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**TRUST INDENTURE**

**between the**

**CITY OF SAN JOSE, CALIFORNIA,**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Trustee**

**Dated as of December 1, 2009**

**Relating to:  
\$13,600,000  
City of San José, California  
Variable Rate Demand Multifamily Housing Revenue Bonds  
(Brookwood Terrace Family Apartments),  
Series 2009B**

# TABLE OF CONTENTS

## ARTICLE I DEFINITIONS

Section 1.01	Definitions .....	6
Section 1.02	Interpretation .....	26
Section 1.03	Construction Phase Credit Facility .....	26
Section 1.04	Termination of References .....	27

## ARTICLE II THE BONDS

Section 2.01	The Bonds .....	28
Section 2.02	Determination of Interest Rate on the Bonds .....	29
Section 2.03	Limited Obligations .....	36
Section 2.04	Indenture Constitutes Contract .....	37
Section 2.05	Form of Bonds; Execution; Initial Bond .....	37
Section 2.06	Authentication .....	37
Section 2.07	Mutilated, Lost, Stolen or Destroyed Bonds .....	38
Section 2.08	Transfer and Exchange of Bonds; Persons Treated as Owners .....	38
Section 2.09	Temporary Bonds .....	39
Section 2.10	Delivery of Bonds .....	39
Section 2.11	Establishment of Bond Mortgage Loan Fund; Application of Bond Proceeds and Other Moneys .....	40
Section 2.12	Book-Entry Only System of Registration .....	41
Section 2.13	Mandatory Tender of Bonds on Substitution Date .....	43
Section 2.14	Conversion .....	44
Section 2.15	Failed Conversion .....	45

## ARTICLE III REDEMPTION OF BONDS PRIOR TO MATURITY

Section 3.01	Redemption of Bonds Prior to Maturity .....	46
Section 3.02	Selection of Bonds for Redemption .....	49
Section 3.03	Notice of Redemption .....	50
Section 3.04	Cancellation .....	51
Section 3.05	Effect of Notice of Redemption .....	51
Section 3.06	Purchase of Bonds in Whole in Lieu of Redemption .....	51
Section 3.07	Cancellation of Purchased Bonds .....	52

## ARTICLE IV REVENUES AND FUNDS

Section 4.01	Pledge of Revenues and Assets; Establishment of Funds .....	53
Section 4.02	Bond Mortgage Loan Fund .....	54
Section 4.03	Application of Revenues .....	56

Section 4.04	Application of Bond Fund .....	58
Section 4.05	Application of Redemption Fund .....	59
Section 4.06	Application of Administration Fund.....	59
Section 4.07	Principal Reserve Fund .....	61
Section 4.08	Investment of Funds .....	62
Section 4.09	Moneys Held for Particular Bonds; Funds Held in Trust.....	63
Section 4.10	Accounting Records.....	64
Section 4.11	Amounts Remaining in Funds .....	64
Section 4.12	Rebate Fund; Compliance with Tax Certificate .....	64
Section 4.13	Cost of Issuance Fund.....	66
Section 4.14	Reports From the Trustee.....	66
Section 4.15	Payments Under Bond Mortgage Loan.....	67
Section 4.16	Drawings Under Credit Facility .....	67
Section 4.17	Notices Under Credit Facility .....	68

ARTICLE V

GENERAL COVENANTS AND REPRESENTATIONS

Section 5.01	Payment of Principal and Interest .....	69
Section 5.02	Performance of Covenants.....	69
Section 5.03	Instruments of Further Assurance .....	69
Section 5.04	Inspection of Project Books .....	70
Section 5.05	No Modification of Security; Additional Indebtedness .....	70
Section 5.06	Damage, Destruction or Condemnation .....	70
Section 5.07	[Reserved.] .....	70
Section 5.08	Tax Covenants .....	71
Section 5.09	Limitations on Liability .....	73

ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

Section 6.01	Events of Default .....	75
Section 6.02	Acceleration; Other Remedies Upon Event of Default .....	75
Section 6.03	Rights of Bondholders .....	78
Section 6.04	Waiver by Issuer.....	78
Section 6.05	Application of Moneys After Default.....	78
Section 6.06	Rights of the Credit Facility Provider.....	80
Section 6.07	Remedies Vested in Trustee.....	80
Section 6.08	Remedies of Bondholders .....	80
Section 6.09	Termination of Proceedings.....	81
Section 6.10	Waivers of Events of Default .....	81
Section 6.11	Notice to Bondholders if Default Occurs.....	82

ARTICLE VII

CONCERNING THE TRUSTEE

Section 7.01	Standard of Care.....	83
Section 7.02	Reliance Upon Documents.....	84

Section 7.03	Use of Proceeds .....	87
Section 7.04	Trustee May Hold Bonds .....	87
Section 7.05	Trust Imposed.....	87
Section 7.06	Compensation of Trustee .....	87
Section 7.07	Maintenance of Office.....	88
Section 7.08	Successor Trustee .....	88
Section 7.09	Resignation by the Trustee.....	88
Section 7.10	Removal of the Trustee.....	89
Section 7.11	Appointment of Successor Trustee .....	89
Section 7.12	Concerning Any Successor Trustee .....	89
Section 7.13	Successor Trustee as Trustee, Paying Agent and Bond Registrar .....	90
Section 7.14	Servicing the Bond Mortgage Loan .....	90
Section 7.15	Co-Trustee or Separate Trustee .....	90
Section 7.16	Compliance of Borrower Under Regulatory Agreement.....	92
Section 7.17	Record of Advances and Freddie Mac Reimbursement Amounts .....	92
Section 7.18	Filing of Financing Statements .....	93

## ARTICLE VIII

### SUPPLEMENTAL INDENTURES AND AMENDMENTS OF CERTAIN DOCUMENTS

Section 8.01	Supplemental Indentures Not Requiring Consent of Bondholders .....	94
Section 8.02	Supplemental Indentures Requiring Consent of Bondholders .....	95
Section 8.03	Amendments to Financing Agreement Not Requiring Consent of Bondholders .....	96
Section 8.04	Amendments to Financing Agreement Requiring Consent of Bondholders .....	97
Section 8.05	Amendments to the Credit Facility .....	97
Section 8.06	Rating Confirmation for Certain Amendments .....	98
Section 8.07	Opinion of Bond Counsel Required .....	98

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF INDENTURE

Section 9.01	Discharge of Lien .....	99
Section 9.02	[Reserved] .....	100
Section 9.03	Discharge of Liability on Bonds .....	100
Section 9.04	Payment of Bonds after Discharge of Indenture.....	100
Section 9.05	Deposit of Money or Securities with Trustee .....	101

## ARTICLE X

### REMARKETING AND PURCHASE OF BONDS

Section 10.01	Demand for and Mandatory Purchase of Bonds .....	102
Section 10.02	Mandatory Tender of Bonds.....	103
Section 10.03	Remarketing of Bonds .....	104
Section 10.04	Purchase of Bonds not Remarketed.....	105
Section 10.05	Remarketing Agent.....	106
Section 10.06	Qualifications and Resignation or Removal of Remarketing Agent.....	107
Section 10.07	Tender Agent .....	108
Section 10.08	Qualifications of Tender Agent.....	109

Section 10.09	Dealing in Bonds .....	110
Section 10.10	Purchased Bonds .....	110

ARTICLE XI  
MISCELLANEOUS

Section 11.01	Consents and Other Instruments of Bondholders .....	113
Section 11.02	Limitation of Rights .....	114
Section 11.03	Construction of Conflicts; Severability .....	114
Section 11.04	Notices .....	114
Section 11.05	Credit Facility Provider .....	118
Section 11.06	Trustee as Paying Agent and Bond Registrar .....	118
Section 11.07	Payments Due on Non-Business Days .....	118
Section 11.08	Counterparts .....	119
Section 11.09	Laws Governing Indenture and Administration of Trust .....	119
Section 11.10	No Recourse .....	119
Section 11.11	Successors and Assigns .....	119

EXHIBIT A	FORM OF BOND	
EXHIBIT A-1	FORM OF PURCHASED BOND	
EXHIBIT B	FORM OF TENDER NOTICE	
EXHIBIT C	FORM OF PURCHASER'S LETTER	
EXHIBIT D	FORM OF REQUISITION	
EXHIBIT E	COSTS OF ISSUANCE REQUISITION	

## TRUST INDENTURE

THIS TRUST INDENTURE (this "Indenture"), made and entered into as of November 1, 2009, is by and between the CITY OF SAN JOSE, CALIFORNIA (the "Issuer"), a municipal corporation and charter city organized and existing under its Charter and the laws of the State of California (the "State"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, and authorized to accept and execute trusts of the character herein set out, with a corporate trust office in Los Angeles, California (the "Trustee").

Capitalized terms used in this Indenture are defined in Section 1.01 of this Indenture.

### RECITALS:

1. The Issuer is authorized by the Act to issue revenue bonds for the purpose of financing the development of multifamily rental housing for persons and families of low and very low income.

2. Pursuant to the Act and this Indenture, the Issuer has determined to issue its City of San José, California, Variable Rate Demand Multifamily Housing Revenue Bonds (Brookwood Terrace Family Apartments), Series 2009B in the original aggregate principal amount of \$13,600,000 (the "Bonds") to provide for the financing of the construction of an 84-unit multifamily rental housing development to be located in the City of San José, California at 1338-1350 East San Antonio Street, to be known as Brookwood Terrace Family Apartments (the "Project").

3. Pursuant to a Financing Agreement, dated as of November 1, 2009 (the "Financing Agreement"), among the Issuer, Brookwood Terrace Family Apartments, L.P. (the "Borrower") and the Trustee, the Issuer has agreed to use the Net Bond Proceeds to make the Bond Mortgage Loan to the Borrower in connection with the Project.

4. The Borrower has agreed to use the proceeds of the Bond Mortgage Loan to finance the acquisition and construction of the Project and to pay certain costs of issuance of the Bonds with disbursements of the proceeds of the Bond Mortgage Loan to the Borrower to be made periodically following the Delivery Date pursuant to the provisions of the Indenture and the Financing Agreement.

5. The Borrower's repayment obligations in respect of the Bond Mortgage Loan will be evidenced by the Bond Mortgage Note delivered upon the order of the Issuer pursuant to the Financing Agreement to the Trustee.

6. The Borrower will cause to be delivered to the Trustee on the Delivery Date the Credit Facility consisting of the Letter of Credit provided by JPMorgan Chase Bank, N.A. (the "Bank" or the "Construction Phase Credit Facility Provider").

7. On the Delivery Date, the Borrower will advance the Costs of Issuance Deposit in an amount sufficient to pay Costs of Issuance.

8. The Bank has agreed, pursuant to the terms and subject to the conditions of the Construction Phase Credit Reimbursement Agreement, to facilitate the financing of the Bond Mortgage Loan by arranging for credit enhancement and liquidity support for the Bonds pursuant to, and subject to the limitations of, the Letter of Credit. The Letter of Credit expires on November 1, 2011, but is subject to earlier termination in certain events, including termination on the Conversion Date.

9. Freddie Mac has agreed, pursuant to the terms of the Forward Commitment issued to the Servicer, but subject to (i) the satisfaction of the conditions contained in the Forward Commitment and (ii) the satisfaction of the Conditions to Conversion contained in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Bond Mortgage Loan in the Permanent Phase by providing credit enhancement and liquidity support for the Bonds pursuant to, and subject to the limitations of, the Credit Enhancement Agreement. For purposes of the Forward Commitment and the Construction Phase Financing Agreement, the Permanent Phase begins on the Conversion Date. Accordingly, if Conversion occurs, the Credit Enhancement Agreement will be effective, and will replace the Letter of Credit as the Credit Facility on the Conversion Date.

10. To evidence the orderly substitution of the Credit Enhancement Agreement for the Letter of Credit as the credit enhancement and liquidity facility for the Bonds in the Permanent Phase, the Issuer, the Trustee and the Bank have agreed, the provisions of this Indenture contemplate, and the Bondholders by their acceptance of the Bonds under the terms of this Indenture agree, that if the Servicer issues the Conversion Notice on or before the Forward Commitment Maturity Date, the Credit Enhancement Agreement will, on the Conversion Date, replace the Letter of Credit as the Credit Facility.

11. To evidence the Borrower's reimbursement obligations to Freddie Mac for draws made under the Credit Enhancement Agreement, the Borrower and Freddie Mac will enter into a Reimbursement and Security Agreement (the "Freddie Mac Reimbursement Agreement") on or prior to the Conversion Date.

12. To secure the Borrower's obligations under the Bond Mortgage Note, the Borrower and the City of San José Financing Authority, as applicable, will execute and deliver to the Issuer on or prior to the Delivery Date the Bond Mortgage, which Bond Mortgage will be assigned by the Issuer to the Trustee and recorded in the Official Records of Santa Clara County, California.

13. To secure the Borrower's reimbursement obligations to: (i) during the Construction Phase, the Bank under the Construction Phase Credit Reimbursement Agreement, and (ii) during the Permanent Phase, Freddie Mac under the Freddie Mac Reimbursement Agreement, the Borrower will execute and deliver to the Bank on or before the Delivery Date the Reimbursement Mortgage.

14. The Issuer and the Trustee will also enter into an Intercreditor Agreement with the Bank and Freddie Mac, on or before the Delivery Date (the "Intercreditor Agreement").

15. If the Servicer issues the Conversion Notice prior to the Forward Commitment Maturity Date, the Bond Mortgage Loan will convert from the Construction Phase to the Permanent Phase.

16. If the Conversion Notice is not issued prior to the Forward Commitment Maturity Date (a) Conversion will not occur, (b) Freddie Mac will have no obligation to provide the Credit Enhancement Agreement as the Credit Facility for the Bonds, and (c) the Bonds will continue to be credit enhanced by the Letter of Credit in accordance with its terms.

17. The Bonds will be secured by the Trust Estate.

18. The development and operation of the Project will be regulated by, among other documents, the terms of the Financing Agreement and the Regulatory Agreement.

19. The Issuer has determined that all things necessary to make the Bonds, when issued as provided in this Indenture, valid and binding limited obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid lien on the Trust Estate, have been done and performed, and the creation, execution and delivery of this Indenture, and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized by the Issuer.

20. The Trustee has trust powers and the power and authority to enter into this Indenture, to accept trusts generally and to accept and execute the trust created by this Indenture; the Trustee has accepted the trust so created, and to evidence such acceptance, has joined in the execution of this Indenture.

NOW, THEREFORE, the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the owners thereof, and for other consideration the receipt and sufficiency of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect, the payment to Credit Provider for amounts owed under the Reimbursement Agreement, and the performance and observance by the Issuer of all the covenants expressed herein and in the Bonds, does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Trustee, and its successors in trust and its and

their assigns in and to the following (said property being herein referred to as the "Trust Estate"), to wit:

## GRANTING CLAUSES

### I.

All right, title and interest of the Issuer in and to all Revenues.

### II.

All right, title and interest of the Issuer in and to the Financing Agreement, the Bond Mortgage Note, the Credit Facility and the Bond Mortgage (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the moneys, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards subject to the interest of the Credit Facility Provider under the Reimbursement Agreement and the Intercreditor Agreement) whether payable under the above-referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer or any other person is or may become entitled to do under said documents.

### III.

Except for amounts in the Bond Purchase Fund, the Rebate Fund, Principal Reserve Fund, the Equity Account in the Bond Mortgage Loan Fund and the Cost of Issuance Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said trust and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all Holders of the Bonds from time to time issued under and secured by this Indenture without privilege, priority or distinction as to lien or otherwise of any of the Bonds over any of the other Bonds, except as set forth in this Indenture, and for the benefit, security and protection of the Credit Facility Provider to the

extent of its interests hereunder and under the Reimbursement Agreement and the Intercreditor Agreement;

PROVIDED, HOWEVER, that if the Issuer or its successors or assigns shall pay or cause to be paid to the Holders of the Bonds the principal, interest and premium, if any, to become due thereon at the times and in the manner provided in Article IX hereof and shall discharge or cause to be discharged any and all obligations to the Credit Facility Provider hereunder and under the Reimbursement Agreement, and if the Issuer shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Issuer, cease, terminate and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.09, 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any property at the time subject to the lien of this Indenture which may then be in its possession, except for the Rebate Fund and cash held by the Tender Agent for the payment of the Purchase Price of Bonds tendered pursuant to the terms of this Indenture or held by the Trustee for the payment of interest on and principal of the Bonds or for payment of amounts payable to the Credit Facility Provider; otherwise this Indenture shall remain in full force and effect and upon the trusts and subject to the covenants and conditions hereinafter set forth.

AND IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto, that the terms and provisions upon which the Bonds are to be issued, executed, authenticated, delivered and secured, and the trusts and conditions upon which the Trust Estate is to be held and disposed of, which said trusts and conditions the said Trustee hereby accepts and agrees to discharge, are as follows (except that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money shall not be a general obligation of the Issuer nor a debt or pledge of the faith and credit of the Issuer or the State, but shall be payable solely from the revenues and funds pledged for its payment in accordance with this Indenture):

**ARTICLE I**  
**DEFINITIONS**

**Section 1.01 Definitions.**

The terms used in this Indenture (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified below:

“Act” means Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the California Health and Safety Code as now in effect and as the same may from time to time hereafter be amended and supplemented.

“Administration Fund” means the Administration Fund established by the Trustee pursuant to Section 4.01 hereof.

“Advance” shall have the meaning set forth in the Credit Enhancement Agreement.

“Affiliate” as applied to any person, means any other person directly or indirectly controlling, controlled by, or under common control with, that person. For the purposes of this definition, “control” (including with correlative meanings, the terms “controlling”, “controlled by” an “under common control with”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, partnership interests or by contract or otherwise.

“Alternate Credit Facility” means a letter of credit, surety bond, insurance policy, standby purchase agreement, guaranty, mortgage-backed security or other credit facility, collateral purchase agreement or similar agreement issued by a financial institution (including without limitation Freddie Mac) which provides security for payment of (i) the principal of and interest on the Bonds (but in no case less than all of the Outstanding Bonds when due) or (ii) the Bond Mortgage Loan in an amount not less than the Guaranteed Payment, which Alternate Credit Facility is provided in accordance with Section 5.4 of the Financing Agreement. Neither the Letter of Credit (including any extension or renewal thereof), nor the Credit Enhancement Agreement is an “Alternate Credit Facility.”

“Alternate Credit Facility Provider” means the provider of an Alternate Credit Facility.

“Authorized Denomination” means, (i) with respect to Bonds during any Variable Period, \$100,000 principal amount or any integral multiple of \$5,000 greater than \$100,000, and (ii) with respect to Bonds during any Reset Period or the Fixed Rate Period, \$5,000 principal amount or any integral multiple thereof.

“Authorized Officer” means (i) when used with respect to the Issuer, the Issuer’s City Manager, Director of Finance, Assistant Director of Finance, Debt Administrator, Director of Housing or any officer or employee of the Issuer designated to perform a specified act, to sign a specified document or to act generally, on behalf of the Issuer by a written certificate furnished to the Trustee, which certificate is signed by an Authorized Officer of the Issuer and contains the specimen signature of such other office or employee of the Issuer, (ii) when used with respect to the Borrower, the managing general partner of the Borrower and such additional person or persons, if any, duly designated by the Borrower in writing to act on its behalf, (iii) when used with respect to the Trustee, any authorized signatory of the Trustee, or any person who is authorized in writing to take the action in question on behalf of the Trustee, (iv) when used with respect to the Servicer, any Executive Vice President or Senior Vice President of the Servicer and such additional person or persons, if any, duly designated by the Servicer in writing to act on its behalf, (v) when used with respect to the Remarketing Agent, any Vice President or Director of the Remarketing Agent and such additional person or persons, if any, duly designated by the Remarketing Agent in writing to act on its behalf, (vi) when used with respect to the Tender Agent, any authorized signatory of the Tender Agent and such additional person or persons, if any, duly designated by the Tender Agent in writing to act on its behalf, (vii) when used with respect to the Credit Facility Provider, any person who is authorized in writing to take the action in question on behalf of the Credit Facility Provider, (viii) prior to Conversion, when used with respect to Freddie Mac, any person who is authorized in writing to take the action in question on behalf of Freddie Mac, and (ix) when used with respect to the Construction Phase Credit Facility Provider, any person who is authorized in writing to take the action in question on behalf of the Construction Phase Credit Facility Provider.

“Bank” means JPMorgan Chase Bank, N.A., its successors and assigns.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor federal statute.

“Bond” or “Bonds” means the Issuer’s Variable Rate Demand Multifamily Housing Revenue Bonds (Brookwood Terrace Family Apartments), Series 2009B in the original aggregate principal amount of \$13,600,000 issued pursuant to this Indenture.

“Bond Counsel” means (i) Quint & Thimmig LLP, or (ii) any other firm of attorneys selected by the Issuer experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer’s Municipal Marketplace and that is acceptable to the Credit Facility Provider.

“Bond Documents” means, collectively, this Indenture, the Bonds, the Intercreditor Agreement, the Remarketing Agreement, the Tax Certificate and the Bond Mortgage Loan Documents and any other agreements and documents relating to the Bonds.

“Bond Fee Component” means the regular, ongoing fees due from time to time to the Issuer, the Trustee, the Remarketing Agent, the Custodian and the Tender Agent, expressed in

terms of a percentage of the principal amount of Outstanding Bonds (including Purchased Bonds) on an annual basis. Any increase in the regular fee of the Remarketing Agent due to a failure to timely replace a resigning Remarketing Agent shall not be included within the Bond Fee Component. Also, the Issuer Fee is equal to 0.125% of the initial principal amount of the Bonds, such that if a portion of the principal of the Bonds is repaid by means of maturity or earlier redemption, an amount equal to one-eighth of one percent of the Outstanding principal amount of the Bonds shall constitute a portion of the Bond Fee Component, and the Issuer Fee in excess of such amount shall be paid by the Owner to the Trustee as required by Section 4.2(b)(viii) of the Financing Agreement.

“Bond Financing Documents” means, collectively, this Indenture, the Bonds, the Financing Agreement, the Remarketing Agreement and the Bond Mortgage Loan Documents.

“Bond Fund” means the Bond Fund established by the Trustee pursuant to Section 4.01 hereof.

“Bond Mortgage” means, collectively, the First Multifamily Fee Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (California), and the First Multifamily Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (California), together with, in each use, all riders and addenda thereto, from the City of San José Financing Authority and the Borrower, respectively, for the benefit of the Issuer, and each assigned in Section 3.4 of the Financing Agreement by the Issuer to the Trustee, with each securing payment of the Bond Mortgage Loan, as each such Bond Mortgage may from time to time be amended, modified or supplemented.

“Bond Mortgage Loan” means the loan made by the Issuer to the Borrower pursuant to the Financing Agreement for the purpose of providing funds to the Borrower to finance costs of the acquisition and construction of the Project.

“Bond Mortgage Loan Documents” means the Bond Mortgage, the Bond Mortgage Note, the Financing Agreement, the Regulatory Agreement, any Custodial Escrow Agreement, the Credit Facility, the Reimbursement Agreement, the Reimbursement Mortgage, the Intercreditor Agreement, and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Bond Mortgage Loan, or any portion thereof, or to the Borrower’s reimbursement obligations to the Credit Facility Provider.

“Bond Mortgage Loan Fund” means the Bond Mortgage Loan Fund established by the Trustee pursuant to Section 2.11 hereof.

“Bond Mortgage Note” means the Bond Mortgage Note dated the Delivery Date made by the Borrower to the order of the Issuer in the principal amount of \$13,600,000, together with all riders and addenda thereto, evidencing the Bond Mortgage Loan, as such Bond Mortgage Note may from time to time be amended, modified or supplemented, as such Bond Mortgage Note has been assigned by the Issuer to the Trustee.

“Bond Purchase Fund” means the Bond Purchase Fund established by the Tender Agent pursuant to Section 10.03.

“Bond Register” means the books or other records maintained by the Bond Registrar setting forth the registered Holders from time to time of the Bonds.

“Bond Registrar” means the Trustee acting as such, and any other bond registrar appointed pursuant to this Indenture.

“Bond Year” means the period commencing on the Delivery Date and ending on October 31, 2010 and each twelve month period thereafter commencing on November 1 and ending on October 31 of the following year so long as any Bonds remain outstanding.

“Bondholder” or “Holder” or “owner of the Bonds” or “registered owner” means any person who shall be the owner of any Bond or Bonds as shown on the Bond Register.

“Borrower” means Brookwood Terrace Family Apartments, L.P., a California limited partnership, or any of its permitted successors or assigns as owner of the Project.

“Business Day” means any day other than (i) a Saturday, (ii) a Sunday, (iii) a day on which the Federal Reserve Bank of New York (or other agent acting as the Credit Facility Provider’s fiscal agent identified to the Trustee) is closed, (iv) a day on which the Principal Office of the Credit Facility Provider, or, while Freddie Mac is the Credit Facility Provider, the southeastern regional office or the permanent home office, is closed or (v) a day on which (a) banking institutions in the City of New York or in the city in which the Principal Office of the Trustee, the Principal Office of the Tender Agent, or the Principal Office of the Remarketing Agent or the Principal Office of the Credit Facility Provider is located are authorized or obligated by law or executive order to be closed or (b) the New York Stock Exchange is closed.

“Cap Fee Escrow” has the meaning given to the term “Hedge Fee Escrow” in the Freddie Mac Reimbursement Agreement.

“Certificate of the Issuer,” “Statement of the Issuer,” “Request of the Issuer” and “Requisition of the Issuer” mean, respectively, a written certificate, statement, request or requisition signed in the name of the Issuer by an Authorized Officer of the Issuer or such other person as may be designated and authorized to sign for the Issuer. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Conditions to Conversion” has the meaning given to that term in the Construction Phase Financing Agreement.

“Construction Phase” has the meaning given to that term in the Construction Phase Financing Agreement.

“Construction Phase Credit Assignment” means the Assignment of Rights and Interests, dated as of the Conversion Date, from the Bank to Freddie Mac, and acknowledged and agreed to by the Borrower and the Trustee, as it may be amended, supplemented or restated from time to time. The Construction Phase Credit Assignment shall be in substantially the form attached to the Construction Phase Financing Agreement.

“Construction Phase Credit Documents” means, individually and collectively, the Construction Phase Financing Agreement, the Construction Phase Credit Reimbursement Agreement, the Letter of Credit and all other documents evidencing, securing or otherwise relating to the Letter of Credit, including all amendments, modifications, supplements and restatements of such documents.

“Construction Phase Credit Facility Provider” means the Bank, as provider of the initial Credit Facility, and its successors and assigns, or so long as any Alternate Credit Facility is in effect prior to the Conversion Date, the Credit Facility Provider then obligated under the Alternate Credit Facility.

“Construction Phase Credit Facility Fee” means the quarterly fee owed to the Construction Phase Credit Facility Provider pursuant to Section 2.2.2 of the Construction Phase Credit Reimbursement Agreement.

“Construction Phase Credit Pledge Agreement” means the Bond Pledge Agreement dated as of November 1, 2009, between the Borrower and the Bank, as such agreement may be amended from time to time.

“Construction Phase Credit Reimbursement Agreement” means the Reimbursement Agreement dated as of November 1, 2009, between the Borrower and the Bank, as such agreement may be amended, modified, supplemented or restated from time to time.

“Construction Phase Financing Agreement” means the Construction Phase Financing Agreement dated as of November 1, 2009, by and among Freddie Mac, the Servicer and the Bank, as such agreement may be amended, modified, supplemented or restated from time to time.

“Conversion” means the conversion of the Bond Mortgage Loan from the Construction Phase to the Permanent Phase.

“Conversion Date” means the date specified as such in the Conversion Notice, which date must be at least fifteen days following the date on which the Conversion Notice is issued, and, during any Variable Period, which date must be the beginning date of a Variable Interest Accrual Period.

“Conversion Notice” means a written notice by the Servicer to the Issuer, the Trustee, the Borrower, the Bank and Freddie Mac given prior to the Forward Commitment Maturity Date (a) stating that each of the Conditions to Conversion has been satisfied prior to the Forward Commitment Maturity Date or, if any Condition to Conversion has not been satisfied prior to the Forward Commitment Maturity Date, has been waived in writing by Freddie Mac prior to the Forward Commitment Maturity Date, and (b) specifying the Conversion Date.

“Cost,” “Costs” or “Costs of the Project” means costs paid with respect to the Project that are (i) properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general Federal income tax principles and in accordance with United States Treasury Regulations Section 1.103-8(a)(1), (ii) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) are paid after the earlier of 60 days prior to May 21, 2009 (being the date the Issuer’s Director of Finance and Director of Housing executed a declaration expressing the intent of the City to issue tax-exempt debt to provide financing for the Project), and (iv) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Bonds such costs were (A) costs of issuance of the Bonds, (B) preliminary capital expenditures (within the meaning of United States Treasury Regulations Section 1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Bonds (as defined in United States Treasury Regulations Section 1.148-1), or (C) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid); provided however, that if any portion of the Project is being constructed or developed by the Borrower or an Affiliate (whether as a developer, a general contractor or a subcontractor), “Cost,” “Costs” or “Costs of the Project” shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such Affiliate in developing or constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such Affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the Borrower such Affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction or development of the Project or payments received by such Affiliate due to early completion of the Project (or any portion thereof).

“Costs of Issuance” means (i) the fees (excluding ongoing fees), costs and expenses of (a) the Issuer, the Issuer’s counsel and the Issuer’s financial advisor, (b) the Underwriter (including

discounts to the Underwriter or other purchasers of the Bonds, other than original issue discount, incurred in the issuance and sale of the Bonds) and the Underwriter's counsel, (c) Bond Counsel, (d) the Trustee and the Trustee's counsel, (e) the Servicer and the Servicer's counsel, if any, (f) the Credit Facility Provider's counsel, (g) the Borrower's counsel and the Borrower's financial advisor, if any, (h) Freddie Mac's counsel, (i) the Remarketing Agent and its counsel, (j) the Bank and its counsel, and (1) the Rating Agency, (2) costs of printing the offering documents relating to the sale of the Bonds and (3) all other fees, costs and expenses directly associated with the authorization, issuance, sale and delivery of the Bonds, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

"Costs of Issuance Deposit" means the deposit to be made by the Borrower with the Trustee on the Delivery Date for deposit to the Equity Account of the Costs of Issuance Fund, which deposit shall equal \$\_\_\_\_\_ comprised of sources other than the proceeds of the Bonds.

"Cost of Issuance Fund" means the Cost of Issuance Fund established by the Trustee pursuant to Section 4.01 hereof.

"Credit Enhancement Agreement" means, from and after the Conversion Date, the Credit Enhancement Agreement dated the Conversion Date between Freddie Mac and the Trustee, as such Credit Enhancement Agreement may from time to time be amended or supplemented. The Credit Enhancement Agreement shall be in substantially the form attached to the Construction Phase Financing Agreement

"Credit Facility" means (i) prior to the Conversion Date, the Letter of Credit or any Alternate Credit Facility in effect prior to the Conversion Date and (ii) from and after the Conversion Date, the Credit Enhancement Agreement or any Alternate Credit Facility at that time in effect.

"Credit Facility Provider" means, (i) prior to the Conversion Date, the Construction Phase Credit Facility Provider, and (ii) from and after the Conversion Date, Freddie Mac, so long as the Credit Enhancement Agreement is in effect, or so long as any Alternate Credit Facility is in effect, the Credit Facility Provider then obligated under the Alternate Credit Facility.

"Custodial Escrow Account" means, collectively, the account or accounts established and held by the Servicer from and after the Conversion Date pursuant to the Guide or otherwise, for the purpose of funding (i) escrows for taxes, insurance and related payments and costs, if required by Freddie Mac, (ii) a reserve for replacements for the Project, if required by Freddie Mac, and (iii) a debt service reserve for the Bond Mortgage Loan, if required by Freddie Mac.

“Custodial Escrow Agreement” means any agreement (which agreement may be the Guide or Forward Commitment, as applicable) pursuant to which a Custodial Escrow Account is established and maintained.

“Custodian” means Wells Fargo Bank, National Association, not in its individual capacity but solely in its capacity as collateral agent for the Credit Facility Provider.

“Delivery Date” means November 19, 2009, the date of initial delivery of the Bonds to the initial purchasers thereof against payment therefor.

“DTC” means The Depository Trust Company, New York, New York, as securities depository for the Bonds pursuant to Section 2.12 hereof.

“Electronic Notice” means delivery of notice in a Word format or a Portable Document Format (“PDF”) by electronic mail to the electronic mail addresses listed in Section 11.04, provided that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.04.

“Eligible Funds” means (i) remarketing proceeds received from the Remarketing Agent or any purchaser (other than funds provided by the Borrower, any general partner, member or guarantor of the Borrower or the Issuer), (ii) proceeds received pursuant to the Credit Facility, (iii) proceeds of the Bonds received contemporaneously with the issuance and sale of the Bonds (including any Bond proceeds deposited to the Bond Mortgage Loan Fund on the Delivery Date), (iv) proceeds from the investment or reinvestment of moneys described in clauses (i), (ii) and (iii) above, or (v) moneys delivered to the Trustee and accompanied by a written opinion of Bond Counsel or nationally recognized counsel experienced in bankruptcy matters acceptable to the Rating Agency to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Issuer were to become a debtor in a proceeding under the Bankruptcy Code: (a) payment of such moneys to holders of the Bonds would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (b) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such moneys to the payment of the Bonds.

“Extraordinary Administrative Expenses” means and includes, but not by way of limitation, any costs of litigation, investigation or audit by the IRS or other authority which may be reasonably incurred by the Issuer or the Trustee in connection with the Bonds or the Indenture, including the costs and fees of any attorney or other experts retained by the Issuer or the Trustee in connection therewith.

“Event of Default” or “event of default” means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

“Extraordinary Services” means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Trustee in respect of or to

prevent default under this Indenture and the Bond Mortgage Loan Documents, including any attorneys' fees and other litigation costs that are entitled to reimbursement under the terms of the Financing Agreement, and other actions taken and carried out which are not expressly set forth in this Indenture.

"Extraordinary Servicing Fees and Expenses" means all fees and expenses of the Servicer under the Guide during any Bond Year in excess of Ordinary Servicing Fees and Expenses.

"Extraordinary Trustee's Fees and Expenses" means all those fees, expenses and disbursements earned or incurred by the Trustee as described under Section 7.06 during any Bond Year for Extraordinary Services, as set forth in a detailed invoice to the Borrower.

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

"Financing Agreement" means the Financing Agreement, dated as of November 1, 2009, among the Borrower, the Issuer and the Trustee, as such Financing Agreement may from time to time be amended or supplemented.

"Fixed Rate Adjustment" means the establishment of the interest rate on the Bonds at the Fixed Rate, pursuant to Section 2.02(d) hereof.

"Fixed Rate Adjustment Date" means the date on which the Fixed Rate for the Bonds becomes effective.

"Fixed Rate" means the interest rate borne by the Bonds from and after the Fixed Rate Adjustment to the maturity date of the Bonds, determined in accordance with Section 2.02(d) hereof.

“Fixed Rate Period” means the period during which the Bonds bear interest at the Fixed Rate.

“Forward Commitment” means Freddie Mac’s commitment to the Servicer, dated \_\_\_\_\_, 2009, and accepted by the Servicer, pursuant to which Freddie Mac has agreed, upon satisfaction of the terms and conditions set forth in the Forward Commitment, to provide credit enhancement and liquidity support for the Bonds effective as of the Conversion Date.

“Forward Commitment Maturity Date” means December 1, 2011, unless extended by Freddie Mac in its sole discretion.

“Freddie Mac” means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States, and its successors and assigns.

“Freddie Mac Credit Enhancement Fee” has the meaning given to that term in the Freddie Mac Reimbursement Agreement.

“Freddie Mac Credit Enhancement Payment” means the amount required to be paid by Freddie Mac to the Trustee with respect to any Guaranteed Payment or with respect to any payment of Purchase Price for tendered Bonds.

“Freddie Mac Pledge Agreement” means that certain Pledge, Security and Custody Agreement, dated as of the Conversion Date, by and between the Custodian and the Borrower, as modified or amended from time to time, and in the form attached to the Construction Phase Financing Agreement.

“Freddie Mac Reimbursement Agreement” means, from and after the Conversion Date, the Reimbursement and Security Agreement, dated on or before the Conversion Date, between the Borrower and Freddie Mac (a form of which is attached to the Construction Phase Financing Agreement), as such Reimbursement Agreement may be amended or supplemented from time to time.

“Freddie Mac Reimbursement Amount” has the meaning given to that term in the Freddie Mac Reimbursement Agreement.

“Government Obligations” means investments meeting the requirements of clauses (a) or (b) of the definition of Qualified Investments herein.

“Guaranteed Payment” has the meaning set forth in the Credit Enhancement Agreement.

“Guide” means the Freddie Mac Multifamily Seller/Servicer Guide, as the same may be amended, modified or supplemented from time to time.

“Hedge Agreement” means, prior to the Conversion Date, any agreement required by the Bank to be maintained and, after the Conversion Date, any agreement which satisfies the requirements of Article IV of the Freddie Mac Reimbursement Agreement.

“Indenture” means this Trust Indenture, as the same may have been from time to time amended or modified, together with any other indentures supplemental hereto.

“Index Rate” means a rate equal to the index of the weekly index rate resets of tax-exempt variable rate issues included in a database maintained by Municipal Market Data, a Thomson Financial Services Company, or its successors, which meet specific criteria established by the Securities Industry and Financial Markets Association (“SIFMA”) Municipal Swap Index, or any successor to such index.

“Information Services” means, in accordance with then current guidelines of the Securities and Exchange Commission, one or more services selected by the Trustee which are then providing information with respect to called Bonds or, if the Trustee does not select a service, then such service or services as the Issuer may designate in a certificate of the Issuer delivered to the Trustee.

“Intercreditor Agreement” means the Intercreditor Agreement, dated on or before the Delivery Date, among the Issuer, the Trustee, Freddie Mac and the Bank, as the same may be amended or supplemented.

“Interest Payment Date” means December 1, 2009, and thereafter (i) for interest accrued during any Variable Period, the first Business Day of each month; (ii) for interest accrued during any Reset Period, May 1 and November 1 of each year, commencing on the May 1 or November 1 next following the applicable Reset Adjustment Date, (iii) for interest accrued on and after the Fixed Rate Adjustment Date, May 1 and November 1 of each year, commencing on the May 1 or November 1 next following the Fixed Rate Adjustment Date and (iv) on each Reset Adjustment Date, Variable Rate Adjustment Date or Fixed Rate Adjustment Date and on the maturity date of the Bonds.

“Interest Requirement” means (a) during the Variable Period, 35 days’ interest computed at the Maximum Rate, and (b) during a Reset Period or the Fixed Rate Period, 189 days’ interest computed at the Reset Rate or Fixed Rate, as applicable; or, in the case of either (a) or (b), such lesser number of days as may be acceptable to the Rating Agency, as confirmed in writing by the Rating Agency.

“Investment Income” means the earnings and profits derived from the investment of moneys pursuant to Section 4.08 of this Indenture.

“Issuer” means the City of San José, California, and its successors and assigns.

“Issuer Fee” means the annual fee of the Issuer equal to 0.125% of the initial principal amount of Bonds, payable by Borrower in equal semiannual installments on each May 1 and November 1, commencing May 1, 2010. The term “Issuer Fee” does not include the amount payable by the Borrower on the Delivery Date, as referenced in Section 4.2(b)(ii) of the Financing Agreement.

“Letter of Credit” means the unconditional irrevocable direct pay letter of credit provided by the Construction Phase Credit Facility Provider as the initial Credit Facility on or before the Delivery Date pursuant to the Construction Phase Financing Agreement and includes any Alternate Credit Facility which may be in place during the Construction Phase.

“Liquidity Advance” means an advance by the Credit Facility Provider pursuant to the terms of the Credit Facility to pay the Purchase Price of any Bonds tendered optionally by Bondholders pursuant to Section 10.01 of this Indenture which have not been remarketed by the Remarketing Agent pursuant to the Remarketing Agreement and this Indenture and therefore, with respect to which there are no proceeds of remarketing.

“Market Risk Event” means (a)(i) legislation enacted by the Congress, (ii) a final non-appealable decision rendered by a court established under Article III of the Constitution of the United States, or the United States Tax Court, or (iii) an order, ruling or regulation issued by the United States Department of the Treasury or the Internal Revenue Service, with the purpose or effect, directly or indirectly, of causing interest received by any Borrower of the Bonds (other than a “substantial user” of the Project, the Borrower or any “related person,” as such quoted terms are defined in the Code) to be included in the gross income of such Borrower of the Bonds for purposes of federal income taxation; or (b) legislation enacted or any action taken by the Securities and Exchange Commission which, in the opinion of counsel to the Remarketing Agent, has the effect of requiring the remarketing of the Bonds to be registered under the Securities Act of 1933, as amended (the “Securities Act”), or any other “security,” as defined in the Securities Act, issued in connection with or as part of the remarketing of the Bonds to be so registered or the Indenture to be qualified as an indenture under the Trust Indenture Act of 1939, as amended; or (c) any event shall have occurred or shall exist which, in the reasonable judgment of the Remarketing Agent, makes or has made untrue or incorrect in any material respect any statement or information contained in a reoffering circular or other disclosure document distributed in connection with the Fixed Rate Adjustment or Reset Adjustment Date or is not or was not reflected in such reoffering circular or other disclosure document but should be or should have been reflected therein in order to make the statements or information contained therein not misleading in any material respect; or (d) in the reasonable judgment of the Remarketing Agent, any event which makes it impractical or inadvisable for the Remarketing Agent to remarket or enforce agreements to remarket Bonds because trading in securities generally shall have been suspended on the New York Stock Exchange, Inc., or a general banking moratorium shall have been established by federal, New York or State authorities.

“Maturity Date” means the maturity date of the Bonds set forth in Section 2.01(c) hereof.

“Maximum Rate” means twelve percent (12%) per annum; provided that without amendment to any Bond Documents pursuant to Article VIII of this Indenture the Maximum Rate may be increased to a specified higher Maximum Rate if there shall have been delivered to the Trustee (a) an opinion of Bond Counsel to the effect that such higher Maximum Rate is permitted under applicable law and will not, in itself, cause the interest on the Bonds to be included in the gross incomes of the Bondholders for federal tax purposes and (b) either (1) the written consent of the Credit Facility Provider to the specified higher Maximum Rate and evidence that the Credit Facility will cover the Interest Requirement at such Maximum Rate, or (2) a new or amended Credit Facility in an amount equal to the sum of (i) the then outstanding principal amount of the Bonds and (ii) the new Interest Requirement calculated using the new Maximum Rate; provided, further, that the Maximum Rate shall never exceed the maximum rate permitted by applicable law to be paid on the Bonds or to be charged on the Bond Mortgage Loan.

“Moody’s” means Moody’s Investors Service, Inc., and its successors and assigns.

“Net Bond Proceeds” means the total proceeds derived from the issuance, sale and delivery of the Bonds, representing the total purchase price of the Bonds, including any premium paid as part of the purchase price of the Bonds, but excluding the accrued interest, if any, on the Bonds paid by the initial purchaser(s) of the Bonds.

“Net Proceeds” when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of gross insurance proceeds or a condemnation award, including reasonable attorney fees.

“Official Statement” means the Official Statement relating to the sale of the Bonds to the initial owners thereof, as the same may be supplemented or amended.

“Ordinary Servicing Fees and Expenses” means the ordinary fees payable to the Servicer in connection with the servicing of the Bond Mortgage Loan, payable monthly in arrears on the first day of each month, commencing on the date and in an amount provided in the Forward Commitment.

“Ordinary Trustee’s Fees and Expenses” means the annual administration fee for the Trustee’s ordinary fees and expenses in rendering its services under this Indenture as Trustee during each twelve month period, which annual administrative fee shall not exceed .05% per annum of the outstanding principal amount of the Bonds.

“Outstanding” when used with respect to the Bonds or “Bonds Outstanding” means, as of any date, all Bonds that have been duly authenticated and delivered by the Trustee under this Indenture, except:

(a) Bonds surrendered and replaced upon exchange or transfer, or cancelled because of payment or redemption, at or prior to such date;

(b) Bonds for the payment, redemption or purchase for cancellation of which sufficient money has been deposited prior to such date with the Trustee (whether upon or prior to the maturity, amortization or redemption date of any such Bonds), or which are deemed to have been paid and discharged pursuant to the provisions of Section 9.01 hereof; provided, that if such Bonds are to be redeemed prior to the maturity thereof, other than by scheduled amortization, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee shall have been filed with the Trustee; and

(c) Bonds in lieu of which others have been authenticated (or payment, when due, of which is made without replacement) under Section 2.07 hereof; and also except that

(d) For the purpose of determining whether the holders of the requisite amount of Bonds Outstanding have made or concurred in any notice, request, demand, direction, consent, approval, order, waiver, acceptance, appointment or other instrument or communication under or pursuant to this Indenture, Bonds owned by or for the account of the Borrower or any person owned, controlled by, under common control with or controlling the Borrower shall be disregarded and deemed to be not outstanding; the term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Beneficial ownership of 5% or more of a class of securities having general voting power to elect a majority of the board of directors of a corporation shall be conclusive evidence of control of such corporation.

"Paying Agent" means the Trustee acting as such, and any other paying agent appointed pursuant to this Indenture.

"Permanent Phase" has the meaning given to that term in the Construction Phase Financing Agreement.

"Person" means an individual, corporation, firm, association, partnership, limited liability company, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

"Pledge Agreement" means (i) prior to the Conversion Date, the Construction Phase Credit Pledge Agreement, (ii) from and after the Conversion Date, the Freddie Mac Pledge Agreement, and (iii) any similar agreement executed in connection with an Alternate Credit Facility, as originally executed or as amended or modified from time to time.

“Pre-Conversion Loan Equalization Payment” has the meaning given to that term in the Freddie Mac Reimbursement Agreement.

“Principal Office of the Credit Facility Provider” means (i) so long as the Construction Credit Facility Provider is the Credit Facility Provider, JPMorgan Chase Bank, N.A., Chase Community Development Banking, 17875 Von Karman, Floor 02, Irvine, CA 92614, Attention: Don Munoz, Sr. Service Specialist, with copies to (i) JPMorgan Chase Bank, N.A., 300 South Riverside Plaza, Mail Code IL1-0236, Chicago, IL 60606-0236, Attention: Standby Service Unit, and (ii) JPMorgan Chase Bank, N.A., Legal Department, 245 Park Avenue, Mail Code NY1-Q657, New York, NY 10167, Attention: Michael Zients, Vice President and Assistant General Counsel, (ii) from and after the Conversion Date and so long as Freddie Mac is the Credit Facility Provider, the office of Freddie Mac located at 8100 Jones Branch Drive, McLean, Virginia 22102 or such other office or offices as Freddie Mac may designate from time to time, or (iii) the office of any successor Credit Facility Provider where it principally conducts its business of serving as credit facility provider under indentures pursuant to which municipal or governmental obligations are issued, or such other office or offices as the Credit Facility Provider may designate from time to time.

“Principal Office of the Remarketing Agent” means the office of the Remarketing Agent located at 3 World Financial Center, 200 Vesey Street, New York, New York 10281, or such other office or offices as the Remarketing Agent may designate in writing from time to time, or the office of any successor Remarketing Agent where it principally conducts its business of serving as remarketing agent under indentures pursuant to which municipal or governmental obligations are issued.

“Principal Office of the Tender Agent” means the office of the Tender Agent located at 707 Wilshire Boulevard, 17<sup>th</sup> Floor, MAC: E2818-176, Los Angeles, California 90017, or such other office or offices as the Tender Agent may designate in writing from time to time, or the office of any successor Tender Agent where it principally conducts its business of serving as tender agent under indentures pursuant to which municipal or governmental obligations are issued.

“Principal Office of the Trustee” means the office of the Trustee located at 707 Wilshire Boulevard, 17<sup>th</sup> Floor, MAC: E2818-176, Los Angeles, California 90017, or such other office or offices as the Trustee may designate in writing from time to time, or the office of any successor Trustee where it principally conducts its business of serving as trustee under indentures pursuant to which municipal or governmental obligations are issued.

“Principal Reserve Fund” means the Principal Reserve Fund established by the Trustee pursuant to Section 4.01 hereof.

“Principal Reserve Schedule” means the Principal Reserve Schedule attached to the Freddie Mac Reimbursement Agreement, as the same may be amended from time to time.

“Principal Reserve Schedule Payments” means the payments to be made by the Borrower in accordance with the Principal Reserve Schedule on the first day of each month following Conversion.

“Project” means the Borrower’s leasehold interest in land, and 84 residential rental apartment units, and related fixtures, equipment, furnishings and site improvements to be known as Brookwood Terrace Family Apartments, located at 1338-1350 East San Antonio Street, San Jose, California, including the fee interest of the City of San José Financing Authority in real estate described in the Bond Mortgage.

“Purchase Price” with respect to any Bond required to be purchased pursuant to Sections 2.02, 2.13, 10.01 and 10.02 hereof, means the principal amount of such Bond plus interest accrued thereon to the Settlement Date and with respect to any Bond to be purchased pursuant to Section 3.06 hereof means the principal amount of such Bond plus any redemption premium due thereon plus interest accrued thereon to the Settlement Date.

“Purchased Bond” means any Bond during the period from and including the date of its purchase by the Trustee on behalf of and as agent for the Borrower with amounts provided by the Credit Facility Provider under the Credit Facility, to, but excluding, the date on which such Bond is remarketed to any person other than the Credit Facility Provider, the Borrower, any general partner, member or guarantor of the Borrower or the Issuer. All Purchased Bonds are to be held in certificated form under and pursuant to the Pledge Agreement. A form of the Purchased Bonds is attached hereto as Exhibit A-1.

“Purchased Bond CUSIP” means the CUSIP number assigned solely to Purchased Bonds.

“Qualified Investments” means any of the following, but only to the extent the same (i) are acquired at Fair Market Value, (ii) are legal for the investment of the Issuer’s moneys at the time such investment is made or contracted for, and (iii) are explicitly permitted under the Issuer’s Investment Policy as in effect at the time of the investment (the current version of which was approved by the City Council of the Issuer on June 9, 2009, and which may be amended from time to time): (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Trustee or its affiliates or any bank organized under the laws of the United States or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Trustee or such other institution has been rated at least “A-1+” by S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation; (f) investment agreements with Freddie Mac or a bank or any insurance company or other financial institution which has a rating assigned by S&P to its

outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by S&P, and which are approved by the Credit Facility Provider; or (g) shares or units in any money market mutual fund (including mutual funds of the Trustee or its affiliates) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of direct obligations of the United States government, and which fund has been rated "Aaa" by S&P or (h) any other investments approved in writing by the Credit Facility Provider. For purposes of this definition, the "highest rating" shall mean a rating of at least "A-1+" for obligations with less than one year maturity; at least "P-1" for obligations with a maturity of one year or greater but less than three years; and at least "AAA" for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

"Rating Agency" means each national rating agency then maintaining a rating on the Bonds, or any successor or assign thereof.

"Rebate Analyst" means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Issuer, to make the computations required under this Indenture and the Financing Agreement. The initial Rebate Analyst is \_\_\_\_\_.

"Rebate Fund" means the Rebate Fund established by the Trustee pursuant to Section 4.01 hereof.

"Record Date" means during any Variable Period, the Business Day immediately preceding an Interest Payment Date and during any Reset Period or the Fixed Rate Period, the 15th day of the month preceding any Interest Payment Date.

"Redemption Fund" means the Redemption Fund established by the Trustee pursuant to Section 4.01 hereof.

"Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of November 1, 2009, by and among the Borrower, the Trustee and the Issuer, as the same may be amended or supplemented in accordance with its terms.

"Reimbursement Agreement" means (i) prior to the Conversion Date, the Construction Phase Credit Reimbursement Agreement, (ii) from and after the Conversion Date, the Freddie Mac Reimbursement Agreement, as such agreements may be amended or supplemented from time to time, and (iii) upon the effectiveness of any Alternate Credit Facility, any similar agreement between the Borrower and the Alternate Credit Facility Provider pursuant to which

the Borrower agrees to reimburse the Alternate Credit Facility Provider for payments made under the Alternate Credit Facility, as such agreement may be amended or supplemented.

“Reimbursement Mortgage” means, (i) prior to the Conversion Date, the Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (Credit Bank), and the Construction Fee Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (Credit Bank), each dated as of November 1, 2009, from the Borrower and the City of San José Financing Authority, respectively, to the Construction Phase Credit Facility Provider and to be assigned to Freddie Mac and simultaneously amended and restated on the Conversion Date in the forms attached to the Construction Phase Financing Agreement, as the same may be further amended, restated or supplemented from time to time; and (ii) from and after the Conversion Date, collectively, the Amended and Restated Second Multifamily Fee Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (California), and the Amended and Restated Second Multifamily Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (California), together with, in each case, all riders and addenda thereto, from the City of San José Financing Authority and the Borrower, respectively, for the benefit of Freddie Mac, each securing the Borrower’s obligations under the Freddie Mac Reimbursement Agreement, as each such Bond Mortgage may from time to time be amended, modified or supplemented.

“Remarketing Agent” means the remarketing agent appointed pursuant to Section 10.05 hereof.

“Remarketing Agreement” means the Remarketing Agreement, dated as of November 1, 2009, between the Remarketing Agent and the Borrower, or any similar agreement between the Remarketing Agent, the Borrower, in each case as originally executed or as it may be amended or supplemented from time to time in accordance with its terms.

“Remarketing Date” means each date on which the Remarketing Agent is required to notify the Trustee, the Tender Agent, the Borrower and the Credit Facility Provider of the Bonds for which it has found purchasers, as set forth in Section 10.03 hereof.

“Requisition” means, with respect to the Bond Mortgage Loan Fund, the requisition in the form of Exhibit D to this Indenture required to be submitted in connection with certain disbursements from the Bond Mortgage Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of Exhibit E to this Indenture required to be submitted in connection with disbursements from the Cost of Issuance Fund.

“Reset Adjustment Date” means any date on which the interest rate on the Bonds is adjusted to a Reset Rate or to a different Reset Rate. During a Variable Period, a Reset Adjustment Date may occur only on an Interest Payment Date or if such Interest Payment Date is not a Business Day, the next succeeding Business Day.

“Reset Period” means each period during which the Bonds bear interest at a Reset Rate.

“Reset Rate” means the rate of interest borne by the Bonds as determined in accordance with Section 2.02(c) hereof.

“Responsible Officer” means any officer of the Trustee employed within or otherwise having regular responsibility in connection with the corporate trust department of the Trustee and who is located at the Principal Office of the Trustee.

“Revenue Fund” means the Revenue Fund established by the Trustee pursuant to Section 4.01 hereof.

“Revenues” means (i) all payments made with respect to the Bond Mortgage Loan pursuant to the Financing Agreement, the Bond Mortgage Note or the Bond Mortgage, (except Principal Reserve Schedule Payments) including all casualty or other insurance benefits and condemnation awards paid in connection therewith (subject in all events to the interests of the Credit Facility Provider therein under the terms of the Credit Facility and the Reimbursement Agreement), (ii) payments made by the Credit Facility Provider pursuant to the Credit Facility and (iii) all moneys and securities held by the Trustee in the funds and accounts established pursuant to this Indenture (excluding moneys or securities in the Cost of Issuance Fund, the Principal Reserve Fund, the Equity Account of the Bond Mortgage Loan Fund, the Rebate Fund and the Bond Purchase Fund), together with all investment earnings thereon.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors and assigns.

“Securities Depositories” means (a) The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax: (516) 227-4039 or 4190; or (b) any registered securities depository which has been designated in a certificate of the Issuer delivered to the Trustee; or such other securities depositories as the Issuer may designate in a certificate of the Issuer delivered to the Trustee and the Credit Facility Provider.

“Servicer” means, following the Conversion Date, the eligible servicing institution designated by Freddie Mac from time to time (which may be Freddie Mac if Freddie Mac elects to service the Bond Mortgage Loan), or its successor, as servicer of the Bond Mortgage Loan. Initially, the Servicer shall be Citibank, N.A.

“Settlement Date” means any date on which any Bond is purchased or deemed purchased pursuant to Sections 2.02, 2.13, 3.06, 10.01, 10.02, 10.03 or 10.04 hereof.

“State” means the State of California.

“Substitution Date” means the date established for the mandatory tender and purchase of the Bonds in connection with the delivery to the Trustee of an Alternate Credit Facility pursuant to Section 2.13 hereof. The Conversion Date is not a Substitution Date.

“Tax Certificate” means the Certificate as to Arbitrage, dated the Delivery Date, executed and delivered by the Issuer and the Borrower.

“Tender Agent” means the Tender Agent appointed in accordance with Section 10.07.

“Tender Notice” means a notice of demand for purchase of Bonds given by any Bondholder pursuant to Section 10.01 hereof.

“Trustee” means Wells Fargo Bank, National Association and its successors in trust hereunder.

“Trust Estate” shall have the meaning set forth in the Granting Clauses.

“Unassigned Rights” means (a) all of the Issuer’s right, title and interest in and to all reimbursement rights of the Issuer, (b) all rights of the Issuer to receive the Issuer Fee and payment of any amounts due to the Issuer under Section 4.2(b)(viii) of the Financing Agreement, (c) the right to receive notices and to make any determination and to grant any approval or consent to anything in this Indenture or any Bond Mortgage Loan Document requiring the determination, consent or approval of the Issuer, (d) all rights of the Issuer to enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Tax Certificate and in the Regulatory Agreement and to enforce the Borrower’s compliance with applicable federal tax law and State law (including the Act), subject to the Intercreditor Agreement, (e) any and all rights, remedies and limitations of liability of the Issuer set forth in this Indenture or any Bond Mortgage Loan Document regarding (1) the negotiability, registration and transfer of the Bonds, (2) the loss or destruction of the Bonds, (3) the limited liability of the Issuer as provided in the Act and in this Indenture or any Bond Mortgage Loan Document, (4) the maintenance of insurance by the Borrower, (5) no liability or the limited liability of the Issuer to any and/or all parties, (6) no warranties of suitability or merchantability by the Issuer, (7) the Issuer’s rights to indemnification from the Borrower as provided in the Financing Agreement and the Regulatory Agreement, subject to the Intercreditor Agreement, (8) the Issuer’s rights to enforce restrictions on transfer of ownership, subject to the Intercreditor Agreement, (9) the Issuer’s right to inspect books, records and premises, and (10) to amend this Indenture and the Bond Mortgage Loan Documents in accordance with the provisions hereof and thereof, as applicable, and (f) all rights of the Issuer in connection with any amendment to or modification of this Indenture or any Bond Mortgage Loan Document.

“Variable Interest Accrual Period” means, during any Variable Period, a period beginning on the date following any Variable Interest Computation Date and ending on the next succeeding Variable Interest Computation Date, except that the first Variable Interest Accrual Period following the initial delivery of the Bonds shall begin on the Delivery Date and end on November 25, 2008 and the first Variable Interest Accrual Period for any other Variable Period shall begin on the first day of such Variable Period and end on the next succeeding Variable Interest Computation Date.

“Variable Interest Computation Date” means with respect to any Variable Interest Accrual Period, each Wednesday during such period, or if any such Wednesday is not a Business Day, the next succeeding Business Day.

“Variable Period” means each period during which the Bonds bear interest at a Variable Rate.

“Variable Rate” means the variable rate of interest borne by the Bonds as determined in accordance with Section 2.02(b) hereof.

“Variable Rate Adjustment Date” means any date upon which the Bonds begin to bear interest at a Variable Rate for the succeeding Variable Period.

### **Section 1.02 Interpretation.**

The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All accounting terms not otherwise defined herein shall have the meanings assigned to them in accordance with generally accepted accounting principals as in effect from time to time. References to Articles, Sections, and other subdivisions of this Indenture are to the designated Articles, Sections and other subdivisions of this Indenture as originally executed. The headings of this Indenture are for convenience only and shall not define or limit the provisions hereof.

### **Section 1.03 Construction Phase Credit Facility.**

(a) Release of Construction Phase Credit Facility. Notwithstanding any other provision of this Indenture or the other Bond Documents or the Construction Phase Credit Documents to the contrary, the Construction Phase Credit Facility Provider shall be entitled to the release and return of the Construction Phase Credit Facility on the Conversion Date. If Conversion does not occur, the Construction Phase Credit Facility shall remain in effect in accordance with its terms. All references to Freddie Mac and the Servicer shall be of no further force or effect and shall be disregarded for all purposes of this Indenture if Conversion does not occur.

(b) Acknowledgment of Intercreditor Agreement. The Issuer acknowledges that the Trustee has entered into the Intercreditor Agreement.

**Section 1.04 Termination of References.**

All references in this Indenture to the Construction Phase Credit Facility Provider shall be of no further force or effect and shall be disregarded for all purposes of this Indenture from and after the Conversion Date.

## ARTICLE II

### THE BONDS

#### Section 2.01 The Bonds.

(a) (1) The Bonds and the Trustee's Certificate of Authentication to be endorsed on such Bonds are to be substantially in the form of Exhibit A attached hereto, with necessary and appropriate variations, omissions and insertions as permitted or required by this Indenture. The Bonds shall be issued in the initial aggregate principal amount of \$13,600,000, and shall be designated "City of San José, California, Variable Rate Demand Multifamily Housing Revenue Bonds (Brookwood Terrace Family Apartments), Series 2009B" during any Variable Period, and shall be designated "City of San José, California, Multifamily Housing Revenue Bonds (Brookwood Terrace Family Apartments), Series 2009B" during any Reset Period or Fixed Rate Period.

(2) The Bonds shall be issued only as fully registered bonds, without coupons. All of the Bonds are equally and ratably secured under this Indenture. The Bonds shall be numbered from R-1 upward. The Bonds issued on the Delivery Date shall be dated the Delivery Date. Bonds issued after the Delivery Date shall be dated the date they are authenticated by the Trustee.

(b) The Bonds shall bear interest from the later of the Delivery Date or the most recent Interest Payment Date to which interest has been or provided for and shall be payable on each Interest Payment Date.

(c) The Bonds shall be issued in Authorized Denominations and shall bear interest payable on each Interest Payment Date at the rate per annum determined as provided in Section 2.02 below. The Bonds shall mature, subject to redemption prior to maturity as provided in Article III hereof, on June 1, 2047.

(d) Interest shall be payable to the person in whose name any Bond is registered on the Record Date with respect to an Interest Payment Date (unless such Bond has been called for redemption on a redemption date which is prior to such Interest Payment Date); provided, however, that if and to the extent the Issuer shall default in the payment of the interest due on any Interest Payment Date, such defaulted interest shall be paid as provided in the next paragraph.

(e) Any interest on any Bond that is due and payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the person in whose name such Bond is registered on the relevant Record Date and shall be paid in the manner set forth in this paragraph. The Trustee may elect to make payment of any Defaulted Interest to the persons in whose names the Bonds (or their respective predecessor Bonds) are registered at the close of business on a special record date for the

payment of such Defaulted Interest (a "Special Record Date"), which shall be fixed in the following manner. The Trustee shall determine the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (a "Special Interest Payment Date"), shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the Special Interest Payment Date and shall cause notice of the Special Interest Payment Date and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Bondholder at such Bondholder's address as it appears in the Bond Register not less than 10 days prior to such Special Record Date; notice of the Special Interest Payment Date and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Bonds (or their respective predecessor Bonds) are registered on such Special Record Date.

(f) Payment of the principal of the Bonds and premium, if any, shall be made upon presentation and surrender of the Bonds at the Principal Office of the Trustee. Interest on the Bonds shall be paid by check mailed to the registered owner thereof at such registered owner's address as it appears on the Bond Register on the Record Date. Upon written request of a registered owner of at least \$1,000,000 in principal amount of Bonds Outstanding received by the Trustee at least five (5) days prior to such Record Date, all payments of principal, premium, if any, and interest on the Bonds less any reasonable wire transfer fees imposed by the Trustee shall be paid by wire transfer in immediately available funds to an account within the United States designated by such registered owner. Payment of the Purchase Price of any Bonds tendered for purchase on a Settlement Date shall be payable in lawful money of the United States of America only upon presentation thereof at the Principal Office of the Tender Agent.

(g) Before the date fixed for redemption, moneys shall be deposited with the Trustee to pay, and the Trustee is hereby authorized and directed to apply such moneys to the payment of, the Bonds or portions thereof called for redemption, together with accrued interest thereon to the redemption date. CUSIP number identification with appropriate dollar amounts for each CUSIP number must accompany all payments of principal, redemption price, premium, if any, and interest, whether by check or by wire transfer.

(h) No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued hereunder, or in substitution for other Bonds pursuant to Section 2.07, is expressly limited to \$13,600,000.

## **Section 2.02 Determination of Interest Rate on the Bonds.**

(a) The Bonds shall bear interest as set forth in subsection (b) of this Section, until the first Reset Adjustment Date or Fixed Rate Adjustment Date, if any, and thereafter the Bonds shall bear interest at the applicable rate set forth in this Section.

(b) Variable Rate. The Bonds delivered on the Delivery Date shall bear interest at a Variable Rate established for the Bonds, computed on the basis of a 365-day or 366-day year, for the actual number of days elapsed from and including the Delivery Date to and including the

following Wednesday; and thereafter shall continue to bear interest at a Variable Rate, until converted to a Reset Rate or Fixed Rate as provided herein. The Variable Rate of interest borne by the Bonds during each Variable Period for each Variable Interest Accrual Period shall be the Variable Rate determined by the Remarketing Agent and reported in writing to the Trustee, the Tender Agent, the Borrower, the Issuer, the Bank (prior to the Conversion Date), the Servicer (from and after the Conversion Date) and the Credit Facility Provider as provided in Section 10.05 hereof, on the Variable Interest Computation Date for each such Variable Interest Accrual Period. Any Bondholder may obtain information on the Variable Rate by request to the Remarketing Agent.

The Variable Rate determined by the Remarketing Agent on each Variable Interest Computation Date shall be that rate of interest which, if borne by the Bonds, would, in its reasonable professional judgment, on the basis of prevailing financial market conditions, be the interest rate necessary, but which would not exceed the interest rate necessary, to be borne by the Bonds in order for the market value of the Bonds on such Variable Interest Computation Date to be 100% of the principal amount thereof (disregarding accrued interest) if the Bonds were sold on such Variable Interest Computation Date; provided, however, that in no event shall the Variable Rate at any time exceed the Maximum Rate. If for any reason the Remarketing Agent shall fail to determine the rate of interest or if the rate of interest determined by the Remarketing Agent is held to be invalid or unenforceable for any Variable Interest Accrual Period (other than in connection with an Event of Default pursuant to Section 6.01(b) hereof), then the Variable Rate for such Variable Interest Accrual Period shall be the Index Rate in effect on the applicable Variable Interest Computation Date.

Anything herein to the contrary notwithstanding, so long as an Event of Default pursuant to Section 6.01(b) hereof shall have occurred and be continuing, the Variable Rate for each Variable Interest Accrual Period shall be (i) for the first 60 days following the occurrence of such Event of Default, the Index Rate in effect on the applicable Variable Interest Computation Date plus 4% per annum, and (ii) thereafter, the Maximum Rate. The Remarketing Agent shall not be responsible for determining the Variable Rate for any Variable Interest Accrual Period after the occurrence and during the continuance of an Event of Default pursuant to Section 6.01(b) hereof.

For each Variable Interest Accrual Period, the Variable Rate determined by the Remarketing Agent shall be communicated in writing (which may be by Electronic Notice) to the Trustee, the Tender Agent, the Issuer, the Borrower, the Servicer and the Credit Facility Provider (which shall be by Electronic Notice) as provided in Section 10.05 hereof, on the Variable Interest Computation Date.

The determination of the Variable Rate by the Remarketing Agent shall (in the absence of manifest error) be conclusive and binding on the holders of the Bonds, the Issuer, the Borrower, the Credit Facility Provider, the Remarketing Agent, the Tender Agent, the Trustee, and the Servicer (from and after the Conversion Date), and each shall be protected in relying on it.

Following any Reset Adjustment Date, the interest rate on the Bonds may be converted again to a Variable Rate at the election or deemed election of the Borrower in accordance with the procedures in Section 2.02(c) hereof, which date of adjustment to a Variable Rate shall be the Variable Rate Adjustment Date.

(c) Reset Rate. Provided no Event of Default shall have occurred and be continuing, at the written request of the Borrower and with the prior written consent of Freddie Mac and the Bank or, after Conversion, at the written request of the Credit Facility Provider on behalf of the Borrower if the Borrower has not provided the Credit Facility Provider proof satisfactory to it of the extension or substitution of a Hedge Agreement satisfying the requirements of the Reimbursement Agreement not later than sixty (60) days prior to the expiration of the Hedge Agreement, the rate of interest on the Bonds may be established at a Reset Rate on any Interest Payment Date during a Variable Period or on any Reset Adjustment Date, in accordance with the procedures set forth in this subsection (c). In order to effect establishment of a Reset Rate, the Borrower must deliver such written consent and a written request to the Trustee, the Issuer, the Credit Facility Provider, the Servicer (from and after the Conversion Date), the Tender Agent and the Remarketing Agent (or, if applicable, following the Conversion Date, the Credit Facility Provider on behalf of the Borrower must deliver such request) specifying (i) (if the Bonds then bear interest at a Variable Rate) the Reset Adjustment Date, which shall be not less than forty (40) days after notice is received by the parties, (ii) the sinking fund redemption amounts for each Interest Payment Date, as provided in Section 3.01(c), at a price equal to the principal amount of Bonds subject to redemption plus interest accrued thereon to the date fixed for redemption, without premium, pursuant to Section 3.01(b)(v) hereof and any applicable optional redemption provisions pursuant to Section 3.01(a) hereof, (iii) the proposed duration of the Reset Period, which shall be at least five (5) years (ten (10) years so long as the Credit Enhancement Agreement is the Credit Facility) or such shorter period as may be approved by the Credit Facility Provider and shall terminate on the Business Day before the last Interest Payment Date preceding (x) the "Termination Date" (as defined in the Credit Enhancement Agreement) if the Credit Enhancement Agreement is the Credit Facility, to be effective with respect to the Bonds during such Reset Period and (y) the expiration of the Credit Facility if the Credit Enhancement Agreement is not the Credit Facility to be effective with respect to the Bonds during such Reset Period, and (iv) the date on which the Reset Rate will be determined by the Remarketing Agent, which date shall be not later than the Business Day immediately prior to the Reset Adjustment Date. Such notice must be accompanied by (1) an opinion of Bond Counsel to the effect that the establishment of the Reset Rate for the Reset Period in accordance with the procedure described in this subsection (c) is permitted by this Indenture and the Act and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds, (2) if Bonds are to be held publicly after the Reset Adjustment Date, either an irrevocable commitment (which commitment may be subject to customary commercial conditions) of an Alternate Credit Facility Provider to issue an Alternate Credit Facility, together with accompanying documentation required by Section 5.4 of the Financing Agreement or the irrevocable written commitment of the Credit Facility Provider for an amendment to the Credit Facility to fulfill the Interest Requirement and, if applicable, to extend

the termination date of the Credit Facility, (3) the form of notice to be given by the Trustee to the owners of the Bonds with respect to the establishment of a Reset Rate, (4) payment to the Trustee and the Issuer of such amount as the Trustee and the Issuer, respectively, reasonably determines may be required in connection with the establishment of the Reset Rate, including, but not limited to, its own fees and expenses (including those of its counsel) and the cost of printing new Bonds, (5) the proposed form of disclosure document, if any, to be distributed in connection with the remarketing of the Bonds on the Reset Adjustment Date and an undertaking of the Borrower which satisfies any applicable requirements of Rule 15c2-12 of the Securities Exchange Act of 1934, and (6) unless otherwise consented to in writing by the Issuer in its sole and absolute discretion, either: (A) the repayment of the Bonds or the Bond Mortgage Loan from and after such Reset Adjustment Date will be secured by a credit enhancement provided by Freddie Mac in form and substance equivalent to the Credit Facility, or (B) written evidence from the Rating Agency to the effect that the Bonds will be rated at least "Aa2"/"P-1" by Moody's or "AA"/"A-1" by S&P, without regard to pluses or minuses (or such lower ratings as shall be approved by the Issuer) on such Reset Adjustment Date.

If (i) the Credit Facility to be in effect upon and after a Reset Adjustment Date or (ii) an irrevocable commitment as described in (2) above is not delivered to the Trustee in escrow at least fifteen (15) days before the applicable Reset Adjustment Date, or if on any Business Day at least fifteen (15) days before the applicable Reset Adjustment Date the Trustee receives notice from the Remarketing Agent that a Market Risk Event has occurred, the Trustee shall not give the notice specified in the next paragraph to the owners of the Bonds. In the event that the Trustee receives notice from the Remarketing Agent that a Market Risk Event has occurred after giving the notice specified in the next paragraph to the owners of the Bonds, the Trustee shall notify the owners of the Bonds that the Reset Adjustment Date has been cancelled. In such event, the Bonds shall (i) continue to bear interest at a Variable Rate if the Bonds then bear interest at a Variable Rate, or (ii) if the Bonds then bear interest at a Reset Rate, on the day following the Reset Period, the Bonds shall be redeemed or purchased in lieu thereof pursuant to Section 3.01(b)(vi) or 3.06 hereof, as applicable.

The Trustee shall give notice to the owners of the Bonds, by first class mail not less than nine (9) days before the Reset Adjustment Date specifying: (i) the Reset Adjustment Date, and that the interest rate on the Bonds will be established at the Reset Rate on the Reset Adjustment Date; (ii) that all Bonds must be tendered for purchase at the Purchase Price and surrendered to the Tender Agent for purchase not later than 9:30 a.m., Washington, DC time, on the Reset Adjustment Date; and (iii) that the Reset Adjustment Date is subject to cancellation upon the Trustee's receipt of notice from the Remarketing Agent that a Market Risk Event has occurred.

Any Bond not tendered to the Tender Agent for purchase in accordance with the provisions of this subsection (c), on a Reset Adjustment Date (including a cancelled Reset Adjustment Date) shall be deemed to have been tendered for purchase on such Reset Adjustment Date pursuant to Section 10.01 hereof for all purposes of this Indenture, including particularly Article X hereof; provided, however, payment on such Bonds shall only be made upon presentation thereof.

From and after each Reset Adjustment Date until the last day of the related Reset Period, the Bonds will bear interest at the applicable Reset Rate, payable on each Interest Payment Date of each year, commencing on the Interest Payment Date next following the Reset Adjustment Date, computed on the basis of a 360-day year of twelve 30-day months. The Reset Rate shall be that rate, determined by the Remarketing Agent on the date specified in the notice from the Borrower referred to in the first paragraph of this subsection (c), which, in the reasonable professional judgment of the Remarketing Agent, on the basis of prevailing financial market conditions, would be the interest rate necessary, but which would not exceed the interest rate necessary, to be borne by the Bonds in order for the market value of the Bonds on said date to be 100% of the principal amount thereof (disregarding accrued interest), provided that the Reset Rate on any Bond shall never exceed the Maximum Rate.

The determination of a Reset Rate by the Remarketing Agent in accordance with the provisions of this subsection (c) shall (in the absence of manifest error) be conclusive and binding upon the Holders of the Bonds, the Issuer, the Credit Facility Provider, the Servicer (from and after the Conversion Date), the Remarketing Agent, the Borrower, the Tender Agent and the Trustee, and each shall be protected in relying on it.

At least 40 and not more than 50 days prior to the final Interest Payment Date of a Reset Period, the Borrower shall elect to have the Bonds bear interest from and after such Interest Payment Date at a Reset Rate for a new Reset Period or at a Variable Rate or a Fixed Rate by giving written notice of such election to the Trustee, the Tender Agent, the Issuer, the Credit Facility Provider, the Servicer (from and after the Conversion Date) and the Remarketing Agent. If the Borrower elects to have the Bonds bear interest at a Variable Rate or fails to make such election, the Borrower shall be deemed to have elected to have the Bonds bear interest at a Variable Rate determined in accordance with the procedures set forth in subsection (b) of this Section commencing on the day immediately following the last day of the Reset Period, in which event there shall be no mandatory sinking fund redemption schedule for the Bonds during the succeeding Variable Period. Notwithstanding the election of the Borrower to have the Bonds bear interest at a new Reset Rate, a Fixed Rate or a Variable Rate as the case may be, at the end of a Reset Period or the deemed election of the Borrower to have the Bonds bear interest at a Variable Rate, if the Borrower fails to supply the items required by subsections (c) or (d), as applicable, of this Section 2.02, the Bonds shall be redeemed or purchased in lieu thereof on the day following such Reset Period pursuant to Section 3.01(b)(vi) or 3.06 hereof, as applicable.

(d) Fixed Rate. At the written request of the Borrower and with the prior written consent of Freddie Mac and the Bank, or, after Conversion, at the written request of the Credit Facility Provider on behalf of the Borrower if the Borrower has not provided the Credit Facility Provider proof satisfactory to it of the extension or substitution of a Hedge Agreement satisfying the requirements of the Reimbursement Agreement not later than sixty (60) days prior to the expiration of the Hedge Agreement, the rate of interest on the Bonds may be established at a Fixed Rate on any Interest Payment Date during a Variable Period or on the day

following any Reset Period, in accordance with the procedures set forth in this subsection (d). In order to effect a Fixed Rate Adjustment, the Borrower must deliver such written consent and a written request to the Trustee, the Issuer, the Bank (prior to the Conversion Date), the Credit Facility Provider, the Servicer (from and after the Conversion Date), the Tender Agent and the Remarketing Agent (or, if applicable, the Credit Facility Provider on behalf of the Borrower must deliver such request) specifying (i) the Fixed Rate Adjustment Date, which shall be not less than forty (40) days after such notice is received by such parties, (ii) the sinking fund redemption amounts for each Interest Payment Date, as provided in Section 3.01(c), at a price equal to the principal amount of Bonds subject to redemption plus interest accrued thereon to the date fixed for redemption, without premium, pursuant to Section 3.01(b)(v) hereof and any applicable optional redemption provision pursuant to Section 3.01(a) hereof, and (iii) the date on which the Fixed Rate will be determined by the Remarketing Agent, which date shall be not later than the Business Day immediately prior to the Fixed Rate Adjustment Date. Such notice must be accompanied by (1) an opinion of Bond Counsel to the effect that Fixed Rate Adjustment in accordance with the procedures described in this subsection (d) is permitted by this Indenture and will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes, (2) if Bonds are to be held publicly after the Fixed Rate Adjustment Date, either an irrevocable commitment (which commitment may be subject to customary commercial conditions) of an Alternate Credit Facility Provider to issue the Credit Facility to be in effect upon and after Fixed Rate Adjustment and until the maturity date of the Bonds, together with accompanying documentation required by Section 5.4 of the Financing Agreement or the irrevocable written commitment of the Credit Facility Provider for an amendment to the Credit Facility to fulfill the Interest Requirement and, if applicable, to extend the termination date of the Credit Facility, (3) the form of notice to be given by the Trustee to the owners of the Bonds with respect to Fixed Rate Adjustment, (4) payment to the Trustee and the Issuer of such amount as the Trustee and the Issuer, respectively, reasonably determines may be required in connection with Fixed Rate Adjustment, including, but not limited to, its own fees and expenses and the cost of printing Bonds, (5) the proposed form of disclosure document (if any) to be distributed in connection with the remarketing of the Bonds on the Fixed Rate Adjustment Date and an undertaking of the Borrower which satisfies any applicable requirements of Rule 15c2-12 of the Securities Exchange Act of 1934, and (6) unless otherwise consented to by the Issuer in its sole and absolute discretion, either: (A) the repayment of the Bonds or the Bond Mortgage Loan from and after the Fixed Rate Adjustment Date will be secured by a credit enhancement provided by Freddie Mac in form and substance equivalent to the Credit Facility, or (B) written evidence from the Rating Agency to the effect that the Bonds will be rated at least "Aa2" by Moody's or "AA" by S&P, without regard to pluses or minuses (or such lower ratings as shall be approved by the Issuer) on the Fixed Rate Adjustment Date.

If (i) the Credit Facility to be in effect upon and after Fixed Rate Adjustment or (ii) an irrevocable commitment as described in (2) above is not delivered (such delivery may be in escrow) to the Trustee at least fifteen (15) days before the Fixed Rate Adjustment Date, or if on any Business Day at least fifteen (15) days before the Fixed Rate Adjustment Date, the Trustee receives notice from the Borrower to the effect that it no longer wishes to proceed with the Fixed Rate Adjustment, or the Trustee receives written notice from the Remarketing Agent that a

Market Risk Event has occurred, the Trustee shall not give the notice specified in the next paragraph to the owners of the Bonds. In the event that the Trustee receives notice from the Remarketing Agent that a Market Risk Event has occurred after giving the notice specified in the next paragraph to the owners of the Bonds, the Trustee shall notify the owners of the Bonds that the Fixed Rate Adjustment has been cancelled. In such event, (i) if the Bonds bear interest at a Variable Rate prior to the proposed Fixed Rate Adjustment Date, they shall continue to bear interest at a Variable Rate, and (ii) if the proposed Fixed Rate Adjustment Date was to be the day following a Reset Period, then the Bonds shall be redeemed (or purchased in lieu thereof) on the day following such Reset Period pursuant to Section 3.01(b)(vi) or Section 3.06 hereof, as applicable.

The Trustee shall give notice to the owners of the Bonds, by first class mail not less than nine (9) days before the Fixed Rate Adjustment Date, specifying: (i) that the interest rate on the Bonds will be established at the Fixed Rate through the final maturity of the Bonds and the date the Fixed Rate will become effective; (ii) that all Bonds must be tendered for purchase and surrendered to the Tender Agent for purchase not later than 9:30 a.m., Washington, DC time, on the Fixed Rate Adjustment Date; and (iii) that the Fixed Rate Adjustment (but not the mandatory tender of Bonds on the proposed Fixed Rate Adjustment Date) is subject to cancellation upon the Trustee's receipt of notice from the Remarketing Agent that a Market Risk Event has occurred.

Any Bond not tendered to the Tender Agent for purchase in accordance with the provisions of this Section 2.02(d) on the Fixed Rate Adjustment Date (including a cancelled Fixed Rate Adjustment Date) shall be deemed to have been tendered for purchase on such Fixed Rate Adjustment Date pursuant to Section 10.01 hereof for all purposes of this Indenture, including particularly Article X hereof; provided, however, payment on such Bonds shall only be made upon presentation thereof.

From and after Fixed Rate Adjustment and until maturity, the Bonds will bear interest at the Fixed Rate, payable on each Interest Payment Date, commencing on the Interest Payment Date next following the Fixed Rate Adjustment Date, computed on the basis of a 360-day year of twelve 30-day months. The Fixed Rate shall be that rate, determined by the Remarketing Agent on the date specified in the notice from the Borrower referred to in the first paragraph of this subsection (d) which, in the reasonable professional judgment of the Remarketing Agent, on the basis of prevailing financial market conditions, would be the interest rate necessary, but which would not exceed the interest rate necessary, to be borne by the Bonds in order for the market value of the Bonds on such date to be 100% of the principal amount thereof (disregarding accrued interest), provided that in no event shall the Fixed Rate exceed any Maximum Rate.

The determination of the Fixed Rate by the Remarketing Agent shall (in the absence of manifest error) be conclusive and binding on the holders of the Bonds, the Issuer, the Tender Agent, the Trustee, the Credit Facility Provider, the Servicer (from and after the Conversion Date), and the Remarketing Agent, and each shall be protected by relying on such rate. The

Trustee shall, upon written request of any Bondholder, notify such Bondholder of the Fixed Rate to be in effect on and after the Fixed Rate Adjustment Date.

Upon Fixed Rate Adjustment, the Trustee (with the cooperation of the Issuer) shall cause to be prepared, at the expense of the Borrower, new Bonds substantially in the form set forth in Exhibit A hereto and stating the Fixed Rate. Any such Bonds shall be executed and authenticated as provided in Section 2.06, and shall be delivered to Bondholders on the Fixed Rate Adjustment Date without charge.

### **Section 2.03 Limited Obligations.**

THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES, RECEIPTS, AND OTHER MONEYS PLEDGED THEREFOR UNDER THIS INDENTURE. THE BONDS ARE NOT A DEBT OF THE STATE, THE ISSUER (EXCEPT TO THE LIMITED EXTENT SET FORTH IN THIS INDENTURE) OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE, AND NONE OF THE STATE, THE ISSUER (EXCEPT TO THE LIMITED EXTENT SET FORTH IN THIS INDENTURE) OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE IS LIABLE FOR THE PAYMENT OF THE BONDS. NEITHER THE FAITH AND CREDIT OF THE STATE, THE ISSUER NOR OF ANY OTHER POLITICAL SUBDIVISION OF THE STATE ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR OF INTEREST ON THE BONDS.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds, or for any claim based thereon or upon any obligation, covenant or agreement contained herein or therein, against any past, present or future Councilmember, officer, employee or agent of the Issuer, under any rule of law or equity or statutory or constitutional provision, or by the enforcement of any assessment or penalty or otherwise.

DESPITE THE COMMITMENT FROM FREDDIE MAC TO PROVIDE THE CREDIT FACILITY FROM AND AFTER THE CONVERSION DATE, THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, ANY AGENCY OF THE UNITED STATES OF AMERICA, OR OF FREDDIE MAC, AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA OR BY FREDDIE MAC. PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS IS NOT GUARANTEED BY FREDDIE MAC. THE OBLIGATIONS OF FREDDIE MAC CONTEMPLATED UNDER THE CREDIT ENHANCEMENT AGREEMENT ARE OBLIGATIONS SOLELY OF FREDDIE MAC AND ARE NOT BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA.

Any obligation of the Issuer under this Indenture to the Credit Facility Provider by reason of the pledge of the Trust Estate for the benefit of the Credit Facility Provider pursuant to the Granting Clause of this Indenture shall be limited as provided in Sections 5.09 and 11.09 hereof.

#### **Section 2.04 Indenture Constitutes Contract.**

In consideration of the purchase and acceptance of the Bonds issued hereunder by those who shall hold them from time to time, the provisions of this Indenture shall be part of the contract of the Issuer with the Holders of the Bonds and shall be deemed to be a contract between the Issuer and the Holders of the Bonds from time to time.

#### **Section 2.05 Form of Bonds; Execution; Initial Bond.**

The Bonds and any Bonds issued in exchange or replacement for the Bonds shall be substantially in the form set forth in Exhibit A to this Indenture with such appropriate variations, omissions and insertions as are customary (including, but not limited to, changes in form to reflect the current interest rate mode with respect to the Bonds), permitted or required by this Indenture and may have such letters, numbers or other marks of identification as may be approved by the officers executing such Bonds, such approval to be conclusively evidenced by the execution of the Bonds. Definitive Bonds shall be printed, engraved, typewritten or reproduced in any manner acceptable to the Issuer.

Bonds shall be signed by, or executed with the facsimile or manual signature of, an Authorized Officer of the Issuer and countersigned by the facsimile or manual signature of the City Clerk of the Issuer.

In case any officer of the Issuer whose signature or whose facsimile signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery, and also any Bond may be signed by such persons as at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

#### **Section 2.06 Authentication.**

Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth in Exhibit A duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee; and such executed certificate upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized signer of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds.

### **Section 2.07 Mutilated, Lost, Stolen or Destroyed Bonds.**

In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate a new Bond of like date, series, maturity and denomination as that mutilated, lost, stolen or destroyed. Any mutilated Bond shall first be surrendered to the Trustee; and in the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Trustee evidence of such loss, theft or destruction reasonably satisfactory to it together with indemnity for the Trustee and the Issuer reasonably satisfactory to the Trustee. In the event any such Bond shall have matured, instead of issuing a duplicate Bond or Bonds the Issuer may pay the same without surrender thereof. The Trustee may charge the holder or owner of such Bond with its reasonable fees and expenses.

### **Section 2.08 Transfer and Exchange of Bonds; Persons Treated as Owners.**

The Trustee as Bond Registrar shall cause a Bond Register to be kept for the registration of transfers of Bonds. Any Bond may be transferred only upon an assignment duly executed by the registered owner or such registered owner's duly authorized representative in such form as shall be satisfactory to the Bond Registrar and upon surrender of such Bond to the Trustee for cancellation. Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the Trustee shall authenticate and deliver to the transferee a replacement fully registered Bond or Bonds, of Authorized Denomination or Denominations and for the amount of such Bond or Bonds so surrendered.

Any Bond may, in accordance with its terms, be exchanged, at the office of the Trustee, for a new fully registered Bond or Bonds, of the same maturity, of any Authorized Denomination or Denominations and for the aggregate amount of such Bond then Outstanding.

In all cases in which Bonds shall be transferred or exchanged hereunder, the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange. The Trustee shall not be required to transfer any Bond after the mailing of notice calling such Bond for redemption, or during the period of fifteen days preceding the mailing of a notice of redemption of any Bonds.

The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of and premium, if any, and interest on any such Bond shall be made only to or upon the order of the registered owner thereof, or such registered owner's legal representative, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

Neither the Issuer nor the Trustee shall be required to make any such exchange, registration or transfer of Bonds during the period of fifteen (15) days immediately preceding an Interest Payment Date if the Bonds bear interest at a Reset Rate or the Fixed Rate. Except as

provided in Section 10.01 with respect to a redemption of the Bonds in whole during a Variable Rate Period, in the case of any proposed redemption of Bonds, during the period of fifteen (15) days immediately preceding the selection of Bonds for such redemption and after the giving of notice of redemption, the Trustee is not required to transfer or exchange any Bond or portion thereof which has been called for redemption.

### **Section 2.09 Temporary Bonds.**

Until definitive Bonds are ready for delivery, there may be executed, and upon the request of the Issuer the Trustee shall authenticate and deliver, in lieu of definitive Bonds temporary printed, typewritten, engraved or lithographed Bonds, in such denomination or denominations as shall be determined by the Issuer, in fully registered form, in substantially the form hereinabove set forth and with such appropriate omissions, insertions and variations as may be required.

If temporary Bonds shall be issued, the Issuer shall cause the definitive Bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it at its principal trust office of any temporary Bond, shall cancel the same and authenticate and deliver in exchange therefor, without charge to the owner thereof, a definitive Bond or Bonds, as the case may be, of an equal aggregate principal amount, of the same maturity or maturities and bearing interest at the same rates as the temporary Bond surrendered. Until so exchanged the temporary Bonds shall in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds to be issued and authenticated hereunder. Interest on temporary Bonds, when due and payable, if the definitive Bonds shall not be ready for exchange, shall be paid on presentation of such temporary Bonds and notation of such payment shall be endorsed thereon by the Trustee.

### **Section 2.10 Delivery of Bonds.**

Prior to the delivery by the Trustee of any Bonds there shall be delivered to the Trustee:

(a) executed counterparts of this Indenture, the Financing Agreement, the Regulatory Agreement, the Tax Certificate, the Remarketing Agreement, the Intercreditor Agreement, the Pledge Agreement, the Construction Phase Financing Agreement and the Construction Phase Credit Documents;

(b) an opinion of Bond Counsel to the effect that this Indenture and the Bonds are valid and binding limited obligations of the Issuer enforceable upon the Issuer in accordance with their respective terms, subject to customary exceptions;

(c) sale proceeds of the Bonds;

(d) the Bond Mortgage Note;

(e) the Bond Mortgage;

(f) the Reimbursement Mortgage;

(g) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the agreements described herein to which it is a party, that its execution and delivery of and performance of its covenants in such agreements do not contravene law or any provision of any other agreement to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their respective terms;

(h) an opinion of Bond Counsel to the effect that the interest on the Bonds, under laws in effect on the date of such opinion, is excluded from gross income of the Holders thereof for federal income tax purposes and, where applicable, for State income tax purposes;

(i) a certified copy of the Issuer's resolution authorizing the issuance of the Bonds;

(j) the written request and authorization to the Trustee by the Issuer to authenticate and deliver the Bonds to the initial purchasers thereof upon payment to the Trustee, for the account of the Issuer, of the sum specified as the purchase price therefor in such request and authorization;

(k) receipt by the Trustee of the amounts specified in Section 2.11 of this Indenture and Section 3.3 of the Financing Agreement; and

(l) evidence that the Bonds have been assigned a rating of Aa3/A+ by Moody's.

**Section 2.11 Establishment of Bond Mortgage Loan Fund; Application of Bond Proceeds and Other Moneys.**

(a) The Trustee shall establish, maintain and hold in trust, and there is hereby established with the Trustee, a Bond Mortgage Loan Fund comprised of a Bond Proceeds Account and an Equity Account. No amount shall be charged against the Bond Mortgage Loan Fund except as expressly provided in this Section 2.11 and Section 4.02.

(b) The proceeds of the sale of the Bonds shall be delivered to the Trustee on the Delivery Date. The Trustee shall deposit (i) \$\_\_\_\_\_ of such proceeds to the credit of the Bond Proceeds Account of the Bond Mortgage Loan Fund and (ii) \$\_\_\_\_\_ of such proceeds to the credit of the Bond Proceeds Account of the Cost of Issuance Fund.

(c) The Borrower shall deliver or cause to be delivered to the Trustee, on or prior to the Delivery Date, \$\_\_\_\_\_ for deposit to the credit of the Equity Account of the Bond Mortgage Loan Fund established pursuant to Section 4.01. The Trustee shall deposit such Borrower funds to the credit of the Equity Account of the Bond Mortgage Loan Fund. Amounts in the Bond Mortgage Loan Fund shall be disbursed as provided in Section 4.02 hereof. Upon the disbursement of all amounts in the Bond Mortgage Loan Fund, the Trustee shall close the Bond Mortgage Loan Fund.

(d) The Borrower shall deliver or cause to be delivered to the Trustee, on or prior to the Delivery Date, the Costs of Issuance Deposit for deposit to the credit of the Cost of Issuance Fund.

(e) Upon the deposit of moneys to the credit of the Bond Mortgage Loan Fund and the Cost of Issuance Fund and the delivery of the items required by Section 2.10, the Issuer shall originate the Bond Mortgage Loan pursuant to the Financing Agreement and the Trustee shall make disbursements of amounts in the Bond Mortgage Loan Fund to the Borrower as provided in this Indenture and the Financing Agreement.

#### **Section 2.12 Book-Entry Only System of Registration.**

(a) Notwithstanding the foregoing provisions of this Article II, each of the Bonds shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Bonds of each maturity, which Bonds shall be registered in the name of Cede & Co., as nominee of DTC. Except as provided in paragraph (f) below and other than with respect to Purchased Bonds which shall be held in certificated form, all of the Bonds shall be registered in the Bond Register in the name of Cede & Co., as nominee of DTC; provided that if DTC shall request that the Bonds be registered in the name of a different nominee, the Trustee shall exchange all or any portion of the Bonds for an equal aggregate principal amount of Bonds registered in the name of such nominee or nominees of DTC. No person other than DTC or its nominee shall be entitled to receive from the Issuer or the Trustee either a Bond or any other evidence of ownership of the Bonds, or any right to receive any payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the Bonds on the Bond Register in connection with discontinuing the book entry system as provided in paragraph (f) below or otherwise.

(b) So long as the Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the principal or redemption price of or interest on such Bonds shall be made to DTC or its nominee in same day funds on the dates provided for such payments under this Indenture. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the Issuer or the Trustee with respect to the principal or redemption price of or interest on the Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Bonds Outstanding of any maturity, the Trustee shall not require surrender by DTC or its nominee of the Bonds so redeemed, but DTC (or its nominee) may retain such Bonds and make an appropriate notation on the Bond certificate as to

the amount of such partial redemption; provided, that DTC shall deliver to the Trustee, upon request, a written confirmation of such partial redemption and thereafter the records maintained by the Trustee shall be conclusive as to the amount of the Bonds of such maturity which have been redeemed.

(c) The Issuer and the Trustee may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal or redemption price of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Indenture, registering the transfer of Bonds, obtaining any consent or other action to be taken by Holders and for all other purposes whatsoever; and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. Neither the Issuer nor the Trustee shall have any responsibility or obligation to any broker-dealer, bank or other financial institution for which DTC holds Bonds from time to time as securities depository ("DTC Participant"), any person claiming a beneficial ownership interest in the Bonds under or through DTC or any DTC Participant, or any other person which is not shown on the Bond Register as being a Bondholder, with respect to either: (1) the Bonds; or (2) the accuracy of any records maintained by DTC or any DTC Participant; or (3) the payment by DTC or any DTC Participant of any amount in respect of the principal or redemption price of or interest on the Bonds; or (4) any notice which is permitted or required to be given to Holders under this Indenture; or (5) the selection by DTC or any DTC Participant of any person to receive payment in the event of a partial redemption of the Bonds; or (6) any consent given or other action taken by DTC as Holder.

(d) So long as the Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all notices required or permitted to be given to the Holders under this Indenture shall be given to DTC as provided in DTC's procedures, as the same may be amended from time to time.

(e) In connection with any notice or other communication to be provided to Holders pursuant to this Indenture by the Issuer or the Trustee with respect to any consent or other action to be taken by Holders, DTC shall consider the date of receipt of notice requesting such consent or other action as the record date for such consent or other action, provided that the Issuer or the Trustee may establish a special record date for such consent or other action. The Issuer or the Trustee shall give DTC notice of such special record date not less than 15 calendar days in advance of such special record date to the extent possible.

(f) The book-entry system for registration of the ownership of the Bonds may be discontinued at any time if either: (1) DTC determines to resign as securities depository for the Bonds; or (2) the Issuer determines that continuation of the system of book-entry transfers through DTC (or through a successor securities depository) is not in the best interests of the Issuer. In either of such events (unless, in the case described in clause (2) above, the Issuer appoints a successor securities depository), the Bonds shall be delivered in registered certificate form to such persons, and in such maturities and principal amounts, as may be designated by

DTC, but without any liability on the part of the Issuer or the Trustee for the accuracy of such designation. Whenever DTC requests the Issuer and the Trustee to do so, the Issuer and the Trustee shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of certificates evidencing the Bonds.

(g) The book-entry system for registration of the ownership of the Bonds shall be discontinued in the event that at any time there is no Credit Facility then in effect. In such event, the Bonds shall be in the form of a single registered Bond, subject to transfer only with the prior written consent of the Issuer and only upon execution by the transferee of an investment letter in the form attached hereto as Exhibit C.

### **Section 2.13 Mandatory Tender of Bonds on Substitution Date.**

Except during the Fixed Rate Period, the Borrower, pursuant to Section 5.4 of the Financing Agreement, is permitted with the prior written consent of Freddie Mac and with the prior written consent of the Bank (prior to the Conversion Date) and the Credit Facility Provider (provided there has been no Wrongful Dishonor (as such term is defined in the Financing Agreement)) to provide an Alternate Credit Facility to replace the then outstanding Credit Facility at the times specified in the Financing Agreement.

The Bonds shall be subject to mandatory tender for purchase on any Substitution Date from the sources available pursuant to Sections 10.03 and 10.04, at a Purchase Price equal to the principal amount thereof plus accrued interest to the Substitution Date; provided, however, such mandatory tender shall be subject to (a) the receipt by the Tender Agent on the Substitution Date of remarketing proceeds in an amount equal to one hundred percent (100%) of the Purchase Price of the Outstanding Bonds, and (b) the receipt by the Trustee of an Alternate Credit Facility and the other documents required by Section 5.4 of the Financing Agreement. If, for any reason, (i) the Tender Agent does not receive remarketing proceeds in an amount sufficient to pay one hundred percent (100%) of the Purchase Price of the Outstanding Bonds, or (ii) the Alternate Credit Facility and the other documents required by Section 5.4 of the Financing Agreement are not received by the Trustee by 2:00 p.m., Washington D.C. time, on the Substitution Date, the Bonds shall be returned to the Holders thereof and such Bonds shall continue to be subject to the terms hereof.

Upon receipt by the Trustee of a form of the Alternate Credit Facility to be in effect on and after the Substitution Date, the form of the disclosure document (if any) to be used in connection with the remarketing of the Bonds on the Substitution Date, and a form of the documents required pursuant to Section 5.4 of the Financing Agreement, the Trustee shall establish the Substitution Date for the mandatory tender and purchase of the Bonds. Such Substitution Date shall be not less than five (5) days following the Trustee's receipt of the Alternate Credit Facility to be in effect on and after the Substitution Date (which Alternate Credit Facility may be delivered in escrow), and such other required documents; provided, however, the Substitution Date may be at a later date if the Trustee has received a commitment to extend the existing Credit Facility or the existing Credit Facility will be in place for up to a

time period of not less than fifteen (15) days following the Trustee's receipt of the Alternate Credit Facility.

The Trustee shall give notice to the owners of the Bonds, by first class mail not less than nine (9) days before the Substitution Date specifying: (i) the Substitution Date, (ii) that all Bonds must be surrendered to the Tender Agent for purchase not later than 9:30 a.m., Washington, DC time, on the Substitution Date, and (iii) that such tender is subject to cancellation if the conditions to the substitution of an Alternate Credit Facility are not satisfied on the Substitution Date.

Unless such tender is revoked by the Trustee, as provided in this Section, any Bond not tendered to the Tender Agent for purchase in accordance with the provisions of this Section 2.13 on the Substitution Date (including any Substitution Date which fails to occur) shall be deemed to have been tendered for purchase on such Substitution Date pursuant to Section 10.01 hereof for all purposes of this Indenture, including particularly Article X hereof; provided, however, payment on such Bonds shall only be made upon presentation thereof.

The Trustee shall draw on the existing Credit Facility in accordance with Section 10.04 with regard to the purchase of Bonds pursuant to this Section prior to the delivery of the then outstanding Credit Facility to the Credit Facility Provider and prior to providing notice to the then existing Credit Facility Provider that the Alternate Credit Facility is in effect; provided, however, that the Trustee shall not surrender the existing Credit Facility until all draws have been honored by the related Credit Facility Provider.

#### **Section 2.14 Conversion.**

Notwithstanding any other provision of this Indenture to the contrary, if the Conversion Notice is issued on or before the Forward Commitment Maturity Date, Conversion shall occur on the Conversion Date specified in the Conversion Notice. The Trustee shall, not less than twelve (12) Business Days prior to the Conversion Date, give written notice of Conversion to the Bondholders and to the Issuer. Conversion shall not require, and shall be effective without, the consent of the Bondholders. The Trustee's notice to the Bondholders and to the Issuer shall state the Conversion Date and the rating to be in effect with respect to the Bonds from and after the Conversion Date. The Bonds shall not be subject to mandatory tender on the Conversion Date. The Issuer and the Trustee acknowledge that on the Conversion Date, pursuant to the Construction Phase Credit Assignment, Freddie Mac will succeed to all of the rights and interests of the Construction Phase Credit Facility Provider and the Bank under the Bond Financing Documents (subject to certain reserved rights) and the Bond Mortgage Loan Documents with the authority to exercise the rights otherwise granted to the Construction Phase Credit Facility Provider and the Bank under the Bond Financing Documents and the Bond Mortgage Loan Documents. Upon receipt by the Trustee of the Credit Enhancement Agreement, the Trustee shall surrender the Letter of Credit to the Construction Phase Credit Facility Provider.

## **Section 2.15 Failed Conversion.**

If the Conversion Notice is not issued on or before the Forward Commitment Maturity Date, Conversion will not occur and Freddie Mac will not have any obligation to provide the Credit Enhancement Agreement and will not otherwise have any obligation with respect to the Bonds or the Bond Mortgage Loan. If Conversion does not occur, the Letter of Credit will remain in effect in accordance with its terms, and all references in this Indenture to Freddie Mac and the Servicer will be null and void and of no force and effect.

**ARTICLE III**

**REDEMPTION OF BONDS PRIOR TO MATURITY**

**Section 3.01 Redemption of Bonds Prior to Maturity.**

(a) Optional Redemption. With the prior written consent of the Credit Facility Provider, the Bonds are subject to optional redemption in whole or in part as a result of optional prepayments on the Bond Mortgage Loan in accordance with the prepayment restrictions set forth in Section 4.4 of the Financing Agreement from payments made under the Credit Facility or from other Eligible Funds deposited with the Trustee at the redemption prices set forth below:

(i) During a Variable Period, on any Interest Payment Date, at a redemption price of 100% of the principal amount thereof, plus accrued interest thereon to the redemption date, without premium.

(ii) During a Reset Period or the Fixed Rate Period, on any Business Day during the periods set forth in the table below and at the respective redemption prices set forth below expressed as percentages of the principal amounts of the Bonds called for redemption, such redemption prices declining as set forth below until such redemption price equals 100% of the principal amount of the Bonds, plus accrued interest, if any, to the redemption date:

<b>Term of Reset Period or Fixed Rate Period</b>	<b>Redemption Prices as a Percentage of Principal Amounts</b>	<b>Earliest Call Date</b>
Greater than 15 years	103% after 10 years declining 1% per 12 months to 100%	10 years
Greater than 10 and less than or equal to 15	102% after 7 years declining 1% per 12 months to 100%	7 years
Less than or equal to 10 and greater than 7	102% after 4 years declining 1/2% per 12 months to 100%	4 years
Less than or equal to 7 and greater than 5	102% after 3 years declining 1% per 12 months to 100%	3 years
Less than or equal to 5 and greater than 2	101% after 1 year declining 1/2% per 6 months to 100%	2 years
Less than or equal to 2 and greater than 1	100-1/2% after 1 year declining 1/2% per 6 months to 100%	1 year
Equal to 1 year	100% after 6 months	6 months

provided that, notwithstanding the foregoing and to the extent necessary to enable the Bonds to be remarketed at par, the Borrower and the Remarketing Agent may, not later than fifteen (15) days before the Reset Adjustment Date, Variable Rate Adjustment Date or Fixed Rate Adjustment Date, as applicable, give notice to the Issuer, the Credit

Facility Provider, the Servicer, and the Trustee setting forth a redemption schedule different from that set forth in this paragraph, accompanied by (A) the written consent of the Credit Facility Provider, if any, to be in effect for the ensuing Reset Period or Fixed Rate Period, as applicable, and (B) an opinion of Bond Counsel to the effect that such change will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes; and upon such notice and delivery of the consent and the opinion, such different redemption schedule shall apply to any redemption pursuant to this paragraph for such Reset Period or Fixed Rate Period, as applicable, without further action by any party.

(iii) While the Bonds are registered in the name of the Borrower pursuant to the Pledge Agreement or in such other name as the Credit Facility Provider or another party designated by the Credit Facility Provider shall have directed, as a result of a mandatory tender for purchase of the Bonds pursuant to Section 3.06 hereof, the Bonds are subject to redemption in whole or in part on any date, at the option of the Credit Facility Provider, at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date, without premium, from Eligible Funds deposited with the Trustee.

(iv) Optional redemption of Bonds at a premium may only be made if the Trustee has received Eligible Funds (not consisting of funds drawn under the Credit Facility) on or prior to the redemption date in an amount sufficient to pay the applicable redemption premium.

(v) The Trustee shall effect a redemption of Bonds pursuant to this Section 3.01(a) not later than 35 days following its receipt of moneys representing an optional prepayment of the Bond Mortgage Loan.

(b) Mandatory Redemption. The Bonds are subject to mandatory redemption on any date, at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date, without premium, at the earliest practicable date from payments made under the Credit Facility or from funds transferred from the Bond Mortgage Loan Fund to the Redemption Fund pursuant to Section 4.02(E), as applicable, upon the occurrence of any of the following:

(i) in whole or in part, upon receipt by the Trustee of (1) proceeds of a draw under the Credit Facility, in the amount of Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Bond Mortgage Loan, such amount to be applied to reimburse the Credit Facility Provider for the draw under the Credit Facility as a result of casualty or condemnation of the Project and (2) a written direction by the Credit Facility Provider to redeem such Bonds using moneys obtained as a result of a draw upon the Credit Facility; or

(ii) in whole, (1) upon receipt by the Trustee of amounts from the Credit Facility Provider pursuant to the Credit Facility or from funds transferred from the Bond Mortgage Loan Fund to the Redemption Fund pursuant to Section 4.02(e), as applicable, as a result of the occurrence of a default under any Bond Mortgage Loan Document and receipt by the Trustee of a written direction by the Credit Facility Provider to redeem the Bonds pursuant to the Credit Facility; or (2) upon receipt by the Trustee of notice from the Construction Phase Credit Facility Provider that the interest component of the Construction Phase Credit Facility will not be reinstated following a draw on the Construction Phase Credit Facility to pay interest on the Bonds; or

(iii) in whole, on the last Business Day which is not less than five days before the date of expiration of any Credit Facility unless the Trustee receives a renewal or extension of or replacement for such Credit Facility meeting the requirements of Section 5.4 of the Financing Agreement or, in the case of a replacement of the Credit Facility in connection with a Reset Adjustment Date or the Fixed Rate Adjustment Date pursuant to Section 2.02(c) or (d), an irrevocable commitment of an entity to issue an Alternate Credit Facility to be in effect upon and after such Reset Adjustment Date or Fixed Rate Adjustment Date, in each case not less than thirty (30) days before the expiration of the then-existing Credit Facility; or

(iv) in part in Authorized Denominations, at the direction of the Credit Facility Provider from and after Conversion, (1) on each Reset Adjustment Date, each Variable Rate Adjustment Date and on the Fixed Rate Adjustment Date in an amount not greater than the amount in the Principal Reserve Fund on the first day of the month prior to such Reset Adjustment Date, Variable Rate Adjustment Date or the Fixed Rate Adjustment Date, as applicable, or (2) on any Interest Payment Date during a Variable Period, in an amount not greater than the amount in the Principal Reserve Fund on the first day of the month prior to such Interest Payment Date; or

(v) in part in Authorized Denominations, on each Interest Payment Date, during any Reset Period or Fixed Rate Period, with respect to the Bonds that have term maturities occurring during such Reset Period or Fixed Rate Period commencing on the first sinking fund mandatory redemption date established for the Bonds for such Reset Period or Fixed Rate Period as provided in subsection (c) below; provided that if less than all the Bonds shall have been redeemed pursuant to Section 3.01(a) or 3.01(b)(i), the amount of Bonds to be redeemed in each year from sinking fund installments as provided in this Section 3.01(b)(v) shall be decreased by an amount, in proportion, as nearly as practicable, to the decrease in the payments on the Bond Mortgage Loan in such year; or

(vi) in whole, on the day following any Reset Period if the Trustee has not received the items required by Sections 2.02(c) or (d), as applicable, to effect a new Variable Period, Reset Period or a Fixed Rate Adjustment or upon cancellation of a rate

adjustment on a Reset Adjustment Date or upon cancellation of a Fixed Rate Adjustment to a Fixed Rate; or

(vii) in part, in the event that the Borrower elects to make a Pre-Conversion Equalization Payment, in an amount equal to the amount prepaid by the Borrower;

(viii) in part, in the event and to the extent that amounts remaining in the Bond Mortgage Loan Fund are transferred to the Redemption Fund pursuant to Section 4.02(e) for application to the redemption of Bonds; or

(ix) on the Conversion Date, in part, in the amount of \$\_\_\_\_\_, pursuant to a mandatory principal prepayment of the Bond Mortgage Loan.

(c) At least fifteen (15) days before a Reset Adjustment Date or the Fixed Rate Adjustment Date the Borrower shall, with the prior written consent of the Credit Facility Provider, determine the mandatory sinking fund redemption schedule for the Bonds for such Reset Period or Fixed Rate Period, which shall be based upon and shall be consistent with the Principal Reserve Fund payments to be made by the Borrower under the Bond Mortgage Loan for deposit to the Principal Reserve Fund; provided, however, the Borrower shall deliver to the Trustee, the Issuer and the Credit Facility Provider an opinion of Bond Counsel to the effect that such determination of the sinking fund redemption schedule will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(d) Following a Variable Rate Adjustment Date, there shall be no mandatory sinking fund redemption schedule for the Bonds during the succeeding Variable Period.

### **Section 3.02 Selection of Bonds for Redemption.**

(a) The Trustee shall select Bonds subject to mandatory sinking fund redemption pursuant to Section 3.01(b)(v) hereof by lot within the appropriate maturity. If less than all the Bonds then Outstanding shall be called for redemption other than as a result of mandatory sinking fund redemption pursuant to Section 3.01(b)(v) hereof, the Trustee shall redeem an amount of Bonds so that the resulting decrease in debt service on the Bonds in each semiannual period ending on an Interest Payment Date is proportional, as nearly as practicable, to the decrease in the payments on the Bond Mortgage Note in each such semiannual period, and the Bonds shall be selected by lot within each maturity, the cost of such selection being at the Borrower's expense.

(b) Bonds shall be redeemed pursuant to this Article III only in Authorized Denominations.

### **Section 3.03 Notice of Redemption.**

Notice of the intended redemption of each Bond shall be given by the Trustee by first class mail, postage prepaid, or by facsimile transmission, to the registered owner at the address of such owner shown on the Bond Register. All such redemption notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional or mandatory sinking fund redemptions) nor more than sixty (60) days prior to the date fixed for redemption. The Trustee may provide a conditional notice of redemption upon the direction of the Credit Facility Provider or the Borrower (with the prior written consent of the Credit Facility Provider).

Notices of redemption shall state the redemption date and the redemption price, the place or places where amounts due upon such redemption will be payable, and, if less than all of the then Outstanding Bonds are called for redemption, shall state (i) the numbers of the Bonds to be redeemed by giving the individual certificate number of each Bond to be redeemed or shall state that all Bonds between two stated certificate numbers, both inclusive, are to be redeemed or that all of the Bonds of one or more maturities have been called for redemption; (ii) the CUSIP numbers of all Bonds being redeemed if available; (iii) the amount of each Bond being redeemed (in the case of a partial redemption); (iv) the date of issue of the Bond as originally issued; (v) the rate of interest borne by each Bond redeemed; (vi) the maturity date of each Bond being redeemed; (vii) the possibility of a purchase of Bonds in lieu of redemption, if applicable; (viii) the conditions, if any, which must be satisfied in order for the redemption to take place on the scheduled date of redemption (including, to the extent applicable, notice that a redemption of Bonds at a premium is conditioned upon the receipt by the Trustee of Eligible Funds not consisting of funds drawn under the Credit Facility in an amount sufficient to pay the redemption premium); and (ix) any other descriptive information needed to identify accurately the Bonds being redeemed.

Each notice of redemption shall state that further interest on such Bonds will not accrue from and after the redemption date and that payment of the principal amount and premium, if any, will be made upon presentation and surrender of the Bonds at the Principal Office of the Trustee unless the Bonds are then held in a book-entry only system of registration.

Notice of such redemption shall also be sent by certified mail, overnight delivery service, facsimile transmission or other secure means, postage prepaid, to the Issuer, to the Credit Facility Provider, to the Servicer (from and after the Conversion Date), to the Rating Agency, to all municipal registered Securities Depositories, to the Remarketing Agent and to at least two of the national Information Services that disseminate securities redemption notices, when possible, at least two (2) Business Days prior to the mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of such Bonds.

In addition to providing notice of redemption as set forth above, if the Bonds are no longer held in book-entry form, the Trustee shall send a second notice of redemption within sixty (60) days following the redemption date, by certified mail, overnight delivery service, or other secure means, postage prepaid to the registered owners of any Bonds called for redemption, at their addresses appearing on the Bond Register, who have not surrendered their Bonds for redemption within thirty (30) days following the redemption date.

Failure to give notice by mailing to the registered owner of any Bond designated for redemption or tender or to any depository or information service shall not affect the validity of the proceedings for the redemption of any other Bond if notice of such redemption shall have been mailed as herein provided.

#### **Section 3.04 Cancellation.**

All Bonds that have been redeemed shall be marked cancelled by the Trustee, and shall not be reissued. A counterpart of the certificate of cancellation evidencing such cancellation shall, upon request, be furnished by the Trustee to the Issuer.

#### **Section 3.05 Effect of Notice of Redemption.**

If a conditional notice of redemption has been provided pursuant to the terms of this Indenture and the conditions are not satisfied, such notice of redemption shall be of no force and effect and the Bondholders shall be restored to their former positions as though no such notice of redemption had been delivered. Notice of redemption having been given in the manner provided in this Article III and if either there were no conditions to such redemption or the conditions have been satisfied (or in the event no such notice is required under Section 3.03), and money for the redemption being held by the Trustee or Paying Agent for that purpose, thereupon the Bonds so called for redemption shall become due and payable on the redemption date, and interest thereon shall cease to accrue on such date; and such Bonds shall thereafter no longer be entitled to any security or benefit under this Indenture except to receive payment of the redemption price thereof.

#### **Section 3.06 Purchase of Bonds in Whole in Lieu of Redemption.**

Notwithstanding anything in this Indenture to the contrary, at any time that the Bonds are subject to redemption in whole pursuant to the provisions of this Indenture, all (but not less than all) of the Bonds to be redeemed may be purchased by the Trustee (for the account of the Borrower or the Credit Facility Provider or their respective designee, as directed by such party) on the date which would be the redemption date at the direction of the Credit Facility Provider or the Borrower, with the prior written consent of the Credit Facility Provider (which direction shall specify that such purchase is pursuant to this Section 3.06), who shall give the Trustee at least one Business Day's notice prior to such redemption date, at a purchase price equal to the redemption price which would have been applicable to such Bonds on the redemption date. The Bonds shall be purchased in lieu of redemption only from amounts provided by the Credit

Facility Provider or from other Eligible Funds, in that order of priority. In the event the Trustee is so directed to purchase Bonds in lieu of redemption, no notice to the holders of the Bonds to be so purchased (other than the notice of redemption otherwise required hereunder) shall be required, and the Trustee shall be authorized to apply to such purpose the funds in the Redemption Account which would have been used to pay the redemption price for such Bonds if such Bonds had been redeemed rather than purchased. Such Bonds so purchased for the account of the Borrower shall for all purposes under this Indenture constitute Purchased Bonds held by the Custodian pursuant to the Pledge Agreement and may be remarketed, so long as the Credit Facility is then in effect with respect to the Bonds, by the Remarketing Agent in accordance with the provisions of Section 10.03.

In addition, the Credit Facility Provider shall have the right to transfer the Purchased Bonds (without reinstatement of the then existing Credit Facility or delivery to the Trustee of an Alternate Credit Facility, which will result in such Bonds being unrated) only to a single Bondholder which has provided the Trustee with an investment letter in the form attached to this Indenture as Exhibit C (and otherwise subject to the provisions of Section 2.12(g) hereof), provided that an opinion of Bond Counsel is delivered to the Trustee to the effect that such transfer will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds. Such Purchased Bonds shall not be transferred unless and until the Credit Facility is reinstated, except to a single Bondholder which has provided the Trustee with an investment letter in the form attached to this Indenture as Exhibit C, and if not remarketed or transferred as provided herein, shall be redeemed and cancelled automatically by the Trustee on the date which is two (2) years from the date of purchase, unless an opinion of Bond Counsel is delivered to the Trustee to the effect that not redeeming and canceling such Purchased Bonds will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds. Any purchase of Bonds hereunder is not intended as an extinguishment of the debt represented by the Bonds.

### **Section 3.07 Cancellation of Purchased Bonds.**

Upon a redemption date on which all Bonds (other than Purchased Bonds) are redeemed or on a date on which all Bonds (other than Purchased Bonds) are presented to the Trustee for cancellation pursuant to Section 3.06, all Purchased Bonds shall be deemed cancelled provided that the Credit Facility Provider has consented to such cancellation in writing. The Credit Facility Provider also may, in accordance with the terms of the Reimbursement Agreement, direct the cancellation of Purchased Bonds in whole or in part at any time. No further moneys shall be required to be paid by the Issuer or the Credit Facility Provider in connection with such cancellation; provided, however, that such cancellation shall not release the obligation of the Borrower to reimburse the Credit Facility Provider for payments made in respect of principal of, interest on or Purchase Price of the Bonds, including Purchased Bonds.

## ARTICLE IV

### REVENUES AND FUNDS

#### Section 4.01 Pledge of Revenues and Assets; Establishment of Funds.

The pledge and assignment of and the security interest granted in the Trust Estate pursuant to the Granting Clauses hereof shall attach, be perfected and be valid and binding from and after the time of the delivery of the Bonds to the initial purchasers thereof by the Trustee or by any person authorized by the Trustee to so deliver the Bonds. The Trust Estate so pledged and then or thereafter received by the Trustee shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Issuer irrespective of whether such parties have notice thereof.

In addition to the Bond Mortgage Loan Fund established pursuant to Section 2.11 hereof and the Bond Purchase Fund established pursuant to Sections 10.03 and 10.07 hereof, the Trustee shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund, and within the Revenue Fund, a General Account and a Credit Facility Account;
- (b) Bond Fund, and within the Bond Fund, a Purchased Bonds Account;
- (c) Redemption Fund;
- (d) Administration Fund;
- (e) Cost of Issuance Fund, and within the Cost of Issuance Fund, a Bond Proceeds Account and an Equity Account;
- (f) Principal Reserve Fund; and
- (g) Rebate Fund.

The funds and accounts established pursuant to this Section 4.01 shall be maintained in the corporate trust department of the Trustee as segregated trust accounts, separate and identifiable from all other funds held by the Trustee. The funds and accounts established hereunder shall bear a designation clearly indicating that the funds deposited therein are held for the benefit of (i) the Holders of the Bonds respecting the Revenue Fund, the Bond Fund and the Redemption Fund, (ii) the Credit Facility Provider respecting the Principal Reserve Fund,

and (iii) the Borrower respecting the Administration Fund, Cost of Issuance Fund and the Rebate Fund. The Trustee shall, at the written direction of an authorized representative of the Issuer, and may, in its discretion, establish such additional Accounts within any Fund, and Subaccounts within any of the accounts, as the Issuer or the Trustee may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such Account or Subaccount shall not alter or modify any of the requirements of this Indenture with respect to a deposit or use of money in the funds established hereunder or result in commingling of funds not permitted hereunder.

#### **Section 4.02 Bond Mortgage Loan Fund.**

(a) Deposit; Disbursement. On the Delivery Date, the Trustee shall receive the proceeds of the sale of the Bonds and shall deposit a portion of such proceeds into the Bond Proceeds Account of the Mortgage Loan Fund as provided in Section 2.11(b). In addition, on the Delivery Date, the Trustee shall receive \$\_\_\_\_\_ from the Borrower as provided in Section 2.11(c), and shall deposit such funds to the Equity Account of the Bond Mortgage Loan Fund. On or prior to the Conversion Date, the Trustee shall deposit to the Equity Account in the Bond Mortgage Loan Fund any and all payments received from the counterparty under the Hedge Agreement.

(b) Disbursements from Bond Proceeds Account. Amounts on deposit in the Bond Proceeds Account of the Bond Mortgage Loan Fund shall be disbursed from time to time by the Trustee in accordance with Section 4.02(c) below, for the purpose of paying Costs of the Project that are approved by the Construction Phase Credit Facility Provider pursuant to the terms, conditions and provisions of the Construction Phase Credit Documents. In addition, amounts in the Bond Proceeds Account may be used to pay the Purchase Price of Bonds or to reimburse the Credit Facility Provider for the same or for transfer to the Redemption Fund and the Rebate Fund pursuant to the last sentence of Section 4.02(e).

(c) Transfers and Acquisitions from Bond Proceeds Account. The Trustee shall make disbursements from the Bond Proceeds Account of the Bond Mortgage Loan Fund for purposes described in Section 4.02(b) only upon the receipt of Requisitions, each in the form of Exhibit D attached to this Indenture, signed in all cases by an Authorized Borrower Representative and countersigned by an Authorized Officer of the Construction Phase Credit Facility Provider (signifying the approval of the Requisition by the Construction Phase Credit Facility Provider); provided, however, that amounts necessary to reimburse the Construction Phase Credit Facility Provider for draws on the Letter of Credit to pay interest on the Bonds prior to the date on which the Project is placed in service shall be paid from the Bond Proceeds Account automatically without need of Requisition or written direction. The Borrower will provide written notice to the Trustee and the Issuer of the date on which the Project is placed in service. The Trustee shall have no duty to determine whether any requested disbursement from the Bond Proceeds Account of the Bond Mortgage Loan Fund complies with the terms, conditions

and provisions of the Construction Phase Credit Documents. The countersignature of the Authorized Officer of the Construction Phase Credit Facility Provider on a Requisition shall be deemed a certification and, insofar as the Trustee is concerned, constitute conclusive evidence that all of the terms, conditions and requirements of the Construction Phase Credit Documents applicable to such disbursement have been fully satisfied or waived. The Trustee shall, immediately upon each receipt of a completed Requisition signed by an Authorized Borrower Representative and countersigned by an Authorized Officer of the Construction Phase Credit Facility Provider, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

(d) Timing. If a Requisition signed by the Authorized Borrower Representative and countersigned by an Authorized Bank Representative is received by the Trustee, the requested disbursement shall be paid by the Trustee as soon as practicable, but in no event later than five Business Days following receipt thereof by the Trustee. Upon final disbursement of all amounts on deposit in the Bond Mortgage Loan Fund, the Trustee shall close the Bond Mortgage Loan Fund.

Notwithstanding anything to the contrary contained herein:

(i) no signature of an Authorized Borrower Representative shall be required during any period in which a default has occurred and is then continuing under the Bond Documents or the Construction Phase Credit Documents (notice of which default has been given in writing by an Authorized Officer of the Construction Phase Credit Facility Provider to the Trustee and the Issuer, and the Trustee shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default); and

(ii) during the continuance of such default under the Bond Documents or the Construction Phase Credit Documents the Trustee shall disburse amounts in the Bond Proceeds Account of the Bond Mortgage Loan Fund upon receipt of a Requisition signed only by the Construction Phase Credit Facility Provider (and without any need for any signature by an Authorized Borrower Representative), with notice to the Borrower and the Issuer, so long as the amount to be disbursed is to be used solely to make payments of fees due under the Construction Phase Credit Documents, including the Construction Phase Credit Facility Fee.

(e) Transfers to Effect Certain Mandatory Redemptions of Bonds. Immediately prior to (a) any mandatory redemption of Bonds pursuant to Section 3.01(b)(ii) of this Indenture, any amounts then remaining in the Bond Proceeds Account or the Equity Account of the Bond Mortgage Loan Fund shall, at the written direction of the Credit Facility Provider, be transferred to the Redemption Fund to be applied to the redemption of Bonds pursuant to Sections 3.01(b)(ii).

Any amounts remaining on deposit in the Bond Proceeds Account of the Bond Mortgage Loan Fund upon the earlier of (1) the Conversion Date or (2) the expiration date of the Letter of Credit, whichever occurs first, and not required to pay Costs of the Project not yet due and payable or being contested in good faith, in each case determined in accordance with the Construction Phase Credit Documents, shall be transferred to the Redemption Fund and applied to the redemption of Bonds pursuant to Section 3.01(b)(viii).

(f) Investment Income on Bond Mortgage Loan Fund. Amounts on deposit in the Bond Mortgage Loan Fund shall be invested as provided in Section 4.08. All Investment Income earned on amounts on deposit in the Bond Mortgage Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in each of the Bond Proceeds Account and the Equity Account of the Bond Mortgage Loan Fund.

(g) Disbursements from Equity Account. Up to and including the Conversion Date, the Trustee shall disburse amounts held in the Equity Account of the Bond Mortgage Loan Fund automatically without need of Requisitions or written direction (except as provided in subsection (vi)) to (i) pay the Construction Phase Credit Facility Fee so long as the Construction Phase Credit Facility is outstanding, (ii) reimburse the Construction Phase Credit Facility Provider for draws under the Letter of Credit to pay interest on the Bonds, to the extent there are insufficient funds in the Bond Proceeds Account for such reimbursement or for any time period following the date the Project is placed in service, (iii) make payments due and owing to the counterparty by the Borrower under the Hedge Agreement; (iv) timely pay the Issuer Fee, the Ordinary Trustee's Fees and Expenses, the fees of the Remarketing Agent (excluding any increase in the Remarketing Agent's fee due to failure to timely replace a resigning Remarketing Agent), (v) pay any Rating Agency fees due and owing and (vi) otherwise as directed in writing by an Authorized Officer of the Construction Phase Credit Facility Provider. On the Conversion Date, to the extent not applied for the purposes set forth above, funds remaining in the Equity Account shall be transferred to this Borrower or its designee.

#### **Section 4.03 Application of Revenues.**

(a) There shall be deposited in the Credit Facility Account of the Revenue Fund all amounts paid pursuant to the Credit Facility. Moneys received from the Servicer or the Borrower from and after Conversion representing monthly payments by the Borrower in accordance with the Principal Reserve Schedule shall be deposited directly into the Principal Reserve Fund. All Revenues (other than amounts paid under the Credit Facility or received as Principal Reserve Schedule Payments) shall be deposited by the Trustee, promptly upon receipt thereof, to the General Account of the Revenue Fund, except (i) the proceeds of the Bonds received by the Trustee on the Delivery Date, which shall be applied in accordance with the provisions of Section 2.11 hereof; (ii) as otherwise specifically provided in Section 4.03(c) hereof with respect to certain deposits into the Redemption Fund; (iii) the Bond Fee Component shall be deposited to the Administration Fund; (iv) as otherwise specifically provided in the second paragraph of Section 4.06 hereof with respect to deficiencies in the Administration Fund; (v) with respect to investment earnings to the extent required under the terms hereof to be retained

in the funds and accounts to which they are attributable; (vi) as otherwise specifically provided in Section 4.07 hereof with respect to certain deposits into the Principal Reserve Fund; and (vii) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) On each Interest Payment Date or any other date on which payment of principal of or interest on the Bonds becomes due and payable, the Trustee, out of moneys in the Credit Facility Account and the General Account of the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

FIRST: To the Bond Fund from moneys, if any, in the Credit Facility Account of the Revenue Fund, an amount equal to the principal of and interest due on the Bonds on such date (excluding principal of or interest on any Purchased Bonds and excluding the principal constituting a mandatory sinking fund redemption payment on any Bonds on such Interest Payment Date); and

SECOND: To the Bond Fund from moneys in the Credit Facility Account of the Revenue Fund, an amount equal to the principal amount due and payable on the Bonds with respect to mandatory sinking fund redemption (excluding principal of any Purchased Bonds) on such date; and

THIRD: To the Redemption Fund from moneys in the Credit Facility Account (i) amounts paid to the Trustee under the Credit Facility to be applied to the mandatory redemption of all or a portion of the Bonds pursuant to Section 3.01(b) hereof (other than a mandatory sinking fund redemption) and (ii) amounts paid to the Trustee under the Credit Facility to be applied to the optional redemption of all or a portion of the Bonds pursuant to Section 3.01(a)(i) hereof; and

FOURTH: To the Purchased Bonds Account in the Bond Fund from moneys in the General Account, an amount equal to the interest due on the Purchased Bonds on such Interest Payment Date.

(c) Immediately upon receipt, the Trustee shall deposit directly to the Redemption Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Bond Mortgage Loan to the extent the same will not be applied to costs of reconstruction, such amount to be applied to reimburse the Credit Facility Provider for a draw under the Credit Facility in such amount to provide for extraordinary mandatory redemption of all or a portion of the Bonds pursuant to Section 3.01(b)(i); (ii) Eligible Funds (other than draws under the Credit Facility) paid to the Trustee to be applied to the optional redemption of all or a portion of the Bonds pursuant to Section 3.01(a)(i); and (iii) amounts transferred to the Redemption Fund from the Bond Mortgage Loan Fund pursuant to Section 4.02(e).

(d) Immediately upon receipt, the Trustee shall deposit directly to the Principal Reserve Fund all Principal Reserve Schedule Payments received from the Servicer (from and after Conversion) or the Borrower.

(e) Immediately upon receipt, the Trustee shall deposit directly to the Administration Fund the Bond Fee Component received from the Servicer (from and after Conversion) or the Borrower.

(f) Should the amount in the Bond Fund or in the Redemption Fund, as applicable, be insufficient to pay the amount due on the Bonds on any given Interest Payment Date or other payment date after the transfers from the Credit Facility Account, the Trustee shall credit to the Bond Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the General Account of the Revenue Fund; (2) the Administration Fund; (3) the Redemption Fund, except no such charge to the Redemption Fund shall be made from moneys to be used to effect a redemption for which notice of redemption has been provided for or from moneys which are held for payment of Bonds which are no longer Outstanding hereunder; and (4) the Principal Reserve Fund.

(g) Immediately upon receipt, the Trustee shall deposit directly to the Administration Fund amounts required to be paid pursuant to Section 4.2(b)(vi) of the Financing Agreement from the Borrower.

#### **Section 4.04 Application of Bond Fund.**

The Trustee shall charge the Bond Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Bonds on such Interest Payment Date, and shall cause the same to be applied to the payment of such interest and principal when due (excluding principal on any Purchased Bond). Any moneys remaining in the Bond Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Redemption Fund to redeem Bonds called for mandatory sinking fund redemption on such Interest Payment Date, be transferred to the Redemption Fund to be applied for such purpose.

Income realized from the investment or deposit of moneys in the Bond Fund shall be deposited by the Trustee upon receipt thereof in the General Account of the Revenue Fund.

No amount shall be charged against the Bond Fund except as expressly provided in this Article IV.

#### **Section 4.05 Application of Redemption Fund.**

Any moneys credited to the Redemption Fund and not otherwise restricted shall be applied:

FIRST, to reimburse the Credit Facility Provider to the extent of any draw made under the Credit Facility for redemption of the Bonds pursuant to Section 3.01(b)(i);

SECOND, to pay the redemption price of Bonds called for redemption pursuant to Sections 3.01(a)(i), or 3.01(b); and

THIRD, to make up any deficiency in the Bond Fund on any Interest Payment Date, to the extent moneys then available in accordance with Section 4.03(f) hereof in the General Account of the Revenue Fund and the Administration Fund are insufficient to make up such deficiency, provided that no moneys to be used to effect a redemption for which a conditional notice of redemption, the conditions of which have been satisfied, or an unconditional notice of redemption has been provided or moneys which are held for payment of Bonds which are no longer Outstanding hereunder shall be so transferred to the Bond Fund.

On or before each Interest Payment Date, the income realized from the investment of moneys in the Redemption Fund shall be credited by the Trustee to the General Account of the Revenue Fund.

No amount shall be charged against the Redemption Fund except as expressly provided in this Article IV.

#### **Section 4.06 Application of Administration Fund.**

Prior to the Conversion Date, amounts on deposit in the Administration Fund shall be applied on each Interest Payment Date as follows: first, to the payment of accrued fees that are included in the Bond Fee Component that are due and payable; second, to the Construction Phase Credit Facility Provider any fees due and payable under the Construction Phase Credit Reimbursement Agreement; third, to the Remarketing Agent any fees due and payable that are not included within the Bond Fee Component; and fourth, to the Issuer or the Trustee any Extraordinary Administrative Expenses.

On and after the Conversion Date, amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Trustee and used:

FIRST, in accordance with Section 4.03(f) of the Indenture, to make up any deficiency in the Bond Fund on any Interest Payment Date, to the extent moneys then available in the General Account of the Revenue Fund are insufficient to make up such deficiency;

SECOND, to pay to the Trustee when due the Ordinary Trustee's Fees and Expenses;

THIRD, to pay to the Issuer when due the Issuer Fee;

FOURTH, to pay the reasonable fees and expenses of a Rebate Analyst when due in connection with the computations relating to arbitrage rebate required under the Indenture and the Financing Agreement, upon receipt of an invoice from the Rebate Analyst;

FIFTH, to deposit to any Custodial Escrow Account any deficiency in the amount held therein as certified in writing by the Servicer (or subsequent holder of the account) to the Trustee;

SIXTH, to pay to the Remarketing Agent any unpaid portion of the Remarketing Agent fee that is included within the Bond Fee Component owed to it upon receipt of invoices by the Trustee;

SEVENTH, to pay to the Trustee any Extraordinary Trustee's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Issuer, the Borrower and the Credit Facility Provider;

EIGHTH, to pay to the Issuer any extraordinary expenses it may incur in connection with the Bonds, this Indenture or any Bond Mortgage Loan Document from time to time, as set forth in an invoice submitted to the Trustee and Freddie Mac, including but not limited to Extraordinary Administrative Expenses;

NINTH, to pay to the Credit Facility Provider any unpaid portion of the amounts due under the Reimbursement Agreement, as certified in writing by the Credit Facility Provider to the Trustee;

TENTH, to pay to the Servicer any unpaid portion of the Ordinary Servicing Fees and Expenses and any Extraordinary Servicing Fees and Expenses due and owing from time to time, as set forth in an invoice submitted to the Trustee and Freddie Mac;

ELEVENTH, to make up any deficiency in the Redemption Fund on any redemption date of Bonds, to the extent moneys then available in accordance with Section 4.03(f) of the Indenture in the Redemption Fund are insufficient to redeem Bonds called for redemption on such redemption date;

TWELFTH, to pay to the Rating Agency when due the annual rating maintenance fee, if upon receipt of invoices by the Trustee;

THIRTEENTH, to pay to the Remarketing Agent any unpaid fee owed to it upon receipt of invoices by the Trustee; and

FOURTEENTH, to transfer any remaining balance after application as aforesaid to the General Account of the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Trustee shall give notice to the Borrower of such deficiency and of the amount of such deficiency and request payment within two Business Days to the Trustee of the amount of such deficiency. Upon payment by the Borrower of such deficiency, the amounts for which such deficiency was requested shall be paid by the Trustee.

On or before each Interest Payment Date, the income realized from the investment of moneys in the Administration Fund shall be retained in and credited to and become a part of the amounts on deposit in the Administration Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV.

#### **Section 4.07 Principal Reserve Fund.**

There shall be deposited into the Principal Reserve Fund that portion of the monthly payments made by the Borrower in accordance with the Principal Reserve Schedule and designated for deposit to the Principal Reserve Fund as required by the Reimbursement Agreement. Any interest earned on or profits realized from amounts on deposit in the Principal Reserve Fund shall be deposited into the Principal Reserve Fund and, provided that, to Trustee's actual knowledge, there is no deficiency in the Principal Reserve Fund, the Administration Fund or the Rebate Fund, and that no Event of Default exists under any of the Bond Documents, such interest or profits shall be paid to the Borrower on the Interest Payment Date next succeeding receipt of such interest or profits by the Trustee. In addition, remarketing proceeds relating to Purchased Bonds shall be deposited in the Principal Reserve Fund and used to reimburse the Credit Facility Provider in an amount equal to the amount of any Liquidity Advance paid to the Trustee to purchase Bonds on any Settlement Date. At the direction of the Credit Facility Provider after the Conversion, amounts on deposit in the Principal Reserve Fund shall be used by the Trustee to pay any amounts required to be paid by the Borrower under any of the Bond Mortgage Loan Documents or the Reimbursement Agreement, including without limitation any amounts required to be paid to Freddie Mac or to pay any other sum as directed in writing by Freddie Mac.

(a) From and after the Conversion Date, on each Reset Adjustment Date, Variable Rate Adjustment Date and on the Fixed Rate Adjustment Date, amounts on deposit in the Principal Reserve Fund shall be used to reimburse the Credit Facility Provider in an amount equal to any

Guaranteed Payment made by the Credit Facility Provider to the Trustee under the Credit Facility to redeem Bonds in Authorized Denominations pursuant to Section 3.01(b)(iv).

(b) From and after the Conversion Date, on the first day of the month in which an Interest Payment Date falls during a Reset Period or a Fixed Rate Period, amounts on deposit in the Principal Reserve Fund shall be used to reimburse the Credit Facility Provider in an amount equal to any Guaranteed Payment made by the Credit Facility Provider to the Trustee under the Credit Facility to redeem Bonds in Authorized Denominations pursuant to Section 3.01(b)(v).

(c) From and after the Conversion Date, on any Interest Payment Date, to the extent of any deficiency in the Bond Fund, to the extent moneys then available in accordance with Section 4.03(f) in the General Account of the Revenue Fund, the Administration Fund and the Redemption Fund are insufficient to make up such deficiency, at the direction of the Credit Facility Provider amounts on deposit in the Principal Reserve Fund shall be transferred to the Bond Fund in the amount of such deficiency.

(d) Any amounts remaining in the Principal Reserve Fund after payment in full of the principal of and interest on the Bonds shall be applied as provided in Section 4.11 hereof.

#### **Section 4.08 Investment of Funds.**

The moneys held by the Trustee shall constitute trust funds for the purposes hereof. Any moneys attributable to each of the funds and accounts hereunder shall be invested by the Trustee, at the written direction of the Borrower and, during such time that the Credit Enhancement Agreement is the Credit Facility, subject to Section 3.1(d) of the Credit Enhancement Agreement, at least two (2) Business Days prior to the date of investment, in Qualified Investments which mature on the earlier of (i) six months from the date of investment and (ii) the date such moneys are needed; provided, that if the Trustee shall have entered into any investment agreement requiring investment of moneys in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such moneys shall be invested in accordance with such requirements; provided further, that all funds derived from draws on the Credit Facility shall be held uninvested or shall be invested only in Government Obligations or in Qualified Investments of the type described in subparagraph (g) of the definition thereof which, in any case, shall mature or be subject to tender or redemption at par on or prior to the earlier of (i) 30 days from the date of investment or (ii) the date such money is required to be applied pursuant to the provisions of this Indenture. Except as otherwise provided in the preceding sentence, in the absence of the written direction of the Borrower, the Trustee shall invest amounts on deposit in the funds and accounts established under this Indenture in investments described in subparagraph (g) of the definition of Qualified Investments. Such investments may be made through the investment or securities department of the Trustee. All such Qualified Investments purchased with money in any fund or account hereunder shall mature, or shall be subject to redemption or withdrawal without discount or penalty at the option of the Trustee, prior to the next succeeding Interest Payment Date. The Trustee may purchase from or sell to itself or an affiliate, as principal or

agent, securities herein authorized. If the Trustee does not receive instructions, it shall invest funds in Qualified Investments described in subparagraph (g) of the definition thereof. Any instruction from the Borrower shall be deemed to include a representation that the investment constitutes a Qualified Investment and is in accordance with the terms hereof and the Tax Certificate.

Amounts on deposit in the Principal Reserve Fund shall be invested and reinvested by the Trustee as provided in the Reimbursement Agreement (or as otherwise agreed to by Freddie Mac) with all such investments attributable to and deemed at all times to be a part of the Principal Reserve Fund.

Qualified Investments representing an investment of moneys attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the General Account of the Revenue Fund, and any loss resulting on the sale thereof shall be charged against General Account of the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide moneys to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of moneys to another such fund or account, such investments may be transferred to that fund or account in lieu of the required moneys if permitted hereby as an investment of moneys in that fund or account. For investment purposes the Trustee may commingle the funds and accounts established hereunder (other than the Rebate Fund and the Credit Facility Account). The Trustee shall not be liable or responsible for any loss resulting from any investment made in accordance herewith. Unless otherwise confirmed in writing, an account statement delivered periodically by the Trustee to the Borrower shall be deemed written confirmation by the Borrower that the investment transactions identified therein accurately reflect the investment directions given to the Trustee by the Borrower unless the Borrower notifies the Trustee in writing to the contrary within thirty days of the date of such statement.

In computing for any purpose hereunder, the amount in any fund or account on any date, obligations so purchased shall be valued at the lower of cost or par, exclusive of accrued interest.

#### **Section 4.09 Moneys Held for Particular Bonds; Funds Held in Trust.**

The amounts held by the Trustee for the payment of the interest, principal or redemption price due on any date with respect to particular Bonds pending such payment, shall be set aside and held in trust by it for the holders of the Bonds entitled thereto, and for the purposes hereof such interest, principal or redemption price, after the due date thereof, shall no longer be considered to be unpaid.

All moneys held by the Trustee, as such, at any time pursuant to the terms of this Indenture shall be and hereby are assigned, transferred and set over unto the Trustee in trust for the purposes and under the terms and conditions of this Indenture.

#### **Section 4.10 Accounting Records.**

The Trustee shall maintain accurate books and records for all funds and accounts established hereunder.

#### **Section 4.11 Amounts Remaining in Funds.**

After full payment of the Bonds (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Issuer, the Trustee and other amounts required to be paid hereunder or under any Bond Document, the Credit Facility, the Reimbursement Agreement or the Construction Phase Credit Documents, including fees payable to the Issuer and the Credit Facility Provider, any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower; provided, however, that if a default shall have occurred and remain uncured under any Bond Document of which the Trustee shall have received written notice from the Credit Facility Provider or the Servicer, then any such amounts remaining in any fund or account hereunder shall be paid to the Credit Facility Provider in accordance with the Reimbursement Agreement to the extent of any amounts due thereunder with any excess paid to the Borrower.

#### **Section 4.12 Rebate Fund; Compliance with Tax Certificate.**

The Rebate Fund shall be established by the Trustee and held and applied as provided in this Section. On any date on which any amounts are required by applicable federal law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy any amounts which are required by applicable federal tax law to be rebated to the federal government as follows:

(a) The Trustee shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Trustee by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto. The Trustee shall provide the Issuer with written notice of the amount of any funds received by it from the Borrower for deposit to the Rebate Fund.

(b) Within five days after each receipt or transfer of funds to the Rebate Fund in accordance with Section 4.3 of the Financing Agreement, the Trustee shall withdraw from the Rebate Fund and pay to the United States of America the entire balance of the Rebate Fund, and shall provide written notice to the Issuer of any such payment.

(c) Within five days after receipt from the Borrower of any amount pursuant to Section 4.3 of the Financing Agreement, the Trustee shall withdraw such amount from the Rebate Fund and pay such amount to the United States of America, and shall provide written notice to the Issuer of any such payment.

(d) All payments to the United States of America pursuant to this Section shall be made by the Trustee for the account and in the name of the Issuer and shall be paid by check posted by registered United States Mail (return receipt requested), addressed to the appropriate Internal Revenue Service Center (accompanied by the relevant Internal Revenue Service Form 8038-T. The Trustee shall provide a copy of any such Form 8038-T to the Issuer.

(e) The Trustee shall preserve all statements, forms, and explanations received from the Borrower regarding payment of arbitrage rebate pursuant to the Financing Agreement and all records of transactions in the Rebate Fund until six years after the retirement of all of the Bonds. The Trustee shall make such records available to the Issuer, upon the written request of the Issuer.

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

(g) If at any time during the term of this Indenture the Issuer, the Trustee or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section, such Person shall be permitted to take such action if it shall first obtain and provide to the other Persons named herein an opinion of Bond Counsel to the effect that such action shall not adversely affect the exclusion of interest on the Bonds from gross income of the Borrowers thereof for federal income tax purposes.

(h) Moneys and securities held by the Trustee in the Rebate Fund shall not be deemed funds of the Issuer and are not pledged or otherwise subject to any security interest in favor of the Bondholders to secure the Bonds or any other obligations.

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

(j) Notwithstanding anything to the contrary in this Indenture, no payment shall be made by the Trustee to the United States if the Borrower shall furnish an opinion of Bond Counsel to the Trustee and the Issuer the effect that such payment is not required under Section 148(d) and (f) of the Code in order to maintain the exclusion from gross income of interest on the Bonds. In such event the Borrower shall be entitled to withdraw funds from the Rebate Fund to the extent an opinion of Bond Counsel is provided to the Trustee and the Issuer that such withdrawal will not adversely affect the exclusion from gross income of interest on the Bonds.

#### **Section 4.13 Cost of Issuance Fund.**

The Trustee shall use moneys on deposit to the credit of the Cost of Issuance Fund to pay the costs of issuance on the Delivery Date or as soon as practicable thereafter in accordance with written instructions to be given to the Trustee by the Issuer, upon delivery to the Trustee of appropriate invoices for such expenses and a requisition in the form attached as Exhibit E. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall be refunded to the Borrower. Upon such final disbursement, the Trustee shall close the Cost of Issuance Fund.

#### **Section 4.14 Reports From the Trustee.**

The Trustee shall, on or before the fifteenth (15th) day of each month, file with (i) the Credit Facility Provider (following Conversion) addressed to the Multifamily Loan Servicing Department of the Credit Facility Provider (with a copy to the Servicer); (ii) the Issuer and; (iii) prior to the Conversion Date, the Construction Phase Credit Facility Provider, in each case a statement setting forth in respect of the preceding calendar month:

(i) the amount withdrawn or transferred by it and the amount deposited within or on account of each Fund and account held by it under the provisions of this Indenture, including the amount of investment income on each Fund and account;

(ii) the amount on deposit with it at the end of such month to the credit of each Fund and account;

(iii) a brief description of all obligations held by it as an investment of moneys in each such Fund and account; and

(iv) any other information which the Credit Facility Provider or the Issuer may reasonably request and to which the Trustee has access in the ordinary course of its operations.

Upon the written request of any Bondholder, the Trustee, at the cost of the Borrower, shall provide a copy of such statement to the Bondholder. All records and files pertaining to the

Trust Estate shall be open at all reasonable times to the inspection of the Issuer and Credit Facility Provider and their agents and representatives upon reasonable prior notice.

#### **Section 4.15 Payments Under Bond Mortgage Loan.**

The Trustee and the Issuer hereby expressly acknowledge that references in this Indenture to payments or prepayments of the Bond Mortgage Loan shall, for all purposes of this Indenture, refer solely to such portion of such payments or prepayments actually paid by the Credit Facility Provider to the Trustee as Guaranteed Payments pursuant to the Credit Facility. Without in any way limiting the foregoing, the Trustee and the Issuer hereby acknowledge that, from and after the Conversion Date, pursuant to the Guide, the Servicer will pay the Freddie Mac Credit Enhancement Fee, the Freddie Mac Reimbursement Amount and the Ordinary Servicing Fees and Expenses from payments under the Bond Mortgage Loan made by the Borrower prior to remitting the balance of such payments or prepayments to the Trustee for application as provided in this Indenture.

#### **Section 4.16 Drawings Under Credit Facility.**

The Credit Facility shall be held by the Trustee and drawn upon in accordance with its terms and the provisions of this Indenture. Moneys derived from draws upon the Credit Facility shall be deposited in the Credit Facility Account of the Revenue Fund and applied by the Trustee to pay the principal of and interest on the Bonds, and, in the event of a purchase of the Bonds, to pay, to the extent provided in the Credit Facility, the Purchase Price of the Bonds in accordance with this Indenture.

The Trustee shall draw moneys under the Credit Facility in accordance with the terms thereof in an amount sufficient to make timely payments of the principal of and interest, but not premium, on the Bonds when due and payable (i.e. on Interest Payment Dates, at Bond maturity or upon the redemption or acceleration of the maturity of the Bonds). The Trustee shall not, however, be permitted to draw on the Credit Facility to pay principal of and interest on Purchased Bonds.

While the Bonds are bearing interest at the Variable Rate, should any Variable Interest Computation Date fall between the date of the draw on the Credit Facility and the next Interest Payment Date on the Bonds, the Trustee shall assume that the Bonds will bear interest at the Maximum Rate from such Variable Interest Computation Date to the next Interest Payment Date and shall draw on the Credit Facility accordingly. In the event that the Maximum Rate exceeds the actual interest rate during such period, the excess interest shall be immediately returned to the Credit Facility Provider.

Should the Credit Facility Provider become the owner of the Project by foreclosure or otherwise, the Trustee shall nevertheless continue to make payments on the Bonds only from draws on the Credit Facility or from Eligible Funds.

Upon Borrower's request, the Trustee shall send to the Borrower via facsimile a copy of any documents which are presented to the Credit Facility Provider in connection with a drawing on the Credit Facility concurrently with its submission of those documents to the Credit Facility Provider. The Borrower shall be permitted to provide the Trustee with an Alternate Credit Facility in accordance with this Indenture and the Financing Agreement.

**Section 4.17 Notices Under Credit Facility.**

The Trustee hereby agrees to provide to the Credit Facility Provider all such notices, including any notice of failure to receive a payment, as shall be required under the Credit Facility in the manner and within the periods of time provided therein and the Trustee and the Issuer each hereby acknowledges that certain notices constitute a condition precedent to payment by the Credit Facility Provider under the Credit Facility.

## ARTICLE V

### GENERAL COVENANTS AND REPRESENTATIONS

#### **Section 5.01 Payment of Principal and Interest.**

Subject to Section 5.10 hereof, the Issuer covenants that it shall promptly cause to be paid, but only from the sources provided herein, the principal of, including any applicable redemption premiums, the Purchase Price of and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bonds, according to the true intent and meaning thereof.

#### **Section 5.02 Performance of Covenants.**

Subject to Section 5.10 hereof, the Issuer covenants that it shall faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto.

#### **Section 5.03 Instruments of Further Assurance.**

Subject to Section 5.10 hereof, the Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all and singular its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to the lien of this Indenture as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Issuer under this Section of this Indenture. The Issuer covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Trust Estate or the revenues or receipts therefrom.

The Issuer will promptly notify the Trustee in writing of the occurrence of any of the following:

(i) the submission to it of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Issuer with respect to the Bonds, in each case with respect to which an Authorized Officer of the Issuer has received service of process or written notice;

(ii) the occurrence of any default or Event of Default of which an Authorized Officer of the Issuer has actual knowledge; or

(iii) the commencement or threat of any proceedings or any proceedings instituted by or against the Issuer, with respect to which an Authorized Officer of the Issuer has been served with written notice, in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Bonds.

#### **Section 5.04 Inspection of Project Books.**

The Issuer covenants and agrees that all books and documents in its possession relating to the Project shall at all times during business hours, upon prior written notice, be open to inspection and copying by such accountants or other agents as the Trustee or the Credit Facility Provider may from time to time reasonably designate.

#### **Section 5.05 No Modification of Security; Additional Indebtedness.**

The Issuer covenants that it will not, without the written consent of the Trustee, the Credit Facility Provider and, prior to the Conversion Date, Freddie Mac (provided, that the consent of Freddie Mac shall not be required if the Forward Commitment is no longer in effect or Freddie Mac is no longer the Credit Facility Provider), alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Issuer is a party, or which has been assigned to the Issuer, and which relates to or affects the security for the Bonds or the payment of any amount owed to the Credit Facility Provider. The Issuer further covenants not to incur any additional indebtedness payable from the Revenues which is secured by a lien prior to or on a parity with the lien of this Indenture.

#### **Section 5.06 Damage, Destruction or Condemnation.**

Net Proceeds resulting from casualty to or condemnation of the Project shall be applied (a) prior to the Conversion Date, as provided in the Construction Phase Credit Documents, and (b) after the Conversion Date, as provided in the Bond Mortgage Loan Documents and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

#### **Section 5.07 [Reserved.]**

## Section 5.08 Tax Covenants.

(a) Subject to Section 5.09 hereof the Issuer covenants to and for the benefit of the Bondholders that it will:

(i) neither knowingly make or use nor cause to be made or used any investment or other use of the proceeds of the Bonds or the moneys and investments held in the funds and accounts created hereunder which would cause the Bonds to be arbitrage bonds under Section 148 of the Code and the Regulations issued under Section 148 of the Code or which would otherwise cause the interest payable on the Bonds to be includable in gross income for federal income tax purposes; provided that it is expressly stated and acknowledged that the use and investment of moneys held in the Funds and Accounts established hereunder will not be under the control or subject to the direction of the Issuer, but will be under the control and direction of Trustee and the Borrower;

(ii) not knowingly take or cause to be taken any other action or actions, or fail to take any action or actions within its control, which would cause the interest payable on the Bonds to be includable in gross income for federal income tax purposes;

(iii) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Issuer on the Bonds will be excluded from the gross income for federal income tax purposes, of the Bondholders pursuant to Section 103 of the Code, except in the event where any such Borrower of Bonds is a "substantial user" of the facilities financed with the Bonds or a "related person" within the meaning of the Code;

(iv) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code and the Regulations;

(v) require the Borrower to agree, solely by requiring the Borrower to execute the Financing Agreement, not to commit any act and not to make any use of the proceeds of the Bonds, or any other moneys which may be deemed to be proceeds of the Bonds pursuant to the Code, which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and to comply with the requirements of the Code throughout the term of the Bonds; and

(vi) not knowingly cause to be made any investment or other use of the proceeds of the Bonds (it being acknowledged that, under Section 4.08 hereof, the investment of funds held by the Trustee is at the written direction of the Borrower, and the Issuer has not responsibility whatsoever for the application of funds disbursed from the Bond Mortgage Loan Fund under Section 4.02) that would cause the Bonds to be arbitrage bonds under section 148 of the Code and the regulations thereunder or otherwise cause the interest on the Bonds to become included in gross income for federal income tax

purposes. This covenant shall extend throughout the term of the Bonds, to all funds and accounts created hereunder and all money on deposit to the credit of any such fund or account.

In furtherance of the covenants in this Section 5.08, the Issuer and the Borrower shall execute, deliver and comply, as applicable, with the provisions of the Tax Certificate, which is by this reference incorporated into this Indenture and made a part of this Indenture as if set forth in this Indenture in full, and by its acceptance of this Indenture the Trustee acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Indenture by this reference, but notwithstanding such acknowledgment, the Trustee shall have no duties thereunder unless and until it receives explicit written instructions from the Borrower.

(b) The Trustee agrees that it will invest funds held under this Indenture in accordance with the terms of this Indenture and the Tax Certificate (this covenant shall extend throughout the term of the Bonds, to all funds and accounts created under this Indenture and all moneys on deposit to the credit of any such fund or account). The Trustee covenants to and for the benefit of the Bondholders that, notwithstanding any other provisions of this Indenture or of any other instrument, it will not make or cause to be made any investment or other use of the moneys in the funds or accounts created hereunder which would cause the Bonds to be classified as "arbitrage bonds" within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Bonds to be includable in gross income for federal income tax purposes; provided that the Trustee shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Issuer or the Rebate Analyst. This covenant shall extend, throughout the term of the Bonds, to all funds created under this Indenture and all moneys on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Indenture, the Trustee obligates itself to comply throughout the term of the issue of the Bonds with the requirements of Sections 103(b) and 148 of the Code; provided that the Trustee shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Issuer or the Rebate Analyst. The Trustee further covenants that should the Issuer or the Borrower file with the Trustee (it being understood that neither the Issuer nor the Borrower has an obligation to so file), or should the Trustee receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Bonds would cause the Bonds to become "arbitrage bonds," then the Trustee will comply with any written instructions of the Borrower or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Bonds from becoming "arbitrage bonds," and the Trustee will bear no liability to the Issuer, the Borrower, the Bondholders or the Credit Facility Provider for investments made in accordance with such instructions.

## **Section 5.09 Limitations on Liability.**

Notwithstanding any other provision of this Indenture to the contrary:

(a) the obligations of the Issuer with respect to the Bonds are limited, as set forth in Section 2.03; and the obligations of the Issuer under this Indenture, the Financing Agreement, the Regulatory Agreement, the Tax Certificate, the Intercreditor Agreement and any other Bond Mortgage Loan Document limited obligations of the Issuer payable by the Issuer solely from the Trust Estate and are not a debt of the Issuer, the State or any political subdivision of the State;

(b) nothing contained in the Bonds or in this Indenture shall be considered as assigning or pledging any funds or assets of the Issuer other than the Trust Estate;

(c) no failure of the Issuer to comply with any term, condition, covenant or agreement in this Indenture or in any document executed by the Issuer in connection with the Project, or the issuance, sale and delivery of the Bonds shall subject the Issuer to liability for any claim for damages, costs or other charges except to the extent that the same can be paid or recovered from the Trust Estate; and

(d) the Issuer shall not be required to advance any moneys derived from any source other than the Trust Estate for any of the purposes of this Indenture, any of the other Bond Documents or any of the Bond Mortgage Loan Documents, whether for the payment of the principal or redemption price of, or interest on, the Bonds, the payment of any fees or administrative expenses or otherwise; and

(e) neither the Issuer (or any officer, official or employee thereof) nor any person executing the Bonds is liable personally on the Bonds or subject to any personal liability or accountability by reason of their issuance; and no recourse under, or upon any statement, obligation, covenant, or agreement contained in this Indenture or in any Bond hereby secured, or in the Financing Agreement, or in any document or certification whatsoever, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any officer, official, employee or agent, as such, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for, or to, the Issuer or any receiver thereof, or for, or to, the holder of any Bond issued hereunder or otherwise, of any sum that may be due and unpaid by the Issuer upon any such Bond; and any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such officer, official, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for, or to, the Issuer or any receiver thereof, or for, or to, the holder of any Bond issued hereunder or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured

or any of them, is hereby expressly waived and released as an express condition of, and in consideration for, the execution of this Indenture and the issuance of the Bonds.

Anything in this Indenture to the contrary notwithstanding, it is expressly understood by the parties to this Indenture that (a) the Issuer and the Trustee may rely exclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer or the Trustee or any Bondholder as to the existence of any fact or state of affairs, (b) the Issuer shall not be under any obligation under this Indenture to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or caused to be performed by the Trustee or by the Bondholders, and (c) none of the provisions of this Indenture shall require the Issuer or the Trustee to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under this Indenture, unless it shall first have been adequately indemnified to its satisfaction against any costs, expenses and liability which it may incur as a result of taking such action.

## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

#### Section 6.01 Events of Default.

Each of the following shall be an "event of default" with respect to the Bonds (an "Event of Default") under this Indenture:

(a) failure to pay the principal or Purchase Price of, premium, if any, or interest on any Bond (other than Purchased Bonds) when due, whether at the stated maturity thereof, or on proceedings for redemption thereof, or on the maturity thereof by declaration; or

(b) failure by the Credit Facility Provider to make when due a required payment under the Credit Facility; or

(c) failure to observe or perform any of the other covenants, agreements or conditions on the part of the Issuer (other than those set forth in Section 5.01 hereof) in this Indenture or in the Bonds and the continuance thereof for a period of thirty (30) days after written notice to the Issuer from the Trustee or the Holders of more than 51% of the principal amount of the Bonds then Outstanding at such time specifying such default and requiring the same to be remedied; provided, that the Credit Facility Provider shall have directed in writing that the same shall have constituted an Event of Default.

The Trustee and the Issuer agree that, notwithstanding the provisions hereof, no default under the terms of this Indenture shall be construed as resulting in a default under the Bond Mortgage Note, the Bond Mortgage, the Reimbursement Mortgage or any other Bond Mortgage Loan Document, unless such event also constitutes a default thereunder.

The Trustee will immediately notify the Issuer, the Remarketing Agent, the Servicer (from and after the Conversion Date) and the Credit Facility Provider after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

#### Section 6.02 Acceleration; Other Remedies Upon Event of Default.

Upon the occurrence of an Event of Default as provided in Section 6.01(a) hereof, the Trustee shall, but so long as no Event of Default has occurred and is then continuing under Section 6.01(b) hereof, only upon receipt from the Credit Facility Provider of a notice directing such acceleration (which notice may be given in the sole discretion of the Credit Facility Provider), by notice in writing delivered to the Issuer, declare the principal of all Bonds then

Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. Upon the occurrence of an Event of Default as provided in Section 6.01(c) hereof, the Trustee may, but so long as no Event of Default has occurred and is then continuing under Section 6.01(b) hereof, only upon receipt of the written consent of the Credit Facility Provider (which consent may be given in the sole discretion of the Credit Facility Provider), by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. Upon the occurrence of an Event of Default under Section 6.01(b) hereof, the Trustee may, and upon the written request of the Holders of more than 51% of the principal amount of the Bonds then Outstanding and receipt of indemnity satisfactory to it shall, by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. The payment on the Bonds resulting from a declaration of acceleration on the Bonds as the result of an Event of Default occurring under Section 6.01(a) or (c) shall be made from the Credit Facility.

If at any time after the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Issuer, the Borrower, or the Credit Facility Provider, as applicable, shall pay to or deposit with the Trustee a sum sufficient to pay all principal of the Bonds then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) upon all the Bonds then due, with interest at the rate borne by the Bonds on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable expenses of the Trustee shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Reimbursement Agreement (including, without limitation, with respect to the Credit Facility Provider all outstanding amounts owed to the Credit Facility Provider and all fees owed to the Credit Facility Provider) (collectively, the "Cure Amount") shall have been paid in full and all other defaults hereunder shall have been made good or cured or waived in writing by the Credit Facility Provider (or, if an Event of Default under Section 6.01(b) hereof has occurred and is then continuing, by the Holders of more than 51% of the principal amount of the Bonds then Outstanding), then and in every case, the Trustee on behalf of the Holders of all the Outstanding Bonds shall rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon. Notwithstanding the foregoing provisions of this paragraph, in the event the Cure Amount is derived in whole or in part from a draw on the Credit Facility, any such rescission or annulment of such declaration of acceleration shall not occur without the consent of the Credit Facility Provider.

Upon the happening and continuance of an Event of Default, the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Holders of all Bonds with respect to which such an Event of Default has occurred and of the Credit Facility Provider (if no Event of Default has occurred and is continuing under Section

6.01(b)), may also proceed to protect and enforce any rights of the Trustee and, to the full extent that the Holders of such Bonds themselves might do, the rights of such Bondholders under the laws of the State or under this Indenture by such of the following remedies as the Trustee shall deem most effectual to protect and enforce such rights; provided that, so long as no Event of Default has occurred and is then continuing under Section 6.01(b) hereof, the Trustee may undertake any such remedy only upon the receipt of the prior written consent of the Credit Facility Provider (which consent may be given in the sole discretion of the Credit Facility Provider):

(i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, premium, if any, or interest on the Bonds then Outstanding, or for the specific performance of any covenant or agreement contained herein or in the Credit Facility, the Financing Agreement or the Regulatory Agreement, or to require the Issuer to carry out any other covenant or agreement with Bondholders and to perform its duties under the Act;

(ii) by pursuing any available remedies under the Financing Agreement, the Regulatory Agreement or the Credit Facility;

(iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(iv) by action or suit in equity, to enjoin any acts or things that may be unlawful or in violation of the rights of the Holders of Bonds and to execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee, the Credit Facility Provider or the Bondholders hereunder or under the Financing Agreement, the Regulatory Agreement, the Credit Facility or the Reimbursement Agreement, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Trustee, the Credit Facility Provider or the Bondholders, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

In all events the rights of the Trustee to exercise remedies hereunder upon the occurrence of an Event of Default shall be subject to the provisions of the Intercreditor Agreement.

### **Section 6.03 Rights of Bondholders.**

If an Event of Default under Section 6.01(b) hereof shall have occurred and is then continuing, and if requested in writing so to do by the Holders of more than 51% of the principal amount of the Bonds then Outstanding with respect to which there is a default, and if indemnified to its satisfaction, the Trustee shall exercise one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interest of the affected Bondholders. If an Event of Default under Section 6.01(b) hereof shall have occurred and is then continuing, the Holders of more than 51% of the principal amount of the Bonds then Outstanding with respect to which an Event of Default has occurred shall have the right at any time, subject to the provisions of Section 6.08 hereof, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Indenture.

### **Section 6.04 Waiver by Issuer.**

Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Issuer nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Indenture; and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and redemption to which it may be entitled under the laws of the State and the United States of America.

### **Section 6.05 Application of Moneys After Default.**

All moneys (other than amounts drawn from the Credit Facility under Section 6.02 hereof) collected by the Trustee at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Trustee to the General Account of the Revenue Fund. Such moneys so credited to the General Account of the Revenue Fund and all other moneys from time to time credited to the General Account of the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the moneys credited to the Revenue Fund, the Bond Fund, the Redemption Fund, the Administration Fund and the Principal Reserve Fund available for the payment of interest or principal then due with respect to the Bonds shall be insufficient for such payment, such moneys (other than moneys held for the payment or redemption of particular Bonds as provided in Section 4.09 hereof and amounts drawn from the Credit Facility under Section 6.02 hereof) shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Trustee incurred in performance of its duties under this Indenture, including, without limitation, the payment of all reasonable fees and expenses of the Trustee incurred in exercising any remedies under this Indenture.

(b) So long as no Event of Default has occurred and is then continuing under Section 6.01(b) hereof, for the payment to the Credit Facility Provider of all amounts then due and unpaid under the Reimbursement Agreement (including, without limitation, with respect to Freddie Mac all Freddie Mac Credit Enhancement Fees and Freddie Mac Reimbursement Amounts).

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

FIRST, to the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available is not sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference; and

SECOND, to the payment to the persons entitled thereto of the unpaid principal of and premium, if any (which payment of premium shall not be restricted to Eligible Funds), on any Bonds which shall have become due, whether at maturity or by call for redemption, in the order in which they became due and payable, and, if the amount available is not sufficient to pay in full all the principal of and premium, if any, on the Bonds so due on any date, then to the payment of principal ratably, according to the amounts due on such date, to the persons entitled thereto, without any discrimination or preference, and then to the payment of any premium due on the Bonds, ratably, according to the amounts due on such date, to the persons entitled thereto, without any discrimination or preference.

(d) If the principal of all of the Bonds shall have become or have been declared due and payable, to the payment of the principal of, premium, if any (which payment of premium shall not be restricted to Eligible Funds), and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due, respectively, for principal, premium and interest, to the persons entitled thereto without any discrimination or preference except as to any differences in the respective rates of interest specified in the Bonds.

(e) If an Event of Default has occurred and is then continuing under Section 6.01(b) hereof, for the payment to the Credit Facility Provider of all amounts then due and unpaid under the Reimbursement Agreement to the date of such Event of Default.

#### **Section 6.06 Rights of the Credit Facility Provider.**

If an Event of Default under Section 6.01(a) or (c) shall have occurred and so long as no Event of Default has occurred and is then continuing under Section 6.01(b) hereof, upon receipt of the written direction of the Credit Facility Provider (which direction may be given in the sole discretion of the Credit Facility Provider), the Trustee shall be obligated to exercise any right or power conferred by this Article in the manner set forth in such written direction of the Credit Facility Provider. If such written direction expressly states that the Trustee may exercise one or more of the rights and powers conferred in this Article as the Trustee shall deem to be in the interest of the Bondholders and the Credit Facility Provider, the Trustee shall exercise one or more of such rights and powers as the Trustee shall deem to be in the best interests of the Bondholders and the Credit Facility Provider; provided, however, that in any event, so long as no Event of Default has occurred and is then continuing under Section 6.01(b) hereof, the Trustee may not undertake any action to realize, through sale or otherwise, upon the Bond Mortgage Loan without the express written direction of the Credit Facility Provider. So long as no Event of Default has occurred and is then continuing under Section 6.01(b) hereof, in the case of an Event of Default under Section 6.01(a) or (c) hereof, the Credit Facility Provider shall have the right, by an instrument in writing executed and delivered to the Trustee to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee.

#### **Section 6.07 Remedies Vested in Trustee.**

All rights of action, including the right to file proof of claims, under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery or judgment shall be for the mutual benefit as provided herein of all of the Holders of the Outstanding Bonds.

#### **Section 6.08 Remedies of Bondholders.**

No Holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default shall have occurred of which the Trustee shall have been notified as provided herein; (b) such default shall have become an Event of Default under Section 6.01(b) hereof; (c) the Holders of more than 51% of the principal amount of the Bonds then Outstanding with respect to which there is such an Event of Default shall have made written request to the Trustee and shall have

offered reasonable opportunity to the Trustee either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (d) such Holders shall have offered to the Trustee indemnity as provided in this Indenture; and (e) the Trustee shall within sixty (60) days thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture or the rights of any other Holders of Bonds or to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided with respect to the equal and ratable benefit of all holders of Bonds with respect to which there is a default. Nothing contained in this Indenture shall, however, affect or impair the right of any Bondholder to enforce the payment of the principal of, the premium, if any, and interest on any Bond at the maturity thereof or the obligation of the Issuer to pay the principal of, premium, if any, and interest on the Bonds issued hereunder to the respective holders thereof, at the time, in the place, from the sources and in the manner expressed in said Bonds.

#### **Section 6.09 Termination of Proceedings.**

In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee, the Credit Facility Provider, the Borrower and the Bondholders shall be restored to their former positions and rights hereunder with respect to the Trust Estate herein conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

#### **Section 6.10 Waivers of Events of Default.**

So long as no Event of Default has occurred and is then continuing under Section 6.01(b) hereof, the Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of, premium, if any, and interest on the Bonds only upon the written direction of the Credit Facility Provider. If there shall have occurred and is then continuing an Event of Default under Section 6.01(b) hereof, the Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of, premium, if any, and interest on the Bonds only upon the written request of the Holders of 100% of the Bonds then Outstanding with respect to which there is a default; provided, however, that there shall not be waived (a) any Event of Default in the payment of the principal of any Bonds (other than Purchased Bonds) at the date of maturity specified therein, or upon proceedings for mandatory redemption or in the Purchase Price of any Bonds (other than Purchased Bonds), (b) any default in the payment when due of the interest or premium on any such Bonds (other than Purchased Bonds), unless prior to such waiver or rescission all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal or premium, if any, when due (whether at the

stated maturity thereof or upon proceedings for mandatory redemption) as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee, the Credit Facility Provider and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

#### **Section 6.11 Notice to Bondholders if Default Occurs.**

Upon the occurrence of an Event of Default, or if an event occurs which could lead to a default with the passage of time and of which the Trustee is required to take notice pursuant to Section 7.02(1) hereof, the Trustee shall, within thirty (30) days, give written notice thereof by first class mail to the registered owners of all Bonds then Outstanding. Notwithstanding the foregoing, except in the case of default with respect to the payment of principal of or premium, if any, and interest on the Bonds, the Trustee shall be protected in withholding such notice if and so long as the board of directors of the Trustee, the executive committee, or a trust committee of directors or officers of the Trustee in good faith determines that the withholding of such notice is in the best interests of the Holders of the Bonds.

## ARTICLE VII

### CONCERNING THE TRUSTEE

#### Section 7.01 Standard of Care.

The Trustee, prior to an Event of Default as defined in Section 6.01 and after the curing of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Indenture. The Trustee, during the existence of any such Event of Default (which shall not have been cured), shall exercise such rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under similar circumstances in the conduct of such person's own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing of all such Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Trustee by the person or persons authorized to furnish the same.

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Trustee shall not be liable for any error of judgment made in good faith by an officer or employee of the Trustee; and

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of more than 51% of the principal amount of the Bonds then Outstanding (or such lesser or greater percentage as is specifically required or permitted by this Indenture) or the Credit Facility Provider relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

## **Section 7.02 Reliance Upon Documents.**

Except as otherwise provided in Section 7.01:

(a) the Trustee may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document of the proper party or parties;

(b) any notice, request, direction, election, order or demand of the Issuer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Issuer by an Authorized Officer of the Issuer (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Issuer may be evidenced to the Trustee by a copy of such resolution duly certified by the Secretary of the Issuer;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Trustee by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Credit Facility Provider mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Credit Facility Provider by any Authorized Officer of the Credit Facility Provider (unless other evidence in respect thereof be herein specifically prescribed);

(f) any notice, request, direction, election, order or demand of the Remarketing Agent mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Remarketing Agent by any Authorized Officer of the Remarketing Agent (unless other evidence in respect thereof be herein specifically prescribed);

(g) any notice, request, direction, election, order or demand of the Tender Agent mentioned herein shall be sufficiently evidenced by an instrument purporting to be

signed in the name of the Tender Agent by any Authorized Officer of the Tender Agent (unless other evidence in respect thereof be herein specifically prescribed);

(h) in the administration of the trusts of this Indenture, the Trustee may execute any of the trusts or powers hereby granted directly or through its agents or attorneys, and the Trustee may consult with counsel (who may be counsel for the Issuer, the Servicer or the Credit Facility Provider) and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Issuer or the Borrower and such certificate shall in the absence of bad faith on the part of the Trustee be full warrant to the Trustee for any action taken or permitted by it under the provisions of this Indenture, but in its discretion the Trustee may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Bonds (except the Trustee's Certificate of Authentication thereon) shall be taken as the statements of the Issuer and the Borrower and shall not be considered as made by or imposing any obligation or liability upon the Trustee. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the title of the Issuer or the Borrower to the Trust Estate, or as to the security of this Indenture, or of the Bonds issued hereunder, and the Trustee shall incur no liability or responsibility in respect of any of such matters;

(k) the Trustee shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Trust Estate; and every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this subsection (k);

(l) the Trustee shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements herein or in any contracts or securities assigned or conveyed to or pledged with the Trustee hereunder, except defaults that are evident under Section 6.01(a) or Section 6.01(b) hereof. The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) or Section 6.01(b) hereof) unless the Trustee shall receive from the Issuer,

the Credit Facility Provider or the Holders of more than 51% of the Bonds then Outstanding written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Trustee may conclusively assume that there is not such default. Every provision contained in this Indenture or related instruments or in any such contract or security wherein the duty of the Trustee depends on the occurrence and continuance of such default shall be subject to the provisions of this subsection (l);

(m) the Trustee shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Holder of any Bond; and

(n) the Trustee shall be under no obligation to exercise those rights or powers vested in it by this Indenture, other than such rights and powers which it shall be obliged to exercise in the ordinary course of its trusteeship under the terms and provisions of this Indenture, at the request or direction of any of the Bondholders pursuant to Sections 6.03 and 6.08 of this Indenture, unless such Bondholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Trustee is authorized and directed to execute, in its capacity as Trustee, the Financing Agreement, the Regulatory Agreement and the Intercreditor Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

The Trustee or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Trustee pursuant to this Section 7.02 shall remain in effect until the Trustee receives written notice to the contrary from the party that delivered such instrument accompanied by revised information from such party.

The Trustee shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.18 hereof.

### **Section 7.03 Use of Proceeds.**

The Trustee shall not be accountable for the use or application of any of the Bonds authenticated or delivered hereunder or of the proceeds of the Bonds, except as provided in Articles II and V hereof.

### **Section 7.04 Trustee May Hold Bonds.**

The Trustee and its officers and directors may acquire and hold, or become the pledgee of Bonds and otherwise deal with the Issuer and the Borrower in the manner and to the same extent and like effect as though it were not Trustee hereunder.

### **Section 7.05 Trust Imposed.**

All money received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other moneys except to the extent required by law.

### **Section 7.06 Compensation of Trustee.**

The Trustee shall be entitled to its Ordinary Trustee's Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties hereunder of the Trustee to the extent moneys are available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Trustee shall be entitled to Extraordinary Trustee's Fees and Expenses in connection with any Extraordinary Services performed consistent with its duties hereunder; provided, the Trustee shall not incur any Extraordinary Trustee's Fees and Expenses without the consent of the Credit Facility Provider (except that no consent shall be required if an Event of Default under 6.01(b) has occurred and is continuing). If any property, other than cash, shall at any time be held by the Trustee subject to this Indenture, or any supplemental indenture, as security for the Bonds, the Trustee, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Indenture as such security for the Bonds, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Pursuant to the Financing Agreement, the Trustee shall also be indemnified by the Borrower for, and held harmless against, any loss, liability, expense or advance incurred or made without negligence or willful misconduct on the part of the Trustee, arising out of or in connection with the acceptance of this trust, including the costs and expenses of defending itself against any claim or liability in connection with the Project. Payment to the Trustee for its services and reimbursement to the Trustee for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in Section 4.06 hereof and in the Financing Agreement. The Issuer shall have no liability for Trustee's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Trustee agrees that it shall

continue to perform its duties hereunder even in the event that moneys designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Ordinary Trustee's Fees and Expenses, as required by the Financing Agreement.

#### **Section 7.07 Maintenance of Office.**

There shall at all times be a Trustee hereunder which shall be a trust company or bank (having trust powers) in good standing, shall be authorized to exercise trust powers in the State and shall have an unimpaired capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trusts upon reasonable or customary terms. If such corporation or association publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital and surplus of such corporation or association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

#### **Section 7.08 Successor Trustee.**

Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Trustee hereunder and vested with all the title to the whole property or Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Trustee in respect of the beneficial interest of the Trustee in the Bond Mortgage Loan.

#### **Section 7.09 Resignation by the Trustee.**

The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving written notice to the Issuer, the Borrower, the Tender Agent, the Remarketing Agent, and the Credit Facility Provider, and by giving notice by certified mail or overnight delivery service to each Holder of the Bonds then Outstanding. Such notice to the Issuer, the Borrower, the Tender Agent, the Remarketing Agent, and the Credit Facility Provider may be served personally or sent by certified mail. The Trustee shall not resign until a successor Trustee has been appointed by the Issuer. If no successor Trustee shall have been appointed and have accepted appointment within sixty (60) days following delivery of all required notices of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

### **Section 7.10 Removal of the Trustee.**

The Trustee may be removed at any time, by an instrument in writing signed by the Issuer and delivered to the Trustee, the Borrower, the Tender Agent, the Remarketing Agent and the Credit Facility Provider. The Trustee may also be removed for cause, at the request of the Credit Facility Provider, by an instrument in writing signed by the Issuer consenting to such removal (which consent of the Issuer shall not be unreasonably withheld) and delivered to the Trustee and the Borrower. The Trustee may also be removed for cause, at the request of the Borrower, by an instrument in writing signed by the Issuer and the Credit Facility Provider consenting to such removal (which consent of the Issuer and the Credit Facility Provider shall not be unreasonably withheld) and delivered to the Trustee and the Remarketing Agent. The Trustee may not be removed until a successor Trustee has been appointed and has accepted such appointment.

### **Section 7.11 Appointment of Successor Trustee.**

In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Issuer with the approval of the Credit Facility Provider (provided that such consent shall be deemed given 15 Business Days after the Issuer delivers any such request for consent to the Credit Facility Provider if, on such date, the Credit Facility Provider has not responded to such request), by an instrument in writing signed by the Issuer and delivered to the Borrower, the Credit Facility Provider, the Trustee being replaced and such successor Trustee. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank organized under the laws of the United States of America or any state thereof and which is in good standing, within or outside the State, having a reported capital and surplus of not less than \$50,000,000 and at least \$50,000,000 in trust assets under management if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms. Such successor Trustee shall agree to be the successor mortgagee under the Bond Mortgage.

### **Section 7.12 Concerning Any Successor Trustee.**

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer an instrument in writing accepting such appointment hereunder, accepting assignment of the beneficial interest in the Bond Mortgage, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, the Borrower or the Credit Facility Provider, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver

all securities, including, but not limited to, the existing Credit Facility, and money held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by a successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Trustee in each recording office where this Indenture shall have been filed and/or recorded.

### **Section 7.13 Successor Trustee as Trustee, Paying Agent and Bond Registrar.**

In the event of a change in the office of Trustee, the predecessor Trustee which shall have resigned or shall have been removed shall cease to be trustee and paying agent on the Bonds and Bond Registrar, and the successor Trustee shall become such Trustee, Paying Agent and Registrar.

### **Section 7.14 Servicing the Bond Mortgage Loan.**

There shall be engaged at all times that Freddie Mac is the Credit Facility Provider an eligible servicing institution designated by Freddie Mac as the Servicer (which may be Freddie Mac if Freddie Mac elects to service the Bond Mortgage Loan) to service the Bond Mortgage Loan pursuant to the Guide.

### **Section 7.15 Co-Trustee or Separate Trustee.**

It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in case of litigation under or connected with this Indenture, the Financing Agreement or any of the other Bond Documents, and in particular in case of the enforcement thereof upon an Event of Default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, the Authorized Officer of the Issuer and the Trustee shall have power to appoint an institution or individual as a co-trustee or separate trustee, and upon the request of the Trustee or of the Holders of at least ten percent (10%) of the Bonds then Outstanding the Issuer shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint such institution or individual to act as co-trustee jointly with the Trustee or as a separate trustee of all or any part of the Trust Estate, and to vest in such person or institution, in such capacity, such title to the Trust Estate, or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section.

The Trustee, the Issuer and the Borrower shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

Every co-trustee or separate trustee, shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) The Bonds shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Trustee;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon or exercised or performed by the Trustee, or by the Trustee and such co-trustee, or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or separate trustee;

(c) any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co-trustee or separate trustee;

(d) any co-trustee or separate trustee to the extent permitted by law shall delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Trustee at any time by an instrument in writing with the concurrence of the Issuer evidenced by a certified resolution may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section and in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of or remove any such co-trustee or separate trustee without the concurrence of the Issuer, and upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section;

(f) no Trustee or co-trustee hereunder shall be personally liable by reason of any act or omission of any other Trustee hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Bondholders and delivered to the Trustee shall be deemed to have been delivered to each such co-trustee or separate trustee or which would otherwise adversely affect the interests of Bondowners;

(h) any money, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee; and

(i) any co-trustee serving hereunder shall be entitled to the same rights and protections hereunder and under the Financing Agreement to which the Trustee is entitled, including but not limited to, the indemnification provided in Section 6.1 of the Financing Agreement.

Upon the acceptance in writing of such appointment, any such co-trustee or separate trustee shall be vested with such title to the Trust Estate or any part thereof, and with such rights, powers, duties, trusts or obligations as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as local law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee and the Issuer.

In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the Trust Estate and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the manner herein provided.

The total compensation of the Trustee and co-trustee or separate trustee shall be as provided in (and may not exceed the amount provided in) Section 7.06 hereof.

#### **Section 7.16 Compliance of Borrower Under Regulatory Agreement.**

The Trustee shall give written notice to the Issuer, the Servicer (from and after the Conversion Date) and the Credit Facility Provider of any failure by the Borrower to comply with the terms of the Regulatory Agreement of which a Responsible Officer of the Trustee has actual knowledge.

#### **Section 7.17 Record of Advances and Freddie Mac Reimbursement Amounts.**

From and after the Conversion Date, the Trustee shall maintain records of all Advances received by it from Freddie Mac under the Credit Enhancement Agreement and of all Freddie Mac Reimbursement Amounts paid by the Trustee to Freddie Mac or known by the Trustee to be due to Freddie Mac but unpaid from time to time. Upon receipt of a written request from Freddie Mac, the Trustee agrees, within a reasonable period following receipt of such written

request, to cooperate with Freddie Mac and the Servicer in connection with the reconciliation of the Trustee's records maintained pursuant to this Section 7.17 and any similar records maintained by Freddie Mac or the Servicer.

### **Section 7.18 Filing of Financing Statements.**

The Trustee shall file or record or cause to be filed or recorded all financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Bond Mortgage Loan, the Trust Estate and the Bond Mortgage, and the rights and powers of the Issuer, the Trustee and the Credit Facility Provider in connection with such security interests, including, but not limited to, all continuation statements provided by the Borrower to the Trustee for the purpose of continuing without lapse the effectiveness of (i) those financing statements which have been filed at or prior to the Delivery Date in connection with the security for the Bonds pursuant to the authority of the UCC, and (ii) any previously filed continuation statements which have been filed as required by this Indenture; provided, however, that if the Borrower or the Credit Facility Provider or the Servicer gives written notice to the Trustee that it has filed or recorded all applicable financing statements, the Trustee shall be entitled to rely on such written notice. The Issuer shall, if required, sign, and the Trustee shall obtain from the Borrower, the Servicer or the Credit Facility Provider, all such financing statements in all appropriate places, which places shall be designated in such notice. Upon the filing of any such financing statement the Trustee shall immediately notify the Issuer, the Borrower, the Credit Facility Provider and the Servicer that the same has been done. If direction is given by the Servicer or the Credit Facility Provider, the Trustee shall file all financing statements in accordance with such directions. Provided further that (i) the Borrower shall bear all costs of filing financing statements, (ii) the Trustee may require an opinion of counsel (at the cost of Borrower) instructing the Trustee what financing statements are required to be filed and when, and (iii) the Trustee shall bear no responsibility for filing any financing statements in which it is not listed as the Secured Party or the Assignee of the Secured Party.

## ARTICLE VIII

### SUPPLEMENTAL INDENTURES AND AMENDMENTS OF CERTAIN DOCUMENTS

#### Section 8.01 Supplemental Indentures Not Requiring Consent of Bondholders.

The Issuer and the Trustee may without the consent of, or notice to, any of the Bondholders, but with the prior written consent of the Credit Facility Provider and, prior to the Conversion Date, Freddie Mac (unless the Forward Commitment is not longer applicable), enter into an indenture or indentures supplemental to this Indenture as shall not be inconsistent with the terms and provisions hereof or materially adverse to the Holders of the Bonds for any one or more of the following purposes:

(a) to cure any ambiguity or formal defect or omission herein;

(b) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or either of them;

(c) to subject to the lien and pledge of this Indenture additional revenues, properties or collateral;

(d) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under any state blue sky laws;

(e) in connection with any other change in this Indenture which will not adversely affect the interest of the Trustee or the Bondholders;

(f) to make such changes as are, in the opinion of Bond Counsel, necessary to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds;

(g) to modify or amend the Indenture as necessary to maintain the then current rating on the Bonds, except no change may be made that will adversely affect the interests of the Bondholders;

(h) during a Variable Period, to modify, alter, amend or supplement this Indenture in any other respect, including amendments which would otherwise be described in Section 8.02 hereof, if notice of the proposed supplemental indenture is given to Bondholders (in the same manner as notices of redemption are given) at least thirty (30) days before the effective date thereof and, on or before such effective date, the

Bondholders have the right to demand purchase of their Bonds pursuant to Section 10.01 hereof;

(i) to modify, alter, amend or supplement this Indenture in connection with the delivery of any Alternate Credit Facility; or

(j) to implement or modify any secondary market disclosure requirements.

### **Section 8.02 Supplemental Indentures Requiring Consent of Bondholders.**

With the prior written consent of the Credit Facility Provider and, prior to the Conversion Date, Freddie Mac (unless the Forward Commitment is no longer applicable), the Holders of more than 51% of the principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture; provided, however, that nothing in this Section contained shall permit, or be construed as permitting, (a) an extension of the time for payment of or reduction in the Purchase Price, or an extension of the time for payment of, or an extension of the stated maturity or reduction in the principal amount or reduction in the rate of interest on or extension of the time of payment, of interest on, or reduction of any premium payable on the redemption of, any Bonds, or a reduction in the Borrower's obligation on the Bond Mortgage Note, without the consent of the Holders of all of the Bonds then Outstanding, or (b) the creation of any lien prior to or on a parity with the lien of this Indenture, or (c) a reduction in the aforesaid percentage of the principal amount of Bonds which is required in connection with the giving of consent to any such supplemental indenture, without the consent of the Holders of all of the Bonds then Outstanding, or (d) the modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, or (e) a privilege or priority of any Bond over any other Bonds, or (f) any action that results in the interest on the Bonds becoming included in gross income for federal income tax purposes.

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes described of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed, postage prepaid, to all registered Bondholders and to the Credit Facility Provider. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Bondholders. A copy of such supplemental indenture shall be delivered to the Credit Facility Provider no less than forty-five (45) days prior to the proposed effective date of such supplemental indenture. If, within sixty (60) days or such longer period as shall be prescribed by the Issuer following the mailing of such notice, the Holders of more than 51% of the principal amount of the Bonds then Outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the

execution thereof as herein provided and the Credit Facility Provider shall have delivered to the Trustee its written consent to such supplemental indenture, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith. The Trustee may rely upon an opinion of counsel as conclusive evidence that execution and delivery of a supplemental indenture has been effected in compliance with the provisions of this Article.

Anything in this Article VIII to the contrary notwithstanding, unless the Borrower shall then be in default of any of its obligations under the Financing Agreement, the Reimbursement Agreement, the Regulatory Agreement, the Bond Mortgage Note, the Reimbursement Mortgage or the Bond Mortgage, a supplemental indenture under this Article which affects any rights of the Borrower shall not become effective unless and until the Borrower shall have expressly consented in writing to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture to be mailed by certified or registered mail to the Borrower or the Borrower's attorney at least fifteen (15) days prior to the proposed date of execution and delivery of any supplemental indenture.

Notwithstanding any other provision of this Indenture, the Issuer and the Trustee may consent to any supplemental indenture upon receipt of the consent of the Credit Facility Provider and of the Holders of all Bonds then Outstanding, and as applicable, the Borrower.

### **Section 8.03 Amendments to Financing Agreement Not Requiring Consent of Bondholders.**

The Trustee shall, without the consent of, or notice to, the Bondholders, but with the consent of the Borrower, the Credit Facility Provider and, prior to the Conversion Date, Freddie Mac (unless the Forward Commitment is no longer applicable), consent to any amendment, change or modification of the Financing Agreement as follows:

- (a) as may be required by the provisions of the Credit Facility, by the Financing Agreement or by this Indenture;
- (b) to cure any ambiguity or formal defect or omission in the Financing Agreement;
- (c) in connection with any other change in the Financing Agreement which will not materially adversely affect the interest of the Trustee or the Bondholders;

(d) to modify or amend the Financing Agreement as necessary to maintain the then current rating on the Bonds;

(e) to make such additions, deletions or modifications as may be necessary, in the opinion of Bond Counsel delivered to the Issuer, the Trustee and the Credit Facility Provider to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds;

(f) during a Variable Period, to modify, alter, amend or supplement the Documents in any other respect, if notice of the proposed amendments is given to Bondholders (in the same manner as notices of redemption are given) at least thirty (30) days before the effective date thereof and, on or before such effective date, the Bondholders have the right to demand purchase of their Bonds pursuant to Section 10.01 hereof;

(g) to modify, alter, amend or supplement the Financing Agreement in connection with the delivery of an Alternate Credit Facility to the extent such modification, alteration, amendment or supplement will not materially adversely affect the interest of the Bondowners.

**Section 8.04 Amendments to Financing Agreement Requiring Consent of Bondholders.**

Except for the amendments, changes or modifications of the Financing Agreement as provided in Section 8.03 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Financing Agreement without the consent of the Credit Facility Provider, the Borrower and, prior to the Conversion Date, Freddie Mac (unless the Forward Commitment is no longer applicable), and without the giving of notice and the written approval or consent of the Holders of at least 51% of the principal amount of the Bonds then Outstanding given and procured in accordance with the procedure set forth in Section 8.02 hereof; provided, however, that nothing contained in this Section 8.04 shall permit, or be construed as permitting, any amendment, change or modification of the Borrower's obligation to make the payments required under the Financing Agreement. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of the Financing Agreement, the Trustee shall cause notice of such proposed amendment, change or modification to be given in the same manner as provided in Section 8.02 hereof. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal office of the Trustee for inspection by Bondholders.

**Section 8.05 Amendments to the Credit Facility.**

The Trustee and the Issuer may, without the consent of, or notice to, any of the Bondholders, enter into any amendment, change or modification of the Credit Facility (a) as

may be required by the provisions of the Credit Facility (including but not limited to Section 3.4(b) of the Credit Enhancement Agreement), (b) to cure any ambiguity or formal defect or omission in the Credit Facility, (c) in a manner which is not prejudicial to the interests of the Bondholders (which shall be conclusively evidenced by an opinion of counsel delivered to the Trustee, the Credit Facility Provider and the Issuer or by a written confirmation from the Rating Agency of the then existing rating on the Bonds delivered to the Trustee, the Credit Facility Provider and the Issuer), or (d) as may be required to maintain the then current rating on the Bonds. Except for the amendments, changes and modifications permitted pursuant to the preceding sentence, neither the Trustee, the Credit Facility Provider nor the Issuer shall enter into any amendment, change or modification of the Credit Facility without the giving of notice and the written approval or consent of the Holders or more than 51% of the principal amount of Bonds then Outstanding given and procured in accordance with the procedures set forth in Section 8.02 hereof.

#### **Section 8.06 Rating Confirmation for Certain Amendments.**

Notwithstanding the provisions of Sections 8.03 and 8.04 hereof, the Trustee shall not execute or acknowledge or consent to, as applicable, any amendment to the Borrower's payment obligations under the Financing Agreement or any modification to or substitution for the Bond Mortgage Note without first obtaining a written confirmation from the Rating Agency that its then rating on the Bonds will not be adversely affected by such amendment, modification or substitution.

#### **Section 8.07 Opinion of Bond Counsel Required.**

No supplement or amendment to the Financing Agreement or this Indenture, as described in this Article VIII, shall be effective until the Issuer, the Trustee and the Credit Facility Provider shall have received an opinion of Bond Counsel to the effect that such supplement or amendment is authorized or permitted by this Indenture and, upon execution and delivery thereof, will be valid and binding upon the Issuer in accordance with its terms and will not cause interest on the Bonds to be includable in gross income of the Holders thereof for federal income tax purposes. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it as conclusive evidence that (i) any proposed supplemental indenture or amendment permitted by this Article VIII complies with the provisions of this Indenture, (ii) it is proper for the Trustee to join in the execution of that supplemental indenture or amendment under the provisions of this Article VIII and (iii) if applicable, any such proposed supplemental indenture or amendment is not materially adverse to the interests of the Bondholders.

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF INDENTURE

#### Section 9.01 Discharge of Lien.

If the Issuer shall pay or cause to be paid to the Holders of the Bonds the principal, interest and premium, if any, to become due thereon at the times and in the manner stipulated therein and herein, in any one or more of the following ways:

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

(b) by (i) the deposit or credit to the account of the Trustee, in trust, of money or securities in the necessary amount (as provided in Section 9.04) to pay the principal, redemption price or Purchase Price and interest (to the extent the Bonds then bear interest at a Variable Rate calculated at the Maximum Rate) whether by redemption, purchase or otherwise, and (ii) if the Bonds then bear interest at the Variable Rate, the delivery to the Trustee of a written confirmation by the Rating Agency that any rating then existing on the Bonds as of the date of such deposit or credit will not be withdrawn, qualified or reduced; or

(c) by the delivery to the Trustee, for cancellation by it, of all Bonds outstanding;

and shall have paid all amounts due and owing to the Credit Facility Provider hereunder and under the Credit Facility and the Reimbursement Agreement (including, but not limited to, the Freddie Mac Reimbursement Amount and the Freddie Mac Credit Enhancement Fee, if applicable), and shall have paid all fees and expenses of, and other amounts owing to, the Trustee, the Servicer, the Tender Agent, the Remarketing Agent, and each Paying Agent, and if the Issuer shall keep, perform and observe all and singular the covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any interest in property at the time subject to the lien of this Indenture which may then be in its possession, except amounts held by the Trustee for the payment of principal of, interest and premium, if any, on the Bonds or the payment of any amounts payable to the Credit Facility Provider.

Any Outstanding Bond shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section if, under circumstances which do not cause interest on the Bonds to become includable in the Holders' gross income for purposes of federal income taxation, the

following conditions shall have been fulfilled: (a) in case such Bond is to be redeemed on any date prior to its maturity, the Trustee shall have given to the Bondholder irrevocable notice of redemption of such Bond on said date; (b) there shall be on deposit with the Trustee either money or direct obligations of the United States of America in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal or redemption price, if applicable, and interest due and to become due on such Bond on the redemption date or maturity date thereof, as the case may be; and (c) the Trustee shall have received an opinion of nationally recognized bankruptcy counsel that payments from such moneys are not subject to Sections 547 or 550 of the United States Bankruptcy Code or any other applicable bankruptcy provisions.

The Trustee shall in no event cause the Bonds to be optionally redeemed from moneys deposited pursuant to this Article IX unless the requirements of Article III have been met with respect to such redemption, including the requirements of Section 3.01(a)(ii) or (iii) hereof.

**Section 9.02 [Reserved].**

**Section 9.03 Discharge of Liability on Bonds.**

Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01) to pay or redeem outstanding Bonds (whether upon or prior to their maturity or the redemption date of such Bonds) provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article III provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, all liability of the Issuer in respect of such Bonds shall cease, terminate and be completely discharged, except only that thereafter the holders thereof shall be entitled to payment by the Issuer, and the Issuer shall remain liable for such payment, but only out of the money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 9.04.

**Section 9.04 Payment of Bonds after Discharge of Indenture.**

Notwithstanding any provisions of this Indenture, any moneys deposited with the Trustee or any paying agent in trust for the payment of the principal of, or interest or premium, if any, on any Bonds remaining unclaimed for two (2) years after the principal of all the outstanding Bonds, or any interest thereon, has become due and payable (whether at maturity or upon call for redemption or by declaration as provided in this Indenture), shall be disbursed to the Issuer, and the owners of the Bonds shall be entitled to look only to the Issuer for payment thereof and only to the extent of the amount paid to the Issuer, and all liability of the Issuer and the Trustee or any paying agent with respect to such moneys shall thereupon cease. In the event of the payment of any such moneys to the Issuer as aforesaid, the Holders of the Bonds in respect of which such moneys were deposited shall thereafter be deemed to be unsecured creditors of the Issuer for amounts equivalent to the respective amounts so paid to

the Issuer and deposited for the payment of such Bonds (without interest to such holders thereon).

#### **Section 9.05 Deposit of Money or Securities with Trustee.**

Whenever in this Indenture it is provided or permitted that there be deposited with or credited to the account of or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held shall be Eligible Funds (or Government Obligations purchased with Eligible Funds) constituting:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which there shall have been furnished to the Trustee proof satisfactory to it that notice of such redemption on a specified redemption date has been duly given or provision satisfactory to the Trustee shall be made for such notice, the amount so to be deposited or held shall be the principal amount of such Bonds and interest thereon to the redemption date, together with the redemption premium, if any; or

(b) noncallable and nonprepayable direct obligations of the United States of America or noncallable and nonprepayable obligations which as to principal and interest constitute full faith and credit obligations of the United States of America, in such amounts and maturing at such times that the proceeds of said obligations received upon their respective maturities and interest payment dates, without further reinvestment, will provide funds sufficient, in the opinion of a nationally recognized firm of certified public accountants, to pay the principal, premium, if any, and interest to maturity, or to the redemption date, as the case may be, with respect to all of the Bonds to be paid or redeemed, as such principal, premium and interest become due; provided that the Trustee shall have been irrevocably instructed by the Issuer to apply the proceeds of said obligations to the payment of said principal, premium, if any, and interest with respect to such Bonds.

## ARTICLE X

### REMARKETING AND PURCHASE OF BONDS

#### Section 10.01 Demand for and Mandatory Purchase of Bonds.

Any Bonds (other than Purchased Bonds), or any units of principal amount thereof in Authorized Denominations, shall be purchased from the proceeds of remarketing thereof as described in Section 10.03 or from the sources prescribed in Section 10.04 hereof, (i) on demand of the owner of such Bond (or, so long as Bonds are in "book-entry only" form pursuant to Section 2.12, demand of a DTC Participant, as defined in Section 2.12 hereof, with respect to such Bonds) on any Business Day during a Variable Period which is an Optional Tender Date (as defined below), or (ii) upon being tendered or deemed tendered pursuant to Section 2.02, 2.13 or 10.02 hereof, on any Reset Adjustment Date, Variable Rate Adjustment Date, the Fixed Rate Adjustment Date and any Substitution Date (even if such Reset Adjustment Date, Variable Rate Adjustment Date, Fixed Rate Adjustment Date or Substitution Date for which notice has been given by the Trustee to the Bondholders fails to occur). Bonds shall be purchased for a Purchase Price equal to the principal amount thereof, or of any units thereof purchased in Authorized Denominations, plus interest accrued thereon, if any, to the Settlement Date. Bonds shall be purchased upon (a) in the case of a purchase upon the demand of an owner or DTC Participant, delivery to the Tender Agent, with a copy to the Trustee and the Remarketing Agent, of a written notice in the form set forth as Exhibit B hereto (a "Tender Notice") which states (i) the principal amount of such Bond for which payment is demanded, (ii) that such demand is irrevocable and (iii) the date on which such Bond or units of principal amount thereof in Authorized Denominations shall be purchased pursuant to this Section 10.01, which date shall be a Business Day not prior to the seventh (7th) day next succeeding the date of the receipt of the Tender Notice by the Tender Agent (an "Optional Tender Date"); and (b) in all cases, delivery of such Bond (with an appropriate transfer of registration form executed in blank and in form satisfactory to the Tender Agent) to the Tender Agent, at or prior to 9.30 a.m., Washington, DC time, on the Settlement Date. In the event that a depository is appointed pursuant to Section 2.12 hereof and a "book-entry only" system is in effect with respect to the Bonds, delivery of Bonds for purchase on the Settlement Date shall be effected in the manner set forth by such depository.

Bonds not delivered to the Tender Agent on or prior to 9:30 a.m., Washington, DC time, on the Settlement Date shall be deemed tendered and purchased for all purposes of this Indenture and interest shall cease to accrue on such Bonds on the related Settlement Date.

Payment of the Purchase Price of any Bond shall be made on the Settlement Date by check or by wire transfer (if requested in writing by the Bondholder) or as designated in the Tender Notice with respect to such Bond, but only upon delivery and surrender of such Bond to the Tender Agent.

If the Trustee shall have received the items required by Sections 2.02 or 2.13, as the case may be, the Trustee shall (i) not later than the fifteenth (15th) day before any such Reset Adjustment Date, Variable Rate Adjustment Date, the Fixed Rate Adjustment Date or Substitution Date (or, if such day is not a Business Day, then on the next succeeding Business Day), notify the Tender Agent by telephone, promptly confirmed in writing, with a copy to the Remarketing Agent and (ii) not later than the ninth (9th) day before any such Reset Adjustment Date, Variable Rate Adjustment Date, Fixed Rate Adjustment Date or Substitution Date, notify the Bondholders by first class mail, that all outstanding Bonds (other than Purchased Bonds) shall be subject to mandatory tender and if not so tendered, shall be deemed to have been tendered for purchase on each such Reset Adjustment Date or Variable Rate Adjustment Date as provided in Section 2.02(c), Fixed Rate Adjustment Date as provided in Section 2.02(d) or the Substitution Date as provided in Section 2.13, at the Purchase Price. Such notices from the Trustee shall be treated as a Tender Notice for all purposes of this Indenture, including this Section and Article X hereof.

If all of the Bonds shall have been called for redemption during any Variable Period, the Bonds may continue to be remarketed until the redemption date, provided the purchasers of such Bonds are given notice of the call for redemption prior to purchase of any Bonds.

Anything herein to the contrary notwithstanding, no Bonds shall be purchased pursuant to this Section or remarketed pursuant to Section 10.03 if an Event of Default hereunder (other than an Event of Default under Section 6.01(c) hereof) shall have occurred and be continuing and would not be cured as a result of such tender and remarketing of the Bonds or following a declaration of acceleration of the Bonds; nor shall any Bond be purchased pursuant to this Section if such Bond is registered in the name of the Issuer, the Borrower or the Credit Facility Provider, or known by the Trustee (the Trustee shall have no duty to inquire as to any such nominees) to be registered in the name of any general partner, member or guarantor of the Borrower or any nominee of the Issuer, the Borrower, the Credit Facility Provider, or any such general partner, member or guarantor unless the Credit Facility will be in full force and effect after such purchase with respect to such Bonds.

#### **Section 10.02 Mandatory Tender of Bonds.**

(a) Holders of Bonds shall be required to tender their Bonds to the Tender Agent on:

(i) any Reset Adjustment Date, Variable Rate Adjustment Date, or the Fixed Rate Adjustment Date in accordance with the provisions of Section 2.02; and

(ii) any Substitution Date in accordance with and subject to the provisions of Section 2.13.

(b) Any Bond required to be tendered on a Reset Adjustment Date, a Variable Rate Adjustment Date, the Fixed Rate Adjustment Date or a Substitution Date which is not tendered

as of such date shall be deemed to have been tendered to the Tender Agent on such date and shall thereafter cease to bear interest and no longer be considered to be Outstanding hereunder.

### **Section 10.03 Remarketing of Bonds.**

Upon the receipt by the Remarketing Agent of any notice from the Tender Agent that any Bondholder (or DTC Participant, with respect to any Bonds in "book-entry only" form) has delivered a Tender Notice pursuant to Section 10.01 hereof, or upon receipt of any notice from the Trustee of Bonds deemed to have been tendered in accordance with the provisions of Section 2.02(c), 2.02(d) or 2.13 or purchased in lieu of redemption pursuant to Section 3.06 hereof, the Remarketing Agent shall offer for sale and use its best efforts to market the Bonds referred to in such Tender Notice or such notice from the Trustee (which shall be deemed to be a Tender Notice as provided in Section 10.01) at a price of par plus accrued interest to the Settlement Date, in accordance with the Remarketing Agreement; provided, however, that the Remarketing Agent shall not offer for sale or sell such Bonds to the Issuer, the Borrower or any general partner or any guarantor of the Borrower. The Remarketing Agent has no obligation to remarket Bonds registered in the name of the Borrower, the Credit Facility Provider or any general partner or guarantor of the Borrower unless the Credit Facility shall be in full force and effect after such remarketing. On the Business Day immediately prior to each Settlement Date (each, a "Remarketing Date"), the Remarketing Agent shall give telephonic notice, promptly confirmed in writing and transmitted by facsimile or Electronic Notice, to the Trustee, the Tender Agent, the Borrower, and the Credit Facility Provider by 11:00 a.m., Washington, DC time, stating whether all tendered Bonds have been remarketed successfully, specifying the names, addresses, and taxpayer identification numbers of the purchasers of, and the principal amount and denominations of, such Bonds, if any, for which it has found purchasers as of such Remarketing Date, and the Purchase Price at which the Bonds are to be sold (which shall be par plus accrued interest to the Settlement Date). The Remarketing Agent shall instruct such purchasers to deliver to the Tender Agent, no later than 9:30 a.m., Washington, DC time, on the Settlement Date, in immediately available funds, the amount required to purchase such Bonds. Upon receipt by the Tender Agent of such amount from such purchasers, the Tender Agent shall deliver the Bonds to the respective new purchasers upon deposit of the Purchase Price with the Tender Agent. The Tender Agent shall hold all Bonds delivered to it in trust for the benefit of the respective Bondholders which shall have so delivered such Bonds until moneys representing the Purchase Price of such Bonds shall have been delivered to or for the account of or to the order of such Bondholders. The Tender Agent shall remit the Purchase Price of such Bonds to the tendering Bondholder or Bondholders entitled to the same as provided in Section 10.01. In the event that any purchaser which shall have been identified by the Remarketing Agent to the Trustee and the Tender Agent shall fail to pay the Purchase Price for any Bonds prior to 10:00 a.m., Washington, DC time, on the Settlement Date, the Tender Agent shall not be obligated to accept such amount after such time. The Tender Agent will immediately notify by telephone the Trustee, the Credit Facility Provider, the Borrower and the Remarketing Agent of any such failure to receive the Purchase Price for such Bonds. On the Settlement Date, the Tender Agent shall notify by telephone the Trustee, the Credit Facility Provider, the Borrower and the Remarketing Agent of the amount of funds held by the Tender Agent as of 10:00 a.m.,

Washington, DC time, on such date constituting the Purchase Price of the Bonds remarketed by the Remarketing Agent, promptly confirmed in writing and transmitted by facsimile. The Tender Agent shall hold all moneys delivered to it for the purchase of Bonds (including any remarketing proceeds or proceeds of draws on the Credit Facility) in trust in a non-commingled account to be known as the "Bond Purchase Fund" for the benefit of the person or entity which shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to or for the account of such person. Such moneys shall be held uninvested except as directed in writing by the Credit Facility Provider and then only in Qualified Investments of the type described in clauses (a) and (b) of the definition thereof and maturing the earlier of (i) 30 days from the date of investment or (ii) when needed. The Issuer and the Borrower shall not have any right, title or interest in such moneys.

Except with respect to Bonds to be held under the terms of the Pledge Agreement and any Bonds purchased in lieu of redemption or acceleration pursuant to the provisions hereof, the Issuer, the Borrower or any general partner or any guarantor of the Borrower may not purchase any Bonds, from the Remarketing Agent or otherwise.

#### **Section 10.04 Purchase of Bonds not Remarketed.**

In the event that either the Tender Agent shall not have received notice of successful remarketing of tendered Bonds by the day which is one (1) Business Day prior to the Settlement Date, or the proceeds of remarketing of any tendered Bond have not been received by the Tender Agent on or prior to 10:00 a.m., Washington, DC time on the Settlement Date, the Trustee shall, within the time required by the terms of the Credit Facility, draw on the then existing Credit Facility in an amount sufficient to enable the Tender Agent to pay the Purchase Price of each such Bond. On each Settlement Date, the Trustee shall pay or cause to be paid to the Tender Agent the Purchase Price of any Bonds tendered pursuant to Section 10.01 or 10.02 hereof and which have not been remarketed pursuant to Section 10.03 hereof, but only from (i) moneys obtained by the Trustee pursuant to the Credit Facility then in effect to enable the Trustee to pay the Purchase Price of such tendered Bonds, which amounts shall be transferred by the Trustee to the Tender Agent at or before 3:00 p.m., Washington, DC time, on the Settlement Date; (ii) Eligible Funds from the Borrower to the extent that moneys obtained pursuant to (i) above are insufficient on any date to pay the Purchase Price of tendered Bonds; and (iii) in connection with a mandatory tender under Section 2.13, amounts in the Bond Mortgage Loan Fund.

Upon receipt of such Purchase Price and upon receipt of the Bonds tendered for purchase pursuant to Section 10.01 or 10.02 hereof, the Tender Agent shall pay such Purchase Price to the registered owners thereof; provided, that if the Purchase Price was theretofore paid from the proceeds of a draw on the Credit Facility, the Tender Agent shall pay such amount to the Credit Facility Provider. Any amounts drawn under the Credit Facility to purchase Bonds shall be used solely for such purpose. Any Bonds so purchased with amounts drawn under the Credit Facility by the Trustee shall be Purchased Bonds and shall be registered as provided in the Pledge Agreement. Amounts drawn under the Credit Facility which are not used to

purchase Bonds pursuant to this Section 10.04 shall be remitted by the Trustee or the Tender Agent to the Credit Facility Provider promptly upon payment of the Purchase Price of the Bonds.

#### **Section 10.05 Remarketing Agent.**

The Issuer, with the approval of the Credit Facility Provider and the Borrower (such Borrower approval not to be unreasonably withheld or delayed), shall appoint a Remarketing Agent for the Bonds, subject to the conditions set forth in Section 10.05 hereof. The Remarketing Agent initially appointed hereunder is RBC Capital Markets Corporation. The Remarketing Agent shall designate to the Trustee its Principal Office and signify its acceptance of the duties and obligations imposed upon it hereunder by execution of the Remarketing Agreement. The Remarketing Agent shall, and shall agree in the Remarketing Agreement to, do each of the following:

(a) act as agent for the Issuer in determining the interest rates to be borne by the Bonds, act as agent for Bondholders in receiving and holding moneys to pay the Purchase Price thereof;

(b) use its best efforts to remarket bonds tendered for purchase (including Purchased Bonds) except in the circumstances described in the last paragraph of Section 10.01 and in the Remarketing Agreement;

(c) notify the Trustee, the Credit Facility Provider, the Borrower, the Issuer and the Tender Agent of the Variable Rate determined in accordance with Section 2.02(b), the Reset Rate determined in accordance with Section 2.02(c) and the Fixed Rate determined in accordance with Section 2.02(d), on the Variable Interest Computation Date or other date required for such determination, each such notification to be in writing or by telex or telecopier or other communication device which produces a written record thereof, or by telephone confirmed within one Business Day by any such written communication;

(d) hold all moneys delivered to it hereunder for the purchase of Bonds in trust for the benefit of the person which shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to the Tender Agent, and not commingle such moneys with other funds of the Remarketing Agent;

(e) keep such books and records with regard to the remarketing of the Bonds as shall be consistent with prudent industry practice and make such books and records available for inspection by the Issuer, the Trustee, the Borrower and the Credit Facility Provider at all reasonable times;

(f) perform the duties and comply with the provisions set forth in Article X hereof; and

(g) notify the Tender Agent, the Trustee, the Borrower and the Credit Facility Provider of the status of the remarketing of tendered Bonds one (1) Business Day prior to the Settlement Date and if remarketing proceeds for all tendered Bonds have not been received by the Remarketing Agent by 10:00 a.m., Washington, DC time, on the Settlement Date.

#### **Section 10.06 Qualifications and Resignation or Removal of Remarketing Agent.**

(a) The initial and any successor Remarketing Agent shall be a commercial bank or trust company or a member of the National Association of Securities Dealers, Inc., and authorized by law to perform all the duties imposed upon it by this Indenture and the Remarketing Agreement.

(b) The Remarketing Agent may at any time resign and be discharged of its duties and obligations under the Remarketing Agreement and this Indenture by giving at least thirty (30) days' written notice to the Issuer, the Borrower, the Credit Facility Provider, the Trustee and the Tender Agent, but any such resignation shall not be effective until a successor is appointed and has accepted such appointment. If no successor Remarketing Agent has been appointed and accepted such appointment thirty (30) days after receipt of notice of the Remarketing Agent's resignation, the fees of the Remarketing Agent shall be increased as provided in the Remarketing Agreement.

(c) The Borrower (but only with the prior written consent of the Issuer and provided the Borrower is not in default under any of the Bond Financing Documents and that no event has occurred that, with notice or the passage of time, or both, would constitute such a default by the Borrower) at any time by a written notice to the Issuer, the Trustee, the Tender Agent and the Credit Facility Provider, may remove the Remarketing Agent and the Issuer, with the approval of the Borrower (such approval not to be unreasonably withheld or delayed, and such Borrower approval only required if the Borrower is not in default under any of the Bond Financing Documents and that no event has occurred that, with notice or the passage of time, or both, would constitute such a default by the Borrower) and the Credit Facility Provider, shall appoint a successor Remarketing Agent, but such removal will not become effective until a successor Remarketing Agent satisfactory to the Issuer and the Credit Facility Provider is appointed. If (i) an Event of Default has occurred and is continuing under any Bond Mortgage Loan Document or (ii) the Remarketing Agent has failed to fulfill any of its duties or obligations under this Indenture or the Remarketing Agreement, the Credit Facility Provider may remove the Remarketing Agent by written notice to the Issuer, the Trustee, the Tender Agent and the Borrower, and in such event the Issuer, with the approval of the Borrower (such approval not to be unreasonably withheld or delayed, and such Borrower approval only required if the Borrower is not in default under any of the Bond Financing Documents and that no event has occurred that, with notice or the passage of time, or both, would constitute such a default by the Borrower) and the Credit Facility Provider, shall appoint a successor Remarketing Agent.

(d) Upon receipt of notice of resignation or upon termination of the Remarketing Agent's corporate existence or upon removal of the Remarketing Agent pursuant to Section 10.06(c), the Issuer, with the approval of the Borrower (such approval not to be unreasonably withheld or delayed, and such Borrower approval only required if the Borrower is not in default under any of the Bond Financing Documents and that no event has occurred that, with notice or the passage of time, or both, would constitute such a default by the Borrower) and the Credit Facility Provider, shall appoint a successor Remarketing Agent, which must be a trust company or bank or investment bank in good standing, within or without the State. If the Issuer fails or refuses to make such appointment prior to the effective date of the resignation set forth in such notice (or, if earlier, within thirty (30) days of receipt of the Remarketing Agent's notice of resignation), or upon such termination of existence, the Credit Facility Provider may appoint a successor Remarketing Agent.

(e) In the event of the resignation or removal of the Remarketing Agent, the Remarketing Agent shall pay over, assign and deliver any moneys held by it in such capacity to its successor.

#### **Section 10.07 Tender Agent.**

The Trustee, with the written consent of the Credit Facility Provider, shall appoint the Tender Agent for the Bonds, subject to the conditions set forth in Section 10.08 hereof. The Trustee shall initially serve as the Tender Agent. The Tender Agent shall designate to the Trustee its Principal Office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Trustee and the Remarketing Agent under which the Tender Agent acknowledges its qualifications and authority to act as Tender Agent under this Indenture and agrees, particularly, as follows:

(i) The Tender Agent shall, upon receipt of a Tender Notice from any Bondholder (or DTC Participant, with respect to a Bond in "book-entry only" form), give prompt telephonic notice thereof to the Trustee and the Remarketing Agent, specifying the amount of Bonds to be purchased and the Settlement Date, and shall, not later than the following Business Day, confirm such telephonic notice in writing and deliver to the Remarketing Agent, the Trustee and the Credit Facility Provider a copy of such Tender Notice.

(ii) On each Settlement Date, the Tender Agent shall give the Remarketing Agent, the Credit Facility Provider and the Trustee telephonic notice, confirmed in writing by the following Business Day, of the principal amount of Bonds delivered pursuant to Section 10.01.

(iii) The Tender Agent shall hold all Bonds delivered to it pursuant to Section 10.01 in trust for the benefit of the respective Bondholders which shall have so delivered such Bonds until such Bonds are required by this Indenture to be delivered to the respective purchasers thereof.

(iv) The Tender Agent shall cancel all Bonds for which it has received written notice of remarketing from the Remarketing Agent and shall authenticate new Bonds in a like aggregate principal amount in the names and in the denominations set forth in the written notice given to the Tender Agent by the Remarketing Agent pursuant to Section 10.03 hereof.

(v) The Tender Agent shall deliver Bonds to the purchasers thereof in accordance with Section 10.04 hereof. The Tender Agent shall establish the Bond Purchase Fund as provided in Section 10.03 hereof. The Tender Agent shall remit the Purchase Price of tendered Bonds to the tendering Bondholders in accordance with Section 10.03 hereof.

(vi) The Tender Agent shall deliver to the Trustee all tendered Bonds canceled.

(vii) The Tender Agent shall keep such books and records as shall be consistent with prudent industry practice and shall make such books and records available for inspection by the Issuer, the Trustee and the Credit Facility Provider at all reasonable times.

(viii) The Tender Agent shall send to the Trustee a copy of its transfer journal evidencing all changes in registration of the Bonds within two (2) days of making such changes.

The Tender Agent shall pay to tendering Bondholders the Purchase Price of any Bonds for which it has received a Tender Notice and which have not been remarketed pursuant to Section 10.03 hereof, but solely from the sources listed in Section 10.04 hereof; and the Tender Agent shall pay to tendering Bondholders the Purchase Price of any Bonds for which it has received a Tender Notice and which have been remarketed pursuant to Section 10.03 hereof, but solely from amounts received from the Remarketing Agent.

#### **Section 10.08 Qualifications of Tender Agent.**

The Tender Agent shall be a commercial bank or trust company with a principal office, or with an affiliate with an office, in Los Angeles, California, having a capitalization of at least \$10,000,000 and authorized by law to perform all the duties imposed upon it by this Indenture; provided that, in any event, the Trustee may serve as the Tender Agent so long as the Bonds are in "book-entry-only" form. The Tender Agent shall be an affiliate of the Trustee (unless the Tender Agent is the Trustee), unless the Trustee has no affiliate meeting the requirements of the first sentence of this Section, in which case the selection of the Tender Agent shall be an entity appointed by the Trustee with the written consent of the Credit Facility Provider and the Issuer.

The Tender Agent may at any time resign and be discharged by giving at least sixty (60) days' notice to the Trustee, the Issuer, the Borrower and the Credit Facility Provider. The Tender Agent may be removed at any time, with the written consent of the Credit Facility

Provider and by an instrument signed by the Trustee and filed with the Tender Agent, the Remarketing Agent and the Issuer.

In the event of the resignation or removal of the Tender Agent, the Tender Agent shall pay over, assign and deliver any moneys and Bonds held by it in such capacity, and shall deliver all books and records relating thereto, to its successor or, if there be no successor, to the Trustee.

In the event that the Trustee shall fail to appoint a Tender Agent hereunder, or in the event that the Tender Agent shall resign or be removed, or be dissolved, or if the property or affairs of the Tender Agent shall be taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the Trustee shall not have appointed its successor as Tender Agent, the Trustee, notwithstanding the provisions of the first paragraph of this Section 10.08, shall be deemed to be the Tender Agent for all purposes of this Indenture until the appointment by the Trustee of the Tender Agent or a successor Tender Agent, as the case may be, notwithstanding the fact that the Trustee may not meet the qualifications set forth in the first paragraph of this Section 10.08.

Insofar as such provisions may be applicable, the Tender Agent shall enjoy the same protective provisions in the performance of its duties hereunder as are specified in Sections 7.01 and 7.02 with respect to the Trustee. The Tender Agent shall perform such duties, and only such duties, as are specifically set forth in this Indenture and the Agreement and no implied covenants shall be read into this Indenture or the Agreement against the Tender Agent.

#### **Section 10.09 Dealing in Bonds.**

The Credit Facility Provider, the Trustee, the Tender Agent or the Remarketing Agent, in its individual capacity, may each in good faith buy, sell, own, hold and deal in any of the Bonds, and may join in any action which any Bondholder may be entitled to take with like effect as if it did not act in any capacity hereunder. The Trustee, the Tender Agent, the Credit Facility Provider or the Remarketing Agent, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Credit Facility Provider, and may act as depository, trustee or agent for any committee or body of Bondholders secured hereby or other obligations of the Issuer as freely as if it did not act in any capacity hereunder. It is expressly understood that the Trustee and the Tender Agent in carrying out their respective duties hereunder shall each be acting as a conduit with respect to deliveries of Bonds for purchase pursuant to Section 10.01 hereof.

#### **Section 10.10 Purchased Bonds.**

(a) Unremarketed Bonds as Purchased Bonds; No Credit Facility Support. Bonds for which the Purchase Price is funded with moneys provided under the Credit Facility and which are not remarketed in accordance with the Remarketing Agreement shall be deemed to be

Purchased Bonds. The Credit Facility shall not constitute security for or provide liquidity for Purchased Bonds.

(b) Ownership and Pledge of Purchased Bonds. Purchased Bonds shall be owned by the Borrower and pledged to the Custodian under the Pledge Agreement for the benefit of the Credit Facility Provider pursuant to the Pledge Agreement. As set forth in the Pledge Agreement, the Tender Agent shall immediately deliver Purchased Bonds to the Custodian, in either certificated form or book-entry form. If delivered in book-entry form, the Trustee shall deliver a written entitlement order to the applicable financial intermediaries on whose records ownership of the Purchased Bonds is reflected directing the intermediaries to credit the security entitlement to the Purchased Bonds to the account of the Custodian for the benefit of the Credit Facility Provider and deliver to the Custodian a written confirmation of such credit, whether or not the Borrower notifies the Remarketing Agent to do so.

(c) Purchased Bonds Held in Certificated or Book entry Form. All Purchased Bonds shall be held under and pursuant to the Pledge Agreement in either certificated form or book entry form, provided that Purchased Bonds held in book entry form shall be in the form of Exhibit A 1 and transferred immediately to, and continuously held through the Securities Depository under, the Purchased Bond CUSIP number. The Tender Agent or the Trustee, as applicable, shall, upon written direction of the Credit Facility Provider, withdraw Purchased Bonds from the Securities Depository and issue registered certificated Purchased Bonds to be held by the Custodian pursuant to the Pledge Agreement.

(d) Payment Failure Not a Default. Failure to pay interest on Purchased Bonds when due or failure to pay principal and interest on Purchased Bonds upon any Redemption Date or Settlement Date or the Maturity Date shall not constitute an Event of Default. Upon the Maturity Date, any Redemption Date or date of acceleration, all Purchased Bonds shall be deemed canceled. Purchased Bonds shall also be canceled upon direction of the Credit Facility Provider.

(e) Remarketing of Purchased Bonds. At such time as Purchased Bonds are remarketed by the Remarketing Agent (i) the Trustee or the Tender Agent, as appropriate, shall remit the proceeds of the remarketing to the Credit Facility Provider to reimburse the Credit Facility Provider for amounts paid under the Credit Facility to purchase the Bonds (and the Trustee or the Tender Agent shall submit a certificate to the Credit Facility Provider in the form contained in the Credit Facility), (ii) the Trustee or Tender Agent, as appropriate, upon receipt of notice from the Credit Facility Provider that it has received reimbursement for the amount provided under the Credit Facility (or notice from the Tender Agent that the Tender Agent has received funds that it will immediately remit to the Credit Facility Provider) and that the Credit Facility has been reinstated in accordance with its terms, the Custodian shall release all remarketed Purchased Bonds in accordance with the Pledge Agreement (and with respect to the Freddie Mac Pledge Agreement, specifically, Section 2.4), (iii) the Trustee or the Tender Agent shall give written notice to the Remarketing Agent, the Borrower and the Credit Facility Provider that such Bonds are no longer Purchased Bonds, and (iv) the Trustee shall immediately transfer such

remarketed Bonds to the original CUSIP number and advise the Securities Depository accordingly.

## ARTICLE XI

### MISCELLANEOUS

#### Section 11.01 Consents and Other Instruments of Bondholders.

Any consent, request, direction, approval, waiver, objection, appointment or other instrument required by this Indenture to be signed and executed by the Bondholders may be signed and executed in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such instrument, namely:

(a) the fact and date of the execution by any person of any such instrument may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such instrument acknowledged the execution thereof. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such affidavit or certificate shall also constitute sufficient proof of such authority;

(b) the ownership of registered Bonds shall be proved by the Bond Register;

(c) any request, consent or vote of the Holder of any Bond shall bind every future Holder of the same Bond and the Holder of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or permitted to be done by the Trustee or the Issuer in pursuance of such request, consent or vote; and

(d) in determining whether the Holders of the requisite percentage of the principal amount of Bonds then Outstanding have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned by the Issuer or the Borrower or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer or the Borrower shall be disregarded and deemed not to be Outstanding for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver. Only Bonds which the Trustee knows to be so owned shall be disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

### **Section 11.02 Limitation of Rights.**

With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person other than the parties hereto, the Credit Facility Provider, the Borrower and the Holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions hereof.

### **Section 11.03 Construction of Conflicts; Severability.**

Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Bonds, the interest on which is excluded from gross income for federal income tax purposes under section 103(a) of the Code, are inconsistent with the Bond Mortgage Loan Documents, then the Bond Mortgage Loan Documents shall be controlling in all respects. If any provision of this Indenture shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Indenture contained, shall not affect the remaining portions of this Indenture, or any part thereof.

### **Section 11.04 Notices.**

(a) Any provision of this Indenture relating to the mailing of notice or other communication to Bondholders shall be deemed fully complied with if such notice or other communication is mailed, by first class mail, postage prepaid, to each registered owner of any Bonds then Outstanding at the address of such registered owner as it appears on the Bond Register. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Issuer, the Trustee, the Credit Facility Provider, Freddie Mac, the Borrower, the Remarketing Agent or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been

delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Indenture by Electronic Notice. The Issuer, the Trustee, the Credit Facility Provider, Freddie Mac, the Borrower, the Remarketing Agent or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Issuer: City of San José, California  
Department of Finance  
200 East Santa Clara Street, 13<sup>th</sup> Floor Tower  
San Jose, California 95113-1905  
Attention: Debt Management  
Telephone: 408-535-7000  
Facsimile: 408-292-6482

with a copy to: Office of the City Attorney  
City of San José, California  
200 East Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, California 95113-1905  
Attention: City Attorney  
Telephone: 408-535-1201  
Facsimile: 408-998-3131

The Trustee or the Tender Agent: Wells Fargo Bank, National Association  
707 Wilshire Boulevard, 17<sup>th</sup> Floor  
MAC: E2818-176  
Los Angeles, California 90017  
Attention: Corporate Trust Services  
Telephone: 213-614-3328  
Facsimile: 213-614-3335

The Borrower: Brookwood Terrace Family Apartments, L.P.  
1650 Lafayette Street  
Santa Clara, California 95050  
Attention: Jonathan Emami  
Telephone: 408-984-5600  
Facsimile: 408-984-3111

and to: Pacific Housing, Inc.  
1801 L Street, Suite 245  
Sacramento, California 95811  
Attention: Mark Wiese  
Telephone: 916-638-5200

Facsimile: 916-325-8624

with a copy to:

Cox, Castle & Nicholson, LLP  
555 California Street, 10<sup>th</sup> Floor  
San Francisco, California 94104-1513  
Attention: Stephen C. Ryan, Esq.  
Telephone: 415-262-5150  
Facsimile: 415-392-4250

Freddie Mac:

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, Mail Stop B4Q  
McLean, Virginia 22102  
Attention: Director of Multifamily Management  
and Information Control  
Telephone: 703-903-2000  
Facsimile: 703-714-3273

with a copy to:

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive  
McLean, Virginia 22102  
Attention: Associate General Counsel -  
Multifamily Legal Department  
Telephone: 703-903-2000  
Facsimile: 703-903-2885

with a copy to:

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, Mail Stop B4F  
McLean, Virginia 22102  
Attention: Director of Multifamily Loan  
Servicing  
Telephone: 703-903-2000  
Facsimile: 703-714-3003

The Credit Facility Provider:

JPMorgan Chase Bank, N.A.  
Chase Community Development Banking  
17875 Von Karman, Floor 02  
Irvine, California 92614  
Attention: Don Munoz, Sr. Service Specialist  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with a copy to:

JPMorgan Chase Bank, N.A.  
300 south Riverside Plaza, Mail Code IL1-0236  
Chicago, Illinois 60606-0236

-116-

Attention: Standby Service Unit  
Telephone:  
Facsimile:

and a copy to:

JPMorgan Chase Bank, N.A.  
Legal Department  
245 Park Avenue, Mail Code NY1-Q657  
New York, New York 10167  
Attention: Michael Zients, Vice President and  
Assistant General Counsel  
Telephone:  
Facsimile:

Electronic Notices of interest rates  
shall be delivered to:

MFLA\_Trustees@freddiemac.com

The Servicer:

Citibank, N.A.  
c/o Capmark Finance Inc.  
116 Welsh Road  
P. O. Box 809  
Horsham, Pennsylvania 19044  
Attention: Servicing-Account Manager  
Telephone: 215-328-3866  
Facsimile: 215-328-3478

with a copy to:

Robinson & Cole LLP  
885 Third Avenue, 28<sup>th</sup> Floor  
New York, New York 10022  
Attention: Andrew Kramer, Esq.  
Telephone: 212-451-2904  
Facsimile: 212-451-2999

The Remarketing Agent:

RBC Capital Markets Corporation  
3 World Financial Center  
200 Vesey Street  
New York, New York 10281  
Attention: Short Term Desk  
Telephone: 212-618-2019  
Facsimile: 212-618-2570

The Rating Agency:

Moody's Public Finance  
7 World Trade Center  
250 Greenwich Street

-117-

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Credit Facility Provider.

(b) The Trustee shall provide to the Credit Facility Provider (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other communication received by the Trustee hereunder within ten (10) Business Days of receiving a written request from the Credit Facility Provider for any such information or other communication.

(c) The Trustee shall provide to the Rating Agency, at the address specified in Section 11.04(a), notice of (a) any change in Trustee hereunder or the Remarketing Agent, (b) any material amendment to any of the Bond Documents, (c) any termination, expiration, substitution or extension of the Credit Facility, (d) any redemption in whole or defeasance of the Bonds or any mandatory tender or acceleration of the Bonds and (e) any change of the interest rate on the Bonds to a Reset Rate or a Fixed Rate. The Trustee also shall provide to the Rating Agency any information requested by the Rating Agency needed to maintain the rating on the Bonds.

**Section 11.05 Credit Facility Provider.**

Following the release of the Credit Enhancement Agreement by the Trustee pursuant to the terms of this Indenture and the provision of an Alternate Credit Facility, all notices to be provided Freddie Mac and/or the Servicer hereunder shall be provided to the Alternate Credit Facility Provider and payments to be made to Freddie Mac or the Servicer from the Administration Fund shall be paid to the Alternate Credit Facility Provider.

**Section 11.06 Trustee as Paying Agent and Bond Registrar.**

The Trustee is hereby designated and agrees to act as Paying Agent and Bond Registrar for and in respect to the Bonds.

**Section 11.07 Payments Due on Non-Business Days.**

In any case where a date of payment with respect to any Bonds shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date providing that payment is made on such next succeeding Business Day.

### **Section 11.08 Counterparts.**

This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

### **Section 11.09 Laws Governing Indenture and Administration of Trust.**

The effect and meanings of this Indenture and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State without regard to conflicts of laws principles.

### **Section 11.10 No Recourse.**

THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND SHALL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE AND ARE AND SHALL ALWAYS BE A VALID CLAIM OF THE OWNERS OF THE BONDS ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME SHALL BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE FINANCING AGREEMENT.

No recourse under or upon any obligation, covenant, warranty or agreement contained in this Indenture or in any Bond shall be had against any officer, employee or agent (past, present or future) of the Issuer, either directly or through the Issuer or its City Council or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Holder of any Bond issued hereunder, or otherwise, of any sum that may be due and unpaid by the Issuer or its City Council upon any such Bond. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such officer, employee, or agent as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Holder of any Bond issued hereunder or otherwise of any sum that may remain due and unpaid upon any Bond hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

### **Section 11.11 Successors and Assigns.**

All the covenants and representations contained in this Indenture by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Trust Indenture to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

CITY OF SAN JOSE, CALIFORNIA

By: \_\_\_\_\_  
Julia H. Cooper,  
Assistant Director of Finance

Attest:

By: \_\_\_\_\_  
Lee Price,  
City Clerk

Approved as to form:

By: \_\_\_\_\_  
Patricia Deignan,  
Chief Deputy City Attorney

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Authorized Officer

19021.13:J10545

**EXHIBIT A**  
**FORM OF BOND**

**UNITED STATES OF AMERICA**  
**STATE OF CALIFORNIA**

**\$13,600,000**  
**CITY OF SAN JOSE, CALIFORNIA**  
**VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE BONDS**  
**(BROOKWOOD TERRACE FAMILY APARTMENTS), SERIES 2009B**

NO. R-1 \$ \_\_\_\_\_

NOTICE: Unless this bond certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered Borrowers hereof, Cede & Co., has an interest herein.

INTEREST RATE	MATURITY DATE	DATED DATE	CUSIP NO.
VARIABLE	June 1, 2047	November 19, 2009	

REGISTERED BORROWER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of San José, California (the "Issuer"), a municipal corporation and charter city organized and existing under the laws of the State of California (the "State"), for value received, hereby promises (but solely from the sources hereinafter described) to pay to the registered owner identified above, or registered assigns, on the maturity date set forth above, unless previously called for redemption, the principal sum as set forth above, together with interest thereon at the rate provided in the hereinafter defined Indenture from the later of the Delivery Date or the most recent Interest Payment Date (as defined below) to which interest has been paid or duly provided for, until the principal amount hereof shall have been fully paid, at the rate per annum provided in the Indenture, payable (a) during the Variable Period, on the first Business Day of each calendar month, commencing December 1, 2009, (b) during a Reset Period or the Fixed Rate Period, on May 1 and November 1 of each year, (c) on each Reset Adjustment Date, Variable Rate Adjustment Date or the Fixed Rate Adjustment Date and on the maturity date of this Bond (the "Interest Payment Dates"), calculated as provided in the Indenture.

Payment of principal, premium, if any, and interest on this Bond are payable in lawful money of the United States of America. Payment of the principal of and premium, if any, on this Bond shall be made only upon presentation and surrender of this Bond at the Principal Office of the Trustee (as defined in the Indenture). Payment of interest on this Bond shall be made by check mailed to the registered Borrower of this Bond as such address shall appear on the registration books for the Bonds (a) during the Variable Period, on the Business Day immediately preceding an Interest Payment Date, and (b) during a Reset Period or the Fixed Rate Period, on the 15th day of the month preceding each Interest Payment Date (a "Record Date") or, upon written request of a registered owner of at least \$1,000,000 aggregate principal amount of the Bonds received by Wells Fargo Bank, National Association, as trustee (together with any successor trustee appointed in accordance with the terms of the hereinafter defined Indenture, the "Trustee"), at least five (5) days prior to a Record Date, by wire transfer of immediately available funds to an account designated by such owner, less any reasonable wire transfer fees imposed by the Trustee. Payment of the Purchase Price of this Bond tendered for purchase as herein described shall be payable (if such Bond is not held under a book-entry system as described in the Indenture) only upon presentation and surrender of this Bond at the Principal Office of the Tender Agent (as defined in the Indenture). Payment of any past due interest shall be made to the person in whose name this Bond is registered on a "Special Record Date" which shall be a date not less than ten (10) days and not more than fifteen (15) days prior to the date of the proposed payment of past due interest. All capitalized terms not defined herein shall have the meaning set forth in the Trust Indenture, dated as of November 1, 2009, by and between the Issuer and the Trustee (the "Indenture").

THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES, RECEIPTS, AND OTHER MONEYS PLEDGED THEREFOR UNDER THE INDENTURE. THE BONDS ARE NOT A DEBT OF THE STATE, THE ISSUER (EXCEPT TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE, AND NONE OF THE STATE, THE ISSUER (EXCEPT TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE IS LIABLE FOR THE PAYMENT OF THE BONDS. NEITHER THE FAITH AND CREDIT OF THE STATE, THE ISSUER NOR OF ANY OTHER POLITICAL SUBDIVISION OF THE STATE ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR OF INTEREST ON THE BONDS.

THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, OR ANY AGENCY OF THE UNITED STATES OF AMERICA, OR THE FEDERAL HOME LOAN MORTGAGE CORPORATION ("FREDDIE MAC"), AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA OR BY FREDDIE MAC, PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS IS NOT GUARANTEED BY FREDDIE MAC. THE OBLIGATIONS OF FREDDIE MAC UNDER THE CREDIT ENHANCEMENT AGREEMENT (AS HEREINAFTER DEFINED) ARE OBLIGATIONS SOLELY OF FREDDIE MAC AND ARE NOT BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA.

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

This Bond is one of a duly authorized issue of bonds of the Issuer known as its City of San José, California Variable Rate Demand Multifamily Housing Revenue Bonds (Brookwood Terrace Family Apartments), Series 2009B, issued in the initial aggregate principal amount of \$13,600,000 (the "Bonds") under and pursuant to Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State (the "Act"), and a resolution adopted by the Issuer on November 10, 2009 (the "Resolution"). The Bonds are limited obligations of the Issuer payable solely from and secured by the Trust Estate pledged therefor pursuant to the Indenture. The Bonds are issued to provide funds to finance a multifamily housing project (the "Project") to be located in San Jose, California, initially owned by Brookwood Terrace Family Apartments, L.P., a California limited partnership (the "Borrower").

The Bonds are issuable as fully registered bonds in Authorized Denominations of \$100,000 or integral multiples of \$5,000 in excess of \$100,000 during any period the Bonds bear interest at a rate determined weekly (the "Variable Rate"), and \$5,000 or integral multiples thereof during any period that the rate of interest on the Bonds is fixed for a period of five (5) years or more or such shorter period as may be approved by the Credit Facility Provider (a "Reset Period") or fixed to the maturity date of the Bonds (the "Fixed Rate Period").

To secure its obligation to make payments on the Bond Mortgage Note in accordance with its terms the Bonds will be initially secured by (i) a Bond Mortgage (as defined in the Indenture) from the Borrower to the Issuer and assigned to the Trustee and (ii) an irrevocable direct-pay Letter of Credit dated the Delivery Date (the "Letter of Credit"), issued by JPMorgan Chase Bank, N.A. (the "Construction Phase Credit Facility Provider"); on and after the Conversion Date, if it occurs, the Bonds will be secured by a Credit Enhancement Agreement (the "Credit Enhancement Agreement") between Freddie Mac and the Trustee. If the Conditions to Conversion are not timely satisfied and are not waived by Freddie Mac, if waiver is permitted), Freddie Mac will not have any obligation with respect to the Bonds or the Bond Mortgage Loan and the Letter of Credit will remain in effect.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the Trust Estate under the Indenture, the nature and extent of the security, the terms and conditions upon which the Bonds are issued and secured and the rights of the holders thereof, to all of the provisions of which Indenture the registered owner of this Bond, by

acceptance hereof, assents and agrees. This Bond is equally and ratably secured under the Indenture with all other Bonds issued thereunder.

**Variable Interest Accrual Period.** From the Delivery Date to, but excluding, the earlier of (a) the date of adjustment to a Reset Rate (a "Reset Adjustment Date") or the Fixed Rate (a "Fixed Rate Adjustment Date") or (b) the maturity date specified above, this Bond shall bear interest at the Variable Rate determined weekly on the Variable Interest Computation Date by the Remarketing Agent, as provided in the Indenture, for each Variable Interest Accrual Period. The Variable Interest Computation Date shall be Wednesday of each week during the Variable Period or, if any such Wednesday is not a Business Day, then the next day which is a Business Day. Interest on the Bonds during the Variable Period shall be computed on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed. Bonds purchased with proceeds made available under the Credit Facility shall bear interest at the rate established pursuant to the Reimbursement Agreement, provided that in no event shall such rate exceed the Maximum Rate of interest which may be charged pursuant to the terms of the Indenture.

**Reset Period.** The Borrower may, upon compliance with certain conditions of the Indenture, cause the interest rate on the Bonds to be adjusted to a Reset Rate, which shall be determined by the Remarketing Agent as provided in the Indenture. During the Reset Period, the Bonds shall bear interest at the Reset Rate, payable on each Interest Payment Date (commencing on the first Interest Payment Date next following after the Reset Adjustment Date) to and including the next succeeding Reset Adjustment Date. Such interest shall be computed on the basis of a three hundred sixty (360) day year composed of twelve (12) thirty (30) day months. At the conclusion of a Reset Period, the Borrower may, upon compliance with certain conditions of the Indenture, cause the interest rate on the Bonds to be adjusted to a Variable Rate, a new Reset Date or a Fixed Rate, which shall be determined and redetermined by the Remarketing Agent as provided in the Indenture.

**Fixed Rate Period.** The Borrower may, upon compliance with certain conditions of the Indenture, cause the interest rate on the Bonds to be adjusted to a Fixed Rate, which shall be determined by the Remarketing Agent as provided in the Indenture. During the Fixed Rate Period, the Bonds shall bear interest at the Fixed Rate, payable on each Interest Payment Date (commencing on the first Interest Payment Date next following after the Fixed Rate Adjustment Date) to and including the maturity of the Bonds. Such interest shall be computed on the basis of a three hundred sixty (360) day year composed of twelve (12) thirty (30) days months.

**Redemption.** The Bonds are subject to optional and mandatory redemption or purchase in lieu of redemption in accordance with the provisions of the Indenture.

**Purchase in Lieu of Redemption.** At any time that Bonds are subject to redemption in whole pursuant to the Indenture the Trustee may purchase such Bonds for the account of the Borrower or the Credit Facility Provider. The Purchase Price of such Bonds, excluding accrued interest, shall not exceed the applicable redemption price of the Bonds that would otherwise have been redeemed.

Purchase of Bonds at Option of Registered Owner. During the Variable Period, this Bond shall be purchased by the Trustee as Tender Agent (the "Tender Agent"), on behalf of and as agent for the owner of this Bond, on the demand of the beneficial owner the Bond, on any Business Day at a Purchase Price equal to one hundred percent (100%) of the principal amount thereof plus accrued interest, if any, to the date of purchase upon delivery to the Tender Agent, at the Principal Office of the Tender Agent, of a notice as required by the Indenture (a "Tender Notice"). The date stated in the Tender Notice on which such Bond shall be purchased shall be a Business Day not prior to the seventh day next succeeding the date of delivery of such notice to the Tender Agent.

MANDATORY TENDER ON CERTAIN DATES. THE REGISTERED OWNERS OF THE BONDS ARE REQUIRED TO TENDER THEIR BONDS TO THE TENDER AGENT FOR PURCHASE BY THE TRUSTEE ON BEHALF OF AND AS AGENT FOR THE OWNER OF THE BONDS FOR A PURCHASE PRICE EQUAL TO ONE HUNDRED PERCENT (100%) OF THE PRINCIPAL AMOUNT THEREOF PLUS ACCRUED INTEREST TO THE APPLICABLE SETTLEMENT DATE, ON EACH RESET ADJUSTMENT DATE, EACH VARIABLE RATE ADJUSTMENT DATE, THE FIXED RATE ADJUSTMENT DATE, AND ON THE DATE OF ANY SUBSTITUTION OF ANY ALTERNATE CREDIT FACILITY PURSUANT TO THE INDENTURE. ANY BOND REQUIRED TO BE TENDERED ON SUCH DATES WHICH IS NOT TENDERED AS OF SUCH DATE SHALL BE DEEMED TO HAVE BEEN TENDERED TO THE TENDER AGENT ON SUCH DATE AND SHALL THEREAFTER CEASE TO BEAR INTEREST AND SHALL NO LONGER BE CONSIDERED OUTSTANDING UNDER THE INDENTURE.

Mandatory Tender on Certain Dates. The registered Owners of the Bonds shall be required to tender their Bonds to the Tender Agent for purchase by the Trustee on behalf of and as agent for the owner of the Bonds for a Purchase Price equal to 100% of the principal amount thereof plus accrued interest to the applicable Settlement Date on each Reset Adjustment Date, each Variable Rate Adjustment Date and the Fixed Rate Adjustment Date, and on the date of any substitution of any Alternate Credit Facility pursuant to the Indenture. Bonds shall be subject to mandatory tender and purchase on any date specified by the Trustee following a default under the Bond Mortgage Loan or the Reimbursement Agreement and receipt by the Trustee of notice from the Credit Facility Provider that the Bonds are to be tendered for purchase on the Settlement Date selected by the Credit Facility Provider. Bondholders may not elect to retain their Bonds in any such event (even if such Reset Adjustment Date, Variable Rate Adjustment Date, the Fixed Rate Adjustment Date or any Substitution Date fails to occur).

In the event of a redemption of less than all of the Bonds, the Bonds shall be selected by lot. Bonds shall only be redeemed in Authorized Denominations.

Unless notice of redemption is not required under this Bond and the terms of the Indenture, notice of redemption of this Bond shall be given by first class mail, postage prepaid, to the registered owner hereof at the address of such owner shown on the registration books

maintained by the Trustee, as bond registrar. All such notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional or mandatory sinking fund redemptions) nor more than sixty (60) days prior to the date fixed for redemption. Notice shall also be sent by certified mail, overnight delivery service or other secure means, postage prepaid, to the Credit Facility Provider and to certain information services as described in the Indenture. Failure to give notice by mailing to the registered owner of any Bond designated for redemption shall not affect the validity of the proceedings for the redemption of any other Bond if notice shall have been mailed as herein provided. The Trustee may provide a conditional notice of redemption as provided in the Indenture.

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

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

This Bond is transferable by the registered owner hereof in person or by such owner's attorney duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer, a new registered Bond or Bonds of the same series, maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued to the transferee in exchange therefor. The Bonds are issuable only as fully registered Bonds without coupons.

The Issuer and the Trustee may deem and treat the registered holder hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until this Bond shall have been authenticated by the certificate of the Trustee endorsed hereon.

In the event of a conflict between the terms of this Bond and the Indenture, the terms of the Indenture shall control.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in the time, form and manner as required by law; that payment in full for this Bond has been received; and

that this Bond and the issue of which it forms a part does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of San José, California has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its Assistant Director of Finance and countersigned by the manual or facsimile signature of its City Clerk.

CITY OF SAN JOSE, CALIFORNIA

By: \_\_\_\_\_  
Assistant Director of Finance

ATTEST:

By: \_\_\_\_\_  
City Clerk

**CERTIFICATE OF AUTHENTICATION**

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

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

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

**ASSIGNMENT**

For value received the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
\_\_\_\_\_

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

the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

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

Signatures Guaranteed:

\_\_\_\_\_  
Note: Signature(s) must be guaranteed by an eligible guarantor.

\_\_\_\_\_  
Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

**EXHIBIT A 1**

**FORM OF PURCHASED BOND**

**UNITED STATES OF AMERICA  
STATE OF CALIFORNIA**

**\$13,600,000  
CITY OF SAN JOSE, CALIFORNIA  
VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE BONDS  
(BROOKWOOD TERRACE FAMILY APARTMENTS), SERIES 2009B**

NO. R-1

\$ \_\_\_\_\_

NOTICE: Unless this bond certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered Borrowers hereof, Cede & Co., has an interest herein.

INTEREST RATE	MATURITY DATE	DATED DATE	CUSIP NO.
VARIABLE	June 1, 2047	November 19, 2009	

REGISTERED BORROWER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of San José, California (the "Issuer"), a municipal corporation and charter city organized and existing under the laws of the State of California (the "State"), for value received, hereby promises (but solely from the sources hereinafter described) to pay to the registered owner identified above, or registered assigns, on the maturity date set forth above, unless previously called for redemption, the principal sum as set forth above, together with interest thereon at the rate provided in the hereinafter defined Indenture from the later of the Delivery Date or the most recent Interest Payment Date (as defined below) to which interest has been paid or duly provided for, until the principal amount hereof shall have been fully paid, at the rate per annum provided in the Indenture, payable (a) during the Variable Period, on the first Business Day of each calendar month, commencing December 1, 2009, (b) during a Reset Period or the Fixed Rate Period, on May 1 and November 1 of each year, (c) on each Reset Adjustment Date, Variable Rate Adjustment Date or the Fixed Rate Adjustment Date and on the maturity date of this Bond (the "Interest Payment Dates"), calculated as provided in the Indenture. Payment of principal, premium, if any, and interest on this Bond are payable in lawful money

of the United States of America. Payment of the principal of and premium, if any, on this Bond shall be made only upon presentation and surrender of this Bond at the Principal Office of the Trustee (as defined in the Indenture). Payment of interest on this Bond shall be made by check mailed to the registered Borrower of this Bond as such address shall appear on the registration books for the Bonds (a) during the Variable Period, on the Business Day immediately preceding an Interest Payment Date, and (b) during a Reset Period or the Fixed Rate Period, on the 15th day of the month preceding each Interest Payment Date (a "Record Date") or, upon written request of a registered owner of at least \$1,000,000 aggregate principal amount of the Bonds received by Wells Fargo Bank, National Association, as trustee (together with any successor trustee appointed in accordance with the terms of the hereinafter defined Indenture, the "Trustee"), at least five (5) days prior to a Record Date, by wire transfer of immediately available funds to an account designated by such owner, less any reasonable wire transfer fees imposed by the Trustee. Payment of the Purchase Price of this Bond tendered for purchase as herein described shall be payable (if such Bond is not held under a book-entry system as described in the Indenture) only upon presentation and surrender of this Bond at the Principal Office of the Tender Agent (as defined in the Indenture). Payment of any past due interest shall be made to the person in whose name this Bond is registered on a "Special Record Date" which shall be a date not less than ten (10) days and not more than fifteen (15) days prior to the date of the proposed payment of past due interest. All capitalized terms not defined herein shall have the meaning set forth in the Trust Indenture, dated as of November 1, 2009, by and between the Issuer and the Trustee (the "Indenture").

THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES, RECEIPTS, AND OTHER MONEYS PLEDGED THEREFOR UNDER THE INDENTURE. THE BONDS ARE NOT A DEBT OF THE STATE, THE ISSUER (EXCEPT TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE, AND NONE OF THE STATE, THE ISSUER (EXCEPT TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE IS LIABLE FOR THE PAYMENT OF THE BONDS. NEITHER THE FAITH AND CREDIT OF THE STATE, THE ISSUER NOR OF ANY OTHER POLITICAL SUBDIVISION OF THE STATE ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR OF INTEREST ON THE BONDS.

THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, OR ANY AGENCY OF THE UNITED STATES OF AMERICA, OR THE FEDERAL HOME LOAN MORTGAGE CORPORATION ("FREDDIE MAC"), AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA OR BY FREDDIE MAC, PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS IS NOT GUARANTEED BY FREDDIE MAC. THE OBLIGATIONS OF FREDDIE MAC UNDER THE CREDIT ENHANCEMENT AGREEMENT (AS HEREINAFTER DEFINED) ARE OBLIGATIONS SOLELY OF FREDDIE MAC AND ARE NOT BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA.

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

This Bond is one of a duly authorized issue of bonds of the Issuer known as its City of San José, California Variable Rate Demand Multifamily Housing Revenue Bonds (Brookwood Terrace Family Apartments), Series 2009B, issued in the initial aggregate principal amount of \$13,600,000 (the "Bonds") under and pursuant to Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State (the "Act"), and a resolution adopted by the Issuer on November 10, 2009 (the "Resolution"). The Bonds are limited obligations of the Issuer payable solely from and secured by the Trust Estate pledged therefor pursuant to the Indenture. The Bonds are issued to provide funds to finance a multifamily housing project (the "Project") to be located in San Jose, California, initially owned by Brookwood Terrace Family Apartments, L.P., a California limited partnership (the "Borrower").

The Bonds are issuable as fully registered bonds in Authorized Denominations of \$100,000 or integral multiples of \$5,000 in excess of \$100,000 during any period the Bonds bear interest at a rate determined weekly (the "Variable Rate"), and \$5,000 or integral multiples thereof during any period that the rate of interest on the Bonds is fixed for a period of five (5) years or more or such shorter period as may be approved by the Credit Facility Provider (a "Reset Period") or fixed to the maturity date of the Bonds (the "Fixed Rate Period").

To secure its obligation to make payments on the Bond Mortgage Note in accordance with its terms the Bonds will be initially secured by (i) a Bond Mortgage (as defined in the Indenture) from the Borrower to the Issuer and assigned to the Trustee and (ii) an irrevocable direct-pay Letter of Credit dated the Delivery Date (the "Letter of Credit"), issued by JPMorgan Chase Bank, N.A. (the "Construction Phase Credit Facility Provider"); on and after the Conversion Date, if it occurs, the Bonds will be secured by a Credit Enhancement Agreement (the "Credit Enhancement Agreement") between Freddie Mac and the Trustee. If the Conditions to Conversion are not timely satisfied and are not waived by Freddie Mac, if waiver is permitted), Freddie Mac will not have any obligation with respect to the Bonds or the Bond Mortgage Loan and the Letter of Credit will remain in effect.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the Trust Estate under the Indenture, the nature and extent of the security, the terms and conditions upon which the Bonds are issued and secured and the rights of the holders thereof, to all of the provisions of which Indenture the registered owner of this Bond, by

acceptance hereof, assents and agrees. This Bond is equally and ratably secured under the Indenture with all other Bonds issued thereunder.

Purchased Bonds. This Bond has been purchased with amounts drawn under the Credit Facility and is not secured by the Credit Facility pursuant to the terms of the Indenture and the Credit Facility. The initial principal amount of this Bond shall be zero and increase only to the extent and at such time as the Bonds become Purchased Bonds as provided in the Indenture. The principal amount of this Bond shall decrease when and to the extent the Purchased Bonds are successfully remarketed as provided in the Indenture. At no time shall the aggregate principal amount of all Bonds, including Purchased Bonds, exceed \$13,600,000.

Variable Interest Accrual Period. From the Delivery Date to, but excluding, the earlier of (a) the date of adjustment to a Reset Rate (a "Reset Adjustment Date") or the Fixed Rate (a "Fixed Rate Adjustment Date") or (b) the maturity date specified above, this Bond shall bear interest at the Variable Rate determined weekly on the Variable Interest Computation Date by the Remarketing Agent, as provided in the Indenture, for each Variable Interest Accrual Period. The Variable Interest Computation Date shall be Wednesday of each week during the Variable Period or, if any such Wednesday is not a Business Day, then the next day which is a Business Day. Interest on the Bonds during the Variable Period shall be computed on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed. Bonds purchased with proceeds made available under the Credit Facility shall bear interest at the rate established pursuant to the Reimbursement Agreement, provided that in no event shall such rate exceed the Maximum Rate of interest which may be charged pursuant to the terms of the Indenture.

Reset Period. The Borrower may, upon compliance with certain conditions of the Indenture, cause the interest rate on the Bonds to be adjusted to a Reset Rate, which shall be determined by the Remarketing Agent as provided in the Indenture. During the Reset Period, the Bonds shall bear interest at the Reset Rate, payable on each Interest Payment Date (commencing on the first Interest Payment Date next following after the Reset Adjustment Date) to and including the next succeeding Reset Adjustment Date. Such interest shall be computed on the basis of a three hundred sixty (360) day year composed of twelve (12) thirty (30) day months. At the conclusion of a Reset Period, the Borrower may, upon compliance with certain conditions of the Indenture, cause the interest rate on the Bonds to be adjusted to a Variable Rate, a new Reset Date or a Fixed Rate, which shall be determined and redetermined by the Remarketing Agent as provided in the Indenture.

Fixed Rate Period. The Borrower may, upon compliance with certain conditions of the Indenture, cause the interest rate on the Bonds to be adjusted to a Fixed Rate, which shall be determined by the Remarketing Agent as provided in the Indenture. During the Fixed Rate Period, the Bonds shall bear interest at the Fixed Rate, payable on each Interest Payment Date (commencing on the first Interest Payment Date next following after the Fixed Rate Adjustment Date) to and including the maturity of the Bonds. Such interest shall be computed on the basis of a three hundred sixty (360) day year composed of twelve (12) thirty (30) days months.

Redemption. The Bonds are subject to optional and mandatory redemption or purchase in lieu of redemption in accordance with the provisions of the Indenture.

Purchase in Lieu of Redemption. At any time that Bonds are subject to redemption in whole pursuant to the Indenture the Trustee may purchase such Bonds for the account of the Borrower or the Credit Facility Provider. The Purchase Price of such Bonds, excluding accrued interest, shall not exceed the applicable redemption price of the Bonds that would otherwise have been redeemed.

Purchase of Bonds at Option of Registered Owner. During the Variable Period, this Bond shall be purchased by the Trustee as Tender Agent (the "Tender Agent"), on behalf of and as agent for the owner of this Bond, on the demand of the beneficial owner the Bond, on any Business Day at a Purchase Price equal to one hundred percent (100%) of the principal amount thereof plus accrued interest, if any, to the date of purchase upon delivery to the Tender Agent, at the Principal Office of the Tender Agent, of a notice as required by the Indenture (a "Tender Notice"). The date stated in the Tender Notice on which such Bond shall be purchased shall be a Business Day not prior to the seventh day next succeeding the date of delivery of such notice to the Tender Agent.

MANDATORY TENDER ON CERTAIN DATES. THE REGISTERED OWNERS OF THE BONDS ARE REQUIRED TO TENDER THEIR BONDS TO THE TENDER AGENT FOR PURCHASE BY THE TRUSTEE ON BEHALF OF AND AS AGENT FOR THE OWNER OF THE BONDS FOR A PURCHASE PRICE EQUAL TO ONE HUNDRED PERCENT (100%) OF THE PRINCIPAL AMOUNT THEREOF PLUS ACCRUED INTEREST TO THE APPLICABLE SETTLEMENT DATE, ON EACH RESET ADJUSTMENT DATE, EACH VARIABLE RATE ADJUSTMENT DATE, THE FIXED RATE ADJUSTMENT DATE, AND ON THE DATE OF ANY SUBSTITUTION OF ANY ALTERNATE CREDIT FACILITY PURSUANT TO THE INDENTURE. ANY BOND REQUIRED TO BE TENDERED ON SUCH DATES WHICH IS NOT TENDERED AS OF SUCH DATE SHALL BE DEEMED TO HAVE BEEN TENDERED TO THE TENDER AGENT ON SUCH DATE AND SHALL THEREAFTER CEASE TO BEAR INTEREST AND SHALL NO LONGER BE CONSIDERED OUTSTANDING UNDER THE INDENTURE.

#### Mandatory Tender on Certain Dates

The registered Owners of the Bonds shall be required to tender their Bonds to the Tender Agent for purchase by the Trustee on behalf of and as agent for the owner of the Bonds for a Purchase Price equal to 100% of the principal amount thereof plus accrued interest to the applicable Settlement Date on each Reset Adjustment Date, each Variable Rate Adjustment Date and the Fixed Rate Adjustment Date, and on the date of any substitution of any Alternate Credit Facility pursuant to the Indenture. Bonds shall be subject to mandatory tender and purchase on any date specified by the Trustee following a default under the Bond Mortgage Loan or the Reimbursement Agreement and receipt by the Trustee of notice from the Credit Facility Provider that the Bonds are to be tendered for purchase on the Settlement Date selected by the

Credit Facility Provider. Bondholders may not elect to retain their Bonds in any such event (even if such Reset Adjustment Date, Variable Rate Adjustment Date, the Fixed Rate Adjustment Date or any Substitution Date fails to occur).

In the event of a redemption of less than all of the Bonds, the Bonds shall be selected by lot. Bonds shall only be redeemed in Authorized Denominations.

Unless notice of redemption is not required under this Bond and the terms of the Indenture, notice of redemption of this Bond shall be given by first class mail, postage prepaid, to the registered owner hereof at the address of such owner shown on the registration books maintained by the Trustee, as bond registrar. All such notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional or mandatory sinking fund redemptions) nor more than sixty (60) days prior to the date fixed for redemption. Notice shall also be sent by certified mail, overnight delivery service or other secure means, postage prepaid, to the Credit Facility Provider and to certain information services as described in the Indenture. Failure to give notice by mailing to the registered owner of any Bond designated for redemption shall not affect the validity of the proceedings for the redemption of any other Bond if notice shall have been mailed as herein provided. The Trustee may provide a conditional notice of redemption as provided in the Indenture.

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

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

This Bond is transferable by the registered owner hereof in person or by such owner's attorney duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer, a new registered Bond or Bonds of the same series, maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued to the transferee in exchange therefor. The Bonds are issuable only as fully registered Bonds without coupons.

The Issuer and the Trustee may deem and treat the registered holder hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until this Bond shall have been authenticated by the certificate of the Trustee endorsed hereon.

In the event of a conflict between the terms of this Bond and the Indenture, the terms of the Indenture shall control.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in the time, form and manner as required by law; that payment in full for this Bond has been received; and that this Bond and the issue of which it forms a part does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of San José, California has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its Assistant Director of Finance and countersigned by the manual or facsimile signature of its City Clerk.

CITY OF SAN JOSE, CALIFORNIA

By: \_\_\_\_\_  
Assistant Director of Finance

ATTEST:

By: \_\_\_\_\_  
City Clerk

**CERTIFICATE OF AUTHENTICATION**

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

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

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

**ASSIGNMENT**

For value received the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
\_\_\_\_\_

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

the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

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

Signatures Guaranteed:

\_\_\_\_\_  
Note: Signature(s) must be guaranteed by an eligible guarantor.

\_\_\_\_\_  
Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

**EXHIBIT B**

**FORM OF TENDER NOTICE**

**\$13,600,000**

**CITY OF SAN JOSE, CALIFORNIA**

**VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE BONDS  
(BROOKWOOD TERRACE FAMILY APARTMENTS), SERIES 2009B**

TO: Wells Fargo Bank, National Association, as Tender Agent

Notice is hereby given pursuant to Section 10.01 of the Trust Indenture dated as of November 1, 2009 (the "Indenture") pursuant to which the above-captioned bonds (the "Bonds") are issued and outstanding, that the undersigned Bondholder demands the purchase of \$\_\_\_\_\_ in aggregate principal amount of Bonds, on \_\_\_\_\_, which date is a Business Day not prior to the seventh (7th) day next succeeding the date of your receipt of this Notice. The demand for purchase is irrevocable.

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

---

Authorized Signature

Copies to: Trustee  
Remarketing Agent

B-1

20091110\_02a3\_con1  
Council Agenda: 11-10-09  
Item No.: 2.a.3con1

**DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.**

**EXHIBIT C**

**FORM OF PURCHASER'S LETTER**

[To be prepared on letterhead of Purchaser]

[Date]

City of San José, California  
Finance Department  
200 East Santa Clara Street, 13<sup>th</sup> Floor Tower  
San Jose, California 95113-1905  
Attention: Debt Management

Wells Fargo Bank, National Association  
707 Wilshire Boulevard, 17<sup>th</sup> Floor  
Los Angeles, California 90017

Re: \$13,600,000 City of San José, California  
Variable Rate Demand Multifamily Housing Revenue Bonds  
(Brookwood Terrace Family Apartments), Series 2009B

Ladies and Gentlemen:

The undersigned (the "Purchaser") hereby acknowledges receipt as transferee, from the previous Borrower thereof, of the above-referenced bonds (the "Bonds") in fully registered form and in the aggregate principal amount of \$\_\_\_\_\_, constituting all of the Bonds currently outstanding. The Bonds have been checked, inspected and approved by the Purchaser.

The undersigned acknowledges that the Bonds were issued for the purpose of making a loan to assist in financing a certain multifamily rental housing development located in San Jose, California (the "Project"), as more particularly described in that certain Financing Agreement dated as of November 1, 2009 (the "Financing Agreement"), by and among the City of San José, California (the "Issuer"), Brookwood Terrace Family Apartments, LP (the "Borrower"), and Wells Fargo Bank, National Association, as trustee (the "Trustee"). The undersigned further acknowledges that the Bonds are secured by a certain Trust Indenture dated as of November 1, 2009 (as amended and supplemented from time to time in accordance with its terms, the "Indenture"), between the Issuer and the Trustee, which creates a security interest in loan repayments made pursuant to the Financing Agreement for the benefit of the holders and owners of the Bonds, and by a Bond Mortgage (as defined in the Indenture), which creates a

security interest in the Project, subject to permitted encumbrances, as provided therein. Terms not otherwise defined herein shall have the meanings assigned thereto in the Indenture.

In connection with the sale of the Bonds to the Purchaser, the Purchaser hereby makes the following representations upon which you may rely:

1. The Purchaser hereby certifies that it is a “Qualified Institutional Buyer” as defined in Rule 144A of The Securities Act of 1933 (the “Act”), or an “Accredited Investor” under Regulation D of the Act.

2. The Bonds are being acquired by the Purchaser for its own account and for investment and not with a view to, or for resale in connection with, any public distribution of the Bonds. The Purchaser understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible due to unmarketability of the Bonds.

3. The Purchaser understands that the Bonds have not been registered under any federal or State securities laws.

4. The Purchaser acknowledges that it is familiar with the conditions, financial and otherwise, of the Borrower. To the extent deemed appropriate in making its investment decision, the Purchaser has discussed the Borrower’s financial condition and the Borrower’s current and proposed business activities with the Borrower. The Purchaser further acknowledges that it has such knowledge and experience in business matters that it is fully capable of evaluating the merits and risks of this investment and it is able to bear the economic risk of the investment. The Bonds are a security of the kind the Purchaser wishes to purchase and hold for investment, and the nature and amount of the Bonds are consistent with the Purchaser’s investment program. The Purchaser has been furnished such information and such documents as the Purchaser deems necessary to make a decision to purchase the Bonds, including copies or forms of the Indenture, the Financing Agreement, the Bond Mortgage and the Regulatory Agreement (as defined in the Indenture), and certain other documents relating to the Bonds and the Project, all of which documents the Purchaser has reviewed. Specifically, but without limitation, the Purchaser has reviewed information about the Project and the property manager for the Project, if any, as well as information about the investment risks relating to the Bonds, and the Purchaser understands that the Bonds involve a high degree of risk. SPECIFICALLY, AND WITHOUT IN ANY MANNER LIMITING THE FOREGOING, THE PURCHASER UNDERSTANDS AND ACKNOWLEDGES THAT, AMONG OTHER RISKS, THE BONDS ARE PAYABLE SOLELY FROM REVENUES DERIVED FROM THE PROJECT AND THAT THE BONDS ARE NOT ENTITLED TO THE BENEFIT OF ANY CREDIT FACILITY OR A RATING FROM ANY RATING SERVICE. The Purchaser has made such inquiry with respect to all of the foregoing as it believed to be desirable for its purposes.

5. The Purchaser has received from the Issuer no formal or informal offering or disclosure document relating to the Bonds and has concluded that the receipt of one prior to the

purchase of the Bonds is not required. It is acknowledged that no written information has been provided by the Issuer, and that any written information furnished by any other party to the transaction does not purport to fully disclose all information pertinent to the Bonds. The Purchaser acknowledges that the Official Statement describing the Bonds delivered to the initial purchaser of the Bonds on the date of issuance of the Bonds does not purport to describe the terms of the Bonds during any period that the Bonds are Purchased Bonds (as defined in the Indenture).

6. Except as disclosed in writing to the Issuer, the Purchaser is not now and has never been controlled by, or under common control with, the Borrower. Except as disclosed in writing to the Issuer, the Borrower has never been and is not now controlled by the Purchaser. THE PURCHASER HAS ENTERED INTO NO ARRANGEMENTS WITH THE BORROWER OR WITH ANY AFFILIATE OF THE BORROWER IN CONNECTION WITH THE BONDS, OTHER THAN AS DISCLOSED IN WRITING TO THE ISSUER. The Purchaser hereby agrees to deliver to the Issuer, prior to its acceptance of the Bonds it is purchasing, a copy of any agreement between the Purchaser and the Borrower or any affiliate of the Borrower relating to the Bonds.

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

8. In entering into this transaction the Purchaser has not relied upon any representations or opinions made by the Issuer relating to the legal consequences or other aspects of the transactions, nor has it looked to, nor expected, the Issuer to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the refinancing, operation or management thereof), or any other matter pertaining to the merits or risks of the transaction, or the adequacy of any collateral pledged to the Trustee to secure repayment of the Bonds.

9. The Purchaser understands that the Bonds are not secured by any pledge of any moneys received or to be received from taxation by the State of California or any political subdivision thereof, including, without limitation, the Issuer; that the Bonds will never represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the State of California or any political subdivision thereof; that no right will exist to have taxes levied by the Issuer, the State of California or any political subdivision thereof for the payment of principal, premium, if any, and interest on the Bonds; and that the liability of the Issuer with respect to the Bonds is subject to further limitations as set forth in the Bonds and the Indenture.

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

11. The Purchaser has obtained, from representatives of the Borrower and others, all information regarding the Bonds which it has deemed relevant. The Purchaser has asked of the Borrower and all other relevant parties all the questions to which the Purchaser desired answers, and has had those questions satisfactorily answered. Neither the Borrower nor the Issuer nor any other relevant party has refused to disclose any information that Purchaser deems necessary or appropriate to its decision to purchase the Bonds.

12. Although the Purchaser does not intend at this time to dispose of the Bonds, the Purchaser acknowledges that it has the right to sell and transfer the Bonds, subject to the following requirements:

(a) The Purchaser may not dispose of the Bonds to a person or entity other than as described in Section 1 without the prior written consent of the Issuer;

(b) The Purchaser will not sell or otherwise transfer the Bonds unless such transfer will not result in the transferee owning less than all of the Bonds, except with the prior written approval of the Issuer;

(c) Prior to any transfer of the Bonds, the Purchaser shall deliver to the Issuer and the Trustee a certificate identifying any and all documents that have been executed by the Purchaser and the Borrower or any affiliate of the Borrower with respect to the Bonds; and

(d) The Purchaser will not sell or otherwise transfer the Bonds without requiring the transferee to deliver to the Issuer and to the Trustee an investor's letter to the same effect as this Purchaser's Letter, including this paragraph 12, with no revisions except as may be approved in writing by the Issuer.

[PURCHASER]

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

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

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

**EXHIBIT D**

**FORM OF REQUISITION**

(Bond Mortgage Loan Fund)

(Complete in Triplicate)

Wells Fargo Bank, National Association  
707 Wilshire Boulevard, 17<sup>th</sup> Floor  
MAC: E2818-176  
Los Angeles, California 90017

Re: \$13,600,000 City of San José, California  
Variable Rate Demand Multifamily Housing Revenue Bonds  
(Brookwood Terrace Family Apartments), Series 2009B

Gentlemen:

Pursuant to Section 4.02 of the Indenture, you are requested to disburse funds from the Bond Mortgage Loan Fund pursuant to Section 4.02 of the Indenture in the amount(s), to the person(s) and for the purpose(s) set forth in this Requisition and the Indenture. The terms used in this Requisition shall have the meanings given to those terms in the Trust Indenture (the "Indenture") dated as of November 1, 2009 by and between the City of San José, California and Wells Fargo Bank, National Association, as trustee, securing the above-referenced Bonds.

1. REQUISITION NO.:
2. PAYMENT DUE TO:
3. AMOUNT TO BE DISBURSED: \$
4. The amount requested to be disbursed pursuant to this Requisition will be used to pay Costs of the Project detailed in Section I attached to this Requisition.
5. With respect to a disbursement from the Bond Mortgage Loan Fund, the undersigned certifies that:
  - (i) the amounts included in 3 above were made or incurred or financed and were necessary for the Project and were made or incurred in accordance with the construction contracts, plans and specifications heretofore in effect;

D-1

(ii) the amount paid or to be paid, as set forth in this Requisition, represents a part of the funds due and payable for Costs of the Project, such funds were not paid in advance of the time, if any, fixed for payment and such funds are due in accordance with the terms of any contracts applicable to the Project and in accordance with usual and customary practice under existing conditions;

(iii) the expenditures for which amounts are requisitioned represent proper charges against the Bond Mortgage Loan Fund, have not been included in any previous requisition, have been properly recorded on the Borrower's books and are set forth in Schedule I, with paid invoices attached for any sums for which reimbursement is requested;

(iv) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Borrower for its funds actually advanced for Costs of the Project and do not represent a reimbursement to the Borrower for working capital;

(v) the amount remaining in the Bond Mortgage Loan Fund, together with expected Investment income on the Bond Mortgage Loan Fund, in addition to those funds identified in the Reimbursement Agreement that remain available to the Borrower for the payment of Costs of the Project, will, after payment of the amount requested by this Requisition, be sufficient to pay the costs of completing the Project substantially in accordance with the rehabilitation contracts, plans and specifications and building permits therefor, if any, currently in effect;

(vi) all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Indenture, the Financing Agreement and the Regulatory Agreement;

(vii) not less than 95% of the sum of:

(A) the amounts requisitioned by this Requisition; plus

(B) all amounts previously requisitioned and disbursed from the Bond Mortgage Loan Fund;

have been or will be applied by the Borrower to pay Costs of the Project (as that term is used in the Indenture);

(viii) the Borrower is not in default under the Financing Agreement, the Regulatory Agreement or the Bond Mortgage Loan Documents and nothing has occurred to the knowledge of the Borrower that would prevent the performance of its obligations under the Financing Agreement, the Regulatory Agreement or the Bond Mortgage Loan Documents;

(ix) no amounts being requisitioned by this Requisition will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the issuance of the Bonds; and

(x) for purposes of Treasury Regulation Section 1.42-1T(f)(1)(ii), the proceeds of the Bonds shall be allocated to the land and the buildings in a manner consistent with the way in which the proceeds of the Bonds are allocated to the land and buildings for the determination required by paragraph (vii) hereof.

6. With respect to the disbursement from the Bond Mortgage Loan Fund, attached to this Requisition is Schedule I, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: \_\_\_\_\_

BROOKWOOD TERRACE FAMILY  
APARTMENTS, L.P.

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

APPROVED BY CONSTRUCTION PHASE  
CREDIT FACILITY PROVIDER

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## EXHIBIT E

### COSTS OF ISSUANCE REQUISITION

(Costs of Issuance Fund)

Wells Fargo Bank, National Association  
707 Wilshire Boulevard, 17<sup>th</sup> Floor  
MAC: E2818-176  
Los Angeles, California 90017

Re: \$13,600,000 City of San José, California  
Variable Rate Demand Multifamily Housing Revenue Bonds  
(Brookwood Terrace Family Apartments), Series 2009B

Trustee:

You are requested to disburse funds from the Costs of Issuance Fund pursuant to Section 4.13 of the Indenture in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the "Requisition"). The terms used in this requisition shall have the meaning given to those terms in the Trust Indenture (the "Indenture"), dated as of November 1, 2009, by and between the City of San José, California and Wells Fargo Bank, National Association, as Trustee, securing the above-referenced Bonds.

1. REQUISITION NO.:
2. PAYMENT DUE TO:
3. AMOUNT TO BE DISBURSED: \$
4. The undersigned certifies that:

(a) the expenditures for which moneys are requisitioned by this Requisition represent proper charges against the Costs of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and

(b) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

5. Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: \_\_\_\_\_

CITY OF SAN JOSE, CALIFORNIA

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