, and its permitted successors and assigns as owner of the Project.

"CDLAC" The California Debt Limit Allocation Committee.

"CDLAC Resolution" Resolution No. 12-89 adopted by CDLAC on September 26, 2012, with respect to the Project.

"Certificate of Continuing Program Compliance" The certificate with respect to the Project to be filed by the Borrower with the Issuer and the Bondowner Representative pursuant to Section 4(f) hereof, which shall be substantially in the form attached to this Regulatory Agreement as Exhibit D or in such other form as may be provided by the Administrator to the Borrower.

"City" The City of San Diego, California.

"Closing Date" has the meaning given to such term in the Indenture.

"Code" has the meaning given such term in the Indenture.

"Completion Certificate" The certificate of completion of the acquisition and construction of the Project required to be delivered to the Issuer and the Bondowner Representative by the Borrower pursuant to Section 2(e) of this Regulatory Agreement, which shall be substantially in the form attached to this Regulatory Agreement as Exhibit C.

"Completion Date" The date of the completion of the acquisition and construction of the Project, as that date shall be certified as provided in Section 2(e) of this Regulatory Agreement.

"Costs of Issuance" shall have the meaning given to the term "Issuance Costs" in the Indenture.

"County" The County of San Diego, California.

"Deed of Trust" has the meaning given to such term in the Indenture.

"Facilities" The buildings, structures and other improvements now or hereafter located on the Site, and all fixtures and other property owned by the Borrower and now or hereafter located on, or used in connection with, such buildings, structures and other improvements.

"Housing Act" The United States Housing Act of 1937, as amended, or its successor.

"HUD" The United States Department of Housing and Urban Development.

"Income Certification" An Income Computation and Certification in the form attached as Exhibit B to this Regulatory Agreement or in such other form as may be provided by the Administrator to the Borrower.

"Indenture" The Indenture, dated as of December 1, 2012, between the Issuer and the Bondowner Representative, as amended, supplemented or restated from time to time.

"Inducement Date" July 10, 2012, the date of adoption of the Inducement Resolution.

"Inducement Resolution" Resolution No. 1559 adopted by the Board of Commissioners of the Issuer on the Inducement Date indicating the Issuer's intention to issue tax-exempt obligations to finance the acquisition and construction by the Borrower of the Project.

"Investor Limited Partner" means U.S. Bancorp Community Development Corporation, a Minnesota corporation and its affiliates, successors and assigns as a limited partner of the Borrower.

"Issuer" The Housing Authority of the City of San Diego, and any successor thereto.

"Loan" The loan made to the Borrower pursuant to the terms of the Loan Agreement to provide for the financing for a portion of the costs of the acquisition and construction by the Borrower of the Project.

"Loan Agreement" The Construction and Convertible Term Loan Agreement, dated as of December __, 2012, by and among the Issuer, the Bondowner Representative and the Borrower, as amended, supplemented or restated from time to time.

"Low Income Tenants" Individuals or families (i) with an Adjusted Income that does not exceed sixty percent (60%) of the Median Income for the Area with adjustments for family size; and (ii) with an income that does not exceed the qualifying limits for low income families as established and amended from time to time pursuant to Section 8 of the Housing Act, or who otherwise qualify as lower income households as defined by Section 50079.5 of the California Health and Safety Code. If all the occupants of a unit are students (as defined under Section 151(c)(4) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not qualify as Low Income Tenants.

"Low Income Units" The units in the Project required to be rented to, or held available for occupancy by, Low Income Tenants pursuant to Sections 4(a) and 4C(a) hereof.

"Median Income for the Area" The median income for the Area as most recently determined by the Secretary of the Treasury, adjusted for household size (which determination is required by Code Section 142(d)(2)(B) to be consistent with determinations of area median gross income under Section 8 of the United States Housing Act of 1937, or, if such program is terminated, under such program as in effect immediately before such termination).

"Partnership Agreement" means the [First Amended and Restated Agreement of Limited Partnership] of the Borrower dated as of December __, 2012, as it may be amended from time to time.

"Project" The Facilities and the Borrower's fee or leasehold interest in the Site.

"Project Costs" 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 and construction of the Project, whether paid or incurred prior to or after 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 cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractors' and Borrower's overhead and supervisors' fees and costs directly allocable to 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 interest accrued during construction and prior to the Completion Date.

"Qualified Project Costs" Project Costs that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general Federal income tax principles and in accordance with United States Treasury Regulations §1.103-8(a)(1), provided, however, that only such portion of interest accrued during acquisition and construction of the Project shall be eligible to be a Qualified Project Cost as is so capitalizable and 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 construction of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed by an Affiliate (whether as a general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out-of-pocket costs incurred by such Affiliate in constructing 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 which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the acquisition 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 Inducement Date or the date of issue of the Bonds, and (iv) if the Project Costs were previously paid and are to be reimbursed with proceeds of the Bonds, such costs were (A) costs of issuance of the Bonds, (B) preliminary capital expenditures (within the meaning of United States Treasury Regulations §1.139-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction of the Project that do not exceed twenty percent (20%) of the issue price of the Bonds (as defined in United States Treasury Regulations §1.148-1), or (C) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (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). Notwithstanding the foregoing, *"Qualified Project Costs"* shall not include costs related to the acquisition or construction of any office or commercial space not functionally related to the dwelling units in the Project.

"Qualified Project Period" The period beginning on the first day on which at least ten percent (10%) of the dwelling units in the Project are first occupied, and ending on the later of (a) the first day on which no tax exempt private activity bond issued with respect to the Project is outstanding, (b) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates, (c) the date on which the Bonds are paid in full or extinguished, or (d) the date which is 55 years after the Bond Issuance Date (which 55 years may be reduced to no less than 15 years following the date on which at least fifty percent (50%) of units in the Project are first occupied, upon receipt of the written consents of the Issuer and CDLAC to such shortened term which consents may be given in the sole

discretion of the Issuer and CDLAC, respectively). For purposes of clause (a), the term “private activity bond” has the meaning contemplated in Section 142(d)(2)(A)(ii) of the Code.

“Registered Owner” or “Bondowner” or “owner” When used with respect to the Bonds, the owner of a Bond then outstanding under an Indenture, as shown on the registration books maintained by the Bondowner Representative pursuant to the Indenture.

“Regulations” The income tax regulations promulgated by the United States Department of the Treasury pursuant to the Code from time to time.

“Regulatory Agreement” This Regulatory Agreement and Declaration of Restrictive Covenants, together with any amendments or supplements hereto, or restatements hereof.

“Site” The parcel or parcels of real property described in Exhibit “A”, which is attached hereto and by this reference incorporated herein, and all rights and appurtenances thereunto appertaining.

“State” State of California.

“Subordinate Loan Documents” Has the meaning given to such term in the Loan Agreement.

“Tax Certificate” The Certificate As To Arbitrage, dated the date of issuance of the Bonds, executed and delivered by the Issuer and the Borrower, as amended or supplemented from time to time.

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

“Very Low Income Tenants” Individuals or families whose income does not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the Housing Act, or who otherwise qualify as very low income households as defined by Section 50105 of the California Health and Safety Code.

“Very Low Income Units” The dwelling units in the Project designated for occupancy by Very Low Income Tenants pursuant to Section 4C(a) of this Regulatory Agreement.

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.

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

Section 2. Acquisition and Construction of the Project. The Borrower hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The acquisition and construction by the Borrower of the Project occurred after the date which was 60 days prior to the Inducement Date. The Borrower has incurred, or will incur within six months after the Bond Issuance Date, a substantial binding obligation to commence the construction of the Project, pursuant to which the Borrower is or will be obligated to expend at least five percent (5%) of the authorized maximum principal amount of the Bonds.

(b) The Borrower's reasonable expectations respecting the total cost of the acquisition and construction of the Project and the disbursement of Bond proceeds are accurately set forth in the Borrower's Certificate Regarding Use of Proceeds, which has been delivered to the Issuer on the Bond Issuance Date.

(c) The Borrower will proceed with due diligence to complete the acquisition and construction of the Project and expects to expend the full authorized amount of the Loan for Project Costs prior to the date which is three (3) years after the Closing Date.

(d) The statements made in the various certificates delivered by the Borrower to the Issuer or the Bondowner Representative on the Bond Issuance Date are true and correct.

(e) On the Completion Date, the Borrower will submit to the Issuer and the Bondowner Representative a duly executed and completed Completion Certificate, and such other documents or such other form or forms as the Administrator shall require.

(f) Money on deposit in any fund or account in connection with the Bonds or otherwise pledged as security for the repayment of the Loan (including but not limited to one or more of the accounts referred to in Article 10 of the Loan Agreement), whether or not such money was derived from other sources, shall not be used by or under the direction of the Borrower, in a manner which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and the Borrower specifically agrees that the investment of money in any such fund shall be restricted as may be necessary to prevent the Bonds from being "arbitrage bonds" under the Code.

(g) 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, as applicable.

(h) On or as of the date on which fifty percent (50%) of the units in the Project are first occupied to tenants, the Borrower will submit to the Issuer and the Bondowner

Representative a duly executed and completed Certificate as to Commencement of Qualified Project Period in the form of Exhibit E hereto.

(i) On or concurrently with the final draw by the Borrower of amounts representing proceeds of the Bonds, the expenditure of such draw when added to all previous disbursements representing proceeds of the Bonds will result in not less than 97 percent of all disbursements of Bond proceeds having been used to pay or reimburse the Borrower for Qualified Project Costs and less than 25 percent of all disbursements having been used to pay for the acquisition of land or any interest therein.

(j) All of the proceeds of the Bonds and earnings from the investment of such proceeds will be used to pay Project Costs; and no more than two percent (2%) of the proceeds of the Bonds will be used to pay costs of issuance of the Bonds, within the meaning of Section 147(g) of the Code.

(k) The Borrower shall file the annual certification required by Section 142(d)(7) of the Code with the Internal Revenue Service, and shall provide a copy thereof to the Issuer, the Administrator and the Bondowner Representative.

(l) No portion of the proceeds of the Bonds shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises. No portion of the proceeds of the Bonds shall be used for an office unless the office is located on the premises of the facilities constituting the Project and unless 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 will not 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 of the interest on the Bonds 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.

(n) The Borrower will take such action or actions as may be necessary, in the written opinion of Bond Counsel filed with the Issuer and the Borrower, to comply fully with the Act, the Code 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 to the extent necessary to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(o) In accordance with Section 147(b) of the Code, the average maturity of the Bonds does not exceed 120% of the average reasonably expected economic life of the facilities being financed by the Bonds.

(p) The Borrower hereby incorporates herein, as if set forth in full herein, each of the representations, covenants and warranties of the Borrower contained in the Tax Certificate and Sections 8.9, 12.10, 12.11, 12.12 and 12.13 of the Loan Agreement relating to the Project.

(q) The Borrower agrees to obtain a written report from an independent firm with experience in calculating excess investment earnings for purposes of Section 148(f) of the Code, not less than once on or about each five year anniversary of the Closing

Date and within thirty (30) days of the date the Bonds have been paid in full, determining that either (i) no excess investment earnings subject to rebate to the federal government under Section 148(f) of the Code have arisen with respect to the Bonds in the prior five-year period (or, with respect to the final such report following the repayment of the Bonds, have arisen since the last five-year report); or (ii) excess investment earnings have so arisen during the prior five-year period (or, with respect to the final such report following the repayment of the Bonds, have arisen since the last five-year report), and specifying the amount thereof that needs to be rebated to the federal government and the date by which such amount needs to be so rebated. The Borrower shall provide a copy of each report prepared in accordance with the preceding sentence to the Issuer, each time within one week of its receipt of the same from the independent firm that prepared the respective report.

(r) The Borrower shall provide sufficient funds to pay, on the Closing Date, the Costs of Issuance.

(s) 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, and with all applicable requirements of Section 65863.11 of the California Government Code.

(t) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions contemplated by this Regulatory Agreement; that it is familiar with the provisions of all of the documents and instruments relating to the Bonds to which it is a party or of which it is a beneficiary; that it understands the financial and legal risks inherent in such transactions; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner except to issue the Bonds in order to provide funds to assist the Borrower in constructing the Project.

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 and constructed 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.

(c) None of the dwelling units in the Project will at any time be utilized on a transient basis (e.g., subject to leases that are less than 30 days duration), 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.

(d) No part of the Project will at any time be owned 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 shall not take any steps in connection with a conversion of the Project to a condominium ownership except with the prior written approving opinion of Bond Counsel that the interest on the Bonds will not become includable in gross income of the Bondowners for federal income tax purposes as a result thereof.

(e) All of the dwelling units in the Project will be available for rental on a continuous basis to members of the general public and the Borrower will not give preference to any particular class or group in renting the dwelling units in the Project, except (i) units be set aside for resident manager or other administrative use as described in Section 3(g) below, (ii) to the extent that dwelling units are required to be made available to Low Income Tenants or Very Low Income Tenants hereunder, (iii) as required in connection with any allocation of Federal tax credits for the Project, (iv) as required under the Subordinate Loan Documents.

(f) The Site consists of a parcel or parcels that are contiguous except for the interposition of a road, street, public trail or stream, and all of the 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 the Project shall be occupied by the Borrower. Notwithstanding the foregoing, this subsection shall not be construed to prohibit occupancy of dwelling units by one or more resident managers or maintenance personnel any of whom may be the Borrower; provided that the number of such managers or maintenance personnel is not unreasonable given industry standards in the area for the number of dwelling units in the Project.

(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 Bond Issuance Date which prevents the Issuer from enforcing the requirements of the Code and 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 Bonds or, if permitted under the provisions of the Loan Agreement and the Deed of Trust, 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, creed, color, sex, source of income (e.g. TANF, SSI), 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 construction, operation and management of the Project.

(j) The Borrower will not sell dwelling units within the Project.

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

Section 4. Low Income Tenants. Pursuant to the requirements of Section 142(d) of the Code, subject to the provisions of Section 4(i) below, the Borrower hereby represents, as of the date hereof, and warrants, covenants and agrees as follows:

(a) During the Qualified Project Period:

(i) Not less than forty percent (40%) of the completed dwelling units in the Project shall be designated by the Borrower (which designation may be revised from time to time at its sole option so long as the requirements of this Regulatory Agreement are met on a continuous basis throughout the Qualified Project Period) as Low Income Units and shall be occupied, or held vacant and available for occupancy, by Low Income Tenants (the Low Income Units and the Very Low Income Units required by Section 4C(a) may be included as Low Income Units for purposes of this Section 4(a)(i)).

(ii) Low Income Units shall remain available on a priority basis for occupancy by Low Income Tenants. 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 any residential unit in the Project is 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 redetermined. 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 form 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 Issuer and by 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 pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a credit report or similar search, (4) obtain an income verification from the applicant's current employer, (5) obtain an income verification from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies, or (6) if the applicant is unemployed and does not have an income tax return, obtain another form of independent verification.

Copies of the most recent Income Certifications for Low Income Tenants commencing or continuing occupancy of a Low Income Unit shall be attached to the reports to be filed with the Administrator pursuant to Section 4(f) hereof.

(c) On or about the first anniversary date of Bond Issuance Date, and on or about each one year 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 applicable 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 a Low Income Tenant, and the Borrower will rent the next available unit of comparable or smaller size to one or more Low Income Tenants, and will not rent any such unit to tenants who are not Low Income Tenants. No tenant in the Project shall be denied continued occupancy in the Project because, after occupancy, such tenant's household income increases such that the income for such household will no longer qualify such household as Low Income Tenants. An "available" unit is one that is unoccupied by a tenant. The Borrower shall notify any Low Income Tenant, of any determination that they no longer qualify as a Low Income Tenant, and of any rent increase as a result thereof not less than sixty (60) days prior to any such rent increases.

(d) 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, and continuing for so long as is required under the Code, the Annual Certification of a Residential Rental Project (or such other form as required by the Secretary of the Treasury) and shall provide a copy of such certification to the Issuer, the Bondowner Representative and the Administrator, if any, so as to comply with Section 142(d)(7) of the Code.

(e) The Borrower will maintain complete and accurate records pertaining to the Low Income Units, and will permit (upon reasonable notice and during business hours) any duly authorized representative of the Administrator, the Issuer, the Bondowner Representative, the Department of the Treasury or the 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 will prepare and submit to the Issuer, the Bondowner Representative and the Administrator, if any, within ten days after each January 1, April 1, July 1 and October 1 during the Qualified Project Period, a Certificate of Continuing Program Compliance executed by the Borrower stating (i) the percentage of the dwelling units of the Project which were occupied or deemed occupied, pursuant to subsection (a) hereof, by Low Income Tenants during such period, and (ii) that either (A) no unremedied default has occurred under this Regulatory Agreement or (B) a default has occurred, in which event the certificate shall describe the nature of the default and set forth the measures being taken by the Borrower to remedy such default.

(g) The Borrower shall accept as tenants on the same basis as all other prospective tenants, including 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 and the Borrower shall not refuse to rent to any Low Income Tenant on the basis of household size as long as such household size does not exceed three persons for a one bedroom unit, five persons for a two bedroom unit, seven persons for a three bedroom unit and nine persons for a four

bedroom unit. 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 Section 8 certificate or voucher holders in excess of private market practice, or in excess of amounts charged by the Borrower to unassisted tenants. The Borrower shall not discriminate against Low Income Tenant applicants on the basis of source of income (e.g., 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 a Low Income Tenant can show that the same percentage or more of the tenant'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 Low Income Tenant in determining qualification for occupancy of the Low Income Unit and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease. Each lease may 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.

Section 4A. Additional Requirements of the Issuer. In addition to the requirements set forth above and to the extent not prohibited thereby, the Borrower hereby agrees to comply with each of the requirements of the Issuer set forth in this Section 4A, as follows:

(a) Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Indenture, throughout the term of this Regulatory Agreement, the Borrower shall continue to pay to the Issuer its administrative fee described in the second succeeding sentence, and to the Issuer and to the Bondowner Representative reasonable compensation for any services rendered by either of them hereunder and reimbursement for all expenses reasonably incurred by either of them in connection therewith. The Borrower shall pay to the Issuer on the Closing Date the initial financing fee of the Issuer in the amount of \$_____. Thereafter, the annual administrative fee of the Issuer shall be paid by the Borrower as follows: (i) every twelve (12) months commencing December 1, 2013 in the amount of 0.125% of the maximum principal amount of the Bonds (being \$28,750.00) until the Conversion Date (as defined in the Loan Agreement), and (ii) on the first December 1 following the Conversion Date, and on each December 1 thereafter for the remaining term of this Regulatory Agreement, in each case in an amount equal to the lesser of 0.125% of the principal amount of the Bonds then outstanding or \$_____. The fees of the Issuer referenced in this Section shall in no way limit amounts payable by the Borrower under Section 7 hereof, or otherwise arising in connection with the Issuer's or Bondowner Representative's enforcement of the provisions of this Regulatory Agreement, but the Issuer does agree to compensate any third party Administrator appointed by it from its annual administrative fees for the ordinary duties of the Administrator hereunder. In addition to the foregoing, the Borrower shall pay to the Issuer, promptly following a written demand from the Issuer to the Borrower therefore, any out-of-pocket expenses of the Issuer incurred in connection with the administration of any of the Bond Documents (as defined in the Loan Agreement) or the Loan 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 other than (i) by means of refunding bonds issued by

the Issuer to refund the Bonds, or (ii) in connection with a foreclosure or deed in lieu of foreclosure, and transfer of title to the Project other than to the Borrower or any party related to the Borrower; the Issuer's annual fee for the remainder of the term of this Regulatory Agreement, at the option of the Issuer, shall be paid by the Borrower at the time of the prepayment of the last of the Bonds and shall be a lump sum amount equal to the present value (based on a discount rate equal to the yield on the Bonds, as determined by the Issuer at the time of prepayment) of the Issuer's fee for the number of years remaining under this Regulatory Agreement, calculated based on the principal amount of Bonds outstanding immediately preceding such prepayment.

Notwithstanding the foregoing provisions of this Section 4A(a), in no event shall the fees payable to the Issuer under this Section 4A(a) exceed any limitation imposed by the Code in respect of bonds issued under Section 142(d) of the Code.

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

(c) The Borrower shall submit to the Administrator, (i) not later than the forty-fifth (45th) day after the close of each calendar year, a statistical report to the Administrator in the form set forth as Exhibit F to this Regulatory Agreement, or such other form as may be prescribed by the Administrator or the Issuer, setting forth the information called for therein, and (ii) within fifteen (15) Business Days (as defined in the Indenture) after receipt of a written request, any other information or completed forms requested by the Issuer in order to comply with reporting requirements of the Internal Revenue Service or the State.

(d) The covenants and conditions of this Regulatory Agreement shall be binding upon successors in interest of the Borrower.

(e) Each of the requirements of Sections 3, 4, 4B and 4C hereof is hereby incorporated as a specific requirement of the Issuer, whether or not required by State or federal law, and shall be in force for the Qualified Project Period.

(f) The Borrower acknowledges that the Issuer may act as Administrator itself or may appoint an Administrator other than the initial Administrator to administer this Regulatory Agreement and to monitor performance by the Borrower of the terms, provisions and requirements hereof. In such event, the Borrower shall comply with any request by the Issuer to deliver to any such Administrator, in addition to or instead of the Issuer, any reports, notices or other documents required to be delivered pursuant hereto, and to make the Project and the books and records with respect thereto available for inspection by the Administrator as an agent of the Issuer. The fees and charges of the Administrator, if any, shall be the responsibility of the Issuer.

(g) The Very Low Income Units and the Low Income Units (i) shall have characteristics comparable to all other units in the Project with the same number of bedrooms, including with respect to floor area and amenities, (ii) shall be distributed throughout the Project, and (iii) shall have the same access to Project facilities as all other units in the Project.

(h) In accordance with Section 3.1 of the Issuer's Policy for Multifamily Mortgage Revenue Bond Program, as revised on October 6, 2008, notwithstanding the termination of the Qualified Project Period or the provisions of Section 3(m) hereof, the rent of "in-place" Very Low Income Tenants at the conclusion of the Qualified Project Period will continue to be governed by the applicable affordability restrictions in Section 4, so long as those tenants continue to live in the Project.

(i) The Borrower will comply with the following post issuance compliance procedures of the Issuer:

(i) At the completion of the construction of the Project, the Borrower shall provide to the Administrator a certification from the Borrower's architect for the Project to the effect that the Project includes all design elements that formed the basis for CDLAC adopting the CDLAC Resolution (including but not limited to sustainable building methods and/or energy efficiency elements).

(ii) At or before completion of the construction work on the Project, and in any event prior to the Conversion Date (as defined in the Loan Agreement), the Borrower shall provide the Administrator with final actual sources and uses of funds for the acquisition and construction of the Project, and shall confirm to the staff of the Administrator that such sources and uses of funds complies with all applicable State and federal legal requirements, including those set forth in the Tax Certificate (as defined in the Indenture).

(iii) Annually, on or before January 1 of each year until the expiration of the Qualified Project Period, the Borrower shall provide a written certificate of compliance to the Administrator to confirm that the Project meets the terms and conditions stated in the CDLAC Resolution. The Administrator may request that the Borrower provide evidence of compliance by the Project with the terms and conditions of the CDLAC Resolution, including supporting documentation as necessary in the reasonable discretion of the Administrator, and the Borrower shall timely and completely comply with any such request.

(iv) The Administrator shall have the right to approve any voluntary change in ownership (A) that results in a transfer of 50% or more of the total equity interests in the Borrower, or (B) that results in a transfer of any general partner or managing member interest in the Borrower. Such approval to transfer ownership shall be at the reasonable discretion of the Administrator, and shall be in addition to any applicable requirements set forth in this Regulatory Agreement, the Loan Agreement or the Deed of Trust. The Administrator may review management practices of the proposed transferee's current and previously owned properties, if any. Any proposed transferee (including individuals with an ownership interest) whose currently-owned properties have been found by the Administrator to have material deficiencies that have not been resolved within the time frame prescribed by the City, the Issuer, the Administrator or other local government authority, may not assume ownership of the Project. The Administrator may initiate additional inspections, at the proposed transferee's request, to verify findings. Notwithstanding the foregoing, (A) transfers of or in the limited partner interests of the Borrower, (B) the removal and replacement of the general partner of the Borrower in accordance with the terms of the Partnership Agreement, (C) the first transfer of the Project following a foreclosure under the Deed of Trust or acceptance of a deed in lieu of such foreclosure, or (D) any transfer referred to in the last sentence of Section 10 of this Regulatory Agreement, shall not require the prior

consent of the Administrator. The Borrower agrees that it will provide the Administrator with notice of any such transfer within thirty (30) days thereof.

(v) The Borrower shall provide the Administrator's staff with all documentation necessary, in the sole discretion of Administrator's staff, to confirm the Borrower's and the Project's compliance with federal tax laws as set forth in the Tax Certificate (as defined in the Indenture), the Loan Agreement and this Regulatory Agreement, including the requirements of Section 8.9 of the Loan Agreement and Section 2(q) of this Regulatory Agreement regarding rebate compliance.

Any of the foregoing requirements of the Issuer may be expressly waived by the Issuer in writing, but (i) no waiver by the Issuer of any requirement of this Section 4A shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement except to the extent the Issuer has received an opinion of Bond Counsel that any such provision is not required by the Act and may be waived without adversely affecting the exclusion from gross income of interest on the Bonds for federal income tax purposes; and (ii) any requirement of this Section 4A shall be void and of no force and effect if the Issuer and the Borrower receive a written opinion of Bond Counsel to the effect that compliance with any such requirement would cause interest on the Bonds to cease to be Tax-Exempt or to the effect that compliance with such requirement would be in conflict with the Act or any other State or federal law.

Section 4B. Additional CDLAC Requirements. The Borrower agrees to comply with the more stringent of the provisions set forth in this Section 4B and the requirements set forth in Sections 3, 4, 4A and 4C.

(a) The Project and the financing thereof shall be in compliance with the conditions set forth in Exhibit A to the CDLAC Resolution (the "CDLAC Conditions"), which conditions are incorporated herein by reference and are made a part hereof.

(b) The Borrower shall prepare and submit to CDLAC (with a copy to the Issuer), at the times required by CDLAC, (i) a Certificate of Compliance in the form required by CDLAC, executed by an authorized representative of the Borrower; and (b) such other form or forms as may be required by CDLAC related to the Borrower's compliance with the CDLAC Conditions.

The Borrower will promptly provide any information requested by the Issuer in order for the Issuer to complete any Annual Applicant Public Benefit and On-going Compliance Self Certification or otherwise to comply with any regulations of CDLAC applicable to the CDLAC Resolution, the CDLAC Conditions or the Project, including but not limited to Section 5144 of Article 11 of the CDLAC regulations.

The requirements of this Section 4B may be waived in writing by CDLAC in its sole and absolute discretion, without the consent of the Issuer or the Bondowner Representative. CDLAC and the Issuer each shall have the right (but not the obligation) to enforce the CDLAC Conditions and to pursue an action for specific performance or other available remedy at law or in equity, provided that any such action or remedy shall not materially adversely affect the interests and rights of the owner of the Notes or the owners of the Bonds.

Section 4C. Additional Requirements of the Act. In addition to the requirements set forth in Sections 4, 4A and 4B above, so long as any Bonds are outstanding the Borrower hereby agrees to comply with each of the requirements of the Act applicable to the Project. Without limiting the foregoing, the Borrower agrees as follows:

(a) Not less than 20% of the total number of units in the Project shall be available for occupancy by Low Income Tenants as required by subsection (c)(1)(A) of Section

34312.3 of the Act, and one-half of which units shall be made available to Very Low Income Tenants. If a unit in the Project is rented to a Low Income Tenant or a Very Low Income Tenant as necessary to satisfy this Section 4C(a), it may be counted towards the requirements of Section 4(a)(i).

(b) The rental payments made by the Low Income Tenants occupying units pursuant to Section 4C.(a) (including, with respect to the units in the Project that are not the subject of a Section 8 project based housing voucher, as an additional requirement of the Issuer, any supplemental rental assistance from the State, the federal government or any other public agency to those tenants or on behalf of those units; but excluding such amounts for all other units) shall not exceed 30% of an amount equal to 60% of the Median Income for the Area, adjusted for family size as determined pursuant to Section 8 of the Housing Act, less a reasonable deduction (as determined by the Administrator) for utilities so long as utilities (gas, electric, water and sewer, trash removal) are paid by the tenant. For units reserved for Low Income Tenants as required by subsection (a) of this Section, the base rents shall be adjusted for household size, and in making such adjustments it shall be assumed that one person will occupy a studio unit, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, four persons will occupy a three-bedroom unit, and five persons will occupy a four-bedroom unit.

(c) The rental payments made by the Very Low Income Tenants occupying units pursuant to Section 4C.(a) (including, with respect to the units in the Project that are not the subject of a Section 8 project based housing voucher, as an additional requirement of the Issuer, any supplemental rental assistance from the State, the federal government or any other public agency to those tenants or on behalf of those units; but excluding such amounts for all other units) shall not exceed 30% of an amount equal to 50% of the Median Income for the Area, adjusted for family size as determined pursuant to Section 8 of the Housing Act, less a reasonable deduction (as determined by the Administrator) for utilities so long as utilities (gas, electric, water and sewer, trash removal) are paid by the tenant. For units reserved for Very Low Income Tenants as required by subsection (a) of this Section, the base rents shall be adjusted for household size, and in making such adjustments it shall be assumed that one person will occupy a studio unit, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, four persons will occupy a three-bedroom unit, and five persons will occupy a four-bedroom unit.

(d) The Borrower shall accept as tenants, on the same basis as all other prospective tenants, Low Income Tenants and Very Low Income Tenants who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act. The Borrower shall not permit any selection criteria to be applied to Section 8 certificate or voucher holders that is more burdensome than the criteria applied to all other prospective tenants.

(e) No tenant residing in a Low Income Unit or a Very Low Income Unit shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's Adjusted Income increases to exceed the qualifying limit for Low Income Tenants or Very Low Income Tenants, as applicable. However, should the Adjusted Income of a tenant residing in a Low Income Unit or a Very Low Income Unit increase to exceed the applicable qualifying limit, the next available unit must be rented to (or held vacant and available for immediate occupancy by) a Low Income Tenant or a Very Low Income Tenant, as applicable. Until such next available unit is rented to a qualified tenant, the former Low Income Tenant or Very Low Income Tenant who has ceased to qualify as such shall be deemed to continue to be a Low Income Tenant or Very Low

Income Tenant, as applicable, for purposes of the requirement of Section 4C.(a) hereof until the rental of an available unit of comparable or smaller size to a tenant who is not a Low Income Tenant or Very Low Income Tenant, as applicable. (A Very Low Income Tenant whose Adjusted Income has increased may nevertheless continue to be a Low Income Tenant.)

(f) The Low Income Units and Very Low Income Units shall remain occupied by, or shall be made available for occupancy by, Low Income Tenants and Very Low Income Tenants, respectively, until the Bonds are retired.

(g) Following the expiration or termination of the Qualified Project Period, except in the event of foreclosure and repayment in full of the Bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units required by Section 4C.(a) to be reserved for occupancy by Low Income Tenants and Very Low Income Tenants shall remain available to any eligible household occupying a Low Income Unit or a Very Low Income Unit at the date of expiration or termination, at a rent not greater than the amount required by Section 4C.(b) or (c), as applicable, prior to the date of termination or expiration, until the earliest of any of the following occur:

(i) The household's income exceeds 140 percent of the maximum eligible income required by Section 4C.(a) for the Low Income Unit or Very Low Income Unit, as applicable.

(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 which 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) Thirty (30) years after the commencement of the Qualified Project Period.

(iv) The Borrower pays the relocation assistance and benefits to such Low Income Tenant or Very Low Income Tenant, as applicable, as provided in Section 7264(b) of the Government Code of the State of California.

Section 5. Tax Status of the Bonds; Opinions of Bond Counsel. The Borrower and the Issuer 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 of the interest on the Bonds 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 Issuer, the Bondowner Representative and the Borrower, 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 Bonds; and

(c) it will file of record such documents and take such other steps as are necessary, in the written opinion of Bond Counsel filed with the Issuer, the Bondowner Representative and the Borrower, 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.

The Borrower hereby covenants to include the requirements and restrictions contained in this Regulatory Agreement in any document transferring any interest in the Project to another person (other than in tenant leases or any document granting a security interest to the Bondowner Representative and, provided, however, that no such assignment shall be required in connection with the transfer of the Project to the Bondowner Representative or to the Bondholders by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan) 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.

Notwithstanding any other provision of this Regulatory Agreement, whenever an opinion of Bond Counsel is required or requested to be delivered hereunder after the Closing Date, the Bondowner Representative, the Issuer and the Borrower shall accept (unless otherwise directed in writing by the Issuer) an opinion of Bond Counsel in such form and with such disclaimers as may be required so that such opinion will not be treated as a "covered opinion" for purposes of the Treasury Department regulations governing practice before the Internal Revenue Service (Circular 230), 31 CFR Part 10.

Section 6. Modification of Special Tax Covenants. The Borrower and the Issuer 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 Issuer, the Bondowner Representative and the Borrower, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement which must be complied with in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements.

(b) The Borrower and the Issuer 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 each of the Borrower and the Issuer hereby appoints the Bondowner Representative as its true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Issuer, as is applicable, any such document or instrument (in such form as may be approved in writing by Bond Counsel) if either the Borrower or the Issuer defaults in the performance of its obligations under this subsection (b); provided, however, that the Bondowner Representative shall take no action under this subsection (b) without first notifying the Borrower or the Issuer, or both of them, as is applicable, unless directed in writing by the Issuer or the Borrower and without first providing the Borrower or the Issuer, or both, as is applicable, an opportunity to comply with the requirements of this Section 6.

Section 7. Indemnification. The Borrower hereby covenants and agrees that it shall hold harmless, defend and indemnify the Issuer, the Administrator (if not the same as the Issuer), the City of San Diego, the Bondowner Representative and their respective officers, commissioners, directors, officials and employees (individually and collectively, "Issuer Indemnatee") from and against all claims, liabilities, obligations, damages, penalties, litigation, costs, charges and expenses (including without limitation reasonable attorneys, accounting, consulting, engineering, and other fees and expenses), imposed on, incurred by or asserted against the Issuer Indemnatee and arising from, resulting from, or in any way connected with or related to (i) any cause whatsoever in connection with the approval by the Issuer of financing for the Project or the making or administration of the Loan (including any audit or investigation by the Internal Revenue Service or the Securities and Exchange Commission related to the Bonds or the Project); (ii) any act or omission of the Borrower or any of its agents, servants, employees or licensees, in connection with the Loan or the Project; (iii) the construction, operation, use, occupancy, maintenance, or ownership of the Project (including compliance with laws, ordinances and rules and regulations of public authorities relating thereto); (iv) the Bondowner Representative's acceptance or administration of the trusts under and/or the Issuer's execution of the Indenture, the Loan Agreement or this Regulatory Agreement, or the exercise or performance by Issuer Indemnatee of any powers or duties under the Indenture, the Loan Agreement or this Regulatory Agreement; and (v) the issuance of any Bonds or any certifications or representations of the Borrower made in connection therewith and the carrying out of any of the transactions contemplated by the Bonds and this Regulatory Agreement; provided, however, that this provision shall not require the Borrower to indemnify the Issuer Indemnatee from any claims, costs, fees, expenses or liabilities arising solely from the gross negligence or the willful misconduct of the Issuer Indemnatee. The indemnity provided in this Section shall include within its scope, without limitation: any and all active or passive negligence on the part of Issuer Indemnatee (other than gross negligence or the willful misconduct) or any claims of combined negligence on the part of Issuer Indemnatee and Borrower, to the extent Issuer Indemnatee is not prohibited by law from contracting for indemnification against such active, passive or combined negligent conduct; any claims for wrongful death; any vicarious liability imposed upon the Issuer Indemnatee; and any liability imposed by law on the Issuer Indemnatee on a strict liability theory or pursuant to any local, state or federal environmental statute, regulation or law. It is the express intention of the parties that Borrower shall indemnify Issuer Indemnatee against any and all such liability hereunder. The exception to the Borrower's obligation to indemnify is expressly limited to the Borrower's obligation to indemnify the Issuer Indemnatee and does not relieve the Borrower of its obligation to defend the Issuer Indemnatee against such claims whether such claims are made in conjunction with other claims or by themselves.

The Borrower also shall pay and discharge and shall indemnify and hold harmless the Issuer Indemnatee from any taxes (including, without limitation, any ad valorem taxes and sales taxes), assessments, impositions, fees and other charges in respect of the Project.

In the event that any action or proceeding is brought against the Issuer Indemnatee 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 the payment of all expenses related thereto. The Issuer Indemnatee shall have the right to retain separate defense counsel at the sole cost and expense of Borrower, upon Issuer Indemnatee's reasonable determination that such separate counsel is necessary to avoid a conflict of interest or to provide Issuer Indemnatee, in Issuer Indemnatee's sole discretion, with an adequate defense to any such action or proceeding.

In addition thereto, the Borrower will pay upon demand all of the fees and expenses paid or incurred by any Issuer Indemnatee in enforcing the provisions hereof.

The provisions of this Section 7 shall survive the resignation or removal of the Bondowner Representative, the repayment of the Loan and the retirement of the Bonds.

Nothing contained in this Section 7 shall cause the obligation of the Borrower to pay principal and interest on the Loan or amounts owing with respect to the Bonds to be a recourse obligation of the Borrower.

The obligations of the Borrower under this Section are independent of any other contractual obligation of the Borrower to provide indemnity to the Issuer or otherwise, 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 Issuer shall be entitled simultaneously to seek indemnity under this Section and any other provision under which it is entitled to indemnity.

Section 8. Consideration. The Issuer has issued the Bonds to provide funds to finance and refinance, as applicable, 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 Issuer, 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 Issuer 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 the interest on the Bonds and the exemption from California personal income taxation of the interest on the Bonds. In performing its duties and obligations hereunder, the Issuer may rely upon statements and certificates of the Borrower and of the Low Income Tenants and the Very Low Income Tenants, and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Issuer may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer hereunder in good faith and in conformity with such opinion. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Issuer shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Issuer or the Bondowner Representative by the Borrower with respect to the occurrence or absence of a default.

Section 10. Sale or Transfer of the Project. 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 Issuer, which consent shall not be unreasonably withheld and the President and Chief Executive Officer of the San Diego Housing Commission may give such consent without further action by the Board of Commissioners of the Issuer, and receipt by the Issuer of (i) evidence satisfactory to the Issuer that the Borrower's purchaser or transferee has assumed in writing and in full, the Borrower's duties and obligations under this Regulatory Agreement and the Borrower has complied with any applicable requirements of the Loan Agreement, (ii) an opinion of counsel of 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, (iii) evidence acceptable to the Issuer that either (A) the purchaser or assignee has experience in the ownership, operation and management of rental housing projects such as the Project without any record of material violations of discrimination restrictions or other state or federal laws or

regulations applicable to such projects, or (B) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subparagraph (A) above or if the purchaser or assignee does not have management experience, the Issuer may, in its discretion and at the expense of the Borrower, cause the Administrator to provide on-site training in program compliance if the Issuer determines such training is necessary, such training to be at the expense of the Borrower (iv) evidence that no event of default exists under any of this Regulatory Agreement, the Loan Agreement or any document related to the Loan, and payment of all fees and expenses of the Issuer and the Bondowner Representative due under any of such documents are current, and (v) an opinion of Bond Counsel to the effect that such transfer will not, in itself, cause interest on any Bond to become includable in the gross income of the recipients thereof for federal income tax purposes. In addition, any such transfer shall require the consent of the Bondowner Representative, to the extent required pursuant to the Loan Agreement. 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. Nothing in this Section 10 shall affect any provision of any other document or instrument between the Borrower and any other party which requires the Borrower to obtain the prior written consent of such other party in order to sell, transfer or otherwise dispose of the Project. 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 Issuer and the Bondowner Representative a notice in writing explaining the nature of the proposed transfer.

Notwithstanding anything contained in this Section 10 to the contrary, neither the consent of the Issuer nor the delivery of items (i) through (v) of the preceding paragraph shall be required in the case of (a) the execution, delivery and recordation by Borrower of any mortgage or deed of trust encumbering all or any part of the Project, or (b) a foreclosure or deed in lieu of foreclosure by the Bondowner Representative whereby the Bondowner Representative or a purchaser at a foreclosure sale becomes the owner of the Project, and nothing contained in this Section 10 shall otherwise affect the right of the Bondowner Representative or a purchaser at a foreclosure sale to foreclose on the Project or to accept a deed in lieu of foreclosure. In addition, the provisions of this Section 10 shall not apply to (i) the replacement of the initial managing general partner of the Borrower by an entity formed by or that is a subsidiary of the initial managing general partner of the Borrower, (ii) the withdrawal of any partner of the Borrower from its partnership, (iii) any transfer of limited partnership interest in the Borrower, (iv) any transfer of interests in any limited partner of the Borrower, (v) any transfer of interests pursuant to the provisions of the Borrower's partnership agreement as in effect from time to time, including but not limited to the removal of a general partner of the Borrower and replacement thereof by an affiliate of a limited partner of the Borrower, or (vi) with prior written notice to the Issuer, a transfer of the Project to the Managing General Partner of the Borrower or to an entity formed by or that is an affiliate or subsidiary of the Managing General Partner of the Borrower.

Section 11. Term. Subject to the following 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, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds, and expiration, termination or cancellation of the Indenture and the Loan Agreement. 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 upon agreement by the Issuer and the Borrower subject to compliance with any of the provisions contained in this Regulatory Agreement only if there shall have been received by the Issuer an opinion of Bond Counsel that such termination will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds or the

exemption from State personal income taxation of the interest on the Bonds. The Borrower shall provide notice of any termination of this Regulatory Agreement to the Issuer and the Bondowner Representative.

The terms of this Regulatory Agreement to the contrary notwithstanding, this Regulatory Agreement, and all and several of the terms hereof, shall terminate and be of no further force and effect in the event of (i)(a) a foreclosure of the lien of a deed of trust on the Project or delivery of a deed in lieu of foreclosure or comparable conversion of the Loan whereby a third party shall take possession of the Project or (b) involuntary non-compliance 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 date hereof which prevents the Issuer and the Bondowner Representative from enforcing the provisions hereof or condemnation or a similar event, and (ii) in each case, the payment in full and retirement of the Bonds (or extinguishment in accordance with the terms of the Indenture) theretofore or within a reasonable period thereafter; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure or the delivery of a deed in lieu of foreclosure or a similar event, the Borrower or any related person to it (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for Federal income tax purposes. Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

Section 12. Covenants to Run With the Land. The Borrower hereby subjects the Project (including its interests in the Site) to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Issuer 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. No breach of any of the provisions of this Regulatory Agreement shall defeat or render invalid the lien of a mortgage made in good faith and for value encumbering the Site or any interest therein.

Section 13. Burden and Benefit. The Issuer 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 Issuer 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 Very Low Income Tenants and Low Income Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Bonds were issued.

Section 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 Site.

Section 15. Enforcement. If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in this Regulatory Agreement,

and if such default remains uncured for a period of thirty (30) days after notice thereof shall have been given by the Issuer or the Bondowner Representative to the Borrower (provided, however, that the Issuer may at its sole option extend such period if the Borrower provides the Issuer 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 Bonds), then the Issuer or the Bondowner Representative, acting on behalf of the Issuer, may (but shall not be obligated to) declare an "Event of Default" to have occurred hereunder, and, subject to the provisions of the Indenture, the Loan Agreement and the Deed of Trust, may (but shall not be obligated to) take any one or more of the following steps:

- (a) 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 Issuer or the Bondowner Representative hereunder;

- (b) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project;

- (c) 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

- (d) under, and only as may be permitted by and in any event subject to the express provisions of the Loan Agreement, declare an Event of Default under and as defined in the Loan Agreement to have occurred, and take such other actions as are specified in, and in any event subject to the provisions of, the Loan Agreement and, as applicable, the Indenture.

Any limited partner of the Borrower shall have the right but not the obligation to cure any Event of Default, and the Issuer and the Bondowner Representative agree to accept any cure tendered by any such limited partner on behalf of the Borrower within any cure period specified above.

The Borrower hereby agrees that specific enforcement of the Borrower's agreements contained herein is the only means by which the Issuer 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 hereunder.

The Bondowner Representative shall have the right (but no obligation), in accordance with this Section 15 and the provisions of the Indenture, without the consent or approval of the Issuer, to exercise any or all of the rights or remedies of the Issuer hereunder; provided that prior to taking any such act the Bondowner Representative shall give the Issuer written notice of its intended action. All reasonable fees, costs and expenses of the Bondowner Representative or the Issuer incurred in taking any action pursuant to this Section 15 shall be the sole responsibility of the Borrower.

After the Indenture has been discharged, or if the Bondowner Representative fails to act under this Section 15, the Issuer 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 Bondowner Representative.

Notwithstanding anything to the contrary contained herein, the Bondowner Representative and the Issuer hereby agree that any cure of any default made or tendered by

one or more of Borrower's limited partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

Section 16. Recording and Filing. (a) The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto, to be recorded and filed, prior to the recording of the Deed of Trust and the disbursement of the Loan, in the real property records of the County and in such other places as the Issuer or the Bondowner Representative may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

(b) The Borrower and the Issuer will file of record such other documents and take such other steps as are necessary, in the written opinion of Bond Counsel filed with the Issuer and the Bondowner Representative, in order to insure that the requirements and restrictions of this Regulatory Agreement will be binding upon all owners of the Project.

(c) The Borrower hereby covenants to include or reference the requirements and restrictions contained in this Regulatory Agreement in any documents transferring any interest in the Project to another person (other than in any document granting a security interest to the Bondowner Representative and, provided, however, that no such assignment shall be required in connection with the transfer of the Project to the Bondowner Representative or to the Bondholders by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan) to the end that such transferee has notice of, and is bound by, such restrictions, and to obtain the agreement from any transferee to abide by all requirements and restrictions of this Regulatory Agreement.

Section 17. Payment of Attorneys' Fees. In case any action at law or in equity, including an action for declaratory relief, is brought against the Borrower to enforce the provisions of this Regulatory Agreement, the Borrower agrees to pay reasonable attorney's fees and other reasonable expenses incurred by the Issuer, the Bondowner Representative and/or the Administrator in connection with such action.

Section 18. Governing Law. This Regulatory Agreement shall be governed by the laws of the State. Except as expressly provided herein and in the Loan Agreement, the Bondowner Representative's rights, duties and obligations hereunder are governed in their entirety by the terms and provisions of the Indenture.

Section 19. Amendments. Except as provided in Section 6(a) hereof, this Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County. The parties hereto acknowledge that for so long as the Bonds are outstanding the owners of the Bonds are third party beneficiaries to this Regulatory Agreement.

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 second day following the date on which the same have been mailed by first class mail, postage prepaid, addressed as follows:

The Issuer:

Housing Authority of the City of San Diego
1122 Broadway, Suite 300
San Diego, California 92101
Attention: Executive Director

The Bondowner Representative: U.S. Bank National Association
4747 Executive Drive, 3rd Floor
San Diego, California 92121
Attention: Loan Administrator

with a copy to: U.S. Bank National Association
4747 Executive Drive, 3rd Floor
San Diego, California 92121
Attention: Paul Shipstead

The Borrower: Broadway Upper Tower Associates, L.P.
c/o BRIDGE Housing Corporation
345 Spear Street, Suite 700
San Francisco, California 94105
Attention: Rebecca Hlebasko

with a copy to: U.S. Bancorp Community Development
Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MORMCD
St. Louis, Missouri 63102
Attention: LIHTC Asset Management

and a copy to: Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102
Attention: Jill Goldstein, Esq.

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.

A copy of each notice hereunder to the Issuer or the Administrator shall also be given to the Bondowner Representative.

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. The Bondowner Representative. The Bondowner Representative shall be entitled, but shall have no duty, to act with respect to enforcement of the Borrower's performance hereunder. The Bondowner Representative, either on its own behalf or as the agent of and on behalf of the Issuer, may, in its sole discretion, act hereunder and any act required to be performed by the Issuer as herein provided shall be deemed taken if such act is performed by the Bondowner Representative. In connection with any such performance, all provisions of the Indenture relating to the rights, privileges, powers and protections of the Bondowner Representative shall apply with equal force and effect to all actions taken (or omitted to be taken) by the Bondowner Representative in connection with this Regulatory Agreement. Neither the Bondowner Representative nor any of its officers, directors or employees shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith except for its or their own negligence or willful misconduct. The

Bondowner Representative may consult with legal counsel selected by it (the reasonable fees of which counsel shall be paid by the Borrower) and any action taken or suffered by it reasonably and in good faith in accordance with the opinion of such counsel shall be full justification and protection to it. The Bondowner Representative may at all times assume compliance with this Regulatory Agreement unless otherwise notified in writing by or on behalf of the Issuer, or unless it has actual knowledge of noncompliance.

After the date on which no Bonds remain outstanding, as provided in the Indenture, the Bondowner Representative shall no longer have any duties or responsibilities under this Regulatory Agreement and all references to the Bondowner Representative in this Regulatory Agreement shall be deemed references to the Issuer.

Section 24. Limited Liability. All obligations of the Issuer incurred hereunder shall be limited obligations, payable solely and only from Bond proceeds and other amounts derived by the Issuer from the Loan or otherwise under the Loan Agreement.

Section 25. Third Party Beneficiary. The parties to this Regulatory Agreement recognize and agree that the terms of this Regulatory Agreement and the enforcement of those terms are entered into for the benefit of various parties, including the Bondowner Representative, CDLAC and the Administrator. The Bondowner Representative, CDLAC and the Administrator shall accordingly have contractual rights in this Regulatory Agreement, and CDLAC shall be entitled (but not obligated) to enforce the terms of the CDLAC Resolution, and the Administrator shall be entitled (but not obligated) to enforce the terms of Section 4A(i) hereof, each in accordance with Section 15 hereof. In addition, the Bondowner Representative, CDLAC and the Administrator are intended to be and shall be third-party beneficiaries of this Regulatory Agreement. Notwithstanding the above, any enforcement of the terms and provisions of the CDLAC Resolution by CDLAC or of Section 4A(i) hereof by the Administrator shall be subject to the terms, conditions and limitations otherwise applicable to the enforcement of remedies under this Regulatory Agreement and shall not adversely affect the interests of the owners of the Bonds.

Section 26. No Interference or Impairment of Loan. Notwithstanding anything herein to the contrary, (i) the occurrence of an event of default under this Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Loan Documents (as defined in the Loan Agreement), except as may be otherwise specified in the Loan Documents, and shall not impair, defeat or render invalid the lien of the Deed of Trust and (ii) neither the Issuer nor any other person shall:

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

- (b) interfere with or attempt to interfere with or influence the exercise by the Bondowner Representative of any of its rights under the Loan Agreement, including, without limitation, the Bondowner Representative remedial rights under the Loan Documents upon the occurrence of an event of default by the Borrower under the Loan; or

- (c) upon the occurrence of an event of default under the Loan Agreement, take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Loan, it being understood and agreed that the Issuer may not, without the prior written consent of the Bondowner Representative, on account of any default under this Regulatory Agreement, seek, in any manner, to cause the Loan to become due and

payable, to enforce the Loan Agreement or to foreclose on the Deed of Trust or cause the Bondowner Representative to redeem the Bonds or to declare the principal of the Bonds and the interest accrued on the Bonds to be immediately due and payable, or cause the Bondowner Representative to foreclose or take any other action under the Bond Documents (as defined in the Loan Agreement), the Loan Documents or any other documents which action would or could have the effect of achieving any one or more of the foregoing actions, events or results.

No person other than the Bondowner Representative shall have the right to declare the principal balance of the Loan to be immediately due and payable or to initiate foreclosure or other like action.

The foregoing prohibitions and limitations shall not in any way limit the rights of the Issuer to specifically enforce this Regulatory Agreement or to seek injunctive relief in order to provide for the operation of the Project in accordance with the requirements of the Code and the Act, and shall not be construed to limit the rights of the Issuer to enforce its rights against the Borrower under the indemnification provisions of the Regulatory Agreement provided that the prosecution of a claim for indemnification shall not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

Notwithstanding anything in this Regulatory Agreement to the contrary, any right of the Issuer to take any action at law or in equity to enforce the obligations, covenants and agreements for the Borrower under this Regulatory Agreement which includes any claim for indemnification, damages or any other monetary obligation sought to be enforced shall be subject and subordinate in all respects to the repayment in full of all amounts due on the Loan under the Loan Documents.

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 the Issuer shall not have the right to enforce such obligations other than directly against the Borrower pursuant to Section 15 of this Regulatory Agreement.

No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior owner unless specifically assumed in writing by a subsequent owner, including, but not limited to, any payment or indemnification obligation. Such obligations shall be personal to the person who was the owner of the Project at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned by the default or breach even after such person ceases to be the owner of the Project.

Notwithstanding the above, the provisions of this Section 26 shall not in any way limit or alter the Issuer's authority, power or activities as a governmental regulatory agency pursuant to applicable laws and regulations relating to the Project or otherwise.

Section 27. Limitation on Borrower Liability. Notwithstanding any other provision or obligation to the contrary contained in this Regulatory Agreement, and except for the Borrower's obligations under Section 7 of this Regulatory Agreement (which are not subject to the provisions and limitations of this Section 27) (i) the liability of the Borrower under this Regulatory Agreement to any person or entity, including, but not limited to, the Bondowner Representative or the Issuer and their successors and assigns, is limited to the Borrower's interest in the Project, the revenues therefrom, including the amount held in the funds and

accounts created under the Indenture and the Loan Documents (as defined in the Loan Agreement), or any rights of the Borrower under any guarantees relating to the Project, and such persons and entities shall look exclusively thereto, or to such other security as may from time to time be given for the payment of obligations arising out of this Regulatory Agreement or any other agreement securing the obligations of the Borrower under this Regulatory Agreement; and (ii) from and after the date of this Regulatory Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Regulatory Agreement, any agreement pertaining to any Project or any other agreement securing the Borrower's obligations under this Regulatory Agreement), shall be rendered against the Borrower, the assets of the Borrower (other than the Borrower's interest in the Project, this Regulatory Agreement, amounts held in the funds and accounts created under the Indenture and the Loan Documents (as defined in the Loan Agreement), any rights of the Borrower under the Indenture and the Loan Documents (as defined in the Loan Agreement) or any other documents relating to the Bonds or any rights of the Borrower under any guarantees relating to the Project), its partners, members, successors, transferees or assigns and each their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Regulatory Agreement and the Indenture or any agreement securing the obligations of the Borrower under this Regulatory Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding.

Section 28. Conflict With Other Affordability Agreements. In the event of any conflict between the provisions of this Regulatory Agreement and any of the agreements referenced in Section 3(e)(iii) or (iv) hereof, the provisions providing for the most affordable units, with the most affordability, in the Project shall prevail, so long as at all times the requirements of Section 2, 3, 4, 4A and 4C of this Regulatory Agreement are in any event satisfied. Notwithstanding the foregoing, a breach or default under any of the agreements referenced in Section 3(e)(iii) or (iv) hereof shall not, in itself, constitute a breach or a default under this Regulatory Agreement.

IN WITNESS WHEREOF, the Issuer 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

BROADWAY UPPER TOWER ASSOCIATES,
L.P., a California limited partnership

By: Broadway Upper Tower LLC, a California
limited liability company,
its general partner

By: BRIDGE Housing Corporation-
Southern California, a California
nonprofit public benefit corporation,
its sole member/manager

By: _____
Kimberly McKay,
Vice President

[Signature page to Regulatory Agreement and Declaration of Restrictive Covenants
for 9th and Broadway Apartments]

19048.25:J11880

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2012 before me, _____, Notary Public,
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 California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary _____ (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2012 before me, _____, Notary Public,
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 California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary _____ (Seal)

EXHIBIT A
LEGAL DESCRIPTION OF THE SITE

EXHIBIT B

INCOME COMPUTATION AND CERTIFICATION

TENANT INCOME CERTIFICATION

☐ Initial Certification ☐ Recertification ☐ Other _____

Effective Date: _____

Move-in Date: _____

(MM/DD/YYYY)

PART I - DEVELOPMENT DATA

Property Name: 9th and Broadway Apartments County: San Diego BIN #: _____
 Address: 929 9th Street Unit Number: _____ # Bedrooms: _____

PART II. HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Social Security or Alien Reg.
1		HEAD				
2						
3						
4						
5						
6						
7						

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income

Add totals from (A) through (D), above

TOTAL INCOME (E):

\$

PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset

TOTALS:

\$

\$

Enter Column (H) Total

Passbook Rate

If over \$5000 \$ _____ X

2.00%

= (J) Imputed Income

\$

Enter the greater of the total of column I, or J: imputed income

TOTAL INCOME FROM ASSETS (K)

\$

(L) Total Annual Household Income from all Sources [Add (E) + (K)]

\$

II. HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature	(Date)	Signature	(Date)
Signature	(Date)	Signature	(Date)

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM
ALL SOURCES:
From item (L) on page 1

\$

RECERTIFICATION ONLY:

Current Income Limit x 140%:
\$ _____
Household Income exceeds
140% at recertification:
☐ Yes ☐ No

Current Income Limit per Family Size: \$ _____

Household Income at Move-in: \$ _____

Household Size at Move-in: _____

PART VI. RENT

Tenant Paid Rent \$ _____
Utility Allowance \$ _____
GROSS RENT FOR UNIT:
(Tenant paid rent plus Utility Allowance & other
nonoptional charges) \$ _____
Maximum Rent Limit for this unit: \$ _____

Rent Assistance: \$ _____

Other non-optional charges: \$ _____

Unit Meets Rent Restriction at:
0 60% 0 50% 0 40% 0 30% 0 _____%

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL TIME STUDENTS?
☐ Yes ☐ No

If yes, Enter student explanation*
(also attach documentation)

Enter 1-5

*Student Explanation:

1. Current TANF assistance
2. Former TANF assistance
(foster children only)
3. Job Training Program
4. Single parent /
dependent child
5. Married/joint return

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

<p>a. Tax Credit <input type="checkbox"/></p> <p>See Part V above.</p>	<p>b. HOME <input type="checkbox"/></p> <p><i>Income Status</i></p> <p><input type="checkbox"/> ≤ 50% AMGI</p> <p><input type="checkbox"/> ≤ 60% AMGI</p> <p><input type="checkbox"/> ≤ 80% AMGI</p> <p><input type="checkbox"/> OI**</p>	<p>c. Tax Exempt <input type="checkbox"/></p> <p><i>Income Status</i></p> <p><input type="checkbox"/> 50% AMGI</p> <p><input type="checkbox"/> 60% AMGI</p> <p><input type="checkbox"/> 80% AMGI</p> <p><input type="checkbox"/> OI**</p>	<p>d. AHDP <input type="checkbox"/></p> <p><i>Income Status</i></p> <p><input type="checkbox"/> 50% AMGI</p> <p><input type="checkbox"/> 80% AMGI</p> <p><input type="checkbox"/> OI**</p>	<p>e. (Name of Program)</p> <p><i>Income Status</i></p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> OI**</p>
--	---	---	--	--

** Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE

DATE

INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I - Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date	Enter the date the tenant has or will take occupancy of the unit.
Effective Date	Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.
Property Name	Enter the name of the development.
County	Enter the county (or equivalent) in which the building is located.
BIN #	Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).
Address	Enter the address of the building.
Unit Number	Enter the unit number.
# Bedrooms	Enter the number of bedrooms in the unit.

Part II - Household Composition

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following coded definitions:

H - Head of Household	S - Spouse
A - Adult co-tenant	O - Other family member
C - Child	F - Foster child(ren)/adult(s)
L - Live-in caretaker	N - None of the above

Enter the date of birth, student status, and social security number or alien registration number for each occupant.

If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III - Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

Column (A)	Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
Column (B)	Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
Column (C)	Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.).
Column (D)	Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
Row (E)	Add the totals from columns (A) through (D), above. Enter this amount.

Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

Column (F)	List the type of asset (i.e., checking account, savings account, etc.)
Column (G)	Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
Column (H)	Enter the cash value of the respective asset.
Column (I)	Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
TOTALS	Add the total of Column (H) and Column (I), respectively.
If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.	
Row (K)	Enter the greater of the total in Column (I) or (J)
Row (L)	Total Annual Household Income From all Sources Add (E) and (K) and enter the total

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than 5 days prior to the effective date of the certification.

Part V – Determination Of Income Eligibility

Total Annual Household Income from all Sources	Enter the number from item (L).
Current Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size.
Household income at move-in Household size at move-in	For recertifications, only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
Household Meets Income Restriction	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.
Current Income Limit x 140%	For recertifications only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

Part VI - Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

Part VII - Student Status

If all household members are full time* students, check "yes". If at least one household member is not a full time student, check "no".

If "yes" is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

**Full time is determined by the school the student attends.*

Part VIII – Program Type

Mark the program(s) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit	See Part V above.
HOME	If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household's designation.
Tax Exempt	If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household's designation.
AHDP	If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count towards the set-aside requirements, mark the appropriate box indicating the household's designation.
Other	If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER/REPRESENTATIVE

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

TENANT INCOME CERTIFICATION QUESTIONNAIRE	
Name: _____	Telephone Number: _____ ()
<input type="checkbox"/> Initial Certification # _____	BIN
<input type="checkbox"/> Re-certification	
<input type="checkbox"/> Other # _____	Unit

Income Information

YES	NO	Income Information	Monthly Gross Income
<input type="checkbox"/>	<input type="checkbox"/>	I/we am self employed. (List nature of self employment) _____	(use net income from business) \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we have a job and receive wages, salary, overtime pay, commissions, fees, tips, bonuses, and/or other compensation: List the businesses and/or companies that pay you: Name of Employer 1) _____ 2) _____ 3) _____	\$ _____ \$ _____ \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we receive cash contributions of gifts including rent or utility payments, on an ongoing basis from persons not living with me.	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we receive unemployment benefits.	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we receive Veteran's Administration, GI Bill, or National Guard/Military benefits/income.	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we receive periodic social security payments.	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	The household receives unearned income from family members age 17 or under (example: Social Security, Trust Fund disbursements, etc.).	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we receive Supplemental Security Income (SSI).	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we receive disability or death benefits other than Social Security.	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we receive Public Assistance Income (examples: TANF, AFDC)	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we am entitled to receive child support payments.	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we am currently receiving child support payments. If yes, from how many persons do you receive support? _____	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we am/are currently making efforts to collect child support owed to me. List efforts being made to collect child support: _____ _____	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we receive alimony/spousal support payments	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we receive periodic payments from trusts, annuities, inheritance, retirement funds or pensions, insurance policies, or lottery winnings. If yes, list sources: 1) _____ 2) _____	\$ _____ \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we receive income from real or personal property.	(use net earned income) \$ _____

Asset information

YES	NO		Interest Rate	Cash Value
<input type="checkbox"/>	<input type="checkbox"/>	I/we have a checking account(s). If yes, list bank(s) 1) _____ 2) _____	_____% _____%	\$ _____ \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we have a savings account(s) If yes, list bank(s) 1) _____ 2) _____	_____% _____%	\$ _____ \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we have a revocable trust(s) If yes, list bank(s) 1) _____	_____%	\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we own real estate. If yes, provide description: _____		\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we own stocks, bonds, or Treasury Bills If yes, list sources/bank names 1) _____ 2) _____ 3) _____	_____% _____% _____%	\$ _____ \$ _____ \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we have Certificates of Deposit (CD) or Money Market Account(s). If yes, list sources/bank names 1) _____ 2) _____ 3) _____	_____% _____% _____%	\$ _____ \$ _____ \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we have an IRA/Lump Sum Pension/Keogh Account/401K. If yes, list bank(s) 1) _____ 2) _____	_____% _____%	\$ _____ \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we have a whole life insurance policy. If yes, how many policies _____		\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we have cash on hand.		\$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we have disposed of assets (i.e. gave away money/assets) for less than the fair market value in the past 2 years. If yes, list items and date disposed: 1) _____ 2) _____		\$ _____ \$ _____
<input type="checkbox"/>	<input type="checkbox"/>	I/we have income from assets or sources other than those listed above. If yes, list type below: 1) _____ 2) _____	_____% _____%	\$ _____ \$ _____

Student Status

YES	NO	
<input type="checkbox"/>	<input type="checkbox"/>	Does the household consist of persons who are all full-time students (Examples: College/University, trade school, etc.)?
<input type="checkbox"/>	<input type="checkbox"/>	Does your household anticipate becoming a full-time student household in the next 12 months?
<input type="checkbox"/>	<input type="checkbox"/>	If you answered yes to either of the previous two questions are you:
<input type="checkbox"/>	<input type="checkbox"/>	• Receiving assistance under Title IV of the Social Security Act (AFDC/TANF)
<input type="checkbox"/>	<input type="checkbox"/>	• Enrolled in a job training program receiving assistance through the Job Training Participation Act (JTPA) or other similar program
<input type="checkbox"/>	<input type="checkbox"/>	• Married and filing a joint tax return
<input type="checkbox"/>	<input type="checkbox"/>	• Single parent with a dependant child or children and neither you nor your child(ren) are dependent of another individual

Under penalties of perjury, I certify that the information presented on this form is true and accurate to the best of my/our knowledge. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information will result in the denial of application or termination of the lease agreement.

PRINTED NAME OF APPLICANT/TENANT SIGNATURE OF APPLICANT/TENANT DATE

WITNESSED BY (SIGNATURE OF OWNER/REPRESENTATIVE)

EXHIBIT C

COMPLETION CERTIFICATE

The undersigned hereby certifies that all construction work on the Project was substantially completed and all units in the Project were available either for occupancy or use by tenants in the Project as of _____.

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 Bonds have been applied to pay or reimburse the undersigned for the payment of Project Costs and none of the amounts disbursed from the proceeds of the Bonds have been applied to pay or reimburse any party for the payment of costs or expenses other than Project Costs; and

(c) at least 97 percent of the amounts disbursed from the proceeds of the Bonds have been applied to pay or reimburse the Borrower for the payment of Qualified Project Costs and less than 25 percent of the amounts disbursed from the proceeds of the Bonds, exclusive of amounts applied to pay the costs of issuing the Bonds, have been applied to pay or reimburse the Borrower for the cost of acquiring land.

Capitalized terms used in this Completion Certificate have the meanings given to such terms in the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 1, 2012, between the Housing Authority of the City of San Diego and Broadway Upper Terrace Associates, L.P., a California limited partnership.

BROADWAY UPPER TOWER ASSOCIATES,
L.P., a California limited partnership

By: _____

Its: _____

EXHIBIT D

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The undersigned, being _____ of Broadway Upper Tower Associates, L.P., a California limited partnership (the "Borrower") has read and is thoroughly familiar with the provisions of the various documents associated with the Borrower's participation in the Housing Authority of the City of San Diego (the "Issuer") Multifamily Housing Program, such documents including: (a) the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 1, 2012 (the "Regulatory Agreement") between the Borrower and the Issuer; and (b) the Construction and Convertible Term Loan Agreement, dated as of December __, 2012, among U.S. Bank National Association, as Bondowner Representative, the Borrower and the Issuer. Capitalized terms used in this Certificate of Continuing Program Compliance have the meanings given to such terms in the Regulatory Agreement.

In connection with the foregoing, the undersigned does hereby certify that:

1. During the preceding quarter (i) the Project was continually in compliance with the Regulatory Agreement executed in connection with the Loan, and (ii) (a) ____% of the units in the Project were occupied by Low Income Tenants (including units referenced in the succeeding clause (b), minimum of 40%) and (b) ____% of the units in the Project were occupied by Very Low Income Tenants (minimum of 10%).

2. The representations set forth herein are true and correct to the best of the undersigned's knowledge and belief.

Set forth below are the names of Low Income Tenants and Very Low Income Tenants who commenced or terminated occupancy during the preceding quarter.

Commenced Occupancy

1.

2.

Terminated Occupancy

1.

2.

The units occupied by Low Income Tenants and Very Low Income Tenants are of similar size and quality to other units and are dispersed throughout the Project. Attached is a separate sheet listing the number of each unit and indicating which units are occupied by Low Income Tenants and Very Low Income Tenants, the size, the number of bedrooms of such units and the number of Low Income Tenants and Very Low Income Tenants who commenced occupancy of units during the preceding quarter.

3. *Select appropriate certification:* [No unremedied default has occurred under this Regulatory Agreement, the Loan Agreement or the Deed of Trust.] [A default has occurred. The nature of the default and the measures being taken to remedy such default are as follows:

_____.

Date: _____

BROADWAY UPPER TOWER ASSOCIATES,
L.P., a California limited partnership

By: _____

Its: _____

Unit No.	Low Income, Very Low Income or Market Unit	No. of Bedrooms	Rent	Total Eligible Income (for Low/Very Low Income Units)	Size (Sq. Ft.)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Number of Units: _____

Percentage of Low Income Units: _____

Percentage of Very Low Income Units: _____

Number of Low Income Tenants commencing occupancy this month: _____

Number of Very Low Income Tenants commencing occupancy this month: _____

EXHIBIT E

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**
Housing Authority of the City of San Diego
1122 Broadway, Suite 300
San Diego, California 92101
Attention: Executive Director

CERTIFICATE AS TO COMMENCEMENT OF QUALIFIED PROJECT PERIOD

Housing Authority of the City of San Diego
Multifamily Housing Revenue Bonds
(9th and Broadway Apartments), 2012 Series C

The undersigned, on behalf of Broadway Upper Tower Associates, L.P., a California limited partnership, hereby certifies that: (complete blank information):

10% of the dwelling units in the project financed in part from the proceeds of the captioned Bonds were first occupied on _____, 20____.

50% of the dwelling units in the project financed in part from the proceeds of the captioned Bonds were first occupied on _____, 20__.

DATED: _____, 20____

Broadway Upper Tower Associates, L.P., a
California limited partnership

By: _____

Its: _____

EXHIBIT F

STATISTICAL REPORT TO ISSUER

Project: 9th and Broadway Apartments (floors eight through seventeen)

Reporting Period: _____

Date: _____

As of the date hereof:

1. Total units: _____; units occupied by Low Income Tenants: _____; units occupied by Very Low Income Tenants: _____; vacant units most recently occupied by Low Income Tenants: _____; vacant units most recently occupied by Very Low Income Tenants: _____.

2. Total units occupied by households with children: _____; Low Income Units so occupied: _____; Very Low Income Units so occupied: _____.

3. Total units occupied by elderly households with a member of age 62 or over: _____; Low Income Units so occupied: _____; Very Low Income Units so occupied: _____.

4. The percentage of units currently occupied by white, black, Hispanic and Asian persons and American Indians are as follows (optional):

white	_____%
black	_____%
Hispanic	_____%
Asian	_____%
American Indian	_____%

5. The number of Low Income Tenants who terminated their rental agreements during the previous twelve (12) month period is _____. The number of Very Low Income Tenants who terminated their rental agreements during the previous twelve (12) month period is _____.

6. The number of units rented to new Low Income Tenants during the last twelve (12) month period is _____. The number of units rented to new Very Low Income Tenants during the last twelve (12) month period is _____.

7. The family names of each household currently occupying a Low Income Unit are listed on the schedule attached hereto. The family names of each household currently occupying a Very Low Income Unit are listed on the schedule attached hereto.

8. The number of Low Income Units of various sizes is:
one-bedroom: _____
two-bedroom: _____
three-bedroom: _____
9. The number of Very Low Income Units of various sizes is:
one-bedroom: _____
two-bedroom: _____
three-bedroom: _____

Capitalized terms used in this Statistical Report to Issuer have the meanings given to such terms in the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 1, 2012, between the Housing Authority of the City of San Diego and Broadway Upper Terrace Associates, L.P., a California limited partnership.

BROADWAY UPPER TOWER ASSOCIATES, L.P.,
a California limited partnership

By: _____

Its: _____

RECORDING REQUESTED BY
AND MAIL TO:

U.S. Bank National Association
4747 Executive Drive
3rd Floor
San Diego, California 92121
Attention: Loan Administration

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST AND RELATED DOCUMENTS

For value received, **HOUSING AUTHORITY OF THE CITY OF SAN DIEGO**, a public body, corporate and politic, duly organized and existing under the laws of the State of California ("**Issuer**"), hereby grants, conveys, assigns and transfers to **U.S. BANK NATIONAL ASSOCIATION**, a national banking association ("**Bondowner Representative**"), for security purposes only, without recourse the interest of Issuer under:

A. That Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "**Deed of Trust**") dated as of _____, 2012, executed by **BROADWAY UPPER TOWER ASSOCIATES, L.P.**, a California limited partnership ("**Borrower**"), as grantor, to **OLD REPUBLIC TITLE COMPANY**, as trustee, for the benefit of Issuer as beneficiary, and recorded concurrently herewith in the Official Records of San Diego County, California, affecting the real property described in Exhibit A attached hereto and incorporated herein by this reference;

B. That certain Construction and Convertible Term Loan Agreement (the "**Loan Agreement**") dated as of even date herewith among Issuer, Bondowner Representative and Borrower, other than the "Unassigned Rights," as such term is defined in the Indenture referenced in Recital E below;

C. That certain Construction Note ("**Construction Note**") of even date with the Deed of Trust, executed by Borrower in favor of Issuer, in the original principal amount of ///[Twenty-One Million Four Hundred Five Thousand and No/100th Dollars (\$21,405,000)]/// and that certain Convertible Term Note ("**Convertible Term Note**", and together with the Construction Note, the "**Notes**") of even date with the Deed of Trust executed by Borrower in favor of Issuer, in the original principal amount of ///[One Million Five Hundred Ninety-Five Thousand and No/100th Dollars (\$1,595,000)]///, and all renewals, modifications and extensions thereof;

D. The policy of title insurance issued by Old Republic Title Company insuring the lien of the Deed of Trust; and

[PHASE II]

E. All other “**Loan Documents**” relating to the “**Loans**” (as each such term is defined in the Loan Agreement) secured by the Deed of Trust; all of which are granted to secure all obligations of Issuer under the Bonds in the face amount of ///[Twenty-Three Million and No/100th Dollars (\$23,000,000)]/// issued by Issuer and sold to the Bondowner Representative, and all renewals, modifications and extensions thereof, together with all other obligations of Issuer to Bondowner Representative under the Indenture dated as of December 1, 2012, between Issuer and Bondowner Representative.

All capitalized terms used herein and without definition shall have the meanings set forth in the Loan Agreement.

Dated as of _____, 2012.

ISSUER:

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

By: _____
Name: _____
Title: _____

EXHIBIT A
REAL PROPERTY

ACKNOWLEDGMENT

State of California

County of _____

On _____, 2012 before me _____,
(here insert name and title 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 California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

Quint & Thimmig LLP

Attorneys at Law

575 Market Street, Suite 3600
San Francisco, CA 94105-2874

Telephone: 415/765-1550
Fax: 415/765-1555

bquint@qtlp.com
pthimmig@qtlp.com

November 6, 2012

VIA EMAIL

To: Housing Authority of the City of San Diego

From: Paul J. Thimmig, Quint & Thimmig LLP, Bond Counsel

Re: 9th and Broadway Apartments

If the Housing Authority of the City of San Diego (the "Authority") adopts a resolution authorizing the issuance of the Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-1 (Convertible Term Loan) and Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (9th and Broadway Apartments), 2012 Series C-2 (Construction Loan) (collectively, the "Bonds"), it is expected that the Bonds will be sold and issued in mid December of this year.

The primary legal documents for the Bonds that are referenced in the Resolution of the Authority authorizing the issuance of the Bonds (the "Resolution") currently contain a number of blanks that are related to various dates and other matters. The following table sets forth a summary of the blanks in the primary legal documents for the Bonds referenced in the Resolution, and described when, and by whom, the information will be provided in order to fill in the blanks. Capitalized terms used below have the meanings given to them in the related document.

Document	Location of Blank	When Completed	Responsible Party
Indenture	<u>Section 1.01 – Definitions.</u>		
	• Closing Date	Prior to Closing	Housing Authority, Borrower and Bondowner Representative
	<u>Section 3.01 – Authentication and Delivery of the Bonds; and Section 3.03 Program Fund.</u>		
	• Identity of Title Company	Prior to Closing	Borrower
	• Amount of initial advance of Bond proceeds	Prior to Closing	Borrower, Bondowner Representative
	<u>Exhibit A – Form of Bond.</u>		
	• Various dates and dollar amounts	Prior to Closing	Completion of above-listed blanks will allow Bond Counsel to complete blanks in the Form of the Bond

<u>Document</u>	<u>Location of Blank</u>	<u>When Completed</u>	<u>Responsible Party</u>
Construction and Convertible Term Loan Agreement	<u>Exhibit B – Form of Investor’s Letter.</u>		
	• Date of Construction and Convertible Term Loan Agreement	Prior to Closing	Bondowner Representative
	<u>Cover Page and First Page.</u>		
	• Date of Agreement	Prior to Closing	Bondowner Representative
	<u>Recitals.</u>		
	• Location of Lower Tower Units	Prior to Closing	Borrower
	• Partner Capital Contributions	Prior to Closing	Borrower
	<u>Section 1.1 – Defined Terms.</u>		
	• Dates of Various Agreements	Prior to Closing	Borrower
	• Partner Capital Contributions, LIHTC Documents	Prior to Closing	Borrower
	• Closing Date	Prior to Closing	Housing Authority, Borrower, and Bondowner Representative
	• Size of Commercial Space	Prior to Closing	Borrower
	• Conversion Fee	Prior to Closing	Bondowner Representative
	• Engineers, Engineering Contracts	Prior to Closing	Borrower
	• Environmental Reports	Prior to Closing	Borrower
	• Fixed Rate	Prior to Closing	Bondowner Representative
	• General Contractor	Prior to Closing	Borrower
	• Initial Operating Reserve Deposit	Prior to Closing	Borrower and Bondowner Representative
	• Identity of Withdrawing Partner	Prior to Closing	Borrower
	• Property Management Fee	Prior to Closing	Borrower and Bondowner Representative
	• Property Manager	Prior to Closing	Borrower
	• Title Company	Prior to Closing	Borrower
	<u>Section 2.8 – Second Option to Extend.</u>		
	• Maximum Balance of Construction Note at Extension	Prior to Closing	Bondowner Representative
	<u>Section 3.1 – Conditions to Closing.</u>		
	• Amount of Subordinate Loan to be Disbursed	Prior to Closing	Bondowner Representative

Document	Location of Blank	When Completed	Responsible Party
Regulatory Agreement and Declaration of Restrictive Covenants	<u>Section 16.5 – Notices.</u>		
	• Borrower’s Facsimile transmission number	Prior to Closing	Borrower
	<u>Exhibit A – Legal Description.</u>	Prior to Closing	Title Company
	<u>Exhibit B – Budget.</u>	Prior to Closing	Borrower and Bondowner Representative
	<u>Exhibit E – Schedule of Required Capital Contributions.</u>	Prior to Closing	Borrower
	<u>Exhibit F – Construction Funds Schedule.</u>	Prior to Closing	Borrower
	<u>Exhibit H – Permitted Developer Fee Payments.</u>	Prior to Closing	Bondowner Representative
	<u>Recitals and Section 1 – Definitions and Interpretation.</u>		
	• Date of Construction and Convertible Term Loan Agreement	Prior to Closing	Bondowner Representative
	<u>Section 1 – Definitions and Interpretations.</u>		
Assignment of Deed of Trust and Related Documents	• Date of Partnership Agreement	Prior to Closing	Borrower
	<u>Section 4A – Additional Requirements of the Issuer.</u>		
	• Issuer fee at closing and minimum annual fee	Prior to Closing	Housing Authority, Bond Counsel
	<u>Exhibit A – Legal Description of Site.</u>	Prior to Closing	Title Company and Borrower
	<u>Recitals.</u>		
	• Date of Deed of Trust	Prior to Closing	Bondowner Representative