



## MEMORANDUM

To: Bret Bartolotta, City Attorney's Office

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

Date: October 25, 2012

Subject: COMM22 Family Apartments, Related Entity Letter

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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 December 4, 2012, the Housing Commission will seek Housing Authority approval for the issuance of up to \$28,000,000 in multifamily housing revenue bonds (Bonds) to finance the acquisition and rehabilitation of a multifamily residential rental housing facility known as COMM22 Family 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 COMM22 Family 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 25, 2012

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

and

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

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**TRUST INDENTURE**

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Dated as of December 1, 2012

Relating to

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**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO**  
**MULTIFAMILY HOUSING REVENUE BONDS**  
**(COMM22 FAMILY HOUSING)**  
**SERIES 2012C**

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## TRUST INDENTURE

This TRUST INDENTURE dated as of December 1, 2012 (this “**Indenture**”), by and between the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO, a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California (the “**Issuer**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under and by virtue of the laws of the United States of America and being duly qualified to accept and administer the trusts created hereby, as trustee (the “**Trustee**”),

### WITNESSETH:

**WHEREAS**, the Issuer is authorized under the Housing Authorities Law, Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code, as amended (the “**Act**”), to finance multifamily rental housing by issuing its revenue bonds to provide funds for the cost of the permanent financing thereof; and

**WHEREAS**, COMM22 FAMILY HOUSING, L.P., a California limited partnership (the “**Borrower**”), has applied to the Issuer for financial assistance for the purpose of providing all or part of the funds with which to pay the cost of the acquisition, construction and equipping of a 130-unit multifamily rental housing project in San Diego, California currently known as “COMM22 Family Housing” (the “**Project**”); and

**WHEREAS**, the provision of the Loan (as hereinafter defined), is authorized by the Act and will accomplish a valid public purpose of the Issuer, and the Issuer has determined that it is in the public interest to issue its Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (COMM22 Family Housing) Series 2012C in the aggregate principal amount of \$\_\_\_\_\_ (the “**Bonds**”) for the purpose of providing funding necessary for the acquisition, construction and equipping of the Project; and

**WHEREAS**, pursuant to a Loan Agreement dated as of even date herewith (the “**Loan Agreement**”) among the Issuer, the Trustee and the Borrower, the Issuer has agreed to issue the Bonds and lend the proceeds thereof to the Borrower (the “**Loan**”) and the Borrower has agreed to (i) apply the proceeds of the Loan to pay a portion of the costs of acquisition, construction and equipping of the Project, (ii) make payments sufficient to pay the principal of and interest on the Bonds when due (whether at maturity, by redemption, acceleration or otherwise), and (iii) observe the other covenants and agreements and make the other payments set forth therein; and

**WHEREAS**, the Borrower has delivered to the Trustee, on behalf of the Issuer, its promissory note dated the date of issuance of the Bonds in an original principal amount equal to the aggregate original principal amount of the Bonds (as amended, modified or supplemented from time to time, the “**Note**”) evidencing its obligation to repay the Loan, and the Issuer has made the Loan to the Borrower, subject to the terms and conditions of the Loan Agreement and this Indenture; and

**WHEREAS**, to secure its obligations under the Loan Agreement and the Note, the Borrower has executed (i) a Construction Leasehold Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing (as amended, modified or supplemented from time to time, the “**Mortgage**”), (ii) an Assignment of Deed of Trust and Related Documents (as amended, modified or supplements from time to time, the “**Assignment of Mortgage**”), (iii) an Assignment of Contracts, Plans and Specifications (as amended, modified or supplemented from time to time, the

“Assignment of Project Documents”) and (iv) an Assignment of Tax Credits and Capital Contributions (as amended, modified or supplemented from time to time, the “Security Agreement”), each dated as of even date with this Indenture, for the benefit of the Issuer, as secured party;

**NOW, THEREFORE**, in consideration of the premises and the mutual promises, representations and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

## **GRANTING CLAUSES**

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

(a) All right, title and interest of the Issuer in and to the Note, the Mortgage, the Assignment of Mortgage, the Assignment of Project Documents, the Security Agreement and the other Loan Documents (as that term is defined below), and all moneys from time to time paid by the Borrower pursuant to the terms of the Loan Documents and all right, title and interest of the Issuer (including, but not limited to, the right to enforce any of the terms thereof) under and pursuant to and subject to the provisions of the Loan Agreement (but excluding the Reserved Rights as defined in the Loan Agreement); and

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

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

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

**IN TRUST NEVERTHELESS**, upon the terms and conditions herein set forth for the equal and proportionate benefit, security and protection of all present and future Owners of the Bonds Outstanding, without preference, priority or distinction as to participation in the lien, benefit and

protection of this Indenture of one Bond over or from the others, except as herein otherwise expressly provided;

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

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

## **ARTICLE I**

### **DEFINITIONS AND CONSTRUCTION**

Section 1.01 Definitions. The following capitalized terms, as used in this Indenture, shall have the meanings specified below unless the context otherwise shall require. All other capitalized terms which are defined in the Loan Agreement and not defined herein shall have the respective meanings ascribed to them in the Loan Agreement.

**“Accounts”** means the accounts established pursuant to Section 5.01 hereof.

**“Act”** has the meaning set forth for that term in the Recitals above.

**“Additional Interest”** means an amount equal to the excess of (i) the amount of interest an Owner (other than an Owner who is a “substantial user” of the Project or a “related person” to a “substantial user,” as defined in Section 147(a) of the Code) would have received during the period of time commencing on the date that the interest on the Bonds, becomes subject to federal income taxation to the earlier of the date of the payment of the Bonds or the date of a Determination of Taxability (excluding from such period any time in which the tax on such interest is uncollectible) at

a per annum rate equal to the Taxable Rate, over (ii) the aggregate amount of interest received by an Owner for said period.

**“Affiliates”** or **“Affiliate”** means, if with respect to an entity, (i) any manager, member, officer or director thereof and any Person who or which is, directly or indirectly, the beneficial owner of more than 10% of any class of shares or other equity security, or (ii) any Person which, directly or indirectly, controls or is controlled by or is under common control with such entity. Control (including the correlative meanings of “controlled by” and “under common control with”) means effective power, directly or indirectly, to direct or cause the direction of the management and policies of such Person. With respect to a partnership or venture, “Affiliate” shall include, without limitation, any (i) general partner, (ii) general partner of a general partner, or (iii) partnership with a common general partner, and if any general partner is a corporation, any Person which is an “Affiliate” (as defined above) of such corporation. With respect to a limited liability company, “Affiliate” shall include, without limitation, any member.

**“Alternative Rate”** means the lower of (i) 4% in excess of the rate of interest payable on the Bonds or (ii) 12% per annum; provided that such rate shall in no event exceed the Maximum Rate.

**“Assignment of Mortgage”** has the meaning set forth for that term in the Recitals above

**“Assignment of Project Documents”** has the meaning set forth for that term in the Recitals above.

**“Authorized Denomination”** means \$250,000, and any amount in excess of \$250,000, but not in excess of the aggregate principal amount of Bonds then Outstanding.

**“Authorized Representative”** means, (i) with respect to the Issuer, any person or persons designated to act on behalf of the Issuer by a certificate filed with the Borrower, the Trustee and the Servicer containing the specimen signatures of such person or persons and signed on behalf of the Issuer by its Chair, Vice Chair, Secretary, or Executive Director; (ii) with respect to the Borrower, any person or persons designated to act on behalf of the Borrower by a certificate filed with the Issuer, the Trustee and the Servicer containing the specimen signatures of such person or persons and signed by an authorized representative of the Borrower and (iii) with respect to the Servicer, any person or persons designated to act on behalf of the Servicer by a certificate filed with the Borrower, the Issuer and the Trustee, containing the specimen signatures of such person or persons and signed on behalf of the Servicer by its President, Vice President or Secretary. Each such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties and exercise all powers of an Authorized Representative.

**“Bank”** means Banc of America Public Capital Corp, a Kansas corporation, its successors and assigns.

**“BBA LIBOR Daily Floating Rate”** means a variable rate of interest per annum equal to the British Bankers Association LIBOR Rate (**“BBA LIBOR”**), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by the Servicer from time to time) as determined for each Business Day at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a one month term, as adjusted from time to time in the Servicer’s sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory

costs. If such rate is not available in such time for any reason, then the rate will be determined by such alternate method as reasonably selected by the Servicer. A **“London Banking Day”** is a day on which banks in London are open for business and dealing in offshore dollars. Interest shall be computed for the actual number of days which have elapsed, on the basis of a 360-day year.

**“Bond”** or **“Bonds”** has the meaning set forth for that term in the Recitals above.

**“Bond Counsel”** means Stradling Yocca Carlson & Rauth, a Professional Corporation, or any other attorney or firm of attorneys of nationally recognized standing in the field of municipal finance law whose opinions are generally accepted by purchasers of tax-exempt obligations and who is acceptable to the Issuer and the Servicer.

**“Bond Payment Date”** means each date on which principal or redemption price or interest shall be payable on any of the Bonds according to their respective terms.

**“Borrower”** has the meaning set forth for that term in the Recitals above.

**“Borrower’s Tax Certificate”** means the Borrower’s Tax Certificate executed by the Borrower on the Closing Date in which the Borrower certifies various facts relating to the Project which bear on the exclusion of interest on the Bonds from gross income for purposes of federal income taxation.

**“Business Day”** means a day of the year which is not a Saturday or Sunday or any other day on which banks located in the city of New York, New York and banks located in the city in which the Principal Office of the Trustee is located are required or authorized by law to remain closed and on which The New York Stock Exchange is not closed.

**“Calculation Period”** means the period commencing upon the first day of each month and ending on (and including) the last day of such month.

**“Capitalized Interest Account”** means the account of that name established in the Project Fund pursuant to Section 5.01 of this Indenture.

**“Closing Date”** means the date of issuance of the Bonds.

**“Code”** means the Internal Revenue Code of 1986, as amended, together with all corresponding and applicable final or temporary regulations and revenue rulings issued or promulgated thereunder.

**“Completion”** has the meaning set forth for that term in the Construction Disbursement Agreement.

**“Completion Agreement”** means that certain Completion Agreement executed by Guarantor and dated as of even date with this Indenture.

**“Completion Deadline”** has the meaning set forth for that term in the Construction Disbursement Agreement, as it may be amended from time to time.

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

**“Construction Disbursement Agreement”** means the Construction Disbursement Agreement dated as of even date with this Indenture, between the Borrower and Bank, as the same may be supplemented, amended or modified.

**“Control,” “Controlled” and “Controlling”** means, with respect to any Person, either (i) ownership directly or indirectly of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

**“Conversion Date”** means the earlier of (a) the Interest Date immediately following the Stabilization Date, or (b) May 1, 2018.

**“Costs of Issuance”** means “issuance costs” with respect to the Bonds within the meaning of Section 147(g) of the Code.

**“Costs of Issuance Account”** means the account of that name established within the Project Fund pursuant to Section 5.01 of this Indenture.

**“Counsel”** means an attorney or firm of attorneys acceptable to the Trustee and the Servicer, and may, but need not, be Bond Counsel, counsel to the Issuer, the Servicer or the Borrower.

**“Determination of Taxability”** means (i) a determination by the Commissioner or any District Director of the Internal Revenue Service, (ii) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service, (iii) a determination by any court of competent jurisdiction, or (iv) receipt by the Trustee, at the request of the Servicer, of an opinion of Bond Counsel to the effect that the interest on the Bonds is includable in gross income for federal income tax purposes of the Owners thereof or any former Owner thereof, other than an Owner who is a “substantial user” (within the meaning of Section 147(a) of the Code) of the Project or a “related person” (as defined in Section 147(a) of the Code); provided that no such Determination of Taxability under clause (i), (ii) or (iii) shall be deemed to have occurred if (a) the Borrower and the Servicer have been afforded the opportunity to contest such determination, and (b) if the Borrower or the Servicer has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (A) a final determination from which no appeal may be taken with respect to such determination, or (B) abandonment of such appeal by the Borrower or the Servicer.

**“Environmental Indemnity”** means collectively, the Borrower Indemnity Agreement dated as of even date herewith, from the Borrower for the benefit of the Trustee, as the same may be modified, supplemented or amended from time to time, and the Third Party Indemnity Agreement dated as of even date herewith from the Guarantors for the benefit of the Trustee, as the same may be modified, supplemented or amended from time to time.

**“Equity Account”** means the account of that name established within the Project Fund pursuant to Section 5.01 of this Indenture.

**“Event of Default”** means any of those events defined as Events of Default by Section 6.01 of this Indenture.

**“Fixed Rate”** means \_\_\_\_\_ percent (\_\_\_\_%) per annum.

**“Fixed Rate Period”** means the period commencing on the date which is 24 months plus one day after the Closing Date and ending on (and including) the Maturity Date.

**“Funds”** means the funds established pursuant to Section 5.01 hereof.

**“Government Obligations”** means direct obligations of, or obligations guaranteed by, the United States of America.

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

**“Guaranty”** means that certain Completion Agreement and Payment Guaranty executed by Guarantor and dated as of even date with this Indenture] [collectively, the Completion Agreement and the Payment Guaranty].

**“Indenture”** has the meaning set forth for that term in the Recitals above.

**“Initial Notification of Taxability”** means the receipt by Trustee or any Owner of a communication from the Internal Revenue Service or any court of competent jurisdiction to the effect that the exclusion of interest on the Bonds from the gross income of the Owners, for federal income tax purposes, will not continue in effect.

**“Insurance and Condemnation Proceeds Account”** means the account of that name established within the Project Fund pursuant to Section 5.01 of this Indenture.

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

**“Interest Payment Date”** means the first day of each month commencing with the month following the month in which the Closing Date occurs.

**“Investment Securities”** means any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein:

(a) Bonds or other obligations of the State or bonds or other obligations, the principal of and interest on which are guaranteed by the full faith and credit of the State;

(b) Bonds or other obligations of the United States or of subsidiary corporations of the United States Government which are fully guaranteed by such government;

(c) Obligations of agencies of the United States Government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Central Bank for Cooperatives;

(d) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(e) Certificates of deposit of national or state banks which have deposits insured by the Federal Deposit Insurance Corporation and certificates of deposit of federal savings and loan associations and state building and loan associations which have deposits insured by the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds. The portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation, if any, shall be secured by deposit, with the Federal Reserve Bank of San Francisco, California, or with any national or state bank or federal savings and loan association or state building and loan or savings and loan association, of one or more the following securities in an aggregate principal amount equal at least to the amount of such excess: direct and general obligations of the State or of any county or municipal corporation in the State, obligations of the United States or subsidiary corporations included in paragraph (ii) hereof, obligations of the agencies of the United States Government included in paragraph (iii) hereof, or bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in paragraph (iv) hereof;

(f) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956 and whose unsecured or uncollateralized long-term debt obligations of which are rated in the one of the two highest letter rating categories of S&P or Moody's or whose unsecured and uncollateralized short-term debt obligations are rated in one of the two highest letter rating categories of S&P or Moody's at the time of purchase, provided that each such interest-bearing deposit, repurchase agreement, reverse repurchase agreement, guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys;

(g) Any and all other obligations of investment grade and having a nationally recognized market, including, but not limited to, rate guarantee agreements, guaranteed investment contracts, or other similar arrangements offered by any firm, agency, business, governmental unit, bank, insurance company or other entity; provided, that each such obligation shall permit moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys;

(h) Shares of a money market mutual fund or other collective investment fund registered under the Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, having assets of at least \$100,000,000 and rated in the one of the two highest letter rating categories of S&P or Moody's; and

(i) Any other investment approved in writing by the Servicer.

**"Investor Limited Partner"** means Bank of America, N.A., a national banking association organized and existing under the United States.

**"Issuer"** has the meaning set forth for that term in the Recitals above.

**"Issuer Documents"** means, collectively, this Indenture, the Loan Agreement, the Regulatory Agreement and the Tax Agreement.

**"Legal Requirements"** means any legal requirements, including any local, state or federal statute, law, ordinance, code, rule or regulation, now or hereinafter in effect (including environmental laws) or order, judgment, decree, injunction, permit, license, authorization, certificate, franchise, approval, notice, demand, direction or determination, of any Governmental Authority and all legal requirements imposed upon the Land, or upon the owner(s) of the Land from time to time, pursuant to any applicable covenants, conditions, easements, servitudes and restrictions and any applicable ground lease.

**"Loan"** has the meaning set forth for that term in the Recitals above.

**"Loan Account"** means the account of that name established within the Project Fund pursuant to Section 5.01 of this Indenture.

**"Loan Agreement"** means the Loan Agreement dated as of even date herewith, among the Issuer, the Trustee and the Borrower, as the same may be supplemented, amended or modified.

**"Loan Documents"** means, collectively, the Loan Agreement, the Note, the Regulatory Agreement, the Construction Disbursement Agreement, the Mortgage, the Assignment of Mortgage, the Assignment of Project Documents, the Security Agreement, the Borrower Environmental Indemnity and the Third Party Environmental Indemnity, the Guaranty, the Tax Agreement and, upon delivery thereof, the Servicing Agreement, together with all other documents or instruments executed by the Borrower which evidence or secure the Borrower's indebtedness under such documents and all other documents and instruments delivered simultaneously herewith or required under the Loan Documents to be delivered during the term of the Loan.

**"Majority Owner"** means the Person who owns at least fifty-one percent (51%) in aggregate principal amount of Outstanding Bonds, or, if no single person owns at least fifty-one percent (51%) in aggregate principal amount of Outstanding Bonds, the person who is designated in writing to exercise the powers of "Servicer" and "Majority Owner" hereunder by persons who collectively own at least fifty-one percent (51%) in aggregate principal amount of Outstanding Bonds.

**"Maturity Date"** means [December 1, 2044].

**“Maximum Rate”** means the highest per annum rate of interest permissible under the Act and the laws of the State, calculated by taking into account all available exceptions. At the time of Bond issuance, the Maximum Rate is twelve percent (12%) per annum.

**“Moody’s”** means Moody’s Investors Service, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer, with the consent of the Borrower and the Servicer.

**“Mortgage”** has the meaning set forth for that term in the Recitals above.

**“Note”** has the meaning set forth for that term in the Recitals above.

**“Notice Address”** means, with respect to the Issuer, 1122 Broadway, Suite 300, San Diego, California 92101, Attention: Executive Director; with respect to the Borrower, 2202 30th Street, San Diego, California 92104, Attention: Project Manager, with a copy to Bocarsly Emden Cowan Esmail & Arndt LLP, 633 West Fifth Street, 70th Floor, Los Angeles, California 90071, Attention: Lance Bocarsly; with respect to the Trustee, 633 West Fifth Street, 24<sup>th</sup> Floor, Los Angeles, California 90071 Attention: Julie Hommel; with respect to the initial Servicer and Majority Owner: Bank of America, N.A., CA4-70202-29, 2001 Clayton Road, 2<sup>nd</sup> Floor, Concord, California 94520, Attention: Loan Administration Manager; with respect to any future Servicer or Majority Owner, such address as may be shown in the records of the Trustee.

**“Operating Reserve Fund”** means the fund of that name established pursuant to Section 5.01 of this Indenture.

**“Outstanding”** means, when used with respect to Bonds, as of any date, all Bonds theretofore authenticated and delivered under this Indenture except:

- (a) any Bond canceled or delivered to the registrar for cancellation on or before such date;
- (b) specified as not Outstanding in paragraph (c) of Section 4.05 hereof;
- (c) any Bond in lieu of or in exchange for which another Bond shall have been authenticated and delivered pursuant to Article II of this Indenture;
- (d) any Bond deemed to have been paid as provided in Article IX of this Indenture;
- (e) any Bond owned or held by or for the account of the Issuer or the Borrower, as provided in Section 10.11 of this Indenture, for the purpose of consent or other action or any calculation of outstanding Bonds provided for in this Indenture, and
- (f) any undelivered Bond (except for purposes of receiving the purchase price thereof upon surrender in accordance with this Indenture).

**“Owner”** or **“Owners”** means the registered owner, or owners, of the Bonds.

**“Payment Guaranty”** means that certain Payment Guaranty executed by Guarantor and dated as of even date with this Indenture.

**“Person”** means any natural individual, corporation, partnership, trust, unincorporated association, business or other legal entity, and any government or governmental agency or political subdivision thereof.

**Payment Guaranty**” means that certain Payment Guaranty executed by Guarantor and dated as of even date with this Indenture.

**“Person”** means any natural individual, corporation, partnership, trust, unincorporated association, business or other legal entity, and any government or governmental agency or political subdivision thereof.

**“Prime Rate”** means, on any day, the rate of interest per annum then most recently established by Bank of America, N.A. as its “prime rate.” Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by Bank of America, N.A. to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that Bank of America, N.A. may make various business or other loans at rates of interest having no relationship to such rate. Each time the Prime Rate changes, the per annum rate of interest on the Bonds shall change immediately and contemporaneously with such change in the Prime Rate. If Bank of America, N.A. ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in *The Wall Street Journal* (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported.

**“Principal Office”** means, with respect to any party, the office designated as such in, or as designated by the respective party in writing pursuant to, this Indenture.

**“Project”** has the meaning set forth for that term in the Recitals above.

**“Project Fund”** means the fund of that name established pursuant to Section 5.01 of this Indenture.

**“Property”** has the meaning ascribed to such term in the Mortgage.

**“Qualified Costs of the Project”** means the actual costs incurred to acquire, construct and equip the Project which (i) are incurred not more than sixty (60) days prior to July 10, 2012, being the date on which the Issuer first declared its “official intent” (within the meaning of Treasury Regulations Section 1.150-2) with respect to the Project (other than preliminary expenditures with respect to the Project in an amount not exceeding twenty percent (20%) of the aggregate principal amount of the Bonds), (ii) are (A) chargeable to the Project’s capital account or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs, within the meaning of Treasury Regulation Section 1.103-8(a)(1), and if charged or chargeable to the Project’s capital account are or would have been deducted only through an allowance for depreciation or (B) made for the acquisition of land, to the extent allowed in Section 147(c) of the Code and (iii) are made exclusively with respect to “qualified residential rental

project” within the meaning of Section 142(d) of the Code; provided, however, that (i) Costs of Issuance shall not be deemed to be Qualified Costs of the Project; (ii) fees, charges or profits payable to the Borrower or a “related person” (within the meaning of Section 147 of the Code) shall not be deemed to be Qualified Costs of the Project; (iii) interest during the construction of the Project shall be allocated between Qualified Costs of the Project and other costs and expenses of the Project; (iv) interest following the construction of the Project shall not constitute Qualified Costs of the Project; (v) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk shall be allocated between Qualified Costs of the Project and other costs and expenses to be paid from the proceeds of the Bonds; and (vi) letter of credit fees and municipal bond insurance premiums which do not represent a transfer of credit risk (including, without limitation, letter of credit fees payable to a “related person” to the Borrower) shall not constitute Qualified Costs of the Project. As used herein, the term “preliminary expenditures” includes architectural, engineering, surveying, soil testing and similar costs that were incurred prior to commencement of acquisition, construction and equipping of the Project, but does not include land acquisition, site preparation or similar costs incident to commencement of construction of the Project.

**“Qualified Institutional Buyer”** has the meaning set forth in Rule 144A of the Securities Act of 1933.

**“Rebate Analyst”** means any Person, chosen by the Borrower and at the expense of the Borrower, qualified and experienced in the calculation of rebate payments under Section 148 of the Code and compliance with the arbitrage rebate regulations promulgated under the Code, which is engaged for the purpose of determining the amount of required deposits to the Rebate Fund, if any, pursuant to the Tax Agreement.

**“Rebate Fund”** means the fund of that name established pursuant to Section 5.01 of this Indenture.

**“Record Date”** means, with respect to each Bond Payment Date, the close of business on the day preceding such Bond Payment Date, whether or not such day is a Business Day.

**“Regulatory Agreement”** means the Regulatory Agreement and Declaration of Restrictive Covenants dated as of December 1, 2012, by and among the Issuer, the Trustee and the Borrower, as the same may be amended, modified or supplemented from time to time.

**“Replacement Reserve Fund”** means the fund of that name established pursuant to Section 5.01 of this Indenture.

**“Required Equity Funds”** means the amounts required to be deposited in the Equity Account of the Project Fund pursuant to Section 1.2 of the Construction Disbursement Agreement and Section 5.9 of the Loan Agreement.

**“Requisition”** means a requisition in the form of Exhibit D attached hereto, together with all invoices, bills of sale, schedules and other submissions required for the making of an advance from the Loan Account, the Equity Account of the Project Fund.

**“Resolution”** means the resolution of the Issuer adopted on December 4, 2012, authorizing, among other things, the execution and delivery by the Issuer of the Issuer Documents and the Bonds and the performance of its obligations thereunder.

**“Revenue Fund”** means the fund of that name established pursuant to Section 5.01 of this Indenture.

**“S&P”** means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer, with the consent of the Borrower and the Servicer.

**“Security Agreement”** has the meaning set forth for that term in the Recitals above.

**“Servicer”** means the servicer of the Loan appointed pursuant to Section 7.11 hereof. Prior to the Conversion Date and during any other times as no servicer has been appointed pursuant to Section 7.11 hereof, all references herein and in the Loan Documents to the Servicer shall be deemed to refer to the Majority Owner.

**“Servicing Agreement”** means any servicing agreement entered into among the Majority Owner, the Trustee and the Servicer, as the same may be amended, modified or supplemented from time to time.

**“Stabilization”** has the meaning set forth for that term in the Construction Disbursement Agreement, as it may be amended from time to time.

**“Stabilization Date”** means the date specified by the Servicer, in a notice to the Trustee and the Borrower, as the date upon which Stabilization occurred.

**“Stabilization Deadline”** has the meaning set forth for that term in the Construction Disbursement Agreement, as it may be amended from time to time.

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

**“Supplemental Indenture”** means any indenture hereafter duly authorized and entered into between the Issuer and the Trustee in accordance with Article VIII hereof, amending, modifying or supplementing this Indenture.

**“Tax and Insurance Fund”** means the fund of that name established pursuant to Section 5.01 of this Indenture.

**“Tax Agreement”** means the Tax Exemption Agreement and Certificate dated the Closing Date between the Issuer and the Borrower, as the same may be supplemented, amended or modified.

**“Taxable Rate”** means a rate of interest equal to the lesser of twelve percent (12.0%) per annum or a rate per annum that is two percent (2%) in excess of the Prime Rate, with changes in the Taxable Rate effective concurrently with each announced change in the Prime Rate.

**“Trust Estate”** means the trust estate pledged by the Issuer and described in the Granting Clauses of this Indenture.

**“Trustee”** has the meaning set forth for that term in the Recitals above, and includes any successor trustee appointed pursuant to Section 7.08.

“**Trustee Fee**” means \_\_\_\_\_ per \_\_\_\_\_, payable \_\_\_\_\_.

“**Trustee Expenses**” means the fees and expenses of the Trustee set forth in Section 7.04 of this Indenture.

“**Variable Rate**” means a variable rate per annum equal to the sum of (a) BBA LIBOR Daily Floating Rate, plus (b) one and fifty-five one hundredths percent (1.55%).

“**Variable Rate Period**” means the period commencing on the Closing Date and ending on (and including) the day before the date that is 24 months after the Closing Date.

Section 1.02 Construction. In this Indenture, unless the context otherwise requires:

(a) Articles and Sections referred to by number shall mean the corresponding Articles and Sections of this Indenture.

(b) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms refer to this Indenture, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of adoption of this Indenture.

(c) Words of the masculine gender shall mean and include correlative words of the female and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

(d) Words importing the redemption of a Bond or the calling of a Bond for redemption do not include or connote the payment of such Bond at its stated maturity or the purchase of such Bond.

(e) References in this Indenture to particular sections of the Code, the Act or any other legislation shall be deemed to refer also to any successor sections thereto or other redesignation for codification purposes.

(f) The terms “receipt”, “received”, “recovery”, “recovered” and any similar terms, when used in this Indenture with respect to moneys or payments due the Issuer, shall be deemed to refer to the passage of physical possession and control of such moneys and payments to the Issuer, the Owners of the Bonds or the Trustee on its behalf.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS OF THE ISSUER

Section 2.01 Representations by the Issuer. The Issuer represents and warrants to the Trustee and the Owners of the Bonds that:

(a) The Issuer is a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State, duly organized, validly existing and in good standing under the Act and the laws of the State.

(b) The Issuer has power and lawful authority to adopt the Resolution, to execute and deliver the Issuer Documents, to issue the Bonds and receive the proceeds of the Bonds, to apply the proceeds of the Bonds to make the Loan, to assign the revenues derived and to be derived by the Issuer from the Loan to the Trustee, and to perform and observe the provisions of the Issuer Documents and the Bonds on its part to be performed and observed.

(c) The Issuer has duly authorized the execution and delivery of each of the Issuer Documents, the issuance, execution, sale and delivery of the Bonds, and the performance of the obligations of the Issuer thereunder.

(d) The Issuer makes no representation or warranty, express or implied, that the proceeds of the Bonds will be sufficient to finance the acquisition, construction and equipping of the Project or that the Project will be adequate or sufficient for the Borrower's intended purposes.

(e) The Issuer is not in violation of any Legal Requirements which would affect its existence or its ability to issue, execute, sell or deliver the Bonds, to enter into any of the Issuer Documents or to perform any of its obligations thereunder.

Section 2.02 Covenants of the Issuer. The Issuer hereby agrees with the Owners from time to time of the Bonds that, so long as the Bonds remain unpaid:

(a) The Issuer will pay or cause to be paid the principal of and the interest on the Bonds as the same become due, but solely to the extent provided in Section 10.02 hereof.

(b) The Issuer will do, execute, acknowledge, when appropriate, and deliver from time to time at the request of the Owners of the Bonds or the Trustee such further acts, instruments, financing statements and other documents as are necessary or desirable to better assure, transfer, pledge or assign to the Trustee, and grant a security interest unto the Trustee in and to the Trust Estate and the other properties and revenues herein described and otherwise to carry out the intent and purpose of the Issuer Documents and the Bonds.

(c) The Issuer will not use or knowingly permit the use of any proceeds of the Bonds or other funds of the Issuer, directly or indirectly, in any manner, and will 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(a)(7) of the Code by reason of such Bond not meeting the requirements of Section 142(d) of the Code.

(d) The Issuer will at all times do and perform all acts and things permitted by law and this Indenture which are necessary or desirable in order to assure, and will not knowingly take any action which will adversely affect, the excludability of interest on the Bonds from gross income for federal income tax purposes.

### **ARTICLE III**

#### **AUTHORIZATION AND ISSUANCE OF BONDS**

##### **Section 3.01 Authorization of Bonds.**

(a) There is hereby authorized, established and created an issue of Bonds of the Issuer to be known and designated as the "Housing Authority of the City of San Diego Multifamily Housing

Revenue Bonds (COMM22 Family Housing) Series 2012C” in the original aggregate principal amount of \$\_\_\_\_\_. No additional bonds shall be authorized or issued under this Indenture. The Bonds shall be issued for the purpose of making the Loan by depositing such amounts in the various accounts of the Project Fund established hereunder.

(b) The Bonds are hereby authorized to be issued as drawdown Bonds. The Owners of the Bonds shall fund the purchase price of the Bonds in installments. The initial installment for the purchase of the Bonds shall be in the amount of \$\_\_\_\_\_ to be advanced by the Owners of such Bonds and received by the Trustee on the Closing Date, which purchase price shall be deposited in the Project Fund for application as provided in Section 5.02 hereof. Provided that the conditions to advance contained in the Construction Disbursement Agreement are either satisfied or waived by the Servicer, the balance of the purchase price of the Bonds shall be advanced in subsequent installments by the Owners (if more than one Owner for a series of Bonds, pro rata based on the respective maximum face principal amounts of such Bonds). Upon receipt of a Funding Notice described below, the Trustee shall provide the Owners with written directions to fund a portion of the purchase price of the Bonds not less than three (3) Business Days prior to the date when such funds are required from the Owners, which such notice shall describe the amount of the purchase price to be funded and the purposes to which the proceeds of the Bonds so purchased will be applied. Upon the payment of any portion of the purchase price of the Bonds by the Owners in accordance with the terms of this Section 3.01(b), such payment shall be deposited by the Trustee in the Project Fund as designated in the corresponding funding notice received by the Trustee from the Servicer (each, a “**Funding Notice**”) and thereafter immediately applied in accordance with the corresponding Requisition pursuant to Section 5.02 hereof. The Trustee shall maintain in its books a log which shall reflect from time to time the payment of the purchase price of each series of Bonds by the Owners in accordance with the provisions of this Section 3.01(b). If presented to the Trustee by any Owner, amounts funded by the Owners in accordance with the provisions of this Section 3.01(b) shall be noted on Schedule A attached to the applicable Bond so presented to the Trustee. Notwithstanding any provision in Section 3.06 hereof to the contrary, each series of Bonds shall bear interest as provided in Section 3.06 hereof upon the deposit with Trustee by the Owners of the amount of purchase price of the Bonds so paid in accordance with the provisions of this Section 3.01(b).

Section 3.02 Conditions Precedent to Authentication and Delivery of Bonds. Prior to the initial authentication and delivery of the Bonds, the Trustee shall have received each of the following:

(a) the original executed Note, and executed original counterparts of this Indenture, the other Issuer Documents and the Loan Documents;

(b) confirmation from the Servicer or its counsel that the conditions to initial purchase of Bonds contained in the Construction Disbursement Agreement have been satisfied or waived by Servicer;

(c) a certified copy of the Resolution;

(d) evidence of the payment of the initial installment of the purchase price of the Bonds and deposit of the Borrower funds required pursuant to Section 5.01(c) of this Indenture;

(e) an opinion of Bond Counsel substantially to the effect that the Bonds constitute legal, valid and binding obligations of the Issuer and that under existing statutes, regulations, rulings and court decisions, the interest on the Bonds is not includable in gross income of the Owners (other than an Owner who is a “substantial user” of the Project or a “related person” to a “substantial user,” as defined in Section 147(a) of the Code) for federal income tax purposes; and

(f) an original investor letter executed by the initial purchaser(s) of the Bonds, in substantially the applicable form set forth in Exhibit B hereto.

Section 3.03 Registered Bonds. The Bonds shall be in fully registered form and shall be payable in accordance with the provisions hereof and of the Bonds to the Owner thereof as shown on the records maintained by the Trustee.

Section 3.04 Loss, Theft, Destruction or Mutilation of Bonds. In the event a Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond bearing a notation indicating the principal amount outstanding, in exchange for the mutilated Bond, or in substitution for a Bond so destroyed, lost or stolen. In every case of exchange or substitution, the applicant shall furnish to the Issuer and the Trustee (i) such security or indemnity as may be required by them to save them harmless from all risks, however remote, and (ii) evidence to their satisfaction of the mutilation, destruction, loss or theft of a Bond and of the ownership thereof. Upon the issuance of a Bond upon such exchange or substitution, the Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees, of the Issuer and the Trustee. In case a Bond shall become mutilated or be destroyed, lost or stolen, the Trustee may, instead of authenticating a Bond in exchange or substitution therefor, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Bond) if the applicant for such payment shall furnish to the Issuer and the Trustee such security or indemnity as they may require to save them harmless and evidence satisfactory to them of the mutilation, destruction, loss or theft of the Bond and of the ownership thereof.

Section 3.05 Terms of Bonds - General.

(a) Registration; Denomination. The Bonds shall be issuable initially in Authorized Denominations as specified by the initial Owner. Thereafter, the Bonds shall be issuable in any Authorized Denomination required to effect transfers, exchanges or redemptions permitted or required by this Indenture. The Bonds shall be substantially in the form of Exhibit A hereto, with such amendments and changes as the officer executing the same shall deem appropriate.

(b) Date and Maturity. All Bonds shall be dated the Closing Date. The Bonds shall bear interest from the Closing Date until paid in full, payable for the periods, in the amounts, at the rates, and as provided in Section 3.06 hereof. The Bonds shall mature on the Maturity Date, unless sooner redeemed or accelerated.

(c) Payment. The principal of and interest on the Bonds shall be payable in lawful money of the United States of America by check or draft of the Trustee. Payments of interest and of principal upon redemption pursuant to Section 4.01(f) hereof shall be mailed by first-class mail to the Owners of the Bonds at their addresses appearing on the records of the Trustee; provided, however, that the payment to the Servicer shall, upon written request of the Servicer, be transmitted by the Trustee by wire transfer or other means requested in writing by the Servicer. Payment of the

principal (other than upon redemption pursuant to Section 4.01(f) hereof) of a Bond shall only be made upon surrender of the Bond at the Principal Office of the Trustee. Notwithstanding anything in this Indenture to the contrary, all payments of principal and interest with respect to Bonds owned by the Majority Owner shall, at the request of the Majority Owner, be made by wire transfer to the Majority Owner without the requirement of surrender of such Bonds under any circumstances.

Section 3.06 Interest on the Bonds.

(a) General. The cumulative principal amount of the Bonds for which installment purchase payments have been received by the Trustee shall bear interest at the applicable rate provided below. On each Interest Payment Date, interest accrued for the previous Calculation Period shall be payable. While the Bonds bear interest at a Variable Rate, or at an Alternative Rate based on a Variable Rate, interest on the Bonds shall be computed on the basis of a 360-day year, for the number of days actually elapsed. While the Bonds bear interest at the Fixed Rate, or at an Alternative Rate based on the Fixed Rate, interest on the Bonds shall be computed on the basis of a 360-day year of twelve equal months of 30 days each. While the Bonds bear interest at the Taxable Rate, interest on the Bonds shall be computed on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed.

(b) Variable Rate. The Bonds shall initially bear interest at the Variable Rate through and including the Conversion Date. Following the Conversion Date, the Bonds shall bear interest at the Fixed Rate. During the Variable Rate Period, the Bonds shall bear interest at the Variable Rate. During the Variable Rate Period, the Servicer shall determine a Variable Rate for each day. The Servicer shall give telephonic (with following written confirmation) or facsimile notice on, or promptly following, each Interest Payment Date to the Trustee and the Borrower of the interest payable on such Interest Payment Date. Absent manifest error, the determination of the Variable Rate by the Servicer shall be conclusive and binding upon the Owners, the Issuer, the Borrower and the Trustee.

(c) Fixed Rate. During the Fixed Rate Period, the Bonds shall bear interest at the Fixed Rate. Not less than thirty (30) days prior to the Conversion Date, the Trustee shall provide notice by first-class mail, postage prepaid, to all Owners (with a copy to the Issuer and the Borrower) at their addresses shown on the bond register providing that the interest rate on the Bonds will be converted to the Fixed Rate effective on the Conversion Date. Failure to mail any such notice or any defect in the mailing thereof in respect of any Bond shall not affect the validity of the conversion of the interest rate with respect to any Bond.

(d) Reserved.

(e) Alternative Rate. Following the occurrence of an Event of Default under the Loan Agreement or an Event of Default under this Indenture, the Bonds shall bear interest at the Alternative Rate.

(f) Taxable Rate. If an Initial Notification of Taxability shall occur, the Bonds shall bear interest from the date of such Initial Notification of Taxability at the Taxable Rate. If such Initial Notification of Taxability is reversed by the Internal Revenue Service or a court of competent jurisdiction and a Determination of Taxability has not occurred, then the Bonds shall bear interest from the date of such reversal at the rate applicable to the Bonds prior to the Initial Notification of Taxability and the Bank shall refund to the Borrower on or prior to the next succeeding Bond

Payment Date, the excess interest previously paid. This provision shall survive the discharge of this Indenture.

(g) Additional Interest. The Owners of the Bonds shall also be entitled to Additional Interest, which amount, if any, shall be deposited in the Revenue Fund pursuant to the provisions of Section 3.2(b) of the Loan Agreement.

(h) Maximum Rate. Notwithstanding any other provision set forth in this Indenture, under no circumstances shall the Bonds bear interest at a rate exceeding the Maximum Rate.

(i) Usury. Notwithstanding any provision of this Indenture to the contrary, in no event shall the interest contracted for, charged or received in connection with the Bonds (including any other costs or considerations that constitute interest under the laws of the State which are contracted for, charged or received pursuant to this Indenture) exceed the maximum rate of nonusurious interest allowed under the laws of the State as presently in effect and to the extent of any increase allowable by such laws. To the extent permitted by law, interest contracted for, charged or received on the Bonds shall be allocated over the entire term of the Bonds, to the end that interest paid on the Bonds does not exceed the maximum amount permitted to be paid thereon by law. Excess interest, if any, provided for in this Indenture, or otherwise, shall be canceled automatically as of the date of such acceleration or, if theretofore paid, shall be credited as principal paid on the Bonds.

Section 3.07 Payment of Interest on the Bonds. Interest on the Bonds shall be payable in the following manner: commencing the first day of the first month after the month in which the Closing Date occurs and continuing on each Interest Payment Date thereafter, interest on the Outstanding principal balance of the Bonds (which amount shall reflect so much of the purchase price as shall have been paid pursuant to Section 3.01(b) hereof) at the applicable interest rate for each series of Bonds shall be due and payable in arrears; and all accrued and unpaid interest shall be due and payable in full on the Maturity Date, if not paid earlier. To the extent more than one Bond is issued and Outstanding at any one time under the terms of this Indenture, payments of principal, interest and premium (if any) on the Bonds shall be made in a pro rata manner based on the Outstanding principal amount of the Bonds.

Section 3.08 Execution and Authentication of Bonds.

(a) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of an Authorized Representative of the Issuer, and its corporate seal (or a facsimile thereof) shall be thereunto affixed, imprinted, engraved or otherwise reproduced, and attested by the manual or facsimile signature of an Authorized Representative of the Issuer.

(b) In case any officer of the Issuer whose signature or facsimile signature shall appear on any of the Bonds shall cease to be such officer before the Bonds so signed and sealed shall have been actually delivered, such Bonds may, nevertheless, be delivered as herein provided, and may be issued as if the persons who signed or sealed such Bonds had not ceased to hold such offices or be so employed. Any Bond may be signed and sealed on behalf of the Issuer by such persons as, at the actual time of the execution of such Bond, shall be duly authorized or hold the proper office in or employment by the Issuer, although at the date of the Bonds such persons may not have been so authorized nor have held such office or employment.

(c) No Bond shall be valid or obligatory for any purpose or shall be entitled to any right or benefit under this Indenture unless there shall be endorsed on such Bond a certificate of authentication in the form set forth in such Bond duly executed by the Trustee, by the manual signature of an authorized signatory thereof, and such certificate of the Trustee upon any Bond executed on behalf of the Issuer shall be conclusive evidence that the Bond so authenticated has been duly issued under this Indenture and that the Owner thereof is entitled to the benefits of this Indenture.

### Section 3.09 Negotiability, Transfer and Registry of Bonds.

(a) All the Bonds issued under this Indenture shall be negotiable, subject to the provisions for registration and transfer contained in this Indenture and in the Bonds. So long as this Indenture remains in force, the Trustee, as registrar, shall maintain and keep books for the recordation of the taxpayer identification number of each of the Owners of the Bonds and the registration, transfer and exchange of Bonds. Each Bond shall be transferable only upon the books of registration. The Trustee is hereby appointed registrar, to act as agent of the Issuer for the registration and transfer of Bonds and the maintenance of the books of registration. The Issuer may appoint a successor registrar upon notice by mail to the Trustee and the Owners of the Bonds.

(b) Upon a partial redemption of the Bonds, the Issuer shall execute and the Trustee shall authenticate and deliver new certificates representing the unredeemed portion of the Bonds to be so tendered or redeemed in part, in exchange for the certificates representing the Bonds to be so tendered or redeemed in part. Surrender of Bonds for execution, authentication and delivery of new certificates shall not be a precondition to the redemption of Bonds pursuant to Section 4.01(f) hereof. If a Bond shall be transferred in part, such Bond shall be delivered to the registrar, and the Trustee shall, on behalf of the Issuer, deliver two Bonds in replacement therefor, having the same maturity and interest provisions and in the same aggregate principal amount as the Bond so delivered.

(c) Upon surrender of the Bonds at the Principal Office of the Trustee with a written instrument of transfer satisfactory to the Trustee, duly executed by the Owner or his attorney duly authorized in writing, such Bonds may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of Bonds in Authorized Denominations.

(d) The Borrower shall bear all costs in connection with any transfer or exchange of Bonds, including the reasonable fees and expenses of the Issuer, Bond Counsel and the Trustee and of any required indemnity for the Issuer and the Trustee; provided that the costs of any tax or other governmental charge imposed upon such transfer or exchange shall be borne by the Owner of the Bond.

(e) Bonds shall be transferred upon presentation and surrender thereof at the Principal Office of the Trustee by the Owner thereof or his attorney duly authorized in writing with due endorsement for transfer or accompanied by a written instrument of transfer in form satisfactory to the Trustee. All Bonds surrendered in any exchanges or transfers shall forthwith be canceled. For every such exchange or transfer of Bonds, there shall be made a charge sufficient to pay any tax or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the Owner requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The Trustee shall not be obligated to (i) authenticate, exchange or transfer any Bond during a period beginning at the opening of business on any Record Date and ending at the close of business on the next succeeding Interest

Payment Date, (ii) authenticate, exchange or transfer any Bond during a period beginning at the opening of business 15 days next preceding any selection of Bonds to be redeemed and ending at the close of business on the date of the first giving of notice of such redemption, or (iii) transfer or exchange any Bonds called or being called for redemption in whole or in part.

(f) The Bonds may be transferred in whole or in part by any Owner only as follows:

(1) Subject to the restrictions set forth in this Section 3.09(f) below, the initial Owner shall have the right to transfer the Bonds without the consent of the Issuer in minimum denominations of \$250,000 to Qualified Institutional Buyers or to a trustee or custodian of a trust the participants of which are all Qualified Institutional Buyers. The initial Owner shall, as a condition to delivery of the Bonds, sign an investor letter in substantially the form attached hereto as Exhibit B. Notwithstanding the foregoing restrictions in this Section 3.09(f), the initial Owner may transfer the Bonds to a parent, subsidiary or affiliate of the initial Owner.

(2) The Bonds shall be transferred only in minimum denominations of \$250,000; provided, however, that a single Bond may remain outstanding if due to partial redemptions the amount remaining outstanding on the applicable Bond is less than \$250,000; provided further that an additional Bond may be transferred in a principal amount not less than \$250,000.

(3) Without the prior written consent of the Issuer (which may be granted or withheld in its sole and absolute discretion), prior to the Conversion Date, there shall be no transfer of the Bonds except to (i) an affiliate of the initial Owner, or to any successor to initial Owner, whether by merger, acquisition of assets or otherwise, or (ii) a single Qualified Institutional Buyer which certifies that it is a Qualified Institutional Buyer to the Issuer by executing and delivering an investor's letter substantially in the form attached hereto as Exhibit B.

(4) On and after the Conversion Date, the Bonds shall only be sold and subsequently transferred to (A) Qualified Institutional Buyers (with the transferee certifying in writing to the Issuer that it is a Qualified Institutional Buyer by executing and delivering an investor's letter substantially in the form attached hereto as Exhibit B), (B) a trustee or custodian of a trust the participants of which are all Qualified Institutional Buyers and/or (C) an affiliate of the initial Owner, or any successor to the initial Owner, whether by merger, acquisition of assets or otherwise.

(5) Following any transfer of the Bonds, subject to the restrictions in this Section 3.09(f), there shall be no more than fifteen (15) different Bondowners; provided there shall at all times be a Majority Owner.

(6) No Bondholder shall transfer any Bond other than by a transfer made on the Bond Register maintained by the Trustee in accordance with this Indenture.

(7) The Trustee shall require the payment by the Bondholder requesting any 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 Trustee or Issuer in connection therewith shall be paid by the Borrower.

(8) Each Registered Owner acknowledges by reason of its purchase of Bonds and being the Registered Owner thereof that the Issuer has agreed to issue and deliver the Bonds to the Registered Owner, enter into the Issuer Documents and consummate the transactions hereunder only upon the Registered Owner's agreement that the Registered Owner shall not sell, assign or transfer any portion of the principal amount of the Bonds or any interest therein, or any interest in the proceeds thereof, except as provided in Section 3.09 hereof and upon delivery by each transferee to the Issuer of an Investor Letter in substantially the form attached hereto in Exhibit B and acknowledges in writing that it shall have no right to pursue any action or claim against the Issuer; provided that the Registered Owner agrees to and shall indemnify, hold harmless and defend the Issuer, their officers, directors, officials, agents and employees, and each of them, against all loss, costs, damages, expenses, suits, judgments, actions and liabilities of whatever nature (including, without limitation, reasonable 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 such sale, transfer or participation.

Section 3.10 Ownership of Bonds. The Issuer, the Trustee and any other Person may treat the registered owner of any Bond as the absolute owner thereof, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal or redemption price of and interest on such Bond and for all other purposes whatsoever, and payment of the principal or redemption price, if any, of and interest on any such Bond shall be made only to, or upon the order of, such registered owner. All such payments to such registered owner shall be valid and effectual to satisfy and discharge the liability of the Issuer upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor any Trustee shall be affected by any notice to the contrary.

Section 3.11 Payments on Bonds Due on Non-Business Days. In any case where any Bond Payment Date shall be a day other than a Business Day, then payment of the Bonds need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the Bond Payment Date, and no interest shall accrue for the period after such date.

Section 3.12 Registration and Transferability.

(a) The Bonds shall be in fully registered form, registered in the name of the initial Owner upon the registration books of the Trustee (the "Bond Register") at the office of the Trustee, such registration to be noted on the Bonds, after which no transfer shall be valid unless made in compliance with Section 3.09(f) hereof and noted on the Bond Register and on the Bonds.

(b) Subject to Section 3.09(f), the Bonds shall be transferable upon the Bond Register by the registered owner in person or by its attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Trustee, duly executed by the registered Owner or its duly authorized attorney. Upon such transfer, the Trustee will note the date of registration and the name and address of the newly registered Owner on the Bond Register. The Issuer and the Trustee shall deem and treat the person in whose name the Bond is last registered upon the books of the Trustee, with such registration noted on the Bond, as the absolute owner thereof for the purpose of receiving payment of or on account of the principal, or interest, premium and late payment fees and for all other purposes; all such payments so made to the registered Owner or upon such Holder's order shall be valid and effectual to satisfy and discharge the liability upon the Bonds to the extent of the sum or sums so paid, and the Issuer shall not be affected by any notice to the contrary.

(c) Whenever Bonds shall be surrendered for transfer, the Issuer shall execute and the Trustee shall authenticate and deliver new Bonds for a like aggregate principal amount and of the same tenor.

## **ARTICLE IV**

### **REDEMPTION OF BONDS**

Section 4.01 Mandatory Redemption. The Bonds shall be subject to mandatory redemption, and shall be redeemed prior to maturity, as follows:

(a) in whole or in part on the first Interest Payment Date for which notice can be given in accordance with this Indenture after the Conversion Date to the extent of excess funds on deposit on such date in the Loan Account of the Project Fund, determined as provided in Section 5.03 of this Indenture; or

(b) in whole or in part on the first Interest Payment Date for which adequate notice can be given in accordance with this Indenture after and to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project are deposited in the Insurance and Condemnation Account of the Project Fund and are not to be used to repair or restore the Project (which unused Condemnation Award or Insurance Proceeds shall be applied to the redemption of Bonds, unless all of the Owners shall have approved a proposed alternative application of such funds and the Trustee and the Servicer shall have received an opinion of Bond Counsel to the effect that such proposed alternative application of such funds will not adversely affect the exclusion from gross income of Owners (other than an Owner who is a “substantial user” of the Project or a “related person” to a “substantial user,” as defined in Section 147(a) of the Code); or

(c) in whole on the first Interest Payment Date for which notice can be given to the Owners in accordance with this Indenture following receipt by the Trustee of notice from the Servicer demanding such redemption, following a Determination of Taxability; or

(d) on the date upon which Stabilization is achieved (or the Interest Payment Date immediately preceding such date), in an amount sufficient to reduce the aggregate principal amount of Outstanding Bonds to [\$3,595,000]; or

(e) on the date upon which Stabilization is achieved (or the Interest Payment Date immediately preceding such date), in the amount (if any), in excess of the amount required pursuant to Section 4.01(d), that is necessary in order to achieve compliance with the debt service coverage condition to achievement of Stabilization; or

(f) in part on the first day of each calendar month as set forth in Exhibit C to this Indenture (as it may be amended from time to time in accordance with Section 4.07(b)), in the amount set forth opposite such date in Exhibit C; or

(g) in whole, following receipt by the Trustee of notice from the Servicer stating that an Event of Default has occurred under the Loan Agreement or the Construction Disbursement Agreement and demanding redemption of the Bonds, on any date selected by the Servicer, specified in a notice in writing delivered to the Borrower at least ten (10) days prior to such date.

Section 4.02 Redemption Price of Bonds Redeemed Pursuant to Mandatory Redemption. Any Bonds being redeemed before maturity in accordance with Section 4.01 of this Indenture shall be redeemed at a redemption price equal to the principal amount of the Bonds being redeemed, together with accrued interest to the date of redemption, plus Additional Interest, if redemption is under Section 4.01(c).

Section 4.03 Optional Redemption. The Bonds shall be subject to redemption from the proceeds of an optional prepayment of the Loan by the Borrower (a) in whole or in part, on any Interest Payment Date during the Variable Rate Period, at a redemption price equal to the principal amount thereof, together with accrued interest to the date of redemption, and (b) in whole, but not in part, on any Interest Payment Date, at a redemption price equal to the principal amount thereof, together with accrued interest to the date of redemption.

Section 4.04 Purchase in Lieu of Redemption. At the election of the Borrower upon a redemption in whole of the Bonds, by written notice to the Trustee and the Servicer given not less than five (5) Business Days in advance of such redemption date, the Bonds will be deemed tendered for purchase in lieu of the redemption on such date. The purchase price of Bonds so purchased in lieu of redemption shall be the principal amount thereof together with all accrued and unpaid interest to the date of redemption and shall be payable on the date of redemption thereof. Bonds so purchased in lieu of redemption shall remain Outstanding and shall be registered to or upon the direction of the Borrower.

Section 4.05 Notice of Redemption.

(a) Notice of redemption shall be given by the Trustee to the Owners and Borrower by facsimile transmission or other similar electronic means of communication, promptly confirmed in writing, not less than ten (10) Business Days prior to the date fixed for redemption; provided, however, that no notice of redemption shall be required to be given to the Owners for a redemption pursuant to Section 4.01(e) of this Indenture during such time as there is a single Owner of all the Bonds, and no notice of redemption shall be required to be given to the Owners in any event for a redemption pursuant to Section 4.01(f) of this Indenture. Receipt of such notice of redemption shall not be a condition precedent to such redemption, and failure to so notify any of such registered Owners shall not affect the validity of the proceedings for the redemption of the Bonds.

(b) Notice of redemption having been given as provided in subsection (a) of this Section 4.05 and all conditions precedent, if any, specified in such notice having been satisfied, the Bonds or portions thereof so to be redeemed shall become due and payable on the date fixed for redemption at the redemption price specified therein plus any accrued interest to the redemption date, and upon presentation and surrender thereof at the place specified in such notice, such Bonds or portions thereof shall be paid at the redemption price, plus any accrued interest to the redemption date. On and after the redemption date (unless funds for the payment of the redemption price and accrued interest shall not have been provided to the Trustee), (i) such Bonds shall cease to bear interest and (ii) such Bonds shall no longer be considered as Outstanding under this Indenture.

Section 4.06 Selection of Bonds To Be Redeemed.

(a) Except as otherwise expressly set forth herein, if less than all the Bonds are to be redeemed, the particular Bonds or portions of Bonds to be redeemed shall be selected by the Trustee, in such manner as the Trustee in its sole discretion may deem fair and appropriate so that Bonds are

redeemed, as nearly as practicable, from each Owner, if there is more than one Owner, on a pro rata basis according to the principal amount of Bonds represented by each Bond Outstanding.

(b) In making such selection, the Trustee may treat each Bond to be redeemed as representing that number of Bonds of the lowest Authorized Denomination as is obtained by dividing the principal amount of such Bond by such Authorized Denomination.

**Section 4.07 Partial Redemption of Registered Bonds.**

(a) In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the Principal Office of the Trustee of such Bond by the Owner thereof or his attorney duly authorized in writing (with due endorsement for transfer or accompanied by a written instrument of transfer in form satisfactory to the Trustee), the Issuer shall execute and the Trustee shall authenticate and deliver to or upon the order of such Owner, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Owner, of any Authorized Denomination of like tenor, or if less than the minimum Authorized Denomination, an amount necessary to equal the unredeemed portion of the principal amount of the Bond; provided, however, that such surrender of Bonds shall not be required for payment of the redemption price pursuant to Sections 4.01(e) or 4.01(f) hereof. For all purposes of this Indenture (including exchange and transfer), the Bond so issued in less than a minimum Authorized Denomination shall be deemed to have been issued in an Authorized Denomination. Bonds so presented and surrendered shall be canceled in accordance with this Indenture.

(b) In the event of a partial redemption of Bonds other than pursuant to Section 4.01(e) of this Indenture or any failure of all of the Bonds authorized hereunder to be purchased through the “drawdown” mechanism pursuant to Section 3.01(b) through the Conversion Date, the mandatory sinking fund schedule set forth on the schedule attached as Exhibit C to this Indenture (as it may have been previously adjusted in accordance with this Section 4.07(b)) shall be adjusted to provide for approximately equal monthly payments of principal and interest at the applicable rate hereunder (taking into account minimum denominations of the Bonds) on the Bonds remaining Outstanding after taking into account such partial redemption; the Servicer shall provide the Trustee with a new schedule reflecting such adjustment.

**ARTICLE V**

**ESTABLISHMENT OF CERTAIN FUNDS AND ACCOUNTS,  
APPLICATION THEREOF AND SECURITY THEREFOR**

**Section 5.01 Establishment of Funds and Accounts; Application of Proceeds of the Bonds; and Other Amounts.**

(a) The following Funds and Accounts are hereby created and established as special trust funds:

- (i) the Project Fund, consisting of:
  - (A) the Loan Account;
  - (B) the Costs of Issuance Account;

- (C) the Insurance and Condemnation Proceeds Account;
- (D) the Equity Account; and
- (E) the Capitalized Interest Account.

- (ii) the Replacement Reserve Fund;
- (iii) the Operating Reserve Fund;
- (iv) the Tax and Insurance Fund;
- (v) the Revenue Fund; and
- (vi) the Rebate Fund.

(b) All the Funds and Accounts created by subsection (a) of this Section 5.01 shall be held by the Trustee in trust for application only in accordance with the provisions of this Indenture.

(c) The initial installment for the sale of the Bonds (\$\_\_\_\_\_), together with the initial equity contribution of the Borrower (\$\_\_\_\_\_) shall be applied as follows:

(i) \$\_\_\_\_\_, representing [a portion of the initial installment of] the proceeds of the sale of the Bonds, shall be deposited in the Loan Account of the Project Fund;

(ii) \$\_\_\_\_\_, representing [a portion of the initial installment of] [the proceeds of the sale of the Bonds] [the initial equity contribution of the Borrower] shall be deposited in the Capitalized Interest Account;

(iii) \$\_\_\_\_\_, representing a portion of the initial equity contribution of the Borrower and \$\_\_\_\_\_, representing a portion of the initial installment of the proceeds of the sale of the Bonds, for a total of \$\_\_\_\_\_ shall be deposited in the Costs of Issuance Account of the Project Fund; and

(iv) \$\_\_\_\_\_, representing the balance of the initial equity contribution of the Borrower shall be deposited in the Equity Account of the Project Fund.

#### Section 5.02 Project Fund.

(a) Deposit of Moneys. The amounts specified in Section 5.01(c) shall be deposited in the Loan Account, the Capitalized Interest Account, the Costs of Issuance Account and the Equity Account of the Project Fund. The Loan Account of the Project Fund shall be funded from time to time as and when installments of the purchase price of the Bonds are paid by the Owners pursuant to Section 3.01(b) hereof. Additional capitalized interest deposited by the Borrower in connection with any extension of the Completion Deadline or the Stabilization Deadline shall be deposited in the Capitalized Interest Account of the Project Fund. Any amounts received by the Trustee from the Guarantor, and any amounts received by the Trustee from the Borrower in response to demands by the Trustee or the Servicer for deposits of Borrower's funds shall be deposited in the Equity Account of the Project Fund. All Condemnation Awards and Insurance Proceeds shall be deposited in the Insurance and Condemnation Proceeds Account of the Project Fund. Any other funds directed by the

Issuer, the Servicer or the Borrower to be deposited in the Project Fund which are not required to be otherwise deposited or disbursed shall be so deposited by the Trustee upon receipt of funds and such direction.

(b) Use of Moneys.

(i) Loan Account and Equity Account. The Trustee shall make payments from the Loan Account for the purpose of paying the Qualified Costs of the Project. The Trustee shall make payments from the Equity Account to pay (A) all costs of acquisition, construction, and equipping of the Project other than Qualified Costs of the Project and (B) to the extent amounts on deposit in the Loan Account are insufficient for such purposes, all Qualified Costs of the Project. Disbursements from the Loan Account and the Equity Account shall be made by the Trustee upon receipt of a Requisition, executed by an Authorized Representative of the Borrower and approved by an Authorized Representative of the Servicer.

(ii) Capitalized Interest. On the last Business Day immediately preceding each Interest Payment Date up to and including the Stabilization Date, the Trustee shall transfer funds from the Capitalized Interest Account to the Revenue Fund to pay accrued interest on the Bonds through the date immediately preceding such Interest Payment Date, without any requirement or condition of submission of any Requisition. After the Stabilization Date, amounts held in the Capitalized Interest Account shall be applied to pay Project Costs, transferred to the Revenue Fund for application to the payment of amounts due in respect to the Bonds, or, as further provided in Section 5.03 hereof, released to the Borrower, in each case upon the written direction of the Servicer to the Trustee (a copy of which shall be provided to the Borrower).

(iii) Costs of Issuance Account. Amounts in the Costs of Issuance Account shall be disbursed by the Trustee on the Closing Date and thereafter only to pay costs of issuance of the Bonds pursuant to a closing statement signed by the Borrower and the Servicer identifying the amount to be paid and the payee. Amounts remaining in the Costs of Issuance Account (including investment proceeds) after the payment of all costs of issuance, and in any event not later than thirty (30) days following the Closing Date, shall be transferred to the Equity Account of the Project Fund.

(iv) Insurance and Condemnation Proceeds Account. The Trustee shall make all disbursements from the Insurance and Condemnation Proceeds Account only upon the receipt by the Trustee of the written request of the Borrower accompanied by the written approval of the Servicer and in accordance with the provisions of Section 5.04 hereof.

(v) Acceleration. Upon the occurrence and continuation of an Event of Default hereunder and an acceleration of the Bonds pursuant thereto, all moneys and investments in the Project Fund shall be transferred to the Revenue Fund and applied to the payment of the Bonds.

(c) Requisitions. The Trustee may rely fully on the representations of the Borrower contained in any Requisition, and upon the written approval of the Servicer set forth on any Requisition, delivered pursuant to the Loan Agreement, this Indenture and the Construction Disbursement Agreement, and shall not be required to make any investigation or inspection of the Project in connection therewith.

Section 5.03 Use of Moneys Following Stabilization. Moneys (including investment proceeds but net of amounts that the Trustee is directed by a written instruction from the Servicer to

retain to pay Qualified Costs of the Project (i) incurred but not then due and payable or (ii) allocated to construction contingency, marketing or operating expenses after the Stabilization Date) held in the Loan Account shall be transferred immediately after the Stabilization Date to the Revenue Fund for application to the redemption of Bonds pursuant to Section 4.01(a) of this Indenture. Moneys held in the Equity Account shall be released to or upon the order of the Borrower, when the Servicer has notified the Trustee that all of the following conditions have been satisfied or waived by the Servicer: (i) the Borrower has obtained, and applied to costs of the Project in accordance with the requirements of the Construction Disbursement Agreement, all funds required to be paid by the Borrower pursuant to the Construction Disbursement Agreement; and (ii) Stabilization has occurred.

Section 5.04 Condemnation Awards and Insurance Proceeds.

(a) Moneys representing a Condemnation Award or Insurance Proceeds shall be deposited into the Insurance and Condemnation Proceeds Account of the Project Fund, and notice of such deposit thereof shall be given by the Trustee to the Servicer.

(b) To the extent there has been a determination pursuant to the Loan Documents to restore the Project, such Condemnation Award or Insurance Proceeds as have been approved for disbursement by the Servicer shall be disbursed by the Trustee to or for the account of the Borrower, in accordance with terms, conditions and procedures specified by the Servicer, for application by the Borrower for such purposes in accordance with the provisions of the Loan Documents.

(c) In the event there is a determination pursuant to the Loan Documents not to restore the Project, such Condemnation Award or Insurance Proceeds shall be either (i) transferred to the Revenue Fund and applied to the redemption of Bonds in accordance with Section 4.01(c) hereof, or (ii) released to the Borrower if the Borrower obtains an opinion of Bond Counsel that such release will not affect the excludability of the interest on the Bonds from gross income of Owners (other than an Owner who is a “substantial user” of the Project or a “related person” to a “substantial user,” as defined in Section 147(a) of the Code) for federal income tax purposes, all in accordance with written direction of the Servicer to the Trustee and subject to the provisions of the Loan Documents.

Section 5.05 Replacement Reserve Fund and Operating Reserve Fund. There shall be deposited in the Replacement Reserve Fund all moneys received for such purpose by the Issuer or the Trustee from the Borrower pursuant to Section 5.22(c) of the Loan Agreement or transferred pursuant to Section 5.07 of this Indenture. Moneys in the Replacement Reserve Fund shall be disbursed by the Trustee only upon receipt of a written request therefor executed by the Authorized Representative of the Borrower and approved by the Servicer to be applied to repairs of or replacements in part of the Project, except that upon the occurrence and continuation of an Event of Default hereunder and an acceleration of the Bonds pursuant hereto, all moneys and investments in the Replacement Reserve Fund (other than moneys held to pay costs required to be paid but not yet payable) shall be transferred to the Revenue Fund and applied to the payment of the Bonds. Upon the payment in full of the Bonds and the fees and expenses of the Issuer, the Majority Owner, the Servicer and the Trustee and upon payment of amounts payable to the United States pursuant to Section 5.08 hereof, any amounts remaining in the Replacement Reserve Fund shall be paid to the Borrower as soon as practicable upon its written request therefor.

(a) There shall be deposited in the Operating Reserve Fund all moneys received for such purpose by the Issuer or the Trustee from the Borrower pursuant to Section 5.22(i) of the Loan Agreement or transferred pursuant to Section 5.07 of this Indenture. Moneys in the Operating

Reserve Fund shall be disbursed by the Trustee only upon receipt of a written request therefor executed by the Authorized Representative of the Borrower and approved by the Servicer to be applied to costs of operation of the Project, except that upon the occurrence and continuation of an Event of Default hereunder and an acceleration of the Bonds pursuant hereto, all moneys and investments in the Operating Reserve Fund (other than moneys held to pay costs required to be paid but not yet payable) shall be transferred to the Revenue Fund and applied to the payment of the Bonds. Upon the payment in full of the Bonds and the fees and expenses of the Issuer, the Majority Owner, the Servicer and the Trustee and upon payment of amounts payable to the United States pursuant to Section 5.08 hereof, any amounts remaining in the Operating Reserve Fund shall be paid to the Borrower as soon as practicable upon its written request therefor.

Section 5.06 Tax and Insurance Fund. There shall be deposited in the Tax and Insurance Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to Section 5.22(h) of the Loan Agreement or transferred pursuant to Section 5.07 of this Indenture. Moneys in the Tax and Insurance Fund shall be applied to payment of real estate taxes and insurance premiums, as the same become due in accordance with bills for such taxes and insurance premiums. If the Trustee becomes aware at any time that amounts in the Tax and Insurance Fund are or will be insufficient to pay such taxes and insurance premiums as they become due, the Trustee shall promptly give notice of such insufficiency to Borrower and the Servicer. Upon the occurrence and continuation of an Event of Default hereunder and an acceleration of the Bonds pursuant hereto, all moneys and investment in the Tax and Insurance Fund (other than moneys held to pay costs required to be paid but not yet payable) shall be transferred to the Revenue Fund and applied to the payment of the Bonds. Upon the payment in full of the Bonds and the fees and expenses of the Issuer, the Majority Owner, the Servicer and the Trustee, and upon payment of amounts payable to the United States pursuant to Section 5.08 hereof, any amounts remaining in the Tax and Insurance Fund shall be paid to the Borrower as soon as practicable upon its written request therefor.

Section 5.07 Revenue Fund.

(a) There shall be deposited in the Revenue Fund all amounts transferred from the Project Fund or received from the Borrower pursuant to Section 3.2 of the Loan Agreement with respect to the Loan Documents or from the Guarantor under the Guaranty, including payments of interest and principal and voluntary and involuntary prepayments of the Loan and investment earnings on investments held in the Funds and Accounts created by this Indenture (except as otherwise provided in Section 5.08 and Section 5.10).

(b) Amounts in the Revenue Fund shall be applied to the following items in the following order of priority:

- (i) on each Interest Payment Date, to the payment of interest on the Bonds;
- (ii) on each Bond Payment Date, to the payment of the principal of or redemption price (or purchase price in the event of an election of Borrower under Section 4.04) of, interest on, and any Additional Interest due with respect to, the Bonds;
- (iii) on the first day of each month, to the payment of any required deposit in the Tax and Insurance Fund;

(iv) on the first day of each month, to the payment of any required deposit in the Replacement Reserve Fund;

(v) on the first day of each month, to the payment of any required deposit in the Operating Reserve Fund;

(vi) on the first day of each month, to the payment of the fees of the Issuer, the Trustee, the Majority Owner and the Servicer, if any, due and owing under the Loan Documents and this Indenture;

(vii) on the first day of each month, to the payment of any other amounts then due and owing under the Loan Documents; and

(viii) on the first day of each month, to the Borrower or such other party as may be legally entitled thereto.

(c) Upon the payment in full of the Bonds and the fees and expenses of the Issuer and the Trustee and the payment of amounts payable to the United States pursuant to Section 5.08 hereof, any amounts remaining in the Revenue Fund (except amounts held for future payment to the United States pursuant to Section 5.08 hereof) shall be paid to the Borrower.

#### Section 5.08 Rebate Fund.

(a) The Rebate Fund shall be held and applied as provided in this Section 5.08. All money at any time deposited in the Rebate Fund shall be held by the Trustee in trust for payment, to the extent required under the Code and as calculated by the Rebate Analyst, for payment to the United States Government. None of the Issuer, the Borrower or the Owners shall have any rights in or claim to such moneys. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and by the Tax Agreement.

(b) The Trustee shall make information regarding the Bonds and the investments hereunder available to the Borrower promptly upon written request, shall make deposits to and disbursements from the Rebate Fund in accordance with the directions received from the Authorized Representative of the Borrower, shall invest moneys in the Rebate Fund pursuant to said directions and shall deposit income from such investments pursuant to said directions, and shall make payments to the United States of America in accordance with written directions received from the Borrower.

(c) Notwithstanding any provision of this Indenture to the contrary, the Trustee shall not be liable or responsible for any calculation or determination which may be required in connection with or for the purpose of complying with Section 148 of the Code or any applicable Treasury regulation (the “**Arbitrage Rules**”), including, without limitation, the calculation of amounts required to be paid to the United States under the provisions of the Arbitrage Rules and the fair market value of any investment made hereunder, it being understood and agreed that the sole obligation of the Trustee with respect to investments of funds hereunder shall be to invest the moneys received by the Trustee pursuant to the written instructions of the Authorized Representative of the Borrower given in accordance with Section 5.09 hereof. The Trustee shall have no responsibility for determining whether or not the investments made pursuant to the direction of the Borrower or any of the instructions received by the Trustee under this Section comply with the requirements of the

Arbitrage Rules and shall have no responsibility for monitoring the obligations of the Borrower or the Issuer for compliance with the provisions of the Indenture with respect to the Arbitrage Rules.

(d) Notwithstanding any provision of this Indenture to the contrary, the obligation to remit payment of the rebate amount to the United States and to comply with all other requirements of this Section 5.08 shall survive the defeasance or payment in full of the Bonds.

(e) Any funds remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Trustee, shall be withdrawn and remitted to the Borrower.

(f) The Trustee shall obtain and keep such records of the computations made pursuant to this Section 5.08 as are required under Section 148(f) of the Code. The Trustee shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Bonds and the investments of earnings from those investments as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

(g) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 5.08 need not be made if there shall have been delivered to the Trustee, the Issuer and the Servicer an opinion of Bond Counsel to the effect that such withdrawal and payment are not necessary in order to establish or maintain the exclusion from gross income of Owners (other than an Owner who is a “substantial user” of the Project or a “related person” to a “substantial user,” as defined in Section 147(a) of the Code) of interest on the Bonds. In the event Bond Counsel so opines, the moneys on deposit in the Rebate Fund shall be applied to such purpose as the Borrower shall direct provided that the Borrower shall deliver to the Issuer, the Trustee and the Servicer an opinion of Bond Counsel to the effect that such application will not adversely affect the exclusion from gross income of Owners (other than an Owner who is a “substantial user” of the Project or a “related person” to a “substantial user,” as defined in Section 147(a) of the Code) of interest on the Bonds for purposes of federal income taxation.

#### Section 5.09 Moneys Held in Trust; Investment of Moneys.

(a) All moneys from time to time received by the Trustee and held in the Funds and Accounts created hereby (other than the Rebate Fund) shall be held in trust as security for the benefit of the Owners of the Bonds. All such moneys, including the moneys held in the Rebate Fund, shall be invested as provided in this Indenture.

(b) Any such investments shall be held by or under the control of the Trustee. A sufficient amount of such investments shall be liquidated whenever the cash balance in any Fund or Account is insufficient to pay an approved Requisition when presented. Any moneys held as a part of the Funds shall be invested or reinvested, to the extent permitted by law, in Investment Securities at the request of and as directed in writing by an Authorized Representative of the Borrower.

Section 5.10 Investment Earnings. Earnings on investments held in the Capitalized Interest Account, the Loan Account, the Equity Account and the Insurance and Condemnation Proceeds Account shall be retained in the Capitalized Interest Account, the Loan Account, the Equity Account and the Insurance and Condemnation Proceeds Account, respectively, for application pursuant to Sections 5.02, 5.03 and 5.04 hereof. Earnings on all investments held in the Revenue

Fund shall be retained in the Revenue Fund for application pursuant to Section 5.07 hereof. Earnings on investments held in the Replacement Reserve Fund, the Operating Reserve Account, the Tax and Insurance Fund and the Rebate Fund shall be retained therein and applied in the manner prescribed by Sections 5.05, 5.06 and 5.08 hereof, respectively.

Section 5.11 Covenants Respecting Arbitrage and Rebate. The Trustee shall keep and make available to the Borrower such records concerning the investment of the gross proceeds of the Bonds and the investments of earnings from those investments as may be requested by the Borrower in order to enable the Borrower to fulfill the requirements of Section 148(f) of the Code.

Section 5.12 Records. The Trustee shall keep and maintain adequate records pertaining to the Funds and Accounts established hereunder, including all deposits to and disbursements from said funds and accounts. The Trustee shall retain in its possession all certifications and other documents presented to it, all such records and all records of principal and interest paid on the Bonds, subject to the inspection of the Borrower, the Issuer, the Trustee and the Owners of the Bonds and their representatives at all reasonable times and upon reasonable prior notice.

Section 5.13 Reports From the Trustee. The Trustee shall, on or before the tenth (10<sup>th</sup>) day of each month and annually, file with the Servicer, the Borrower and the Issuer a statement setting forth in respect to the preceding calendar month or year:

- (a) the amount withdrawn or transferred by it and the amount deposited within or on account of each Fund and Account held by it under the provisions of this Indenture, including the amount of investment income on each Fund and Account;
- (b) the amount on deposit with it at the end of such month to the credit of each Fund and Account;
- (c) a brief description of all obligations held by it as an investment of moneys in each such Fund and Account;
- (d) the amount applied to the purchase or redemption of Bonds and a description of the Bonds or portions of Bonds so purchased or redeemed; and
- (e) any other information which the Borrower, the Servicer or the Issuer may reasonably request and to which the Trustee has access in the ordinary course of its operations.

The Issuer acknowledges that, to the extent that regulations of the Comptroller of the Currency or any other applicable regulatory agency grant the Issuer the right to receive brokerage confirmations of securities transactions as they occur, the Issuer specifically waives the right to receive such confirmations. Upon the written request of any Owner or Owners of twenty-five percent (25%) or more in aggregate principal amount of Bonds then Outstanding, the Trustee, at the cost of the Borrower, shall provide a copy of such statement to the Owners of the Bonds. All records and files pertaining to the Trust Estate shall be open at all reasonable times to the inspection of the Servicer and its agents and representatives upon reasonable prior notice.

## ARTICLE VI

### DEFAULT PROVISIONS; REMEDIES

Section 6.01 Events of Default. Each of the following events is hereby declared an “Event of Default” under this Indenture:

(a) The failure to pay any installment of principal or the redemption price of any Bond when and as the same shall become due and payable, whether at maturity or by call for redemption or otherwise;

(b) During the Variable Rate Period, the failure to pay any installment of interest on any Bond payable hereunder within five (5) calendar days after the Borrower’s receipt of notice of the amount due and payable; or

(c) During the Fixed Rate Period, the failure to pay any installment of interest on any Bond when and as the same shall become due and payable; or

(d) The failure by Issuer to perform or observe any other covenant, agreement or condition on its part contained in this Indenture or in the Bonds, and such failure shall continue for a period of sixty (60) days after written notice thereof to the Issuer and the Borrower by the Trustee or by the Owners of not less than twenty-five percent (25%) in principal amount of the Bonds Outstanding.

(e) Default in the timely payment of any installment of the fees payable to the Issuer pursuant to the Loan Agreement and Bond Regulatory Agreement, and the continuance thereof for a period of thirty (30) days after written notice to the Trustee, the Borrower and the Servicer has been given by the Issuer, which default shall not be subject to waiver by the Servicer or the Trustee; or

(f) The Trustee shall have received written notice from the Issuer that a default under the Regulatory Agreement has occurred and is continuing past any applicable notice and cure periods.

#### Section 6.02 Remedies.

(a) Except as otherwise provided in this Article, the Trustee shall take only such actions in respect of an Event of Default as it shall be directed in writing to take by the Servicer. Such actions may include the following:

(i) Declaration of all Outstanding Bonds to be immediately due and payable, whereupon such Bonds shall become and be immediately due and payable, anything in the Bonds or in this Indenture to the contrary notwithstanding. In such event, there shall be due and payable on the Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon and which will accrue thereon to the date of payment and all unpaid interest on the Bonds on the date of payment.

(ii) Implementation of actions for the recovery of the amounts due on the Note, the Loan Agreement and the other Loan Documents;

(iii) Foreclosure or realization upon the collateral held by the Trustee for the obligations of the Borrower under the Loan Documents;

(iv) Implementation of such other rights and remedies as may be available under the Loan Documents, the Guaranty or applicable law.

(b) At any time after the principal of the Bonds shall have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Indenture, the Trustee, if so directed by the Servicer (or in the case of an Event of Default arising under Section 6.01(d), the Issuer), shall annul such declaration and its consequences with respect to any Bonds not then due by their terms. In such event, the Issuer, the Borrower, the Trustee and all of the Owners shall be restored to the same position as before the occurrence of the Event of Default. No such annulment shall extend to or affect any subsequent Event of Default or impair any right consequent thereon.

Section 6.03 Additional Remedies and Enforcement of Remedies. Upon the occurrence and continuation of any Event of Default, the Trustee, if and to the extent directed by the Servicer, may proceed forthwith to protect and enforce its rights and the rights of the Owners under the Act, the Bonds and this Indenture by such suits, actions or proceedings as the Servicer, in its sole discretion, shall deem expedient.

Section 6.04 Application of Revenues and Other Moneys After Default.

(a) If an Event of Default shall occur and shall not have been remedied, the Trustee shall transfer to the Revenue Fund (i) forthwith, all moneys and securities then held in any other Fund or Account under this Indenture other than amounts held in the Rebate Fund and (ii) as promptly as practicable after receipt thereof, all revenues and other payments or receipts pledged under this Indenture and all proceeds realized as a result of remedial action under the Loan Documents, the General Partner Documents and the Guaranty.

(b) During the continuation of an Event of Default, the Trustee shall apply such moneys, securities, revenues, payments and receipts and the income therefrom as follows and in the following order:

(i) To the payment of Trustee Expenses;

(ii) To the payment of the amounts required to reimburse the Owners of the Bonds and the Issuer for any reasonable legal or other out-of-pocket costs incurred by them in connection with such remedial action and the reasonable fees and expenses of the Issuer in carrying out this Indenture or the Loan Documents;

(iii) To the payment of the interest and principal installments or redemption price then due and payable on the Bonds, as follows:

(A) Unless the principal of all of the Bonds shall have become or have been declared due and payable;

First: To the payment to the Persons entitled thereto of all installments of interest then due and payable in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the

amounts due thereon to the Persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the Persons entitled thereto of the unpaid principal installments or redemption price of any Bonds which shall have become due and payable, whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Bonds due and payable on any date, then to the payment thereof ratably, according to the amounts of principal installments or redemption price due on such date, to the Persons entitled thereto, without any discrimination or preference.

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

(iv) Notwithstanding anything contained herein to the contrary, the Servicer may by written notice to the Trustee direct the application of funds other than in the manner set forth above (except that the priority of payment of Trustee's fees and expenses shall not be altered), including, without limitation, the application of funds between the principal of or interest on the Bonds. Any such determination by the Servicer shall be deemed conclusive, and the Issuer and the Trustee shall have no liability for the tax consequences of said determination.

Section 6.05 Remedies Not Exclusive. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or the Owners 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 under this Indenture or existing at law or in equity or by statute (including the Act) on or after the date of adoption of this Indenture.

Section 6.06 Remedies Vested in Trustee and Servicer. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee and the Servicer without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Servicer to direct proceedings hereunder, any such suit or proceeding instituted by the Trustee shall be brought in its name under the authority herein granted without the necessity of joining as plaintiffs or defendants any Owners of the Bonds. Any recovery of judgment shall be for the equal benefit of the Owners of the Outstanding Bonds.

Section 6.07 Individual Bond Owners Action Restricted.

(a) No Owner of any Bond other than the Servicer (if it is the Owner of any Bond) or the Majority Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust under this Indenture or for any remedy under this Indenture.

(b) Nothing contained in this Indenture shall affect or impair, or be construed to affect or impair, the right of the Owner of any Bond (i) to receive payment of the principal of or interest on such Bond on or after the due date thereof or (ii) to institute suit for the enforcement of any such payment on or after such due date; provided, however, no Owner of any Bond may institute or prosecute any such suit or enter judgment therein, if, and to the extent that, the institution or prosecution of such suit or the entry of judgment therein, under applicable law, would result in the surrender, impairment, waiver or loss of the lien of this Indenture on the moneys, funds and properties pledged under this Indenture for the equal and ratable benefit of all Owners of the Bonds appertaining thereto.

Section 6.08 Termination of Proceedings. In case any proceeding taken by the Servicer or by the Trustee at the direction of the Servicer on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Owners of the Bonds, the Issuer, the Trustee, the Borrower and the Owners of the Bonds shall be restored to their former positions and rights under this Indenture, and all rights, remedies and powers of the such parties shall continue as if no such proceeding had been taken.

Section 6.09 Waiver and Non-Waiver of Event of Default.

(a) No delay or omission of the Trustee, the Servicer or the Owners of the Bonds to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given by this Article VII to any party may be exercised from time to time and as often as may be deemed expedient.

(b) In case of any waiver by the Trustee, acting upon the direction of the Servicer, of an Event of Default under this Indenture, the Issuer, the Trustee and the Owners of the Bonds shall be restored to their former positions and rights under this Indenture, respectively, but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

Section 6.10 Servicer Controls Proceedings. If an Event of Default shall have occurred and be continuing, notwithstanding anything in this Indenture to the contrary, the Servicer shall have the right, at any time, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting any proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings under this Indenture and subject to Section 7.02 of this Indenture; provided, however, that such direction is in accordance with law and the provisions of this Indenture; provided that nothing in this Section 6.10 shall impair the right of the Trustee in its discretion to take any other action under this Indenture which it may deem proper and which is not inconsistent with such direction by the Servicer, nor shall it impair the Issuer's right to direct the Trustee to the extent permitted by Section 6.02.

**ARTICLE VII**  
**CONCERNING THE TRUSTEE**

Section 7.01 Trustee; Appointment and Acceptance of Duties.

(a) The Issuer hereby appoints U.S. Bank National Association as trustee hereunder. The Trustee shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing this Indenture.

(b) Unless otherwise provided, the corporate trust offices of the Trustee are designated as the respective offices or agencies of the Trustee for the authentication and delivery of Bonds.

Section 7.02 Responsibilities of Trustee.

(a) The recitals of fact herein and in the Bonds contained (other than the certificate of authentication) shall be taken as the statements of the Issuer and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of any Bonds issued hereunder or as to the security afforded by this Indenture, and the Trustee shall incur no liability in respect thereof. The Trustee shall be under no responsibility or duty with respect to the application of any moneys properly paid to it except as provided herein or as otherwise expressly agreed by the Trustee. Except for a declaration of acceleration under Section 6.02 hereof or the payment of principal and interest on the Bonds, the Trustee shall be under no obligation or duty to perform any act that would involve it in expense or liability or to institute or defend any suit in respect of this Indenture or to advance any of its own moneys, unless indemnified to its reasonable satisfaction. Subject to the provisions of subsection (b) of this Section 7.02, the Trustee shall not be liable in connection with the performance of its duties under this Indenture except for its own negligence or willful misconduct.

(b) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (and has not been cured within any applicable grace period) and subject to the rights of the Servicer with respect to control of remedies following an Event of Default hereunder, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Any provisions of this Indenture relating to action taken or to be taken by the Trustee or to evidence upon which the Trustee may rely shall be subject to the provisions of this Section 7.02.

(c) The Trustee shall cooperate fully with the Servicer in the enforcement and protection of the rights of the Owners of the Bonds to the fullest extent possible under this Indenture, the Loan Documents and applicable law. Toward this end, the Trustee shall take such action as directed by the Servicer, including foreclosure of the Property under the Mortgage, suit for specific performance of the Loan Documents or for damages for nonperformance thereof and assignment of the Loan Documents to the Owners of the Bonds for purposes of enforcing the rights of the Owners of the Bonds; provided, that without the prior written consent of the Issuer, the Servicer shall give the Trustee no direction as to the enforcement of the Reserved Rights, which shall, except with the prior written consent of the Issuer, be enforceable only by the Issuer.

(d) The Trustee shall not take any discretionary action under the Loan Documents (although approval or disapproval of disbursement of Loan proceeds and investment earnings thereon under the Loan Agreement shall be made in accordance with the terms of Article V hereof) without the written approval of the Servicer and shall, subject to the proviso of paragraph (c) of this section, take such discretionary action permitted or required under the Loan Documents, as may be directed in writing by the Servicer.

(e) The Trustee shall notify the Servicer of any notification received by the Trustee under or pursuant to the Loan Documents promptly after receipt of said notice.

(f) If any Event of Default occurs and is continuing hereunder and if the Trustee has received written notice thereof or is deemed to have notice pursuant to this Indenture, the Trustee shall give to all Owners, the Issuer and the Borrower written notice of such default or Event of Default within thirty (30) days after receipt of such information. For the purpose of this Section 7.02 only, the term “**default**” means any event which is, or after notice or lapse of time or both would become, an Event of Default under Section 6.01 hereof.

(g) Promptly upon receipt of notice of the occurrence of a Determination of Taxability, the Trustee shall give immediate telephonic notice, promptly confirmed in writing, to the Borrower, the Issuer, the Owners and former Owners (provided that the Trustee shall not be obligated to maintain records of such former Owners or to retain records relating to such former Owners for more than six years).

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder or under the Loan Agreement except for a default or Event of Default referred to in Section 6.01(a) or (b) hereof, unless the Trustee shall have received written notice of such Event of Default by the Issuer, the Borrower, the Servicer or by the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding.

#### Section 7.03 Evidence on Which Trustee May Act.

(a) The Trustee, upon receipt of any notice, resolution, request, consent, order, certificate, report, opinion, bond, or other paper or document furnished to it pursuant to any provision of this Indenture, shall examine such instrument to determine whether it conforms to the requirements of this Indenture and shall be protected in acting upon any such instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel selected by it in respect of any action taken or suffered by the Trustee under this Indenture.

(b) Except as otherwise expressly provided in this Indenture, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision of this Indenture by the Issuer to any Trustee shall be sufficiently executed if executed in the name of the Issuer by an Authorized Representative of the Issuer.

Section 7.04 Compensation; No Trustee Liens. The Borrower shall pay to the Trustee, as provided in the Loan Agreement, from time to time reasonable compensation for all services rendered under this Indenture and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this Indenture, provided that the Trustee shall not have

a lien therefor on any moneys or Investment Securities at any time held or received by it under this Indenture.

Section 7.05 Certain Permitted Acts. The Trustee may become the owner of any Bonds with the same rights it would have if it were not the Trustee. To the extent permitted by law, the Trustee may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of the Bonds or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not any such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

Section 7.06 Resignation of Trustee. The Trustee may resign at any time and be discharged of the duties and obligations created by this Indenture by giving not less than sixty (60) days' written notice to the Issuer, the Borrower and the Owners of the Bonds, provided that no resignation shall become effective until the acceptance of appointment by a successor Trustee as provided in Section 7.08 of this Indenture. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 60 days after the giving of such notice of resignation, the retiring Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

Section 7.07 Removal of Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing, signed by the Issuer or by the Servicer (subject to the prior written consent of the Issuer, which consent shall not be unreasonably withheld or delayed, if such removal is not for cause) and filed with the Trustee and the Borrower; provided that no removal shall become effective until the acceptance of appointment by a successor Trustee as provided in Section 7.08 of this Indenture

Section 7.08 Appointment of Successor Trustee; Temporary Trustee. In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, the Servicer shall appoint a successor Trustee, subject to the prior written consent of the Issuer (which consent shall not be unreasonably withheld or delayed).

Section 7.09 Transfer of Rights and Property to Successor Trustee. Any successor Trustee appointed under this Indenture shall execute, acknowledge and deliver to its predecessor, and also to the Issuer, the Servicer and to any Owner which shall request the same, an instrument accepting such appointment and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if originally named; but the Trustee ceasing to act nevertheless, shall execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as reasonably may be required for more fully and certainly vesting and confirming in such successor all the right, title and interest of the predecessor Trustee in and to any property held by it under this Indenture, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions set forth in or pursuant to this Indenture. Should any deed, conveyance or instrument in writing from the Issuer be required by such successor Trustee for more fully and certainly vesting in and confirming any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing, on

request and so far as may be authorized by law, shall be executed, acknowledged and delivered by the Issuer.

Section 7.10 Merger or Consolidation of Trustee. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it may be party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a bank or trust company organized under the laws of any state of the United States or a national banking association, and shall be authorized by law to perform all the duties imposed upon it by this Indenture, shall be the successor to the Trustee without the execution or filing of any paper or the performance of any further act.

Section 7.11 Servicer. The Majority Owner may (but shall not be obligated to) appoint (with prompt notice thereof to the Issuer and the Borrower) a mortgage servicer to service the Loan for all or a portion of the term of the Loan. The Servicer shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing the Servicing Agreement. Any Servicer appointed hereunder may be removed at any time, with or without cause, by the Majority Owner, by written notice to the Issuer, the Trustee, the Borrower and the Servicer. At any time when a Servicer has not been appointed or when a Servicer has been removed without appointment of a successor Servicer, pursuant to this Section 7.11, all references in this Indenture and in the Loan Documents to the Servicer shall be deemed to refer to the Majority Owner. The Servicer may, with the prior written consent of the Majority Owner, appoint an agent as subservicer to perform the duties of the Servicer under the Servicing Agreement.

## **ARTICLE VIII**

### **AMENDMENTS AND SUPPLEMENTAL INDENTURES; AMENDMENTS OF ISSUER DOCUMENTS**

Section 8.01 Supplemental Indentures Not Requiring Consent of Owners of Bonds. The Issuer and the Trustee may, without the consent of, or notice to, the Owners of any Bonds (but only with the prior written consent of the Servicer, if any one person or entity owns at least fifty-one percent (51%) in aggregate principal amount of the Outstanding Bonds, and with notice to the Servicer and the Borrower), enter into one or more Supplemental Indentures for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Indenture;
- (b) to grant to or confer any additional benefits, rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Owners of the Bonds or the Trustee, or to make any change which, in the judgment of the Trustee and the Servicer, is not to the prejudice of the Owners of the Bonds;
- (c) to subject to the pledge and lien of this Indenture additional revenues, properties and collateral;
- (d) to evidence the appointment of a separate Trustee or co-Trustee or the succession of a new Trustee; or

(e) to modify, amend or supplement the provisions of this Indenture or any Supplemental Indenture relating to the holding or investing by the Trustee of moneys hereunder or thereunder in such manner as the Issuer may deem necessary or desirable to maintain the exclusion from gross income of Owners (other than an Owner who is a “substantial user” of the Project or a “related person” to a “substantial user,” as defined in Section 147(a) of the Code) for purposes of federal income taxation of interest on the Bonds.

#### Section 8.02 Supplemental Indentures Requiring Consent of Owners of Bonds.

(a) Exclusive of Supplemental Indentures covered by Section 8.01 of this Indenture and subject to the terms and provisions contained in this Section 8.02, and not otherwise, neither the Issuer nor the Trustee shall enter into any amendment, change or modification of this Indenture without the prior written consent of the Owners of not less than two-thirds in aggregate principal amount of the Bonds then Outstanding; provided, however, that nothing in this Section 8.02 contained shall permit, or be construed as permitting, without the consent of the Owners of all of the Bonds, (i) an extension of the maturity date of the principal of or the interest on any Bond, (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, (iii) change in a privilege or priority of any Bond or Bonds over any other Bond or Bonds, (iv) a reduction in the percentages of the Owners of the Outstanding Bonds required for consent to such Supplemental Indenture, (v) the creation of any lien other than a lien ratably securing all of the Bonds at any time Outstanding or (vi) any reduction of the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of the Trustee.

(b) If at any time the Issuer and the Trustee shall desire to execute and deliver a Supplemental Indenture for any of the purposes of this Section 8.02, the Trustee shall, upon being provided with reasonably satisfactory arrangements for payment of its fees and expenses, cause notice of the proposed execution of such Supplemental Indenture to be mailed by registered or certified mail to each Owner of the Bonds. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the Principal Office of the Trustee for inspection by all Owners of the Bonds. If within 60 days or such longer period as shall be prescribed by the Issuer following the giving of such notice, the Owners of not less than two-thirds in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Issuer from adopting the same or from taking any action pursuant to the provisions thereof. Subject to Section 8.04 hereof, upon the execution of any such Supplemental Indenture as in this Section 8.02 permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

Section 8.03 Reliance on Opinion of Counsel. The Trustee and the Issuer shall be entitled to rely upon an opinion of Counsel stating that a Supplemental Indenture is authorized or permitted by this Indenture, and prior to the execution and delivery of any Supplemental Indenture, the Trustee, the Issuer, the Servicer shall be furnished with an opinion of Bond Counsel stating that the provisions of such Supplemental Indenture will not cause the interest on the Bonds to be includable in gross income of Owners (other than an Owner who is a “substantial user” of the Project or a “related person” to a “substantial user,” as defined in Section 147(a) of the Code) for purposes of federal income taxation.

Section 8.04 Consents Required. Anything herein to the contrary notwithstanding, a Supplemental Indenture described in Section 8.02 hereof which adversely affects any rights of the Borrower, the Servicer or the Trustee shall not become effective unless and until the affected party shall have consented in writing to the execution and delivery of such Supplemental Indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture together with a copy of the proposed Supplemental Indenture to be mailed as provided in Section 4.05 with respect to the redemption of Bonds to the Borrower and the Servicer at least ten (10) days before the date of its proposed execution and delivery.

Section 8.05 Amendments of Loan Documents Not Requiring Consent of Owners of Bonds. The Issuer, the Trustee and the Borrower may, without the consent of or notice to any of the Owners of Bonds (but only with the consent of the Servicer) enter into any amendment, change or modification of any of the Loan Documents as may be required (a) by the provisions of the Loan Agreement or this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission therein, (c) so as to add additional rights and remedies for the benefit of Owners of the Bonds, or (d) in connection with any other change therein which, in the judgment of the Trustee and the Servicer, is not to the prejudice of the Trustee or the Owners of the Bonds.

Section 8.06 Amendments of Loan Documents Requiring Consent of Owners of Bonds. Except for the amendments, changes or modifications as provided in Section 8.05 hereof, none of the Issuer, the Trustee or the Borrower shall enter into any other amendment, change or modification of the Loan Documents without the mailing of notice and the written approval or consent of the Owners of not less than 51% in aggregate principal amount of the Outstanding Bonds; provided, however, that nothing in this Section or Section 8.05 hereof shall permit or be construed as permitting without the consent of the Owners of all of the Bonds (a) an extension of the time of the payment of any amounts payable under the Loan Documents, or (b) a reduction in the amount of any payment or in the total amount due under the Loan Documents. If at any time the Issuer, the Trustee or the Borrower shall desire the consent to any such proposed amendment, change or modification, the Trustee shall, upon being satisfactorily indemnified with respect to fees and expenses, cause notice of such proposed amendment, change or modification to be mailed in the same manner as provided herein with respect to redemption of Bonds. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Trustee for inspection by all Owners of Bonds. If, within sixty (60) days, or such longer period as shall be prescribed by the Trustee as the case may be, following the mailing of such notice, the Owners of 51% in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such amendment, change or modification shall have consented to and approved the execution thereof as hereto provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Borrower or the Issuer or the Trustee as the case may be, from executing the same or from taking any action pursuant to the provisions thereof. The Issuer, or the Trustee as the case may be, shall have the right to extend from time to time the period within which such consent and approval may be obtained from Owners of the Bonds. Upon the execution of any such amendment, change or modification as in this Section permitted and provided, the Issuer Documents shall be and be deemed to be modified, changed and amended in accordance therewith.

## ARTICLE IX

### DISCHARGE

Section 9.01 Discharge of Indenture. If the Issuer shall pay, or there shall otherwise be paid, to the Owners of all Bonds the principal or redemption price, if applicable, and interest due thereon, at the times and in the manner stipulated therein and in this Indenture and if all Trustee Expenses and all amounts payable to the Issuer for its own account (including expenses and indemnification) shall be paid in full, then the pledge of revenues, other moneys and securities under this Indenture, and all covenants, agreements and other obligations of the Issuer to the Owners of Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall cause an accounting for such period or periods as shall be requested by the Issuer to be prepared and filed with the Issuer and, upon the request of the Issuer, shall execute and deliver to the Issuer and the Borrower all such instruments as may be desirable to evidence such discharge and satisfaction, and the Trustee shall pay over or deliver as provided in Article V hereof all moneys or securities held by them pursuant to this Indenture (except as otherwise specified in Section 5.08) after the payment of principal or redemption price, if applicable, of or interest on Bonds. Notwithstanding the foregoing, upon such discharge the provisions of this Indenture relating to the Rebate Fund and Section 5.18(c) of the Loan Agreement shall continue in effect.

Section 9.02 Discharge by Delivery. The obligation to pay the principal of and interest on all or any portion of the Bonds (the “**Bond Obligations**”) may be discharged by the delivery of the Bonds to the Trustee accompanied by written direction from the Owner(s) thereof to cancel such Bonds without payment (except as provided hereafter in this Section 9.02), and upon such delivery, such Bond Obligations shall be canceled and deemed paid. In the event only a portion of the Bond Obligations shall be canceled and deemed paid pursuant to the terms of this Section 9.02, those Bond Obligations which are not so canceled and deemed paid shall remain Outstanding for all purposes of this Indenture; provided that if all Outstanding Bonds shall be delivered to the Trustee in accordance with the terms of this Section 9.02 and all of the requirements for the discharge of this Indenture (other than the payment of Bond Obligations) shall be paid and satisfied in full, then the Trustee shall discharge and release the lien of this Indenture, assign to the Owner(s) of the Bonds all right, title and interest of the Trustee in and to the Note, the Loan Agreement and the other Loan Documents, deliver to the Owner(s) of the Bonds all moneys and securities held by the Trustee pursuant to this Indenture (except as otherwise specified in Section 5.08) up to an amount necessary to pay in full all of the principal of and interest on the Bonds through such cancellation and any other amounts due under the Loan Documents, and execute and deliver such releases or other instruments requisite to release the lien hereof.

Section 9.03 Discharge by Deposit. The obligation to pay the principal of and interest on all or a portion of the Bonds may be discharged if the Issuer or the Borrower has deposited or caused to be deposited, as trust funds, with the Trustee cash and/or Government Obligations which do not permit the redemption thereof at the option of the issuer thereof, the principal of and interest on which when due (or upon the redemption thereof at the option of the Owner), will, without reinvestment, provide cash which together with the cash, if any, on deposit with the Trustee at the same time, shall be sufficient, to pay and discharge the entire indebtedness on Bonds not theretofore canceled by the Trustee or delivered to the Trustee for cancellation by the payment of interest on and principal of the Bonds which have become due and payable or which shall become due at their stated maturity or redemption date, as the case may be (the “**Defeasance Collateral**”), and which are to be discharged under the provisions hereof, and has made arrangements satisfactory to the Trustee for the

giving of notice of redemption, if any, by the Trustee in the name, and at the expense, of the Borrower. If the period over which payments will be made from the Defeasance Collateral is greater than ninety (90) days, the Borrower must also deliver to the Trustee a verification report prepared by a certified public accountant, with respect to the sufficiency of the Defeasance Collateral to make such payments. In addition, to discharge the obligation to pay the principal and interest on the Bonds pursuant to this Section 9.03, the Issuer or the Borrower must (i) obtain an opinion of Bond Counsel addressed to the Issuer and the Trustee to the effect that all actions have been taken to cause the defeasance of this Indenture and such actions will not adversely affect the excludability of interest on the Bonds for federal income tax purposes under existing law, and (ii) provide written notice to the Servicer of such discharge at least thirty (30) days in advance.

## **ARTICLE X**

### **MISCELLANEOUS**

#### **Section 10.01 Evidence of Signatures of Bond Owners and Ownership of Bonds.**

(a) Any request, consent, revocation of consent or other instrument that this Indenture may require or permit to be signed and executed by the Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their attorneys appointed in writing. The fact and date of the execution by any Owner of the Bonds or his attorney of such instruments may be proved by a guaranty of the signature thereon by a bank, trust company or national banking association or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such signature guaranty, certificate or affidavit also shall constitute sufficient proof of his authority.

(b) The ownership of Bonds and the amount, numbers and other identification, and date of holding the same, shall be proved by the registry books maintained by the Trustee.

(c) Any request or consent by the Owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done by the Issuer or any Trustee in accordance therewith.

#### **Section 10.02 Bonds Not an Obligation of the State or Any Political Subdivision.**

(a) The Bonds will not be general obligations of the Issuer but limited obligations payable solely from the Trust Estate. The Bonds will not constitute an indebtedness or obligation of the State or any county, municipality or political subdivision thereof, and will not constitute or result in the creation of an indebtedness of the State or any county, municipality or political subdivision thereof. No Owner of the Bonds will ever have the right to compel any exercise of the taxing power of the State or any county, municipality or political subdivision thereof, nor to enforce the payment thereof against any property of the State or any county, municipality or political subdivision thereof.

(b) No recourse may be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein, in any other Issuer Document, in the Loan Documents or in the Bonds

or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, member, officer, agent, attorney or employee, as such, in his individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty otherwise. No personal liability whatsoever will attach to, or be incurred by, any director, member, officer, agent, attorney or employee as such, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into in the Bonds or between the Issuer and the Trustee, whether contained herein or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such director, member, officer, agent, attorney and employee is, by the execution of this Indenture and as a condition of, and as part of the consideration for, the execution of this Indenture, expressly waived and released.

Section 10.03 Preservation and Inspection of Documents. All documents received by any Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times and upon reasonable prior notice to the inspection of the Issuer, any other Trustee, and any Owner of the Bonds and their agents and their representatives, any of whom may make copies thereof.

Section 10.04 Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any Person, other than the Issuer, the Trustee, the Servicer, the Borrower and the Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation of this Indenture; and all the covenants, stipulations, promises and agreements in this Indenture shall be for the sole and exclusive benefit of the Issuer, the Trustee, the Servicer, the Borrower and the Owners of the Bonds.

Section 10.05 No Recourse on the Bonds. No recourse shall be had for the payment of the principal or redemption price or purchase price of or interest on the Bonds or for any claim based thereon or on this Indenture or any other Issuer Document or the Loan Documents against any member, officer, employee or agent of the Issuer or any person executing the Bonds.

Section 10.06 Severability of Invalid Provisions. If any one or more of the covenants or agreements provided in this Indenture on the part of the Issuer or any Trustee to be performed should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and in no way shall affect the validity of the other provisions of this Indenture.

Section 10.07 Successors. Whenever in this Indenture the Issuer is named or referred to, it shall be deemed to include any entity that may succeed to the principal functions and powers of the Issuer under the Act, and all the covenants and agreements contained in this Indenture by or on behalf of the Issuer shall bind and inure to the benefit of said successor whether so expressed or not.

Section 10.08 Notices, Demands and Requests. Except as otherwise provided in Section 4.05, all notices, demands and requests to be given or made under this Indenture to or by the Issuer or the Trustee shall be in writing and shall be sufficiently given and shall be deemed given (a) three days after mailing by certified mail, first-class, postage prepaid; (b) the Business Day after sending by expedited overnight delivery service; (c) the date of receipt if delivered by personal delivery; (d) if sent by facsimile transmission, the date of transmission, if receipt of such transmission is telephonically confirmed on such day and addressed to the Notice Address of the

respective addressee. Either the Issuer or the Trustee may change the Notice Address listed for it at any time upon written notice of such change sent by United States mail, postage prepaid, to the other party, which change shall be effective upon receipt.

Section 10.09 Applicable Law. This Indenture shall be governed exclusively by the applicable laws of the State.

Section 10.10 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Articles and Sections of this Indenture have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Indenture.

Section 10.11 Exclusion of Bonds. Bonds owned or held by or for the account of the Issuer or the Borrower shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Indenture, and the Issuer and the Borrower shall not be entitled with respect to such Bonds to give any consent or take any other action provided for herein, unless all of the Outstanding Bonds are then owned by such Person.

Section 10.12 Effective Date. This Indenture shall take effect immediately upon the execution and delivery by all of the parties hereto.

IN WITNESS WHEREOF, the Issuer has caused these presents to be executed in its name by its duly authorized official; and to evidence its acceptance of the trusts hereby created, the Trustee has caused these presents to be executed in its corporate name and with its corporate seal hereunto affixed and attested by its duly authorized officer, as of the date first above written.

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

By: \_\_\_\_\_  
Wendy G. DeWitt  
Director of Real Estate  
San Diego Housing Commission

*[Signatures continued on next page]*

U.S. BANK NATIONAL ASSOCIATION

(SEAL)

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Attest:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

[Signature Page – Trust Indenture]

**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 SET FORTH HEREIN AND BY THE TERMS OF INDENTURE DESCRIBED HEREIN. THE PURCHASER OF THIS BOND MUST BE A “QUALIFIED INSTITUTIONAL BUYER” WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT OF 1933 AND WILL BE REQUIRED TO EXECUTE AND DELIVER AN INVESTMENT LETTER AGREEMENT THAT WILL, AMONG OTHER THINGS RESTRICT TRANSFER OF THIS BOND.**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
MULTIFAMILY HOUSING REVENUE BONDS  
(COMM22 FAMILY HOUSING)  
SERIES 2012C**

No. \_\_\_\_\_

Dated Date: December \_\_, 2012

Registered Owner: \_\_\_\_\_

Maturity Date: [December 1, 2044]

Interest Rate: As stated below

Housing Authority of the City of San Diego (hereinafter called the “**Issuer**”), a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California, for value received hereby promises to pay (but only from the sources and as hereinafter provided) to the Registered Owner specified above, or registered assigns, the principal amount of [\_\_\_\_\_ Dollars (\$\_\_\_\_\_)], or so much of such maximum authorized principal amount as may have been purchased by the Owner of this Bond from time to time in accordance with the terms of this Bonds and Section 3.01(b) of the Indenture (described below) on the Maturity Date specified above, upon presentation and surrender of this Bond at the principal office of U.S. Bank National Association or its successor as trustee (the “**Trustee**”), under the Indenture, and to pay (but only from the sources and as hereinafter provided) interest on said principal amount at the interest rate set forth above, from and including the dated date hereof until the principal amount shall have been paid in accordance with the terms of this Bond and the Indenture, as and when set forth below, but only from the sources and as hereinafter provided, by wire transfer if there be one Owner of all of the Bonds or otherwise by check or draft mailed to the record Owners of Bonds as the same appear upon the books of registry to be maintained by the Trustee, as registrar.

This Bond is one of an authorized series of Bonds of the Issuer designated Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (COMM22 Family Housing) Series

2012C and issued in the aggregate principal amount of \$\_\_\_\_\_ (collectively, the **"Bonds"**). The Bonds are issued for the purpose of funding a loan to COMM22Family Housing, L.P., a California limited partnership (the **"Borrower"**), in order to finance a portion of the costs of the acquisition, construction and equipping of a 130-unit multifamily residential housing project in San Diego, California (the **"Project"**).

THIS BOND IS BEING ISSUED AS A DRAW-DOWN BOND, IN THAT THE HOLDERS OF THE BONDS WILL PURCHASE THE PRINCIPAL AMOUNT OF THE BONDS IN INSTALLMENTS, AT PAR, IN ACCORDANCE WITH THE TERMS OF AND AS REQUIRED BY SECTION 3.01(b) OF THE INDENTURE. ACCORDINGLY, THE PRINCIPAL AMOUNT OF THE BONDS WHICH HAVE BEEN PURCHASED BY THE HOLDERS AND ARE OUTSTANDING AT ANY GIVEN TIME MAY BE LESS THAN THE MAXIMUM PRINCIPAL AMOUNT OF THE BONDS AS SET FORTH ON THE FACE OF THIS BOND. UPON EACH PURCHASE OF A PORTION OF THE PRINCIPAL AMOUNT OF THE BONDS IN ACCORDANCE WITH THE TERMS OF SECTION 3.01(b) OF THE INDENTURE, THE TRUSTEE WILL NOTE ON A LOG MAINTAINED BY THE TRUSTEE FOR SUCH PURPOSE THE PRINCIPAL AMOUNT OF THE BONDS SO PURCHASED, THE DATE OF SUCH PURPOSE AND THE IDENTITY OF SUCH PURCHASER. THE RECORDS MAINTAINED BY THE TRUSTEE IN SUCH REGARD WILL BE CONCLUSIVE EVIDENCE OF THE PRINCIPAL AMOUNT OF THE BONDS WHICH HAVE BEEN PURCHASED AND ARE OUTSTANDING. IF PRESENTED TO THE TRUSTEE BY THE HOLDER OF THIS BOND, THE PRINCIPAL AMOUNT OF THE BONDS PURCHASED BY THE OWNER OF THIS BOND WILL BE NOTED BY THE TRUSTEE ON SCHEDULE 1 ATTACHED TO THIS BOND.

PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS BOND IS REQUIRED TO BE MADE DIRECTLY TO THE REGISTERED OWNER HEREOF WITHOUT NOTATION HEREON. IT CANNOT BE DETERMINED FROM THE FACE OF THIS BOND WHETHER ALL OR ANY PART OF THE PRINCIPAL OF OR INTEREST ON THIS BOND HAS BEEN PAID.

This Bond is issued under and pursuant to the Trust Indenture dated as of December 1, 2012 between the Issuer and the Trustee (as amended and supplemented from time to time, the **"Indenture"**), and the Act (as that term is defined in the Indenture). Reference is made to the Indenture and the Act for a full statement of their respective terms. Capitalized terms used herein and not otherwise defined herein have the respective meanings accorded such terms in the Indenture, which is hereby incorporated herein by reference. The Bonds issued under the Indenture are expressly limited to [\$\_\_\_\_\_] in aggregate principal amount at any time Outstanding and are all of like tenor, except as to numbers and denominations. Pursuant to a Loan Agreement (the **"Loan Agreement"**) and a Promissory Note (the **"Note"**) dated as of December 1, 2012, the Borrower has agreed to make payments to the Trustee in amounts equal to amounts of principal of and interest on the Bonds.

This Bond and the interest thereon shall not be deemed to constitute or to create in any manner an indebtedness or obligation of the State or any county, municipality or political subdivision thereof, and will not constitute or result in the creation of an indebtedness of the State or any county, municipality or political subdivision thereof, but shall be limited obligations of the Issuer payable solely from the revenues and other funds pledged therefor and shall not be payable from any assets or funds of the Issuer other than the revenues and other funds pledged therefor, and neither the faith and credit nor the taxing power of the State or any county, municipality or political subdivision thereof is

pledged to the payment of the principal of or the interest on this Bond. The Issuer has no taxing power.

THE OBLIGATIONS OF THE ISSUER ON THIS BOND ARE EXPRESSLY LIMITED TO AND ARE PAYABLE SOLELY FROM (I) THE PAYMENTS MADE PURSUANT TO THE LOAN AGREEMENT AND THE BY THE BORROWER, AND THE SECURITY THEREFOR PROVIDED BY THE MORTGAGE AND THE SECURITY AGREEMENT (AS THOSE TERMS ARE DEFINED IN THE INDENTURE) AND ANY OTHER COLLATERAL SECURITY FROM TIME TO TIME HELD BY THE TRUSTEE, AND (II) ANY ADDITIONAL SECURITY PROVIDED IN THE INDENTURE.

Interest Rates. This Bond shall bear interest at the applicable rate provided below. On each Interest Payment Date, interest accrued through the day immediately preceding such Interest Payment Date shall be payable. While this Bond bears interest at the Fixed Rate (or an Alternative Rate based upon the Fixed Rate), interest on this Bond shall be computed on the basis of a 360-day year of twelve equal months of 30 days each. While this Bond bears interest at the Variable Rate (or an Alternative Rate based upon the Variable Rate), interest on this Bond shall be computed on the basis of a 360-day year and actual days elapsed. While this Bond bears interest at the Taxable Rate, interest on this Bond shall be computed on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed.

Variable Rate. Commencing on the Dated Date and ending on (and including) the earliest of the day before the Conversion Date (hereinafter defined), the day before the Maturity Date or the date of redemption prior to maturity, this Bond shall bear interest at the Variable Rate (as defined in the Indenture) per annum equal to a variable rate established as hereinafter provided (the “**Variable Rate**”).

Fixed Rate. From and after the Conversion Date (as defined in the Indenture), this Bond shall bear interest at a fixed rate per annum of [\_\_\_\_\_ percent (\_\_\_\_%)].

Alternative Rate; Taxable Rate. Following the occurrence of an Event of Default under the Loan Agreement or an Event of Default under the Indenture, the Bonds shall bear interest at the Alternative Rate, as that term is defined in the Indenture. If a Determination of Taxability occurs, this Bond shall bear interest from the date of the Determination of Taxability at the Taxable Rate, and the Owner shall also be paid Additional Interest, as provided in the Indenture.

Maximum Rate. Notwithstanding any other provision of this Bond or the Indenture, under no circumstances shall interest on the Bonds exceed the Maximum Rate, which is the highest per annum rate of interest permissible under the Act and the laws of the State, calculated by taking into account all available exceptions. At the time of Bond issuance, the Maximum Rate is twelve percent (12%) per annum.

Usury. Notwithstanding any provision of this Bond to the contrary, in no event shall the interest contracted for, charged or received in connection with this Bond (including any other costs or considerations that constitute interest under the laws of the State which are contracted for, charged or received pursuant to this Bond) exceed the maximum rate of nonusurious interest allowed under the laws of the State as presently in effect and to the extent of any increase allowable by such laws. To the extent permitted by law, interest contracted for, charged or received on this Bond shall be allocated over the entire term of this Bond, to the end that interest paid on this Bond does not exceed

the Maximum Rate. Excess interest, if any, provided for in this Bond, or otherwise, shall be canceled automatically as of the date of such acceleration or, if theretofore paid, shall be credited as principal paid on this Bond.

Registration and Transfer. THIS BOND IS SUBJECT TO THE TRANSFER RESTRICTIONS SET FORTH IN SECTION 3.09 OF THE INDENTURE. This Bond is transferable by the registered owner hereof in person or by his attorney duly authorized in writing at the office of the Trustee as registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond or Bonds, of any authorized denomination or denominations, of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Bonds are issuable as fully registered Bonds in Authorized Denominations as provided in the Indenture. The Issuer, the Trustee, and any other person may treat the person in whose name this Bond is registered on the books of registry as the Owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Bond be overdue, and no person shall be affected by notice to the contrary.

Transfer Restrictions. The Bonds shall be transferred only in minimum denominations of \$250,000; provided, however, that a single Bond may remain outstanding if due to partial redemptions the amount remaining outstanding on the applicable Bond is less than \$250,000; provided further that an additional Bond may be transferred in a principal amount not less than \$250,000. Without the prior written consent of the Issuer (which may be granted or withheld in its sole and absolute discretion), prior to the Conversion Date, there shall be no transfer of the Bonds except to (i) an affiliate of the initial Owner, or to any successor to initial Owner, whether by merger, acquisition of assets or otherwise, or (ii) a single Qualified Institutional Buyer which certifies that it is a Qualified Institutional Buyer to the Issuer by executing and delivering an investor's letter substantially in the form attached as Exhibit B to the Indenture. On and after the Conversion Date, the Bonds shall only be sold and subsequently transferred to (A) Qualified Institutional Buyers (with the transferee certifying in writing to the Issuer that it is a Qualified Institutional Buyer by executing and delivering an investor's letter substantially in the form attached as Exhibit B to the Indenture), (B) a trustee or custodian of a trust the participants of which are all Qualified Institutional Buyers and/or (C) an affiliate of the initial Owner, or any successor to the initial Owner, whether by merger, acquisition of assets or otherwise. Following any transfer of the Bonds, subject to the restrictions in Section 3.09(f) of the Indenture, there shall be no more than fifteen (15) different Bondowners; provided there shall at all times be a Majority Owner. No Bondholder shall transfer any Bond other than by a transfer made on the Bond Register maintained by the Trustee in accordance with the Indenture.

Redemption of Bonds. This Bond is subject to optional and mandatory redemption (and purchase in lieu of redemption by the Borrower) prior to maturity as a whole or in part at such time or times, under such circumstances, at such redemption prices and in such manner as is set forth in the Indenture.

Enforcement. Only the Servicer shall have the right to direct the Trustee to enforce the provisions of this Bond or the Indenture or to institute any action to enforce the covenants herein or therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. If an Event of Default occurs and is continuing, the principal of all Bonds then outstanding may be declared due and payable by the Servicer upon the conditions and in the manner

and with the effect provided in the Indenture. As provided in the Indenture, and to the extent permitted by law, interest and a penalty rate of interest shall be payable on unpaid amounts due hereon.

Discharge. The Indenture prescribes the manner in which it may be discharged and after which the Bonds shall be deemed to be paid and no longer be secured by or entitled to the benefits of the Indenture, except for the purposes of registration and exchange of Bonds and of such payment.

Modifications. Modifications or alterations of the Indenture, or of any supplements thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond shall not be valid or obligatory for any purpose until it shall have been signed on behalf of the Issuer and such signature attested, by the officer, and in the manner, provided in the Indenture, and authenticated by a duly authorized officer of the Trustee, as Authenticating Agent.

It is hereby certified and recited that all conditions, acts and things required by the statutes of the State or by the Act or the Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this Bond exist, have happened and have been performed and that the issue of the Bonds, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by said statutes.

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

IN WITNESS WHEREOF, the Housing Authority of the City of San Diego has caused this Bond to be executed in its name by the manual or facsimile signature of its Executive Director, and its corporate seal to be impressed or printed hereon and attested by the manual or facsimile signature of its Secretary.

HOUSING AUTHORITY OF THE CITY OF  
SAN DIEGO

By: \_\_\_\_\_  
Executive Director

ATTEST:

\_\_\_\_\_  
Secretary

FORM OF CERTIFICATE OF AUTHENTICATION

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

U.S. BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title

Date of Authentication: \_\_\_\_\_

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_  
the within and hereby authorizes the transfer of this Bond on the registration books of the Trustee.

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

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name of Transferee

\_\_\_\_\_  
Signature Guaranteed by

\_\_\_\_\_  
Name of Bank

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

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

SCHEDULE A

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
MULTIFAMILY HOUSING REVENUE BONDS  
(COMM22 FAMILY HOUSING)  
SERIES 2012C**

Draw-Down Purchases

The installment reflected by the draw-down of this Bond may be registered only by the registered owner in person or by its duly authorized officer or attorney upon presentation hereof to the Bond Registrar, who shall make note thereof in the books kept for such purpose and in the registration blank below.

<i><b>Date of Draw-Down</b></i>	<i><b>Name of Registered Owner</b></i>	<i><b>Principal Amount</b></i>	<i><b>Signature of Bond Registrar</b></i>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**EXHIBIT B**  
**FORM OF INVESTOR LETTER**

\_\_\_\_\_, 20\_\_\_\_

Housing Authority of the City of San Diego  
1122 Broadway, Suite 300  
San Diego, California 92101

U.S. Bank National Association  
633 West Fifth Street, 24<sup>th</sup> Floor  
Los Angeles, California 90071

Re: Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds  
(COMM22 Family Housing) Series 2012C

Ladies and Gentlemen:

The undersigned (the “**Investor**”), being the purchaser of all or a portion of the above-referenced bonds (the “**Bonds**”) does hereby certify, represent and warrant for the benefit of the Housing Authority of the City of San Diego (the “**Issuer**”) and U.S. Bank National Association, as Trustee for the Bonds the following.

The undersigned acknowledges that the Bonds were issued for the purpose of making a mortgage loan to assist in the financing of the acquisition, construction and equipping of a certain 130-unit multifamily residential rental housing project located in San Diego, California (the “**Project**”), as more particularly described in that certain Loan Agreement dated as of December 1, 2012 (the “**Loan Agreement**”), among Housing Authority of the City of San Diego (the “**Issuer**”), U.S. Bank National Association, as trustee (the “**Trustee**”), and COMM22 Family Housing, L.P., a California limited partnership (the “**Borrower**”). The undersigned further acknowledges that the Bonds are secured by a Trust Indenture dated as of December 1, 2012 (the “**Indenture**”), between the Issuer and the Trustee, which creates a security interest in the trust estate described therein (the “**Trust Estate**”) for the benefit of the Owners of the Bonds.

In connection with the purchase of the Bonds by the Investor, the Investor hereby makes the following representations upon which you may rely:

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

2. The Investor is a “qualified institutional buyer” (as defined in Rule 144A promulgated under the Securities Act of 1933, as amended), or (ii) a trust or custodial arrangement each of the beneficial owners of which is required to be a qualified institutional buyer.

3. The Bonds are being acquired as [custodian/trustee under the custody agreement/trust agreement] [by the Investor for investment] and not with a view to, or for resale in connection with, any distribution of the Bonds, and the Investor intends to hold the Bonds for its own account and for

an indefinite period of time. The Investor 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.

4. The Investor understands that the Bonds are not registered under the Securities Act of 1933 and that such registration is not legally required as of the date hereof; and further understands that the Bonds (a) are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which is not be readily marketable.

5. The Investor understands that (a) the Bonds are not secured by any pledge of any moneys received or to be received from taxation by the City of San Diego, the State of California or any political subdivision thereof and that the Issuer has no taxing power, (b) the Bonds do not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the City of San Diego, the State of California or any political subdivision thereof; and (c) the liability of the Issuer with respect to the Bonds is limited to the Trust Estate as set forth in the Indenture. The Investor acknowledges that the Issuer is issuing the Bonds on a conduit, nonrecourse basis, and has no continuing obligations with respect thereto except as expressly set forth in the Indenture.

6. The Investor has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision to act as custodian/trustee in connection with the purchase of the Bonds, and the Investor has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower, the Project and the Bonds. The Investor has not relied upon the Issuer for any information in connection with its purchase of the Bonds.

7. The Investor acknowledges that neither the Issuer nor the Borrower has prepared an offering document with respect to the Bonds.

8. The Investor has made its own inquiry and analysis with respect to the Bonds and the security therefor, and other material factors affecting the security and payment of the Bonds. The Investor is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Bonds.

9. The Investor acknowledges and understands the Bonds are subject to the transfer restrictions set forth in Section 3.09 of the Indenture, including without limitation the following. The Bonds shall be transferred only in minimum denominations of \$250,000; provided, however, that a single Bond may remain outstanding if due to partial redemptions the amount remaining outstanding on the applicable Bond is less than \$250,000; provided further that an additional Bond may be transferred in a principal amount not less than \$250,000. Without the prior written consent of the Issuer (which may be granted or withheld in its sole and absolute discretion), prior to the Conversion Date, there shall be no transfer of the Bonds except to (i) an affiliate of the initial Owner, or to any successor to initial Owner, whether by merger, acquisition of assets or otherwise, or (ii) a single Qualified Institutional Buyer which certifies that it is a Qualified Institutional Buyer to the Issuer by executing and delivering an investor’s letter substantially in the form attached as Exhibit B to the Indenture. On and after the Conversion Date, the Bonds shall only be sold and subsequently transferred to (A) Qualified Institutional Buyers (with the transferee certifying in writing to the Issuer that it is a Qualified Institutional Buyer by executing and delivering an investor’s letter substantially in the form attached as Exhibit B to the Indenture), (B) a trustee or custodian of a trust the

participants of which are all Qualified Institutional Buyers and/or (C) an affiliate of the initial Owner, or any successor to the initial Owner, whether by merger, acquisition of assets or otherwise. Following any transfer of the Bonds, subject to the restrictions in Section 3.09(f) of the Indenture, there shall be no more than fifteen (15) different Bondowners; provided there shall at all times be a Majority Owner. No Bondholder shall transfer any Bond other than by a transfer made on the Bond Register maintained by the Trustee in accordance with the Indenture.

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

Very truly yours,

[INVESTOR]

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title

**EXHIBIT C**

**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
MULTIFAMILY HOUSING REVENUE BONDS  
(COMM22 FAMILY HOUSING)  
SERIES 2012C**

**REDEMPTION SCHEDULE**

**DATE OF REDEMPTION**

**AMOUNT OF REDEMPTION**



## EXHIBIT D

### FORM OF REQUISITION

BORROWER: \_\_\_\_\_  
PROJECT: COMM22 Family Housing  
REQUISITION NO.: \_\_\_\_\_  
In the Amount of \$ \_\_\_\_\_

TO: U.S. Bank National Association (the “**Trustee**”)  
633 West Fifth Street, 24th Floor  
Los Angeles, California 90071

---

Banc of America, N.A. (the “**Majority Owner**”)  
CA4-70202-29  
2001 Clayton Road, 2<sup>nd</sup> Floor  
Concord, California 94520

The Borrower hereby requests payments in the following amounts, from the following sources and to be made to the following parties, all as set forth on the Borrower’s Request for Payment attached to this Requisition:

Amount

Source

Payable to:

[identify name of Account & [Borrower’s account #] [third  
Fund in Indenture [proceeds of party payment/wire  
subordinate loans] or Capital instructions must be attached]  
Contributions]

#### **Requisition - Contents and Attachments**

- ☐ Borrower’s Request for Payment
- ☐ Contractor’s Application and Certification for Payment (AIA Form G-702) including change orders if applicable
- ☐ Paid Invoices Supporting Application-(AIA Form G-702), as appropriate
- ☐ Paid Invoices Supporting Borrower’s Request for Payment, as appropriate
- ☐ Lien Waivers
- ☐ Architect’s Certificate (If required by Bondowner Representative)
- ☐ Borrower’s Representations and Warranties

The Borrower hereby requisitions the funds described above, and makes the representations and warranties attached hereto to the Issuer and the Trustee.

**“Borrower”:**

COMM22 FAMILY HOUSING, L.P., a California limited partnership

By: COMM22 HOUSING GP, LLC, a California limited liability company, its general partner

By: BRIDGE Housing Corporation, a California nonprofit public benefit corporation, its manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The foregoing Requisition is approved by Majority Owner.

**“Majority Owner”:**

BANK OF AMERICA, N.A.

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

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

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

Date: \_\_\_\_\_

**Borrower's Request for Payment**

**[Bank of America Form]**

**[attach spreadsheets]**

**Contractor's Application and Certification for Payment**  
**(AIA Form G-702) including change orders if applicable**

**Paid Invoices Supporting Application**  
**(AIA Form G-702), as appropriate**

**Paid Invoices Supporting Borrower's Request for Payment, as appropriate**

## **Lien Waivers**

**Architect's Certificate**

**(If required by Bondowner Representative)**

Application for Payment No. \_\_\_\_\_

TO: U.S. BANK NATIONAL ASSOCIATION (“**Trustee**”)  
BANC OF AMERICA PUBLIC CAPITAL CORP (“**Majority Owner**”)

FROM: \_\_\_\_\_ (“**Architect**”)

RE: construction of COMM22 Family Housing located at \_\_\_\_\_  
[insert address] (the “**Project**”) by COMM22 Family Housing, L.P., a California  
limited partnership (“**Borrower**”).

We are the architect for the Project, and to induce Majority Owner and Servicer to approve advance loans of proceeds by the Trustee to assist in funding [construction] [rehabilitation] of the Project, and knowing that Majority Owner and Servicer will rely on this certificate in doing so, we hereby certify as follows:

1. We inspected the Project on \_\_\_\_\_, 20\_\_ and found the status of the Project on that date and the progress made on the Project since our last certificate to you dated \_\_\_\_\_, 20\_\_ to be as follows:

2. We delivered the Plans and Specifications for the Project, copies of which have been delivered to you (the “Plans and Specifications”). We have made no changes to the Plans and Specifications except as you have approved in writing. There are no pending change orders or construction change directives except as follows:

3. All work to date has been done in accordance with the Plans and Specifications and in a good and workmanlike manner. All materials and fixtures usually furnished and installed or stored on site at the current stage of construction have been furnished, installed or stored on site. All of the work to date is hereby approved except as follows:

4. We have examined the requisition being submitted herewith to you by Borrower, which requisition includes and Application for Payment from \_\_\_\_\_ (“Contractor”) respecting construction of the Project. The payment so applied for by Contractor does not exceed (when added to the payments heretofore applied for by and paid to Contractor) [90%] of the value of labor and materials incorporated into the Project.

5. We have been advised that as of this date there remains unexpended funds of \$\_\_\_\_\_ which are available to fund construction costs, from which funds to pay the aforementioned Application for Payment will be deducted. In our opinion, such unexpended funds, after deduction of funds sufficient to cover both the current Application for Payment and the applicable retainage heretofore withheld and to become due on account of previous Applications, will be sufficient to pay for all construction costs reasonably required to complete the Project, provided that the amount advanced under the current application is, in fact, applied against obligations incurred for labor and materials heretofore furnished on account of [construction] [rehabilitation] of the Project.

6. All permits, licenses, approvals and the like required to complete construction of the Project have been validly issued by the appropriate authorities and are in full force and effect, and there is no violation of any of the provisions thereof or of any legal requirements applicable to the Project of which we have notice or knowledge as of the date hereof except as follows:

7. Access to and egress from the Project and all improvements to be constructed thereon are in accordance with all applicable legal requirements. Water, drainage and sanitary sewerage facilities and telephone, gas and electric services of public utilities are or are due to be installed in the locations indicated on the Plans and Specifications and are adequate to serve the Project. All necessary approvals for installation of or connection to said facilities or services have been obtained.

8. To the best of our knowledge, there are no petitions, actions or proceedings pending or threatened to revoke, rescind, alter or declare invalid any laws, ordinances, regulations, permits, licenses or approvals for or relating to the Project.

9. No amendments, modifications or changes have been made to our contract dated \_\_\_\_\_, 20\_\_ with the Borrowers except such as have had your prior written approval.

10. Borrower is not in default of any of Borrower's obligations to us as of the date hereof except as follows:

This certificate is rendered based on our examination of the Project, the Plans and Specifications, the data comprising the Application for Payment and all other matters which we deem relevant. We are to incur no liability under this certificate except for failure to exercise due professional skill and diligence.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**[ARCHITECT NAME]**

\_\_\_\_\_

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

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

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

### **Borrower's Representations and Warranties**

1. No changes have been made in the Plans and Specifications which require and have not received the prior approval of (i) the Bank under the terms of the Construction Disbursement Agreement dated as of December 1, 2012 (the "**Agreement**"), (ii) any Governmental Authority having jurisdiction over the Project or (iii) any other parties from whom such approval is required.

2. Construction of the Improvements has been performed in accordance with the Plans and Specifications.

3. As of the date hereof, the Borrower has executed change orders (increasing/decreasing) the cost of the Improvements by \$\_\_\_\_\_ in the aggregate, has notified the Consulting Engineer of such changes and, to the extent necessary, has received any and all necessary approvals from the Majority Owner.

4. Funding of this Requisition shall be in accordance with the terms and provisions of the (i) Agreement, (ii) the Loan Agreement dated as of December 1, 2012 with respect to the Bonds (the "**Loan Agreement**") and (iii) the Trust Indenture dated as of December 1, 2012 with respect to the Bonds (the "**Indenture**").

5. All monies requisitioned by the Borrower for [construction] [rehabilitation] and disbursed by the Trustee under previously approved requisitions have been paid to the Contractor and, to Borrower's best knowledge, all subcontractors, vendors and suppliers; all other funds requisitioned by the Borrower and disbursed by the Trustee under previously approved requisitions have been expended for the purpose for which they were requisitioned.

6. All of the information submitted to the Majority Owner and the Trustee in connection with this Requisition is true and accurate as of the date of submission.

7. The representations and warranties set forth in the Loan Documents are true and correct as of the date hereof with the same effect as if made on this date.

8. The Borrower represents and warrants that (i) there has occurred no Event of default or event which, with the passage of time or the giving or notice or both, would constitute an Event of Default on the part of the Borrower or the Guarantor under the terms of the Loan Documents, (ii) except as previously disclosed by the Borrower to the Majority Owner, the Borrower has not received notice from or been informed by any Governmental Authority or the Consulting Engineer of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or notice of any assertion of a claim that the Improvements are not been constructed in accordance with all applicable Requirements, (iii) with the exception of any Permitted Liens, there are no liens against any portion of the Project or any other asset of the Borrower, and (iv) the Loan Documents are in full force and effect.

9. The Borrower represents and warrants that this Requisition is in the form of requisition required by the Bank.

10. The Borrower represents and warrants that, following payment of the amounts requested under this Requisition, not less than 95% of amounts paid from proceeds of the Bonds have been applied to the payment of Qualified Costs of the Project.

11. Attached hereto are copies of lien waivers from all such subcontractors and materialmen requisitioning payment under this Requisition, the originals of which have been delivered to the Title Insurance Company.

12. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Loan Agreement.

Executed this \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

COMM22 FAMILY HOUSING, L.P., a California  
limited partnership

By: COMM22 HOUSING GP, LLC, a  
California limited liability company, its  
general partner

By: BRIDGE Housing Corporation, a  
California nonprofit public benefit  
corporation, its manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

and

**COMM22 FAMILY HOUSING, L.P.**

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**LOAN AGREEMENT**

---

Dated as of December 1, 2012

Relating to

\$ \_\_\_\_\_  
**HOUSING AUTHORITY OF THE CITY OF SAN DIEGO**  
**MULTIFAMILY HOUSING REVENUE BONDS**  
**(COMM22 FAMILY HOUSING),**  
**SERIES 2012C**

---

The interest of the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO (the “**Issuer**”) in this Loan Agreement has been assigned (except for certain “**Reserved Rights**” as defined in this Loan Agreement) pursuant to the Trust Indenture dated as of the date hereof from the Issuer to U.S. BANK NATIONAL ASSOCIATION, as trustee (the “**Trustee**”), and is subject to the security interest of the Trustee thereunder.

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## LOAN AGREEMENT

THIS LOAN AGREEMENT dated as of December 1, 2012 (together with all supplements, modifications and amendments thereto, this “**Loan Agreement**”), among HOUSING AUTHORITY OF THE CITY OF SAN DIEGO, a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California (together with its successors and assigns, the “**Issuer**”), U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the Constitution and the laws of the United States of America, as trustee under the herein defined Indenture (together with any successor trustee hereunder and their respective successors and assigns, the “**Trustee**”), and COMM22 FAMILY HOUSING, L.P., a California limited partnership (together with its successors and assigns, the “**Borrower**”).

### WITNESSETH:

**WHEREAS**, the Issuer is authorized under the laws of the State of California (the “**State**”) to finance multifamily rental housing by issuing its revenue bonds; and

**WHEREAS**, the Issuer has determined to issue its Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (COMM22 Family Housing) Series 2012C in the aggregate principal amount of \$\_\_\_\_\_ (the “**Bonds**”) pursuant to the Trust Indenture dated as of (the “**Indenture**”), executed by the Issuer and U.S. BANK NATIONAL ASSOCIATION, as trustee (the “**Trustee**”), for the purpose of providing funding necessary for the acquisition, construction and equipping by the Borrower of a 130-unit multifamily rental housing project in San Diego, California known as the “Comm22 Family Apartments” (the “**Project**”); and

**WHEREAS**, pursuant to this Loan Agreement, the Issuer has agreed to issue the Bonds and to use proceeds of the Bonds to fund a loan to the Borrower (the “**Loan**”), and the Borrower has agreed to (i) apply the proceeds of the Loan to pay a portion of the costs of acquisition, construction and equipping of the Project, (ii) make payments sufficient to pay the principal of, premium, if any, and interest on the Bonds when due (whether at maturity, by redemption, acceleration or otherwise), and (iii) observe the other covenants and agreements and make the other payments set forth herein; and

**WHEREAS**, the Borrower has delivered to the Trustee, on behalf of the Issuer, its promissory note dated the date of issuance of the Bonds in an original principal amount equal to the aggregate original principal amount of the Bonds in substantially the form set forth on Exhibit B hereto (as the same may be amended, modified or supplemented from time to time, the “**Note**”) evidencing its obligation to repay the Loan; and

**WHEREAS**, to secure its obligations under this Loan Agreement and the Note, the Borrower has executed (i) a [Construction Deed of Trust] with Assignment of Rents, Security Agreement and Fixture Filing (as amended, modified or supplemented from time to time, the “**Mortgage**”), (ii) an Assignment of Contracts, Plans and Specifications (as the same may be amended, modified or supplemented from time to time, the “**Assignment of Project Documents**”) and (iii) a Security Agreement (Assignment of Partnership Interest and Capital Obligations (as amended, modified or supplemented from time to time, the “**Partnership Assignment**”) each dated as of even date with this Loan Agreement, for the benefit of the Issuer as secured party;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1 Definitions.** The following capitalized terms shall have the meanings specified in this Article unless the context requires otherwise. All other capitalized terms used herein which are defined in the Indenture and not defined herein shall have the respective meanings ascribed thereto in the Indenture unless otherwise expressly provided or unless the context otherwise requires. The singular shall include the plural and the masculine shall include the feminine and neuter shall include the masculine or feminine.

**“Accountant”** means Lindquist, Von Husen & Joyce LLP, or such other independent certified public accountant or firm of independent certified public accountants, selected by the Borrower and approved by the Servicer, such approval not to be unreasonably withheld or delayed.

**“Appraisal”** means an appraisal of the market value of the Project performed by a qualified independent appraiser approved by the Servicer.

**“Approved Budget”** means the Proposed Budget approved by the Servicer.

**“Architect”** means McLarand Vasquez Emsiek & Partners, Inc., a California corporation.

**“Architect’s Contract”** means the Standard Form of Agreement between Owner and Architect with Standard Form of Architect’s Services, Design and Contract Administration (AIA Document B141-1997 Parts 1 and 2) entered into in October of 2005, and the amendment thereto, entered into in March of 2012, between the Borrower and the Architect, providing for the design of the Improvements and the supervision of the construction and equipping thereof, including ongoing monthly inspection of the Improvements, certification of Requisitions and certification of Completion, among other things.

**“Bank”** means Banc of America Public Capital Corp, and its successors and assigns.

**“Capital Expenditures”** means capital expenditures determined in accordance with generally accepted accounting principles relating to the repair, renovation or replacement of the Project.

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

**“Comptroller of the Currency”** means the Comptroller of the Currency of the United States Department of the Treasury.

**“Construction Contract”** means the contract, dated \_\_\_\_\_, 2012 between the Borrower and the Contractor, providing for the construction and equipping of the Improvements and certification of Requisitions, among other things.

**“Consulting Engineer”** has the meaning set forth for that term in the Construction Disbursement Agreement.

**“Contractor”** means \_\_\_\_\_.

[**“Contribution Agreement”** means the Capital Contribution Agreement among the Borrower, the General Partner and the Special Limited Partner dated as of December 1, 2012, as the same may be amended, modified or supplemented from time to time.]

**“Control,” “Controlled” and “Controlling”** means, with respect to any Person, either (i) ownership directly or indirectly of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

**“Default” or “Event of Default”** means, when referring to (i) the Indenture, an event or condition specified or defined as such by Article VI of the Indenture and (ii) this Loan Agreement, an event or condition specified or defined as such by Section 7.1 hereof.

**“Development Budget”** means the budget for total estimated Project Costs and sources of payment attached to the Construction Disbursement Agreement, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and the Construction Disbursement Agreement.

**“Direct Costs”** means the costs of the Land, the Improvements, the Personal Property, and all labor, materials, fixtures, machinery and equipment required to construct and equip the Improvements in accordance with the Plans and Specifications.

**“Financing Statements”** means Uniform Commercial Code Form 1 Financing Statement(s) from the Borrower and the General Partner in favor of the Trustee.

**“General Partner”** means COMM22 Housing GP, LLC, a California limited liability company, together with any permitted successors and assigns as General Partner of Borrower.

**“General Partner Documents”** means the Partnership Agreement.

**“Generally Accepted Accounting Principles”** means the principles that are (i) consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors, as in effect from time to time, and (ii) consistently applied with past financial statements of the Borrower adopting the same principles; provided that a certified public accountant would, insofar as the use of such accounting principles is pertinent, be in a position to deliver an unqualified opinion (other than a qualification regarding changes in Generally Accepted Accounting Principles) as to financial statements in which such principles have been properly applied.

**“Governmental Authority”** means the United States, the State in which the Land is located and any political subdivision, agency, department, commission, board, bureau, authority or instrumentality of either of them, including any local authorities, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of government, which has jurisdiction over the Land or the construction, equipping and operation of the Project thereon.

**“Guarantor Documents”** means the Payment Guaranty and the Completion Agreement.

**“Improvements”** means the 130-unit multifamily rental housing project with related site improvements and amenities located on the Land and constructed, equipped and furnished in accordance with the Plans and Specifications.

**“Indebtedness”** means all obligations, contingent and otherwise, that in accordance with Generally Accepted Accounting Principles should be classified upon the Obligor’s balance sheet as liabilities, or to which reference should be made by footnotes thereto, including in any event and whether or not so classified: (a) all debt and similar monetary obligations, whether direct or indirect; (b) all liabilities secured by any deed to secure debt, mortgage, deed of trust, pledge, security interest, lien, charge or other encumbrance existing on property owned or acquired subject thereto, whether or not the liability secured thereby shall have been assumed; (c) all liabilities under capitalized leases; and (d) all guaranties, endorsements and other contingent obligations whether direct or indirect in respect of indebtedness of others, including the obligations to reimburse the issuer of any letter of credit for amounts drawn on such letter of credit.

**“Indirect Costs”** means all title insurance premiums, survey charges, engineering fees, architectural fees, real estate taxes, appraisal costs, premiums for insurance, marketing, advertising and leasing costs, brokerage commissions, legal fees, accounting fees, overhead and administrative costs, and all other expenses as shown on the Development Budget which are expenditures relating to the Project and are not Direct Costs.

**“Initial Notification of Taxability”** means the receipt by the Trustee or the Owner of a communication from the Internal Revenue Service or any court of competent jurisdiction to the effect that interest on the Bonds is not excluded, or will not in the future be excluded, from the gross income of the owners of the Bonds for federal income tax purposes.

**“Investor Limited Partner”** means Bank of America, N.A., a national banking association organized and existing under the United States, together with its permitted successors and assigns as limited partner in Borrower.

**“Issuer’s Fee”** means the administrative fee of the Issuer payable on the Closing Date and on each December 1 thereafter, commencing December 1, 2013, in an amount equal to (i) \$[23 BASIS POINTS OF THE ORIGINAL PRINCIPAL AMOUNT OF THE BONDS] until the Conversion Date, and (ii) after the Conversion Date, 0.23% of the aggregate principal amount of the Bonds outstanding immediately following the Conversion Date.

**“Land”** means the real property described in Exhibit A attached hereto.

**“Lien”** means any interest in the Project or any part thereof or any right therein, including without limitation any rents, issues, profits, proceeds and revenues therefrom, securing an obligation owed to, or a claim by, any Person, whether such interest is based on the common law, statute or contract, and including but not limited to the lien and security interest arising from a deed to secure debt, mortgage, deed of trust, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” shall also include any and all reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project or any part thereof or any interest therein.

**“Loan Fee”** means an amount equal to three-quarters percent (0.75%) of the maximum principal amount of the Bonds, or Two Hundred Ten Thousand Dollars (\$210,000).

**“Management Agreement”** means the Management Agreement dated as of August 2, 2012, between the Borrower and the Manager, and any substitute agreement relating to the management of the Project.

**“Manager”** means Bridge Property Management Company, a California non-profit public benefit corporation, or any successor manager of the Project approved by the Servicer and the Issuer (which approval of the Issuer shall not be unreasonably withheld and shall be deemed granted if not rejected within ten (10) days of receipt of written request therefor).

**“Managing Member”** means BRIDGE Housing Corporation, a California nonprofit public benefit corporation, as managing member of the General Partner, together with any permitted successors and assigns.

**“Net Operating Income”** means, for any period, (A) the lesser of (i) actual Project Revenues for such period or (ii) Project Revenues as projected in the Appraisal dated \_\_\_\_\_, 2012 for such period, adjusted to reflect a five percent (5.0%) vacancy rate less (B) the greater of (i) Operating Expenses for such period or (ii) the allocable portion of Projected Operating Expenses.

**“Obligor(s)”** means the Borrower, the General Partner, [the Managing Member] and each Guarantor.

**“Operating Expenses”** means, for any period, the aggregate amount of expenses incurred by the Borrower in connection with the Project pursuant to arm’s length transactions for ordinary and necessary expenses sufficient to provide the amenities and services associated with a multi-family residential facility as follows: labor costs; general maintenance; legal and accounting fees relating solely to the operation of the Project (and not partnership administration, other than audit and other expenses incurred by the Borrower relating solely to the operation of the Project); general and administrative costs of the Borrower directly attributable to the Project (and not partnership administration) and advertising and marketing costs; supplies for the Project; non-capital repairs and replacements; leasing and brokerage commissions; management fees payable pursuant to the management agreement up to an amount equal to 3.0% of Project Revenues; costs of licenses, permits and similar fees relating to property operations; premiums for insurance required pursuant to the Loan Agreement; charges for electricity and other utilities; real estate taxes, water and sewer rents and assessments; payments made into the Replacement Reserve Fund, the Operating Reserve Fund and the Tax and Insurance Fund; and all other expenses incurred in connection with the ordinary course of property operations and maintenance. The foregoing expenses and fees paid to Affiliates of the Borrower, with the Servicer’s consent, shall be included as Operating Expenses in an amount equal to the actual fees and expenses paid or payable to such Affiliate, but in no event greater than amount that customarily would be paid to an unaffiliated third party on an arm’s-length basis for such services. Without limiting the generality of those items which shall be excluded from the definition of Operating Expenses, the following shall be specifically excluded from such calculation: depreciation, amortization and other non-cash items; all partnership administrative expenses (including, without limitation, legal, accounting, and other professional expenses); prepaid expenses which are not customarily prepaid in the ordinary course of business; any termination or similar fee in connection with financing for the Project; expenditures funded by disbursements from the Replacement Reserve Fund and the Tax and Insurance Fund; scheduled debt service and scheduled

principal payments on Indebtedness related to the Project; penalties, late fees and similar charges arising from or on account of the Borrower's failure to pay any monetary obligations; any costs, expenses or fees, including interest, payable by the Borrower on advances made by the Servicer, the Issuer or the Trustee after an Event of Default, and franchise and income taxes of the Borrower.

**"Organizational Documents"** means for any corporation, partnership, trust, limited liability company, limited liability partnership, unincorporated association, business or other legal entity, the documents pursuant to which such entity has been established or organized, as such documents may be amended from time to time in accordance with the terms of this Loan Agreement.

**"Partnership Agreement"** means the Amended and Restated Agreement of Limited Partnership of the Borrower dated as of December \_\_, 2012, among the General Partner, the Special Limited Partner and the Investor Limited Partner, as the same may be amended, modified or supplemented from time to time, subject to the terms hereof.

**"Partnership Documents"** means, collectively, the Partnership Agreement, [the Contribution Agreement] and any other documents that govern the formation, organization, management and funding of Borrower's partnership.

**"Permitted Encumbrances"** has the meaning set forth for that term in the Mortgage.

**"Personal Property"** means all materials, furnishings, fixtures, furniture, machinery, equipment and all items of tangible or intangible personal property now or hereafter owned or acquired by the Borrower in which the Issuer has been or will be granted an interest to secure the obligations of the Borrower under the Loan Documents.

**"Plans and Specifications"** means the plans and specifications for the Project prepared by the Architect and more particularly described in the Construction Disbursement Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof and the Construction Disbursement Agreement.

**"Project Approvals"** means all approvals, consents, waivers, orders, agreements, authorization, permits and licenses required under applicable Legal Requirements or under the terms of any restriction, covenant or easement affecting the Project, or otherwise necessary or desirable for the ownership, acquisition, construction and equipping, use and operation of the Project and the Improvements, whether obtained from a Governmental Authority or any other Person.

**"Project Costs"** means the sum of all Direct Costs and Indirect Costs that will be incurred by the Borrower in connection with the acquisition of the Land and the Improvements, the construction and equipping of the Improvements, the marketing and leasing of leasable space in the Improvements, and the operation and carrying of the Project through Stabilization.

**"Project Revenues"** means, for any period, the revenues actually collected during such period (a) generated from all tenants and others occupying or having a right to occupy or use the Project or any portion thereof (other than revenue from Section 8 vouchers to the extent such revenue causes the rent on any unit to exceed the lower of (A) maximum allowable tax credit rent designated for that unit or (B) the average rent being achieved for similar non-Section 8 subsidized units within the Project for such period), adjusted to reflect rental concessions over the term of any applicable lease, and (b) from the use and occupancy of any amenities and services of the Project, including

vending machine income, net cable TV revenues, laundry service and parking income, but exclusive of (i) capital contributions, (ii) net proceeds from the sale or refinancing of the Project, (iii) net proceeds of insurance (other than proceeds of loss of rent insurance to the extent paid for apartment units occupied at the time of the loss), and net condemnation awards, (iv) security deposits and prepaid rents to the extent not permitted to be released to the Borrower pursuant to the terms of leases, and (v) interest earnings.

**“Projected Operating Expenses”** means \$\_\_\_\_\_ per annum (increased on an annual basis beginning [December 1, 2013], by \_\_\_\_%), plus actual costs of utilities, insurance and Impositions (provided Impositions constituting real property taxes are based on the full assessed value of the Project following completion of construction and equipping of the Improvements as contemplated by this Loan Agreement and provided further that if the actual amount of real property taxes reflects a full or partial abatement or exemption other than the exemption provided for under Section 214(g) of the California Revenue and Taxation Code, such abatement or exemption shall have been approved by Servicer), plus all required deposits into the Replacement Reserve Fund and Operating Reserve Fund.

**“Property”** has the meaning set forth for that term in the Mortgage.

**“Proposed Budget”** means the proposed capital and operating budget for the Project, submitted to the Servicer for approval.

**“Related Person”** means a “related person” as defined in Section 147(a) of the Code.

**“Required Equity Funds”** means contributions by Investor Limited Partner to the capital of the Borrower, for application to Project Costs in accordance with the Approved Budget, to be contributed and so applied in installments at times and in amounts approved by the Servicer, in the aggregate amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**“Reserved Rights”** means, the rights of the Issuer hereunder pursuant to Sections 2.3(a), 2.3(b), 2.3(c), 2.3(d), 2.3(e), 2.3(l), 3.2(b), 3.2(d), 3.2(e), 5.3, 5.6, 5.13, 5.14, 5.19, 5.21(b), 6.3(a)(ii), 7.4 and 7.8 hereof, which are retained and not assigned to the Trustee pursuant to the Indenture.

**“Single Purpose Entity”** means an entity that (i) is formed solely for the purpose of owning and operating a single asset; (ii) does not engage in any business unrelated to such asset; (iii) keeps its own books and records and its own accounts, separate and apart from the books, records and accounts of any other Person; and (iv) holds itself out as being a legal entity, separate and apart from any other Person.

**“Subordinate Loans”** means, collectively, a State of California Mental Health Services Act (MHSA) loan in the amount of \$1,462,000.00 (“MHSA Loan”); (ii) a loan from the City of San Diego acting solely in its capacity as the designated successor housing agency to the former Redevelopment Agency of the City of San Diego in the amount of \$9,255,000.00 (“City Loan”); (iii) a loan from the San Diego Housing Commission in the amount of \$500,000 (the “Commission Loan”); (iv) a California Department of Housing and Community Development Transit Oriented Development Loan in the amount of \$10,786,109.00 (“TOD Loan”) and (v) a loan in the amount of [\$13,284,614] from COMM22 LLC to the Borrower from (a) a State of California Proposition 1C Transit Oriented Development grant in the amount of \$3,636,109.00 (“TOD Grant”); (b) a State of California Proposition 1C Infill Infrastructure grant in the amount of \$7,659,715.00 (“IIG Grant”);

(c) a State of California Proposition 1C CalReUse grant in the amount of \$1,287,552.00 (“CalReUse Grant”); (d) a grant in the amount of \$701,238.00 from the San Diego Association of Governments (“SANDAG Grant”);

“**Survey**” means an instrument survey of the Land and the Improvements prepared in accordance with the Servicer’s survey requirements, such survey to be reasonably satisfactory to the Servicer in form and substance.

“**Tax Credits**” means the federal low income housing credits available with respect to the Project.

“**Title Insurance Company**” means Old Republic Title Company.

“**Title Policy**” means an ALTA standard form title insurance policy issued by the Title Insurance Company for the benefit of the Trustee and, its successors and assigns, as their interests may appear (with such reinsurance or co-insurance as the Servicer may require, any such reinsurance to be with direct access endorsements) insuring the priority of the Mortgage and that the Borrower holds marketable leasehold title to the Project, subject only to Permitted Encumbrances and such exceptions as the Servicer may approve, and containing such endorsements and affirmative insurance as the Servicer in its reasonable discretion may require.

“**Unit Reserve Amount**” means during the first twelve months following completion of construction and equipping of the Project, an amount equal to \$600 times the number of apartment units at the Project, which amount shall be increased (i) as of the first day of the first full month of each succeeding twelve month period by the amount by which the cost of living (as reflected in the Consumer Price Index for the metropolitan area in which the Project is located, or any successor or substitute index) as of the last calendar month of the immediately preceding twelve month period exceeded such cost of living as of the last calendar month of the prior twelve month period and (ii) not more frequently than once every five years upon the written direction of the Servicer by an amount reasonably determined by the Servicer, based on a physical needs assessment in respect of the Project, as necessary to meet the upcoming capital needs of the Project.

**Section 1.2 Construction.** In this Loan Agreement, unless the context otherwise requires:

(a) Articles and Sections referred to by number shall mean the corresponding Articles and Sections of this Loan Agreement.

(b) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms refer to this Indenture, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of adoption of this Loan Agreement.

(c) Words of the masculine gender shall mean and include correlative words of the female and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

(d) References in this Indenture to particular sections of the Code, the Act or any other legislation shall be deemed to refer also to any successor sections thereto or other redesignation for codification purposes.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

**Section 2.1 Representations by the Issuer.** The Issuer makes the following representations as of the date of the execution and delivery of this Loan Agreement as the basis for the undertakings on its part herein contained:

(a) The Issuer a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State, duly organized, validly existing and in good standing under the Act and the laws of the State.

(b) The Issuer has the power and lawful authority to adopt the Resolution, to execute and deliver the Issuer Documents, to issue the Bonds and receive the proceeds of the Bonds, to apply the proceeds of the Bonds to make the Loan, to assign the revenues derived and to be derived by the Issuer from the Loan to the Trustee and to perform and observe the provisions of to enter into the transactions the Issuer Documents and the Bonds on its part to be performed and observed.

(c) The Issuer has duly authorized the execution and delivery of each of the Issuer Documents, the issuance sale and delivery of the Bonds and the performance of the obligations of the Issuer thereunder.

(d) The Issuer Documents and the Bonds have been duly executed and delivered by the Issuer and constitute the legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights, and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought, and except as enforcement may be limited by the exercise of judicial discretion in accordance with general principles of equity and by limitations on legal remedies against public agencies in the State.

(e) Neither of the Issuer nor any director, officer or employee of the Issuer has any interest, financial, employment or other, in the Borrower, the Project or the transactions contemplated hereby.

(f) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Issuer, threatened against the Issuer by or before any court, governmental agency or public board or body, which (i) affects or questions the existence or the territorial jurisdiction of the Issuer or the title to office of any director of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any of the Issuer Documents, or the issuance, execution or delivery of the Bonds; (iii) affects or questions the validity or enforceability of any of the Issuer Documents or the Bonds; (iv) questions the exclusion from gross income for federal income taxation of interest on the Bonds; or (v) questions the power or authority of the Issuer to perform its obligations under any of the Issuer Documents or the Bonds or to carry out the transactions contemplated by any of the Issuer Documents or the Bonds.

(g) The Issuer makes no representation or warranty, express or implied, that the proceeds of the Bonds will be sufficient to finance the acquisition, construction and equipping of the Project or that the Project will be adequate or sufficient for the Borrower's intended purposes.

(h) The Issuer has used no broker in connection with the execution hereof and the transactions contemplated hereby.

**Section 2.2 Representations by the Borrower.** The Borrower makes the following representations and warranties, and covenants and agrees as follows, as of and from the date of the execution and delivery of this Loan Agreement as the basis for the undertakings on its part herein contained:

(a) The Borrower is, and at all times will be, a limited partnership duly organized, validly existing and in good standing under the laws of the State. The General Partner is, and at all times will be, a limited liability company, duly organized, validly existing and in good standing under the laws of the State. The Managing Member is, and at all times will be, a corporation, duly organized, validly existing and in good standing under the laws of the State. Each of the Borrower, the General Partner and the Managing Member has, and will at all times have, all requisite power to own its property and conduct its business as now conducted and as presently contemplated, to execute and deliver the Loan Documents and the General Partner Documents and to perform its duties and obligations hereunder and thereunder.

(b) The execution, delivery and performance of this Loan Agreement and the other Loan Documents and the transactions contemplated hereby and thereby (i) are within the authority of the Borrower, (ii) have been duly authorized by all necessary proceedings on the part of the Borrower, (iii) do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which the Borrower is subject or any judgment, order, writ, injunction, license or permit applicable to the Borrower, (iv) do not conflict with any provision of the Organizational Documents of the Borrower, and (v) do not require the approval or consent of, or filing with, any governmental agency or authority other than those already obtained and the filing of certain of the Loan Documents in the appropriate public records.

(c) The execution and delivery of this Loan Agreement and the other Loan Documents will result in valid and legally binding obligations of the Borrower enforceable against it in accordance with the respective terms and provisions hereof and thereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights, and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(d) The Borrower is, and will at all times be, a Single Purpose Entity.

(e) The address of the Borrower's chief executive office and principal place of business is 2202 30th Street, San Diego, California 92104. The organizational identification number for the Borrower is 201111800005. The federal employer identification number for the Borrower is 45-3719866.

(f) On the Closing Date, the Borrower will acquire and hold leasehold title to the Land and the Improvements, in each case subject only to the Permitted Encumbrances. The

Borrower possesses, and will at all times possess, all franchises, patents, copyrights, trademarks, trade names, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of its business substantially as now conducted or as it is intended to be conducted with respect to the Project, without known conflict with any rights of others.

(g) The Borrower is not subject to any charter, partnership or other legal restriction, or any judgment, decree, order, rule or regulation that has or is expected in the future to have a materially adverse effect on the business assets or financial condition of the Borrower. The Borrower is not, and will not be, a party to any contract or agreement that has or is expected, in the judgment of the Borrower's partners, to have any materially adverse effect on the business or financial condition of the Borrower.

(h) The Borrower is not and will not at any time be, in violation of any provision of its Organizational Documents or any agreement or instrument to which it may be subject or by which it or any of its properties may be bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that could result in the imposition of substantial penalties or adversely affect the financial condition, properties or business of the Borrower.

(i) The Borrower and each Obligor (i) has made or filed, and will make or file in a timely fashion, all federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid, and will pay when due, all taxes and other governmental assessments and charges shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and by appropriate proceedings, (iii) if a partnership, limited liability partnership or limited liability company, has, and will maintain, partnership tax classification under the Code, and (iv) has set aside, and will at all times set aside, on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the period to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the partners, officers, members or trustees of the Borrower know of no basis for any such claim. The Borrower has filed, and will continue to file, all of such tax returns, reports, and declarations either (x) separately from any Affiliate or (y) if part of a consolidated filing, as a separate member of any such consolidated group.

(j) The Project is located wholly within the State and within the jurisdiction of the Issuer.

(k) None of the Issuer, the Trustee or any director, officer or employee of the Issuer or the Trustee has any interest, financial, employment or other, in the Borrower, the Project or the transactions contemplated hereby.

(l) There is no Event of Default on the part of the Borrower or any Obligor under this Loan Agreement or any other Loan Document, any General Partner Document, any Guarantor Document or any Organizational Document, and no event has occurred and is continuing which after notice or passage of time or both would give rise to a default under any thereof. The Borrower has received no notices of and has no knowledge of any violations of any Legal Requirements or Project Approvals.

(m) The certifications, representations, warranties, statements, information and descriptions contained in the Loan Documents and in the Borrower's Tax Certificate, as of the date

of the first authentication and delivery of the Bonds, are and will be true, correct and complete in all material respects, do not and will not contain any untrue statement or misleading statement of a material fact, and do not and will not omit to state a material fact required to be stated therein or necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in light of the circumstances under which they were made, not misleading. The estimates and the assumptions contained in the Loan Documents and in the Borrower's Tax Certificate, as of the date of the first authentication and delivery of the Bonds, are reasonable and based on the best information available to the Borrower. Each of the certifications, representations, warranties, statements, information and descriptions contained in the Borrower's Tax Certificate is hereby incorporated into this Loan Agreement by reference, as if fully set forth herein.

(n) The Borrower has furnished to the Issuer in the Borrower's Tax Certificate all information necessary for the Issuer to file an IRS Form 8038 with respect to the Bonds, and all of such information is and will be on the date of filing, true, complete and correct.

(o) The Borrower is not contemplating either the filing of a petition by it, by the General Partner or by the Managing Member under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property, and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it or any Obligor.

(p) The Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of the Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101.

(q) No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other Regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Loan Document.

(r) The Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

(s) The Borrower has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of the Borrower's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed the Borrower's total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower's assets is and will, immediately following the execution and delivery of the Loan Documents, be greater than the Borrower's probable liabilities, including maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents, will not, constitute unreasonably small capital to carry out its business as

conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

(t) All information regarding the Borrower, the Project and any Obligor delivered to the Issuer, the Trustee and the Bank is true and correct in all material respects and all such financial information fairly presents the financial condition and results of operations of the Borrower and the other Obligors for the periods to which such financial information relates, and discloses all liabilities and contingent liabilities of the Borrower or the other Obligors.

(u) There are no actions, suits, proceedings or investigations of any kind pending (with proper service of process having been accomplished) or, to the Borrower's actual knowledge, threatened against the Borrower, the General Partner or the Managing Member before any court, tribunal or administrative agency or board or any mediator or arbitrator that, if adversely determined, might, either in any case or in the aggregate, adversely affect the business, assets or financial condition of the Borrower, the General Partner or the Managing Member, or result in any liability not adequately covered by insurance, or for which adequate reserves are not maintained on the balance sheet of the Borrower, the General Partner or the Managing Member, or which question the validity of this Loan Agreement or any of the other Loan Documents or any of the General Partner Documents, any action taken or to be taken pursuant hereto or thereto, or any lien or security interest created or intended to be created pursuant hereto or thereto, or which will adversely affect the ability of the Borrower or the General Partner to construct, equip, use and occupy the Project or to pay and perform its obligations hereunder in the manner contemplated by this Loan Agreement, any of the other Loan Documents or any of the General Partner Documents.

(v) All utility services necessary and sufficient for the construction, equipping and operation of the Project shall be, upon Completion of the Project, and thereafter will at all times be, available through dedicated public rights of way or through perpetual private easements with respect to the Borrower's interest in which the Mortgage creates a valid and enforceable first priority mortgage lien. The Borrower has obtained, or promptly will obtain, all utility installations and connections required for the operation and servicing of the Project for its intended purposes.

(w) The rights of way for all roads necessary for the full utilization of the Project for its intended purposes have either been acquired by the appropriate Governmental Authority or have been dedicated to public use and accepted by such Governmental Authority. All such roads shall have been completed, and the right to use all such roads, or suitable substitute rights of way approved by the initial Servicer, shall be maintained at all times for the Project. All curb cuts, driveways and traffic signals shown on the Plans and Specifications are existing or have been fully approved by the appropriate Governmental Authority and after the completion thereof, shall be maintained at all times for the Project.

(x) The acquisition, construction, equipping, use and occupancy of the Project will at times comply with all Legal Requirements. The Borrower will give all notices to, and take all other actions with respect to, such Governmental Authorities as may be required under applicable Legal Requirements to construct and equip the Improvements and to use, occupy and operate the Project.

(y) Except as set forth on Exhibit C hereto, the Borrower has obtained all Project Approvals required for the acquisition, construction and equipping of the Project in accordance with the Plans and Specifications. All Project Approvals obtained by the Borrower have been validly issued and are in full force and effect. The Borrower has no reason to believe that any of the Project Approvals required for acquisition, construction and equipping of the Project in accordance with the Plans and Specifications and not heretofore obtained by the Borrower will not be obtained by the Borrower in the ordinary course in order to permit completion of construction and equipping of the Project in accordance with the Plans and Specifications on or before the Completion Deadline. The Borrower will timely obtain all Project Approvals not heretofore obtained by the Borrower (including those listed and described on Exhibit C hereto, those required for use and occupancy of the Project for its intended purpose upon Completion and any other Project Approvals which may hereafter become required, necessary or desirable) and will furnish the Servicer with evidence that the Borrower has obtained such Project Approvals promptly upon their receipt. The Borrower will duly perform and comply with all of the terms and conditions of all Project Approvals obtained at any time. No Project Approvals will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project, including any transfer pursuant to foreclosure, deed in lieu of foreclosure or exercise of power of sale under the Mortgage.

(z) The Borrower has furnished the Bank with true and complete sets of the Plans and Specifications. The Plans and Specifications so furnished to the initial Servicer comply with all Legal Requirements, all Project Approvals, and all restrictions, covenants and easements affecting the Project, and have been approved by such Governmental Authority as is required for construction and equipping of the Improvements.

(aa) The Development Budget accurately reflects all Project Costs.

(bb) The Survey delivered to the Bank does not fail to reflect any material matter of survey affecting the Project or the title thereto.

(cc) No part of the Land is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazard or to the extent any part of the Land is an area identified as an area having special flood hazard, adequate flood insurance has been obtained by the Borrower.

(dd) The Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which might materially adversely affect the condition (financial or otherwise) or business of the Borrower. There has not been and shall never be committed by the Borrower or any other Person in occupancy of or involved with the operation or use of the Project any act or omission affording any Governmental Authority the right of forfeiture as against the Project or any part thereof any moneys paid in performance of the Borrower's obligations under any Loan Document.

(ee) The Construction Contract and the Architect's Contract are each in full force and effect and each of the parties thereto are in full compliance with their respective obligations thereunder. The work to be performed by the Contractor under the Construction Contract is the work called for by the Plans and Specifications, and all work required to complete the Improvements in accordance with the Plans and Specifications is provided for under the Construction Contract.

(ff) Each Requisition submitted by the Borrower shall contain an affirmation that the foregoing representations and warranties remain true and correct as of the date hereof.

(gg) The Related Persons are not (and to Borrower's knowledge after diligent inquiry, no other Person holding any legal or beneficial interest whatsoever in the Related Persons, directly or indirectly, is included in, owned by, Controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the Persons referred to or described in any list of persons, entities, and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended ("Executive Order 13224"), or any similar list issued by OFAC or any other department or agency of the United States of America (collectively, the "OFAC Lists").

**Section 2.3 Covenants by the Borrower.** The Borrower hereby covenants and agrees that, on and after the Closing Date, it will:

(a) Give written notice promptly, and in any event at least thirty (30) days prior to the closing thereof, of any intended refinancing of the Project to the Issuer, the Trustee and the Servicer;

(b) Comply with all Legal Requirements and promptly furnish the Issuer, the Trustee and the Servicer with reports of any official searches made by any Governmental Authority and any claims of violations thereof;

(c) Upon reasonable notice and at reasonable times, permit the Servicer, the Majority Owner, the Issuer and the Trustee (or their representatives) to enter upon the Land and inspect the Project;

(d) Indemnify the Issuer, the Trustee, the Owners and the Servicer against claims of brokers arising by reason of the execution hereof or the consummation of the transactions contemplated hereby;

(e) Deliver to the Servicer and the Issuer copies of all leases (other than leases to residential tenants in the ordinary course of business in the form set forth in Exhibit D hereto) with respect to the Project or any portion thereof, whether executed before or after the date of this Loan Agreement;

(f) Not enter into, cancel or amend any agreement for the furnishing of management or similar services to the Project, without the prior written consent of the Servicer and the Issuer, such consent not to be unreasonably withheld or delayed;

(g) Comply with all restrictions, covenants and easements affecting the Land or the Project;

(h) Take, or require to be taken, such acts as may be required under applicable law or regulation in order that the interest on the Bonds continues to be excludable from gross income for purposes of federal income taxation, and refrain from taking any action which would

adversely affect the exclusion from gross income of interest on the Bonds from federal income taxation;

(i) Perform and satisfy all the duties and obligations of the Borrower set forth and specified in the Indenture as duties and obligations of the Borrower, including those duties and obligations which the Indenture requires this Loan Agreement or the other Loan Documents to impose upon the Borrower;

(j) Confirm and assure that the Project, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at reasonable times and upon reasonable notice by the Issuer, the Trustee or the Servicer or the duly authorized agent of any of them and shall keep copies of all written contracts or other instruments which affect the Project, all or any of which shall be subject to inspection and examination by the Issuer, the Trustee, the Servicer or the duly authorized agent of any of them;

(k) Commencing on the fifth anniversary of the Closing Date, and on such anniversary in each fifth year thereafter, cause to be delivered to the Trustee and the Servicer, if so requested by the Trustee or the Servicer, at Borrower's cost, an opinion of counsel, who may be counsel for the Borrower, addressed to the Trustee and the Servicer and stating that based upon the law in effect on the date of such opinion no filing, registration or recording and no refiling, re-registration or rerecording of the Mortgage and any Financing Statement, amendments thereto, continuation statements or instruments of a similar character relating to the pledges and assignments made by the Borrower to the Issuer or the Trustee to or for the benefit of the Owners of Bonds is required by law in order to fully preserve and protect the rights of the Issuer, the Trustee and the Owners of Bonds, as the case may be, or if such filing, registration, recording, refiling, re-registration or rerecording is necessary, setting forth the requirements in respect thereof; and cause such filing, registration, recording, refiling, re-registration or rerecording to take place at Borrower's expense and promptly after any filing, recording, refiling or rerecording of the Mortgage and any such Financing Statement or amendment thereto or continuation statement or instrument, deliver to the Trustee and the Servicer evidence, satisfactory to the Trustee and the Servicer, that such filing, registration, recording, refiling, re-registration, or rerecording has been duly accomplished and setting forth the particulars thereof;

(l) Promptly notify the Issuer, the Trustee and the Servicer in writing of any (i) default by the Borrower in the performance or observance of any covenant, agreement, representation, warranty or obligation of the Borrower set forth in this Loan Agreement or any other Loan Documents or (ii) any event or condition which with the lapse of time or the giving of notice, or both would constitute an Event of Default under this Loan Agreement or any other Loan Documents; and commence, pursue and complete construction and equipping of the Improvements as provided herein and in the Construction Disbursement Agreement.

The Borrower acknowledges that, to the extent that regulations of the Comptroller of the Currency or any other applicable regulatory agency require granting the Borrower the right to receive brokerage confirmations of securities transactions as they occur, the Borrower specifically waives the right to receive such confirmations.

## **ARTICLE III**

### **LOAN AND PROVISIONS FOR REPAYMENT**

#### **Section 3.1 Issuance of Bonds and Delivery of Note and other Loan Documents.**

(a) In order to finance a portion of the costs of the acquisition, construction and equipping of the Project, the Issuer has, consistent with its duties and purpose under the Act, issued and caused the Trustee to authenticate and deliver the Bonds pursuant to the Indenture to the initial Owner. Each series of Bonds bears interest and is payable as provided therein and in the Indenture. Each series of Bonds shall mature and all Outstanding principal of, Prepayment Equalization Payments, interest and Additional Interest (if any) on such series of Bonds shall be due and payable in full on the Maturity Date applicable to such series of Bonds, all as provided more fully in the Bonds and the Indenture.

(b) The Issuer agrees to lend the proceeds received from the sale of the Bonds to the Borrower, by causing such amounts to be deposited directly into the Project Fund, subject to the terms and conditions of the Indenture and this Loan Agreement, including the terms and conditions thereof and hereof governing the disbursement of proceeds of the Loan.

(c) Pursuant to the Indenture, the Trustee shall make disbursements from the Project Fund created pursuant to the Indenture to pay or to reimburse the Borrower for costs of the acquisition, construction and equipping of the Project, subject to the conditions of the Indenture and this Loan Agreement. Upon receipt of a properly signed Requisition approved by the Servicer (which approval of the Servicer is expressly subject to the satisfaction of the conditions precedent set forth in the Construction Disbursement Agreement), the Trustee is authorized to act upon such Requisition without further inquiry, and, except for negligence after notice of facts to the contrary or willful misconduct of the Trustee, the Borrower shall hold the Trustee harmless against any and all losses, claims or liabilities incurred in connection with the Trustee's making disbursements from the Project Fund in accordance with such Requisition. Neither the Trustee nor the Issuer shall be responsible for the application by the Borrower of moneys properly disbursed from the Project Fund.

(d) Concurrently with the sale and delivery of the Bonds, and to evidence further the obligation to repay the Loan in accordance with the provisions of this Loan Agreement, the Borrower has executed and delivered the Note and the other Loan Documents.

#### **Section 3.2 Loan Repayments and Other Amounts.**

(a) On the Closing Date, the Borrower shall pay to the Trustee, for deposit into the Revenue Fund, the amount equal to \$\_\_\_\_\_. Thereafter, the Borrower shall pay to the Trustee, for deposit into the Revenue Fund, on the first day of each month commencing with the month that is \_\_\_\_\_ after the month of the Conversion Date, an amount equal to the sum of (i) the interest due on the Bonds on said date (after taking into account funds available for such purpose, if any, in the Capitalized Interest Account of the Project Fund), plus (ii) the principal due on the Bonds on said date, plus (iii) amounts required to be deposited into the Replacement Reserve Fund (pursuant to Section 5.22(c) hereof), the Operating Reserve Fund (pursuant to Section 5.22(i) hereof) and the Tax and Insurance Fund pursuant to Section 5.22(h) hereof) as of such date. Amounts so paid to the Trustee by the Borrower shall be in immediately available funds or shall be such that on the Bond Payment Date they are available funds.

(b) The Borrower understands that the interest rate applicable under the Note and with respect to the Bonds is based upon the assumption that interest income paid on the Bonds will be excludable from the gross income of the Owners under Section 103 of the Code and applicable state law. In the event that an Initial Notification of Taxability shall occur, then the interest rate on the Note and the Bonds, and on all obligations under this Agreement (other than those to which the Alternative Rate applies) shall, effective on the date of such Initial Notification of Taxability, be increased to a rate equal to the Taxable Rate. The Borrower shall, in addition, pay to the Trustee, for deposit into the Revenue Fund, promptly upon demand from the Trustee or the Servicer, an amount equal to the Additional Interest payable on the Bonds. The Borrower shall also indemnify, defend and hold the Owners harmless from any penalties, interest expense or other costs, including reasonable attorneys' fees (including all reasonably allocated time and charges of Owners' and Trustee's "in-house" and "outside" counsel) and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of the Bonds and any interest payable to any Owner with respect to the Bonds. The obligations of the Borrower under this Section 3.2(b) shall survive termination of this Agreement and the Note and repayment of the Loan. If, following any increase in interest rates pursuant to this Section 3.2(b), a final determination is made, to the satisfaction of the Owners, that interest paid on the Bonds is excludable from the Owners' gross income under Section 103 of the Code and applicable state law, the Owners shall promptly refund to the Borrower any Additional Interest and other additional amounts paid by the Borrower pursuant to this Section 3.2(b).

(c) The Borrower agrees to pay the Trustee Fee and Trustee Expenses to the Trustee and agrees to pay the Issuer's Fee to the Issuer. The Borrower also agrees to pay all fees, charges and expenses of the Trustee and the Issuer, respectively (including, without limitation, the reasonable, actually incurred fees and expenses of counsel to the Issuer, Bond Counsel and counsel to the Trustee), with respect to the Bonds and the Loan as and when the same become due. The Borrower also agrees to pay the printing and engraving costs of the Bonds, including any certificates required to be prepared for use in connection with any exchanges of Bonds for the cost of which Owners are not liable. The Borrower also agrees to pay the Loan Fee to Bank on or before the Closing Date, to pay the fees of the Majority Owner and the Servicer, and to pay all reasonable costs and expenses incurred by the Majority Owner and the Servicer in connection with the administration of the Bonds, the Loan or the collateral therefor, and any amendments, modifications or "workouts" thereof, including without limitation reasonable attorneys' fees and costs (including allocated costs of in-house attorneys), fees and costs of engineers, accountants, appraisers and other consultants, title insurance premiums and recording costs upon receipt of written demand therefor.

(d) The Borrower agrees to pay all Costs of Issuance (in addition to those Costs of Issuance otherwise required to be paid by this Section 3.2).

(e) The Borrower agrees to pay any Prepayment Equalization Payments at the times and in the amounts the same become payable pursuant to the Indenture.

(f) The Borrower agrees to pay, as and when the same become due, to the Issuer the Issuer's annual Issuer's Fee, and to the Issuer, the Servicer or the Trustee any extraordinary expenses, including, without limitation, any costs of litigation, which may be incurred by the Issuer, the Servicer or the Trustee in connection with this Loan Agreement or the Indenture, including the reasonable, actually incurred costs and fees of any attorneys or other experts retained by the Issuer, the Servicer or the Trustee in connection therewith.

(g) The Borrower agrees to repay the Loan at the times and in the amounts necessary to enable the Trustee, on behalf of the Issuer, to pay all amounts payable with respect to the Bonds, when due, whether at maturity or upon redemption, acceleration, tender, purchase or otherwise.

**Section 3.3 Payments Pledged and Assigned.** It is understood and agreed that the Loan Documents and certain other documents and property and all payments required to be made by the Borrower pursuant hereto (except payments to be made to the Issuer in respect of its Reserved Rights and payments to be made to the Servicer and the Trustee pursuant to Section 3.2(b) hereof) have been assigned to the Trustee simultaneously herewith pursuant to the Indenture as and for security for the Bonds. The Borrower hereby consents to such assignment and recognizes the Trustee as the assignee of the Issuer, to the extent of the assignment, for purposes of said documents and property.

**Section 3.4 Obligations of Borrower Hereunder Unconditional.** The obligations of the Borrower to make any payments required by the terms of this Loan Agreement and the other Loan Documents, including, without limitation, the payments required in Section 3.2 hereof, and to perform and observe the other agreements on its part contained herein and in the other Loan Documents shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of set-off, counterclaim, abatement or otherwise and, until such time as the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture. The Borrower (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for herein or in the other Loan Documents, (ii) will perform and observe all of its other agreements contained herein and the other Loan Documents and (iii) will not suspend the performance of its obligations hereunder and under the other Loan Documents for any cause including, without limiting the generality of the foregoing, failure to complete construction and equipping of the Project, any acts or circumstances that may constitute failure of consideration, failure of or a defect of title to the Project or any part thereof, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State or any political subdivision of either, or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement or the other Loan Documents. The Borrower may, at its own cost and expense and in its own name or in the name of the Issuer (provided the Issuer is a necessary party and consents thereto), prosecute or defend any action or proceeding or take any other action involving third persons which the Borrower deems reasonably necessary in order to secure or protect its rights hereunder, and in such event the Issuer, subject to the provisions of the Indenture, hereby agrees to cooperate fully with the Borrower and to take all action (at the Borrower's cost and expense) necessary to effect the substitution of the Borrower for the Issuer in any such action or proceeding if the Borrower shall so request.

## **ARTICLE IV**

### **ADVANCES**

**Section 4.1 Requisition.** At such time as the Borrower shall desire to obtain an advance from the Loan Account, the Insurance and Condemnation Proceeds Account, or, the Equity Account of the Project Fund, the Borrower shall complete, execute and deliver a Requisition to the Servicer. Each Requisition shall be signed on behalf of the Borrower and shall be in the form attached as Exhibit G to the Construction Disbursement Agreement. The Trustee may rely conclusively on the

statements and certifications contained in any Requisition. The Borrower shall not submit any Requisition directly to the Trustee. Each advance from the Loan Account, the Insurance and Condemnation Proceeds Account, or the Equity Account of the Project Fund by the Trustee shall be subject to prior approval of the Requisition by the Servicer. Upon approval, the Servicer shall forward each Requisition to the Trustee for payment.

## **ARTICLE V**

### **SPECIAL COVENANTS OF THE BORROWER**

**Section 5.1 Commencement and Completion of Project.** The Borrower will commence construction and equipping of the Improvements within ninety (90) days after the Closing Date, will diligently pursue construction and equipping of the Improvements, will attain Completion prior to the Completion Deadline, and will pay all sums and perform all such acts as may be necessary or appropriate to complete such construction and equipping, all as more fully set forth in the Construction Disbursement Agreement.

**Section 5.2 Records and Accounts.** The Borrower will (a) keep true and accurate records and books of account in which full, true and correct entries will be made in accordance with Generally Accepted Accounting Principles, which records and books will not be maintained on a consolidated basis with those of any other Person, including any Affiliate of the Borrower and (b) maintain adequate accounts and reserves for all taxes (including income taxes), depreciation and amortization of its properties, contingencies, and other reserves, all of which accounts shall not be commingled with accounts of any other Person, including any or Affiliate of the Borrower.

**Section 5.3 Financial Statements and Information.** The Borrower will deliver, or cause to be delivered, to the Issuer, the Trustee and the Servicer:

(a) as soon as available, but in any event not later than ninety (90) days after the end of each fiscal year of the Borrower, beginning for the year ended December 31, 2012, the audited balance sheet of the Borrower at the end of such year, and the related audited statement of income, statement of retained earnings, changes in capital, and statement of cash flows for such year, and a statement of all contingent liabilities of the Borrower which are not reflected in such financial statements or referred to in the notes thereto, each setting forth in comparative form the figures for the previous fiscal year and all such statements to be in reasonable detail, prepared in accordance with Generally Accepted Accounting Principles, and accompanied by an auditor's report prepared without qualification by the Accountant;

(b) as soon as available, but in any event not later than ninety (90) days after the end of each fiscal year of the General Partner, beginning for the year ended December 31, 2012, the audited balance sheet of the General Partner at the end of such year, and the related audited statement of income, statement of retained earnings, changes in capital, and statement of cash flows for such year, and a statement of all contingent liabilities of the General Partner which are not reflected in such financial statements or referred to in the notes thereto, each setting forth in comparative form the figures for the previous fiscal year and all such statements to be in reasonable detail, prepared in accordance with Generally Accepted Accounting Principles, and accompanied by an auditor's report prepared without qualification by the Accountant;

(c) as soon as available, but in any event not later than thirty (30) days after the end of each calendar quarter, copies of the balance sheet of the Borrower as at the end of such quarter, and the related statement of income, statement of retained earnings, changes in capital, and statement of cash flows for the portion of the Borrower's fiscal year then elapsed, all in reasonable detail and prepared in accordance with Generally Accepted Accounting Principles, together with a certification by the chief financial officer of the Managing Member that the information contained in such financial statements fairly present the financial position of the Borrower on the date thereof (subject to year-end adjustments);

(d) as soon as available, but in any event not later than thirty (30) days after the end of each calendar quarter, copies of the balance sheet of the General Partner as at the end of such quarter, and the related statement of income, statement of retained earnings, changes in capital, and statement of cash flows for the portion of the General Partner's fiscal year then elapsed, all in reasonable detail and prepared in accordance with Generally Accepted Accounting Principles, together with a certification by the General Partner that such financial statements are true and correct and that the information contained in such financial statements fairly present the financial position of the General Partner on the date thereof (subject to year-end adjustments)];

(e) within fifteen (15) days after the end of each calendar month, commencing with the month in which the construction of the Project is substantially complete and continuing until the month in which Stabilization occurs, (i) a current rent roll and schedule of aging lease receivables as of the end of such month, in form and level of detail reasonably acceptable to the Servicer, detailing, with respect to each Lease, the tenant's name, the Lease date, the premises demised, the term, the rent, the security deposit and any rent paid more than one month in advance, (ii) a leasing report setting forth the Borrower's efforts to market and lease the then unleased space in the Improvements and the results of such efforts, accompanied by a certificate of the Borrower in the form attached hereto as Exhibit F, and (iii) an operating report for the Project for such month, in form and level of detail reasonably acceptable to the Servicer, together with a certification by the General Partner that the information in all of the items required pursuant to this Section 5.3(e) is true and correct;

(f) within thirty (30) days after the end of each calendar quarter, commencing with the quarter in which Stabilization occurs, (i) a current rent roll and schedule of aging lease receivables as of the end of such quarter, in form and level of detail reasonably acceptable to the Servicer, detailing, with respect to each Lease, the tenant's name, the Lease date, the premises demised, the term, the rent, the security deposit and any rent paid more than one month in advance, (ii) a leasing report setting forth the Borrower's efforts to market and lease the then unleased space in the Improvements and the results of such efforts, accompanied by a certificate of the Borrower in the form attached hereto as Exhibit F, and (iii) an operating report for the Project for such quarter, in form and level of detail reasonably acceptable to the Servicer, together with a certification by the General Partner that the information in all of the items required pursuant to this Section 5.3(f) is true and correct;

(g) quarterly, on the first day of each calendar quarter beginning with the quarter in which the Project achieves Completion and ending in the quarter in which the Project achieves Stabilization, a certificate in the form set forth in Exhibit G hereto;

(h) on or before December 1 of each year, a copy of the Proposed Budget, and on or before January 30 of each year, a copy of the Approved Budget; and

(i) from time to time such other financial data and information related to the Borrower, the General Partner and the Project as the Issuer, the Trustee or the Servicer may reasonably request.

#### **Section 5.4 Insurance.**

(a) The Borrower will obtain and maintain insurance with respect to the Project and the operations of the Borrower as required from time to time by the Servicer. The initial insurance requirements are set forth on Exhibit E hereto. All renewal policies, with premiums paid, shall be delivered to the Servicer at least thirty (30) days before expiration of the existing policies. If any such insurance shall expire or be canceled, or become void or voidable by reason of the breach of any condition of coverage, or if the Servicer determines that any coverage is unsatisfactory by reason of the failure or impairment of the capital of any insurance carrier, or if any insurance is unsatisfactory to the Servicer, in its sole judgment, the Borrower shall promptly place new insurance satisfactory to the Servicer.

(b) The Borrower will provide the Trustee and the Servicer with certificates evidencing such insurance upon the request of the Servicer.

(c) If the Borrower fails to provide, maintain, keep in force or deliver to the Servicer the policies of insurance and certificates required by this Loan Agreement, the Servicer may (but shall have no obligation to) procure such insurance, and the Borrower will pay all premiums thereon promptly on demand by the Servicer, and until such payment is made by the Borrower, the amount of all such premiums shall bear interest at the Alternative Rate.

**Section 5.5 Liens and Other Charges.** The Borrower will duly pay and discharge, cause to be paid and discharged, or provide a bond satisfactory to the Servicer to pay or discharge, before the same shall become overdue all claims for labor, materials, or supplies that if unpaid might by law become a lien or charge upon any of its property.

#### **Section 5.6 Inspection of Project and Books, Appraisals.**

(a) The Borrower shall permit the Issuer, the Trustee and the Servicer upon reasonable notice at reasonable times, at the Borrower's cost and expense, to visit and inspect the Project and all materials to be used in the construction and equipping thereof and will cooperate with the Issuer, the Trustee and the Servicer during such inspections (including making available working drawings of the Plans and Specifications); provided that this provision shall not be deemed to impose on the Issuer, the Trustee, and the Servicer any obligation to undertake such inspections.

(b) The Borrower shall permit the Issuer, the Trustee and the Servicer, upon reasonable notice at reasonable times, at the Borrower's cost and expense, to examine the books of account of the Borrower and the Project (and to make copies thereof and extracts therefrom) and to discuss the affairs, finances and accounts of the Borrower and the Project with, and to be advised as to the same by, its officers, partners, or trustees, all at such reasonable times and intervals as the Issuer, the Trustee and the Servicer may reasonably request; provided that so long as no Default or Event of Default shall have occurred and be continuing, the Borrower shall only be obligated to pay the expenses associated with one (1) such investigation during any twelve (12) month period.

(c) The Issuer, the Trustee and the Servicer shall have the right to obtain from time to time, at the Borrower's cost and expense, updated Appraisals of the Project; provided that so long as no Default or Event of Default shall have occurred and be continuing, the Borrower shall only be obligated to pay for the costs and expenses associated with one (1) such Appraisal during any twelve (12) month period.

(d) The costs and expenses incurred by the Issuer, the Trustee and the Servicer in obtaining such Appraisals or performing such inspections shall be paid by the Borrower promptly upon billing or request by the Issuer, the Trustee and the Servicer for reimbursement.

**Section 5.7 Compliance with Laws, Contracts, Licenses, and Permits.** The Borrower will comply with (a) all Legal Requirements, (b) the provisions of its Organizational Documents, (c) all applicable decrees, orders and judgments, and (d) all licenses and permits required by applicable laws and regulations for the conduct of its business or the ownership, use or operation of its properties, including all Project Approvals.

**Section 5.8 Use of Proceeds.** In accordance with the Development Budget, the Borrower will use the proceeds of the Bonds solely for the purpose of paying for Qualified Costs of the Project.

**Section 5.9 Borrower to Pay Excess Project Costs.** The Borrower will pay when due all costs of acquisition, construction and equipping of the Project in excess of the proceeds of the Bonds, regardless of the amount. If at any time, the Servicer shall reasonably determine that the remaining undisbursed portion of the Project Fund, together with the undisbursed balance of Required Equity Funds, and any other sums previously deposited or to be deposited by the Borrower in connection with the Project, is or will be insufficient to complete the construction and equipping of the Improvements in accordance with the Plans and Specifications, to operate and carry the Project after Completion until Stabilization, to pay all other Project Costs, to pay all interest accrued or to accrue on the Bonds from and after the date hereof or until Stabilization, and to pay all other sums due or to become due under the Loan Documents (or any budget category or line item), regardless of how such condition may be caused, the Borrower will, within ten (10) days after written notice of such determination from the Servicer, deposit with the Trustee such sums of money in cash as the Servicer may require, in an amount sufficient to remedy the condition described in such notice, and sufficient to pay any liens for labor and materials alleged to be due and payable at the time in connection with the Improvements, and, at the Servicer's direction, no further disbursements from the Project Fund shall be made by the Trustee until the provisions of this Section have been fully complied with. The Servicer may direct the Trustee to enforce the Completion Agreement in accordance with its terms, and upon such direction, the Trustee shall proceed to enforce the Completion Agreement. All such deposited sums shall constitute additional security under the Loan Documents and, prior to the occurrence of a Default, shall be disbursed by the Trustee in the same manner as disbursements under the Indenture before any further disbursements from the Project Fund shall be made by the Trustee. Notwithstanding the above, in the event amounts deposited hereunder are actually in excess of the amount necessary to achieve Completion, such excess amounts shall be returned to the Borrower in accordance with Section 5.03 of the Indenture.

**Section 5.10 Laborers, Subcontractors and Materialmen.** The Borrower will furnish to the Issuer, the Trustee or the Servicer, upon reasonable request, and from time to time, affidavits listing all laborers, subcontractors, materialmen, and any other Persons who might or could claim statutory or common law liens and are furnishing or have furnished labor or material to the Project or any part thereof, together with affidavits, or other evidence satisfactory to the Issuer, the Trustee or

the Servicer, showing that such parties have been paid all amounts then due for labor and materials furnished to the Project. The Borrower will also furnish to the Issuer, the Trustee, and the Servicer, at any time and from time to time upon reasonable request by the Issuer, the Trustee, Servicer or the Servicer, lien waivers bearing a then current date and prepared on a form satisfactory to the Issuer, the Trustee or the Servicer from the Contractor and such subcontractors or materialman as the Issuer, the Trustee or the Servicer may designate.

**Section 5.11 Further Assurance of Title.** If at any time the Servicer has reason to believe that any disbursement from the Project Fund is not secured or will or may not be secured by the Mortgage as a first priority mortgage lien and security interest on the Property, then the Borrower shall, within ten (10) days after written notice from the Servicer, do all things and matters necessary, to assure to the satisfaction of the Servicer that any disbursement from the Project Fund previously made hereunder or to be made hereunder is secured or will be secured by the Mortgage as a first priority mortgage lien and security interest on the Property, and the Servicer, at its option, may decline to approve any further Requisitions until the Servicer has received such assurance. Nothing in this Section shall limit the right of the Servicer, at the Borrower's expense, to order searches of title from time to time and to require bringdowns or endorsements extending the effective date of the Title Policy in connection with the making of advances as herein set forth.

**Section 5.12 Publicity.** The Borrower will permit the Servicer to obtain publicity in connection with the acquisition, construction and equipping of the Improvements through press releases and participation in such events as ground breaking and opening ceremonies and placement of signs on the Land.

**Section 5.13 Further Assurances.**

(a) Regarding Construction. The Borrower will furnish or cause to be furnished to the Issuer, the Trustee and the Servicer all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, title and other insurance, reports and agreements and each and every other document and instrument required to be furnished by the terms of this Loan Agreement or the other Loan Documents, all at the Borrower's expense.

(b) Regarding Preservation of Collateral. The Borrower will execute and deliver to the Issuer, the Trustee and the Servicer such further documents, instruments, assignments and other writings, and will do such other acts necessary or desirable, to preserve and protect the collateral at any time securing or intended to secure the obligations of the Borrower under the Loan Documents, as the Issuer, the Trustee and the Servicer may require.

(c) Regarding this Loan Agreement. The Borrower will cooperate with, and will do such further acts and execute such further instruments and documents as the Issuer, the Trustee and the Servicer shall reasonably request to carry out to their satisfaction the transactions contemplated by this Loan Agreement and the other Loan Documents; provided, however, that such further acts, instruments or documents shall not materially modify the rights or obligations of the Borrower under the Loan Documents.

(d) Bank of Account. The Borrower will utilize Bank as its principal bank of account; including all construction disbursement, operating accounts, and reserve accounts.

**Section 5.14 Notices.** The Borrower will promptly notify the Issuer, the Trustee and the Servicer in writing of (i) the occurrence of any Default or Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute a Default or Event of Default; (ii) the Borrower's receipt of notice from any Governmental Authority of any alleged violation of environmental laws or regulations or other Legal Requirements; (iii) any labor problems with respect to the Borrower or the Project; (iv) the occurrence of any other event which would have a material adverse effect on the Project or the business or financial condition of the Borrower; or (v) the receipt by the Borrower of any notice of default or notice of termination with respect to any contract or agreement relating to the ownership, construction, equipping, operation, or use of the Project.

**Section 5.15 Solvency; Adequate Capital.** The Borrower will:

- (a) Remain solvent and pay all of its indebtedness from its assets as the same become due; and
- (b) Maintain adequate capital for the normal obligations reasonably foreseeable for a business of its size and character and in light of its contemplated business operations.

**Section 5.16 Management Contract.**

(a) At all times following Completion, the Project shall be managed pursuant to a management contract with the Manager, which contract shall be terminable with or without cause by the Borrower or its successors as owners of the Project and shall otherwise be in form and substance satisfactory to the Servicer. The Borrower acknowledges that the Issuer, the Trustee and the Servicer will rely on the Manager's experience in operating properties such as the Project as a means of maintaining the value of the collateral. In connection with the approval of the Manager, or any replacement management company:

(i) the Manager or holder of the stock or partnership interest therein, shall be a Person whose character, financial strength, stability and experience is acceptable to the Servicer and who shall have experience managing properties of a type and size reasonably similar to the Project;

(ii) the Manager shall deliver all organizational documentation and other materials evidencing its experience acceptable to the Servicer; and

(iii) [the terms of any management contract shall provide for management fees in excess of 3.0% of the Project Revenues to be subordinate to payments owed by the Borrower under the Loan Documents and otherwise must be acceptable to the Servicer in all respects.]

(b) The Borrower shall, from time to time, obtain from the Manager such certificates of estoppel with respect to compliance by the Borrower with the terms of the management contract as may be requested by the Servicer, the Trustee and the Servicer.

(c) The Project will be managed by the Manager pursuant to the Management Agreement. The Borrower acknowledges and agrees that Trustee, as mortgagee under the Mortgage, is and shall be a third-party beneficiary of the Management Agreement and any replacement management agreement. Any amendment to the Management Agreement or delivery of a replacement management agreement must be approved in writing by the Servicer.

**Section 5.17 Negative Covenants of the Borrower.** The Borrower covenants and agrees that, so long as the Loan is outstanding:

(a) Restrictions on Easements and Covenants. Except for Permitted Encumbrances and matters permitted by Section 5.17(d), the Borrower will not create or suffer to be created or to exist any easement, right of way, restriction, covenant, condition, license or other right in favor of any Person which affects or might affect title to the Project or the use and occupancy of the Project or any part thereof without obtaining the prior written consent of the Servicer, which shall not be unreasonably withheld or delayed so long as the proposed action is necessary for the operation of the Project for the purposes contemplated hereby and the proposed action does not materially impair the validity or priority of the lien of the Mortgage.

(b) No Amendments, Terminations or Waivers. Neither the Borrower nor the General Partner shall amend, supplement terminate or otherwise modify or waive any provision of its Organizational Documents, the documents evidencing the Subordinate Loans or any documents relating to the contribution of equity by the partners of the Borrower in a manner that would have a material adverse effect on the Issuer or the Owners without obtaining the prior written consent of the Servicer.

(c) Restrictions on Indebtedness. Without obtaining the prior written consent of the Servicer, the Borrower will not create, incur, assume, guarantee or be or remain liable, contingently or otherwise, with respect to any Indebtedness other than:

(i) Indebtedness arising under the Loan Documents;

(ii) Indebtedness arising in connection with the Subordinate Loans;

(iii) current liabilities of the Borrower relating to the Project, incurred in the ordinary course of business but not incurred through (A) the borrowing of money (other than operating loans made by partners of the Borrower in accordance with the Partnership Agreement), or (B) the obtaining of credit except for credit on an open account basis customarily extended and in fact extended in connection with normal purchases of goods and services; and

(iv) Indebtedness relating to the Project, in respect of taxes, assessments, governmental charges or levies and claims for labor, materials and supplies to the extent that payment therefor shall not at the time be required to be made.

(d) Restrictions on Liens The Borrower shall not subject the Project, or permit the Project to be subjected, to any Lien or encumbrance except as permitted pursuant to Article 6 of the Mortgage.

(e) Transfers. The Borrower shall not transfer the Project or any interest in the Project, in the Borrower or in any partner of the Borrower, or permit any such transfer, except (i) as permitted pursuant to Article 6 of the Mortgage, or (ii) as permitted pursuant to the Construction Disbursement Agreement.

(f) Merger, Consolidation, Conversion and Disposition of Assets.

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

(ii) The Borrower will not convert into any other type of entity.

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

(g) Sale and Leaseback. The Borrower will not enter into any arrangement, directly or indirectly, whereby the Borrower shall sell or transfer any property owned by it in order then or thereafter to lease such property or lease other property that the Borrower intends to use for substantially the same purpose as the property being sold or transferred.

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

### **Section 5.18 Arbitrage and Tax Matters.**

(a) The Borrower hereby represents, warrants and agrees that all certifications and representations of fact made by the Borrower in the Borrower's Tax Certificate are true, accurate and complete in all material respects of the date on which executed and delivered.

(b) The Borrower covenants not to cause or direct any moneys on deposit in any fund or account to be used in a manner which would cause the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code, and the Borrower certifies and covenants to and for the benefit of the Issuer and the Owners of the that so long as there are any Bonds Outstanding, moneys on deposit in any fund or account in connection with the Bonds, whether such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner which will cause the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code. In furtherance of the foregoing, the Borrower covenants to comply with the terms and conditions of Borrower's Tax Certificate and to pay when due any amount required to be paid to the United States in accordance with Borrower's Tax Certificate and this Loan Agreement.

(c) At any time when any amount required to be paid under Section 148(f) of the Code (the "**Rebate Regulations**") is due, the Borrower shall pay to the United States on behalf of the Issuer the full amount then required to be paid under the Rebate Regulations. Within sixty (60) days after the Bonds have been paid in full, the Borrower shall pay to the United State on behalf of the Issuer the full amount then required to be paid under the Rebate Regulations. Each such payment shall be made to such location specified by the Internal Revenue Service, accompanied by a Form 8038-T (or other appropriate information reporting form) prepared by the Borrower. No later than fifteen (15) days prior to each date on which a payment could become due under the Rebate Regulations ("**Rebate Payment Date**"), the Borrower shall deliver to the Issuer and the Trustee a certificate of a Rebate Analyst either summarizing the determination that no amount is required to be paid or specifying the amount then required to be paid, if the certificate specifies an amount to be paid, (A) such certificate shall be accompanied by a completed Form 8038-T, which is to be signed by an Authorized Representative of the Issuer, and shall include a certification by the Borrower that the Form 8038-T is accurate and complete, and (B) no later than ten (10) days after the Rebate Payment Date, the Borrower shall furnish to the Issuer and the Trustee a certificate state that such

amount has been timely paid. This Section 5.18(c) shall be construed so as to cause compliance with the Rebate Regulations. The Borrower covenants that all action taken under this Section 5.18(c) shall be taken in a manner that complies with the Rebate Regulations and that it shall neither take any action nor omit to take any action that would cause the Bonds to be “arbitrage bonds” by reason of the failure to comply with the Rebate Regulations. To the extent that any payment of rebatable arbitrage or penalty in lieu of rebate is not timely made to the United States, the Borrower shall pay to the United States on behalf of the Issuer any correction amount, interest, penalty or other amount necessary to prevent the Bonds from becoming “arbitrage bonds” within the meaning of Section 148 of the Code. The Borrower covenants that, to the extent necessary, it shall obtain the advice and assistance of a Rebate Analyst to aid it in complying with the Rebate Regulations.

#### **Section 5.19 Indemnification.**

(a) The Borrower hereby releases the Issuer, the Trustee and the Servicer (including any Person at any time serving as a member, employee, officer, trustee, official or agent of any thereof) from and agrees that the Issuer, the Trustee and the Servicer (including any Person at any time serving as a member, employee, officer, trustee, official or agent of any thereof) shall not be liable for, and to the maximum extent permitted by law, agrees to indemnify and hold the Issuer, the Trustee and the Servicer (including any Person at any time serving as a member, employee, officer, trustee, official or agent of any thereof) harmless from: (i) any liability for any loss or damage to property or any injury to, or death of, any Person that may be occasioned by any cause whatsoever pertaining to the Project, (ii) any liabilities, losses or damages, or claims therefor, and expenses (including reasonable attorneys’ fees actually incurred), arising out of or in connection with any Loan Document or any of the transactions contemplated hereby or thereby or failure on the part of the Borrower to comply with any law, regulation or ordinance affecting the Project and (iii) any liabilities, losses or damages, or claims therefor, arising out of or in connection with the issuance, sale and public or other offering or remarketing of the Bonds, including, in each such case, reasonable attorneys’ fees actually incurred, except for any such liabilities, losses or damages, or claims therefor resulting from information provided by the Issuer, the Trustee or the Servicer, as the case may be, in connection with the issuance, sale and public or other offering or remarketing of the Bonds which proves to have been materially incorrect or misleading when provided or any act of negligence or willful misconduct by such Person. If any such claim is asserted, any Person indemnified herein will give prompt notice to the Borrower and will cooperate with the Borrower in the investigation and defense of any such claim, and the Borrower will assume the defense thereof by engaging counsel approved by the indemnified party (which approval shall not be unreasonably withheld). In the event the indemnified party reasonably determines that there exists a conflict of interest between counsel’s representation of the Borrower and its own representation in any such action or proceedings, the indemnified party shall have the right to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses actually incurred by such separate counsel. During the pendency of litigation with respect to any claim which would have a material adverse effect on the financial condition of the Borrower or the Project. Borrower shall at its cost post such bond or other security as the Issuer, the Trustee or the Servicer or any individual indemnified hereunder may reasonably require with respect to any such claim. This indemnification covenant shall survive repayment of the Loan and the Bonds and the termination of this Loan Agreement and the Indenture.

(b) The Borrower agrees to indemnify and hold harmless the Issuer, the Trustee and the Servicer from and against any and all claims, actions and suits, and from and against any and

all liabilities, losses, damages and expenses of every nature and character arising out of this Loan Agreement or any of the other Loan Documents or the transactions contemplated hereby and thereby including, without limitation, (i) any brokerage, leasing, finder's or similar fees, (ii) any disbursement of the proceeds of any of the Bonds, (iii) any condition of the Project whether related to the quality of construction or construction or otherwise, (iv) any actual or proposed use by the Borrower of the proceeds of the Bonds, (v) any actual or alleged violation of any Legal Requirements or Project Approvals, or (vi) any Obligor's entering into or performing this Loan Agreement or any of the other Loan Documents, in each case including reasonable fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding except for any act of negligence or willful misconduct by the Person. In litigation, or the preparation therefor, the Issuer, the Trustee or the Servicer shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Borrower agrees to pay promptly the reasonable actually incurred fees and expenses of such counsel. The obligations of the Borrower under this Section shall survive the termination of this Loan Agreement and the Indenture and the repayment of the Loan and the Bonds. If, and to the extent that the obligations of the Borrower under this Section are unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment in satisfaction of such obligations which is permissible under applicable law.

**Section 5.20 Agreements Between Borrower and its Affiliates.** [Except for the \_\_\_\_\_ executed by the Borrower and \_\_\_\_\_ and dated \_\_\_\_\_, 20\_\_\_\_,] the Borrower shall not enter into any agreement, written or otherwise, directly or indirectly relating to the Project with an Affiliate of the Borrower without the prior written consent of the Servicer.

**Section 5.21 Sale of Bonds and Securitization.**

(a) At the request of the Servicer, the Borrower shall take such actions and execute and deliver such documents and data as may be reasonably necessary or appropriate in connection with the sale of the Bonds or participation therein or any securitization (such sale and/or securitization, the "**Securitization**") of single or multi-class securities (the "**Securities**") secured by or evidencing ownership interests in the Bonds, if and to the extent permitted under the Indenture. Without limiting the generality of the foregoing, the Borrower shall:

(i) provide financial and other information with respect to the Project, the Borrower and its Affiliates, the manager and any tenants of the Project and provide business plans and budgets relating to the Project;

(ii) perform or permit or cause to be performed or permitted such site inspection, appraisals, market studies, environmental reviews and reports (Phase I and, if appropriate, Phase II), engineering reports and other due diligence investigations of the Project, as may be reasonably requested by the Servicer or the Rating Agencies or as may be necessary or appropriate in connection with the Securitization (the items provided to the Servicer pursuant to this paragraph (a) being called the "**Provided Information**"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Servicer and the Rating Agencies;

(iii) cause counsel to render opinions as to non-consolidation, fraudulent conveyance, true sale and true contribution and any other opinion customary in securitization transactions with respect to the Project, the Borrower and its Affiliates, which counsel and opinions shall be satisfactory to the Servicer and the Rating Agencies;

(iv) make such representations and warranties as of the closing date of the Securitization with respect to the Project, the Borrower and the Loan Documents as are customarily provided in securitization transactions and as may be reasonably requested by the Servicer or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents;

(v) provide current certificates of existence with respect to the Borrower from appropriate Governmental Authorities; and

(vi) execute such amendments to the Loan Documents and the Organizational Documents of the Borrower as may be requested by the Servicer or the Rating Agencies or otherwise to effect the Securitization; provided, however, that such amendments shall not materially modify the economic terms of the Loan Documents.

(b) All reasonable third party costs and expenses incurred by the Borrower solely in connection with the Borrower's complying with requests made under this Section 5.21 shall promptly be paid or caused to be paid by the Servicer. The Borrower shall not be liable for third party costs or expenses incurred by the Servicer in connection with the Securitization.

(c) The Borrower understands that certain of the Provided Information may be included in disclosure documents in connection with the Securitization, including a prospectus or private placement memorandum (each, a "**Disclosure Document**") and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, the Borrower shall cooperate with the Servicer in updating the Provided Information for inclusion or summary in the Disclosure Document by providing all current information pertaining to the Borrower and the Project necessary to keep the Disclosure Document accurate and complete in all material respects with respect to such matters.

(d) In connection with a preliminary and a final private placement memorandum or prospectus, as applicable, the Borrower agrees if requested by the Servicer, to certify in writing that the Borrower has carefully examined those portions of such memorandum or prospectus, as applicable, pertaining to the Borrower and the Project and such sections (and any other sections reasonably requested and pertaining to Borrower and the Project) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading.

(e) The Borrower's liability under this Section 5.21 shall be limited to liabilities arising out of or based upon any such material untrue statement or omission made with knowledge thereof and made therein in reliance upon and in conformity with information furnished to the Servicer by or on behalf of the Borrower in connection with the preparation of those portions of the Disclosure Document pertaining to the Borrower or the Project or in connection with the underwriting of the debt, including financial statements of the Borrower, operating statements, rent rolls, environmental site assessment reports and property condition reports with respect to the Project.

**Section 5.22 Funds.** The Borrower acknowledges the creation of the Replacement Reserve Fund, the Operating Reserve Funds and the Tax and Insurance Fund pursuant to the Indenture. The Replacement Reserve Fund, the Operating Reserve Fund and the Tax and Insurance Fund shall be funded, and moneys therein shall be disbursed, in accordance with the provisions of the Indenture and this Section 5.22.

(a) On or before December 1 of each year, the Borrower shall submit to the Servicer for approval the Proposed Budget to be effective for the next following year. The Servicer shall have the right to approve or disapprove any Proposed Budget or any line-item contained in such Proposed Budget. If any Proposed Budget is not approved by the Servicer within thirty (30) days following submission by the Borrower, such Proposed Budget shall be deemed disapproved. If any line-item or Proposed Budget is disapproved, the Borrower shall thereafter consult for an additional thirty (30) days with the Servicer in an effort to achieve mutually acceptable Approved Budget. To the extent that the Proposed Budget is disapproved, the Approved Budget for the previous year shall remain in effect, increased by 5% over the previous year (except for costs of utilities, real estate taxes and assessments and insurance and other third-party costs or cost associated with remediation of emergency conditions which shall be permitted variances to the Proposed Budget) until the parties resolve their differences. In addition to, and not in limitation of the foregoing, each Approved Budget may be revised from time to time with prior written consent of the Servicer to reflect changes to items set forth in the then-current Approved Budget.

(b) Each Proposed Budget:

(i) shall be prepared on the basis of sound accounting practices consistently applied;

(ii) shall reflect the projected gross revenues and operating expenses regarding the Project;

(iii) shall reflect all projected Capital Expenditures which are reasonably expected to be made in connection with the Project during the year covered by such Proposed Budget; and

(iv) shall contain such other information as reasonably may be requested by the Servicer.

(c) On each Interest Payment Date beginning with the first month after the Project achieves Completion, the Borrower shall deposit an amount equal to 1/12 of the Unit Reserve Amount in the Replacement Reserve Fund.

(d) Except as otherwise provided in this Section, before the Servicer shall authorize the disbursement of any amounts from the Replacement Reserve Fund, the Borrower shall submit the following items to the Servicer for its review and approval:

(i) a requisition from the Borrower stating that no Event of Default exists and requesting the Servicer to approve a disbursement;

(ii) the identity of all general contractors, architects, engineers and other professionals, if any, engaged in connection with the proposed capital expenditures along with copies of the contracts entered into between the Borrower and such entities;

(iii) copies of the plans and specifications for the work to be done, if required or produced in connection with the work contemplated;

(iv) if requested by the Servicer, evidence of compliance with all applicable Legal Requirements;

(v) if requested by the Servicer in connection with construction work in excess of \$10,000, evidence of builders' risk insurance along with workers' compensation and public liability insurance in such amounts and in such form as the Servicer may reasonably require;

(vi) if requested by the Servicer in connection with construction work in excess of \$10,000, evidence that the Consulting Engineer shall have inspected and approved of the work performed to date;

(vii) copies of bills or invoices documenting the proposed expenditure (with paid receipts or other evidence of payment for such Capital Expenditures to be provided to the Servicer before the next requested requisition and in any event within ten (10) days of disbursement to the Borrower of the requested payment); and

(viii) evidence that the general contractor has delivered and filed effective mechanics lien waivers prior to the commencement of work or, if such waivers were not delivered and filed, a release of liens in connection with all work performed, which releases may be conditioned upon payment to the general contractor provided that the general contractor delivers unconditional releases within thirty (30) days of receipt of such payment.

(e) Provided the conditions set forth in Section 5.22(d) have been satisfied (or waived in writing by the Servicer), the Servicer shall authorize the disbursement from the Replacement Reserve Fund of the amount requested by the Borrower in its requisition, or such lesser amount approved by the Consulting Engineer, to the Borrower. It shall be a condition to all withdrawals from the Replacement Reserve Fund that (i) all work shall be performed in a good and workmanlike manner and in compliance with all applicable Legal Requirements, (ii) the Servicer shall have reviewed and approved each of the foregoing requirements, (iii) the work to be performed is consistent with the Approved Budget or the recommendations of the Consulting Engineer, and (iv) sufficient amounts are on deposit in the Replacement Reserve Fund to pay the amount requisitioned.

(f) For any single Capital Expenditure (not part of, or related to, a sequence or a series of Capital Expenditures or a particular capital improvement plan or project) costing less than Ten Thousand Dollars (\$10,000.00) and whether or not described in the Approved Budget, the Borrower, upon completion of the work, shall deliver to the Servicer evidence reasonably satisfactory to the Servicer of such completion and shall deliver to the Servicer invoices for such work, and, for all of such subsequent disbursements from the Replacement Reserve Fund, the Borrower shall deliver evidence of payment in full for all invoices pertaining to the previous disbursement from the Replacement Reserve Fund, whereupon the Servicer shall authorize reimbursement of the cost of the

Capital Expenditure from the Replacement Reserve Fund to the Borrower or, at the Servicer's option, to the contractors to whom such funds are owed.

(g) For any Capital Expenditure (not part of or related to a sequence or series of Capital Expenditures) costing Ten Thousand Dollars (\$10,000.00) or more which is to be paid from the Replacement Reserve Fund, before entering into any contracts in connection with such Capital Expenditure (whether or not the Capital Expenditure was described in the Approved Budget), the Borrower shall submit to the Servicer for its prior review and approval (which shall not be unreasonably withheld or delayed) copies of the proposed contracts to be entered into with respect to such Capital Expenditure and copies of the proposed plans and specifications for the Capital Expenditure. Once the Capital Expenditure is approved in advance by the Servicer, the provisions of Section 5.22(d) shall apply. Upon completion of such work, the Borrower shall deliver to the Servicer evidence reasonably satisfactory to the Servicer of such completion and shall deliver to the Servicer invoices for such work and, for all of such subsequent disbursements from the Replacement Reserve Fund, the Borrower shall deliver evidence of payment in full for all invoices pertaining to the previous disbursement from the Replacement Reserve Fund, whereupon the Servicer shall authorize reimbursement of the cost of the Capital Expenditure from the Replacement Reserve Fund to the Borrower, or, at the Servicer's option, the contractors to whom such costs are owed.

(h) Borrower shall provide to the Trustee and the Servicer, promptly following the Borrower's receipt thereof, copies of all bills received by the Borrower for real property taxes for the Property and for the premiums on the insurance policies required to be maintained pursuant to the loan documents. On each Interest Payment Date, beginning with the first month after the Conversion Date, the Borrower shall deposit funds into the Tax and Insurance Fund in an amount equal to one-twelfth (1/12) of the amount required to be payable during the current year for real estate taxes and insurance premiums with respect to the Project, as indicated by the current bills. If, one month prior to the due date of any aforementioned obligations, the amounts then on deposit shall be insufficient for the payment of such obligation in full, the Borrower shall deposit with the Trustee the amount of the deficiency within ten (10) days after demand from the Trustee or the Servicer. Amounts held in the Tax and Insurance Fund shall be applied by the Trustee to the payment of real estate taxes and insurance premiums on or before the respective dates on which the same or any of them would become delinquent.

(i) On the Conversion Date, the Borrower shall deposit Five Hundred Seventy-Nine Thousand Four Hundred Twenty-Eight Dollars (\$579,428) in its own funds into the Operating Reserve Fund. Moneys in the Operating Reserve Fund shall be disbursed only upon the authorization of the Servicer. To the extent that Project Revenues are insufficient to pay Operating Expenses and/or the amount necessary to pay principal and interest on the Bonds as required pursuant to Section 3.2, the Borrower may make written request to the Servicer for disbursement of amounts in the Operating Reserve Fund for payment of such Operating Expenses and debt service on the Bonds. Following receipt of any such request, the Servicer may authorize the disbursement of such sums from the Operating Reserve Fund as it shall have approved from time to time. If moneys are disbursed from the Operating Reserve Fund, the Borrower shall, from time to time, deposit into the Operating Reserve Fund any Net Operating Revenues that it realizes until the amount so deposited is equal to the aggregate amounts so disbursed.

**Section 5.23 Covenants Regarding Tax Credits.** The Borrower hereby agrees to comply with all of the following covenants (each, a “**Tax Credit Covenant**”):

(a) To observe and perform all obligations imposed on the Borrower in connection with the Tax Credits, including the obligation to have the Project “placed in service” (within the meaning given in Section 42 of the Code) in a timely manner; and to operate the residential units of the Project, and to use the Borrower’s best efforts to cause all appropriate parties to operate the same, in accordance with all requirements, statutes, and regulations governing the Tax Credits;

(b) To preserve at all times the allocation and availability of the Tax Credits;

(c) Not to release, forego, alter, amend, or modify its rights to the Tax Credits without the Servicer’s prior written consent, which the Servicer may give or withhold in the Servicer’s reasonable discretion;

(d) Not to execute any residential lease of all or any portion of the Project which does not comply fully with all requirements, statutes, and regulations governing the Tax Credits, without the Servicer’s prior written consent, which the Servicer may give or withhold in the Servicer’s sole and absolute discretion;

(e) To cause to be kept all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income level of tenants, set-asides for low-income tenants, and any other matters now or hereafter required to qualify for and maintain the Tax Credits in connection with the low-income occupancy of the Project;

(f) To comply with the appropriate minimum low-income set-aside requirements under the Code or applicable federal regulations (the “**Federal Laws**”) and all laws and regulations of the State (the “**State Laws**”) applicable to the creation, maintenance and continued availability of the Tax Credits;

(g) To certify compliance with the set-aside requirements and report the dollar amount of qualified basis and maximum applicable percentage, date of placement in service and any other information required for the Tax Credits at such time periods as required by Federal Laws or State Laws for such Tax Credits;

(h) To set aside the appropriate number of units for households with incomes meeting the required standards of the median income of the county in which the Project is located to qualify for the Tax Credits (as determined pursuant to Section 42 of the Code and/or State Laws), adjusted for family size, and to operate and maintain all such units as “low-income units” qualifying for the Tax Credits under Section 42(i)(3) of the Code and/or State Laws;

(i) To exercise good faith in all activities relating to the operation and maintenance of the Project in accordance with the requirement of Federal Laws and State Laws; and

(j) To promptly deliver to the Servicer true and correct copies of all notices or other documents or communications received or given by the Borrower with regard to or relating in any way to the Borrower’s partnership interests and/or the Tax Credits. Immediately upon receipt

thereof, the Borrower shall deliver to the Servicer a copy of (i) the fully-executed allocation and final reservation of Tax Credits for the Project; (ii) the basis audit (as required by Section 42 of the Code) for the Project (including a certificate of the Borrower's accountant or attorneys if requested by the Servicer); (iii) the first annual income certification for all tenants of the Project showing that the tenants are qualified for purposes of the Borrower's obtaining Tax Credits, and (iv) the fully-completed Form 8609 (required by the Code) issued for the Project. The Borrower shall deliver promptly to the Servicer such other certificates, income certificates, reports and information as the Servicer may reasonably request in connection with the availability of the Tax Credits.

The Borrower understands and acknowledges that the Bank is purchasing the Bonds based, in part, upon the value of the Tax Credits, and the Tax Credits, directly or indirectly, constitute part of Trustee's security on behalf of the Owners of the Bonds, for the obligations of the Borrower in connection with the Loan. The Borrower agrees to indemnify, defend, and hold the Servicer and the Owners harmless for, from, and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations, and costs or expenses, including litigation costs and reasonable attorneys' fees, arising from or in any way connected with the Borrower's failure to comply with one or more Tax Credit Covenants, excepting those arising out of, or resulting, solely from the gross negligence or willful misconduct of the Servicer.

#### **Section 5.24 Leasing.**

(a) The Servicer (and all other parties whose approval is required) must approve the Borrower's standard form of residential lease or rental agreement prior to its use by the Borrower. The Borrower may not materially modify the approved standard form of residential lease without the Servicer's prior written consent in each instance (which consent shall not be unreasonably withheld), together with the approval of all other parties whose consent is required. Each lease, other than leases on the Borrower's standard form of residential lease, of any part of the Project is subject to the Servicer's written approval as to form and substance prior to execution and delivery. Despite the foregoing, the Borrower may enter into residential leases (and amendments) in the ordinary course of business with bona fide third party tenants without the Servicer's prior written consent if the Borrower uses the approved standard form of residential lease and:

(i) Within fifteen (15) days after the Servicer's written request therefor, the Servicer receives a copy of the executed lease (accompanied by all financial information and certificates obtained by the Borrower pertaining to the tenant);

(ii) The Borrower, acting in good faith and exercising due diligence, has determined that the tenant qualifies as a low-income family for purposes of meeting the requirements for obtaining Tax Credits;

(iii) The lease meets the standards required by Section 42 of the Code;

(iv) The lease meets the requirements of the Servicer, the Issuer, and the Investor Limited Partner;

(v) The lease reflects an arm's-length transaction and, so long as the Construction Disbursement Agreement is in effect, conforms to the projections of the Pro Forma Schedule attached thereto;

(vi) The lease does not affect more than one (1) residential unit within the Improvements and is for a minimum term of six (6) months and a maximum term of twelve (12) months, unless otherwise agreed in writing by the Servicer; and

(vii) So long as the Construction Disbursement Agreement is in effect, the lease, together with all leases previously executed, does not cause the Loan to become “out of balance” as that term is defined in Section 1.2(a) of the Construction Disbursement Agreement. The Borrower acknowledges that the Loan may become “out of balance” if the landlord’s aggregate economic obligations under the leases exceed, or the Net Operating Income from the Project fails to meet, the Borrower’s projections for such obligations, thereby increasing the cost or decreasing the value of the Project.

(b) The Servicer in the exercise of its sole discretion 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 the Borrower at any time fails to submit any executed lease (and accompanying information) at the time required by this Section, or if any Event of Default has occurred and is continuing, the Servicer may make written demand on the Borrower to submit all future leases for the Servicer’s approval prior to execution. The Borrower must comply with any such demand by the Servicer.

(c) The Servicer’s approval of any lease is for the sole purpose of protecting the Servicer’s security and preserving the Servicer’s rights under the Loan Documents. No approval by the Servicer will result in a waiver of any default of the Borrower. In no event will the Servicer’s approval of any lease be a representation of any kind with regard to the lease, its enforceability or the financial capacity of any tenant or guarantor.

(d) The Borrower must perform all obligations required to be performed by it as landlord under any lease affecting any part of the Land or any space within the Improvements.

#### **Section 5.25 Compliance with Anti-Terrorism Regulations.**

(a) None of the Related Persons will be included in, owned by, Controlled by, act for or on behalf of, provide assistance, support, sponsorship, or services of any kind to, or otherwise associate with any of the Persons referred to or described in any list of persons, entities, and governments issued by OFAC pursuant to Executive Order 13224 or any other OFAC List.

(b) Borrower will comply at all times with the requirements of Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56 (the “**PATRIOT Act**”); the Iraqi Sanctions Act, Pub. L. 101-513, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa 9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597; the Bank Secrecy Act, Pub. L. 91-508, 84 Stat. 1114, 1118; the Trading with the Enemy Act, 50 U.S.C. App. Section 1 *et seq.*; the laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957

and any similar laws or regulations currently in force or hereafter enacted (collectively, the “**Anti-Terrorism Regulations**”).

(c) If Borrower becomes aware or receives any notice that any of the Related Persons are named on any of the OFAC Lists (such occurrence, an “**OFAC Violation**”), Borrower will immediately (i) give notice to the Issuer, the Trustee and the Servicer of such OFAC Violation, and (ii) comply with all laws applicable to such OFAC Violation (regardless of whether the party included on any of the OFAC Lists is located within the jurisdiction of the United States of America), including, without limitation, the Anti-Terrorism Regulations, and Borrower hereby authorizes and consents to Issuer’s, Trustee’s and Servicer’s taking any and all steps Issuer, Trustee and Servicer deem necessary, in the sole discretion of each of Issuer, Trustee and Servicer, to comply with all laws applicable to any such OFAC Violation, including, without limitation, the requirements of the Anti-Terrorism Regulations (including the “freezing” and/or “blocking” of assets).

(d) Upon Issuer, Trustee’s or Servicer’s request from time to time during the term of the Loan, Borrower agrees deliver a certification confirming that the representations and warranties set forth in this Agreement remain true and correct as of the date of such certificate and confirming Borrower’s compliance with this Section. Borrower also agrees to cooperate with each of Issuer, Trustee and Servicer, and to cause each Related Person to cooperate with Issuer, Trustee and Servicer, in providing such additional information and documentation on Borrower’s and such Related Person’s legal or beneficial ownership, policies, procedures and sources of funds as Issuer, Trustee and Servicer deem necessary or prudent to enable each of them to comply with the Anti-Terrorism Regulations as now in existence or hereafter amended. From time to time upon the written request of Issuer, Trustee or Servicer, Borrower shall deliver to the requesting party a schedule of the name, legal domicile, address and jurisdiction of organization, if applicable, for each Related Party and each holder of a legal interest in any Borrower.

## **ARTICLE VI**

### **OPTION AND OBLIGATIONS OF BORROWER TO PREPAY**

#### **Section 6.1 Optional Prepayment.**

(a) The Note and amounts due under Section 3.2(a) hereof are subject to prepayment in order to effect the redemption of the Bonds under Section 4.03 of the Indenture at the option of the Borrower in whole but not in part at the times (and not before the times) and at the redemption prices plus accrued interest to the redemption date of the Bonds, Additional Interest and the Prepayment Equalization Payment, if applicable, as set forth in Section 4.03 of the Indenture together with interest as set forth in Section 4.03 of the Indenture. The Note is not otherwise subject to optional prepayment by the Borrower.

(b) To effect prepayment of the Note and redemption of the Bonds as contemplated in subparagraph (a) above, the Borrower shall deliver to the Trustee and the Servicer, not less than ninety (90) days prior to the date on which Bonds are subject to redemption under said Section, a written certificate of the Borrower stating that the Borrower is prepaying the Note pursuant to this Section 6.1. The certificate from the Borrower shall certify the following: (i) the principal amount of the Note to be prepaid, (ii) that the amount to be prepaid on the Note shall be credited to redemption of the Bonds pursuant to Section 4.03 of the Indenture, (iii) the date for redemption of the Bonds, (iv) any conditions to such prepayment.

(c) The options granted to the Borrower in this Section 6.1 shall be exercisable only (i) in the event and to the extent the Bonds are subject to redemption in accordance with the Indenture and (ii) if no Event of Default under any of the Loan Documents shall have occurred and be then continuing or if all costs associated with any existing Event of Default (including, without limitation, late fees, penalties, costs of enforcement, protective advances and interest on such amounts) which are then due and owing under the Loan Documents are paid in full in connection with such prepayment.

**Section 6.2 Mandatory Prepayment.** The Loan and amounts due under Section 3.2(a) hereof shall be prepaid in whole or in part in order to effect the mandatory redemption of the Bonds at the times and in the amounts specified in Section 4.01 of the Indenture.

**Section 6.3 Amounts Required for Prepayment.**

(a) The amount payable by the Borrower hereunder upon either (i) the exercise of the option granted to the Borrower in Section 6.1 hereof, or (ii) the mandatory prepayment of the Note by the Borrower in Section 6.2 hereof shall be, to the extent applicable and except as otherwise provided, the sum of the following:

(i) the amount of money necessary to pay the redemption price of the Bonds to be redeemed specified in Section 4.03 of the Indenture, in the case of optional redemption and Section 4.02 of the Indenture in the case of mandatory redemption, together with all interest specified therein payable up to and including said redemption date, Prepayment Equalization Payment (if applicable), and all expenses of the redemption; plus

(ii) in the event of a redemption in whole, an amount of money equal to the Trustee Fee, Trustee's Expenses and Issuer's Fee and expenses under the Indenture accrued and to accrue until the final payment and redemption of the Bonds; plus

(iii) in the event of any prepayment during the existence and continuance of an Event of Default, the amounts described in Section 6.1(c)(ii) hereof.

(b) Any prepayment made pursuant to Section 6.1 or 6.2 hereof shall be deposited into the Revenue Fund. No prepayment or investment of the proceeds thereof shall be made which shall cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

**Section 6.4 Cancellation at Expiration of Term.** At the acceleration, termination or expiration of the term of this Loan Agreement and following full payment of the Bonds or provision for payment thereof in accordance with Article XI of the Indenture and of all other fees and charges of all parties having been made in accordance with the provisions of this Loan Agreement and the Indenture, the Issuer shall deliver to the Borrower any documents and take or cause the Trustee to take such actions as may be necessary to effectuate the cancellation and evidence the termination of this Loan Agreement and the Loan Documents (other than the Regulatory Agreement, which shall not terminate except in accordance with the terms thereof).

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.1 Events of Default.** The following shall be “**Events of Default**” under this Loan Agreement, and the term “Event of Default” shall mean, whenever it is used in this Loan Agreement, any one or more of the following events:

(a) Failure by the Borrower to pay any amounts required to be paid on the Note or under Section 3.2(a) or (b) hereof when due;

(b) Any failure by the Borrower to pay as and when due and payable any other sums to be paid by the Borrower under this Loan Agreement and the continuation of such failure for a period of five (5) days after the same are due; or

(c) Any failure of any representation or warranty made in this Loan Agreement, the Construction Disbursement Agreement or any Requisition to be true and correct in all material respects; or

(d) Any failure by the Borrower to observe and perform any covenant or agreement on its part to be observed or performed hereunder or thereunder, other than as referred to in subsections (a) or (b) of this Section 7.1, for a period of thirty (30) days after written notice specifying such breach or failure and requesting that it be remedied, given to the Borrower by the Issuer, the Trustee or the Servicer; provided, however, that in the event such breach or failure be such that it can be corrected but cannot be corrected within said 30-day period, the same shall not constitute an Event of Default hereunder if corrective action is instituted by the Borrower or on behalf of the Borrower within said 30-day period and is diligently pursued to completion thereafter (unless, in the opinion of Bond Counsel delivered to the Servicer, failure to correct such breach or failure within the cure period herein provided (or such shorter time as shall be established as a limitation on the period of time during which correction may be pursued) will adversely affect the exclusion from gross income of interest on the Bonds for federal income taxation purposes or violate State law, in which case the extension of cure period herein provided will not be available); or

(e) Any Event of Default (as defined or otherwise set forth in the Indenture or any of the Loan Documents or the Guarantor Documents) shall have occurred and shall remain uncured beyond any applicable cure period provided in the applicable document; or

(f) Any dissolution, termination, partial or complete liquidation, merger or consolidation of any Obligor or the General Partner of Borrower, or any sale, transfer or other disposition of the Project or of all or substantially all of the assets of Borrower; or

(g) Any failure by the Borrower to obtain any Project Approvals as required in order to proceed with the construction of the Project so as to complete the same by the Completion Deadline, or the revocation or other invalidation of any Project Approvals previously obtained; or

(h) Any change in the legal or beneficial ownership of the Borrower or the General Partner other than as expressly permitted by the terms hereof or by reason of the death of the owner of such interests; or

(i) The General Partner ceases for any reason to act in that capacity unless replaced by a transferee permitted pursuant to Section 5.17(e); or

(j) BRIDGE Housing Corporation ceases for any reason to act in the capacity of managing member of the General Partner and the Borrower fails to deliver to the Servicer, within thirty (30) days of Borrower's discovery of this occurrence, a plan, reasonably satisfactory to the Servicer, for the replacement of BRIDGE Housing Corporation in such capacity within ninety (90) days; or

(k) Any failure by the Borrower to pay at maturity, or within any applicable period of grace, any Indebtedness, or any failure to observe or perform any material term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing any Indebtedness, for such period of time as would permit (assuming the giving of appropriate notice if required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof; or

(l) Any Obligor shall file a voluntary petition in bankruptcy under Title 11 of the United States Code, or an order for relief shall be issued against any such Obligor in any involuntary petition in bankruptcy under Title 11 of the United States Code, or any such Obligor shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief of debtors, or such Obligor shall seek or consent to or acquiesce in the appointment of any custodian, trustee, receiver, conservator or liquidator of such Obligor, or of all or any substantial part of its respective property, or such Obligor shall make an assignment for the benefit of creditors, or such Obligor shall give notice to any governmental authority or body of insolvency or pending insolvency or suspension of operation; or

(m) An involuntary petition in bankruptcy under Title 11 of the United States Code shall be filed against the Borrower or any Obligor and such petition shall not be dismissed within ninety (90) days of the filing thereof; or

(n) A court of competent jurisdiction shall enter any order, judgment or decree approving a petition filed against any Obligor seeking any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or appointing any custodian, trustee, receiver, conservator or liquidator of all or any substantial part of its property; or

(o) Any of the events described in Section 7.1(l) or (m) occurs with respect to the Investor Limited Partner prior to funding by the Investor Limited Partner of all of the capital contributions required in order to avoid the occurrence of an Event of Default pursuant to Section 7.1(v); or

(p) Any uninsured final judgment in excess of \$25,000 shall be rendered against the Borrower and shall remain in force, undischarged, unsatisfied and unstayed, for more than thirty (30) days, whether or not consecutive (except for such final judgments which the Borrower may appeal and for which the Borrower has posted a performance bond in the amount of the final judgment); or

(q) Any of the Loan Documents, the General Partner Documents or the Guarantor Documents shall be canceled, terminated, revoked or rescinded otherwise than in accordance with the terms thereof or with the express prior written consent of the Servicer, or any action at law, suit in equity or other legal proceeding to cancel, revoke or rescind any of the Loan Documents, the General Partner Documents or the Guarantor Documents shall be commenced by or on behalf of any Obligor which is a party thereto, or any of their respective stockholders, partners or beneficiaries, or any court or any other governmental or regulatory authority or agency of competent jurisdiction shall make a determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents, the General Partner Documents or the Guarantor Documents is illegal, invalid or unenforceable in accordance with the terms thereof; or

(r) Any refusal by the Title Insurance Company to insure that any advance is secured by the Mortgage as a valid lien and security interest on the Project and the continuation of such refusal for a period of twenty (20) days after notice thereof by Servicer to the Borrower; or

(s) Completion shall not have been attained by the Completion Deadline; or

(t) Any cessation at any time in construction or equipping of the Improvements for more than twenty (20) consecutive days except for strikes, acts of God, fire or other casualty, or other causes entirely beyond the Borrower's control, or any cessation at any time in construction or equipping of the Improvements for more than sixty (60) consecutive days, regardless of the cause thereof; provided, however, that such cessation may continue for a period of longer than sixty (60) consecutive days with the consent of the Servicer if the Borrower shall have requested and received the consent of the Servicer to an extension of the Completion Deadline, in which case it shall not be an Event of Default hereunder unless and until the period of cessation extends beyond the number of days for which the extension was granted; or

(u) Any of the Indenture, this Agreement, the Regulatory Agreement or the Tax Certificate shall be amended in a material manner (including without limitation any "automatic" amendments of the Regulatory Agreement) without the prior written consent of the Servicer; or

(v) Failure of the Investor Limited Partner to fund its capital contributions to the Borrower in at least the amounts and on or before the deadline dates as set forth in the Construction Disbursement Agreement.

## **Section 7.2 Remedies on Default.**

(a) Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing, any obligation of the Servicer to approve Requisitions shall be terminated, and the Trustee (but only if directed to do so by Servicer and, subject to the provisions of the Indenture) shall:

(i) by notice in writing to the Borrower declare the unpaid indebtedness under the Loan Documents to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable; and

(ii) take whatever action at law or in equity or under any of the Loan Documents, the General Partner Documents or the Guarantor Documents, as may appear necessary or desirable to collect the payments and other amounts then due and thereafter to become due

hereunder or thereunder or under the Note, or to exercise any right or remedy or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement, the Note or any other Loan Document (including without limitation foreclosure of the Mortgage), any General Partner Document or any Guarantor Document (including actions to enforce the Payment Guaranty and/or the Completion Agreement); and

(iii) cause the Project to be completed, constructed and equipped in accordance with the Plans and Specifications, with such changes therein as the Servicer may, from time to time, and in its sole discretion, deem appropriate.

(b) Any amounts collected pursuant to action taken under this Section (other than amounts collected by the Issuer pursuant to the Reserved Rights) shall, after the payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Issuer, the Trustee or the Servicer and their respective Counsel, be paid into the Revenue Fund (unless otherwise provided in this Loan Agreement) and applied in accordance with the provisions of the Indenture. No action taken pursuant to this Section 7.2 shall relieve the Borrower from the Borrower's obligations pursuant to Section 3.2 hereof.

**Section 7.3 No Remedy Exclusive.** No remedy conferred herein or in any other Loan Document upon or reserved to the Trustee or the Servicer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee or the Servicer to exercise any remedy reserved to it herein or in any other Loan Document, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

**Section 7.4 Agreement to Pay Fees and Expenses of Counsel.** If an Event of Default shall occur under this Loan Agreement or under any of the other Loan Documents, and the Issuer, the Trustee, the Servicer should employ counsel or incur other expenses for the collection of the indebtedness or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower herein or therein contained, the Borrower agrees that it will on demand therefor pay to any such party, or, if so directed by any such party, to its counsel, the reasonable actually incurred fees of such Counsel and all other out-of-pocket expenses incurred by or on behalf of the Issuer, the Trustee, the Servicer.

**Section 7.5 No Additional Waiver Implied by One Waiver; Consents to Waivers.** In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be effective unless in writing and signed by the party making the waiver.

**Section 7.6 Remedies Subject to Applicable Law.** All rights, remedies, and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the Land and to be limited to

the extent necessary so that they will not render this Loan Agreement invalid, unenforceable, or not entitled to be recorded, registered, or filed under the provisions of any applicable law.

**Section 7.7 Cure by Investor Limited Partner.** The Issuer, the Trustee and the Servicer hereby agree that cure of any Event of Default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

**Section 7.8 Issuer Exercise of Remedies.** Notwithstanding anything to the contrary contained herein, the Issuer may enforce its Reserved Rights under the Loan Documents and exercise the permitted remedies with respect thereto against the Borrower; provided that the Issuer shall not commence or direct the Trustee to commence any action to declare the outstanding balance of the Bonds or the Loan to be due and neither the Issuer nor the Trustee shall take any action in respect of Reserved Rights (i) to foreclose to take similar action under the Mortgage or otherwise in respect of any liens upon or security interests in the Project or other property pledged to secure the Borrower's obligations under the Loan Documents, (ii) to appoint a receiver, (iii) to enforce any similar remedy against the Project or other property pledged to secure the Borrower's obligations under the Loan Documents; or (iv) to enforce any other remedy which would cause any liens or security interests granted under the Loan Documents to be discharged or materially impaired thereby.

## **ARTICLE VIII**

### **MISCELLANEOUS**

**Section 8.1 General Provisions.** The following provisions shall be applicable at all times throughout the term of this Loan Agreement:

(a) The Issuer, the Trustee and the Servicer shall, at all times, be free to establish independently to their respective satisfaction and in their respective absolute discretion the existence or nonexistence of any fact or facts the existence of which is a condition of this Loan Agreement or any other Loan Document.

(b) The Bonds and the obligations and undertakings of the Issuer hereunder do not constitute a general obligation of the Issuer or the State or any political subdivision thereof, and recourse on the Bonds and on the instruments and documents executed and delivered by or on behalf of the Issuer in connection with the transactions contemplated hereby may be had only against certain moneys due and to become due under the Loan Documents (and not against any moneys due or to become due to the Issuer pursuant to the Reserved Rights). No recourse shall be had for the payment of the principal of or interest on the Bonds, or for any claim based thereon or on this Loan Agreement or any other Loan Document, any Issuer Document or any instrument or document executed and delivered by or on behalf of the Issuer in connection with the transactions contemplated hereby, against the Issuer or any member, officer, employee or other elected or appointed official, past, present or future, of the Issuer or any successor body, as such, either directly or through the Issuer or any such successor body, under any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or by any legal or equitable proceeding or otherwise and all such liability of the Issuer or any such incorporation, member, officer, director, employee, any other elected or appointed official or trustee as such is hereby expressly waived and released as a condition of and consideration for the adoption of the resolution authorizing the execution of the Issuer Documents and issuance of the Bonds and the delivery of other documents in connection

herewith. No member, officer, employee or other elected or appointed official past, present or future, of the Issuer or any successor body shall be personally liable on the Issuer Documents, the Bonds or any other documents in connection herewith, nor shall the issuance of the Bonds be considered as misfeasance or malfeasance in office. The Bonds and the undertakings of the Issuer under the Issuer Documents do not constitute a pledge of the general credit or taxing power of the Issuer, the State, or any political subdivision thereof, do not evidence and shall never constitute a debt of the State or any political subdivision thereof (other than the Issuer), and shall never constitute nor give rise to a pecuniary liability of the State or any political subdivision thereof, other than the Issuer.

**Section 8.2 Authorized Borrower Representative.** Pursuant to written direction provided on the Closing Date, the Borrower has appointed one or more Authorized Representative for the purpose of taking all actions and making all certificates required to be taken and made by the Authorized Representative under the provisions of the Loan Documents. Whenever under the provisions of any Loan Document the approval of the Borrower is required or any party is required to take some action at the request of the Borrower, such approval or such request shall be made by the Authorized Borrower Representative, unless otherwise specified in this Loan Agreement, and the Issuer, the Trustee and the Servicer shall be authorized to act on any such approval or request and the Borrower shall have no complaint against any such party as a result of any such action taken in conformity with such approval or request by the Authorized Borrower Representative.

**Section 8.3 Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Trustee and the Borrower and their respective successors and permitted assigns. The Borrower acknowledges and agrees that the Issuer has assigned or is assigning its rights under this Loan Agreement to the Trustee, and that, pursuant to the Indenture, Trustee will follow directions from the Servicer in implementing certain of the rights and remedies under this Loan Agreement. The Owners of the Bonds and the Servicer shall be express third party beneficiaries of this Loan Agreement, and shall have the right to enforce directly against Borrower or other persons the rights and implement the rights and remedies provided to each of them hereunder, but not including the Reserved Rights; provided, however, that the rights of the Owners to bring actions and implement rights and remedies hereunder shall be subject to the same restrictions as are imposed with respect to actions, rights and remedies of the Owners under the Indenture.

**Section 8.4 Execution in Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; provided, however, that for purposes of perfecting a lien or security interest in this Loan Agreement by the Trustee, whether under Article 9 of the Uniform Commercial Code of the State or otherwise, only the counterpart delivered to, and receipted by, the Trustee shall be deemed the original.

**Section 8.5 Amendments, Changes and Modifications.** Subsequent to the issuance of the Bonds and prior to payment or provision for the payment of the Bonds in full (including interest thereon) in accordance with the provisions of the Indenture and except as otherwise provided herein, the Loan Documents may not be amended, changed, modified, altered or terminated by the Issuer, the Trustee or the Borrower except in compliance with Article IX of the Indenture.

**Section 8.6 Severability.** In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof and such invalid or unenforceable provision shall be deemed no longer to be contained in this Loan Agreement.

**Section 8.7 Notices.** All notices, demands, requests, consents, approvals, certificates or other communications hereunder shall be effective if given in the manner required in Section 10.08 of the Indenture.

**Section 8.8 Applicable Law.** This Loan Agreement shall be governed exclusively by and construed in accordance with the laws of the State.

**Section 8.9 Debtor-Creditor Relationship.** It is expressly understood and agreed that the relationship between the Issuer and the Borrower established by the transaction contemplated by this Loan Agreement and by all of the other Loan Documents is exclusively that of creditor or lender, on the part of the Issuer, and debtor or borrower, on the part of the Borrower and is in no way to be construed as a partnership or joint venture of any kind. It is further understood that all payments by the Borrower under the Loan Documents shall be exclusively on account of the said debtor/creditor relationship.

**Section 8.10 Usury; Total Interest.** This Loan Agreement is subject to the express condition, and it is agreed, that at no time shall payments hereunder, under the Note or under the other Loan Documents that are or are construed to be payments of interest on the unpaid principal amount of the Loan reflect interest that is borne at a rate in excess of the Maximum Interest Rate. The Borrower shall not be obligated or required to pay, nor shall the Issuer be permitted to charge or collect, interest borne at a rate in excess of the Maximum Interest Rate. If by the terms of this Loan Agreement or the other Loan Documents the Borrower is required to make such payments reflecting interest borne at a rate in excess of the Maximum Interest Rate, such payments shall be deemed to be reduced immediately and automatically to reflect the Maximum Interest Rate. It is further agreed that the total of amounts paid hereunder as interest on the Loan which is to pay interest on the Bonds, cumulative from the date of the Note, shall not exceed the sum of 5% per month, simple and non-compounded for each month from such date to the date of calculation (calculated on the basis of a 360-day year of twelve thirty-day months). Any such excess payment previously made in either case shall be immediately and automatically applied to the unpaid balance of the principal sum of the Loan and not to the payment of interest thereon. This Loan Agreement is also subject to the condition that amounts paid hereunder representing late payment or penalty charges or the like shall only be payable to the extent permitted by law.

**Section 8.11 Term of this Loan Agreement.** This Loan Agreement shall be in full force and effect from its date to and including such date as all of the Bonds issued under the Indenture shall have been fully paid or retired in accordance with their terms and the terms of the Indenture (or provision for such payment shall have been made as provided in the Indenture), except, however, that the covenants and provisions relating to the Reserved Rights of the Issuer and the covenants relating to the preservation of exclusion from gross income of interest on the Bonds for purposes of federal income taxation shall survive the termination hereof.

**Section 8.12 Non-Recourse.** Anything contained in any provision of this Loan Agreement, the Mortgage, the Regulatory Agreement, the Borrower's Tax Certificate or the Note notwithstanding, in the event of any proceeding to foreclose the Mortgage or otherwise to enforce the provisions of the Note, this Loan Agreement, the Mortgage or the Regulatory Agreement after Stabilization, neither the Issuer, nor the Trustee or other holder of the Note (collectively, the "Noteholder"), nor any Owner of Bonds, nor any beneficiary of the Mortgage shall be entitled to take any action to procure any personal money judgment or any deficiency decree against the Borrower or any partner of the Borrower or its or their heirs, personal representatives, successors and

assigns, it being understood and agreed that recourse hereon and under the Mortgage, the Regulatory Agreement and the Note shall, following Stabilization, be limited to the assets of the Borrower that are the security from time to time provided with respect to the Note and this Loan Agreement; provided, however, nothing herein contained shall limit or be construed to limit or impair the enforcement against the Project or any other additional security as may from time to time be given to the beneficiary hereof as security for the performance of this Loan Agreement, the Mortgage, the Regulatory Agreement, the Borrower's Tax Certificate, the Note, or any other instrument now or hereafter securing the Note or this Loan Agreement, or the rights and remedies of the Trustee or the beneficiary, its successors and assigns, under this Loan Agreement, the Mortgage, the Regulatory Agreement, the Tax Agreement or the Note or any other instruments. Notwithstanding the foregoing, the provisions of this Section shall be null and void and have no force and effect to the extent of any loss suffered by the Issuer, the Trustee, any Bondholder or any beneficiary of or the trustee under the Mortgage as a result of the Borrower's: (a) committing any act of fraud; (b) misapplication of any condemnation award or casualty insurance proceeds; (c) failure to apply the revenues of the Project in the manner and for the purposes provided in the Bond Documents, whether before or after an Event of Default; or (d) violation of any environmental laws. Nothing herein shall be deemed to prohibit the naming of the Borrower in an action to realize upon the remedies provided herein either at law or in equity, subject to the foregoing limitation against a personal money judgment or deficiency decree against the Borrower, the partners of the Borrower or their heirs, personal representatives, successors and assigns, or to prohibit the naming of any person in any action to realize upon the remedies provided in the General Partner Documents, the Guarantor Documents or any other guaranty given in favor of the Issuer, the Trustee or the Servicer.

**Section 8.13 PATRIOT Act Notice.** Issuer hereby notifies Borrower and Guarantor that, pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies Borrower and Guarantor, which information includes the names and addresses of Borrower and Guarantor and other information that will allow Issuer to identify Borrower and Guarantor in accordance with the PATRIOT Act.

IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have caused this Loan Agreement to be executed in their respective names, all as of the date first above written.

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

By: \_\_\_\_\_  
Wendy G. DeWitt  
Director of Real Estate  
San Diego Housing Commission

*[signatures continued on next page]*

COMM22 FAMILY HOUSING, L.P., a California  
limited partnership

By: COMM22 HOUSING GP, LLC, a  
California limited liability company, its  
General Partner

By: BRIDGE Housing Corporation, a  
California nonprofit public benefit  
corporation, its manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF REAL ESTATE**

[TO BE ATTACHED]

**EXHIBIT B**  
**FORM OF PROMISSORY NOTE**

\$ \_\_\_\_\_

December \_\_, 2012

FOR VALUE RECEIVED, COMM22 Family Housing, L.P., a California limited partnership (together with its permitted successors and assigns, "**Borrower**"), having an address of 2202 30th Street, San Diego, California 92104, promises to pay to the order of HOUSING AUTHORITY OF THE CITY OF SAN DIEGO, a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California, or its successors or assigns (the "**Holder**"), at its office at 1122 Broadway, Suite 300, San Diego, California 92101 or at such other place as may be designated in writing by the Holder, in legal tender of the United States, the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Trust Indenture (as the same may be modified, amended or supplemented from time to time, the "**Indenture**") dated as of even date herewith between Housing Authority of the City of San Diego (the "**Issuer**"), and U.S. BANK NATIONAL ASSOCIATION (the "**Trustee**") or the Loan Agreement dated as of even date herewith among the Issuer, the Trustee and Borrower (as the same may be modified, amended or supplemented from time to time, the "**Loan Agreement**").

This Note shall bear interest at the rate from time to time borne by the Bonds, and Additional Interest shall be payable on this Note as provided in Section 3.2 of the Loan Agreement.

[On the Closing Date, the Borrower shall pay to the Trustee, for deposit into the Revenue Fund, the amount equal to \$ \_\_\_\_\_. Thereafter,] Borrower shall pay to the Trustee for deposit into the Revenue Fund, on the first day of each month for the period commencing [January 1, 2013] (i) an amount equal to the sum of the principal and interest next coming due on the Bonds (after taking into account funds available for such purpose, if any, in the Capitalized Interest Account of the Project Fund) to pay the principal of and interest on the Bonds due and payable on each Bond Payment Date and amounts required to be deposited into the Replacement Reserve Fund (pursuant to Section 5.22(c) of the Loan Agreement), the Tax and Insurance Fund (pursuant to Section 5.22(h) of the Loan Agreement) and the Operating Reserve Fund (pursuant to Section 5.22(i) of the Loan Agreement) as of such date. Amounts so paid to the Trustee by the Borrower shall be in immediately available funds or shall be such that on the Bond Payment Date they are available funds.

All payments under this Note shall be applied as provided in the Indenture.

The obligations of Borrower under this Note are secured by a [Construction Deed of Trust] with Assignment of Rents, Security Agreement and Fixture Filing dated as of even date herewith (as the same may be modified, amended or supplemented from time to time, the "**Mortgage**") made by Borrower to the Holder covering property, with improvements thereon, as more fully described therein (the "**Property**") and certain other security as more fully set forth in the Loan Agreement.

At no time shall interest be payable on this Note or under the Mortgage or the Loan Agreement at a rate in excess of the Maximum Interest Rate. Borrower shall not be obligated or

required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of the Maximum Interest Rate. If by the terms of this Note or of the Mortgage or Loan Agreement, Borrower is required to pay interest at a rate in excess of the Maximum Interest Rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to the Maximum Interest Rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

Amounts payable hereunder representing late payments, penalty payments or the like shall be payable to the extent allowed by law.

This Note is subject to all of the terms, conditions, and provisions of the Loan Agreement, including Section 8.12 thereof and the provisions of the Loan Agreement respecting prepayment and the acceleration of maturity and is further subject to all of the terms, conditions and provisions of the Indenture. The outstanding principal hereof is subject to acceleration at the same time or times and under the same terms and conditions, and with the same notice, if any, as provided under the Indenture for the acceleration of payment of the Bonds.

If there is an Event of Default under the Loan Documents, then in any such event and subject to the requirements set forth in the Loan Agreement, the Holder may, upon the direction of the Servicer, declare the entire unpaid principal balance of this Note and accrued interest, if any, due and payable at once. All of the covenants, conditions and agreements contained in the Loan Documents are hereby made part of this Note.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Note or the Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Holder under this Note and the Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

Borrower shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements actually incurred, which costs may be added to the indebtedness hereunder, together with interest thereon at the Alternative Rate to the extent allowed by law.

This Note may not be changed orally. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Holder of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Holder of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due, and Borrower's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Holder to any action of Borrower which is subject to consent or approval of the Holder hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

Borrower agrees that this Note shall be construed in accordance with and governed by the laws of the State of California.

COMM22 FAMILY HOUSING, L.P., a California  
limited partnership

By: COMM22 HOUSING GP, LLC, a  
California limited liability company, its  
General Partner

By: BRIDGE Housing Corporation, a  
California nonprofit public benefit  
corporation, its manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C**

**PROJECT APPROVALS TO BE OBTAINED**

[TO BE INSERTED]

**EXHIBIT D**  
**FORM OF APPROVED RESIDENTIAL LEASE**

[TO BE ATTACHED]

## **EXHIBIT E**

### **SCHEDULE OF INSURANCE REQUIREMENTS**

#### **1. General Requirements**

In order to close, the following insurance specifications must be met and approved in writing by the Bank's insurance consultant. Copies of policies together with an original ACORD 28 (Evidence of Property Insurance) and an ACORD 25 (Certificate of Insurance) or an approved equivalent listing all coverage will be accepted for pre-closing contingent on complete "true and certified" copies of the policies with all endorsements attached being received within 90 days after closing. Each certificate must correctly identify the property by address and the insured by borrowing entity name.

Policy premiums cannot be financed or paid in installments to an insurance carrier, but must be paid in full as evidenced by a paid receipt presented prior to or at pre-closing. All policies and renewals thereof are to be written for not less than one year. An escrow account, as described further in the loan application, will be established to pay the premium at renewal.

All of the liability policies must be written and provide for claims to be paid on an "Occurrence" basis.

Each policy must have a cancellation provision that provides that the carrier will notify Mortgagee, its successors and/or assigns, in writing at least 30 days in advance of any policy reduction or cancellation for any reason except for non-payment of premium (for which not less than 10 days written notice shall be provided).

The insurer under each policy shall be a domestic primary insurance company duly qualified as such under the laws of the states in which the Property is located and duly authorized, admitted and licensed in such states to transact the applicable insurance business and to write the insurance provided and must have and maintain a rating of AA or higher by Standard & Poor's or A.M. Best rating of A-IX or higher for any Mortgage Loan \$20,000,000 or above. For any Mortgage Loan below \$20,000,000, the insurance carrier must have and maintain a rating of "A" or higher by Standard & Poor's and/or an A.M. Best rating of A-VI or higher.

The insurance policies may be part of a blanket policy provided the insured acknowledges that failure to pay any portion of the premium which is not allocable to the mortgaged property or any other action not relating to the mortgaged property which would otherwise permit the issuer to cancel the coverage, would require the mortgaged property to be insured by a separate, single-property policy. The blanket policy must properly identify and fully protect the mortgaged property as if a separate policy were issued for 100% of Replacement Cost (insurable value) at the time of loss, allocate a portion of the premium to the mortgaged property, and otherwise meet all applicable insurance requirements of the Bank.

During the life of the loan, should any condition change or occur which affects the levels of risk anticipated, Borrower will be required to obtain appropriate coverage to mitigate the associated risk.

*If any required type of coverage is not available for the mortgaged property, Mortgagee shall have no obligation to close the loan.*

2. Mortgagee Clause

All policies must include EXACTLY the following standard, non-contributory, mortgagee clause:

[TRUSTEE]

[TRUSTEE ADDRESS]

Mortgagee must be named as a first *Mortgagee* with respect to buildings, *Loss Payee* with respect to loss of rents/business interruption, and *Additional Insured* with respect to general liability.

3. Waiver of Subrogation

Not Required.

4. Required Insurance Coverage

Borrower is required to maintain the following policies of insurance during the term of the Loan:

- *All Risk or Special Causes of Loss Form Property Insurance.* Property insurance must be maintained insuring against loss or damage by fire, lightning, wind and such other perils as are included in a standard “all-risk” or “special causes of loss” form, and against loss or damage by all other risks and hazards covered by a standard property insurance policy including, without limitation, riot and civil commotion, vandalism, malicious mischief, burglary and theft. Such insurance shall be in an amount equal to the then full replacement cost of the Improvements, Equipment and personal property, without deduction for physical depreciation, no co-insurance is permitted, and maximum acceptable deductible is \$25,000. If the property is “non-conforming” with respect to zoning requirements, Borrower will be required to maintain “demolition” insurance (in an amount equal to 10% of the building value) and “increased cost of construction” insurance (in an amount equal to 25% of the building value). The burden to prove conforming use is the borrowers.
- *Terrorism Insurance.* For Loans in excess of \$10 million and if the insurance required under the subparagraph immediately above excludes terrorism, terrorism insurance must be maintained, unless at the time of determination: (i) it is not available at commercially reasonable rates; (ii) no affiliates of Borrower have purchased terrorism insurance with respect to another property, (iii) terrorism insurance is not commonly maintained by owners of other similar properties and (iv) it is not required for securitized loans similar to the Loan and secured by property similar to the Property in the commercial mortgage-backed securities market.
- *Flood Insurance.* If any portion of the Improvements are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards (i.e. Zone A and V) and in which flood insurance is made available under the National Flood Insurance Program, then flood insurance must be maintained at least equal to the lesser of (A) the full replacement cost, together with business interruption coverage or (B) the maximum limit of coverage available for the Property under the National Flood Insurance Act of 1968, The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994, as each may be amended, or \$250,000 per residential building and \$500,000 per commercial building.

- *Earthquake Insurance.* If a seismic study is required by this Program Summary and such study reveals a 50 year/10% PML of not more than 20% of the replacement cost (as determined by the Bank), earthquake insurance will not be required. If the PML study reveals that a 50 year/10% PML of greater than 20% of the replacement cost, then earthquake insurance must be maintained in an amount equal to the replacement cost with a maximum deductible of 10% replacement cost.
- *Boiler and Machinery Insurance.* If the Property contains HVAC equipment, or there are boilers or other pressure-fired vessels that are required to be regulated by the state in which the property is located, then Broad Form Boiler and Machinery Insurance (without exclusion for explosion and including “system breakdown coverage) must be maintained on the Property and Improvements in an amount at least equal to or greater than the repair and full replacement cost of such equipment and insurance against loss of occupancy or use arising from any breakdown of such equipment in such amounts as are generally required by institutional lenders for properties comparable to the Property.
- *Business Interruption/Loss of Rental Income Insurance.* Business Interruption and/or loss of rental income insurance must be maintained in an amount sufficient to provide proceeds that will cover the “actual loss” sustained during the restoration. No co-insurance is permitted. The “actual loss” coverage amount may be capped based on projected gross revenues (less non-recurring expenses) for a twelve (12) month period. The policy can provide an “Extended Period of Indemnity” endorsement for at least an additional 90 days for loans of \$20 million or more. The perils covered by this insurance shall be the same as those required to be covered on the real property including flood, terrorism and earthquake, as necessary.
- *Builders Risk Insurance.* Borrower is required to maintain, at all times during which structural construction repairs or alterations are being made with respect to the improvements (A) owner’s contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in Paragraph 1 hereof written in a so-called builder’s risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to said Paragraph 1 hereof, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions.
- *Commercial General Liability Insurance.* Borrower must maintain Commercial General Liability Insurance on an “occurrence” form including broad form property damage, contractual damages and personal injuries (including death resulting therefrom) and a liquor liability endorsement if Borrower sells liquor on the Property. In addition, excess and/or umbrella liability insurance must be maintained against all claims typically covered by an umbrella liability policy including all legal liability imposed upon Borrower and all court costs and attorneys’ fees connected with the ownership, operation, and maintenance of the Property and Equipment, including products/completed operations, if applicable. The per occurrence limits including umbrella liability insurance, if applicable, must be maintained in the minimum amounts as outlined below:

\$1,000,000 total coverage for 1 to 3 story buildings  
 \$5,000,000 total coverage for 4 to 10 story buildings  
 \$10,000,000 total coverage for 11 to 20 story buildings  
 \$25,000,000 total coverage for buildings with greater than 20 stories

If Borrower has a multi-location policy or loan, the aggregates referred to above must be maintained on a per location basis.

- Wind Insurance. If the All Risk or Special Cause of Loss coverage excludes wind, the Borrower must present evidence of separate wind coverage. Maximum acceptable deductible for this peril is 5% of total insured value.
- Sinkhole and Mine Subsidence Insurance. Sinkhole and mine subsidence insurance must be maintained if, in the opinion of a professional engineer, whose resume shows evidence of his/her experience in this professional area, that there is a foreseeable risk of loss due to this hazard. If necessary, as determined by the engineer, Borrower shall maintain coverage in the full principal amount of the Loan.
- Statutory Workers Compensation Insurance. If Borrower has employees on site, statutory workers compensation insurance as required by law and including employer's liability must be maintained in an amount that is at least customary for employers insuring similar risks.
- Hired and Non-Owned Auto Insurance. If Borrower has employees on site, Hired and Non-Owned Auto Insurance must be maintained in an amount equal to \$1 Million combined single limit.
- Employee Dishonesty. If Borrower has employees on site, in an amount not less than three (3) months of gross revenue from the property and with a deductible not greater than Twenty-Five Thousand and no/100 Dollars (\$25,000). This coverage is required only on Cooperative Corporations.
- Other Insurance Coverage. Such other insurance with respect to the Property or on any replacements or substitutions or additions or increased coverage limits as may from time to time be required by the holder of the Loan against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated, including, without limitation, sinkhole, mold, mine subsidence, earthquake and environmental insurance, due regard being given the height and typed of buildings, their construction, location, use and occupancy.

**EXHIBIT F**

**FORM OF MONTHLY LEASE UP REPORT**

**MOVE IN DATABASE**

Building #	Apt. #	# of BR's	# of BA's	Set-Aside	Security Deposit	Lease Rent	Certified or Move in Date	Lease Expiration	Total Value of Concessions	Description of Concession	Concession Given at Move In (Y/N)

**MOVE OUT DATABASE**

Building #	Apt. #	# of BR's	# of BA's	Set-Aside	Total Security Deposit	Security Deposit to Tenant	Lease Rent	Move Out Date	Certified or Move in Date	Lease (enter an "x")			
										Skip	Evicted	Expired	Other

## EXHIBIT G

### FORM OF STABILIZATION CERTIFICATE

\_\_\_\_\_, \_\_\_\_

U.S. Bank National Association  
633 West Fifth Street, 24th Floor  
Los Angeles, California 90071  
Attention: Corporate Trust Department

Re: COMM22 Family Housing (the “**Project**”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project, hereby certifies to U.S. BANK NATIONAL ASSOCIATION, as trustee (the “**Trustee**”) and \_\_\_\_\_ (as servicer, acting on behalf of the Servicer of the bonds issued in connection with the Project, the “**Servicer**”) that:

The undersigned hereby represents and warrants that:

1. The Improvements are \_\_\_\_% occupied by tenants meeting the requirements of the Loan Documents in each of three (3) prior consecutive months.
2. The ratio of Net Operating Income in each of the prior three (3) months to maximum principal and interest payable in any month under the Loan Documents on the amount of Bonds Outstanding at the time of calculation is \_\_\_\_ to 1.0.
3. Stabilization [has/has not] occurred.
4. Attached hereto is a worksheet showing the calculation of Stabilization.

Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Loan Agreement dated as of December 1, 2012 by and among the Housing Authority of the City of San Diego, the Trustee, and the undersigned.

COMM22 FAMILY HOUSING, L.P., a California  
limited partnership

By: COMM22 HOUSING GP, LLC, a  
California limited liability company, its  
General Partner

By: BRIDGE Housing Corporation, a  
California nonprofit public benefit  
corporation, its manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **Stabilization Spreadsheet**

**Recording Requested By and  
When Recorded Mail To:**

Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660  
Attn: Bradley R. Neal, Esq.

[Space above for recorder.]

This document is exempt from  
the payment of a recording fee  
pursuant to Government Code  
Section 27383.

**REGULATORY AGREEMENT  
AND DECLARATION OF RESTRICTIVE COVENANTS  
By and Among  
HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
and  
U.S. BANK NATIONAL ASSOCIATION, as Trustee  
and  
COMM22 FAMILY HOUSING, L.P., a California limited partnership**

\_\_\_\_\_  
**Dated as of December 1, 2012**

\_\_\_\_\_  
**Relating to**

**\$ \_\_\_\_\_  
HOUSING AUTHORITY OF THE CITY OF SAN DIEGO  
MULTIFAMILY HOUSING REVENUE BONDS  
(COMM22 FAMILY HOUSING)  
SERIES 2012C**

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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, by and among the Housing Authority of the City of San Diego, a public body corporate and politic is duly organized and existing under the Constitution and the laws of the State of California (together with any successor to its rights, duties and obligations, the “Issuer”), U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, duly authorized to accept and execute trusts of the type contemplated by the Indenture (as hereinafter defined), with its principal corporate trust office in Los Angeles, California, as Trustee (the “Trustee”), and COMM22 Family Housing, L.P., a California limited partnership (the “Borrower”).

**W I T N E S S E T H**

WHEREAS, the Legislature of the State of California enacted Chapter 1 of Part 2 of Division 24 of the Health and Safety Code (the “Act”) to authorize housing authorities to issue bonds to finance the acquisition, construction, rehabilitation and development of multifamily rental housing for families and individuals of lower income; and

WHEREAS, the Issuer is a political subdivision (within the meaning of that term in the Regulations of the Department of Treasury and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”)); and

WHEREAS, on December 4, 2012, the governing board of the Issuer adopted a resolution (the “Resolution”) authorizing the issuance of revenue bonds in connection with financing the acquisition, construction and equipping of a 128-unit plus two manager’s units, multifamily rental housing project located in the City of San Diego (the “Project”); and

WHEREAS, in furtherance of the purposes of the Act and the Resolution and as a part of the Issuer’s plan of financing residential rental housing, the Issuer has issued \$\_\_\_\_\_ aggregate principal amount of its revenue bonds designated “Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (COMM22 Family Housing), Series 2012C” (the “Bonds”), the proceeds of which will be loaned to the Borrower (the “Loan”) to finance the acquisition, construction and equipping of the Project for the public purpose of providing decent, safe and sanitary housing for families and individuals of low and very low income; and

WHEREAS, the Borrower is leasing the real property upon which the Project is located under the terms of a ground lease by and between the San Diego Unified School District (the “School District”) and the Borrower, dated as of July 19, 2012 (the “Ground Lease”); and

WHEREAS, the Issuer, the Trustee and the Borrower have entered into a financing agreement dated as of the date hereof (the “Loan Agreement”), providing the terms and conditions under which the Issuer will make the Loan to the Borrower to finance the acquisition, construction and equipping of the Project; and

WHEREAS, all things necessary to make the Bonds, when issued as provided in the Indenture, the valid, binding, and limited obligations of the 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 Issuer has obtained an allocation for the Project of a portion of the State of California's private activity bond volume cap, within the meaning of Section 146 of the Code, in accordance with the procedures established by the California Debt Limit Allocation Committee; and

WHEREAS, the Code and the regulations and rulings promulgated with respect thereto and the Act prescribe that the use and operation of the Project be restricted in certain respects and in order to ensure that the Project will be owned and operated in accordance with the Code and the Act, the Issuer, the Trustee and the Borrower have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, construction, equipping and operation of the Project;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Issuer, the Trustee and the Borrower hereby agree as follows:

Section 1. Definitions and Interpretation. The following terms shall have the respective meanings assigned to them in this Section 1 or, if not defined herein, in the Indenture, unless the context in which they are used clearly requires otherwise:

"Adjusted Income" – The adjusted income of a person who intends to reside in a residential unit (together with the adjusted income of all persons the age of 18 years or older who intend to reside with such person in one residential unit) as calculated in the manner prescribed in Regulation Section 1.103-8.

"Affiliated Party" – (1) a Person whose relationship with the Borrower would result in a disallowance of losses under Section 267 or 707(b) of the Code, (2) a Person who together with the Borrower are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein), (3) a partnership and each of its partners (and their spouses and minor children) whose relationship with the Borrower would result in a disallowance of losses under Section 267 or 707(b) of the Code or (4) an S Corporation and each of its shareholders (and their spouses and minor children) whose relationship with the Borrower would result in a disallowance of losses under Section 267 or 707(b) of the Code.

"Area" – The San Diego County, California, Primary Metropolitan Statistical Area.

"Bonds" – The \$\_\_\_\_\_ aggregate principal amount of the Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (COMM22 Family Housing) Series 2012C.

"Borrower's Tax Certificate" – The certificate of the Borrower, dated as of the Closing Date, with respect to certain Project Costs delivered to the Issuer by the Borrower.

“CDLAC” – The California Debt Limit Allocation Committee.

“CDLAC Resolution” – Resolution No. 12-88 adopted by CDLAC on September 26, 2012.

“Certificate of Continuing Program Compliance” – The certificate with respect to the Project to be filed by the Borrower with the Issuer, which shall be substantially in the form attached hereto as Exhibit B.

“Closing Date” – December \_\_\_\_\_, 2012.

“Costs of Issuance” – All costs incurred in connection with the issuance of the Bonds, generally those treated as Costs of Issuance under present Treasury Department regulations and rulings, and including all costs incurred in connection with the authorization, sale and issuance of the Bonds and the transactions contemplated herein, including, but not limited to (1) counsel fees (including bond counsel, purchaser’s counsel, the Issuer’s counsel, Trustee’s counsel, Borrower’s counsel, as well as any other specialized counsel fees and expenses incurred in connection with the borrowing); (2) financial advisor fees and expenses incurred in connection with the borrowing; (3) rating agency fees, if any; (4) initial and prepaid Trustee fees incurred in connection with the borrowing; (5) paying agent and certifying and authenticating agent fees related to issuance of the Bonds; (6) accountant fees related to issuance of the Bonds; (7) costs incurred in connection with the required public approval process (e.g., publication costs for public notices generally and costs of the public hearing or voter referendum); (8) costs of engineering and feasibility studies necessary to the issuance of the Bonds (as opposed to such studies related to acquisition or construction of the Project, but not to the borrowing); and (9) the Issuer fees.

“Income Certification” – The Income Computation and Certification Form in substantially the form attached hereto as Exhibit C.

“Indenture” – The Trust Indenture, dated as of the date hereof, between the Issuer and the Trustee, pursuant to which the Bonds have been issued as amended or supplemented from time to time.

“Issuer Fee” – The administrative fee of the Issuer payable on the Closing Date and on each December 1 thereafter, commencing December 1, 2013, in an amount equal to (i) \$\_\_\_\_\_ until the Conversion Date (as defined in the Indenture), and (ii) after the Conversion Date (as defined in the Indenture), 0.23% of the aggregate principal amount of the Bonds outstanding immediately following the Conversion Date.

“Majority Owner” – Has the meaning set forth in the Indenture.

“Median Income for the Area” – The median gross income for the Area as most recently determined by the Secretary of Treasury pursuant to Section 142(d)(2)(B) of the Code.

“Project” – The Project Facilities and the Project 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, construction and equipping of the Project, whether paid or incurred prior to or after the sixtieth day preceding July 10, 2012, 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 and reconstruction of housing and related facilities and improvements, and all other work in connection therewith, and all costs of financing, including, without limitation, the costs of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, county or entity for expenditures made for the Project) and all other costs approved by Bond Counsel.

“Project Facilities” – The buildings, structures and other improvements on the Project Site that are being financed with proceeds of the Bonds, and all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements.

“Project Site” – 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 in which the Borrower has a leasehold estate.

“Qualified Project Costs” – The Project Costs (excluding Costs of Issuance) incurred after the sixtieth day preceding July 10, 2012, which either constitute land or property of a character subject to the allowance for depreciation under Section 167 of the Code or are chargeable to a capital account with respect to the Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts within the meaning of Regulation Section 1.103-8(a)(1)(i); provided, however, that only such portion of interest accrued during construction of the Project shall constitute a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs paid from Bond proceeds and interest earnings thereon; and provided further that interest accruing after the completion date shall not constitute a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed by an Affiliated Party (whether as a general contractor or a subcontractor), “Qualified Project Costs” shall include only the actual out-of-pocket costs incurred by such Affiliated Party in constructing the Project (or any portion thereof) within the meaning of Section 147(d)(2) of the Code, as provided in the Tax Certificate.

“Qualified Project Period” – The period beginning on the later of (i) the first day on which at least ten percent (10%) of the dwelling units in the Project are first occupied and (ii) the Closing Date, and ending on the later of (a) the date which is 55 years after the date on which fifty percent (50%) of the dwelling units are occupied, (b) the first day on which no tax exempt bonds with respect to the Project are Outstanding, or (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

“Very Low Income Tenants” – Individuals or families with Adjusted Income which does not exceed 50 percent of the Median Income for the Area as adjusted in a manner consistent with determination of lower income families under Section 8 of the United States Housing Act of 1937 and as adjusted for household size as set forth below. In no event, however, will the occupants of a residential unit be considered to be Very Low Income Tenants if all the occupants are students, as defined in Section 151(c)(4) of the Code, as such, may be amended, no one of which is entitled to file a joint federal income tax return. Currently, Section 151(c)(4) defines a student as an individual enrolled as a full-time student during each of 5 calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance or is an

individual pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

<i>Household Size</i>	<i>Adjustment</i>
1	70%
2	80%
3	90%
4	100%
5	108%
6	116%
7	124%
8	132%

“Very Low Income Units” – The dwelling units in the Project designated for occupancy by Very Low Income Tenants pursuant to Section 4(a) of this Regulatory Agreement.

Capitalized terms which are not defined herein shall have the meanings assigned to them in the Indenture.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms shall be determined by reference to this Section 1 notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

Section 2. Acquisition, Construction, Equipping and Completion of the Project. The Borrower hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Borrower has incurred a substantial binding obligation to acquire, construct and equip the Project, pursuant to which the Borrower is obligated to expend at least ninety five percent of the net sale proceeds of the Bonds.

(b) The Borrower’s reasonable expectations respecting the total cost of the acquisition, construction and equipping of the Project and the disbursement of Bond proceeds are accurately set forth in the Borrower’s Tax Certificate attached to the Tax Certificate which has been delivered to the Issuer.

(c) The Borrower will proceed with due diligence to complete the acquisition, construction and equipping of the Project and expects to expend the full amount of the proceeds of the Loan for Project Costs prior to December 1, 2014.

(d) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee are true and correct in all material respects.

(e) Money on deposit in any fund or account in connection with the Bonds, 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.

(f) 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.

(g) The Borrower shall comply with all applicable requirements of Section 65863.10 of the California Government Code, including the requirements for providing notices in Sections (b), (c), (d) and (e) thereof.

Section 3. Residential Rental Property. The Borrower hereby acknowledges and agrees that the Project will be owned, managed and operated as a “qualified residential rental project” (within the meaning of Section 142(d) of the Code) until the expiration of the Qualified Project Period. To that end, and for the term of this Regulatory Agreement, the Borrower hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Project is being acquired, constructed and equipped for the purpose of providing multifamily residential rental property, and the Borrower shall own, manage and operate the Project as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with applicable provisions of Section 142(d) of the Code and Section 1.103-8(b) of the Regulations, and the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the dwelling units in the Project will be similarly constructed units, and, to the extent required by the Code and the Regulations, each dwelling unit in the Project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink; provided that any tenant may, but shall not be obligated to, provide a refrigerator for the unit to be occupied.

(c) None of the dwelling units in the Project will at any time be utilized on a transient basis, or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home, retirement house or trailer court or park; provided, however, that use of certain units for tenant guests on an intermittent basis shall not be considered a transient use for purposes of the Regulatory Agreement.

(d) No part of the Project will at any time be owned or used as a condominium or by a cooperative housing corporation, nor shall the Borrower take any steps in connection with a conversion to such ownership or uses. Other than obtaining a final subdivision map on the Project

and a Final Subdivision Public Report from the California Department of Real Estate, the Borrower shall not take any steps in connection with a conversion of the Project to a condominium or cooperative ownership except with the prior written approving opinion of Bond Counsel that by reason of any such action the interest on the Bonds will not become includable in gross income for federal income tax purposes.

(e) All of the dwelling units (except for two manager's units described in (g) below) 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 to the extent that dwelling units are required by this Regulatory Agreement to be leased or rented to Very Low Income Tenants and to holders of Section 8 certificates or vouchers.

(f) The Project Site consists of a parcel or parcels that are contiguous except for the interposition of a road, street or stream, and all of the Project Facilities will comprise a single geographically and functionally integrated project for residential rental property, as evidenced by the ownership, management, accounting and operation of the Project.

(g) Up to a total of two units in the Project may be occupied by resident managers or maintenance personnel.

(h) Should involuntary noncompliance with the provisions of Section 1.103-8(b) of the Regulations be caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the Closing Date which prevents the Issuer from enforcing the requirements of the Regulations, or condemnation or similar event, the Borrower covenants that, within a "reasonable period" determined in accordance with the Regulations, it will either prepay the Loan or apply any proceeds received as a result of any of the preceding events to reconstruct the Project to meet the requirements of Section 142(d) of the Code and the Regulations.

(i) The Borrower shall not discriminate on the basis of race, religion, creed, color, ethnic group identification, sex, source of income (e.g. AFDC, SSI), mental or physical disability, age, national origin or marital status in the rental, lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

(j) Following the expiration or termination of the Qualified Project Period, Very Low Income Units shall remain available to the Very Low Income Tenants then occupying such units at the date of expiration or termination of the Qualified Project Period at a rent not greater than the rent determined pursuant to Section 4(a) below until the earliest of any of the following occurs:

(i) The household's income exceeds 140 percent of the income at which such household would qualify as a Very Low Income Tenant.

(ii) The household voluntarily moves or is evicted for "good cause." For these purposes, "good cause" means the nonpayment of rent or allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the lease agreement 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) Sixty (60) years after the commencement of the Qualified Project Period.

(iv) The Borrower pays the relocation assistance and benefits to such Very Low Income Tenants as provided in Section 7264(b) of the Government Code of the State of California.

(k) The Issuer may but shall not be required to monitor the Borrower's compliance with the provisions of subparagraph (j) above.

Section 4. Very Low Income Units. Pursuant to the requirements of Section 142(d) of the Code and applicable provisions of the Act, the Borrower hereby represents, as of the date hereof, and warrants, covenants and agrees as follows:

(a) During the Qualified Project Period:

(i) not less than twenty percent (20%) of the units in the Project shall be designated as Very Low Income Units and shall be continuously occupied by or held available for occupancy by Very Low Income Tenants at monthly rents paid by tenants which do not exceed one-twelfth of the amount obtained by multiplying 30% times 50% of the Median Income for the Area, as adjusted for household size utilizing the percentages set forth above under the definition of Very Low Income Tenant less a reasonable deduction for utilities paid by the tenant as determined by the Issuer and assuming (solely for purposes of the above-described limit on the amount of monthly rent, and not for purposes of determining whether individuals or families are Very Low Income Tenants for purposes of Section 142(d) of the Code), the following unit sizes and household sizes:

<i>Unit Size</i>	<i>Household Size</i>
Studio Units	One Person
One Bedrooms	Two Persons
Two Bedrooms	Three Persons
Three Bedrooms	Four Persons

Such Very Low Income Units shall be of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants and shall be distributed throughout the Project.

A unit occupied by a Very Low Income Tenant who at the commencement of the occupancy is a Very Low Income Tenant shall be treated as occupied by a Very 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 Very Low Income Tenant and thereafter any residential unit of comparable or smaller size in the Project is occupied by a new resident other than a Very Low Income Tenant. Moreover, a unit previously occupied by a Very Low Income Tenant and then vacated shall be considered occupied by a Very 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 Very Low Income Tenant's occupancy of a Very Low Income Unit, the Borrower will obtain and maintain on file an Income Certification from each Very Low Income Tenant occupying a Very Low Income Unit, dated immediately prior to the initial occupancy

of such Very 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, the Act, Section 142(d) of the Code and the Regulations, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code. The Borrower shall verify that the income provided by an applicant is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a federal income tax return for the most recent tax year, (2) obtain a written verification of income and employment from the applicant's current employer, (3) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income satisfactory to the Issuer or (4) such other information as may be reasonably requested by the Issuer.

Copies of the most recent Income Certifications for Very Low Income Tenants shall be attached to the quarterly report to be filed with the Issuer as required in (d) below.

(c) Immediately prior to the first anniversary date of the occupancy of a Very Low Income Unit by one or more Very Low Income Tenants, the Borrower shall recertify the income of the occupants of each Very Low Income Unit by obtaining a completed Income Certification based upon the current income of each occupant of the unit. In the event the recertification demonstrates that such household's income exceeds 140% of the income at which such household would qualify as Very Low Income Tenants, such household will no longer qualify as Very Low Income Tenants, and to the extent necessary to comply with the requirements of Section 4(a) above, the Borrower will rent the next available unit of comparable or smaller size to one or more Very Low Income Tenants. No tenants shall be denied continued occupancy in the Project because, after occupancy, their income increases to make them no longer qualify as Very Low Income Tenants.

(d) Upon commencement of the Qualified Project Period, and within ten days of the last day of each quarter thereafter during the term of this Regulatory Agreement, the Borrower shall advise the Issuer of the status of the occupancy of the Project by delivering to the Issuer a Certificate of Continuing Program Compliance. Notwithstanding the provisions of Section 4(a) above, the Borrower will not be determined to be out of compliance with Section 4(a) if during the first year following the Closing Date the Project is occupied by fewer Very Low Income Tenants than is required by Section 4(a).

(e) The Borrower shall maintain complete and accurate records pertaining to the Very Low Income Units, and shall permit any duly authorized representative of the Issuer, the Trustee, the Majority Owner, 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 Very Low Income Units.

(f) The Borrower shall submit to the Secretary of the Treasury annually on the anniversary date of the start of the Qualified Project Period, or such other date as is required by the Secretary, a certification that the Project continues to meet the requirements of Section 142(d) of the Code, and shall provide a copy of such certification to the Issuer.

(g) The Borrower shall accept as tenants on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor. The

Borrower shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants. The Borrower shall not collect any additional fees or payments from a Very 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 those allowed under the Section 8 Program. The Borrower shall not discriminate against applicants for Very Low Income Units on the basis of source of income (i.e., AFDC or SSI), and the Borrower shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (ability to pay shall be demonstrated if an applicant can show that the same percentage or more of the applicant's income has been paid for rent in the past as will be required to be paid to rent the Very Low Income Unit to be occupied).

(h) Each lease pertaining to a Very Low Income Unit shall contain a provision to the effect that the Borrower has relied on the Income Certification and supporting information supplied by the applicant in determining qualification for occupancy of the Very Low Income Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease. Each lease will also contain a provision that failure to cooperate with the annual recertification process reasonably instituted by the Borrower pursuant to Section 4(c) above may, at the option of the Borrower, disqualify the unit as a Very Low Income Unit, or provide grounds for termination of the lease.

(i) Prior to the Closing Date, the Borrower agrees to provide to the Issuer a copy of the form of application and lease to be provided to prospective Very Low Income Tenants. The term of the lease shall be not less than thirty (30) days.

Section 5. Tax Status of the Bonds. 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 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 and the Trustee, 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) The Borrower, at the Borrower's expense, will file of record such documents and take such other steps as are necessary, in the written opinion of Bond Counsel filed with the Issuer and the Trustee, in order to insure that the requirements and restrictions of this Regulatory Agreement will be binding upon all owners of the Project, including, but not limited to, the execution and recordation of this Regulatory Agreement in the real property records of the County of San Diego.

The Borrower hereby covenants to notify any subsequent owner of the Project of the requirements and restrictions contained in this Regulatory Agreement in any documents transferring any interest in the Project to another person to the end that such transferee has notice of such restrictions, and to obtain the agreement from any transferee to abide by all requirements and restrictions of this Regulatory Agreement.

Section 6. Modification of Special Tax Covenants. The Borrower, the Trustee 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 and the Trustee, 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) 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 and the Trustee, impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Regulatory Agreement, this Regulatory Agreement may be amended to conform in whole or in part to such changed requirements should the Issuer, in its sole discretion, determine that such requirements should be made applicable to the Project.

(c) The Borrower, the Issuer and, if applicable, the Trustee 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 Trustee 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 (c); provided, however, that the Trustee shall take no action under this subsection (c) 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 releases the Issuer, the Trustee, their officers and employees from, and covenants and agrees to indemnify, hold harmless and defend the Issuer, the Trustee, their officers, members, directors, officials, agents and employees and each of them (collectively the “Indemnified Parties,” and, individually an “Indemnified Party”) from and against, any and all claims, losses, costs, damages, demands, expenses, taxes, suits, judgments, actions and liabilities of whatever nature, joint or several (including, without limitation, costs of investigation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments), made directly or indirectly (a) by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated hereby or otherwise in connection with the Project, the Bonds, or the execution or amendment of any document relating thereto; (b) arising from any cause whatsoever in connection with the approval of financing for the Project, the making of the Loan or otherwise; (c) arising from any act or omission of the Borrower or any of its agents, servants, employees or licensees, in connection with the Loan or the Project; (d) arising in connection with the issuance and sale, resale or reissuance of any Bonds or any certifications or representations made by any person (other than the Issuer or the party seeking

indemnification in connection therewith) or the carrying out by the Borrower of any of the transactions contemplated by the Bonds, the Indenture, the Loan Agreement or this Regulatory Agreement; (e) arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Project or any part thereof; and (f) arising out of or in connection with the Trustee's acceptance or administration of the trusts created by the Indenture and the exercise of its powers or duties thereunder or under the Loan Agreement, this Regulatory Agreement or any other agreements in connection therewith to which it is a party.

This indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses and liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except (i) in the case of the foregoing indemnification of the Trustee or any of its Indemnified Parties, to the extent such damages are caused by the negligence or willful misconduct of such Person and (ii) in the case of the foregoing indemnification of the Issuer or any of its Indemnified Parties to the extent such damages are caused by the willful misconduct of such Person.

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 Issuer and approved by the Borrower (which approval shall not be unreasonably withheld); and the Borrower shall assume the payment of all reasonable fees and expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Issuer shall have the right to review and approve or disapprove any such compromise or settlement.

The Borrower also shall pay and discharge and shall indemnify and hold harmless the Issuer and the Trustee from (i) any lien or charge upon payments by the Borrower to the Issuer and the Trustee hereunder arising out of Borrower's actions or inactions and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer and the Trustee shall give prompt notice to the Borrower, and the Borrower shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of Section 10 of this Regulatory Agreement, the Borrower shall remain obligated to indemnify the Issuer and the Trustee pursuant to this Section 7, unless at the time of transfer the Issuer has consented to indemnification under this Section 7 from such subsequent owner. If the Issuer has consented to any transfer of the Project in accordance with the provisions of Section 10 of this Regulatory Agreement, the Borrower shall not be obligated to indemnify the Issuer pursuant to this Section 7 for actions or inactions of the transferee arising after such transfer.

The provisions of this Section 7 shall survive the term of the Bonds and this Regulatory Agreement.

The obligations of the Borrower under this Section are independent of any other contractual obligation of the Borrower to provide indemnity to the 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 make the Loan to finance the Project, all for the purpose, among others, of inducing the Borrower to acquire, construct, equip and operate the Project. In consideration of the issuance of the Bonds by the 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 interest on the Bonds and the exemption from California personal income taxes of the interest on the Bonds. In performing their duties and obligations hereunder, the Issuer and the Trustee may rely upon statements and certificates of the Borrower, 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 and the Trustee, in accordance with the provisions in Section 7.03 of the Indenture may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Trustee under this Regulatory Agreement in good faith and in conformity with such opinion; provided, however, if there are conflicting opinions among the counsel selected by such parties, the opinion of Bond Counsel shall govern the interpretation and enforcement of this Regulatory Agreement. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Trustee 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 Trustee by the Borrower or the Issuer with respect to the occurrence or absence of a default.

Section 10. Sale or Transfer of the Project; Syndication. With the exception of a transfer of the Project to the General Partner (as hereinafter defined) or an affiliate thereof following the end of the low income housing tax credit compliance period applicable to 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 (except as provided in the next succeeding paragraph) and upon receipt by the Issuer (except as provided in the next succeeding paragraph) of (i) such certifications as deemed necessary by the Issuer to establish that the Borrower shall not be in default under this Regulatory Agreement or under the Loan Agreement or, if any such defaults exist, the purchaser or assignee undertakes to cure such defaults to the satisfaction of the Issuer; (ii) a written instrument by which the Borrower's purchaser or transferee has assumed in writing and in full the Borrower's duties and obligations under this Regulatory Agreement, (iii) an opinion of counsel for the transferee that the transferee has duly assumed the obligations of the Borrower under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee, (iv) documentation from the transferee reflecting the transferee's experience or, should the transferee choose to have a property manager run the Project, a property manager's experience with owning and/or operating multifamily housing projects such as the Project and with

use and occupancy restrictions similar to those contained in this Regulatory Agreement, and (v) an opinion of Bond Counsel addressed to the Issuer and the Trustee to the effect that such transfer will not cause interest on the Bonds, to become includable in the gross income of the recipients thereof for federal income tax purposes. The Borrower shall not allow any non-profit entity, which is not as of the date hereof a general partner of the Borrower, to become a general partner of the Borrower nor release any non-profit entity which is a general partner of the Borrower as of the date hereof from the limited partnership without the prior written consent of an Authorized Officer of the Issuer (which consent shall not be unreasonably withheld).

No transfer of the Project shall operate to release the Borrower from its obligations under this Regulatory Agreement with respect to any action or inaction taken prior to such transfer.

It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 10 shall be null, void and without effect, shall cause a reversion of title to the Borrower, and shall be ineffective to relieve the Borrower of its obligations under this Regulatory Agreement. Not less than 30 days prior to consummating any sale, transfer or disposition of any interest in the Project, the Borrower shall deliver to the Issuer and the Trustee a notice in writing explaining the nature of the proposed transfer.

The Borrower shall not syndicate the Project unless, prior to such syndication, an opinion of counsel acceptable to the Issuer is delivered to the Issuer to the effect that (i) the terms and conditions of the syndication do not reduce or limit any of the requirements of the Act or regulations adopted or documents executed pursuant to the Act, (ii) no requirements of the Issuer shall be subordinated to the syndication agreement, and (iii) the syndication shall not result in the provision of fewer assisted units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

Notwithstanding the above, the following transfers will be permitted: (a) a transfer of partnership interests in Borrower to or by the tax credit investor (the "Tax Credit Investor") under the limited partnership agreement of the Borrower (the "Partnership Agreement") and/or the special limited partner of the Borrower under the Partnership Agreement (the "Special Limited Partner"), or its or their respective designee pursuant to the partnership agreement of the Borrower; (b) a transfer of the limited partner interests in the Borrower of the Tax Credit Investor and/or the Special Limited Partner to an affiliate of such Tax Credit Investor and/or Special Limited Partner; (c) a transfer of the limited partner interests in the Borrower of the Tax Credit Investor and/or the Special Limited Partner to nonaffiliates of such Tax Credit Investor and/or Special Limited Partner with the consent of the Majority Owner, which consent shall not be unreasonably withheld or delayed; (d) the removal and replacement of the general partner of the Borrower under the Partnership Agreement (the "General Partner") pursuant to the Partnership Agreement; and (e) a transfer of the Project or the limited partnership interests in the Borrower to the General Partner or an affiliate thereof following the end of the low income housing tax credit compliance period applicable to the Project. Prior to any transfer of partnership interests or the Project or removal of the General Partner permitted in (a) through (e) above, the Issuer shall receive an opinion of Bond Counsel acceptable to the Issuer to the effect that such transfer will not cause interest on the Bonds, to become includable in the gross income of the recipients thereof for federal income tax purposes.

Section 11. Subordination. Upon a conveyance or other transfer of title to the Property by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan, the Person who acquires title to the Project pursuant to such foreclosure, deed in lieu of foreclosure or comparable

conversion of the Loan (unless such Person is the Borrower or a Person related to the Borrower within the meaning of Section 1.103–10(e) of the Regulations, in which event this Regulatory Agreement shall remain in full force and effect in its entirety) shall acquire such title free and clear of the terms, covenants and restrictions of this Regulatory Agreement, other than those set forth in Sections 3, 4 and 5 and, from and after the date on which such Person acquires title to the Project, the terms, covenants and restrictions of this Regulatory Agreement, other than those set forth in Sections 3, 4 and 5, shall automatically terminate and be of no force and effect; provided that Sections 3, 4 and 5 shall also terminate and be of no force or effect under the circumstances set forth in Section 12 of this Regulatory Agreement.

Section 12. Term. This Regulatory Agreement and all and several of the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect during the Qualified Project Period, or for such longer period as is provided in Sections 3(j) and 7 above, and in the CDLAC Resolution referred to in Section 26 below, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds and expiration of the Indenture, the Loan Agreement, the Loan and the Mortgage. Notwithstanding any other provisions of this Regulatory Agreement to the contrary, this entire Regulatory Agreement, or any of the provisions or sections hereof, may be terminated prior to the expiration of the Qualified Project Period upon agreement by the Issuer, the Trustee (if the Bonds are outstanding) and the Borrower 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 interest on the Bonds or the exemption from State personal income taxes of the interest on the Bonds.

The terms of this Regulatory Agreement to the contrary notwithstanding (except as to the provisions of Section 7), this Regulatory Agreement, and each and all of the terms hereof, shall terminate and be of no further force or effect in the event of an involuntary noncompliance by the Borrower with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency after the Closing Date which prevents the Issuer and the Trustee from enforcing the provisions of this Regulatory Agreement, foreclosure on the Project or delivery of a deed in lieu of foreclosure or condemnation or a similar event, but only if within a reasonable period thereafter the Bonds are redeemed or retired or amounts received as a consequence of such event are used to provide a project that meets the requirements of the Code set forth in this Regulatory Agreement; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure on the Project or the delivery of a deed in lieu of foreclosure or a similar event, the Borrower or any Affiliated Party 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 13. Covenants to Run With the Land. The Borrower hereby subjects the Project (including the Project Site) to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The 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.

Section 14. 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 by furthering the public purposes for which the Bonds were issued.

Section 15. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Project Site.

Section 16. 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 60 days after written notice thereof shall have been given by the Issuer or the Trustee to the Borrower (or such longer period if the Borrower provides the Issuer and the Trustee (if any Bonds are outstanding) 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 Trustee, subject to the provisions of Section 9 hereof, and to the extent indemnified pursuant to the provisions of the Indenture, and acting on its own behalf or on behalf of the Issuer, shall declare an "Event of Default" to have occurred hereunder, and, at its option, may, subject to the provisions of the Assignment, take any one or more of the following steps:

(i) by mandamus or other suit, action or proceeding at law or in equity, require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;

(ii) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project;

(iii) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower hereunder.

The Trustee shall have the right, in accordance with this Section 16 and the provisions of the Indenture, upon notice to but without the consent or approval of the Issuer, but subject to the Reserved Rights of the Issuer, to exercise any or all of the rights or remedies of the Issuer hereunder. All fees, costs and expenses of the Trustee (including, without limitation, reasonable attorneys fees) incurred in taking any action pursuant to this Section 16 shall be the sole responsibility of the Borrower.

After the Indenture has been discharged, or if the Trustee fails to act under this Section 16, 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 Trustee. After the date on which no Bonds remain outstanding as provided in the Indenture, the Trustee shall no longer have any duties or obligations under this Regulatory Agreement, and all references to the Trustee herein shall be deemed references to the Issuer.

Notwithstanding anything contained in this Regulatory Agreement or the Indenture to the contrary, the occurrence of an Event of Default under this Regulatory Agreement shall not (i) be deemed, under any circumstances whatsoever, to constitute a default under the Loan Documents, except as may be otherwise specified in the Loan Documents or (ii) impair, defeat or render invalid the lien of the Mortgage.

The rights of the Trustee under this Section are in addition to all rights conferred upon the Trustee under the Indenture and in no way limit those rights.

Section 17. Recording and Filing. The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the County of San Diego and in such other places as the Issuer or the Trustee may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

Section 18. Payment of Fees. It is anticipated that moneys on deposit in the funds established under the Indenture will be sufficient to pay the Trustee's and Issuer's costs and expenses. However, to the extent that there are unforeseen and unusual costs and expenses and the moneys in said funds are insufficient therefor, the Borrower hereby agrees to pay all reasonable costs and expenses of the Trustee and the Issuer in connection with the Bonds and the financing of the Project as such costs and expenses become due and payable upon the receipt of written invoices verifying such costs and expenses.

On the Closing Date, the Issuer shall be paid a fee of \$\_\_\_\_\_. Thereafter, the Borrower shall pay to the Issuer the Issuer Fee on December 1 of each year throughout the term of the Regulatory Agreement, commencing December 1, 2013, in an amount equal to (i) \$\_\_\_\_\_ until the Conversion Date (as defined in the Indenture), and (ii) after the Conversion Date (as defined in the Indenture), 0.23% of the aggregate principal amount of the Bonds outstanding immediately following the Conversion Date.

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 the Issuer Fee, and, in the event of default, shall also pay to the Issuer and to the Trustee 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 fee payable to the Issuer referenced in this section shall in no way limit amounts payable by the Borrower under Section 7 hereof, or arising after an Event of Default in connection with the Issuer's or the Trustee's enforcement of the provisions of this Regulatory Agreement. The fee payable to the Issuer referenced in this section includes any fee to be paid by the Issuer to any entity which administers the Project.

In the event that the Bonds are redeemed in part or in full prior to the end of the term of this Regulatory Agreement, the Issuer Fee payable to the Issuer 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 redemption of the Bonds and shall be a lump sum amount equal to the present value (based on a

discount rate equal to the prime rate identified by the Wall Street Journal at the time of redemption) of the Issuer Fee for the number of years remaining under the Regulatory Agreement.

Section 19. Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California. Except as expressly provided herein and in the Loan Agreement, the Trustee's rights, duties and obligations hereunder are governed in their entirety by the terms and provisions of the Indenture.

Section 20. Amendments. Except as provided in Section 6(a) hereof, this Regulatory Agreement shall be amended by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of San Diego. Any amendment to this Regulatory Agreement shall be accompanied by an opinion of Bond Counsel to the effect that such amendment will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

Section 21. Notice. All notices, certificates or other communications shall be sufficiently given and (except for notices to the Trustee, which shall be deemed given only when actually received by the Trustee) 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 certified mail, return receipt requested, postage prepaid, addressed as follows:

Issuer:                   Housing Authority of the City of San Diego  
1122 Broadway, Suite 300  
San Diego, CA 92101  
Attention: Executive Director  
Telephone: (619) 578-7585  
Facsimile: (619) 578-7356

Trustee:                 U.S. Bank National Association  
633 West Fifth Street, 24th Floor  
Los Angeles, California 90071  
Attention: Julie Hommel  
Telephone: (213) 615-6024  
Facsimile: (213) 615-6199

Reference: Housing Authority of the City of San Diego Multifamily  
Housing Revenue Bonds (COMM22 Family Housing),  
Series 2012C

Borrower:             COMM22 Family Housing, L.P.  
2202 30th Street  
San Diego, California 92104  
Attention: Project Manager  
Telephone: (619) 231-6300 x. 501  
Facsimile: (619) 889-9158

with a copy to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, 70th Floor  
Los Angeles, California 90071  
Attention: Lance Bocarsly  
Telephone: (213) 239-8086  
Facsimile: (213) 559-0733

Majority Owner: Bank of America, N.A.,  
CA4-70202-29  
2001 Clayton Road, 2nd Floor,  
Concord, California 94520,  
Attention: Loan Administration Manager

Tax Credit Investor: Bank of America, N.A.,  
CA4-70202-29  
2001 Clayton Road, 2nd Floor, |  
Concord, California 94520,  
Attention: Loan Administration Manager

Any of the foregoing parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, documents or other communications shall be sent. Copies of notices sent by any party hereto shall be sent concurrently to the Majority Owner (as long as Bonds are outstanding). In addition to any other notice required to be given under this Regulatory Agreement, promptly upon determining that a violation of the Regulatory Agreement has occurred, the Issuer or the Trustee shall, by notice in writing to the Majority Owner, inform the Majority Owner that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable.

Section 22. 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 23. 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 24. Compliance by Borrower. The Trustee shall not be responsible for monitoring or verifying compliance by the Borrower with its obligations under this Regulatory Agreement.

Section 25. Personal Obligation of Borrower; Limitations on Recourse to Borrower. Notwithstanding any provisions of this Regulatory Agreement to the contrary, all obligations of the Borrower under this Regulatory Agreement for the payment of money and all claims for damages against the Borrower occasioned by breach or alleged breach by the Borrower of its obligations under this Regulatory Agreement, including indemnification obligations, shall not be secured by, or in any manner constitute, a lien on the Project and no person shall have the right to enforce such obligations other than directly against the Borrower without recourse to the Project, and all such obligations shall be subordinate in priority, in right to payment and in all other respects to the obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Loan

Documents. Except as otherwise provided in Section 7 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 of the Project (including the Borrower) under this Regulatory Agreement. 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.

The following obligations of the Borrower shall, subject to the limitations set forth in the preceding paragraph, and Section 16 of this Regulatory Agreement, be and remain the joint and several full recourse obligations of the Borrower and each general partner of the Borrower (other than any nonprofit general partner):

(i) the Borrower's obligations to the Issuer and the Trustee and the Borrower's obligation to pay any and all rebate amounts that may be owed with respect to the Bonds as provided in Section 5.18 and 5.24 of the Loan Agreement; and

(ii) the Borrower's obligations under Section 7 of this Regulatory Agreement.

Section 26. CDLAC Requirements. The acquisition, construction, equipping and operation of the Project and the financing thereof are and shall be in compliance with the conditions set forth in Exhibit A to the CDLAC Resolution, a copy of which is attached hereto as Exhibit D, which conditions are incorporated herein by reference and are made a part hereof. The Issuer shall monitor and enforce the Borrower's compliance with the provisions of this Section 26. The Borrower shall prepare and submit to CDLAC on each anniversary of the Closing Date, and on such other date as is reasonably requested by CDLAC, a Certificate of Compliance in substantially the form attached hereto as Exhibit E, executed by an authorized representative of the Borrower. CDLAC shall be a third-party beneficiary of this Regulatory Agreement solely for purposes of enforcing the terms of the CDLAC Resolution. CDLAC shall have the right to enforce the terms of the CDLAC Resolution through an action for specific performance or any other available remedy; provided, however, that CDLAC shall not take any action or enforce any remedy that would be materially adverse to the interests of the Bondholders and any such action or enforcement shall otherwise be subject to the terms, conditions and limitations applicable to the enforcement of remedies under this Regulatory Agreement.

Section 27. Damage, Destruction or Condemnation of the Property. In the event that the Property is damaged or destroyed or title to the property, or any part thereof, is taken through the exercise or the threat of the exercise of the power of eminent domain, the Borrower shall comply with all applicable requirements of the Mortgage and the other Loan Documents.

Section 28. Lender Rider. The Lender Rider attached hereto as Exhibit F is hereby incorporated by reference herein.

IN WITNESS WHEREOF, the Issuer, the Trustee 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**, as Issuer

By: \_\_\_\_\_  
Wendy G. DeWitt  
Director of Real Estate  
San Diego Housing Commission

*[signatures continued on next page]*

COMM22 FAMILY HOUSING, L.P., a California  
limited partnership

By: COMM22 HOUSING GP, LLC, a  
California limited liability company, its  
general partner

By: BRIDGE Housing Corporation, a  
California nonprofit public benefit  
corporation, its manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Authorized Officer

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_, Notary  
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)

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_, Notary

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)

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_, Notary

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)

**EXHIBIT A**

**LEGAL DESCRIPTION**

All that certain real property situated in the County of San Diego, State of California, as follows:

[TO COME]

## EXHIBIT B

### CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The undersigned, \_\_\_\_\_, being duly authorized to execute this certificate on behalf of COMM22 FAMILY HOUSING, L.P. (the "Borrower"), hereby represents and warrants that:

1. The undersigned has read and is thoroughly familiar with the provisions of the following documents associated with the Borrower's participation in the Housing Authority of the City of San Diego's (the "Issuer") Multifamily Housing Revenue Bonds. (COMM22 Family Housing) Series 2012C, such documents including:

(a) the Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") dated as of December 1, 2012 among the Borrower, the Issuer and U.S. BANK NATIONAL ASSOCIATION, as Trustee (the "Trustee");

(b) the Note dated the Closing Date from the Borrower to the Issuer representing the Borrower's obligation to repay the Loan.

2. As of the date of this certificate, the following percentages of residential units in the Project (i) are occupied by Very Low Income Tenants (as such term is defined in the Regulatory Agreement) or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the date a Very Low Income Tenant and Low Income Tenant vacated such unit; as indicated:

		Studio	1 Bedroom	2 Bedrooms	3 Bedrooms	Total
Occupied by Very Low Income Tenants:	___ % Unit Nos.:	_____	_____	_____	_____	_____
Held vacant for occupancy continuously since last occupied by a Very Low Income Tenant:	___ % Unit Nos.:	_____	_____	_____	_____	_____

3. The Borrower hereby certifies that the Borrower is not in default under any of the terms of the above documents and no event has occurred which, with the passage of time, would constitute an event of default thereunder, with the exception of the following [state actions being taken to remedy default].

COMM22 FAMILY HOUSING, L.P., a California  
limited partnership

By: COMM22 Housing GP, LLC, a California  
limited liability company, its general partner

By: BRIDGE Housing Corporation, a  
California nonprofit public benefit  
corporation, its manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C

### INCOME COMPUTATION AND CERTIFICATION

NOTE TO APARTMENT OWNER: This form is designed to assist you in computing Annual Income in accordance with the method set forth in the Department of Housing and Urban Development ("HUD") Regulations (24 CFR 5.609). You should make certain that this form is at all times up to date with the HUD Regulations. All capitalized terms used herein shall have the meaning set forth in the Regulatory Agreement.

Re: [Address of Apartment Building]

I/We, the undersigned state that I/we have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the unit being applied for in the above apartment project. Listed below are the names of all persons who intend to reside in the unit:

1 Name of Members of the Household	2 Relationship to Head of Household	3 Social Security Number	4 Age	5 Place of Employment
	HEAD			
	SPOUSE			

### Income Computation

6. The total anticipated income, calculated in accordance with this paragraph 6, of all persons (except children under 18 years) listed above for the 12-month period beginning the earlier of the date that I/we plan to move into a unit or sign a lease for a unit is \$\_\_\_\_\_.

Included in the total anticipated income listed above are:

- (a) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (b) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
- (c) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (6)(b) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by the Department of Housing and Urban Development;
- (d) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount except deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;
- (e) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay except lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (excluding payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay);
- (f) *Welfare assistance.* If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the

welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

- (1) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
  - (2) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage;
- (g) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;
- (h) All regular pay, special pay and allowances of a member of the Armed Forces except the special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

Excluded from such anticipated income are:

- (a) Income from employment of children (including foster children) under the age of 18 years;
- (b) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (c) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses except payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay;
- (d) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (e) Income of a live-in aide, as defined by 24 CFR §5.403;
- (f) The full amount of student financial assistance paid directly to the student or to the educational institution;
- (g) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (h)
  - (1) Amounts received under training programs funded by the Department of Housing and Urban Development;
  - (2) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and

benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS):

- (3) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
  - (4) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the Public Housing Authority or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time;
  - (5) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (i) Temporary, nonrecurring or sporadic income (including gifts);
  - (j) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
  - (k) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
  - (l) Adoption assistance payments in excess of \$480 per adopted child;
  - (m) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
  - (n) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
  - (o) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
  - (p) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR §5.609(c) apply.

7. Do the persons whose income or contributions are included in item 6 above
- (a) have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interests in Indian trust land)?
- \_\_\_\_\_ Yes \_\_\_\_\_ No; or
- (b) have they disposed of any assets (other than at a foreclosure or bankruptcy sale) during the last two years at less than fair market value?
- \_\_\_ Yes \_\_\_ No
- (c) If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than \$5,000?
- \_\_\_ Yes \_\_\_ No
- (d) If the answer to (c) above is yes, state:
- (1) the combined total value of all such assets: \$\_\_\_\_\_;
- (2) the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy in the unit that you propose to rent: \$\_\_\_\_\_, and
- (3) the amount of such income, if any, that was included in item 6 above:
- \$\_\_\_\_\_
8. (a) Are all of the individuals who propose to reside in the unit full-time students\*?
- \_\_\_ Yes \_\_\_ No
- \*A full-time student is an individual enrolled as a full-time student during each of 5 calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance or is an individual pursuing a full-time course of institutional on farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.
- (b) If the answer to 8(a) is yes, is at least 2 of the proposed occupants of the unit a husband and wife entitled to file a joint federal income tax return?
- \_\_\_ Yes \_\_\_ No
9. Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the rental housing project in which the unit is located (hereinafter the "Borrower"), has any family relationship to the Borrower; or owns directly or indirectly any interest in the

Borrower. For purposes of this paragraph, indirect ownership by an individual shall mean ownership by a family member, ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trustee held by the individual or a family member; and ownership, direct or indirect, by a partner of the individual.

10. This certificate is made with the knowledge that it will be relied upon by the Borrower to determine maximum income for eligibility to occupy the unit; and I/we declare that all information set forth herein is true, correct and complete and based upon information I/we deem reliable and that the statement of total anticipated income contained in paragraph 6 is reasonable and based upon such investigation as the undersigned deemed necessary.
11. I/we will assist the Borrower in obtaining any information or documents required to verify the statements made herein, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.
12. I/we acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the Borrower to lease the unit and will entitle the Borrower to prevent or terminate my/our occupancy of the unit by institution of an action for ejection or other appropriate proceedings.

I/we declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_ day of \_\_\_\_\_ in the County of San Diego, California.

---

Applicant

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Applicant

[Signature of all persons (except children under the age of 18 years) listed in number 2 above required]

FOR COMPLETION BY BORROWER ONLY:

1. Calculation of eligible income:

- a. Enter amount entered for entire household in 6 above: \$\_\_\_\_\_
- b. (1) If the answer to 7(c) above is yes, enter the total amount entered in 7(d)(2), subtract from that figure the amount entered in 7(d)(3) and enter the remaining balance (\$\_\_\_\_\_)
- (2) Multiply the amount entered in 7(d)(1) times the current passbook savings rate as determined by HUD to determine what the total annual earnings on the amount in 7(d)(1) would be if invested in passbook savings (\$\_\_\_\_\_), subtract from that figure the amount entered in 7(d)(3) and enter the remaining balance (\$\_\_\_\_\_);
- (3) Enter at right the greater of the amount calculated under (1) or (2) above: \$\_\_\_\_\_
- c. **TOTAL ELIGIBLE INCOME**  
(Line 1.a plus line 1.b(3)): \$\_\_\_\_\_

2. The amount entered in line 1.c:

- \_\_\_\_\_ Qualifies the applicant(s) as a Very Low Income Tenant(s)
- \_\_\_\_\_ Does not qualify the applicant(s) as a Very Low Income Tenant(s).

3. Number of apartment unit assigned: \_\_\_\_\_ Rent: \$\_\_\_\_\_

Bedroom Size \_\_\_\_\_

4. This apartment unit [was/was not] last occupied for a period of 31 or more consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit qualified them as Very Low Income Tenants.

5. Method used to verify applicant(s) income:

\_\_\_\_\_ Employer income verification.

\_\_\_\_\_ Copies of tax returns.

\_\_\_\_\_ Other (\_\_\_\_\_)

\_\_\_\_\_  
Manager

INCOME VERIFICATION  
(for employed persons)

The undersigned employee has applied for a rental unit located in a project financed under the Housing Authority of the City of San Diego Multifamily Housing Revenue Bond Program for persons of lower income. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual wages	_____
Overtime	_____
Bonuses	_____
Commissions	_____
Other Income	_____
Total current income	_____

I hereby certify that the statements above are true and complete to the best of my knowledge.

_____ Signature	_____ Date	_____ Title
--------------------	---------------	----------------

I hereby grant you permission to disclose my income to \_\_\_\_\_ in order that they may determine my income eligibility for rental of an apartment located in their project which has been financed under the Housing Authority of the City of San Diego Multifamily Housing Revenue Bond Program.

_____ Signature	_____ Date
--------------------	---------------

Please send to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

INCOME VERIFICATION  
(for self-employed persons)

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding calendar year and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

---

Signature

Date

**EXHIBIT D**  
**CDLAC RESOLUTION**  
**RESOLUTION NO. \_\_\_\_\_**

1. Applicant: Housing Authority of the City of San Diego
2. Application No.: 12-096
3. Project Sponsor: COMM22 Family Housing, LP (COMM22 Housing GP, LLC)
4. Property Management Co.: BRIDGE Property Management Company
5. Project Name: COMM22 Family Housing Apartments
6. Type of Project: New Construction/Family
7. Location: San Diego, CA
8. Private Placement Purchaser: Bank of America, N.A.
9. The Private Placement Purchaser at the time of issuance will be the same as represented in the application. **Applicable**
10. Total Number of Units: **128** plus 2 manager units
11. Total Number of Restricted Rental Units: **128**
12. The term of the income and rental restrictions for the Project will be at least **55** years.
13. The Project will utilize Gross Rents as defined in Section 5170 of the Committee's Regulations. **Applicable**
14. Income and Rental Restrictions:  
  
For the entire term of the income and rental restrictions, the Project will have:  
  
At least 100 Qualified Residential units rented or held vacant for rental for persons or families whose income is at 50% or below of the Area Median Income.  
  
At least 28 Qualified Residential units rented or held vacant for rental for persons or families whose income is at 60% or below of the Area Median Income.
15. For acquisition and rehabilitation projects, a minimum of \$ 10,000 in hard construction costs will be expended for each Project unit. **Not Applicable**
16. A minimum of \$32,887,549 of public funds will be expended for the Project. **Applicable**

17. At a minimum, the financing for the Project shall include a Taxable Tail in the amount of \$0,000. Taxable debt may only be utilized for Project related expenses, not for the cost of issuance, for which the Project Sponsor could otherwise have used tax-exempt financing. **Not Applicable**
18. If the Project received points for having large family units, for the entire term of the income and rental restrictions, the Project will have at least three-bedroom or larger units. **Not Applicable**
19. For a period of ten (10) years after the Project is placed in use, the Project will provide to Project residents high-speed Internet or wireless (WiFi) service in each Project unit. **Not Applicable**
20. For a period of ten (10) years after the Project is placed in use, the Project will offer to Project residents an after school programs of an ongoing nature on-site or there must be an after school program available to Project residents within 1/4 mile of the Project. The programs shall include, but are not limited to: tutoring, mentoring, homework club, and art and recreation activities to be provided weekdays throughout the school year for at least 10 hours per week. **Not Applicable**
21. For a period of ten (10) years after the Project is placed in use, the Project will offer to Project residents instructor-led educational, health and wellness, or skill building classes. The classes shall include, but are not limited to: financial literacy, computer training, home-buyer education, GED, resume building, ESL, nutrition, exercise, health information/awareness, art, parenting, on-site food cultivation and preparation and smoking cessation. Classes shall be provided at a minimum of 84 hours per year (drop-in computer labs, monitoring and technical assistance shall not qualify) and be located within 1/4 mile of the Project. **Not Applicable**
22. For a period of ten (10) years after the Project is placed in use, the Project will offer to Project residents 20 hours or more per week of licensed childcare on-site or there must be 20 hours or more per week of licensed childcare available to Project residents within 1/4 mile of the Project. **Not Applicable**
23. For a period of ten (10) years after the Project is placed in use, the Project will offer to Project residents health and wellness services and programs within 1/4 mile of the Project. Such services and programs shall provide individualized support for tenants (not group classes) but need to be provided by licensed individuals or organizations. The services shall include, but are not limited to: visiting nurses programs, intergenerational visiting programs, and senior companion programs. Services shall be provided for a minimum of 100 hours per year. **Not Applicable**
24. For a period of ten (10) years after the Project is placed in use, the Project will offer to Project residents a bona fide service coordinator. The responsibilities must include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or enrichment activities for tenants (such as holiday events, tenant council, etc.) **Not Applicable**

25. All projects that receive points for being a Federally Assisted At-Risk Project will renew all Section 8 HAP Contracts or equivalent Project-based subsidies for their full term, and will seek additional renewals, if available, throughout the Project's useful life. **Not Applicable**
26. All projects that receive points for being a Federally Assisted At-Risk Project based on an expiring Low Income Housing Tax Credit Regulatory Agreement or Tax-Exempt Bond Regulatory Agreement shall have a plan in place to re-certify the incomes of the existing tenants and shall not cause involuntary displacement of any tenant whose income may exceed the Project's income limits. **Not Applicable**
27. Applicants shall meet the multiple sustainable building standards utilizing landscaping and construction materials which are compatible with the neighborhood in which the proposed project is to be located, and that the architectural design and construction materials will provide for low maintenance and durability, as well as be suited to the environmental conditions to which the project will be subjected: **Applicable With Waiver(s)**

Section Waived:

- ☐ Energy Efficiency
- ☐ CALGreen Compliance
- ☐ Landscaping
- ☐ Roofs
- ☒ Exterior Doors
- ☐ Appliances
- ☐ Window Coverings
- ☐ Water Heater
- ☐ Floor Coverings
- ☐ Paint
- ☐ Insulation

28. The project commits to becoming certified under any one of the following programs upon completion:
- |    |  |                       |
|----|--|-----------------------|
| a. | Leadership in Energy & Environmental Design (LEED) | <b>Applicable</b>     |
| b. | Green Communities                                  | <b>Not Applicable</b> |
| c. | GreenPoint Rated Multifamily Guidelines            | <b>Not Applicable</b> |
29. The project is a New Construction or Adaptive Reuse Project exceeding the Standards of Title 24, Part 6, of the California Building Code by:
- |    |       |                       |
|----|-------|-----------------------|
| a. | 17.5% | <b>Not Applicable</b> |
| b. | 20%   | <b>Not Applicable</b> |
| c. | 25%   | <b>Not Applicable</b> |

30. The Project will exceed the minimum energy efficiency certification requirements for New Construction/ Adaptive Reuse:
- a. LEED for Homes (Silver) **Applicable**
  - b. LEED for Homes (Gold) **Not Applicable**
  - c. Green Point Rated (100) **Not Applicable**
  - d. Green Point Rated (125) **Not Applicable**
31. The project is a Home Energy Rating System (HERS II) Rehabilitation Project that commits to improve energy efficiency above the current modeled energy consumption of the building(s) by:
- a. 15% **Not Applicable**
  - b. 20% **Not Applicable**
  - c. 25% **Not Applicable**
  - d. 30% **Not Applicable**
32. The project is a Rehabilitation Project that commits to developing, and/or managing the Project with the following Photovoltaic generation or solar energy:
- a. Photovoltaic generation that offsets tenants loads **Not Applicable**
  - b. Photovoltaic generation that offsets 50% of common area load **Not Applicable**
  - c. Solar hot water for a\l tenants who have individual water meters **Not Applicable**
33. The project will implement sustainable building management practices that include:  
 1) development of a percent-specific maintenance manual including replacement specifications and operating information on all energy and green building features;  
 2) Certification of building management staff in sustainable building operations per BPI Multifamily Building Operator or equivalent training program; and 3) Undertaking formal building systems commissioning, retro-commissioning or re-commissioning as appropriate (continuous commissioning is not required: **Not Applicable**
34. The project will sub-meter centralized hot water systems for all tenants: **Not Applicable**

## EXHIBIT E

### CDLAC COMPLIANCE CERTIFICATE

Project Name: COMM22 Family Housing Apartments

Name of Bond Issuer: Housing Authority of the City of San Diego

CDLAC Application No.: 12-096

Pursuant to Section 13 of Resolution No. 12-88 (the "Resolution"), adopted by the California Debt Limit Allocation Committee (the "Committee") on September 26, 2012, I, \_\_\_\_\_, an Officer of the Project Sponsor, hereby certify under penalty of perjury that, as of the date of this Certification, the above-mentioned Project is in compliance with all of the terms and conditions set forth in the Resolution.

I further certify that I have read and understand the CDLAC Resolution, which specifies that once the Bonds are issued, the terms and conditions set forth in the Resolution shall be enforceable by the Committee through an action for specific performance or any other available remedy.

*Please check or write N/A to the items list below:*

\_\_\_\_\_ The project is currently in the Construction or Rehabilitation phase.

\_\_\_\_\_ The project has incorporated The minimum specifications into the project design for all new construction and rehabilitation projects as evidenced by attached the applicable thirty party certification (HERS Rater, Green Point Rater or US Green Building Council). For projects under construction or rehabilitation, the information is due following receipt of the verification but in no event shall the documentation be submitted more than two years after the issuance of bonds.

\_\_\_\_\_ For projects that received points for exceeding the minimum requirements please attach the appropriate Energy Commission compliance form for the project which shows the necessary percentage improvement better than the appropriate standards. The compliance form must be signed by a California Association of Building Consultants, Certified Energy Plans Examiner or HERS Rater as applicable.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Officer

\_\_\_\_\_  
Title of Officer

\_\_\_\_\_  
Phone Number

**EXHIBIT F**  
**LENDER RIDER**

This Lender Rider (the “Rider”) is attached to and forms a part of the Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”), dated as of December 1, 2012, by and between the Housing Authority of the City of San Diego (the “Issuer”), U.S. BANK NATIONAL ASSOCIATION, as bond trustee (together with any successor in such capacity, the “Trustee”), and COMM22 FAMILY HOUSING, L.P., a California limited partnership, as Borrower of the Project identified herein (the “Borrower”).

1. **Definitions.** Terms used in this Rider as defined terms shall have the meanings given those terms in the Regulatory Agreement. In addition, the following terms shall have the following meanings:

2. **Applicability.** The provisions of this Rider shall amend and supplement the provisions of, and in the event of a conflict shall supersede the conflicting provisions of, the Regulatory Agreement.

3. **Indemnification.** Inasmuch as the covenants, reservations and restrictions of the Regulatory Agreement run with the land, the indemnification obligations of the Borrower contained in the Regulatory Agreement will be deemed applicable to any successor in interest to the Borrower, but, it is acknowledged and agreed, notwithstanding any other provision of the Regulatory Agreement to the contrary, that neither the Majority Owner nor any successor in interest to either of them will assume or take subject to any liability for the indemnification obligations of the Borrower for acts or omissions of the Borrower prior to any transfer of title to the Trustee or other entity acting on behalf of the Bondholders, whether by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan. The Borrower shall remain liable under the Regulatory Agreement for its acts and omissions prior to any transfer of title to the Trustee or other entity acting on behalf of the Bondholders.

4. **Sale or Transfer.** Restrictions on sale or transfer of the Project or of any interest in the Borrower, Issuer and/or Trustee consents, transferee agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to the Trustee or other entity acting on behalf of the Bondholders by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan; provided, however, such requirements shall apply to any subsequent transfer following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loan. No transfer of the Project shall operate to release the Borrower from its obligations under the Regulatory Agreement. Nothing contained in the Regulatory Agreement shall affect any provision of the Mortgage or any of the other Loan Documents that requires the Borrower to obtain the consent of the Majority Owner as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Mortgage. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall have any applicability to a transfer upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loan by the Trustee or other entity acting on behalf of the Bondholders, or to any subsequent transfer.

5. Enforcement. Notwithstanding anything contained in the Regulatory Agreement or the Indenture to the contrary:

(i) the occurrence of an event of default under the Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Loan Documents, except as may be otherwise specified in the Loan Documents;

(ii) neither the Issuer nor the Trustee may, upon the occurrence of an event of default under the Regulatory Agreement, seek, in any manner, to (a) cause or direct acceleration of the Loan, (b) enforce the Note, (c) foreclose on the Mortgage, (d) cause the Trustee 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 (e) cause the Trustee to take any other action under any of the Loan Documents or any other documents which action would or could have the effect of achieving any one or more of the actions, events or results described in the preceding clauses (a) through (d); and

(iii) the occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Mortgage.

No person other than the Majority Owner or the Trustee shall have the right to (a) declare the principal balance of the Note to be immediately due and payable or (b) commence foreclosure or other like action with respect to the Mortgage. The Issuer acknowledges the foregoing limitations.

The foregoing prohibitions and limitations are not intended to limit the rights of the Issuer or the Trustee to specifically enforce the Regulatory Agreement or to seek injunctive relief in order to provide for the operation of the Project in accordance with the requirements of the Internal Revenue Code and state law. However, neither the Issuer nor the Trustee shall have the right to enforce any monetary obligation other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must 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.

The obligations of any Borrower under the Regulatory Agreement shall be personal to the person who was the Borrower at the time that an event, including, without limitation, any default or breach of the Regulatory Agreement, occurred or was alleged to have occurred, and such person shall remain liable for any and all such obligations, including damages occasioned by a default or breach, even after such person ceases to be the Borrower of the Project. Accordingly, no subsequent Borrower of the Project shall be liable or obligated for the obligation of any prior Borrower (including the Borrower), including, but not limited to, any obligation for payment, indemnification or damages, for default or breach of the Regulatory Agreement or otherwise. The Borrower of the Project at the time the obligation was incurred, including any obligation arising out of a default or breach of the Regulatory Agreement, shall remain liable for any and all payments and damages occasioned by the Borrower even after such person ceases to be the Borrower of the Project, and no person seeking such payments or damages shall have recourse against the Project.

Under no circumstances shall the Issuer or the Trustee:

(i) 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;

(ii) interfere with or attempt to influence the exercise by the Majority Owner of any of its rights on behalf of the Bondholders under the Loan, including, without limitation, the remedial rights under the Loan Documents upon the occurrence of an event of default by the Borrower under the Loan; or

(iii) upon the occurrence of an event of default under the Loan, take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Loan.

6. Notice of Violations. Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Issuer or the Trustee shall, by notice in writing to the Borrower, and the Majority Owner, inform the Borrower, the Trustee and the Majority Owner that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such violation, neither the Issuer nor the Trustee shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Loan, to enforce the Note or to foreclose on the Mortgage.

7. Amendments. The Regulatory Agreement shall not be amended without the prior written consent of the Majority Owner.

8. Third-Party Beneficiary. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of the Bondholders and are entered into for the benefit of various parties, including the Bondholders. The Majority Owner, on behalf of the Bondholders shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Issuer and/or the Trustee, or to cause the Issuer or the Trustee to enforce, the terms of the Regulatory Agreement. In addition, the Majority Owner, on behalf of the Bondholders, is intended to be and shall be a third-party beneficiary of the Regulatory Agreement.

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Bank of America, N.A.  
CA4-70202-29  
2001 Clayton Road, 2nd Floor  
Concord, CA 94520  
Attention: Loan Administration Manager

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SPACE ABOVE FOR RECORDER'S USE

**ASSIGNMENT OF DEED OF TRUST AND RELATED DOCUMENTS**

This Assignment of Deed of Trust and Related Documents ("Assignment") is dated as of December 1, 2011, from the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO (the "**Issuer**") to U.S. BANK NATIONAL ASSOCIATION, as trustee (the "**Bond Trustee**") under the Trust Indenture (the "**Indenture**") dated as of even date herewith and executed by Issuer and the Bond Trustee, relating to \$28,000,000, Multifamily Housing Revenue Bonds (COMM22 Family Housing) Series 2012C.

**RECITALS**

COMM22Family Housing, L.P., a California limited partnership (the "**Borrower**"), as Borrower, has:

(i) entered into a Loan Agreement dated as of even date herewith (the Loan Agreement and all further supplements and amendments thereto is herein referred to as the "**Loan Agreement**") with the Issuer and the Bond Trustee evidencing indebtedness in the aggregate principal amount of up to \$\_\_\_\_\_ (the "**Loan**");

(ii) made to the order of the Issuer, and delivered to the Issuer, a Promissory Note (said Note together with all further supplements and amendments thereto are herein referred to as the "**Promissory Note**") dated as of \_\_\_\_\_, 2012, in the principal amount of \$\_\_\_\_\_, evidencing Borrower's obligation to repay the Loan; and

(iii) executed and delivered to the Issuer a Construction Leasehold Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing dated as of even date herewith (said Deed of Trust together with all further supplements and amendments thereto is herein referred to as the "**Deed of Trust**"), naming PRLAP, Inc. as trustee and Issuer as beneficiary, securing the Loan, and recorded in the Official Records of the county of San Diego, California, and relating to the real estate described in Exhibit A hereto;

(iv) executed and delivered to the Bond Trustee an Assignment of Contracts, Plans and Specifications dated as of even date herewith and such Consents to Assignment by Architect, Contractor and Property Manager as required therein; and

(v) executed, with COMM22 Housing GP, LLC, a California limited liability company, and delivered to the Bond Trustee a Security Agreement (Assignment of Partnership Interests and Capital Obligations).

The documents identified in (i), (ii), (iii), (iv) and (v) above, together with all financing and continuation statements to perfect the liens and security interests granted thereby, are collectively referred to herein as the "**Borrower Documents**."

The Issuer desires to assign and transfer to the Bond Trustee all its right, title and interest in and to, and its obligations under (except for obligations not assignable as a matter of law) the Borrower Documents, excluding all rights expressly reserved to the Issuer in the Indenture and the Loan Agreement (which reservations include, without limitation, rights as to payment of fees and expenses and rights to indemnification and notices), and the Bond Trustee desires to acquire Issuer's rights, title and interest as aforesaid under the Borrower Documents in accordance with the terms hereof. The Bond Trustee is joining in the execution of this Assignment in order to evidence its acceptance hereof.

The Borrower is joining in the execution of this Assignment in order to evidence its consent hereto and in order to agree that the obligations of the Borrower Documents under the Borrower Documents shall continue to be effective notwithstanding the assignment by the Issuer to the Bond Trustee of its rights therein.

## **AGREEMENT**

NOW, THEREFORE, the parties hereby agree as follows:

Section 1. Assignment. The Issuer sells, assigns and sets over and transfers to the Bond Trustee all the right, title and interest of the Issuer in, to , and its obligations under (except for obligations not assignable as a matter of law) the Borrower Documents, excluding any right expressly reserved to the Issuer in the Indenture and the Loan Agreement (which reservation includes, without limitation, rights as to payment of fees and expenses, rights to indemnification and notices). This Assignment is made and shall be without recourse, warranty or representation of the Issuer.

Section 2. Miscellaneous. In case any one or more of the provisions contained in this Assignment are invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not be affected or impaired thereby.

This Assignment may be executed in any number of counterparts, each executed counterpart constituting an original, but all counterparts together constituting only one instrument.

It is the intention of the parties hereto that this Assignment and the rights and obligations of the parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of California, without reference to the conflicts of laws and principles of the State of California.

IN WITNESS WHEREOF, the undersigned have executed this Assignment of Deed of Trust and Related Documents as of the date first above written.

ISSUER:

HOUSING AUTHORITY OF THE CITY OF SAN  
DIEGO

By: \_\_\_\_\_  
Executive Director

ATTEST:

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

BOND TRUSTEE:

U.S. BANK NATIONAL ASSOCIATION

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

The undersigned, being the Borrower referred to in the foregoing Assignment of Deed of Trust Documents, hereby acknowledges receipt and acceptance thereof, consents and agrees to the Assignment made therein and agrees that its obligations under the Borrower Documents shall remain in full force and effect notwithstanding the assignment effected by the foregoing Assignment.

**BORROWER:**

**COMM22 FAMILY HOUSING, L.P.,**  
a California limited partnership

By: COMM22 Housing GP, LLC,  
a California limited liability company,  
its managing general partner

By: BRIDGE Homes, Inc.,  
a California nonprofit public benefit  
corporation,  
its sole member

By: \_\_\_\_\_  
Rebecca F. Clark  
Vice President

Address:

COMM22 Family Housing, L.P.  
345 Spear Street, Suite 700  
San Francisco, CA 94105  
Attention: Rebecca F. Clark

:

EXHIBIT A

LEGAL DESCRIPTION

All of that certain real property located in the city and county of San Diego, California,  
more particularly described as follows:

[See Attachment]

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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 \_\_\_\_\_

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_        )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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 \_\_\_\_\_

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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 \_\_\_\_\_

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF \_\_\_\_\_                  )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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 \_\_\_\_\_

# STRADLING Yocca CARLSON & RAUTH

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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NEWPORT BEACH, CA 92660-6422

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(805) 730-6800

SANTA MONICA  
(424) 214-7000

SACRAMENTO  
(916) 449-2350

BRADLEY R. NEAL  
DIRECT DIAL: (949) 725-4164  
BNEAL@SYCR.COM

November 9, 2012

## VIA EMAIL

To: Housing Authority of the City of San Diego

From: Bradley R. Neal, Stradling Yocca Carlson & Rauth, Bond Counsel

Re: COMM22 Family Housing

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 (COMM22 Family Housing) (the "Bonds"), it is expected that the Bonds will be sold and issued on or about December 19, 2012. 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 the dollar amount of the Bonds, and various dates and other matters. The dollar amount of the Bonds depends upon the final underwriting by Bank of America, N.A., the private placement purchaser of the Bonds, which will be completed closer to the Bond issuance date.

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>		
	• Authorized Amount (also on cover and in WHEREAS clauses)	Prior to Closing	Bank of America
	• Fixed Rate	Prior to Closing	Bank of America
	• Trustee Fee	Prior to Closing	Trustee
	<u>Section 3.01 – Authorization.</u>		
	• Bond principal amounts (also on cover and in WHEREAS clauses)	Prior to Closing	Bank of America
	• Initial Installment	Prior to Closing	Bank of America

<u>Document</u>	<u>Location of Blank</u>	<u>When Completed</u>	<u>Responsible Party</u>
Loan Agreement	<u>Section 5.01(b) – Deposits in Funds and Accounts.</u>		
	• Various deposits into various accounts	Prior to Closing	Bank of America / Borrower
	<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>Exhibit D – Architect’s Certificate</u>		
	• Architect and Inspection Date Blanks	Prior to Closing	Borrower
	<u>Section 1.1 – Definitions.</u>		
	• Construction Contract Date	Prior to Closing	Bank of America / Borrower
	• Contractor	Prior to Closing	Borrower
	• Appraisal Date	Prior to Closing	Borrower
	• Projected Operating Expenses	Prior to Closing	Bank of America / Borrower
	• Required Equity Funds	Prior to Closing	Bank of America / Borrower
	<u>Section 3.2 – Loan Repayments.</u>		
	• Initial Revenue Fund Deposit	Prior to Closing	Bank of America / Borrower
	<u>Section 5.20 – Permissible Agreements between Borrower and Affiliates.</u>		
	• List of all Permissible Agreements between Borrower and its Affiliates	Prior to Closing	Borrower
	<u>Exhibit B –Form of Promissory Note</u>		
	• Various dates and dollar amounts	Prior to Closing	Completion of the Indenture and Loan Agreement blanks will allow Bond Counsel to complete the Promissory Note

<u>Document</u>	<u>Location of Blank</u>	<u>When Completed</u>	<u>Responsible Party</u>
<b>Regulatory Agreement and Declaration of Restrictive Covenants</b>	<u>Exhibit G – Form of Rate Stabilization Certificate</u> <ul style="list-style-type: none"> <li>• Various Blanks for Services, percentage of occupancy and Net Operating Income</li> </ul>	at Rate Stabilization	Form will be completed by Borrower after Closing and Construction Completion
	<u>Section 1 – Definitions and Interpretation</u> <ul style="list-style-type: none"> <li>• Bonds Principal Amount (also on cover and in “WITNESSETH” clauses)</li> </ul>	Prior to Closing	Bank of America
	<ul style="list-style-type: none"> <li>• Closing Date</li> </ul>	Prior to Closing	Housing Authority, Borrower and Bank of America
	<ul style="list-style-type: none"> <li>• Issuer Fee</li> </ul>	Prior to Closing	Dollar amount based on principal amount of Bonds
	<u>Section 18 – Issuer Fees.</u> <ul style="list-style-type: none"> <li>• Issuer Fees</li> </ul>	Prior to Closing	Dollar amount based on principal amount of Bonds
	<u>Exhibit A – Legal Description of Site</u>	Prior to Closing	Title Company and Borrower
<b>Assignment of Deed of Trust</b>	<ul style="list-style-type: none"> <li>• Promissory Note date, Principal Amount of the Bonds and Loan</li> </ul>	Prior to Closing	Bank of America

BRN:ja  
Enclosures