
FINANCING AGREEMENT

among

CITY OF SAN JOSE, CALIFORNIA,

and

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

and

**ORVIETO FAMILY APARTMENTS, L.P.,
a California limited partnership**

Dated as of November 1, 2009

Relating to:

\$14,200,000

City of San José, California

Variable Rate Demand Multifamily Housing Revenue Bonds

(Orvieto Family Apartments),

Series 2009C

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EXHIBIT A – FORM OF BOND MORTGAGE NOTE

FINANCING AGREEMENT

THIS FINANCING AGREEMENT (this "Financing Agreement") dated as of November 1, 2009 is by and among 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"), WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee under the Indenture described below (together with any successor trustees appointed under the Indenture, the "Trustee"), and ORVIETO FAMILY APARTMENTS, L.P., a California limited partnership (together with its successors and assigns permitted hereunder, the "Borrower").

Capitalized terms used in this Financing Agreement are defined in Section 1.01 of this Financing Agreement or, as applicable, in Section 1.01 of the Indenture referenced therein.

WITNESSETH:

1. The Issuer was created and organized and is validly existing under the laws of the State.
2. The Borrower has advised the Issuer that it expects to acquire and construct a project consisting of a certain multifamily residential rental housing facility to be located at 80 Montecito Vista Drive, San Jose, California, for use as rental housing by persons and families of low and very low income.
3. As more fully set forth in the Indenture, the Issuer has determined to issue the Bonds and to lend the Net Bond Proceeds to the Borrower pursuant to and in accordance with the terms and conditions of this Financing Agreement and the Bond Mortgage Loan Documents.
4. The parties to this Financing Agreement acknowledge the matters set forth in the Recitals to the Indenture.

NOW, THEREFORE, the parties to this Financing Agreement, in consideration of the premises and the mutual covenants and commitments of the parties set forth in this Financing Agreement, and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties to this Financing Agreement agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. All terms defined in the Indenture shall have the same meanings for the purposes of this Financing Agreement. In addition to the terms defined in the

Indenture and elsewhere herein, the following terms shall have the following meanings when used in this Financing Agreement:

“Disclosure Agreement” means the continuing disclosure agreement required by Section 3.7.

“Event of Default” means any event described as an Event of Default in Section 7.1.

“Financing Agreement” means this Financing Agreement and any amendments of or supplements to this Financing Agreement.

“Indenture” means the Trust Indenture, dated as of November 1, 2009, between the Issuer and the Trustee with respect to the Bonds, as the same may have been from time to time amended or modified, together with any other supplements thereto.

“Wrongful Dishonor” means the failure of the Credit Facility Provider to honor a draw made in accordance with the terms of the Credit Facility (which draw strictly complies with, and conforms to, the terms and conditions of the Credit Facility).

Section 1.2 Interpretation. 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. Words importing persons include firms, partnerships, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Financing Agreement are the Articles, sections and other subdivisions of this Financing Agreement as originally executed.

The terms “herein”, “hereunder”, “hereby”, “hereto”, “hereof” and any similar terms refer to this Financing Agreement; the term “heretofore” means before the date of execution of this Financing Agreement; and the term “hereafter” means after the date of execution of this Financing Agreement.

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.1 Representations, Warranties and Covenants of the Issuer. The Issuer makes the following representations, warranties and covenants:

(a) The Issuer is a municipal corporation and charter city duly organized and existing under the laws of the State. Each of the Bond Documents executed on or prior to the Delivery Date and to which the Issuer is a party has been duly executed and delivered by the Issuer and is a legal, valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to bankruptcy,

insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general equitable principles.

(b) The Issuer has complied with the provisions of the Act and the laws of the State which are prerequisites to the consummation of the transactions on its part contemplated in the Bond Documents executed on or prior to the Delivery Date. The execution and delivery of the Bonds and the Bond Documents to which the Issuer is a party, the consummation of the transactions on the part of the Issuer contemplated thereby and the fulfillment of or compliance by the Issuer with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Issuer is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Issuer under the terms of any instrument or agreement.

(c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Issuer of, and performance by the Issuer of its obligations under, any of the Bond Documents executed on or prior to the Delivery Date, which has not been obtained or will not be obtained by the Delivery Date; provided, however, that no representation is made as to compliance with any state securities or "blue sky" laws.

(d) There is no action, suit, proceeding, inquiry or investigation pending with respect to which the Issuer has been served with process, or to the knowledge of the Issuer, threatened against the Issuer by or before any court, governmental agency or public board or body, which (i) adversely affects or questions the existence or the territorial jurisdiction of the Issuer or the title to office of any Councilmember of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Bond Documents or the issuance, execution or delivery of the Bonds; (iii) affects or questions the validity or enforceability of the Bonds or any Bond Document executed on or prior to the Delivery Date; (iv) questions the tax-exempt status of the Bonds; or (v) questions the power or authority of the Issuer to perform its obligations under the Bonds or any Bond Document, or to carry out the transactions on the part of the Issuer contemplated by the Bonds and the Bond Documents.

It is expressly acknowledged that the Issuer makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the sale of the Bonds, or as to the correctness, completeness or accuracy of such statements.

Section 2.2 Representations, Warranties and Covenants of the Borrower. The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Financing

Agreement, are relied upon by the Issuer, the Servicer and the Trustee and serve as a basis for the undertakings of the Issuer, the Servicer and the Trustee contained in this Financing Agreement; provided that, for purposes of this Section 2.2, the term, "Bond Mortgage Loan Documents" shall include only those documents listed in the definition Bond Mortgage Loan Documents in Section 1.01 of the Indenture that are executed and delivered by the Borrower on or prior to the Delivery Date:

(i) the Borrower is a limited partnership, duly organized and validly existing under the laws of the State and is duly qualified to conduct its business in the State and in every other state in which the nature of its business requires such qualification;

(ii) the Borrower has the legal right, power and authority to (a) own its properties, including the Project, (b) carry on its business as now being conducted and as the Borrower contemplates it to be conducted with respect to the Project and (c) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Bond Mortgage Loan Documents to which it is a party;

(iii) each of the Bond Mortgage Loan Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming the due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity;

(iv) no authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of construction of the Project, is required for (a) the execution and delivery or approval, as the case may be, by the Borrower of the Bond Mortgage Loan Documents or (b) the performance by the Borrower of its obligations under the Bond Mortgage Loan Documents to which it is a party;

(v) neither the execution and delivery of the Bond Mortgage Loan Documents to which the Borrower is a party nor the closing of the transactions provided for in the Bond Documents, the Bond Mortgage Loan Documents or the Construction Phase Credit Documents, nor the Borrower's fulfillment of or compliance with the terms and conditions of the Bond Mortgage Loan Documents violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower or its general partner is subject, or any of the organizational or other governing documents of the Borrower, or conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or its general partner or any of their properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or

both) under, any such agreement, instrument or license, or contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or, except as provided in the Bond Mortgage Loan Documents, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance allowed under the terms of the Bond Mortgage Loan Documents and any other liens permitted under the Bond Mortgage;

(vi) on or prior to the Delivery Date, the Borrower will have made all filings required to be made as of the Delivery Date with, and has obtained or will obtain timely after the Delivery Date all approvals, permits, authorizations and consents from, all federal, state and local regulatory agencies having jurisdiction to the extent, if any, required by applicable laws and regulations to be made or to be obtained in connection with the (a) acquisition and construction of the Project and (b) execution and delivery by the Borrower of, and performance by the Borrower of its obligations under, the Bond Mortgage Loan Documents or the Construction Phase Credit Documents;

(vii) the Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any federal or state authority which would have the effect of preventing or hindering the performance of the Borrower's duties under any of the Bond Mortgage Loan Documents or the Construction Phase Credit Documents; nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any such order;

(viii) no litigation or proceeding is pending or, to the knowledge of the Borrower or the general partner of the Borrower, threatened against the Borrower or its general partner or with respect to the Project which has a reasonable probability of having a material adverse effect on the financial condition or business of the Borrower, or the transactions provided for in the Bond Documents or the Construction Phase Credit Documents, or which in any way seeks to prohibit, restrain or enjoin the issuance, execution, sale or delivery of the Bonds, the funding of the Bond Mortgage Loan, the execution or delivery of the Bond Documents, or which in any way would adversely affect or call into question the validity or enforceability of the Bonds, the Bond Documents or the Construction Phase Credit Documents, or the power or authority of the Borrower to incur, or the ability of the Borrower to perform, its obligations under the Bond Mortgage Loan Documents or the Construction Phase Credit Documents, or which questions the power or authority of the Borrower to carry out the transactions provided for in, or to perform its obligations under, the Bond Mortgage Loan Documents or the Construction Phase Credit Documents, or which would affect the power of the Borrower to own, equip or operate the Project, or which questions the exclusion from gross income for federal income tax purposes of the interest payable on the Bonds;

(ix) the Borrower is not in default under any document, instrument or commitment to which the Borrower is a party or to which it or any of its property or

assets is subject which default would or could affect the ability of the Borrower to carry out its obligations under the Bond Mortgage Loan Documents or the Construction Phase Credit Documents;

(x) there (a) is no completed, pending or, to the Borrower's knowledge, threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Borrower or any general partner of the Borrower and (b) has been no assertion or exercise of jurisdiction over the Project, the Borrower or any general partner of the Borrower by any court empowered to exercise bankruptcy powers;

(xi) no event has occurred and no condition exists with respect to the Borrower that would constitute an Event of Default or which, with the lapse of time, if not cured, or with the giving of notice or both, would become an Event of Default;

(xii) the Borrower has not taken any action, or permitted any action that the Borrower can control to be taken, that would impair the exclusion from gross income, for federal income tax purposes, of the interest payable on the Bonds;

(xiii) as of the Delivery Date, the Borrower is in compliance with all requirements of the Tax Certificate, and the representations set forth in the Tax Certificate of the Borrower pertaining to the Borrower and the Project are true and accurate in all material respects;

(xiv) no information, statement or report furnished in writing to the Issuer, the Credit Facility Provider, Freddie Mac, the Servicer or the Trustee by the Borrower in connection with the transactions provided for in the Bond Documents or the Construction Phase Credit Documents or the closing of the transactions provided for in the Bond Documents, or the Construction Phase Credit Documents (including, without limitation, any information furnished by the Borrower in connection with the preparation of any materials related to the issuance, delivery or offering of the Bonds) contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained in such written materials or in any offering material, in the light of the circumstances under which they were made, not misleading; the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, and in any Disclosure Agreement will be true, correct and complete, will not contain any untrue or misleading statement of a material fact, and will not omit to state a material fact required to be stated in such certificates or necessary to make the certifications, representations, warranties, statements, information and descriptions contained in such certificates or in any offering materials, in the light of the circumstances under which they were made, not misleading; the estimates and the assumptions contained in any certificate of the Borrower delivered as of the Delivery Date will be reasonable and based on the best information available to the Borrower;

(xv) to the best knowledge of the Borrower, no Councilmember, officer, agent or employee of the Issuer has been or is in any manner interested, directly or indirectly in a financial capacity, in that person's own name or in the name of any other person, in the Bonds, the Bond Documents, the Construction Phase Credit Documents, any Disclosure Agreement (if any), the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Bond Documents, the Construction Phase Credit Documents or the Disclosure Agreement;

(xvi) the Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the provisions of all of the documents and instruments relating to the financing, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Issuer, the Trustee, the Credit Facility Provider, Freddie Mac or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Bond Documents, or the Construction Phase Credit Documents or otherwise relied on the Issuer, the Trustee, the Credit Facility Provider, Freddie Mac or the Servicer in any manner;

(xvii) the Borrower is in compliance with (a) all provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act of 1986, the Toxic Substances Control Act, (b) all environmental laws of the State, (c) any rules, regulations or administrative orders of any governmental agency (all of the foregoing in clauses (a), (b) and (c) are, collectively, the "Environmental Laws"), and (d) any judgments, decrees or orders of any court of competent jurisdiction with respect to any of the Environmental Laws; the Borrower has not received any assessment or notice of primary or secondary liability or financial responsibility, and no notice of any action, claim or proceeding to determine any such liability or responsibility, or the amount of any such action, claim or proceeding, or any assessment or notice seeking to impose civil penalties with respect to a site listed on any federal or state listing of sites containing or believed to contain "hazardous materials" (as defined in the Environmental Laws); nor has the Borrower received notification that any hazardous substances (as defined under CERCLA) that it has disposed of have been found in any site at which any governmental agency is conducting an investigation or other proceeding under any Environmental Law;

(xviii) the Borrower has not received any notice that it is not in full compliance with the Employee Retirement Income Security Act ("ERISA") and applicable Department of Labor regulations under ERISA, with the Code and applicable Treasury Regulations under the Code or with the terms of each pension or welfare benefit plan to which the Borrower is a party or makes any employer contributions with respect to its employees, for the current or prior plan years of such plans;

(xix) the Bonds are not “federally guaranteed” as defined in section 149(b) of the Code;

(xx) in accordance with section 147(b) of the Code, the weighted average maturity of the Bonds does not exceed 120% of the weighted average reasonably expected economic life of the Project;

(xxi) neither the Borrower nor any “related person” to the Borrower (within the meaning of section 147(a)(2) of the Code) will purchase the Bonds pursuant to any arrangement, formal or informal;

(xxii) the information furnished by the Borrower and used by the Issuer in preparing the certificate pursuant to section 148 of the Code and information statement pursuant to section 149(e) of the Code is accurate and complete as of the date of the issuance of the Bonds;

(xxiii) the acquisition and construction of the Project were not commenced (within the meaning of section 144(a) of the Code) prior to the date that was 60 days prior to the execution of a declaration of intention to issue tax-exempt debt for the Project by the Issuer’s Director of Finance and Director of Housing on December 10, 2008, and no obligation for which reimbursement will be sought from proceeds of the Bonds relating to the acquisition or construction of the Project was paid or incurred prior to such date except with respect to expenditures described under Section 1.150-2(f) of the Treasury Regulations;

(xxiv) the Borrower is the sole borrower under the Bond Mortgage Loan and is a single asset entity, the single asset of which is the Project;

(xxv) the Borrower will have fee simple title to the Project, subject only to liens permitted under the Bond Mortgage and the Reimbursement Mortgage;

(xxvi) the Project, as designed, will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, the Americans with Disabilities Act of 1990 (“ADA”);

(xxvii) all necessary utilities are available to the Project in adequate supply;

(xxviii) the Borrower has obtained or will obtain in due course, when needed, all requisite zoning, planning, building and environmental and other permits which may become necessary with respect to the construction, use and occupancy of the Project;

(xxix) the Borrower has obtained or will obtain in due course, when needed, all licenses, permits and approvals necessary for the ownership, operation and management of the Project, and further including all approvals essential to the

transactions contemplated by the Bond Documents, and the Construction Phase Credit Documents;

(xxx) the Project will satisfy all requirements of the Tax Certificate, the Regulatory Agreement, the Act, this Financing Agreement and the Code with respect to multifamily rental housing and/or qualified residential rental facilities;

(xxxii) the Project will be in compliance with all requirements of the Tax Certificate and the Regulatory Agreement to the extent such requirements are applicable on the Delivery Date;

(xxxiii) the Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Tax Certificate and the Regulatory Agreement including all applicable requirements of the Act and the Code, and pursuant to leases which comply with all applicable laws;

(xxxiv) the Borrower intends to hold the Project for its own account and has no current plans, and has not entered into any agreement, to sell the Project or any part of it;

(xxxv) the Borrower intends to occupy the Project or cause the Project to be occupied and to operate it or cause it to be operated at all times during the term of this Financing Agreement in compliance with the terms of the Tax Certificate and the Regulatory Agreement and does not know of any reason why the Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control;

(xxxvi) the factual statements and representations concerning the Borrower and the Project made by the Borrower to the Issuer, the Servicer, the Credit Facility Provider and Freddie Mac are true, correct and complete in all material respects as of the Delivery Date;

(xxxvii) the information contained in the Official Statement under the headings "The Project and the Private Participants," "Plan of Financing" and "Absence of Litigation - The Borrower," insofar as such information relates to the Borrower and the Project, is accurate in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact required to be stated in the Official Statement or necessary to make the statements made in the Official Statement, in light of the circumstances under which they were made, not misleading as of the Delivery Date; and

(xxxviii) the Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed, and has paid or caused to be paid all taxes as shown on those returns or on any assessment received by it, to the extent that such taxes have become due;

(xxxviii) [Intentionally Omitted];

(xxxix) [Intentionally Omitted];

(xl) the Borrower will hold or will cause the manager of the Project to hold all tenant security deposits (if any) relating to the Project in accordance with State law;

(xli) the Borrower will fully cooperate with the Issuer with respect to its compliance and oversight requirements;

(xlii) the Borrower hereby represents, covenants and agrees that it will comply in all material respects with the provisions of the Tax Certificate and Regulatory Agreement;

(xliii) the Borrower shall not discriminate on the basis of race, creed, color, sex, age or national origin in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project and shall not deny admission to any person exclusively on the basis of rent assistance payments under a local, state, federal or other housing assistance program, including but not limited to Section 8 of the Housing Act;

(xliv) the Borrower covenants to comply with all requirements of the Act and any and all lawful rules, policies and applicable regulations of the Issuer adopted pursuant to the Act;

(xlv) from time to time the Issuer may direct the Borrower to file such additional reports as the Issuer reasonably determines to be necessary to comply with State or federal laws or regulations in connection with administration of the Bond Mortgage Loan and operation of the Project hereunder and the Borrower agrees to file such reports promptly;

(xlvi) The Borrower acknowledges that the obligation of the Issuer hereunder to issue Bonds to finance the Project does not in any way constitute a representation, warranty, guaranty, advice or suggestion by the Issuer as to the feasibility or viability of the Project, and may not be relied on as such by any investor, tenant, lender, or other person, for any reason;

(xlvii) the Project is located entirely within the boundaries of City of San José, California; and

(xlviii) the Borrower covenants and agrees that the Project will be owned and operated as required by this Financing Agreement, the Bond Mortgage, the Tax Certificate and the Regulatory Agreement, including without limitation the

requirements of this Section, and declares and recites that the Project is deemed to be operated by it in furtherance of the purposes of the Act.

Section 2.3 Representations and Warranties of the Trustee. The Trustee makes the following representations and warranties:

(a) The Trustee is a national banking association, duly organized and existing under the laws of the United States of America with trust powers in the State. The Trustee is duly authorized to act as a fiduciary and to execute the trust created by the Indenture, and meets the qualifications to act as Trustee under the Indenture.

(b) The Trustee has all the corporate power (including trust powers) and authority necessary (i) to execute and deliver this Financing Agreement, the Intercreditor Agreement, the Regulatory Agreement and the Indenture, (ii) to perform its obligations under this Financing Agreement, the Intercreditor Agreement, the Regulatory Agreement and the Indenture, and (iii) to consummate the transactions contemplated by this Financing Agreement, the Intercreditor Agreement, the Credit Facility, the Regulatory Agreement and the Indenture.

(c) The Trustee has taken all actions necessary to authorize (i) the execution and delivery of this Financing Agreement, the Intercreditor Agreement, the Regulatory Agreement and the Indenture, (ii) the performance by the Trustee of its obligations under this Financing Agreement, the Intercreditor Agreement, the Credit Facility, the Regulatory Agreement and the Indenture, and (iii) the actions of the Trustee contemplated by this Financing Agreement, the Intercreditor Agreement, the Credit Facility, the Regulatory Agreement and the Indenture.

(d) This Financing Agreement, the Regulatory Agreement, the Intercreditor Agreement and the Indenture have been duly executed and delivered by the Trustee and, assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Trustee, enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Trustee as a prerequisite to (i) the execution and delivery of this Financing Agreement, the Intercreditor Agreement, the Regulatory Agreement or the Indenture, (ii) the authentication or delivery of the Bonds, (iii) the performance by the Trustee of its obligations under this Financing Agreement, the Intercreditor Agreement, the Credit Facility, the Regulatory Agreement and the Indenture, or (iv) the consummation of the transactions contemplated by this Financing Agreement, the Intercreditor Agreement, the Credit Facility, the Indenture and the Regulatory

Agreement. The Trustee makes no representation or warranty relating to compliance with any federal or state tax or securities laws.

Section 2.4 Arbitrage and Rebate Fund Calculations. The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.12 of the Indenture and (b) select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Issuer for the purpose of making any and all calculations required under Section 4.12 of the Indenture. Such calculations shall be made in the manner and at such times as specified in Section 4.12 of the Indenture. The Borrower shall cause the Rebate Analyst to provide such calculations in writing (a) to the Issuer, and (b) to the Trustee at such times and with such directions as are necessary for the Trustee to comply fully with the arbitrage and rebate requirements set forth in the Indenture and to comply fully with section 148 of the Code, including the timely payment of any arbitrage rebate owed.

Section 2.5 Tax-Exempt Status of the Bonds. The Borrower covenants that:

(a) it will at all times comply with the terms of the Regulatory Agreement and the Tax Certificate;

(b) it will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Bonds to be included in gross income, for federal income tax purposes (other than Bonds held by a "substantial user" of the Project, as such term is defined in the Code), and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation the following:

(i) the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Regulatory Agreement);

(ii) the timely payment to the United States of America of any rebate amount required to be paid by the Issuer or the Borrower pursuant to Section 148(f) of the Code and the U.S. Treasury regulations under Section 148; and

(iii) the use of not less than 95% of the net proceeds of the Bonds (within the meaning of Section 142(a) of the Code) for Qualified Project Costs (as defined in the Regulatory Agreement);

(c) in order to satisfy the requirements set forth in subpart (4) of the definition of "program investment" that appears in Section 1.148-1(b) of the Treasury Regulations neither the Borrower nor any related person (within the meaning of "program investment") will purchase Bonds in an amount related to the amount of the Bond Mortgage Loan;

(d) no changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Bonds;

(e) it will comply with the requirements of Section 148 and the Treasury Regulations issued under Section 148 of the Code throughout the term of the Bonds and will not make any use of the proceeds of the Bonds, or of any other funds which may be deemed to be proceeds of the Bonds under the Treasury regulations, which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code;

(f) if the Borrower becomes aware of any circumstance, event or condition which to the best of the Borrower's knowledge would result in the interest payable on the Bonds becoming includable in gross income, for federal income tax purposes, the Borrower will promptly give written notice of such circumstance, event or condition to the Issuer, the Trustee, the Servicer and the Credit Facility Provider;

(g) the full amount of each disbursement from the Bond Mortgage Loan Fund will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account any proposed disbursement, (i) at least 95% of the net proceeds of the Bonds (as defined in Section 150 of the Code) will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code) and (ii) less than 25% of the net proceeds of the Bonds will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land; none of the proceeds of the Bonds (as defined for purposes of Section 147(g) of the Code) will be disbursed to provide working capital;

(h) the Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the Regulatory Agreement;

(i) all leases will comply with all applicable laws and the Regulatory Agreement;

(j) in connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Financing Agreement or the Regulatory Agreement;

(k) no proceeds of the Bonds shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however that this limitation shall not apply with respect to any building (and the equipment therefore) if rehabilitation expenditures (as defined in Section 147(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the Proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if

rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds;

(l) from the proceeds of the Bonds and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Bonds, will be used for Costs of Issuance of the Bonds, all within the meaning of Section 147(g)(1) of the Code (for this purpose, if the fees of the original purchaser of the Bonds are retained as a discount on the purchase price of the Bonds, such retention shall be deemed to be an expenditure of proceeds of the Bonds for said fees); and

(m) no proceeds of the Bonds shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

Section 2.6 Enforcement of Bond Documents. The Trustee may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Bond Documents as and to the extent set forth therein.

ARTICLE III

THE BOND MORTGAGE LOAN

Section 3.1 Conditions to Funding the Bond Mortgage Loan. Upon initial delivery of the Bonds, the Issuer shall cause those proceeds to be deposited with the Trustee in accordance with Section 2.11 and Section 4.02 of the Indenture. The Trustee shall use such proceeds as provided in Article IV of the Indenture; provided that no such disbursements of proceeds of the Bonds shall be made until the following conditions have been met:

(a) the Borrower shall have executed and delivered to the Trustee the Bond Mortgage Note in the form attached hereto as Exhibit A, with only such changes therein as shall be approved in writing by the Credit Facility Provider and Freddie Mac;

(b) the Bond Mortgage and the Reimbursement Mortgage, with only such changes therein as shall be approved in writing by the Credit Facility Provider, shall have been executed by the Borrower and delivered to the title company for recording in the appropriate office for officially recording real estate documents in Santa Clara County, California (the "Recorder's Office");

(c) the Regulatory Agreement shall have been executed by the parties thereto and shall have been delivered to the title company for recording in the Recorder's Office, and the Trustee shall have received evidence satisfactory to it of such delivery;

(d) the Credit Facility and all other Bond Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Trustee; and

(e) the Borrower shall have delivered to the Trustee, the Issuer, the Servicer, the Credit Facility Provider and Freddie Mac a certificate confirming the matters set forth in Section 2.2 and an opinion of its counsel or other counsel satisfactory to the Trustee, the Issuer, the Servicer, the Credit Facility Provider and Freddie Mac.

Section 3.2 Terms of the Bond Mortgage Loan; Servicing.

(a) The Bond Mortgage Loan shall (i) be evidenced by the Bond Mortgage Note; (ii) be secured by the Credit Facility and the Bond Mortgage; (iii) be in the principal amount of \$14,200,000; (iv) bear interest as provided in the Bond Mortgage Note; (v) provide for monthly payments into the Principal Reserve Fund upon Conversion in accordance with the Principal Reserve Schedule, such Principal Reserve Schedule being attached to the Freddie Mac Reimbursement Agreement; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Bond Mortgage Note.

(b) Prior to the Conversion Date, if the Servicer ceases to be a Freddie Mac seller/servicer of multifamily mortgage loans under the Guide, in good standing, the Borrower, with the prior written consent of Freddie Mac, may designate as a substitute servicer of the Bond Mortgage Loan another seller/servicer authorized to sell and service mortgage loans under the Guide. Such seller/servicer shall be in good standing with Freddie Mac and agree to be bound by the terms and conditions of the Construction Phase Financing Agreement. Pursuant to the Guide, Freddie Mac has the right at any time to substitute the Servicer without cause.

From and after the Conversion Date, the Servicer shall service the Bond Mortgage Loan pursuant to the Guide. The Issuer, the Trustee and the Borrower acknowledge and agree that (i) selection or removal of any Servicer is in the sole and absolute discretion of Freddie Mac, or from and after the Conversion Date, any Alternate Credit Facility Provider; (ii) neither the Issuer nor the Trustee shall terminate or attempt to terminate any Servicer as the servicer for the Bond Mortgage Loan or appoint or attempt to appoint a substitute servicer for the Bond Mortgage Loan; (iii) the Guide is subject to amendment or termination without the consent of the Trustee, the Issuer or the Borrower; provided, in the case of an amendment, that such amendment is not inconsistent with the provisions of the Bond Documents or the Freddie Mac Commitment; and (iv) none of the Trustee, the Issuer or the Borrower shall have any rights under, or be a third party beneficiary of, the Guide. From and after the Conversion Date, the Servicer shall have the right to collect all payments made by the Borrower in connection with the Bond Mortgage Loan and to receive copies of all reports and notices provided for by the Bond Documents.

Section 3.3 Initial Deposits. On the Delivery Date, proceeds of the Bonds in the amount of \$_____ shall be deposited in the Bond Proceeds Account of the Bond Mortgage Loan Fund, and shall be disbursed in accordance with the procedures set forth in Section 4.02 of the Indenture. Bond Proceeds in the amount of \$_____ will be deposited in the Bond

Proceeds Account of the Cost of Issuance Fund. In addition, the Borrower will deposit, or cause to be deposited, with the Trustee the Costs of Issuance Deposit, as well as \$_____ for credit to the Equity Account of the Cost of Issuance Fund and the Equity Account of the Bond Mortgage Loan Fund, respectively, as provided in Sections 2.11(c) and (d) of the Indenture.

To the extent that amounts in the Cost of Issuance Fund are insufficient to pay all costs of issuing the Bonds, the Borrower shall cause the payment of such additional costs of issuing the Bonds to be made as such amounts become due.

Section 3.4 Assignment to Trustee. The parties hereto acknowledge, and the Borrower consents to, the assignment by the Issuer to the Trustee pursuant to the Indenture of all of the Issuer's right, title and interest (excluding the Unassigned Rights) in this Financing Agreement, the Credit Facility, the Bond Mortgage Loan, the Bond Mortgage and the Revenues as security for the payment of the Purchase Price of, principal of, premium, if any, and interest on the Bonds and the payment of the Freddie Mac Credit Enhancement Fee and Freddie Mac Reimbursement Amount.

Section 3.5 Investment of Funds. Except as otherwise provided in the Indenture, any moneys held as a part of any Fund or Account established under the Indenture shall be invested or reinvested by the Trustee in Qualified Investments in accordance with Section 4.08 of the Indenture.

Section 3.6 Damage; Destruction and Eminent Domain. If, prior to payment in full of the Bonds, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Issuer, the Borrower, the Trustee or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in (a) the Construction Phase Credit Documents if the destruction, damage or taking in eminent domain occurs prior to the Conversion Date, or (b) the Bond Mortgage Loan Documents and the Indenture if the destruction, damage or taking in eminent domain occurs after the Conversion Date.

Section 3.7 Continuing Disclosure Requirements. The Borrower hereby covenants and agrees that, at least 30 days prior to any time the Bonds are to bear interest at a Reset Rate or Fixed Rate, it will promptly execute and deliver to the Trustee and the Issuer a continuing disclosure agreement complying with Securities and Exchange Commission Rule 15c2-12, as amended (the "Rule"), or deliver to the Trustee and the Issuer an opinion of Counsel to the effect that the requirements of the Rule are not triggered by the change in interest rate mode. Notwithstanding any other provision of this Financing Agreement, failure of the Borrower to comply with any continuing disclosure agreement shall not be considered an Event of Default; however, the Trustee, at the written request of any underwriter of the Bonds required to comply with the Rule or the holders or Beneficial Owners of at least 25% aggregate principal amount in Outstanding Bonds or the Credit Facility Provider, shall, but only to the extent indemnified to its satisfaction, or any Bondholder may take such actions as may be necessary and appropriate,

including seeking specific performance by court order, to cause the Borrower to comply with its obligations under this Section 3.7.

ARTICLE IV

LOAN PAYMENTS

Section 4.1 Payments Under the Bond Mortgage Note; Independent Obligation of Borrower.

(a) The Borrower agrees to repay the Bond Mortgage Loan at the times and in the amounts necessary to enable the Trustee, on behalf of the Issuer, to pay all amounts payable with respect to the Bonds, when due, whether at maturity or upon redemption (with premium, if applicable), acceleration, tender, purchase or otherwise. The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent and separate obligation of the Borrower from its obligation to make payments under the Bond Mortgage Note, provided that in all events payments made by the Borrower under and pursuant to the Bond Mortgage Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Bond Mortgage Note or any provision of the Bond Mortgage Loan shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Bond Mortgage Note or such provision of the Bond Mortgage Note shall be deemed to be the obligation of the Borrower pursuant to this Financing Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Bond Mortgage Note.

(b) The obligations of the Borrower to repay the Bond Mortgage Loan, to perform all of its obligations under the Bond Mortgage Loan Documents, to provide indemnification pursuant to Section 6.1, to pay costs, expenses and charges pursuant to Section 4.2 and to make any and all other payments required by this Financing Agreement, the Indenture or any other documents contemplated by this Financing Agreement or by the Bond Mortgage Loan Documents shall, subject to the limitations set forth in Section 5.1 hereof, be absolute and unconditional and shall not be subject to diminution by set-off, recoupment, counterclaim, abatement or otherwise.

(c) Notwithstanding anything contained in any other provision of this Financing Agreement to the contrary (but subject to the provisions of the Intercreditor Agreement), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and each of the Borrower's general partners, payable from and enforceable against any and all income, assets and properties of the Borrower and each of its general partners: (i) the Borrower's obligations to the Issuer and the Trustee under Section 4.2(b)(ii), (iv), (vii) and (viii) of this Financing Agreement; (ii) the Borrower's obligations under Section 6.1 of this Financing Agreement; and (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Bonds as provided in this

Financing Agreement; including, but not limited to the Borrower's obligations under Sections 2.4 and 4.3.

Section 4.2 Payment of Certain Fees and Expenses Under the Bond Mortgage Note.

(a) In addition to the payments required in Section 4.1, payments to be made by the Borrower under the Bond Mortgage Note also include certain moneys to be paid in respect of, among others, the Bond Fee Component, and the annual rating maintenance fees of the Rating Agency, if any, as set forth in Subsection (b) below. To the extent that any portion of the Bond Fee Component or the annual rating maintenance fees of the Rating Agency, if any, remain due and owing at any time, such amounts remaining due and owing shall be payable from moneys on deposit in the Administration Fund as provided in Section 4.06 of the Indenture or from other moneys of the Borrower, to the extent that moneys in the Administration Fund are insufficient for such purposes. All other fees and expenses shall be payable from moneys of the Borrower as provided in Subsection (b) below.

(b) The Borrower shall pay (or cause to be paid by the Trustee, to the extent paid from moneys on deposit in the Administration Fund or the Cost of Issuance Fund, as applicable), in consideration of the funding of the Bond Mortgage Loan, the following (without limitation) fees, expenses and other moneys payable in connection with the Bond Mortgage Loan:

(i) On the Delivery Date, from moneys on deposit in the Cost of Issuance Fund or, to the extent such moneys are insufficient for such purpose, from other moneys of the Borrower, (A) to Freddie Mac, the closing fee of Freddie Mac, together with all third party and out-of-pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Bond Mortgage Loan, and (B) to the Credit Facility Provider, the closing fee of the Credit Facility Provider, together with all third party and out-of-pocket expenses of the Credit Facility Provider (including but not limited to the fees and expenses of counsel to the Credit Facility Provider) in connection with the Bond Mortgage Loan and the issuance of the Credit Facility.

(ii) On the Delivery Date, from moneys on deposit in the Cost of Issuance Fund or, to the extent such moneys are insufficient for such purpose, from other moneys of the Borrower, to the Issuer, its fee due on the Delivery Date in an amount equal to \$59,000.00, together with all third party and out-of-pocket expenses of the Issuer (including but not limited to the fees and expenses of counsel to the Issuer) in connection with the Bond Mortgage Loan and the issuance of the Bonds.

(iii) On the Delivery Date, from moneys on deposit in the Cost of Issuance Fund or, to the extent such moneys are insufficient for such purpose, from other moneys of the Borrower, to the Servicer, an origination fee in an amount specified in the Servicer's commitment letter to the Borrower, together with all third party and out-of-pocket expenses of the Servicer (including but not limited to the reasonable fees and expenses of counsel to the Servicer) in connection with the Bond Mortgage Loan.

(iv) On the Delivery Date, from moneys on deposit in the Cost of Issuance Fund or, to the extent such moneys are insufficient for such purpose, from other moneys of the Borrower, to the Trustee, an acceptance fee in an amount equal to \$_____ and its first year administration fee as described in the Indenture, together with all third party and out-of-pocket expenses of the Trustee (including but not limited to the reasonable fees and expenses of counsel to the Trustee) in connection with the Bond Mortgage Loan and the issuance of the Bonds.

(v) Prior to the Conversion Date, from proceeds of the Bonds deposited into the Administration Fund, to the Credit Facility Provider the fees of the Credit Facility Provider when the payment of such fees is due from time to time (such payments to be made directly by the Trustee from the Administration Fund without further authorization).

(vi) From moneys of the Borrower, to the Trustee, within two (2) Business Days of receipt from the Trustee of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Indenture, the amount of any such deficiency in the Administration Fund.

(vii) Prior to the Conversion Date, from moneys of the Borrower to the Trustee, the Ordinary Fees and Expenses and the Extraordinary Trustee's Fees and Expenses when due from time to time and, after the Conversion Date, from moneys on deposit in the Administration Fund or, to the extent such moneys are insufficient for such purpose, from other moneys of the Borrower, to the Trustee, the Ordinary Trustee's Fees and Expenses and the Extraordinary Trustee's Fees and Expenses when due from time to time.

(viii) From moneys on deposit in the Administration Fund or, to the extent such moneys are insufficient for such purpose, from other moneys of the Borrower, to the Issuer, the Issuer's Fee when due (including any portion of the Issuer Fee not collected as part of payments on or in connection with the Bond Mortgage Note) together with any expenses that the Issuer may incur in connection with the Bond Documents, the Bond Mortgage Loan Documents, or the Project.

(ix) From moneys on deposit in the Administration Fund, or to the extent such moneys are insufficient for such purpose, from other moneys of the Borrower, to the Rating Agency the annual rating maintenance fee, if any, of the Rating Agency.

Section 4.3 Payments to Rebate Fund. The Borrower shall pay when due to the Trustee at its Principal Office any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Indenture.

Section 4.4 Prepayment of Bond Mortgage Loan. The Borrower shall have the option to prepay the Bond Mortgage Loan in full or in part prior to the payment and discharge of all

the outstanding Bonds only in accordance with the provisions of the Indenture and this Financing Agreement, and only with the prior written consent of the Credit Facility Provider. The Borrower shall be required to prepay the Bond Mortgage Loan in each case that Bonds are required to be redeemed pursuant to the Indenture. The Bonds are subject to redemption in accordance with the terms and conditions set forth in the Indenture.

In connection with any prepayment, whether optional or mandatory, in addition to all other payments required under the Bond Mortgage Note, the Borrower shall pay, or cause to be paid to the Servicer (from and after the Conversion Date) or other party as directed by the Credit Facility Provider or (or, if no Credit Facility is then in effect, to the Trustee), an amount sufficient to pay the redemption price of the Bonds to be redeemed, including principal, interest and premium (if any), and further including any interest to accrue with respect to the Bond Mortgage Loan and such Bonds between the prepayment date and the redemption date, together with a sum sufficient to pay all fees, costs and expenses in connection with such redemption and, in the case of redemption in whole, to pay all other amounts payable hereunder, under the Indenture, Section 7(a) of the Regulatory Agreement and the Reimbursement Agreement. The Borrower shall provide notice of the prepayment to the Trustee, the Credit Facility Provider, the Servicer, the Issuer and, prior to the Conversion Date, Freddie Mac in writing forty-five (45) days, or such shorter time as is possible in the case of involuntary prepayments, prior to the date on which the Borrower will make the prepayment. Each such notice shall state, to the extent such information is available (i) the amount to be prepaid, (ii) the date on which the prepayment will be made by the Borrower, and (iii) the cause for the prepayment, if any.

Section 4.5 Borrower's Obligations Upon Redemption or Tender. In the event of any redemption of the Bonds, the Borrower will timely pay, or cause to be paid through the Servicer, to the Trustee an amount equal to the principal amount of such Bonds or portions thereof called for redemption, together with interest accrued to the redemption date and premium, if any. The Borrower will timely pay all fees, costs and expenses associated with any redemption of Bonds. In the event that on any optional tender date or mandatory tender date under and as provided in Section 10.01, 10.02, 2.02, 2.13 or 3.06 of the Indenture, Bonds are tendered and not remarketed by the Remarketing Agent, and remarketing proceeds are not available for the purpose of paying the purchase price of such Bonds, the Borrower will cause to be paid, under and subject to the terms of the Credit Facility and the Reimbursement Agreement to the Trustee by the applicable times provided in the Indenture an amount equal to the principal amount of such Bonds tendered and not remarketed, together with interest accrued to the mandatory tender date or optional tender date, as the case may be. The Borrower acknowledges that it is required to pay Freddie Mac an amount calculated in accordance with the provisions of the Freddie Mac Reimbursement Agreement upon a prepayment of the Bond Mortgage Loan during the period beginning on the Conversion Date and ending on the fifteenth (15th) anniversary of the Conversion Date. The Borrower acknowledges that Purchased Bonds will be purchased by the Trustee for and on behalf of, and registered in the name of, the Borrower and will be pledged to the Credit Facility Provider pursuant to the Pledge Agreement.

Section 4.6 Principal Reserve Fund. The Borrower shall make payments to the Servicer, for remittance to the Trustee, to be deposited by the Trustee into the Principal Reserve Fund, on the second Business Day preceding the first day of each calendar month following Conversion in accordance with the Principal Reserve Schedule. Amounts on deposit in the Principal Reserve Fund shall be applied as provided in the Indenture; provided, that the amount on deposit in the Principal Reserve Fund shall, upon the occurrence of an event of default under the Bond Mortgage Loan or under any Bond Mortgage Loan Document, be used in any manner and for any purpose specified in writing by the Credit Facility Provider.

Amounts in the Principal Reserve Fund shall not be credited against the principal amount of the Bond Mortgage Note or be deemed to be interest payments on the Bond Mortgage Loan until the date such amounts are withdrawn from the Principal Reserve Fund and used to reimburse Freddie Mac for amounts paid under the Credit Enhancement Agreement to redeem or otherwise pay principal of or interest on the Bonds.

ARTICLE V

SPECIAL COVENANTS OF BORROWER

Section 5.1 Performance of Obligations. The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Bond Documents to which the Borrower is a party, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

Except with respect to the obligations of the Borrower set forth in Sections 2.4, 2.5, 4.2(b)(ii), (iv), (vi), and (vii), 5.8 and 6.1, but otherwise notwithstanding any other provisions of this Financing Agreement, the obligations of the Borrower under this Financing Agreement are non-recourse liabilities of the Borrower. However, nothing in this Section shall limit the right of the Issuer, the Trustee, the Servicer, Freddie Mac or the Credit Facility Provider (if the Credit Facility Provider is not Freddie Mac) to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Financing Agreement or the other Bond Financing Documents. In any action or proceeding brought with respect to the Bond Mortgage Loan or the Bonds, no deficiency or other money judgment shall be enforced against the Borrower or any partner of the Borrower or any successor or assign of the Borrower, and any judgment obtained shall be enforced only against the Project and other property of the Borrower encumbered by the Bond Mortgage Loan Documents and not against the Borrower or any partner of the Borrower or any successor or assign of the Borrower. Nothing in this Section shall limit any right that the Servicer, Freddie Mac or the Credit Facility Provider (if the Credit Facility Provider is not Freddie Mac) may have to enforce the Bond Mortgage Note, the Bond Mortgage, or any other Bond Mortgage Loan Document in accordance with their terms.

Section 5.2 Compliance With Applicable Laws. All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

Section 5.3 Indenture Provisions. The execution of this Financing Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower. Whenever the Indenture by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower shall carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

Section 5.4 Credit Facility. The Borrower may, with the prior written consent of the Bank and Freddie Mac prior to the Conversion Date, and with the prior written consent of the Credit Facility Provider from and after the Conversion Date (provided there has been no Wrongful Dishonor) but without the consent of Bondholders or the Trustee, on any Interest Payment Date during a Variable Period, on any Reset Adjustment Date, or any Variable Rate Adjustment Date and on the Fixed Rate Adjustment Date (but no later than seventeen (17) days prior to the expiration date of the Credit Facility unless a commitment to extend the existing Credit Facility has been delivered to the Trustee satisfying the requirements of the Indenture, if applicable), and, following the beginning of a Reset Period or the Fixed Rate Period, on any Interest Payment Date occurring after the Bonds may first be optionally redeemed at a price of not greater than par plus accrued interest to the redemption date and subject to the terms of the existing Credit Facility and Reimbursement Agreement, arrange for the delivery to the Trustee of an Alternate Credit Facility in substitution for the Credit Facility then in effect (referred to in this Section 5.4 as “credit support”) and, if applicable, for payment of the Purchase Price of Bonds delivered or deemed delivered in accordance with Article X of the Indenture (referred to in this Section 5.4 as “liquidity support”). Notwithstanding the preceding sentence, the Credit Facility Provider may provide any other form of “credit support” or “liquidity support” (or combination thereof) issued by the Credit Facility Provider in substitution for the then existing Credit Facility, without the consent of the Borrower (and without the consent of the Bondholders), if (A) the conditions of Section 8.05 of the Indenture are satisfied and (B)(x) the Rating Agency confirms in writing that the substitution will not adversely affect the rating of the Bonds, (y) the Credit Facility Provider delivers to the Issuer and the Trustee an Opinion of Counsel satisfying the requirements of paragraph (c) of this Section 5.4, and (z) such substitute “credit support” or “liquidity support” (or combination thereof) does not increase the amounts required to be paid by, or other obligations of, the Borrower. The Borrower acknowledges that, from and after the Conversion Date, it is required to pay Freddie Mac an amount calculated in accordance with the provisions of Section 3.10 of the Freddie Mac Reimbursement Agreement upon the delivery of an Alternate Credit Facility during the period beginning on the Conversion Date and ending on the fifteenth (15th) anniversary of the Conversion Date. Any Alternate Credit Facility shall satisfy the following conditions, as applicable:

- (a) An Alternate Credit Facility may be issued to provide only credit support or only liquidity support so long as a separate Credit Facility provides, at all times while

such Alternate Credit Facility is in effect, complementary credit support or liquidity support, as the case may be, so that at all times while any of the Bonds bear interest at the Variable Rate or the Reset Rate such Bonds shall be entitled to credit support and to the liquidity support required by such mode; provided, that in no event shall Freddie Mac be obligated to provide only liquidity or credit support if any Person other than Freddie Mac provides either liquidity or credit support. During the Fixed Rate Period, the Bonds shall be entitled to credit support only.

(b) The Alternate Credit Facility shall (i) be in an amount equal to the aggregate principal amount of the Bonds Outstanding from time to time plus the Interest Requirement (as defined in the Indenture); (ii) provide for payment in immediately available funds to the Trustee upon receipt of the Trustee's request for such payment with respect to any Interest Payment Date, purchase date (if applicable) or extraordinary mandatory redemption date pursuant to the Indenture; (iii) if the Alternate Credit Facility is provided to secure Bonds during a Reset Period, provide an expiration date no earlier than the earliest of (A) the day following the Reset Adjustment Date immediately succeeding the Reset Period; (B) ten (10) days after the Trustee receives notice from the Credit Facility Provider of an Event of Default hereunder or a default under and as defined in the Reimbursement Agreement and a direction to redeem all Outstanding Bonds; (C) the date on which all Bonds are paid in full and the Indenture is discharged in accordance with its terms; and (D) the date on which the Bonds become secured by an Alternate Credit Facility in accordance with the terms of the Indenture and the Reimbursement Agreement; (iv) unless waived by resolution of the Issuer in its sole and absolute discretion, result in the Bonds receiving a long-term rating or short-term rating, or both, as applicable for the mode then in effect, in one of two highest rating categories of the Rating Agency without regard to modifiers and (v) have a stated expiration or termination date not sooner than one year following its effective date.

(c) In connection with the delivery of an Alternate Credit Facility, the Trustee must receive (i) an Opinion of Counsel to the Credit Facility Provider issuing the Alternate Credit Facility, in form and substance satisfactory to the Issuer and the Trustee, relating to the due authorization and issuance of the Alternate Credit Facility, its enforceability, that the statements (if any) made relating to the Alternate Credit Facility and Reimbursement Agreement contained in any new disclosure document or supplement to the existing disclosure document relating to the Bonds are true and correct, that the Alternate Credit Facility is not required to be registered under the Securities Act of 1933, as amended, and if required by the Rating Agency, that payments made by the Credit Facility Provider pursuant to the Credit Facility will not be voidable under Section 547 of the Bankruptcy Code and would not be prevented by the automatic stay provisions of Section 362(a) of the Bankruptcy Code, in the context of a case or proceeding by or against the Borrower, a general partner of the Borrower or by the Issuer under the Bankruptcy Code; (ii) an Opinion of Bond Counsel to the effect that the substitution of such Alternate Credit Facility will not adversely affect the exclusion from gross income, for federal income tax purposes, of the interest payable on the Bonds; (iii) delivery of a new disclosure document or supplement to the existing disclosure

document relating to the Bonds for the period commencing with the delivery of the Alternate Credit Facility and (iv) the delivery of a continuing disclosure agreement if required by Section 3.7.

Section 5.5 Borrower To Maintain Its Existence; Certification of No Default.

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Bond Documents to which the Borrower is a party, the Borrower shall, within 30 days after the end of each calendar year, render to the Trustee a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Bond Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge after due inquiry, there has occurred no Event of Default (as such term is defined in each respective Bond Financing Document) under any of the other Bond Documents.

Section 5.6 Borrower to Remain Qualified in State and Appoint Agent. The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

Section 5.7 Sale or Other Transfer of Project. Subject to the Intercreditor Agreement, the Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Bond Mortgage Loan Documents, including Section 12 of the Regulatory Agreement, and upon receipt of the prior written consent of the Issuer and the Credit Facility Provider.

Section 5.8 Arbitrage and Rebate Collections; Tax-Exempt Status of the Bonds.

(a) The Borrower covenants for the benefit of the Issuer, the Bondholders and the Trustee that the proceeds of the Bonds, the earnings thereon and any other moneys on deposit in any fund or account maintained in respect of the Bonds (whether such moneys were derived from the proceeds of the sale of the Bonds or from other sources) will not be used in a manner which would cause the Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

(b) The Borrower, for the benefit of the Issuer and each Bondholder, represents that it has not taken, or permitted to be taken on its behalf, and agrees that it will not take, or permit to be taken on its behalf, any action which would adversely affect the exclusion from gross income for federal income tax purposes of the interest paid on the Bonds, and that it has taken and caused to be taken, and agrees that it will make and take, or require to be made and taken, all actions that may be required of it, alone and in conjunction with the Issuer, for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes.

Section 5.9 Regulatory Agreement. The covenants of the Borrower in the Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Borrowers of the Bonds and shall be binding upon any Borrower of the Project until (i) such time as such restrictions expire under their own terms, or (ii) the Issuer (in its sole and absolute discretion) and the Trustee consent to the release of such restrictions, or (iii) the Regulatory Agreement is otherwise terminated by its terms. The Borrower covenants to file of record the Regulatory Agreement and such other documents and take such other steps as are necessary in order to assure that the restrictions contained in the Regulatory Agreement will, subject to the terms of the Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, such restrictions. Subject to the provisions of the Intercreditor Agreement, the Issuer and the Trustee shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Regulatory Agreement or this Financing Agreement.

Section 5.10 Damage, Destruction and Condemnation. If prior to full payment of the Bonds (or provision for payment of the Bonds in accordance with the provisions of the Indenture) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Financing Agreement and in the Bond Mortgage Note to the extent the Bond Mortgage Loan is not prepaid in accordance with the terms of the Bond Mortgage Loan Documents.

Section 5.11 Obligation of the Borrower To Construct the Project. The Borrower shall proceed with reasonable dispatch to complete the acquisition, construction and equipping of the Project. If amounts on deposit in the Bond Mortgage Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of such acquisition, construction and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Issuer, the Trustee, the Servicer, the Credit Facility Provider or the Bondholders in respect of any such costs or to any diminution or abatement in the repayment of the Bond Mortgage Loan. Neither the Issuer nor the Credit Facility Provider shall be liable to the Borrower, the Bondholders or any other person if for any reason the Project is not completed or if the proceeds of the Bond Mortgage Loan are insufficient to pay all Costs of the Project. The Issuer does not make any representation or warranty, either express or implied, that moneys, if any, which will be paid into the Bond Mortgage Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and the Issuer shall not be liable to the Borrower, the Bondholders, the Bank, Freddie Mac, the Servicer, the Trustee or any other person if for any reason the Project is not completed.

Section 5.12 Right to Perform Borrower's Obligations. In the event the Borrower fails to perform any of its obligations under this Financing Agreement, the Issuer, the Trustee and/or the Servicer, after giving requisite notice, if any, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced by the Issuer, the Trustee or the Servicer shall become an additional obligation of the Borrower hereunder, payable on demand with interest thereon at the default rate of interest payable under the Bond Mortgage Loan Documents.

Section 5.13 Notice of Certain Events. The Borrower shall promptly advise the Issuer, the Servicer and a Responsible Officer of the Trustee in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

Section 5.14 Survival of Covenants. The provisions of Sections 4.2 and 6.1 of this Financing Agreement shall survive the expiration or termination of this Financing Agreement.

ARTICLE VI

INDEMNIFICATION

Section 6.1 Indemnification.

(a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Issuer, the Trustee, and each of their respective officers, directors, officials, employees, attorneys and agents (collectively, the "Indemnified Parties"), from and against any and all losses, damages, claims, demands, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) (collectively, "Losses") to which the Indemnified Parties, or any of them, may become subject under or any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

(i) the transactions provided for in the Bond Documents or the Bond Mortgage Loan Documents;

(ii) the execution and delivery or amendment of any document entered into in connection with the transactions provided for in the Bond Documents or the Bond Mortgage Loan Documents, including any certifications or representations made by any person other than the party seeking indemnification;

(iii) the approval of the financing for the Project;

(iv) the Bond Mortgage Loan;

(v) any and all claims arising in connection with the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents, the Bond Mortgage Loan Documents or any other documents relating to the Project or the Bonds or in connection with any other matters relating to the Bonds or the Project, including, but not limited to, any federal or state tax audit, or any questions or other matters arising under such documents;

(vi) the Trustee's acceptance or administration of the trusts created by the Indenture or the exercise of its powers or duties under the Indenture, this Financing Agreement, the Regulatory Agreement or any other agreements to which it is a party or otherwise in connection with the transactions provided for in the Bond Documents or the Bond Mortgage Loan Documents;

(vii) any and all claims arising in connection with (A) the issuance, sale or remarketing of any Bonds or any certifications or representations made by any person other than the party seeking indemnification, including, but not limited to, any (1) statement or information made by the Borrower with respect to the Borrower or the Project in any offering document or materials regarding the Bonds, the Project or the Borrower or in the Tax Certificate or in any other certificate executed by the Borrower which, at the time made, is misleading, untrue or incorrect in any material respect, (2) untrue statement or alleged untrue statement of a material fact relating to the Borrower or the Project contained in any offering material relating to the sale or remarketing of the Bonds, as from time to time amended or supplemented, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact relating to the Borrower or the Project required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading, (3) failure to properly register or otherwise qualify the sale of the Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bonds could be sold, and (B) the carrying out by the Borrower of any of the transactions provided for in the Bond Documents and the Bond Mortgage Loan Documents;

(viii) the Borrower's failure to comply with any requirement of this Financing Agreement or the Regulatory Agreement; and

(ix) any act or omission of the Borrower or any of its agents, servants, employees or licensees in connection with the Bond Mortgage Loan or the Project, including violation of any law, ordinance, court order or regulation affecting the Project or any part of it or the ownership, occupancy or use of it;

(x) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Project or arising out of any action or inaction of the Borrower, whether or not related to the Project, or resulting from or in any way connected with the acquisition, construction, operation or management of the Project,

the issuance of the Bonds or otherwise in connection with transactions provided for in the Bond Documents and the Bond Mortgage Loan Documents or otherwise in connection with the Project, the Bonds or the execution or amendment of any document relating to the Project or the Bonds;

(xi) any violation of any environmental law applicable to, or the release of any toxic substance from, the Project or any part thereof;

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

(xiii) any lien or charge upon payments by the Borrower to the Issuer and the Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project;

(xiv) the defeasance and/or redemption, in whole or in part, of the Bonds;

(xv) any declaration of taxability of interest on the Bonds, or allegations (or regulatory inquiry) that interest on the Bonds is taxable, for federal tax purposes; or

(xvi) any audit or investigation by the IRS or other authority;

except (A) in the case of the foregoing indemnification of the Trustee or any of its respective officers, members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Issuer or any of their officers, officials, employees, attorneys and agents, to the extent such damages are directly caused by the fraud or willful misconduct of such Indemnified Party.

In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if in the judgment of such Indemnified Party a conflict of

interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(b) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to Section 4.2 hereof shall survive the final payment or defeasance of the Bonds, and in the case of the Trustee any resignation or removal. The provisions of this Section shall survive the termination of this Financing Agreement.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default. The following shall be “Events of Default” under this Financing Agreement and the terms “Event of Default” or “default” shall mean, whenever they are used in this Financing Agreement, one or all of the following events:

(a) Any representation or warranty made by the Borrower in the Bond Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Issuer for assistance proves at any time to have been incorrect when made in any material respect.

(b) Failure by the Borrower to pay any amounts due under this Financing Agreement, the Bond Mortgage Note or the Bond Mortgage at the times and in the amounts required by this Financing Agreement, the Bond Mortgage Note or the Bond Mortgage;

(c) The Borrower’s failure to observe and perform any of its other covenants, conditions or agreements contained herein, other than as referred to in clause (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given by the Issuer or the Trustee to the Borrower; provided, however, that if the failure shall be such that it can be corrected but not within such period, the Issuer and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower within such period and diligently pursued until the failure is corrected; or

(d) The occurrence of an “Event of Default” under the Reimbursement Agreement shall at the discretion of the Credit Facility Provider constitute an Event of Default under this Financing Agreement but only if the Trustee is provided written notice thereof by the Credit Facility Provider that an Event of Default has occurred under the Reimbursement Agreement and the Trustee is instructed by the Credit Facility Provider that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default under this Financing Agreement or a default continuing beyond any applicable cure period shall in the discretion of the Credit Facility Provider constitute an Event of Default under the Bond Mortgage Loan Documents and the Reimbursement Agreement.

Nothing contained in this Section is intended to amend or modify any of the provisions of the Bond Documents or to bind the Issuer, the Trustee, the Servicer, Freddie Mac or the Credit Facility Provider to any notice and cure periods other than as expressly set forth in the Bond Documents and the Reimbursement Agreement.

Section 7.2 Remedies on Default. Subject to Section 7.6 and the provisions of the Intercreditor Agreement, whenever any Event of Default under Section 7.1 of this Financing Agreement shall have happened and be existing, the Trustee or the Issuer where so provided may take any one or more of the following remedial steps; provided, that in no event shall the Issuer be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to it:

(a) The Issuer shall cooperate with the Trustee as the Trustee acts pursuant to Section 6.02 of the Indenture.

(b) In the event any of the Bonds shall at the time be Outstanding and not paid and discharged in accordance with the provisions of the Indenture, the Issuer or the Trustee may have access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower.

(c) The Issuer may, without being required to give any notice (other than to the Trustee), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(d) The Issuer or Trustee may take whatever action at law or in equity may appear necessary or desirable to collect the payments due under this Financing Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Financing Agreement.

Any amounts collected pursuant to Article IV and any other amounts that would be applicable to payment of principal of and interest and any premium on the Bonds collected pursuant to action taken under this Section shall be applied in accordance with the provisions of the Indenture.

The provisions of this Section are subject to the further limitation that if, after any Event of Default all amounts which would then be payable hereunder by the Borrower if such Event of Default had not occurred and was not continuing shall have been paid by or on behalf of the Borrower, and the Borrower shall have also performed all other obligations in respect of which it is then in default hereunder, and shall have paid the reasonable charges and expenses of the Issuer, the Trustee, the Servicer and the Credit Facility Provider, including reasonable attorneys' fees paid or incurred in connection with such default, and shall have paid all amounts owed to

the Credit Facility Provider, including but not limited to any Freddie Mac Reimbursement Amounts and Freddie Mac Credit Enhancement Fees (in the case that Freddie Mac is the Credit Facility Provider), and if there shall then be no Event of Default existing under the Indenture, then and in every such case such Event of Default hereunder shall be waived and annulled, but no such waiver or annulment shall affect any subsequent or other Event of Default or impair any right consequent thereon.

Section 7.3 No Remedy Exclusive. No remedy conferred upon or reserved to the Issuer or the Trustee by this Financing Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Financing Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Financing Agreement.

Section 7.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Financing Agreement and the Issuer, the Trustee, the Servicer, Freddie Mac or the Credit Facility Provider should employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Financing Agreement or in or represented by the Bond Mortgage Note, the Borrower shall on demand therefor reimburse the reasonable fee of such attorneys and such other expenses so incurred.

Section 7.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Financing Agreement should be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.6 Rights of Credit Facility Provider. Notwithstanding anything herein to the contrary, as long as a Wrongful Dishonor has not occurred with respect to the Credit Facility, neither the Issuer, the Trustee nor any other person shall, upon the occurrence of an Event of Default hereunder or an event of default under the Bond Documents, take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Bond Mortgage Loan, except at the direction of the Credit Facility Provider; provided, that this prohibition shall not be construed to limit the rights of the Issuer or the Trustee to specifically enforce the Regulatory Agreement in order to provide for operation of the Project in accordance with the Code and the Act or to otherwise enforce the Unassigned Rights by means of specific performance; and provided, further, that this prohibition shall not be construed to limit the rights of the Issuer, the Trustee, the Servicer, the Credit Facility Provider or any other indemnified party under Section 6.1 to enforce its rights against the Borrower under Sections 4.2, 5.8 and 6.1 by mandamus or other suit, action or proceeding at law or in equity where such

suit, action or proceeding does not seek any remedies under or with respect to the Bond Mortgage, the Reimbursement Mortgage or cause acceleration of the Bond Mortgage Loan.

Section 7.7 Issuer Exercise of Remedies. Notwithstanding anything to the contrary contained herein, the Issuer may enforce its rights under the Regulatory Agreement or its Unassigned Rights hereunder and exercise the permitted remedies with respect thereto against the Borrower; provided that the Issuer shall not commence or direct the Trustee to commence any action to declare the outstanding balance of the Bonds or the Bond Mortgage Loan to be due and neither the Issuer nor the Trustee shall take any action in respect of Unassigned Rights (i) to foreclose or to take similar action under the Bond Mortgage or otherwise in respect of any liens upon or security interests in the Project or other property pledged to secure the Borrower's obligations under the Bond Mortgage Loan Documents; (ii) to appoint a receiver; (iii) to enforce any similar remedy against the Project or other property pledged to secure the Borrower's obligations under the Bond Mortgage Loan Documents; or (iv) to enforce any other remedy which would cause any liens or security interests granted under the Bond Mortgage Loan Documents to be discharged or materially impaired thereby.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Notices.

(a) Whenever in this Financing Agreement 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, Freddie Mac, the Borrower, the Credit Facility Provider, 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. The Issuer, the Trustee, Freddie Mac, the Borrower, the Credit Facility Provider, 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, 13th 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, 16th 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, 17th Floor
MAC: E2818-176
Los Angeles, California 90017
Attention: Corporate Trust Services
Telephone: 213-614-3328
Facsimile: 213-614-3335

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

and to:

Pinmore HDC, Inc.
c/o Housing Authority of the
County of Santa Clara
505 West Julian Street
San Jose, California 95110
Attention: Alex Sanchez
Telephone: 408-361-4625
Facsimile: 408-993-3041

with a copy to:

Carle, Mackie, Power & Ross, LLP
100 B Street, Suite 400
Santa Rosa, California 95401
Attention: Richard W. Power, Esq.
Telephone: 707-526-4200
Facsimile: 707-526-4707

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: JP Morgan 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: JP Morgan Chase Bank, N.A.
300 South Riverside Plaza, Mail Code IL1-0236
Chicago, Illinois 60606-0236
Attention: Standby Service Unit
Telephone:
Facsimile:

and a copy to: JP Morgan 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:

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, 28th 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
New York, New York 10007

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to Freddie Mac and, prior to the Conversion Date, the Construction Phase Credit Facility Provider. If Conversion does not occur, Freddie Mac and the Servicer shall be removed as notice parties to this Agreement.

(b) The Trustee shall provide to the Credit Facility Provider and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 7.1 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. In addition, the Trustee shall, in accordance with the terms and conditions of the Credit Enhancement Agreement, timely give all notices required by the Credit Enhancement Agreement, including, without limitation, notice to Freddie Mac and the Servicer of the Trustee's failure to receive any regularly scheduled payment under the Bond Mortgage Note.

Section 8.2 Concerning Successors and Assigns. All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Financing Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Financing Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Issuer, the Trustee, the Servicer and the Credit Facility Provider.

Section 8.3 Governing Law. This Financing Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the laws of the State applicable to contracts made and performed in the State and, where applicable, the laws of the United States of America.

Section 8.4 Modifications in Writing. Modification or the waiver of any provisions of this Financing Agreement or consent to any departure by the parties therefrom, shall in no

event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Credit Facility Provider and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given and so long as the interests of any Bondholders are not adversely affected and the Trustee consents in writing thereto. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

Section 8.5 Further Assurances and Corrective Instruments. The Issuer, the Trustee and Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the performance of this Financing Agreement.

Section 8.6 Captions. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Financing Agreement.

Section 8.7 Severability. The invalidity or unenforceability of any provision of this Financing Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

Section 8.8 Counterparts. This Financing Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 8.9 Amounts Remaining in Bond Fund or Other Funds. It is agreed by the parties hereto that any amounts remaining in the Bond Fund or other funds and accounts established under the Indenture upon expiration or sooner termination of the term hereof, shall be paid in accordance with the Indenture.

Section 8.10 Effective Date and Term. This Financing Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Indenture shall terminate.

Section 8.11 Waiver of Personal Liability. No officer, agent or employee of the Issuer or any director, officer, agent or employee of the Borrower (except as may otherwise be provided in Section 4.1(c)) shall be individually or personally liable for the payment of any principal (or redemption price) or interest on the Bonds or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Financing Agreement; but nothing herein contained shall relieve any such director, officer, agent or employee from the performance of any official duty provided by law or by this Financing Agreement.

Section 8.12 Cross References. Any reference in this Financing Agreement to an "Exhibit", an "Article", a "Section", a "Subsection", a "Paragraph", a "Subparagraph" or a

clause shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Financing Agreement, an article of this Financing Agreement, a section of this Financing Agreement, a subsection of the section of this Financing Agreement in which the reference appears and a paragraph of the subsection within this Financing Agreement, a subparagraph of the paragraph within this Agreement or a clause within the sentence within this Financing Agreement in which the reference appears. All exhibits attached to or referred to in this Financing Agreement are incorporated by reference into this Financing Agreement.

Section 8.13 Credit Facility Provider as Third-Party Beneficiary. The parties hereto agree and acknowledge that the Credit Facility Provider and Freddie Mac are each third-party beneficiaries of this Financing Agreement.

Section 8.14 Credit Facility Provider. Following the release of the Credit Enhancement Agreement by the Trustee pursuant to the terms of the Indenture and the provision of an Alternate Credit Facility, all notices to be provided Freddie Mac or the previous Credit Facility Provider, as applicable, hereunder shall be provided to the Alternate Credit Facility Provider.

Section 8.15 Non-Liability of Issuer. The Issuer shall not be obligated to pay the principal (or redemption price) of or interest on the Bonds, except from Revenues and other moneys and assets received by the Trustee on behalf of the Issuer pursuant to this Financing Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit or any taxing power of the Issuer, is pledged to the payment of the principal (or redemption price) or interest on the Bonds. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Financing Agreement, the Bonds, the Indenture or any other Bond Document or Bond Mortgage Loan Document, except only to the extent amounts are received for the payment thereof from the Borrower under this Financing Agreement.

The Borrower hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the payments made by the Borrower pursuant to this Financing Agreement, together with investment income on certain funds and accounts held by the Trustee under the Indenture, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or redemption price) and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or redemption price) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrower, the Issuer or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor.

Section 8.16 Capacity of the Trustee. The Trustee is entering into this Financing Agreement solely in its capacity as Trustee and shall be entitled to the rights, protections,

limitations from liability and immunities afforded it as Trustee under the Indenture. The Trustee shall be responsible only for the duties of the Trustee expressly set forth herein.

Section 8.17 Reliance. The representations, covenants, agreements and warranties set forth in this Financing Agreement may be relied upon by the Issuer, the Trustee, Bond Counsel, Freddie Mac and the Credit Facility Provider. In performing their duties and obligations under this Financing Agreement and under the Indenture, the Issuer and the Trustee may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Issuer and the Trustee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Trustee under this Financing Agreement and under the Indenture in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Financing Agreement (other than the Issuer) that:

(a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee, any Bondholder or the Borrower as to the existence of a fact or state of affairs required under this Financing Agreement to be noticed by the Issuer;

(b) the Issuer shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Trustee, Freddie Mac, the Servicer, the Construction Phase Credit Facility Provider or the Borrower, as applicable; and

(c) none of the provisions of this Financing Agreement shall require the Issuer or the Trustee to expend or risk its own funds or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Financing Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

Section 8.18 Limited Liability of the Issuer. All obligations of the Issuer under any of the Bond Documents or the Bond Mortgage Loan Documents shall be limited obligations of the Issuer, payable solely and only from the Trust Estate. No owner or owners of any of the Bonds shall ever have the right to compel any exercise of the taxing power of the State or any political subdivision thereof or of the Issuer for the payment of the Bonds, nor to enforce the payment of the Bonds against any property of the State or any such political subdivision thereof or of the Issuer except as provided in the Indenture. No officer, agent, employee or attorney of the Issuer, including any person executing this Financing Agreement on behalf of the Issuer, shall be liable personally under this Financing Agreement or for any reason relating to the issuance of the Bonds. No recourse shall be had for the payment of the principal of or the interest on the Bonds, for any claim based on or in respect of the Bonds or based on or in respect of this Financing Agreement, against any officer, employee or agent, as such, of the Issuer or any

successor whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance of this Financing Agreement and as part of the consideration for the issuance of the Bonds, expressly waived and released.

It is recognized that notwithstanding any other provision of this Financing Agreement, and except for the Trust Estate pledged under the Indenture, none of the Borrower, the Trustee, the Bank, Freddie Mac, or the Servicer shall look to the Issuer for damages suffered by the Borrower, the Trustee, the Bank, Freddie Mac, the Servicer or any owner of Bonds as a result of the Issuer's performance, failure to perform or insufficient performance of any covenant, undertaking or obligation under this Financing Agreement or any of the other Bond Documents, or as a result of the incorrectness of any representation made by the Issuer in any of such documents, nor for any other reason, unless such damages result solely from the gross negligence, willful misconduct, fraud or intentional misrepresentation of the Issuer. Although this Financing Agreement recognizes that such documents shall not give rise to any pecuniary liability of the Issuer, nothing contained in this Financing Agreement shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Issuer) in any court or before any governmental body, agency or instrumentality or otherwise against the Issuer or any of its officers or employees to enforce the provisions of any of such documents which the Issuer is obligated to perform and which the Issuer has not assigned to the Trustee or any other person.

The Issuer shall be entitled to the advice of counsel (who, except as otherwise provided herein, may be counsel for any Bondowner), and the Issuer shall be wholly protected as to action taken or omitted in good faith in reliance on such advice. The Issuer shall not be liable for any action (a) taken by it in good faith and reasonably believed by it to be within its discretion or powers hereunder, or (b) in good faith omitted to be taken by it because such action was reasonably believed to be beyond its discretion or powers hereunder, or (c) taken by it pursuant to any direction or instruction by which it is governed hereunder, or (d) omitted to be taken by it by reason of the lack of any direction or instruction required hereby for such action; nor shall it be responsible for the consequences of any error of judgment reasonably made by it. The Issuer shall in no event be liable for the application or misapplication of funds or for other acts or defaults by any person or entity, except for the gross negligence or willful misconduct of its own agents, officers and employees. When any payment or consent or other action by it is called for hereby, it may defer such action pending receipt of such evidence (if any) as it may require in support thereof. The Issuer shall not be required to take any remedial action (other than the giving of notice) unless indemnity in a form acceptable to the Issuer is furnished for any cost or liability to be incurred in connection with such remedial action, other than liability for failure to meet the standards set forth in this Section. The Issuer shall be entitled to reimbursement for its costs reasonably incurred or advances reasonably made, with interest at the rate of 10% per annum, in the exercise of its rights or the performance of its obligations hereunder, to the extent that it acts without previously obtaining indemnity. No permissive right or power to act which it may have shall be construed as a requirement to act; and no delay in the exercise of a right or power shall affect its subsequent exercise of the right or power.

Section 8.19 No Limitations on Actions of Issuer in Exercise of its Governmental Powers. Nothing in this Financing Agreement or the Indenture is intended, nor shall it be construed, to in any way limit the actions of the Issuer in the exercise of its governmental powers, as contrasted with any contractual rights or powers. Subject to the provisions of the Intercreditor Agreement, it is the express intention of the parties hereto that the Issuer shall retain the full right and ability to exercise its governmental powers with respect to the Borrower, the Project, the Servicer, the Bank, Freddie Mac and the transactions contemplated by this Financing Agreement, the Indenture, the Regulatory Agreement and the Bond Mortgage Loan Documents to the same extent as if it were not a party to this Financing Agreement, the Indenture, the Regulatory Agreement or the transactions contemplated thereby, and in no event shall the Issuer have any liability in contract arising under this Financing Agreement, the Indenture or the Regulatory Agreement by virtue of any exercise of its governmental powers.

IN WITNESS WHEREOF, the parties hereto have executed this Financing Agreement all as of the date first set forth above.

CITY OF SAN JOSE, CALIFORNIA

By: _____
Julia H. Cooper,
Assistant Director of Finance

Approved as to form:

By: _____
Patricia Deignan,
Chief Deputy City Attorney

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee

By: _____
Authorized Signatory

ORVIETO FAMILY APARTMENTS, L.P.,
a California limited partnership

By: Pinmore-Orvieto LLC,
a California limited liability company,
its Managing General Partner

By: Pinmore HDC Inc.,
a California nonprofit public benefit
corporation,
its Sole Member and Manager

By: _____
Jacque Hansen,
Vice President

By: ROEM Orvieto Family, LLC,
a California limited liability company,
its Co-General Partner

By: Roem Development Corporation,
a California corporation,
its Sole Member and Manager

By: _____
Jonathan Emami,
Vice President

19021.14:J10604

EXHIBIT A

FORM OF BOND MORTGAGE NOTE

\$14,200,000

CITY OF SAN JOSE, CALIFORNIA

**VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE BONDS
(ORVIETO FAMILY APARTMENTS), SERIES 2009C**

BOND MORTGAGE NOTE

US \$14,200,000

November 19, 2009

FOR VALUE RECEIVED, the undersigned, ORVIETO FAMILY APARTMENTS, L.P. (the "Borrower"), promises to pay to the order of the CITY OF SAN JOSE, CALIFORNIA (the "Issuer") and its assigns, the principal sum of Fourteen Million Two Hundred Thousand Dollars (\$14,200,000), and the premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Note is issued pursuant to that certain Financing Agreement dated as of November 1, 2009, among the Issuer, Wells Fargo Bank, National Association (the "Trustee") and the Borrower (together with any and all amendments, modifications, supplements and restatements, the "Financing Agreement") pursuant to which the Issuer has made a mortgage loan in the principal amount of this Note to the Borrower (the "Bond Mortgage Loan"), and this Note is entitled to the benefits of the Financing Agreement and subject to the terms, conditions and provisions thereof. The Bond Mortgage Loan is being purchased with proceeds from the Issuer's \$14,200,000 City of San José, California Variable Rate Demand Multifamily Housing Revenue Bonds (Orvieto Family Apartments), Series 2009C (the "Bonds") issued pursuant to the Trust Indenture dated as of November 1, 2009 (the "Indenture") between the Issuer and the Trustee.

1. **Defined Terms.** As used in this Note, the term "Lender" means the holder of this Note, and (ii) the term "Indebtedness" means the principal of, premium, if any, and interest on or any other amounts due at any time under this Note. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Financing Agreement or the Indenture.

2. **Payments of Principal and Interest.** The Borrower shall pay on the first Business Day of each month commencing December 1, 2009, interest on this Note in an amount equal to the accrued and unpaid interest on the Bonds during the prior month, and shall also pay in the event of an optional or mandatory prepayment of this Note with respect to a corresponding optional or mandatory redemption or purchase or acceleration of all or part of the Bonds, interest on this Note in an amount equal to the accrued and unpaid interest on such Bonds to the date of redemption, purchase or acceleration, as applicable. The Borrower shall pay the principal of this Note in full on _____ 1, ____ (the "Maturity Date") or at such

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earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment of this Note with respect to a corresponding optional or mandatory redemption or purchase or acceleration of all or part of the Bonds, to pay the principal that equals the principal due with respect to the Bonds at such times.

The Borrower's repayment obligations under the Financing Agreement and this Note shall be reduced from time to time by and to the extent of any amounts drawn under the Credit Facility (as defined in the Indenture) and applied to the payment of debt service on the Bonds, provided that such reductions shall be credited only at the times and to the extent the Borrower has reimbursed the Credit Facility Provider (as defined in the Indenture) fully for such amounts. The outstanding principal hereof is subject to acceleration at the same time or times and under the same terms and conditions, and with the same notice, if any, as provided under the Indenture for the acceleration of payment of the Bonds. Notwithstanding anything to the contrary contained herein or the Financing Agreement, the payments in respect of the Bond Mortgage Loan evidenced hereby shall be sufficient to pay, when due (whether at stated maturity, upon redemption before maturity, upon acceleration of stated maturity, upon tender and purchase or otherwise), the principal of and premium, if any, and interest on the Bonds at any time outstanding.

3. **Payment of Fees and Expenses; Other Required Payments.** The Borrower shall also pay fees and expenses under Section 4.2 of the Financing Agreement, rebate amounts under Section 4.3 of the Financing Agreement, Principal Reserve Fund amounts under Section 4.6 of the Financing Agreement and indemnification-related amounts under Section 6.1 of the Financing Agreement, as well as any other amounts owed under the Financing Agreement, when due and in accordance with the terms and provisions set forth therein.

4. **Manner of Payment; Deficiencies.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds. The Borrower shall make its payments under this Note in Eligible Funds if and to the extent that the Indenture, the Financing Agreement or this Note requires such amount to be available to the Trustee in Eligible Funds. In the event of any deficiency in the funds available under the Indenture for payment of the principal of, premium, if any, or interest on the Bonds when due, the Borrower shall immediately pay the amount of the deficiency to the Trustee upon notice of the deficiency from the Issuer, the Servicer or the Trustee. The Borrower shall be obligated to pay the deficiency regardless of the reason for the deficiency, including any deficiency resulting from any shortfall in payments made or to be made by the Borrower under this Note, any loss due to a default under any investment held by the Trustee, a change in value of any such investment or otherwise.

5. **Application of Payments.** If at any time the Lender receives, from the Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Lender, in the Lender's discretion. The Borrower agrees that neither the Lender's acceptance of a payment from the Borrower in an amount that is less than all amounts then due and payable nor the Lender's application of such

payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

6. **Security.** The Indebtedness is secured, among other things, by a Bond Mortgage, as defined in the Indenture. Reference is made to the Bond Mortgage for other rights of the Lender as to collateral for the Indebtedness.

7. **Limits on Personal Liability.** Except as otherwise provided in Sections 4.1(c) and 5.1 of the Financing Agreement, payments under this Note are a nonrecourse obligation of the Borrower and the Lender's only recourse for the satisfaction of the Indebtedness shall be the Lender's exercise of its rights and remedies with respect to the Project and any other collateral held by the Lender as security for the Indebtedness. This limitation on the Borrower's liability shall not limit or impair the Lender's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any obligations of the Borrower.

8. **Prepayment.** This Note is subject to prepayment as specified in the Financing Agreement and the Indenture.

9. **Costs and Expenses.** The Borrower shall pay all expenses and costs, including reasonable fees and out-of-pocket expenses of attorneys, and fees and out-of-pocket expenses of expert witnesses and costs of investigation, incurred by the Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Bond Mortgage Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or nonjudicial foreclosure proceeding.

10. **Forbearance.** Any forbearance by the Lender in exercising any right or remedy under this Note any other document evidencing or securing the Bond Mortgage Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Lender of any security for the Borrower's obligations under this Note shall not constitute an election by the Lender of remedies so as to preclude the exercise of any other right or remedy available to the Lender.

11. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Borrower and all endorsers and guarantors of this Note and all other third-party obligors.

12. **Loan Charges.** If any applicable law limiting the amount of interest or other charges permitted to be collected from the Borrower in connection with the Bond Mortgage Loan is interpreted so that any interest or other charge provided for herein or in any other document evidencing or securing the Bond Mortgage Loan, whether considered separately or together with other charges provided for in any such other document, violates that law, and the Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation.

13. **Commercial Purpose.** The Borrower represents that the Indebtedness is being incurred by the Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family or household purposes.

14. **Governing Law.** This Note shall be governed by the law of the State of California (the "Property Jurisdiction"), applicable to contracts made and performed in such State.

15. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

16. **Address for Payment.** All payments due under this Note shall be payable at 707 Wilshire Boulevard, 17th Floor, MAC: E2818-176, Los Angeles, California 90017, Attention: Corporate Trust Services, or such other place as may be designated by written notice to the Borrower from or on behalf of the Lender.

17. **Consent to Jurisdiction and Venue.** The Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the Property Jurisdiction in which the Project is located. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. The Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

18. **Waiver of Trial by Jury.** EACH OF THE BORROWER AND THE LENDER (a) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS THE LENDER AND THE BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (b) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. EACH PARTY SEPARATELY GIVES THIS WAIVER OF RIGHT TO TRIAL BY JURY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

19. **Assignment.** The Borrower acknowledges that this Note is being assigned by the Issuer to the Trustee for the Bonds.

[Signature page follows]

IN WITNESS WHEREOF, the Borrower has signed and delivered this Note or has caused this Note to be signed and delivered by its duly authorized representative.

ORVIETO FAMILY APARTMENTS, L.P.,
a California limited partnership

By: Pinmore-Orvieto LLC,
a California limited liability company,
its Managing General Partner

By: Pinmore HDC Inc.,
a California nonprofit public benefit
corporation,
its Sole Member and Manager

By:
Jacque Hansen,
Vice President

By: ROEM Orvieto Family, LLC,
a California limited liability company,
its Co-General Partner

By: Roem Development Corporation,
a California corporation,
its Sole Member and Manager

By: _____
Jonathan Emami,
Vice President

ASSIGNMENT

For value received, pay to the order of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee under the Indenture referred to in the attached Note, without recourse, warranty or representation.

CITY OF SAN JOSE, CALIFORNIA

By: _____
Julia H. Cooper,
Assistant Director of Finance