

**Attachment B**  
**HCIDLA Request for Issuance of Bonds for Leaster Apartments**

KUTAK ROCK LLP  
06/18/15

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**LOAN AGREEMENT**

by and among

**CITY OF LOS ANGELES,**  
as Issuer,

**BBCN BANK**, a California banking corporation,  
as Bondowner Representative

and

**LEASTER APARTMENTS, L.P.,**  
a California limited partnership,  
as Borrower

relating to

\$[13,600,000]  
City of Los Angeles  
Multifamily Housing Revenue Bond  
(Leaster Apartments)  
Series 2015C

Dated as of [\_\_\_\_\_] 1, 2015

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The interests of Issuer in this Agreement, excluding the Unassigned Issuer's Rights retained by Issuer, have been assigned to [TRUSTEE], as Trustee pursuant to an Indenture of Trust dated as of [\_\_\_\_\_] 1, 2015 between the City of Los Angeles and [TRUSTEE], as Trustee.

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## LOAN AGREEMENT

**THIS LOAN AGREEMENT** (this “Agreement”) is made and entered into as of [ ] 1, 2015 by and among the **CITY OF LOS ANGELES**, a charter city and municipal corporation of the State of California (“Issuer”), **BBCN BANK**, a California banking corporation (the “Bondowner Representative”) and **LEASTER APARTMENTS, L.P.**, a California limited partnership (“Borrower”).

### WITNESSETH:

WHEREAS, Issuer is a charter city and municipal corporation of the State of California (the “State”); and

WHEREAS, Issuer is authorized pursuant to Section 248 of the City Charter of the Issuer and Article 6.3 of Chapter 1 of Division 11 of the Los Angeles Administrative Code, as amended (collectively, the “Law”), and in accordance with Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the Health and Safety Code of the State of California, as amended (the “Act”), to issue revenue bonds for the purpose of financing, among other things, the acquisition, rehabilitation and development of multifamily rental housing and for the provision of capital improvements in connection therewith and determined necessary thereto; and

WHEREAS, on January 13, 2015, the Issuer indicated its intent to provide for the issuance of revenue bonds to finance a portion of the acquisition, rehabilitation and equipping of Leaster Apartments, a scattered site multifamily residential rental housing project located in the City of Los Angeles at 825 Green Avenue, 1422-1430 Miramar Street and 911 East 120<sup>th</sup> Street, Los Angeles, California, on the sites more particularly described in Exhibit A hereto (together, the “Project”) and the City Council of the Issuer subsequently adopted a resolution dated [ ], 2015 (the “Resolution”) authorizing the issuance of bonds for such purpose; and

WHEREAS, Issuer, Bondowner Representative and Borrower have determined to enter into this Agreement in order to set forth the term of the Loan; and

WHEREAS, Issuer deems it desirable and in keeping with its purpose to issue its Multifamily Housing Revenue Bond (Leaster Apartments) Series 2015C in the original principal amount of \$[13,600,000] (the “Bond”) and loan the proceeds thereof to Borrower for the purposes described above under the terms and conditions contained in this Agreement; and

WHEREAS, to evidence the loan of the proceeds of the Bond, Borrower is executing in favor of the Trustee a Promissory Note, in the maximum principal amount of \$[13,600,000] relating to the Bond (the “Note”) substantially in the form attached hereto as Exhibit A, which Note provides for the repayment of the sums borrowed pursuant hereto in payments sufficient to pay, when due, the principal of, premium, if any, and interest on the Bond and related expenses of Issuer and Trustee and Project-related expenses and Borrower has executed or caused to be executed the Mortgage (as such term is defined in the Indenture) and the Assignments referenced in recitals below with respect to the Project to secure, among other things, the payments due and other obligations under this Agreement; and

WHEREAS, Bondowner Representative has been approved by the Bondholder to act on its behalf with respect thereto and has been authorized by Issuer to service the Loan; and

WHEREAS, the Loan consists of a construction loan in the principal amount not to exceed \$[13,600,000] (the "Construction Loan") which will be prepaid on or before the Permanent Loan Commencement Date and a permanent loan not to exceed [\$9,162,237] (the "Permanent Loan"); and

WHEREAS, the Project, Plans and Specifications, the Architect, the date and title of the Architectural Contract, the name of the Contractor and date and title of the Construction Contract are all more fully described in Exhibit H hereto; and

WHEREAS, the Note is to be additionally secured by an Assignment of Contracts, Plans and Specifications (the "Assignment of Contracts"), a Replacement Reserve Agreement (the "Replacement Reserve Agreement"), an Operating Reserve Agreement (the "Operating Reserve Agreement") and an Assignment of Rights to Partnership Interests (the "Assignment of Rights"); and

WHEREAS, Borrower is executing an unsecured Certificate of Compliance and Indemnity Agreement Regarding Hazardous Substances (the "Indemnity Agreement") to induce Issuer to make the Loan; and

WHEREAS, this Agreement, the Note, the Mortgage, the Assignment of Contracts, the Replacement Reserve Agreement, the Regulatory Agreement and all other documents which otherwise evidence, guaranty or secure the Loan collectively constitute the "Loan Documents." The Loan Documents include the documents set forth in Exhibit D attached hereto, but do not include the Indemnity Agreement.

NOW, THEREFORE, Issuer, Bondowner Representative (on behalf of the Bondholder) and Borrower, each in consideration of the representations, covenants and agreements of the other as set forth herein, mutually represent, covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND RULES OF INTERPRETATION

**Section 1.01. Definitions.** In this Agreement, all capitalized terms used herein and not defined shall have the meaning ascribed thereto in Section 1.01 of the Indenture.

**Section 1.02. Rules of Interpretation.**

(a) This Agreement shall be governed by and construed in accordance with the Act and judicial decisions of the State of California (the "State"), except as they may be preempted by federal rules, regulations and laws applicable to Issuer.

(b) The words "herein," "hereof" and "hereunder" and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than to any particular section or subdivision of this Agreement.



(c) References in this Agreement to any particular article, section or subdivision hereof are to the designated article, section or subdivision of this Agreement as originally executed.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with tax basis accounting principles; and all computations provided for herein shall be made in accordance with tax basis accounting principles consistently applied and applied on the same basis as in prior years.

(e) The Table of Contents and titles of articles and sections herein are for convenience of reference only and are not a part of this Agreement and shall not define or limit the provisions hereof.

(f) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

(g) Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Agreement.

(h) Any opinion of counsel required hereunder shall be a written opinion of such counsel.

(i) References to the Bond as “tax-exempt” or to the “tax-exempt status of the Bond” are to the exclusion of interest on the Bond from gross income for federal income tax purposes pursuant to Section 103 of the Code, irrespective of such forms of taxation as the alternative minimum tax or branch profits tax on foreign corporations, as is consistent with the approach taken in Section 59(i) of the Code.

## ARTICLE II

### DISBURSEMENT OF FUNDS; ACCOUNTS; LOAN PAYMENTS

#### Section 2.01. Amount and Source of Loan Disbursements; Bondowner Advances.

(a) Issuer has authorized the issuance of the Bond in the aggregate principal amount of up to \$[13,600,000]. Issuer agrees to make the Loan in the amount of up to \$[13,600,000] to Borrower with the proceeds of the Bond. Borrower accepts the Loan from Issuer upon the terms and conditions set forth in this Agreement and the Loan Documents, subject to the Indenture and the Regulatory Agreement. Disbursements shall be made of the Loan from time to time by the responsible party as provided in this Article II. Borrower agrees to have the proceeds of the Loan applied and disbursed directly or indirectly to provide for the financing of the Project. The Bondowner Representative will cause the Bondholder to advance funds to purchase the Bond and fund the Loan as provided herein.

(b) The Loan shall be evidenced by, payable in accordance with, and bear interest at the rates and on the terms provided in, the Note and be secured by the Mortgage. Borrower will repay the Loan in accordance with the provisions of the Note and this Agreement. Notwithstanding anything to the contrary contained herein, Borrower covenants that it shall

make payments, at such times and in such amount to assure that payment of the principal of and premium, if any, and interest on the Bond shall be made when due, whether at maturity, by call for redemption, by acceleration or otherwise.

(c) (i) Disbursements of Loan proceeds shall be deemed made by Trustee under and pursuant to the Indenture when funded by the Bondowner Representative in accordance with this Agreement. Under no circumstances shall the aggregate amount of funds requisitioned hereunder chargeable to the Loan exceed \$[\_\_\_\_\_] consisting of funds advanced to purchase the Bond in an amount not to exceed \$[13,600,000], nor shall any funds be advanced hereunder after [\_\_\_\_\_] 1, [2018][December 31, 2018]. Bondowner Representative agrees to notify the Trustee of the date, amount and disbursements of the Loan (which disbursements shall be made by the deposit of Bond advances in the Project Fund under the Indenture) for notation on the Principal Log as additional payment of purchase price of the Bond, and of all amounts payable to it as interest on the Loan (for credit to the payment of interest on the Bond) prior to the Permanent Loan Commencement Date in accordance with the Indenture by delivery of a completed Requisition Certificate (in the form attached as Exhibit A to the Indenture). Furthermore, Bondowner Representative agrees to deliver to the Trustee on or before the Permanent Loan Commencement Date a schedule of principal payments to be made by Borrower pursuant to the Note monthly following the Permanent Loan Commencement Date, which amounts will be applied to the mandatory sinking fund redemption of the Bond pursuant to Section 3.01(c) of the Indenture. In the event of any redemption of the Bond prior to maturity pursuant to the Indenture other than by reason of Section 3.01(c), Bondowner Representative shall recompute and deliver to the Trustee the revised schedule of principal payments reference in the preceding sentence, corresponding to the revised amortization of the Loan pursuant to the Note which shall be consistent with Section 3.01 of the Indenture.

(ii) Bondowner Representative shall make disbursements of costs of the Project from proceeds of the Loan or other funds available for said purpose based on a detailed breakdown (“Cost Breakdown”) of acquisition, rehabilitation, financing and other development costs.

(iii) If Borrower cannot complete the Project in conformity with the most recently approved Cost Breakdown, Borrower shall immediately submit to Bondowner Representative for its approval a revised Cost Breakdown in the same format, which shall be attached as Exhibit I-2. Bondowner Representative need make no further disbursements unless and until it approves the revised Cost Breakdown.

(iv) Except as provided in the attached Exhibit E (“Disbursement Schedule”), prior to the first disbursement of the Loan, Borrower will submit to Bondowner Representative for Bondowner Representative’s and Investor Limited Partner’s approval an Authorization and Request to Disburse (“Draw Request”), in the form prescribed in Section 2 of the Disbursement Schedule, signed by Borrower or Borrower’s agent designated in Section 5(b) of the Disbursement Schedule, accompanied by such documentation and information as Bondowner Representative may require.

(v) In no event shall Bondowner Representative be required to disburse Borrower’s Sources (as defined in Section 2.02 below) in an aggregate total amount in

excess of the Total Project Costs (as defined in Section 2.02 below) (including contingency reserve and interest reserve) as set forth in the most recently approved Cost Breakdown.

(vi) Anything to the contrary herein notwithstanding, Bondowner Representative shall disburse a minimum of \$50,001 to the Trustee on the Dated Date, for deposit into the Project Fund as the purchase price of a portion of the Bond to be held by the Trustee, which amounts shall be subject to further disbursement on the same terms as provided for hereunder and under the Indenture. Bondowner Representative agrees to direct the Trustee to disburse all funds relating to the Loan from the Project Fund, and shall submit to Trustee a requisition in the form of Exhibit A of the Indenture for each disbursement.

### **Section 2.02. Loan in Balance; Borrower's Sources.**

(a) The Loan is "in balance" whenever the amount of the undisbursed Loan funds, plus the undisbursed funds available to Borrower for the Project, plus any sums on deposit or which Bondowner Representative has received reasonable assurance will be deposited into a restricted account to be maintained with Bondowner Representative in Borrower's name (the "Equity Account") which Equity Account shall earn interest at the rate paid by Bondowner Representative from time to time on similar accounts, plus any sums on deposit in Borrower's Funds Account (as defined below) or otherwise made available to Bondowner Representative in the form of a letter of credit, pledged bank account, or other form of cash collateral, approved by Bondowner Representative in its sole and absolute discretion ("Cash Collateral"), are sufficient in the judgment of Bondowner Representative to pay, through completion of all of the Project and on a timely basis all of the following sums ("Total Project Costs"): (i) all costs of acquisition, ownership and maintenance of the Project Premises and Project and all costs and expenses of rehabilitation of the Project in substantial accordance with (other than unpaid developer fees) the Plans and Specifications and the Cost Breakdown approved by Bondowner Representative; (ii) all costs of leasing or renting of the apartment units in the Project; and (iii) all interest and all other sums and costs which may accrue or be payable under the Loan Documents prior to or in connection with conversion of the Construction Loan to the Permanent Loan. The Equity Account, Borrower's Funds Account, and any Cash Collateral, together with undisbursed Loan funds, are collectively referred to herein as "Borrower's Sources." Borrower shall: (i) cause Investor Limited Partner to deposit each equity installment as due under Section 7.2 of the Partnership Agreement into the Equity Account when the respective conditions precedent to such contributions have been satisfied, as set forth in the Partnership Agreement; and (ii) deposit amounts demanded by Bondowner Representative as set forth below when the Loan is "out of balance" into a restricted non-interest bearing account to be maintained with Bondowner Representative in Borrower's name (the "Borrower's Funds Account") to be disbursed to complete the rehabilitation of the Project, unless Bondowner Representative has agreed otherwise in writing in each instance, which agreement may be withheld by Bondowner Representative in its sole discretion.

(b) The Loan is "out of balance" if and when Bondowner Representative determines that there are insufficient funds (taking into account the amount and timing of all of Borrower's Sources) in the judgment of Bondowner Representative to pay, through completion of the Project and conversion to the Permanent Loan, all Total Project Costs. Borrower acknowledges that the Loan may become "out of balance" in numerous ways, not all of which

may now be foreseen. Borrower further acknowledges that the Loan may become “out of balance” from a shortage of funds in any single line item or category of the Cost Breakdown, even if there are undisbursed Loan funds in other line items or categories. Undisbursed funds in one category or line item may not be applied to another category or line item unless Bondowner Representative consents in writing to such use in each instance, which consent will not be unreasonably withheld, delayed or conditioned.

(c) Whenever the Loan becomes “out of balance,” Bondowner Representative may, at its option, make written demand on Borrower to deposit Borrower’s own funds into Borrower’s Funds Account and/or draw upon, demand, or otherwise obtain payment to Bondowner Representative of any Cash Collateral, in any such instance in an amount sufficient in Bondowner Representative’s reasonable estimation to cause the Loan to be “in balance.” Within fifteen (15) business days following Bondowner Representative’s written demand, Borrower must deposit into Borrower’s Funds Account all funds required by Bondowner Representative’s demand that are in excess of any Cash Collateral actually delivered to Bondowner Representative. Borrower must also submit, for Bondowner Representative’s approval, a revised Cost Breakdown (with a copy to Issuer) within fifteen (15) days after any such demand.

### **Section 2.03. Disbursement Procedures.**

(a) Bondowner Representative shall fund the Loan as described herein and in the Disbursement Schedule. Notwithstanding recording of the Mortgage or anything contained in this Agreement, Bondowner Representative shall not be required to fund or approve any disbursement of Loan proceeds (except for fees, costs and reimbursements payable to Bondowner Representative), unless and until Bondowner Representative has determined that: (i) the amount and timing of Borrower’s Sources are sufficient to pay the Total Project Costs, and (ii) the Mortgage and all disbursements of the Loan funds will be and shall remain a first priority lien on the Project.

(b) Following receipt of funds disbursed from the Project Fund, Bondowner Representative shall transfer funds to Borrower’s Funds Account and Bondowner Representative shall cause the funds to be transferred into a non-interest bearing checking account to be maintained with Bondowner Representative in the name of Borrower (the “Checking Account”). Bondowner Representative shall make disbursements of funds from Borrower’s Sources into the Checking Account. Borrower shall accompany each Draw Request with a check drawn on the Checking Account payable to the applicable Contractor, subcontractors, laborers or material suppliers or other third parties for items covered by the Draw Request, and, to the extent that the Draw Request is approved, Bondowner Representative shall mail each such check to the payee thereof. Alternatively, Bondowner Representative, at its option, may make disbursements directly to any such payees without flowing the disbursed funds through the Checking Account. Notwithstanding the foregoing, if Bondowner Representative elects to utilize the services of a Disbursement Agent, as set forth in Article VIII hereof, Borrower need not accompany each Draw Request with checks made payable to the payees.

(c) Bondowner Representative, at any time, may use any of Borrower’s Sources to pay Loan fees owing to Bondowner Representative, interest on the Loan, fees and

expenses of Bondowner Representative's attorneys, title and miscellaneous costs which are payable by Borrower hereunder, and such other sums as may be owing from time to time by Borrower to Bondowner Representative with respect to the Loan, all without further notice to or authorization by Borrower (subject to the requirement of Section 2.03(f) below). These payments may be made, at Bondowner Representative's option, by: (i) debiting the applicable account containing any of Borrower's Sources in the amount of the payments without first depositing that amount into the Checking Account; (ii) disbursing all or any part of the amount of the payments into the Checking Account and then debiting the Checking Account or (iii) invoicing Borrower in the amount of the payments; provided, however, that Bondowner Representative shall provide Borrower with notice of any such debit by Bondowner Representative no later than thirty (30) days after the debiting has occurred. For these purposes, Bondowner Representative is not restricted to the line items and cost categories of the Cost Breakdown. Borrower acknowledges that such a use of Borrower's Sources by Bondowner Representative may cause the Loan to become "out of balance," requiring deposits by Borrower into Borrower's Funds Account or payment to Bondowner Representative of Cash Collateral.

(d) If the Cost Breakdown provides for an undisbursed balance remaining in the interest reserve line item of the Cost Breakdown and all other disbursement conditions have been met, then Bondowner Representative from time to time shall disburse Borrower's Sources to pay interest on the Loan from the interest reserve line item.

(e) Interest on each disbursement, whether initiated by Borrower or Bondowner Representative, shall be payable from the time Bondowner Representative debits the Loan funds in the amount of the disbursement.

(f) Notwithstanding anything to the contrary herein, all disbursements relative to the Loan will be made by depositing Loan funds to the Project Fund under the Indenture and requisitioning such funds as provided therein.

**Section 2.04. Additional Disbursement Conditions.** Bondowner Representative need not make any disbursement of Borrower's Sources until Borrower fulfills all conditions of the Loan Documents relating to such disbursement, to Bondowner Representative's satisfaction. Bondowner Representative's Loan closing conditions and conditions for subsequent disbursements include the matters described in the Disbursement Schedule. Bondowner Representative may require that the title policy required to be delivered pursuant to the terms of the Disbursement Schedule be brought current with each Loan disbursement by issuance of endorsements satisfactory to Bondowner Representative at Borrower's sole cost and expense.

**Section 2.05. No Waiver of Conditions.** Any waiver by Bondowner Representative of a condition of disbursement must be expressly made by Bondowner Representative in writing. If Bondowner Representative makes a disbursement before fulfillment of one or more required conditions, such disbursement shall not be a waiver of such condition with respect to subsequent disbursements, and Bondowner Representative reserves the right to require their fulfillment before making any subsequent disbursements. If all disbursement conditions are not satisfied, Bondowner Representative, without waiving any rights or conditions as to any other or further disbursements, may disburse selectively as to certain items or categories of costs and not others.

**Section 2.06. Conditions to Disbursement for Restoration.** The following shall be conditions precedent to the right of Borrower to obtain disbursement of proceeds of casualty insurance or condemnation awards, which proceeds may be used by Borrower only to restore the portion of the Project subject to such casualty and condemnation, which may include all of the Project if the casualty affected all of the Property (the “Affected Property”) following the occurrence of a casualty or condemnation and which proceeds shall be deposited, when received, in a segregated account specified by the Bondowner Representative:

(a) no uncured Event of Default (as defined in Section 6.01) shall have occurred, and no event which, with the giving of notice or the passage of time, or both, would be an uncured Event of Default shall have occurred and be continuing;

(b) Bondowner Representative and Issuer shall have received and approved each of the following, approval of which will not be unreasonably withheld, delayed or conditioned:

(i) plans and specifications for the reconstruction of the Affected Property;

(ii) copies of all contracts and subcontracts for the reconstruction of the Affected Property;

(iii) if required by Bondowner Representative, payment and performance bonds for the reconstruction of the Affected Property;

(iv) assignments by Borrower to Trustee on behalf of Issuer of each of the plans and specifications described in clause (i), and each of the contracts and subcontracts described in clause (ii), in form and content satisfactory to Bondowner Representative, and consents to such assignment, in form and content satisfactory to Bondowner Representative, duly executed by the contractors and subcontractors; and

(v) a line item budget setting forth, in form and level of detail satisfactory to Bondowner Representative, all costs of reconstruction of the Affected Property in accordance with the plans and specifications described in clause (i) above;

(c) all proceeds of casualty insurance policies or condemnation awards, as the case may be, shall have been received by Bondowner Representative on behalf of Trustee in the Replacement Reserve Account;

(d) to the extent that available proceeds or an irrevocable commitment of funds reasonably acceptable to the Bondowner Representative received by Bondowner Representative on behalf of Trustee are insufficient to pay all costs of reconstruction of the Project, Borrower shall have delivered the amount of any shortfall, as determined by Bondowner Representative, into Borrower’s Funds Account; and

(e) Bondowner Representative shall have determined that the Project will, following reconstruction, have a fair market value which is at least equal to its value prior to the casualty or condemnation.

If all of the foregoing conditions are satisfied, proceeds held by Bondowner Representative on behalf of Trustee and funds in Borrower's Fund Account shall be disbursed subject to the consent of Bondowner Representative and Issuer, in the same manner and subject to the same conditions (subject to adjustment to reflect the different nature of construction) as applied with respect to the disbursement of the proceeds of the Loan. If the foregoing conditions are not satisfied, or if, after satisfaction of such conditions any proceeds of casualty insurance or condemnation awards remain, all such proceeds shall be remitted to Trustee promptly on account of the outstanding balance on the Note for application to the redemption in whole or in part of the Bond as provided in the Indenture.

Borrower hereby grants a security interest in each of said accounts to Issuer, and Issuer hereby assigns such security interest to Trustee on behalf of the Bondowners. Bondowner Representative shall not be a trustee with respect to said accounts.

Bondowner Representative shall maintain accurate records of the balances, uses and investment of the funds in the above-referenced accounts.

**Section 2.07. Loan Payments.** Prior to the Permanent Loan Commencement Date, Borrower shall pay, including via payments from the Project Fund, to the Trustee, on the dates set forth in the Note, all amounts due under the Note for principal, premium, if any, and interest. Interest on the Note shall accrue at the rates set forth therein on the total Disbursed Amounts and shall be payable at the times specified in the Note. Principal on the Loan shall be payable at the times specified in the Note. Notwithstanding anything to the contrary herein, from and after the Permanent Loan Commencement Date Borrower shall remit to the Trustee all amounts required to be paid by the Trustee to the Bondowner as principal of, premium, if any, and interest on the Bond as provided in the Note and in any case on or before the day such amounts are required to be paid to the Bondholder and such amounts shall be applied against Borrower's obligations under the Note.

**Section 2.08. No Warranty by Issuer.** Borrower agrees that, because the components of the Project have been and are to be designated and selected by it, THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION 2.08 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION

THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

**Section 2.09. Payment of Issuance Costs by Borrower.** Borrower agrees that it will provide, on the Closing Date, any and all funds required for the prompt and full payment of all Costs of Issuance of the Bond, including, but not limited to, the following items:

- (a) all legal (including Bond Counsel and the respective counsel to Borrower, Issuer, Bondowner Representative and Trustee), abstractors', title insurance, financial, engineering, environmental, construction services, appraisal and accounting fees and expenses, administrative fees, printing and engraving costs and other expenses incurred and to be incurred by Borrower, Issuer, Bondowner Representative and Trustee on or before or in connection with issuance of the Bond;
- (b) premiums on all insurance required to be taken out and maintained pursuant to this Agreement;
- (c) all mortgage registry fees and recording fees and other taxes, charges, assessments, license or registration fees of every nature whatsoever incurred and to be incurred in connection with this financing;
- (d) all initial fees and expenses of the Trustee, the Paying Agent and Issuer;
- (e) all fees and expenses for title insurance, survey and related matters; and
- (f) other costs of issuance.

**Section 2.10. Borrower's Obligations Unconditional.** The obligations of Borrower to perform and observe the agreements on its part contained herein shall be absolute and unconditional and payment of the Loan and Additional Charges and all other payments required of Borrower hereunder or under the Note shall be paid without notice or demand and without set off, counterclaim, or defense for any reason and without abatement or deduction or defense. Borrower will not suspend or discontinue any such payments, and will perform and observe all of its other agreements in this Agreement, and, except as expressly permitted with respect to prepayment of the Note, will not terminate this Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction or damage to the Project or Borrower's business, the taking of the Project or Borrower's business by Condemnation or otherwise, the lawful prohibition of Borrower's use of the Project or Borrower's business, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement, the lack of right, power or authority of Issuer to enter into this Agreement, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of Issuer or the Trustee, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State or any political subdivision thereof, or failure of Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the payment of the Loan and other amounts payable by



Borrower hereunder or under the Note shall be paid in full when due without any delay or diminution whatever.

### ARTICLE III

#### BORROWER COVENANTS

Borrower promises to keep and perform each of the covenants set forth below, except to the extent that Bondowner Representative hereafter specifically waives compliance in writing, which waiver may be given or withheld by Bondowner Representative in its sole and absolute discretion.

**Section 3.01. Completion of Rehabilitation.** Borrower shall not commence physical rehabilitation of the Project unless and until Borrower shall have received Authorization to Proceed (as defined below). Bondowner Representative shall promptly, upon Borrower's written request following Borrower's satisfaction (or waiver by Bondowner Representative for this purpose) of all of the conditions set forth in Section 1(a) of the Disbursement Schedule, issue to Borrower written authorization to proceed with rehabilitation ("Authorization to Proceed"). Borrower shall complete the rehabilitation of the Project no later than [\_\_\_\_], 2017 subject to extension as set forth below ("Completion Date") and any *force majeure* delays as per Section 9.20. Borrower shall obtain a temporary certificate of occupancy (with all remaining conditions bonded for), or if unavailable a certificate of completion from the Architect for the Project prior to the Completion Date. In addition, Borrower shall record all appropriate notices of completion, and obtain temporary certificates of occupancy or similar permits regarding completed apartment units and other spaces within the Project as may be necessary or required to permit the lawful use and occupancy of each of such units and spaces.

**Section 3.02. Requirements.** Borrower shall rehabilitate the Project in a good and workmanlike manner in accordance with sound building practices and all applicable governmental and insurance requirements, substantially in accordance with the Plans and Specifications and the recommendations of any soils and environmental reports submitted to Bondowner Representative and accepted by it. Borrower shall comply with all existing and future laws, regulations, codes, orders, building restrictions and requirements of, and all agreements with and commitments to, all governmental authorities having jurisdiction over the Project, and private parties with rights with respect to the Project, including, without limitation, those pertaining to the rehabilitation, sale, lease, rental or financing of the Project and all requirements necessary to obtain and maintain the LIHTCs, if any, allocated to the Project (collectively, the "Requirements").

**Section 3.03. Changes.**

(a) Borrower shall obtain Bondowner Representative's prior written approval of any change in the Plans and Specifications or any other Requirements which:

(i) might adversely affect the value of Bondowner Representative's security; or

(ii) regardless of cost, is a material change in structure, design, exterior appearance, square footage, or function of the Project; or

(iii) would cause an increase in any line item or category of the Cost Breakdown or would cause the Loan to be out of balance; or

(iv) would alter or otherwise not comply with any of the Requirements;  
or

(v) subject to extension as set forth below, might delay completion of any element of the Project beyond the time allocated for it in the Completion Schedule, or completion of all of the Project beyond the Completion Date; or

(vi) is otherwise required by the terms and provisions of the Loan Documents.

(b) Borrower shall obtain Bondowner Representative's prior written approval of any change in any work or materials for the Project which, together with all prior changes for which consent was not required pursuant to Section 3.03(a) of this Agreement, exceeds an absolute value (whether by increasing or decreasing rehabilitation or construction costs) of \$50,000 in aggregate amount. Also, the prior written approval of Bondowner Representative must be obtained for any single change in any work or materials (whether positive or negative) which exceeds \$10,000 in amount or which causes any line item of the Cost Breakdown to be increased or decreased by 10% or more.

(c) Borrower shall obtain Bondowner Representative's prior written approval of all material changes in the scope, schedule, payment terms, performance requirements, or general conditions of the Construction Contract, the Engineering Contracts or any other contracts pertaining to the design, rehabilitation or construction of the Project, including any that may be described in Exhibit B.

(d) Borrower shall obtain from the appropriate individuals or entities all approvals of any changes in the plans, specifications, work, materials or contracts that are required by any of the Requirements, or under the terms of any lease (including subleases), loan commitment or other agreement relating to the Project.

(e) Borrower shall provide Bondowner Representative for Bondowner Representative's approval copies of all applicable change orders, together with all additional documents that Bondowner Representative may require in order to evaluate a request for approval of a proposed change of a type described above which approval shall be given or withheld within 10 days of request therefor. In the event that Bondowner Representative fails to approve or disapprove the applicable order within the time period set forth above, such change order shall be deemed approved. These documents shall include the following: (i) a written description of the proposed change and related working drawings; and (ii) a written estimate of the cost of the proposed change and the time necessary to complete it.

**Section 3.04. Rehabilitation Information and Verification.**

(a) Within fifteen (15) days after receiving a request from Bondowner Representative, Borrower shall deliver to Bondowner Representative any and all of the following information and documents that Bondowner Representative may specify, all in forms acceptable to Bondowner Representative:

(i) A current, complete and correct list showing the name, address and telephone number of each contractor, subcontractor and material supplier engaged in connection with the rehabilitation of the Project, and the total dollar amount of each contract and subcontract (including any changes) together with the amounts paid through the date of the list.

(ii) True and correct copies of the most current versions of all executed contracts and subcontracts identified in the list described above, including any changes.

(iii) A current rehabilitation progress schedule showing the progress of rehabilitation and the projected sequencing and completion times for uncompleted work, all as of the date of the schedule.

(iv) Evidence that the Requirements have been fully satisfied.

(v) Any update to any item described above.

(b) Borrower authorizes Bondowner Representative to contact the Architect, the Project Engineer, the Contractor and any subcontractor, material supplier, surety or any governmental authority or agency, to verify any information regarding the Project. All contracts and subcontracts relating to rehabilitation of the Project must require the disclosure of such information to Bondowner Representative. Bondowner Representative may disapprove any contractor, subcontractor, material supplier, surety or other party whom Bondowner Representative in its reasonable judgment may deem financially or otherwise unqualified; however, the absence of any such disapproval shall not constitute a representation of qualification.

(c) Based on the Requirements or any rehabilitation progress schedule or other materials submitted by Borrower or otherwise available to Bondowner Representative, Bondowner Representative may determine that all or a portion of the Project will not be completed according to the Completion Schedule or that the Project will not be completed by the Completion Date. If this happens, Bondowner Representative may request Borrower in writing to reschedule the work of rehabilitation to permit timely completion. Within fifteen (15) days after receiving such a request from Bondowner Representative, Borrower shall deliver to Bondowner Representative a revised rehabilitation progress schedule showing completion of the Project within the times required by this Agreement.

**Section 3.05. Permits, Licenses and Approvals.** Borrower shall properly obtain, comply with and keep in effect all permits, licenses, agreements (including development agreements) and approvals which are required to be obtained from governmental bodies in order to rehabilitate, construct, occupy, operate, rent or lease the Project. Borrower shall promptly deliver copies of all such permits, licenses and approvals to Bondowner Representative and, on

demand, Issuer. Notwithstanding anything to the contrary in any of the Loan Documents, Borrower shall not materially modify, amend, change, supplement or terminate any of such permits, licenses, agreements and approvals without Bondowner Representative's consent, which consent may be withheld in Bondowner Representative's reasonable discretion.

**Section 3.06. Purchase of Materials; Conditional Sales Contracts; Stored Materials.** Borrower shall not purchase or contract for any materials, equipment, furnishings, fixtures or articles of personal property to be placed or installed on the Project Premises or in the Project under any security agreement or other agreement where the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider them personal property after their incorporation in the work of rehabilitation or construction, unless Bondowner Representative in each instance has authorized Borrower to do so in writing.

No disbursements shall be made for materials ("Stored Materials") that are to be stored on the Project Premises or offsite unless and until the Stored Materials are incorporated into the Project.

**Section 3.07. Site Visits; Right To Stop Work.** Bondowner Representative and its agents and representatives shall have the right at any reasonable time, upon reasonable notice, to enter and visit the Project for the purposes of performing an appraisal, observing the work of rehabilitation and examining all materials, plans, specifications, working drawings and other matters relating to the rehabilitation. For purposes of these site visits, Borrower shall at all times maintain a full set of working drawings at the construction site. Bondowner Representative shall also have the right to examine, copy and audit the books, records, accounting data and other documents of Borrower and its contractors which relate to the Project or rehabilitation of the Project.

If Bondowner Representative reasonably determines that any work or materials fail to conform to the Requirements, the approved Plans and Specifications or sound building practices, Bondowner Representative may require the work to be stopped and withhold disbursements until the matter is corrected. Borrower shall promptly correct the work to the Bondowner Representative's reasonable satisfaction. No such action by Bondowner Representative shall affect Borrower's obligation to complete each element of the Project within the time required by this Agreement.

Bondowner Representative is under no duty to visit the Project site, or supervise or observe rehabilitation or construction or examine any books or records. Any site visit, observation or examination by Bondowner Representative shall be solely for the purpose of protecting Bondowner Representative's security and preserving Bondowner Representative's rights and interests under the Loan Documents. No site visit, observation or examination by Bondowner Representative shall impose any liability on Bondowner Representative, unless such liability is caused by the gross negligence or willful misconduct of Bondowner Representative, or results in a waiver of any default of Borrower. In no event shall any site visit, observation or examination by Bondowner Representative be a representation that there has been or shall be compliance with the Plans and Specifications, that the rehabilitation and construction is free from defective materials or workmanship, or that the rehabilitation and construction complies with the Requirements or any other applicable governmental law, regulation or ordinance.

**Section 3.08. Lien Claims; Junior Encumbrances.**

(a) Borrower shall not incur or permit to exist on the Project any lien or encumbrance unless such lien or encumbrance shall first have been approved and consented to by Bondowner Representative in writing in its sole and absolute discretion and, in such event, any such lien or encumbrance shall at all times be junior and subordinate to the Mortgage. Notwithstanding the foregoing, Bondowner Representative hereby consents to a new loan from [SELLER] in the amount of \$[5,913,058] (the "Seller Loan") which shall be subject and subordinate to the Mortgage. The Seller Loan is referred to herein as a "Permitted Encumbrance". All agreements and instruments evidencing or securing the Seller Loan are herein called the "Permitted Encumbrance Documents." The form and substance of each of the Permitted Encumbrance Documents shall be subject to the written approval of Bondowner Representative. Borrower and the holder of each Permitted Encumbrance shall respectively enter into any agreements required by Bondowner Representative as a condition of Bondowner Representative's consent to the respective Permitted Encumbrances.

(b) Borrower shall promptly pay or otherwise discharge all claims, stop notices and liens for labor done and materials and services furnished in connection with the rehabilitation or construction of the Project. Upon prior written notice to Bondowner Representative, Borrower shall have the right to contest in good faith any claim, stop notice or lien, provided that it does so diligently, without prejudice or cost to Bondowner Representative or delay in completing the Project, and without threat of impairment of Bondowner Representative's security. Upon Bondowner Representative's request, Borrower shall promptly provide a bond, cash deposit or other security satisfactory to Bondowner Representative with respect to any such claim, stop notice or lien.

**Section 3.09. Signs.** At Bondowner Representative's request, Borrower shall post on the Project Bondowner Representative's standard signs, at Borrower's sole cost and expense, for the purpose of identifying Bondowner Representative as the Project lender and shall use its best efforts to identify Bondowner Representative in publicity concerning the Project.

**Section 3.10. Insurance.** Borrower must provide, maintain and keep in force at all times such casualty and liability insurance as is required under the Mortgage. Additionally, at all times during the rehabilitation or construction of the Project, Borrower must provide, maintain and keep in force such additional insurance coverage as is generally required by Bondowner Representative for similar facilities.

**Section 3.11. Cooperation.** Borrower shall cooperate at all times with Bondowner Representative in bringing about the timely completion of each element of the Project, and Borrower shall resolve all disputes arising during the work of rehabilitation in a manner which shall allow work to proceed expeditiously.

**Section 3.12. Payment of Expenses.** Borrower shall pay Bondowner Representative's costs and expenses incurred in connection with the making, disbursement and administration of the Loan, as well as any revisions, extensions, renewals, modifications or "workouts" of the Loan, and in the exercise of any of Bondowner Representative's rights or remedies under this Agreement. Such costs and expenses include, without limitation, title insurance, recording and

escrow charges, survey charges, hazard insurance premiums, bond premiums, fees for appraisals and appraisal reviews, architectural and engineering reviews and services, construction services, cost engineering, environmental reviews and services, zoning and entitlement reviews and services, mortgage taxes, legal expenses and any other fees and costs for services rendered to Bondowner Representative in connection with the Loan, regardless of whether such services are furnished by Bondowner Representative's employees or agents or independent contractors. Borrower acknowledges that the loan and commitment fees, if any, for the Loan do not include amounts payable by Borrower under this subsection. Without limiting the generality of the foregoing, Borrower shall pay to Bondowner Representative a total rehabilitation and construction inspection/administrative fee ("Construction Inspection Fee") of \$[\_\_\_\_\_] on the Closing Date as a prepayment of the draw fee for the first [\_\_\_\_\_] draws during rehabilitation and construction to partially cover Bondowner Representative's monthly administrative fees and costs. The deposit listed in the preceding sentence will be credited to the actual costs incurred by Bondowner Representative in connection with the Loan.

**Section 3.13. Loan Fees.** In consideration for the making of the Construction Loan, Borrower shall pay to Bondowner Representative an origination fee in an amount equal to one and one-half percent (1.5%) of the Construction Loan amount of \$[13,600,000]. In consideration for making the commitment to enter into the Permanent Loan, Borrower shall pay to Bondowner Representative a permanent loan fee in an amount equal to one percent (1.0%) of the maximum Permanent Loan amount of \$[9,162,237]. Each of the Construction Loan origination fee and one-half of the Permanent Loan fee shall be payable concurrently with the recordation of the mortgage and one-half of the Permanent Loan fee shall be payable on or before the Permanent Loan Commencement Date. Pursuant to the terms and conditions contained in the Note, Borrower shall have the option to extend the term of the Construction Loan for one (1) period of up to six (6) months. Borrower shall pay the Bondowner Representative an extension fee of one and one-half percent (1.5%) of the outstanding Construction Loan Amount. All of the amounts set forth in this Section are nonrefundable when paid.

**Section 3.14. Financial and Other Information.** Borrower shall keep true and correct financial books and records on a cash basis for the rehabilitation of the Project. During the term of the Construction Loan (as defined in the Note), Borrower shall provide to Bondowner Representative, on or before the tenth (10th) day of each month, a current rent roll, an operating statement for the previous month and calendar year-to-date, and such other reports as are provided to Borrower by the management agent of the Project, including, without limitation, if requested by Bondowner Representative, a narrative report of the progress of the leasing efforts and results for the Project, which report shall also compare such progress with the Pro Forma Schedule (as defined below) most recently approved by the Bondowner Representative, and a report evidencing Borrower's compliance with Section 42 of the Internal Revenue Code.

**Section 3.15. Notices by Borrower.** Borrower shall promptly notify Bondowner Representative and Issuer in writing of:

(a) any litigation affecting Borrower, or any general partner of Borrower, where the amount claimed is \$25,000 or more.

(b) any communication, whether written or oral, that Borrower may receive from any governmental, judicial or legal authority, giving notice of any claim or assertion that the Project Premises or the Project fail in any material respect to comply with any of the Requirements or any other applicable governmental law, regulation, ordinance or guidance.

(c) any material adverse change in the physical condition of the Project (including any damage suffered as a result of earthquake, fire or flood) or the financial condition or operations of Borrower, or any constituent general partner of Borrower.

(d) any material default by the Contractor or any subcontractor, material supplier or surety, or any material adverse change in the financial condition or operations of any of them.

(e) any actual or proposed condemnation or taking for public or private use which affects all or part of the Project or any interest in it.

(f) any default by Borrower under any of the Loan Documents, the Permitted Encumbrance Documents or any of the Requirements.

(g) any material default by any of Borrower's partners under the Partnership Agreement.

(h) any actual or threatened exercise by any third party of any right or remedy on account of any default or alleged default of Borrower under or with respect to any loan, contract or agreement to which Borrower is a party, and which could have a material adverse effect upon Borrower, the Project or the rehabilitation of the Project.

(i) any actual or proposed change in Borrower's name or any trade name in which it does business.

**Section 3.16. Keeping Guarantor Informed.** Borrower shall keep any guarantor who or which has furnished a guaranty of the Loan informed of all material matters with respect to the Project and the Loan.

**Section 3.17. Income From Project.**

(a) Before using any income it may derive from the Project for any other purpose, Borrower shall first apply all such income to pay costs and expenses associated with the ownership, management, maintenance, operation and leasing of the Project, including any amounts then due and payable under the Loan Documents.

(b) **[Reserved].**

**Section 3.18. Performance of Acts.** Upon request by Bondowner Representative, Borrower shall perform all acts which may be reasonably necessary or advisable to perfect any lien or security interest provided for in the Loan Documents or to carry out the intent of the Loan Documents.

### **Section 3.19. Indemnity Regarding Rehabilitation and Other Risks.**

(a) Without limiting the indemnity provided in Article VII hereof or in the Regulatory Agreement and except to the extent caused by the willful misconduct in the case of the Issuer and the gross negligence or willful misconduct in the case of any other Indemnified Party, Borrower indemnifies and holds the Indemnified Parties (as defined below) harmless from and against any and all Indemnified Costs (as defined below) directly or indirectly arising out of or resulting from the transactions contemplated by this Agreement (including any claims for any brokerage fee, finder's fee, or similar fee) and construction of any improvements on the Project, including any defective workmanship or materials; or any failure to satisfy any requirements of any laws, regulations, ordinances, governmental policies or standards, reports, leases or development agreements that apply or pertain to any rehabilitation of the Project; or any failure to satisfy any Requirements; or Bondowner Representative's performance of any act permitted under the Loan Documents (excluding Bondowner Representative's gross negligence or willful misconduct); or breach of any representation or warranty made or given by Borrower to any of the Indemnified Parties or to any prospective or actual buyer or lessee of all or any portion of the Project; or any claim or cause of action of any kind by any party that any Indemnified Party is liable for any act or omission of Borrower or any other person or entity in connection with the ownership, sale, leasing, rehabilitation, construction, operation or development of the Project.

(b) Upon demand by any Indemnified Party, Borrower shall defend any investigation, action or proceeding involving any Indemnified Costs which is brought or commenced against any Indemnified Party, whether alone or together with Borrower or any other person, all at Borrower's own cost and by counsel to be approved by the Indemnified Party in the exercise of its reasonable judgment. In connection therewith, Borrower shall pay for the cost and expense of any counsel hired or engaged by an Indemnified Party to protect its interest and/or to oversee any defense of the Indemnified Party by Borrower and its counsel. In the alternative, any Indemnified Party may elect to conduct its own defense at the expense of Borrower.

(c) "Indemnified Parties" means and includes the Trustee, Issuer and the Bondowner Representative, its parent, subsidiary and affiliated companies, assignees of any of Bondowner Representative's interest in the Loan or the Loan Documents, owners of other interests in the Loan or the Loan Documents, any purchasers of the Project at any foreclosure sale or from Bondowner Representative or any of its affiliates, and the officers, directors, employees and agents of each of them, past, present and future.

(d) "Indemnified Costs" means all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages, costs, expenses, fines, penalties and losses (including sums paid in settlement of claims and all consultant, expert and legal expenses), including those incurred in connection with any investigation of site conditions or any remedial, removal or restoration work (whether of the Project or any other property), or any resulting damages, harm or injuries to the person or property of any third parties or to any natural resources, but excluding any Costs (as defined in the Indemnity Agreement), which Costs are subject to payment as is set forth in the Indemnity Agreement. Borrower shall not settle or compromise a claim giving rise to liability on the part of an Indemnified Party without the approval of such Indemnified Party.



(e) Notwithstanding any provision to the contrary set forth in any Loan Document, to the fullest extent permitted by law, the obligations created by this section shall survive repayment of the Loan and foreclosure of the Mortgage or deed in lieu thereof. Following such repayment or foreclosure, all obligations of Borrower under this section shall be unsecured obligations of Borrower to the extent they are either unknown or unliquidated at the time of such repayment or foreclosure.

**Section 3.20. Operation of the Project.** Borrower shall at all times operate on the Project an affordable housing apartment rental facility in compliance with all Requirements.

**Section 3.21. Preservation of Existence.** Borrower shall preserve and maintain its existence, and all material licenses, rights, franchises and privileges in the jurisdiction of its formation and all authorizations, consents, approvals, orders, licenses, permits, or exemptions from, or registrations with, any governmental agency that are necessary for the transaction of its business, including all notices, permits or licenses, if any, filed or obtained with regard to compliance with environmental laws, and qualify and remain qualified to transact business in each jurisdiction in which such qualification is necessary in view of its business or the ownership or leasing of its properties, including the Project.

**Section 3.22. Low Income Housing Tax Credits.** Borrower shall perform all actions and shall meet all requirements necessary or desirable to maintain the allocation of LIHTCs to it.

**Section 3.23. State Law Requirements. [Reserved].**

**Section 3.24. Management Agreement and Management Plan.** Any management company for the Project, and the management agreement with such management company shall be subject to the prior written approval of Bondowner Representative. The management agreement shall not be amended, modified, supplemented, terminated or canceled without the prior written approval of Bondowner Representative which approval shall not be unreasonably withheld, delayed or conditioned. Borrower shall obtain Bondowner Representative's approval of Borrower's management plan for the Project which approval shall not be unreasonably withheld, delayed or conditioned, which plan shall provide for training of the on-site staff in full compliance with federal, state and local affordable housing requirements applicable to the Project.

**Section 3.25. Bondowner Representative's Approval of Junior Draw Requests.** If Borrower is obligated to expend Permitted Encumbrance funds for rehabilitation and construction of the Project, information and materials furnished by Borrower to the holder of any Permitted Encumbrance shall also be furnished to Bondowner Representative concurrently therewith for Bondowner Representative's review and approval, except as may otherwise be provided in an intercreditor agreement between Bondowner Representative and such holder.

**Section 3.26. Security Interest in Accounts.** Borrower hereby grants a security interest in the Equity Account, the NOI Account, Borrower's Funds Account, any Cash Collateral and the Checking Account, to the Bondowner Representative to secure all of Borrower's obligations under the Loan Documents.

**Section 3.27. Disbursement of the Loan.** Not less than 95% of all disbursements of the Loan comprised of proceeds of the Bond shall be used to pay or reimburse Borrower for Qualified Project Costs (as defined in the Regulatory Agreement), and no disbursements of the Loan comprised of proceeds of the Bond shall be used to pay for the acquisition of land or any interest therein. The amount expended for acquisition and rehabilitation or construction (consisting of amounts chargeable to Borrower's capital account incurred in connection with the acquisition and rehabilitation or construction of the Project) will exceed 95% of the proceeds of the Bond, all pursuant to Section 142(d) of the Code. Project rehabilitation and construction from Loan Proceeds will be completed no later than two years after the date of Bond Closing. Borrower will incur Qualified Rehabilitation Expenditures (as defined in the Regulatory Agreement) with respect to the Project in an amount equal to or greater than 15% of the portion of the cost of acquiring the Project (exclusive of any acquisition costs attributable to land) financed with the net proceeds of the Bond. No costs of the Project for which Bond proceeds will be used were paid for or incurred more than 60 days prior to official action taken by the Issuer on January 13, 2015 (the "Inducement Date").

**Section 3.28. Payment of All Issuer Costs; Trustee Fees.** Borrower agrees to pay Issuer's Fees and the Trustee's Ordinary Fees and Expenses at the time such fees are due, and to pay within 30 days after receipt of request for payment thereof, which request shall set forth the relevant expenses, all charges, costs, advances, indemnities and expenses, including agent and counsel fees (other than Costs of Issuance paid at Closing), of the Issuer incurred by the Issuer at any time in connection with the Bonds or the Project, including any amendment, interpretation and enforcement of any of the Loan Documents. Borrower will also promptly pay all costs and expenses incurred by Issuer and/or Trustee in connection with the making, disbursement and administration of the Loan and the issuance and administration of the Bond, including, without limitation, the Extraordinary Fees and Expenses. Such costs and expenses shall be paid by Borrower in addition to Issuer's Fee and Trustee's Ordinary Fees and Expenses, which Borrower shall pay as and when required by the Indenture and this Agreement. Borrower agrees to pay all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Trustee and the Issuer (above and beyond the Trustee's Ordinary Fees and Expenses or the Issuer's Ongoing Fee) incurred under the Indenture, as and when the same become due. Borrower will also pay the fees and expenses of any Arbitrage Consultant engaged with respect to the Bond, and will pay any amounts due and owing to the U.S. Treasury as rebate payments.

**Section 3.29. No Purchase of Interest in Note or Bond.** Borrower shall not, nor shall Borrower permit any Related Person to, pursuant to any arrangement, formal or informal, purchase any interest in the Note or the Bond.

**Section 3.30. Note Payments, Issuer and Trustee Fees.** Prior to and following the Permanent Loan Commencement Date, Borrower shall remit all Note payments representing principal, premium, if any, and interest on the Loan to Trustee. If any such amount is paid to Bondowner Representative, Bondowner Representative shall forward any such amounts received by Bondowner Representative to Trustee immediately. All amounts payable pursuant to Section 3.28 hereof shall, likewise, be paid directly to Trustee. Other amounts payable hereunder shall, unless otherwise directed by Issuer, be payable to or at the direction of Bondowner Representative as servicer of the Loan.

## ARTICLE IV

### LEASES

**Section 4.01. Standard Form Lease.** Borrower shall submit to Bondowner Representative for its written approval a standard form of residential lease to be used for leasing of the Project, a copy of which is attached as Exhibit G hereto (the “Standard Lease”). The Standard Lease shall comply with all applicable Requirements. Borrower shall revise the Standard Lease from time to time as reasonably necessary to comply with any change in the Requirements and shall promptly furnish to Bondowner Representative a copy of the revised Standard Lease.

**Section 4.02. Pro-Forma Schedules.** Borrower shall also submit for Bondowner Representative’s written approval pro forma schedules which are attached hereto as Exhibit F (the “Pro Forma Schedules”) stating substantially the following information and projections:

(a) A listing of the rental rates for each apartment (including the maximum rental rate permitted by the Requirements). Such listing shall break out units by bedroom and bathroom count, and by unit square footage, as well as by affordability levels. The listing shall provide the maximum rent, the utility allowance, and the net rent for each unit type. The listing shall be in a similar format, with substantially the same information, as provided in the income information section of the Low-Income Housing Tax Credit Application. The listing shall also address the rental information regarding the market rate units and the managers’ units. Rental rates should be adjusted to an effective rent, if necessary, to be net of any rental concessions in the form of free rent.

(b) A breakdown of the calculation of the utility allowances in a format similar to that provided in the Low-Income Housing Tax Credit Application.

(c) A calculation of total annual potential gross income similar to that provided in the Low-Income Housing Tax Credit Application. Such summary shall include: aggregate annual rent for all units; total projected annual rental subsidy; and a breakdown of income from laundry facilities, garages, and other income. Commercial income, if any, shall be addressed separately.

(d) A detailed breakdown of the annual residential operating expenses, including annual replacement reserves. Commercial expenses, if any, shall be addressed separately.

(e) A 15-year stabilized cash flow for income and expenses, noting date of stabilization, and including debt service and a debt service coverage ratio for each year.

(f) If the Project is not yet stabilized at rates complying with the Requirements, a monthly lease-up schedule through the projected date of stabilization.

**Section 4.03. [Reserved].**

**Section 4.04. No Changes.** Borrower shall not materially modify the approved Standard Lease or adversely deviate from the approved Pro Forma Schedules without Bondowner Representative's prior written consent in each instance, which consent shall not be unreasonably withheld, delayed or conditioned.

**Section 4.05. Landlord's Obligations.** Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Project. If any tenant at any time claims any breach of landlord's obligations and the amount of such claim (in excess of available insurance coverage) is \$10,000 or more, Borrower shall promptly notify Bondowner Representative and Issuer of such claim.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

Borrower promises that each representation and warranty set forth below is true, accurate and correct in all material respects as of the date of this Agreement. Each Disbursement Request, as defined in Exhibit F, shall be deemed to be a reaffirmation of each and every representation and warranty made by Borrower in this Agreement. The Conversion Notice (as defined in the Note) and the conversion of the Loan on the Permanent Loan Commencement Date, respectively, shall also be deemed to be a reaffirmation, as of such dates, of each and every representation and warranty made by Borrower in this Agreement.

**Section 5.01. Authority.** To the best of Borrower's knowledge, Borrower has complied with any and all laws and regulations concerning its organization, existence and the transaction of its business. Borrower has the right and power to acquire and rehabilitate the Project as contemplated in the Loan Documents.

**Section 5.02. Compliance.** Borrower is familiar and has complied with all of the Requirements, as well as all other applicable laws, regulations and ordinances relating to the Project. Borrower has properly obtained, or will when necessary for purposes of this Agreement obtain, all permits, licenses and approvals necessary to rehabilitate, occupy, operate, market and lease or sell the Project in accordance with all Requirements, including those pertaining to zoning, and, upon request, Borrower will deliver true and correct copies of them to Bondowner Representative.

**Section 5.03. Enforceability.** Borrower is authorized to execute, deliver and perform under the Loan Documents. Those documents are valid and binding obligations of Borrower.

**Section 5.04. No Violation.** To the best of Borrower's knowledge, Borrower is not in violation of any provision of the Loan Documents or of any law, regulation or ordinance, or any order of any court or government entity. To the best of Borrower's knowledge, no provision or obligation of Borrower contained in any of the Loan Documents violates any of the Requirements, any other applicable law, regulation or ordinance, or any order or ruling of any court or governmental entity. No such provision or obligation conflicts with, or constitutes a breach or default under, any agreement binding or regulating the Project.

**Section 5.05. No Claims.** There are no claims, actions, proceedings or investigations pending against Borrower or affecting the Project except for those previously disclosed by Borrower to Bondowner Representative in writing. To the best of Borrower's knowledge, there has been no threat of any such claim, action, proceeding or investigation, except for those previously disclosed by Borrower to Bondowner Representative in writing.

**Section 5.06. Financial Information.** All financial information which has been and will be delivered to Bondowner Representative or Issuer, including all information relating to the financial condition of Borrower or any of Borrower's partners or the Project, fairly and accurately represents the financial condition being reported on as of its date. All such information was prepared in accordance with generally accepted accounting principles consistently applied, unless otherwise noted. There has been no material adverse change in any financial condition reported at any time to Bondowner Representative

**Section 5.07. Accuracy.** To the best of Borrower's knowledge, all reports, documents, instruments, information and forms of evidence which have been delivered to Bondowner Representative by the Borrower or its affiliates concerning the Loan or required by the Loan Documents are materially accurate, correct and sufficiently complete to give Bondowner Representative and Issuer true and accurate knowledge of their subject matter. To the best of Borrower's knowledge, none of them contains any material misrepresentation or omission.

**Section 5.08. Loan in Balance; Adequacy of Loan.** The Loan is "in balance" and the disbursed Loan funds, together with any sums provided or to be provided by Borrower as shown in the cost breakdown, are sufficient, in view of all facts and circumstances known to or reasonably foreseeable by Borrower, to acquire and rehabilitate the Project and to accomplish the purposes contemplated by the Loan Documents.

**Section 5.09. Taxes.** Borrower has filed all required state, federal and local income tax returns which are due and has paid all taxes which are due and payable. Borrower knows of no basis for any additional assessment of taxes.

**Section 5.10. Utilities.** All utility services, including gas, water, sewage, electrical and telephone, which are necessary to develop and occupy the Project, are available at or within the boundaries of the Project.

**Section 5.11. Borrower Not a "Foreign Person".** Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

**Section 5.12. Indenture.** The Indenture has been submitted to Borrower for its examination, and Borrower acknowledges, by execution of this Agreement, that it has reviewed the Indenture and that it accepts each of its obligations expressed or implied thereunder. The Borrower will fully and faithfully perform all the duties and obligations which the Issuer has covenanted and agreed in the Indenture to cause the Borrower to perform and any duties and obligations which the Borrower is required in the Indenture to perform. The foregoing will not apply to any duty or undertaking of the Issuer, which by its nature cannot be delegated or assigned.

**Section 5.13. Regulatory Agreement.** The Project is, and will be, in compliance with all requirements of the Regulatory Agreement, including all applicable requirements of the Law, the Act and the Code (as such terms are defined in the Regulatory Agreement). Borrower shall cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Law, the Act and the Code. All leases will comply with all applicable laws and the Regulatory Agreement. The Project will meet the requirements of this Agreement and the Regulatory Agreement and any applicable requirements of the Law, the Act and the Code.

**Section 5.14. No Reliance on Issuer or Bondowner Representative.** Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or Issuer or the Bondowner Representative is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including, without limitation, the risk of loss of the Project and its interests therein; and that it has not relied on Issuer or the Bondowner Representative for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement or otherwise relied on Issuer or the Bondowner Representative in any manner.

**Section 5.15. Average Life.** The average maturity of the Bond does not exceed 120% of the average reasonably expected economic life of the facilities to be financed with the proceeds of the Loan.

**Section 5.16. Interest in the Project.** Borrower intends to hold the Project for its own account and has no current plans to sell and has not entered into any agreement to sell.

**Section 5.17. Location.** The Project will be located wholly within the City of Los Angeles, California.

**Section 5.18. Use of Loan Proceeds.** All of the proceeds of the Loan shall be used to finance the acquisition and rehabilitation of the Project, provided that: (a) at least 95% of the proceeds of the Loan financed with proceeds of the Bond shall be used to finance Qualified Project Costs (as defined in the Regulatory Agreement); and (b) Borrower will incur Qualified Rehabilitation Expenditures with respect to the Project in an amount equal to or greater than 15% of the portion of the cost of acquiring the Project (exclusive of any acquisition costs attributable to land) financed with the net proceeds of the Bonds. No proceeds of the Loan financed with proceeds of the Bond will be used to pay or reimburse any cost (i) incurred more than sixty days prior to the Inducement Date, (ii) incurred more than 18 months prior to the later of the date of such payment or reimbursement or the date the Project is placed in service or (iii) incurred more than three years prior to such payment or reimbursement. The rehabilitation and equipping of the Project by Borrower commenced less than 60 days prior to the Inducement Date, and as of 60 days prior to the Inducement Date (A) neither Borrower nor any related person had made any expenditure in connection with the rehabilitation or equipping of the Project, (B) no on-site work had been commenced by Borrower or any related person in connection with the rehabilitation of the Project, and (C) no off-site fabrication of any portion of the Project had been commenced by Borrower or any related person. The Project consists,

and shall at all times consist, of property which is land or is subject to the allowance for depreciation provided in Section 167 of the Code.

Borrower has incurred, or shall incur within six months following the date of issuance of the Bond, a substantial binding obligation in the form of a purchase agreement or construction contract or both to acquire, rehabilitate or equip the Project pursuant to which Borrower is or will be obligated to expend not less than 5% of the principal amount of the Bond. Borrower shall proceed with due diligence to complete the Project and reasonably expects to expend the full amount of the Loan by no later than two years after the date of Bond Closing.

**Section 5.19. Changes to the Project.** Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Law or the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Bond. Borrower intends to utilize the Project as required by the Regulatory Agreement.

**Section 5.20. Cost of Issuance.** Not in excess of 2% of the proceeds of the Loan financed with proceeds of the Bond will be used to pay Costs of Issuance (as defined in the Indenture).

**Section 5.21. Related Parties.** Borrower has contacted all “related persons” of the Borrower (within the meaning of Section 147(a) of the Code); and neither it nor any of them shall, at any time, pursuant to any arrangement, formal or informal, acquire any interest in the Bond.

**Section 5.22. Other Tax Covenants.**

(a) **General.** Issuer and Borrower have entered into this Agreement with the intention that the interest on the Bond be and remain excluded from gross income for federal income tax purposes. Accordingly, for the benefit of Issuer and the Bondholder, Borrower covenants that it will not (i) take any action, (ii) fail to take any action or (iii) make any use of the Project or the proceeds of the Loan, which would cause the interest on the Bond to be or become includable in the gross income of the owner thereof for federal income tax purposes.

(b) **Closing Certificates.** Borrower recognizes that certain of the facts, estimates and circumstances required to be set forth in the arbitrage certificate and other instruments of Issuer to be delivered in connection with the issuance of the Bond, including form 8038, will be based upon the representations of Borrower in the Tax Certificate and elsewhere. Borrower covenants that any facts, estimates and circumstances set forth or described in any certificate delivered by Borrower on the date of issuance of the Bond will be based on Borrower’s reasonable expectations on the date of issuance of the Bond and will be, to the best of the knowledge of the representative of Borrower furnishing such facts, estimates and circumstances, true, correct and complete as of that date, and Borrower hereby agrees to make or cause to be made reasonable inquiries as to the truth, correctness and completeness.

(c) **Investments.** Borrower covenants and agrees that it will not use or permit the use of any of the funds provided by Issuer hereunder or any other funds of Borrower, directly or indirectly, or direct Bondowner Representative to invest any funds held by it hereunder

(including investment of any funds contributed by the Borrower), in such manner as would, or take or omit to take any other action that would cause the Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code or “federally guaranteed” within the meaning of Section 149(b) of the Code and applicable regulations promulgated from time to time thereunder. Borrower understands that this limitation may apply to funds held as collateral provided to Bondowner Representative, Trustee or the Bondholder as security for the repayment of the Loan.

In the event that at any time Borrower is of the opinion or becomes otherwise aware that for purposes of this Section 5.22(c) it is necessary to restrict or to limit the yield on the investment of any moneys held by Bondowner Representative in Borrower’s Funds Account or any other account described in Section 2.02 hereof, Borrower shall determine the limitations and so instruct Bondowner Representative in writing (with a copy to Issuer) and cause Bondowner Representative to comply with those limitations.

Borrower will take such action or actions as may be reasonably necessary in the opinion of Bond Counsel (as defined in the Regulatory Agreement), or of which it otherwise becomes aware, to comply fully with Section 148 of the Code, including, but not limited to, Section 148(d)(3) of the Code regarding investment of gross proceeds of the Bond in investments with a yield in excess of the yield on the Bond.

(d) ***Federal Guaranty.*** Borrower shall take no action or permit or suffer any action to be taken if the result of the same would be to cause the Bond to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

(e) ***[Reserved].***

(f) ***Prohibited Uses.*** No portion of the proceeds of the Bond shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises. No portion of the proceeds of the Bond shall be used for an office unless the office is located on the premises of the facilities constituting the Project and unless not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

**Section 5.23. No Condemnation.** There is not now pending, and Borrower has not received notice of, any actual or proposed condemnation or taking for public or private use affecting all or any portion of the Project or any interest in it.

**Section 5.24. Borrower’s Uniform Commercial Code Location.** Borrower is a limited partnership organized under the laws of the State of California, and will not change its form and place of organization without first notifying Bondowner Representative in writing.

(a) **Minimum Wage Covenant.** All workers performing construction work for the Project employed by the Borrower or by any contractor or subcontractor shall be compensated in an amount no less than the greater of (i) the general prevailing rate of per diem wages (“Prevailing Wages”) as determined pursuant to California Labor Code Sections 1770-1781 and implementing regulations of the Department of Industrial Relations, (ii) the general prevailing rate of per diem wages as determined by the U.S.



Labor Department pursuant to the Davis–Bacon Act under 40 U.S.C.S. 3141–3148 and implementing regulations (“Davis-Bacon Wages”), if applicable; and (iii) the “Living Wage” as determined by the policies and procedures of the City of Los Angeles. The Borrower shall comply with all reporting and recordkeeping requirements of the City Los Angeles’ prevailing wage policy. The Borrower shall, and shall cause the contractors and subcontractors to, submit data and documents related to Prevailing Wages or Davis-Bacon Wages, if applicable, using the LCP Tracker or comparable HCIDLA-approved program. The fee for the LCP Tracker, or comparable HCIDLA-approved program, will be in the amount equal to Three One-Hundredths Percent (0.03%) of the total construction cost, which fee shall be paid in full to the City of Los Angeles as provided in the Regulatory Agreement.

## ARTICLE VI

### DEFAULTS AND REMEDIES

**Section 6.01. Events of Default.** Borrower will be in default under this Agreement upon the occurrence of any one or more of the following events (“Events of Default”):

(a) Borrower fails to make any payment of principal or interest under the Note within 5 days after the date when such payment is due;

(b) Borrower fails to make any deposit of funds within 5 days after the date when such deposit is due or if demanded by Bondowner Representative under this Agreement within 5 days after Bondowner Representative’s demand;

(c) Borrower fails to comply with any other covenant contained in this Agreement and (i) with respect to any covenant which calls for the payment of money, does not cure that failure within 5 days after written notice from Bondowner Representative and (ii) with respect to all other covenants, is not cured within 25 days after written notice from Bondowner Representative;

(d) Borrower or any of its general partners becomes insolvent or the subject of any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships which remains undismissed or unstayed for a period of 60 days (“Act of Bankruptcy”);

(e) Borrower dissolves, terminates or liquidates;

(f) [Reserved];

(g) Borrower is in default under the Mortgage, following the expiration of any applicable cure period in the Mortgage;

(h) any representation or warranty made or given in any of the Loan Documents proves to be false or misleading in any material respect as of the date made or given;

(i) rehabilitation of the Project is abandoned for a period of 15 consecutive days for any cause which is not beyond the reasonable control of Borrower or any of its contractors or subcontractors or is not completed on or before the Completion Date;

(j) rehabilitation of the Project is halted prior to completion for any period of 15 consecutive days for any cause which is not beyond the reasonable control of Borrower or any of its contractors or subcontractors;

(k) any governmental, judicial or legal authority having jurisdiction over the Project orders or requires that rehabilitation of the Project be stopped in whole or in part or any required approval, license or permit is withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect either (i) for a period of 30 consecutive days (“Initial Cure Period”) or (ii) for a total period of 90 days, so long as Borrower begins within the Initial Cure Period and diligently continues to take steps to remove the effect of the order, requirement, withdrawal or suspension, and Bondowner Representative, exercising reasonable judgment, determines that Borrower is reasonably likely to prevail;

(l) Borrower is in default under any contract for the rehabilitation of the Project or any lease of any part of the Project or any space within the Project, either (i) for an Initial Cure Period of 30 consecutive days or (ii) for a total period of 90 days, so long as Borrower begins within the Initial Cure Period and diligently continues to cure the default, and Bondowner Representative, exercising reasonable judgment, determines that the cure cannot reasonably be completed at or before expiration of the Initial Cure Period;

(m) Borrower fails to comply with any provision contained in this Agreement other than those provisions elsewhere referred to in this Section 6.01 and does not cure that failure either (i) within an Initial Cure Period of 30 consecutive days after written notice from Bondowner Representative or (ii) within 90 days after such written notice, so long as Borrower begins within the Initial Cure Period and diligently continues to cure the failure, and Bondowner Representative, exercising reasonable judgment, determines that the cure cannot reasonably be completed at or before expiration of the Initial Cure Period;

(n) under any of the Loan Documents, an Event of Default (as defined in that document) occurs;

(o) an “Event of Default” occurs under the Regulatory Agreement;

(p) a determination by the Bondowner Representative in its reasonable judgment that there has been a material adverse change in Borrower’s financial condition; or

(q) the occurrence of a Determination of Taxability.

Bondholder Representative hereby consents to any correction of a default on the part of the Borrower hereunder made by the Investor Limited Partner on behalf of the Borrower within the same time periods as provided in Section 6.01.

Copies of all notices which are sent to Borrower under the terms of this Agreement shall also be sent to Goldfarb & Lipman LLP, 1300 Clay Street, 11<sup>th</sup> Floor, Oakland, CA 94612;

[HUDSON ENTITY] [ADDRESS]; BBCN Bank, 2727 West Olympic Blvd., Suite 213, Los Angeles, CA 90006, Attention: Mr. Hassan Bouayad; and Paul Hastings Janofsky & Walker, LLP, 25<sup>th</sup> Floor, 515 South Flower Street, Los Angeles, CA 90071, Attention: Kenneth Krug, Esq.

**Section 6.02. Remedies.** If an Event of Default occurs under this Agreement, Bondowner Representative may direct Trustee, as assignee of the rights of Issuer hereunder, to exercise any right or remedy which Issuer has under any of the Loan Documents, or which is otherwise available at law or in equity or by statute, and all of such rights and remedies shall be cumulative. Trustee shall take such actions hereunder and under the Loan Documents as directed in writing by Bondowner Representative. If any Event of Default occurs, Bondholder's obligation to lend under the Loan Documents shall automatically terminate and Bondowner Representative may, in its sole discretion, withhold any one or more disbursements. Bondowner Representative may also withhold any one or more disbursements after an event occurs that with notice or the passage of time could become an Event of Default under this Agreement. No disbursement of Loan funds by Bondholder shall cure any default of Borrower, unless Bondowner Representative agrees otherwise in writing in each instance. Bondowner Representative may, upon the occurrence of an event of default hereunder or under the Mortgage, instruct the Trustee to redeem the Bond pursuant to Section 3.01(g) of the Indenture. Bondowner Representative and Trustee shall permit the Investor Limited Partner to cure any Event of Default to the extent and in the manner as the Borrower may cure such Event of Default hereunder.

Notwithstanding anything to the contrary contained in the Indenture, this Agreement or any of the other Loan Documents, and excepting the Unassigned Issuer's Rights, Bondowner Representative has the right to act on behalf of Issuer and Trustee by taking any action which Bondowner Representative, in its good faith discretion, deems prudent in order to enforce any right or remedy of Issuer or Trustee under the Loan Documents, provided that such action shall not adversely affect the exclusion of interest on the Bond from gross income for federal income tax purposes.

If Borrower commits an Act of Bankruptcy, all of Borrower's obligations under the Loan Documents shall automatically become immediately due and payable upon the filing of the petition commencing such proceeding, all without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character. Upon the occurrence of any other Event of Default, all of Borrower's obligations under the Loan Documents may become immediately due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character, all at Lender's option, exercisable in its sole discretion. If such acceleration occurs, Bondowner Representative may apply the undisbursed Loan funds, and any other available Borrower's Sources to the obligations of Borrower under the Loan Documents, in any order and proportions that Bondowner Representative in its sole discretion may choose, subject to the requirements of the Indenture with respect to the application of Bond proceeds.

Also upon any Event of Default, Bondowner Representative shall have the right, as servicer of the Loan and on behalf of Trustee to cause to be recorded a notice of default under

the Mortgage, to enter and take possession of the Project, whether in person, by agent or by court-appointed receiver, to take any and all actions which Bondowner Representative in its sole discretion may consider necessary to complete rehabilitation or construction of the Project, including making changes in plans, specifications, work or materials and entering into, modifying or terminating any contractual arrangements, all subject to Bondowner Representative's right at any time to discontinue any work without liability and to exercise any and all rights and remedies of Issuer (except for Unassigned Issuer's Rights) under the Loan Documents in such order and to such extent as Bondowner Representative determines in its sole discretion. If Bondowner Representative chooses to complete the Project, it shall not assume any liability to Borrower or any other person for completing the Project, or for the manner or quality of construction of the Project, and Borrower expressly waives any such liability. If Bondowner Representative or Trustee exercises any of the rights or remedies provided in this paragraph, that exercise alone shall not make Bondowner Representative or Trustee, or cause Bondowner Representative to be deemed to be, a partner or joint venturer of Borrower. Bondowner Representative in its sole discretion may choose to complete rehabilitation and construction in its own name. All sums which are expended by Bondowner Representative in completing rehabilitation and construction shall be considered to have been disbursed to Borrower on behalf of Issuer and shall be secured by the Mortgage and any other collateral held by Issuer, Trustee or Bondowner Representative in connection with the Loan; any sums of principal shall be considered to be an additional loan to Borrower bearing interest at the Default Rate, as defined in the Note, and shall be secured by the Mortgage and any other collateral held in connection with the Loan. For these purposes, Bondowner Representative, in its sole discretion, may reallocate any line item or cost category of the cost breakdown.

## **ARTICLE VII**

### **INDEMNIFICATION; BORROWER'S OBLIGATIONS**

Borrower releases Issuer, Trustee and Bondowner Representative, and their respective officers, directors, agents, officials, employees, counsel, attorneys and agents, past, present and future (and as to Issuer, members of its governing body) and any person who controls Issuer, Trustee or Bondowner Representative within the meaning of the Securities Act of 1933, from, and covenants and agrees, without limiting the Indemnity provided in Section 3.19 hereof or in the Regulatory Agreement, to indemnify, hold harmless and defend Issuer, Trustee and Bondowner Representative and their respective officers, members, supervisors, directors, officials and employees, counsel, attorneys and agents, past present and future of each of them and any person who controls such party within the meaning of the Securities Act of 1933 and employees and each of them (each an "Indemnified Party") from and against, any and all losses, claims, damages, demands, liabilities and expenses (including reasonable attorney's fees and expenses), taxes (other than income taxes payable by any party as a result of any fees payable to such parties in connection with the transaction contemplated hereby), causes of action, suits, claims, demands and judgments of any nature, joint or several, by or on behalf of any person arising out of:

(a) the transactions provided for in the Loan Documents or the Indenture or otherwise in connection with the Project, the Bond, the Loan or the execution and delivery or amendment of any other document entered into in connection with the transactions provided for in the

Indenture or the Loan Documents (provided no indemnity shall be required for claims due to nonpayment of the Note);

(b) the approval of the financing for the Project or the making of the Loan;

(c) the issuance and sale of the Bond or any certifications or representations made by any person other than the party seeking indemnification;

(d) any and all claims arising in connection with the interpretation, performance, enforcement, breach, default or amendment of the Indenture, the Loan Documents or any other documents relating to the Project or the Bond or in connection with any federal or state tax audit or any questions or other matters arising under such documents (provided no indemnity shall be required for claims due to nonpayment of the Note);

(e) the carrying out by Borrower of any of the transactions provided for in the Indenture or the Loan Documents;

(f) Trustee's acceptance or administration of the trusts created by the Indenture or the exercise of its powers or duties under the Indenture or under this Agreement, the Regulatory Agreement or any other agreements to which it is a party or otherwise in connection with the transactions provided for in the Indenture or the Loan Documents except for claims arising from Trustees administration where such is a result of actions contrary to Trustees duties and obligations;

(g) any and all claims arising in connection with the issuance and sale of the Bond or any certifications or representations made by any person other than the Indemnified Party seeking indemnification, including, without limitation, any statement or information made by Borrower with respect to Borrower or the Project in any offering document or materials regarding the initial offering of the Bond (in connection with its issuance under the Indenture), the Project or Borrower or the Tax Certificate executed by Borrower or any other certificate executed by Borrower which, at the time made, is misleading, untrue or incorrect in any material respect and any untrue statement or alleged untrue statement of a material fact by the Borrower relating to Borrower or the Project contained in any offering material relating to the initial offering of the Bond, as from time to time amended or supplemented with information provided by Borrower, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact relating to Borrower or the Project required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading, or failure to properly register or otherwise qualify the sale of the Bond or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bond could be sold and the carrying out by Borrower of any of the transactions contemplated by the Indenture or the Loan Documents;

(h) Borrower's failure to comply with any requirement of this Agreement or the Regulatory Agreement (provided no indemnity shall be required for claims due to nonpayment of the Note);

(i) any act or omission of Borrower or any of its agents, servants, employees or licensees in connection with the Loan or the Project, including violation of any law, ordinance,

court order or regulation affecting the Project or any part of it or the ownership, occupancy or use of it (provided no indemnity shall be required for claims due to nonpayment of the Note);

(j) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Project or arising out of any action or inaction of Borrower, whether or not related to the Project, or resulting from or in any way connected with the acquisition, rehabilitation and construction or management of the Project, the issuance of the Bond or otherwise in connection with transactions contemplated or otherwise in connection with the Project, the Bond or the execution or amendment of any document relating to the Project or the Bond;

(k) any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project; and

(l) any and all claims arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or supervision of work done in or about, or from the planning, design, acquisition, rehabilitation, construction, repair or equipping of, the Project or any part of it, including, but not limited to, the Americans with Disabilities Act, if applicable (as evidenced by an architect's certificate to such effect).

This indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought with respect to such claim, except:

(i) in the case of the foregoing indemnification of Trustee or any of the other Indemnified Parties (except as provided in the following subparagraph (ii)) 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 Issuer or Bondowner Representative, or any of their respective Indemnified Parties, to the extent such damages are caused by the willful misconduct in the case of the Issuer or the gross negligence or willful misconduct in the case of the Bondowner Representative.

In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought under this Agreement, Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense of the action or proceeding, including the employment of counsel selected by Borrower, subject to the approval of the Indemnified Party, which approval shall not be unreasonably withheld, conditioned or delayed, and shall assume the payment of all expenses related to the action or proceeding, with full power to litigate, compromise or settle the same in its sole discretion, provided that Issuer, Bondowner Representative and Trustee, as appropriate, shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense of the action or proceeding, and Borrower shall be obligated to pay the reasonable fees and expenses of such separate counsel if (A) the Indemnified Party, upon the advice of counsel, determines that a conflict of interest exists between the interests of the Indemnified Party and the interests of Borrower or (B) such separate counsel is employed with

the approval of Borrower, which approval shall not be unreasonably withheld, conditioned or delayed.

Borrower understands and agrees that the foregoing release includes all claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, and Borrower has read and understands, and hereby waives the benefits of, Section 1542 of the California Civil Code which provides as follows:

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

Borrower acknowledges that it may hereafter discover facts different from or in addition to those which it now knows or believes to be true with respect to the foregoing release by Borrower and agree that the foregoing release shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery thereof.

Nothing in this Article VII shall in any way limit the Borrower’s indemnification and other payment obligations set forth in the Regulatory Agreement.

The obligations of the Borrower under this Article VII shall survive the termination of this Agreement and the repayment of the Loan and the Bond. If, and to the extent that the obligations of the Borrower under this Article VII 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

## **ARTICLE VIII**

### **BONDOWNER REPRESENTATIVE AS SERVICER**

Bondowner Representative may, in the exercise of its sole discretion, cause some or all of its rights and responsibilities with respect to the disbursement procedures set forth in Article II to be performed by a professional disbursement agent (“Disbursement Agent”). Borrower hereby approves [DISBURSEMENT AGENT] or such other Disbursement Agent selected by the Bondowner Representative as Bondowner Representative’s Disbursement Agent. All reasonable fees payable to [DISBURSEMENT AGENT], or such other Disbursement Agent selected by Bondowner Representative in connection with the Loan shall be payable by Borrower as part of the costs of the Loan. If Bondowner Representative elects to utilize the services of a Disbursement Agent, the Checking Account referred to herein shall be a checking account of Disbursement Agent at Bondowner Representative and Disbursement Agent shall be responsible for delivering checks from the Checking Account to each payee set forth in an approved Draw Request.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01. No Waiver; Consents.** Each waiver by Bondowner Representative must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from Bondowner Representative's delay in exercising or failure to exercise any right or remedy against Borrower or any security. Consent by Bondowner Representative to any act or omission by Borrower shall not be construed as a consent to any other or subsequent act or omission or as a waiver of the requirement for Bondowner Representative's consent to be obtained in any future or other instance. All rights and remedies of Bondowner Representative are cumulative.

**Section 9.02. Purpose and Effect of Bondowner Representative Approval.** Bondowner Representative's approval of any matter in connection with the Loan shall be for the sole purpose of protecting Bondowner's security and rights. No such approval shall result in a waiver of any default of Borrower. In no event shall Bondowner Representative's approval be a representation of any kind with regard to the matter being approved.

**Section 9.03. No Commitment To Increase Loan.** From time to time, Bondowner Representative may approve changes to the Plans and Specification at Borrower's request and may also require Borrower to make corrections to the work of rehabilitation and construction, all on and subject to the terms and conditions of this Agreement. Borrower acknowledges that no such action or other action by Bondowner Representative shall in any manner commit or obligate Lender to increase the amount of the Loan.

**Section 9.04. No Third Parties Benefited.** This Agreement is made and entered into for the sole protection and benefit of Issuer, the Bondholder and Borrower and their permitted successors and assigns. No trust fund is created by this Agreement and no other persons or entities shall have any right of action under this Agreement or any right to the Loan funds.

**Section 9.05. Joint and Several Liability.** If Borrower consists of more than one person or entity, each shall be jointly and severally liable to Issuer and Bondowner Representative for the faithful performance of this Agreement.

**Section 9.06. Notices.** All notices given under this Agreement shall be in writing and shall be given by personal delivery, overnight receipted courier (such as FedEx), sent to the party at its address appearing in Section 12.04 of the Indenture. Notices shall be effective as provided in the Indenture. Addresses for notice may be changed by either party by notice to the other parties as provided in the Indenture.

Borrower hereby agrees to provide Issuer with a copy of any notice given to Bondowner Representative.

**Section 9.07. Authority To File Notices.** Borrower irrevocably appoints Bondowner Representative as its attorney-in-fact, with full power of substitution, to file for record, at Borrower's cost and expense and in Borrower's name, any notices of completion, notices of



cessation of labor, or any other notices that Bondowner Representative, in its sole discretion, may consider necessary or desirable to protect its security, if Borrower fails to do so.

**Section 9.08. Actions.** Bondowner Representative, in its capacity as servicer of the Loan, shall have the right, but not the obligation, to commence, appear in and defend any action or proceeding which might affect its security or its rights, duties or liabilities relating to the Loan, the Project or any of Bondowner Representative's Loan Documents. Borrower shall pay promptly on demand all of Bondowner Representative's reasonable out-of-pocket costs, expenses and legal fees and expenses of Bondowner Representative's counsel incurred in those actions or proceedings.

**Section 9.09. Attorneys' Fees.** If any lawsuit, reference or arbitration is commenced which arises out of or relates to this Agreement, the Loan Documents or the Loan, except in the case of any lawsuit, reference or arbitration involving Issuer, as to which the following provisions shall not apply, the prevailing party shall be entitled to recover from each other party such sums as the court, referee or arbitrator may adjudge to be reasonable attorneys' fees in the action, reference or arbitration, in addition to costs and expenses otherwise allowed by law. In all other situations, including any matter arising out of or relating to any Act of Bankruptcy, Borrower agrees to pay all of Bondowner Representative's, Issuer's or Trustee's costs and expenses, including reasonable attorneys' fees, which may be incurred in enforcing or protecting Bondowner Representative's, Issuer's or Trustee's rights or interests. From the time(s) incurred until paid in full to Bondowner Representative, all such sums shall bear interest at the Default Rate.

**Section 9.10. In-house Counsel Fees.** Whenever Borrower is obligated to pay or reimburse Bondowner Representative for any reasonable attorneys' fees, those fees shall include the allocated costs for services of in-house counsel.

**Section 9.11. Incorporation of Tax Certificate.** The representations of Borrower set forth in the Tax Certificate and the Borrower's Cost Certificate, each dated the Dated Date are incorporated by reference herein as if fully set forth herein.

**Section 9.12. Loss of Tax Exclusion.** Borrower understands that the interest rates provided under this Agreement and the Note are based on the assumption that interest income paid on the Bond and received by Bondholder will be excludable from Bondholder's gross income under Section 103 of the Code and is exempt from personal income taxation under applicable State law. In the event that (a) Borrower receives notice from Bondowner Representative that Bondowner Representative has discovered any facts, actions or failure to act by Borrower that would cause the interest on the Bond not to be treated as tax-exempt, or (b) Bondowner Representative receives notice from the Internal Revenue Service or other government agency that interest payable on the Bond is not excludable from the gross income of the owner thereof for federal income tax purposes, or that the Internal Revenue Service is challenging the tax-exempt status of the Bond, then the interest rate on the Note shall be changed to the Default Rate (as that term is defined in the Indenture), subject to any applicable limitations on the interest rates under the Act or applicable law. In the event of a Determination of Taxability, Borrower shall have fifteen days from the date of receipt of notice thereof to elect

to have the interest rate on the entire principal amount of the Note changed to the Taxable Rate effective on the date of Determination of Taxability.

If, within 180 days following the date of the conversion of interest hereunder to the Taxable Rate, Borrower delivers to Bondowner Representative evidence satisfactory to Bondowner Representative that interest on the Bond is excludable from the gross income of the owner thereof for federal income tax purposes (which may consist of an opinion of bond counsel from a law firm in form and substance acceptable to Bondowner Representative and Issuer to such effect), Bondowner Representative, on behalf of the Bondholder, will promptly refund to Borrower an amount equal to the difference between the interest actually paid at the Taxable Rate and the interest which would have been payable hereunder in the absence of a conversion of the interest rate on the Bond to the Taxable Rate plus interest on such amount at the Taxable Rate.

Any increase in the interest rate pursuant to this Section 9.12 will operate both prospectively and retroactively to the date upon which interest on the Bond becomes (or is stated by the Internal Revenue Service to have become) includable in the gross income of the owner thereof for federal income tax purposes, and Borrower shall pay to Bondowner Representative, for the benefit of Bondholder, promptly upon demand any interest due. Borrower shall also indemnify, defend and hold Bondholder and Issuer harmless from any penalties, interest expense or other costs, including reasonable attorneys' fees (including all allocated charges of internal counsel) and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of the Bond and the interest payable thereunder. The obligations of Borrower under this paragraph shall survive termination of this Agreement and repayment of the Loan.

**Section 9.13. Tax Status.** Borrower agrees as follows:

(a) that Borrower will not take or permit any action to be taken that would adversely affect either the exclusion from gross income for federal income tax purposes of the interest on the Bond and, if it should take or permit any such action, Borrower will take all lawful actions to rescind such action promptly upon having knowledge thereof; and

(b) that Borrower will take such action or actions, including amending this Agreement and the Note, as determined reasonably necessary in the opinion of Bond Counsel to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service under the Code. Borrower further acknowledges that all investments of moneys in Borrower's Funds Account must be made in compliance with the Code and regulations thereunder. Borrower agrees to calculate and pay any amounts owing to the United States as rebate applicable to the Loan, the Bond, this Agreement or the Indenture, in accordance with Section 148 of the Code.

**Section 9.14. Applicable Law.** This Agreement is governed by the laws of the State of California, without regard to the choice of law rules of that State.

**Section 9.15. Heirs, Successors and Assigns; Participations.** The terms of this Agreement shall bind and benefit the heirs, legal representatives, successors and assigns of the parties; provided, however, that Borrower may not assign this Agreement or any Loan funds, or assign or delegate any of its rights or obligations, without the prior written consent of Issuer and Bondowner Representative in each instance. Borrower acknowledges that Issuer has absolutely assigned all of its right, title and interest in this Agreement (except for Unassigned Issuer's Rights) and the other Loan Documents to Trustee for the benefit of the Bondholder and that Trustee may assign its rights under the Loan Documents to the Bondholder subject to the provisions thereof. Without notice to or the consent of Borrower, Bondholder may disclose to any actual or prospective purchaser of any securities issued or to be issued by Bondholder, and to any actual or prospective purchaser or assignee of any participation or other interest in the Loan or the Bond, any financial or other information, data or material in Bondholder's possession relating to Borrower, the Loan, the Bond or the Project.

**Section 9.16. Relationships With Other Borrower's Customers.** From time to time, Bondowner Representative or Bondholder may have business relationships with Borrower's customers, suppliers, contractors, tenants, members, partners, shareholders, officers or directors, or with businesses offering products or services similar to those of Borrower or with persons seeking to invest in, borrow from or lend to Borrower. Borrower agrees that Bondowner Representative and Bondholder may extend credit to such parties and may take any action it may deem necessary to collect the credit, regardless of the effect that such extension or collection of credit may have on Borrower's financial condition or operations. Borrower further agrees that in no event shall Bondowner Representative and Bondholder be obligated to disclose to Borrower any information concerning any other Bondowner Representative and Bondholder.

**Section 9.17. Disclosure to Title Company.** Without notice to or the consent of Borrower, Bondowner Representative may disclose to any title insurance company which insures any interest of Trustee, Issuer or Bondholder under the Mortgage (whether as primary insurer, coinsurer or reinsurer) any information, data or material in Bondowner Representative's possession relating to Borrower, the Loan or the Project.

**Section 9.18. Improvement District.** Borrower shall not vote in favor of, or directly or indirectly, advocate or assist in the incorporation of any part of the Project into any improvement or community facilities district, special assessment district or other district without Bondowner Representative's prior written consent in each instance.

**Section 9.19. Restriction on Personal Property.** Borrower shall not sell, convey or otherwise transfer or dispose of its interest in any material personal property in which Trustee, Issuer or Bondholder has a security interest or contract to do any of the foregoing, without the prior written consent of Bondowner Representative in each instance unless such item is a fungible tenant improvement (e.g., carpet, appliances, plumbing fixtures) which is replaced by property of comparable or better value and quality. Bondowner Representative's prior written consent shall be required for any material changes to any structural or operational components of the Project, such as elevators, air conditioning or security systems and the like.

**Section 9.20. Force Majeure.** If the rehabilitation or construction of the Project is directly affected and delayed by fire, earthquake or other acts of God, inclement weather which

could not reasonably be anticipated by Borrower, strike, lockout, acts of public enemy, riot, insurrection, or governmental regulation of the sale or transportation of materials, supplies or labor, Borrower must notify Bondowner Representative in writing within ten (10) business days after the event occurs which causes the delay. So long as no Event of Default has occurred and is continuing and such notice is given in a timely manner, Bondowner Representative shall extend by a period of time equal to the period of the delay only those time periods stated in the Completion Schedule for completing rehabilitation or construction which is directly affected and delayed by the event, provided that the aggregate time extension for all delays shall not exceed a total of ninety (90) days, and provided further that (i) no extension shall be given for any delay caused by an event, occurrence or condition which is within the reasonable control or anticipation of Borrower, Contractor, or any subcontractor, and (ii) Borrower shall undertake all reasonable efforts to resolve the delay and to minimize the effects of the delay on the work and progress of rehabilitation or construction. No such extension shall affect the time for performance of, or otherwise modify, any of Borrower's other obligations under the Loan Documents or the maturity of the Note.

**Section 9.21. Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement shall in no way affect any other provision.

**Section 9.22. Interpretation.** Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Agreement are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Agreement. Time is of the essence in the performance of this Agreement by Borrower. The exhibits to this Agreement are hereby incorporated in this Agreement.

**Section 9.23. Amendments.** This Agreement may not be modified or amended except by a written agreement signed by the parties hereto.

**Section 9.24. Counterparts.** This Agreement and any attached consents or exhibits requiring signatures may be executed in counterparts, and all counterparts shall constitute but one and the same document.

**Section 9.25. Language of Agreement.** The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party.

**Section 9.26. Recourse.** Recourse for Borrowers obligations hereunder shall be determined pursuant to the Note.

**Section 9.27. Integration and Relation to Loan Commitment.** The Loan Documents (a) integrate all the terms and conditions mentioned in or incidental to this Agreement, (b) supersede all oral negotiations and prior writings with respect to their subject matter, including Bondholder's loan commitment to Borrower and (c) are intended by the parties as the final expression of the agreement with respect to the terms and conditions set forth in those documents and as the complete and exclusive statement of the terms agreed to by the parties.

No representation, understanding, promise or condition shall be enforceable against any party unless it is contained in the Loan Documents. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including any other Loan Document, the terms, conditions and provisions of this Agreement shall prevail.

**Section 9.28. Estoppel Certificates.** Upon written request of Borrower to Bondowner Representative, Bondowner Representative shall provide Borrower with an estoppel certificate regarding the lack of any Event of Default hereunder, if appropriate, and the amount of the principal balance of the Loan remaining unpaid as of the date of the estoppel, and in any event in a form acceptable to Bondowner Representative, as necessary to satisfy any obligation under Borrower's partnership agreement. Such statement shall be subject to the requirements of California Civil Code Section 2943 amended, and any successor law thereto.

**Section 9.29. Non Discrimination and Affirmative Action.** The Borrower shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the Issuer. The Borrower shall not discriminate in its employment practices against any employee or applicant for employment denial of family and medical care leave; denial of pregnancy disability leave or reasonable accommodations against any employee or applicant for employment because of such person's race, ancestry, color, citizenship, national origin, religion, sex, sexual orientation, gender identity/expression, transgender status, age, marital status, familial status, domestic partner status, physical handicap, mental disability, medical condition, political affiliation or belief. The Borrower shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). The Borrower shall comply with the provisions of the Los Angeles Administrative Code Sections 10.8 through 10.13, to the extent applicable hereto. The affirmative action program of the Borrower shall include the mandatory contract provisions set forth in the Los Angeles Administrative Code Section 10.8.4, and said provisions are incorporated herein by this reference. The Borrower shall also comply with all rules, regulations, and policies of the Issuer's Board of Public Works, Office of Contract Compliance relating to nondiscrimination and affirmative action, including the filing of all forms required by the Issuer. Any subcontract entered into by the Borrower relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this section. No person shall on the grounds of race, ancestry, color, citizenship, national origin, religion, sex, sexual orientation, gender identity/expression, transgender status, age, marital status, familial status, domestic partner status, physical handicap, mental disability, medical condition, political affiliation or belief be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Agreement. For purposes of this Section, Title 24 Code of Federal Regulations Part 107 and Section 570.601(b) defines specific discriminatory actions that are prohibited and corrective action that shall be taken in a situation as defined therein.

**Section 9.30. Time.** Time shall be of the essence in the performance of this Agreement.

**Section 9.31. Assignment of Issuer's Rights.** As security for payment of the Bond, Issuer will pledge the amounts payable hereunder and assign, without recourse or liability, to

Trustee, Issuer's rights under this Agreement and the Note, including the right to receive payments hereunder (but excluding Unassigned Issuer's Rights), and hereby directs Borrower to make said payments directly to Trustee, or otherwise upon the order of Trustee. Borrower herewith consents to such assignment and will make payments under this Agreement directly to Trustee, or otherwise to the order of Trustee without defense or set off by reason of any dispute between Borrower and Issuer, Trustee or the Bondholder.

**Section 9.32. Limitation on Issuer's Liability.** No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee, attorney or agent of Issuer in his or her individual capacity, and neither any employee, attorney or officer of the Issuer nor any officer thereof executing the Bond shall be liable personally on the Bond or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee, attorney or agent of Issuer shall incur any personal liability with respect to any other action taken by him or her pursuant to this Loan Agreement or the Act, provided such director, officer, employee, attorney or agent acts in good faith. No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by Issuer contained in any document executed by Issuer in connection with the Project or the issuance, sale and delivery of the Bond shall give rise to any pecuniary liability of Issuer or a charge against its general credit or taxing powers, or shall obligate Issuer financially in any way.

**Section 9.33. Americans With Disabilities Act.** [the following is subject to further revision] Borrower hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., and its implementing regulations and the American Disabilities Act Amendments Act (ADAAA) Pub. L. 110-325 and all subsequent amendments (the "ADA"). Borrower will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the ADA. Borrower will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by Borrower, relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this Section.

**Section 9.34. Business Tax Registration Certificate.** Subject to any exemption available to it, Borrower and Bondowner Representative each represent that it has obtained or will obtain the Business Tax Registration Certificate(s) required by the City of Los Angeles' Business Tax Ordinance (Article 1, Chapter 2, Section 21.00 and following, of the Los Angeles Municipal Code). For the term covered by this Agreement, Borrower and Bondowner Representative each shall maintain, or obtain as necessary, any such Business Tax Registration Certificate(s) required of it under said Ordinance and shall not allow any such Business Tax Registration Certificate(s) to be revoked or suspended.

**Section 9.35. Child Support Assignment Orders.** This Agreement is subject to Section 10.10 of the Los Angeles Administrative Code, Child Support Assignment Orders Ordinance. Pursuant to this Ordinance, Borrower certifies that it will (a) fully comply with all State and Federal employment reporting requirements applicable to Child Support Assignment Orders; (b) that the principal owner(s) of Borrower are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (c) fully

comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230 et seq.; and (d) maintain such compliance throughout the term of the Regulatory Agreement. Pursuant to Section 10.10.b of the Los Angeles Administrative Code, failure of Borrower to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Borrower to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default by Borrower as appropriate, under the terms of the Regulatory Agreement, subjecting (i) Borrower to the remedies provided herein and (ii) the Trustee to termination under the Indenture where, in either case, such failure shall continue for more than 90 days after notice of such failure to Borrower by Issuer. Any subcontract entered into by Borrower relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph and shall incorporate the provisions of the Child Support Assignment Orders Ordinance. Failure of Borrower to obtain compliance of its subcontractors shall constitute a default by Borrower under the terms of this Agreement, subjecting (i) Borrower to the remedies provided herein and (ii) the Trustee to termination under the Indenture where such failure shall continue for more than 90 days after notice of such failure to Borrower by Issuer.

Borrower shall comply with the Child Support Compliance Act of 1998 of the State of California Employment Development Department. The Borrower hereby affirms that to the best of its knowledge, it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in subdivision (b) of Section 7110 of the Public Contract Code.

**Section 9.36 Responsible Banking Ordinance Filing.** The Bondowner Representative shall file with the City Treasurer of the Governmental Lender by July 1 of each year, commencing July 1, 2015, an annual statement of community reinvestment activities as required of a commercial bank under the Governmental Lender’s Ordinance 182138 adopted May 25, 2012 (the “Responsible Banking Ordinance”). The Funding Lender represents that it has filed the report due by July 1, 2014 under the Responsible Banking Ordinance for calendar year 2013.

[Remainder of page intentionally left blank]

The parties to this Agreement have caused this Agreement to be executed by their duly authorized representatives as of the date set forth above.

**CITY OF LOS ANGELES**, as Issuer

By Los Angeles Housing and Community  
Investment Department

By \_\_\_\_\_  
Helmi A. Hisserich  
Authorized Officer

Approved as to form:

**CITY OF LOS ANGELES**  
**MICHAEL N. FEUER**, City Attorney

\_\_\_\_\_  
Deputy/Assistant City Attorney

[Issuer Signature Page to *Leaster* Loan Agreement]



The parties to this Agreement have caused this Agreement to be executed by their duly authorized representatives as of the date set forth above.

**LEASTER APARTMENTS, L.P.**, a California limited partnership

By: Pico-Union Housing Corporation,  
a California nonprofit public benefit corporation, its general partner

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

[Borrower Signature Page to *Leaster* Loan Agreement]

The parties to this Agreement have caused this Agreement to be executed by their duly authorized representatives as of the date set forth above.

**BBCN BANK** as Bondowner Representative

By \_\_\_\_\_  
Name: Hye Jung Yoon  
Title: First Vice President & Portfolio Manager

[Bondowner Signature Page to *Leaster* Loan Agreement]

**EXHIBIT A**  
**PROMISSORY NOTE**

**EXHIBIT B**

**PROJECT PREMISES**

The land referred to is situated in the County of Los Angeles, City of Los Angeles, State of California, and is described as follows:

[TO BE PROVIDED]

**EXHIBIT C**  
**[RESERVED]**

## EXHIBIT D

### LOAN DOCUMENTS

1. Credit and Security Documents
  - (a) Regulatory Agreements (3).
  - (b) Agreement.
  - (c) Note.
  - (d) [Reserved].
  - (e) Mortgage.
  - (f) Assignment of Housing Assistance Payments Contract.
  - (g) Financing Statement UCC-1.
  - (h) Assignment.
  - (i) [Reserved]
  - (j) [Reserved].
  - (k) Replacement Reserve Agreement.
  - (l) Subordination Agreement.
  - (m) [Reserved].
  - (n) Security Agreement.
  - (o) [Reserved].
2. Guaranties and Indemnity
  - (a) Certificate and Indemnity Agreement Regarding Hazardous Substances.
  - (b) Payment and Performance Guaranty by the Guarantor in favor of Trustee.
3. Evidence of Authority
  - (a) Partnership certificate authorizing Borrower to:
    - (i) borrow; and
    - (ii) execute the Loan Documents.
  - (b) Partnership certificate, limited liability company certificate or certified copy of corporate minutes for each general partner of Borrower authorizing the general partner as general partner of Borrower to:
    - (i) borrow; and
    - (ii) execute the Loan Documents.

## **EXHIBIT E**

### **DISBURSEMENT SCHEDULE**

#### 1. Conditions to Disbursement

Before Bondowner Representative becomes obligated to make any disbursement under the Agreement, all conditions to the disbursement must be satisfied at Borrower's sole cost and expense in a manner acceptable to Bondowner Representative. Borrower acknowledges that delays in disbursements may result from the time necessary for Bondowner Representative to verify satisfactory fulfillment of any and all conditions to a given disbursement. Borrower consents to all such reasonable delays.

##### (a) Loan Closing

Bondowner Representative is not required to consent to closing the Loan until all conditions to such closing are satisfied in a manner acceptable to Bondowner Representative. If Bondowner Representative in its sole discretion allows the Loan to close before all of the following conditions are satisfied, the remaining conditions must be satisfied or expressly waived by Bondowner Representative before Bondowner Representative will make any disbursements of Borrower's Sources. The conditions to closing are as follows:

(1) Bondowner Representative must have received all Loan Documents duly executed and, where required, acknowledged.

(2) Bondowner Representative must have received evidence satisfactory to Bondowner Representative that Borrower's Sources, taking into account the amount and timing thereof, are sufficient to pay the Total Project Costs on a timely basis.

(3) The Mortgage must be duly recorded as a first priority encumbrance against the Project Premises and the adjacent property. If required by Bondowner Representative, Borrower and the holder of each Permitted Encumbrance must execute in recordable form a Subordination Agreement, in form and substance acceptable to Bondowner Representative ("Subordination Agreement"), to be recorded concurrently with the Mortgage.

(4) The security interest held by Issuer or the Trustee, as the case may be, in all fixtures and personal property covered by the Mortgage, and in all collateral covered by the Assignment of Rights or otherwise granted pursuant to the Agreement, must be a duly perfected first priority lien.

(5) Borrower shall deliver to Bondowner Representative copies of or certificates acceptable to Bondowner Representative evidencing, all policies of insurance required pursuant to the Mortgage and Bondowner Representative's insurance requirements.

(6) The Initial Cost Breakdown attached to the Agreement as Exhibit D-1 must have been approved by Bondowner Representative.

(7) The Plans and Specifications must have been approved by the Bondowner Representative and by all governmental authorities as needed for lawful rehabilitation and construction of the Project.

(8) The Operating Reserve Account, the NOI Account and the Checking Account must be opened with Bondowner Representative in accordance with Bondowner Representative's customary policies for the establishment of such accounts.

(9) All executed contracts and subcontracts with respect to the rehabilitation and construction of the Project must be acceptable to Bondowner Representative and be in full force and effect.

(10) Bondowner Representative must have received an environmental disclosure statement prepared and certified by Borrower using Bondowner Representative's prescribed form, and the information set forth in it must be acceptable to Bondowner Representative. If Bondowner Representative so requires, it must also receive a Phase I Report and (if applicable) a Phase II Report prepared by a consultant acceptable to Bondowner Representative stating that there are no Hazardous Substances, as defined in the Indemnity Agreement, present in, on, under or around the Project, and that there is no condition or circumstance which warrants further investigation or analysis in the opinion of the preparer of the report. Bondowner Representative shall also receive satisfactory evidence, if required, of the abatement, removal, disposal or correction of all unacceptable conditions identified in such reports, and Borrower must execute an operations and maintenance plan on Bondowner Representative's form or otherwise acceptable to Bondowner Representative if asbestos-containing materials or lead paint will continue to be present on the Project after abatement.

(11) Bondowner Representative's loan fees required pursuant to the Agreement must have been paid as set forth therein. Borrower shall have paid all of Bondowner Representative's costs and fees in connection with the Loan, including, without limitation, appraisal, administrative, closing, escrow and title fees (which title fees will include, among other things, prepayment of CLTA Form 122 endorsements in such number as Bondowner Representative specifies), cost engineering fees, environmental fees, and legal expenses. Said items must be paid by Borrower out of sources other than Borrower's Sources except to the extent included in the Initial Cost Breakdown.

(12) Bondowner Representative must have received and approved such financial statements, tax returns and other financial information which it may require regarding the financial condition of Borrower, any of its partners or joint venturers, any guarantors, any other parties or the Project.

(13) Bondowner Representative must have received and approved certified copies of the entity formation documents of Borrower and its partners as Bondowner Representative may require, including, without limitation, a copy of the Partnership Agreement executed by all of the general and limited partners, including, without limitation, all limited partners who will be providing equity contributions to Borrower.



(14) Bondowner Representative must have received and approved evidence of the due execution of the Permitted Encumbrance Documents for the Seller Loan by Borrower and any other parties, including appropriate certificates of authority.

(15) Bondowner Representative must have received evidence satisfactory to Bondowner Representative that all utilities will be provided which are necessary to develop and occupy the Project Premises and Project, including written assurances from such utility companies as Bondowner Representative may require. Bondowner Representative must also receive evidence satisfactory to Bondowner Representative of the availability of such amounts of potable water as are necessary to develop and occupy the Project Premises and Project, as contemplated by the Agreement.

(16) Bondowner Representative must have received evidence of such zoning (including variances) and other land use entitlements and building permits as may be necessary to lawfully commence and carry on rehabilitation and construction of the Project to completion, and thereafter to operate and occupy the Project as an apartment complex as contemplated hereby (except that actual issuance of permits necessary to commence rehabilitation and construction may be subject only to payment of the applicable fees).

(17) Bondowner Representative must have obtained an appraisal of the Project acceptable to Bondowner Representative.

(18) Bondowner Representative must have obtained evidence that the documents evidencing and securing the Seller Loan shall have been executed and, to the extent applicable, recorded.

(19) Bondowner Representative must have received an opinion of Borrower's counsel in form, scope and substance satisfactory to Bondowner Representative, covering the due formation and good standing of Borrower and each of its general partners or members, Borrower's authority to enter in the transaction contemplated by the Loan Documents, conflicts with applicable laws and other agreements, material litigation, enforceability and such other matters as Bondowner Representative shall require.

(20) Bondowner Representative must have received evidence satisfactory to it that all of the conditions under any applicable development agreement for the development, rehabilitation and construction of the Project have been satisfied in full by Borrower.

(21) Borrower must provide Bondowner Representative with an estoppel certificate or (if required by Bondowner Representative) an intercreditor agreement executed by the holder of each Permitted Encumbrance in form and substance satisfactory to Bondowner Representative and copies of all final Permitted Encumbrance Documents for review and approval by Bondowner Representative.

(22) Bondowner Representative must have received and approved a copy of each regulatory agreement or similar document affecting the Project in final form.

(23) Bondowner Representative must have received and approved Borrower's standard form of lease to be used for the Project.

(24) Borrower shall provide performance, and labor and material bonds as Bondowner Representative may require.

(25) Bondowner Representative must have received and approved a list of all contractors, subcontractors and the material suppliers to be employed in connection with the rehabilitation and construction of the Project (setting forth the nature of the work to be performed, the labor and materials to be supplied and the dollar amount of such work or materials). If requested by Bondowner Representative, Borrower shall also submit copies of all bids received for each item of work to be performed as well as copies of executed subcontracts with accepted bidders.

(26) Such other conditions as Bondowner Representative may require.

(27) An ALTA survey of the Property in form and substance acceptable to the Bondowner Representative from a surveyor that has professional liability insurance of at least \$1,000,000.

(28) [reserved].

(29) A title insurer acceptable to Bondowner Representative must issue an ALTA 1970 Form loan policy of title insurance, including an LP10 package, in the amount of the Loan, insuring the Mortgage as a first priority encumbrance against the Project Premises, showing the Project Premises and any existing portions of the Project to be vested in Borrower, subject only to exceptions consented to by Bondowner Representative in writing, together with such endorsements as Bondowner Representative may require. Bondowner Representative must have reviewed and approved a current ALTA survey of the Project Premises prepared at Borrower's expense by a licensed surveyor acceptable to Bondowner Representative, certified to Bondowner Representative and the title insurance company.

(30) An updated opinion of counsel to Borrower in form and substance acceptable to Bondowner Representative.

(31) The Plans and Specifications must have been approved by Bondowner Representative and by all governmental authorities as needed for lawful rehabilitation and construction of the Project

(b) Initial Disbursement and Subsequent Disbursements

After the Loan has closed, Bondowner Representative is not required to make or approve any disbursements of any Loan proceeds or any release of any other of Borrower's Sources:

(1) if any of the items set forth in subsection 1(a) above, which was not satisfied as a condition of closing, has not been satisfied or specifically waived by Bondowner Representative in writing as a condition of making disbursements.

(2) if Bondowner Representative fails to receive (i) a Draw Request (as defined below) accompanied by such documentation and information as Bondowner Representative may require, (ii) evidence satisfactory to Bondowner Representative that the Permitted Encumbrance funds and the capital contributions from the Investor Limited Partner to be made during or prior to commencement of rehabilitation or construction of the Project have been expended by Borrower for costs of rehabilitation or construction of the Project or other costs acceptable to Bondowner Representative, or (iii) any other documentation or information that Bondowner Representative may require under Section 2 of this Disbursement Schedule, or Bondowner Representative considers any such Draw Request, documentation or information to be unacceptable.

(3) if any part of the Project then subject to the Mortgage is materially damaged and not repaired, unless Bondowner Representative receives funds from Borrower or insurance proceeds sufficient to pay for all repairs in a timely manner.

(4) if any part of the Project then subject to the Mortgage, or any interest in any of it, is affected by eminent domain or condemnation proceedings.

(5) if the title insurer fails or refuses to issue upon request a CLTA Form 102.5 endorsement or its equivalent upon completion of the foundation for the Project (if applicable) or a CLTA Form 122 endorsement or its equivalent if required by Bondowner Representative for the particular disbursement, and/or any other title policy endorsement that Bondowner Representative may require.

(6) if Bondowner Representative receives a bonded or unbonded stop notice, unless Borrower timely files a release bond satisfactory to Bondowner Representative.

(7) if the Loan is “out of balance” and Borrower fails to comply with any demand by Bondowner Representative to deposit funds, and/or Bondowner Representative does not consent to any revised Cost Breakdown proposed by Borrower.

(8) if a default has occurred under any of the Loan Documents and is continuing, or an event has occurred and is continuing that with notice or the passage of time could become such a default, and Borrower has not corrected or cured the default.

(9) if a default has occurred and is continuing under any of the Requirements.

(10) if Borrower has failed timely to receive any equity contribution provided for in Partnership Agreement and such contribution has not subsequently been received.

(11) if Permitted Encumbrance funds shall not have been expended by Borrower as approved by Bondowner Representative or any uncured material default exists under any Permitted Encumbrance.

(12) if Borrower fails to satisfy any other conditions to funding required by Bondowner Representative and such failure is continuing.

(13) if Bondowner Representative has not received Issuer's written approval for loan disbursements relating to Project rehabilitation and construction costs.

(14) unless \$[ ] of the Tax Credit Equity has been disbursed and applied to costs of the Project pursuant to the Cost Breakdown.

(15) if the Housing Assistance Payment contract currently in force covering units at the Property is terminated for any reason, other than renewal or replacement with a long term contract in the form and substance acceptable to Bondowner Representative.

(c) Final Disbursement

Bondowner Representative is not required to make the final disbursement of Loan proceeds until all of the following conditions are satisfied:

(1) The Project must be fully completed in accordance with the Plans and Specifications and all Requirements.

(2) Bondowner Representative must receive evidence that a valid Notice of Completion for all of the Project has been recorded.

(3) Bondowner Representative must receive evidence that all certificates of occupancy or other permits necessary for occupancy of all of the Project have been obtained from the appropriate governmental authorities.

(4) Bondowner Representative must receive a final Draw Request, accompanied by written certification by the Architect and the Contractor that the Project as completed conform to the Plans and Specifications and all Requirements, (including, without limitation, an AIA G-704 Certificate of Substantial Completion with respect to the Project executed by the Architect) and by such other documentation and information as Bondowner Representative may require under Section 2 of this Disbursement Schedule.

(5) Borrower must provide endorsements to or a rewrite of Bondowner Representative's title insurance policy insuring lien-free completion of the Project as well as first-lien priority of the final disbursement.

(6) Bondowner Representative must receive complete as-built plans and specifications for the completed Project certified by the Architect as being complete and accurate.

(7) If the footprint of any of the improvements at the Property have changed, Bondowner Representative must receive and approve an ALTA as-built survey of the completed Project without any encroachments or exceptions of any kind except as acceptable to Bondowner Representative, prepared by a licensed surveyor, certified to Bondowner Representative and the title insurer.

(8) No default shall have occurred and be continuing under any of the Loan Documents and no event shall have occurred that upon notice or the passage of time would become such a default.

(9) Bondowner Representative has received Issuer's written approval for Final Disbursement relating to Project rehabilitation and construction costs.

(10) The Operating Reserve and Replacement Reserve Accounts shall have been established with Bondowner Representative (to be funded concurrently with Permanent Loan Conversion).

## 2. Draw Requests

Before Bondowner Representative becomes obligated to make any disbursement, it must receive a written request signed by Borrower or Borrower's agent designated in Section 5 of this Disbursement Schedule, using a form acceptable to Bondowner Representative ("Draw Request"), accompanied by such documentation and information as Bondowner Representative may require and the written consent of the Investor Limited Partner. In each Draw Request, Borrower shall request disbursement for one or more specified line item(s) of the Cost Breakdown. In addition, each Draw Request shall be accompanied by checks (to be drawn on the Checking Account) made out to each of Borrower's merchants, vendors, materialmen, suppliers, laborers, subcontractors, and other appropriate parties in the amount of the funds owed to such parties after appropriate adjustment for any retainages. Bondowner Representative shall not be obligated to fund any Draw Request earlier than thirty (30) days after receipt of a complete supporting package. In the event the Draw Request is approved and the funds from Borrower's Sources are disbursed into the Checking Account (or, in the case of Loan proceeds, deposited to the Project Fund), Bondowner Representative shall send the checks to the appropriate parties via regular U.S. Mail unless another method is approved by Bondowner Representative in its sole discretion. Borrower may submit Draw Requests to Bondowner Representative no more frequently than once each calendar month, unless Bondowner Representative has given its prior written consent in each instance.

With each Draw Request, Borrower shall submit to Bondowner Representative such items of information and documentation, including invoices, canceled checks, lien waivers and other evidence as may be required by Bondowner Representative to show that Borrower is in compliance with the Loan Documents. All such items must be acceptable in form and substance to Bondowner Representative.

Each Draw Request shall constitute Borrower's representation and warranty to Bondowner Representative that:

- (a) The Loan is "in balance" as defined in the Agreement.
- (b) All of the documentation submitted with the Draw Request is genuine and unaltered.
- (c) All disbursements made to date as well as those being currently requested were and will be in strict compliance with the Cost Breakdown, unless Borrower has notified

Bondowner Representative in writing to the contrary and Bondowner Representative has approved such deviation.

(d) The funds requested by the Draw Request will pay in full all invoices received by Borrower or by Contractor to date for labor, materials and services furnished in connection with the rehabilitation of the Project.

(e) Borrower has caused or will promptly cause the amounts requested by the Draw Request to be paid to the respective individuals or entities for which such amounts were requested.

(f) All amounts disbursed by Bondowner Representative pursuant to each previous Draw Request have been paid in the amounts and to the respective individuals or entities for which such amounts were requested.

### 3. Disbursement Amounts

For each line item of the Cost Breakdown, Bondowner Representative shall make disbursements of Borrower's Sources in amounts which, when totaled, do not exceed the maximum allocation of funds for that line item, as shown in the Cost Breakdown, taking into account all prior disbursements, any reallocations of Borrower's Sources made by Bondowner Representative, in its sole discretion, and all applicable retention requirements. If at any time Bondowner Representative is holding Borrower's Funds in the Equity Account or Borrower's Funds Account, Bondowner Representative shall make all disbursements first from such funds until they are exhausted, in the manner provided in Section 4 of this Disbursement Schedule. On the first day of each month occurring from and after the date hereof (whether or not Bondowner Representative disburses or is obligated to disburse any of the proceeds of the Loan and whether or not Bondowner Representative releases or is obligated to release any funds from the Equity Account), Borrower shall pay to Bondowner Representative a Construction Inspection Fee of \$[\_\_\_\_\_] on the Closing Date as a prepayment of the draw fee for the first [\_\_\_] draws during rehabilitation and construction to partially cover Bondowner Representative's monthly administrative fees and costs.

#### (a) Disbursements of Certain Costs Not Requiring Retention

For each line item of the Cost Breakdown other than Hard Costs, if otherwise approved, Bondowner Representative shall make one or more disbursements to Borrower or for its account in the amount applied for in Borrower's Draw Request, without retention.

#### (b) Disbursements of Costs Requiring Retention

Bondowner Representative shall withhold ten percent (10%) of each disbursement for each of the line items of the Cost Breakdown designated for withholding of ten percent (10%) retention (the "Retainage") until all conditions to Bondowner Representative's final disbursement have been satisfied.

When Bondowner Representative has determined in its sole, but reasonable, discretion that rehabilitation of the Project is at least fifty percent (50%) complete, Bondowner Representative will release the portion of the Retainage applicable to those specific subcontractors whose subcontracts are one hundred percent (100%) complete as determined by Bondowner Representative in its sole discretion, subject to the following additional conditions:

(i) Bondowner Representative will continue to withhold Retainage from all subsequent disbursements from applicable line items.

(ii) The request for release of a particular subcontractor's Retainage must be submitted to Bondowner Representative as part of a regular monthly Draw Request.

(iii) Borrower must notify Bondowner Representative's inspector at a regular monthly site meeting that a request for release of Retainage is to be submitted, so that the inspector can inspect for percentage of completion with respect to the subcontractor in question.

(iv) The Draw Request must include all required lien releases and other supporting documentation with respect to the release of Retainage.

(v) Notwithstanding anything the contrary set forth above, the aggregate Retainage held by Bondowner Representative must at all times be no less than seven and one-half percent (7.5%) of aggregate line items subject to Retainage disbursed to date until all conditions to Bondowner Representative's final disbursement of Loan proceeds have been satisfied.

Borrower, at its option, may request disbursement of the Retainage before requesting the final disbursement of Loan proceeds, provided that all conditions to the final disbursement have been satisfied.

(c) Disbursements of Interest Reserve

Any undisbursed Interest Reserve shown in the Cost Breakdown shall be disbursed to Borrower for purposes other than payment of interest on the Loan only after Bondowner Representative's receipt of a valid Conversion Notice (as defined in the Note) and only immediately prior to the Permanent Loan Commencement Date.

4. Borrower's Funds

At all times when Bondowner Representative is holding Borrower's Funds in Borrower's Funds Account or in the Equity Account, Bondowner Representative shall make all disbursements first from Borrower's Funds until they are exhausted.

5. Disbursement Procedures

(a) Disbursements

Bondowner Representative shall make all disbursements by placing funds into the Checking Account, except as otherwise provided in the Agreement or as otherwise agreed in writing by Bondowner Representative and Borrower.

(b) Authorized Signers

All Draw Requests and other documents in connection with the administration of the Loan must be signed in accordance with the most recent Disbursement Authorization form which Borrower has delivered to Bondowner Representative.

(c) Developer Fee

Other than \$[\_\_\_\_\_] payable at closing, no Developer Fee is payable until the Permanent Loan Conversion Date, the Developer Fee is payable only to the extent and at the times specified in the Cost Breakdown, notwithstanding anything contrary contained in the Partnership Agreement or any other document executed in connection with the Partnership Agreement.

(d) Draw Request Guidelines

Draw Requests shall be subject to Bondowner Representative's Guidelines for the Submittal of Construction Loan Draw Requests (the "Draw Guidelines") as amended from time to time; provided, however, that in the event of conflict between the Agreement (including, without limitation, this Disbursement Schedule) or any other Loan Document and the Draw Guidelines, the Agreement or such other Loan Document shall prevail.]



**EXHIBIT F**  
**PRO FORMA SCHEDULE**

**EXHIBIT G**  
**STANDARD FORM LEASE**

(to be attached)

## EXHIBIT H

### DESCRIPTION OF PROJECT, ENGINEER, ARCHITECT, CONTRACTOR, CONTRACTS, AND PLANS AND SPECIFICATIONS

#### 1. Project

When completed, the Project will consist of an 131-unit (plus two manager units) scattered site “affordable housing” apartment complex located at 825 Green Avenue, 1422-1430 Miramar Street and 911 East 120<sup>th</sup> Street, Los Angeles, California, together with all fixtures, tenant improvements and appurtenances now or later to be located on the Project Premises and/or in the Project, and other onsite improvements as are shown in the Plans and Specifications.

#### 2. Architect

Borrower has engaged Birba Group Architects, P.C., a licensed architect, to act as the Architect in connection with the rehabilitation of the Project. The contract between the Borrower and the Architect governing this engagement (the “Architecture Contract”) is entitled “Standard Form of Agreement Between Owner and Architect” AIA Doc B101-2007 and dated [\_\_\_\_\_].

#### 3. Contractor

Borrower has engaged [\_\_\_\_\_], a licensed general contractor, to act as the Contractor for the rehabilitation of the Project. The contract between Borrower and the Contractor governing this engagement (the “Construction Contract”) is entitled “Standard Form of Agreement Between Owner and Contractor” and dated [\_\_\_\_\_].

#### 4. [Reserved]

#### 5. Plans and Specifications

The Plans and Specifications described below were prepared by the Architect and the Project Engineer for the use of Borrower and the Contractor in rehabilitating the Project. The description of the plans and specifications is attached as Schedule 1 to this Exhibit B.

**SCHEDULE 1  
TO EXHIBIT H  
DESCRIPTION OF PLANS AND SPECIFICATIONS**

The Plans and Specifications are those contained in those certain plans dated [\_\_\_\_], 20[\_\_\_] as prepared by Birba Group Architects, P.C., the Project Architect, which are on file at the Borrower's principal place of business.

**EXHIBIT I-1**  
**INITIAL COST BREAKDOWN**

[TO BE ATTACHED]

**EXHIBIT I-2**  
**REVISED COST BREAKDOWN**

[N/A?]