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**CONTINUING COVENANT AGREEMENT**

**dated as of March 1, 2010,**

**between**

**REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

**Relating to**

**[\$93,000,000]**

**Redevelopment Agency of the City of San Jose  
Merged Area Redevelopment Project  
Taxable Subordinate Housing Set-Aside  
Tax Allocation Variable Rate Bonds  
Series 2010C**

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**EXHIBITS**

[A – REDEMPTION SCHEDULE]

## CONTINUING COVENANT AGREEMENT

**THIS CONTINUING COVENANT AGREEMENT**, dated as of March 1, 2010 (this “Agreement”), between REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE (the “Agency”), a public body, corporate and politic, duly organized and existing under the laws of the State of California (the “Agency”), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (the “Bank”).

### RECITALS

WHEREAS, the Agency is issuing a series of bonds designated as the Merged Area Redevelopment Project Taxable Housing Set-Aside Tax Allocation Variable Rate Bonds, Series 2010C in the principal amount of \$[93,000,000] (the “Bonds”) pursuant to a Fiscal Agent Agreement dated as of March 1, 2010 (said Fiscal Agent Agreement, as the same may be amended, modified or restated in accordance with the terms thereof and hereof, the “Fiscal Agent Agreement”), by and between the Agency and Wells Fargo Bank, National Association (the “Fiscal Agent”); and

WHEREAS, the Agency intends to use the proceeds of the Bonds for the financing and refinancing of the Project and to pay certain costs incurred in connection with the issuance of the Bonds; and

WHEREAS, the Bank has agreed to purchase the Bonds, and as a condition to such purchase, the Bank has required the Agency to enter into this Agreement.

NOW, THEREFORE, to induce the Bank to purchase the Bonds, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Agency and the Bank hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.1. Certain Defined Terms.** In addition to the terms defined in the recitals and elsewhere in this Agreement, the Fiscal Agent Agreement and the Agreement, the following terms shall have the following meanings:

“Affiliate” means a Person, corporation, partnership, association, joint venture, business trust or similar entity organized under the laws of any state that directly, or indirectly through one (1) or more intermediaries, Controls or is Controlled by, or is under common Control with, the Agency or the Bank, as may be applicable.

“Agency” means the Agency and any permitted successor or assign thereof hereunder.

“Agency Representative” means any person authorized from time to time in writing by the Agency, or its successors and assigns, to perform a designated act or execute a designated document.

“Annual Debt Service” means, with respect to Indebtedness then outstanding, for each Fiscal Year, the sum of (1) the interest falling due on the outstanding Indebtedness (assuming that during any variable rate period for which the interest rate on the Indebtedness has not been determined a rate equal to the Assumed Rate, and assuming further that the outstanding Indebtedness is retired as scheduled, whether by maturity or by sinking account payment); and (2) the principal amount or accreted value of the outstanding Indebtedness, if any, falling due by their terms in such Fiscal Year, whether by maturity, sinking account payment or otherwise.

“Approved Low and Moderate Income Housing Fund Loan” means a loan in multiple installments from the Approved Low and Moderate Income Housing Fund Loan in an aggregate amount not to exceed Seventy-Five Million Dollars (\$75,000,000), which loan is made to assist the Agency in satisfying its Supplemental ERAF obligations for the Agency’s 2009-2010 and 2010-2011 Fiscal Years.

“Assumed Rate” means, for Indebtedness bearing interest at a variable rate, a rate equal to the higher as of the date of calculation of: (1) the current, actual rate on such Indebtedness plus 100 basis points; (2) the average interest rate on such Indebtedness for the previous 12 months plus 100 basis points or (3) the average of One-Month LIBOR for the past three years plus 100 basis points; provided that in no event shall the Assumed Rate exceed the maximum interest rate with respect to any Parity Debt.

“Bank Affiliate” means the Bank and any Affiliates of the Bank, and includes without limitation Wells Fargo Bank, National Association and Wells Fargo Securities.

“Bank Participant” means any Qualified Institutional Buyer to whom the Bank has participated its rights under this Agreement or to whom the Bank or any Bank Participant has sold a participation in rights under this Agreement.

“Base Rate” means a per annum rate equal to the highest of (a) the Prime Rate plus 100 basis points (1.00%), (b) the Fed Funds Rate plus two hundred basis points (2.00%) and (c) eight percent (8.00%). Any change in the Base Rate shall take effect on the date specified in the announcement of such change.

“Bond Documents” means, collectively, this Agreement, the Fiscal Agent Agreement, the Bonds, and any exhibits, instruments or agreements relating thereto, as the same may be amended from time to time in accordance with their respective terms and the terms hereof.

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

“Closing Date” means the date of execution of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Contract” means any indenture, agreement (other than this Agreement), mortgage, other contractual restriction, lease, instrument, certificate of incorporation, charter or by-law.

“Control” or any variant thereof means the ownership of, or power to vote (i) 51% of the outstanding capital stock of a corporation, the membership interests of a limited liability

company, or the partnership interests of a partnership; or (ii) 100% of the membership interests of the managing members of a limited liability company or of the partnership interests of the general partners of a partnership.

"Cooperation Agreement" has the meaning assigned to such term in the Fiscal Agent Agreement.

"Debt Service Coverage Ratio" means, as of any date of determination, the ratio of (a) Housing Set-Aside Amounts [received in such Fiscal Year] divided by (b)(i) the aggregate Annual Debt Service for such Fiscal Year on all outstanding Indebtedness plus (ii) the amount, if any, of any judgment or order or any similar decree or decision of any Governmental Board for the payment of money, which is paid from any Housing Amounts in such Fiscal Year. For purposes of this Agreement, "Housing Amounts" shall mean any of the Housing Set-Aside Amounts, Subordinate Housing Set-Aside Amounts or other funds or investments on deposit in, or otherwise to the credit of, any of the Housing Special Fund, the Subordinate Housing Set-Aside Special Fund or the Low and Moderate Income Housing Fund or any funds or accounts established under the Bond Documents.

"Default" means any event or condition which with notice, passage of time or any combination of the foregoing, would constitute an Event of Default.

"Default Rate" means the fluctuating per annum rate at all times equal to the Base Rate plus 3.0%.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Asset Conservation, Lender Liability, and Deposit Insurance Act of 1996, 42 U.S.C. §9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §9601 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. §2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §11001 et seq.; the Clean Air Act of 1966, as amended 42 U.S.C. §7401 et seq.; the National Environmental Policy Act of 1975, 42 U.S.C. §4321 et seq.; the Rivers and Harbours Act of 1899, 33 U.S.C. §401 et seq.; the Endangered Species Act of 1973, as amended 16 U.S.C. §1531 et seq.; the Occupational Safety and Health Act of 1970, as amended 29 U.S.C. §651 et seq.; and the Safe Drinking Water Act of 1974, as amended 42 U.S.C. §300(f) et seq.; and all rules, regulations and guidance promulgated or published thereunder, and any state, regional, country or local statute, law, rule, regulation or ordinance relating to public health, safety or the environment, including, without limitation, those relating (i) to releases, discharges, emissions or disposals to air, water, land or ground water, (ii) to the use, handling or disposal of polychlorinated biphenyls (PCB's), asbestos or urea formaldehyde, (iii) to the treatment, storage, disposal or management of Hazardous Substances (including, without limitation petroleum, crude oil or any fraction thereof) and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the Property or the adjacent or surrounding property, (iv) to the exposure of persons to toxic, hazardous, or other controlled, prohibited or

regulated substances, (v) to the transportation, storage, disposal, management or release of gaseous or liquid substances, and any regulations, order, injunction, judgment, declaration, notice or demand issued thereunder.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

“Event of Default” has the meaning assigned to that term in Section 6.1 of this Agreement.

“Excess Interest Amount” has the meaning assigned to that term in Section 2.2(e) of this Agreement.

“Fed Funds Rate” means for any day, a fluctuating interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Bank from three Federal funds brokers of recognized standing selected by it.

“Fiscal Agent” means Wells Fargo Bank, National Association, its successors and assigns.

“Fiscal Agent Agreement” has the meaning assigned to that term in the recitals to this Agreement.

“Fiscal Year” means the period of twelve (12) consecutive calendar months for which financial statements of the respective entity have been examined by its independent certified public accountants; currently for the Agency, a year ending on June 30.

“Fitch” means Fitch, Inc., or any successor thereto.

“Generally Accepted Accounting Principles” or “GAAP” means generally accepted accounting principles in effect from time to time in the United States and applicable to entities such as the Agency.

“Governing Body” of the Agency means the Board of the Agency.

“Governmental Board” means any government or political subdivision, or any agency, board, commission, department or instrumentality of either, or any court, tribunal, central bank or arbitrator.

“Governmental Requirements” means all Laws, ordinances, orders, rules or regulations of any Governmental Board, including without limitation, laws, ordinances, orders and rules relating to public disclosures, zoning, certificates of need, licenses, permits, subdivision building,

safety, health fire protection or environmental matters.

“Hazardous Substance” means any substance identified as hazardous under any of the Environmental Laws; provided, however, that Hazardous Substances shall not include cleaning and other maintenance-related materials and supplies in type and quantity customary for buildings of the nature of the Property which are being used in a customary and safe manner.

“Highest Lawful Rate” means the maximum rate of interest which the Bank is legally entitled to charge, contract for or receive under any law to which such interest is subject.

"Housing Project" has the meaning assigned to such term in the Fiscal Agent Agreement.

“Housing Set-Aside Amounts” means the portion of Tax Increment Revenues required to be set-aside and deposited in the Low and Moderate Income Housing Fund pursuant to Section 33334.2 et seq. and 33487 of the Law, but in any event an amount equal to 20% of the Tax Increment Revenues.

"Housing Special Fund" has the meaning assigned to such term in the Senior Lien Fiscal Agent Agreement.

“Indebtedness” means each of the following obligations of the Agency, if required to be paid from, or secured by, the Housing Set-Aside Amounts or Subordinate Housing Set-Aside Amounts, or secured by any other right to or Lien (including any junior Lien) upon the Agency's 20% of Tax Increment Revenues, (a) indebtedness or liability for borrowed money, or for the deferred purchase price of property or services; (b) obligations as lessee under leases which are, should be or should have been reported as capital leases in accordance with Generally Accepted Accounting Principles; (c) current liabilities in respect of unfunded vested benefits under governmental plans (as defined in Section 3(32) of ERISA); (d) all obligations arising under any acceptance facility; (e) all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss; (f) obligations secured by any mortgage, lien, pledge, security interest or other charge or encumbrance on property owned by the Agency, whether or not the obligations have been assumed, (g) all other items or obligations which would be included in determining total liabilities on the balance sheet of a Person and (h) obligations under any Interest Rate Protection Agreement to which it is a party; provided, however, that “Indebtedness” shall not include (i) trade payables and similar obligations (including the deferred revenues resulting from subscriptions, dues and the like as shown on the financial statements of the Agency) incurred in the ordinary course of business, (ii) both the indebtedness directly incurred and any corresponding indirect guaranty thereof or (iii) planned giving actuarial liabilities as reflected in the financial statements of the Agency to the extent they are offset by planned giving investments.

“Index Rate Reset Date” means the first day of each calendar month.

“Interest Payment Date” means the first day of each April, July, October and January.

“Interest Rate Protection Agreement” means an interest rate swap, cap or collar

agreement or similar arrangement between any Person and a financial institution providing for the transfer or mitigation of interest rate risks either generally or under specific contingencies.

“Law” means the Community Redevelopment Law (being Division 24 of the Health and Safety Code) of the State of California, as amended.

“Laws” means federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Board having jurisdiction as may be in effect from time to time.

“Lien” means any lien, security interest, pledge or other charge or encumbrance of any kind, or any other type of preferential arrangement, including without limitation the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to Property.

“Low and Moderate Income Housing Fund” means the Low and Moderate Income Housing Fund established with respect to the Merged Area Redevelopment Project all in accordance with Sections 33334.2 et seq. and 33487 of the Law.

“Mandatory Purchase Date” means [\_\_\_\_\_], 2013, or such later date agreed to by the Bank and the Agency in accordance with the terms of Section 8.6 hereof.

“Margin Stock” has the meaning assigned to such term in Regulation U promulgated by the Board of Directors of the Federal Reserve System, as now and hereafter from time to time in effect.

“Material Adverse Effect” means an event or occurrence which adversely affects in a material manner (a) the Housing Set-Aside Amounts or Subordinate Housing Set-Aside Amounts or the business or operations of the Agency in a manner that could impact such Amounts, (b) the taxable value of property in the Project Area, the assessment, collection or allocation to the Agency of property taxes, or the amount of Tax Increment Revenues, or (c) the ability of the Agency to meet or perform its obligations under any of this Agreement, the other Bond Documents, the Senior Lien Fiscal Agent Agreement or the Cooperation Agreement on a timely basis.

“Material Indebtedness” means any Indebtedness of the Agency which has a principal amount outstanding of not less than \$100,000 (or, in the case of any Interest Rate Protection Agreement, has an exposure of not less than \$100,000). For purposes hereof, the “exposure” under an Interest Rate Protection Agreement to which the Agency is a party shall be determined at such time in accordance with the standard methods of calculating such exposure under similar arrangements as prescribed from time to time by the Bank, taking into account the respective termination provisions set forth therein, the notional principal amount and term thereof.

“Material Litigation” has the meaning assigned to such term in Section 4.5(a) of this Agreement.

“Matters Contested in Good Faith” means the imposition of charges, assessments, taxes or other payments, the application of any laws, rules, regulations or policies, or any other matters

(a) then being contested in good faith by appropriate proceedings diligently and continuously pursued, (b) of which the Bank has been notified in writing and is being kept informed in such detail as the Bank may from time to time reasonably request, (c) the enforcement of which is effectively stayed during the period of the contest and (d) with respect to which either (i) adequate reserves in the nature of a cash deposit or pledge of bonds or other securities, or a payment bond of a corporate surety in the face amount equal to the total amount in controversy, reasonably satisfactory to the Bank, have been furnished or (ii) adequate provision therefor, reasonably satisfactory to the Bank, has been reserved on the financial statements of such Agency.

“Maximum Annual Debt Service” means, with respect to Indebtedness, the largest amount of Annual Debt Service during the period from the date of such determination through the final maturity date of such Indebtedness.

“Moody’s” means Moody’s Investors Service, Inc., or any successor thereto.

“Obligations” means all amounts payable by the Agency to the Bank under this Agreement or the Bond Documents, and all other obligations to be performed by the Agency, pursuant to the Bond Documents (including any amounts to reimburse the Bank for any advances or expenditures by it under any of such documents).

"One-Month LIBOR" has the meaning assigned to such term in the Fiscal Agent Agreement.

“Parity Debt” means the Bonds and any Indebtedness, installment sale obligation, lease obligation or other obligation of the Agency having an equal lien and charge upon the Subordinate Housing Set-Aside Amounts and therefore payable on a parity with the Bonds or an obligation of the Agency the regularly scheduled payments of which are payable on a parity with the Bonds.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107-56 (signed into law October 26, 2001).

“Pension Plan” means any “employee pension benefit plan” which is (a) maintained by the Agency or (b) maintained by any other Person and to which the Agency contributes (or permits any other Person to contribute) or has an obligation to contribute, or has made contributions at any time during the immediately preceding six (6) plan years and which contributions can under applicable law be paid from Housing Set-Aside Amounts or Subordinate Housing Set-Aside Amounts.

“Permitted Liens” means, with respect to the Housing Set-Aside Amounts and the Subordinate Housing Set-Aside Amounts, respectively, Liens in favor of the Senior Lien Fiscal Agent and Fiscal Agent, respectively, for the benefit of holders of Senior Obligations and for the benefit of Holders of Parity Debt, respectively, established pursuant to and in accordance with the Senior Lien Fiscal Agent Agreement and the Fiscal Agent Agreement, respectively.

“Person” means an individual, partnership, corporation (including a business trust),

limited liability company, trust, unincorporated association, joint venture, governmental unit or other entity.

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

"Project" means housing projects, programs or loans that increase or improve the supply of low and moderate income housing in the City of San Jose and are permitted under the Law.

"Project Area" has the meaning assigned to such term in the Fiscal Agent Agreement.

"Property" means the real and personal property of the Agency wherever located.

“Proposal” means the Proposal, direct Purchase of Taxable Index Rate Bonds to: Redevelopment Agency of the City of San Jose from the Bank dated March 2, 2010.

“Purchase Price” means, with respect to the Bonds, the aggregate principal amount of, plus all accrued interest on, all outstanding Bonds.

“Rating Agency” means S&P, Moody’s and Fitch.

“Redevelopment Plans” has the meaning assigned to such term in the Fiscal Agent Agreement.

“S&P” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

“Senior Lien Fiscal Agent Agreement” has the meaning assigned to that term in the Fiscal Agent Agreement.

“Senior Obligations” means the Bonds and Parity Obligations outstanding under the Senior Lien Fiscal Agreement (as such terms are defined therein).

“Senior Obligations Rating” shall mean each long-term rating by S&P, Moody’s or Fitch on the Senior Obligations or on any other Indebtedness of the Agency which is secured on a parity with the Senior Obligations by a Lien on all or any portion of the Housing Set-Aside Amounts, without regard to any third-party credit enhancement of any such Indebtedness; and, in the event that (i) any of S&P, Moody’s or Fitch assigns more than one rating to any such Indebtedness or (ii) the ratings assigned by S&P, Moody’s and Fitch, as applicable, to such

Indebtedness differ, Senior Obligations Rating means the lowest such rating assigned by any such Rating Agency.

“State” means the State of California.

“Subordinate Housing Set-Aside Amounts” means (i) prior to the discharge of the Senior Obligations in accordance with the Senior Lien Fiscal Agent Agreement, all Housing Set-Aside Amounts which are permitted to be released from the lien of and/or the Housing Special Fund established by the Senior Lien Fiscal Agent Agreement, (ii) following the discharge of the Senior Obligations in accordance with the Senior Lien Fiscal Agent Agreement, all Housing Set-Aside Amounts and all interest, profits and other income received from the investment of Housing Set-Aside Amounts and, (iii) all interest, profits and other income received from the investment of amounts held by the Fiscal Agent under the Fiscal Agent Agreement.

"Subordinate Housing Set-Aside Special Fund" has the meaning assigned to such term in the Fiscal Agent Agreement.

“Subsidiary” means any corporation, partnership or association (a) of which more than fifty percent (50%) of the outstanding voting power of such entity is at the time directly or indirectly held by the Agency and one (1) or more other Subsidiaries, or by one (1) or more other Subsidiaries or (b) of which a majority of the directors or members of its governing body are subject to election or appointment by the Agency and one (1) or more other Subsidiaries, or by one (1) or more other Subsidiaries.

“Swap” has the meaning ascribed to such term in Section 5.26 of this Agreement.

“Tax Increment Revenues” has the meaning assigned to that term in the Fiscal Agent Agreement.

“UCC” means the Uniform Commercial Code.

"Unfunded Pension Liability" means the excess of a Pension Plan’s benefit liabilities over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan for the applicable plan year.

**Section 1.2. Computation of Time Periods.** In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.”

**Section 1.3. Construction.** Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. The word “including” shall be deemed to mean “including but not limited to,” and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The section headings contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation

thereof in any respect. Section, subsection and exhibit references are to this Agreement unless otherwise specified.

**Section 1.4. Incorporation of Certain Definitions by Reference.** Any capitalized term used herein and not otherwise defined herein shall have the meaning provided therefor in the Fiscal Agent Agreement.

**Section 1.5. Accounting Terms and Determinations.** Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with Generally Accepted Accounting Principles. In the event of changes to Generally Accepted Accounting Principles which become effective after the Closing Date, the Agency and the Bank agree to negotiate in good faith appropriate revisions of this Agreement so as to perpetuate the meaning and effect of such provisions as originally negotiated and agreed upon.

**Section 1.6. Relation to Other Documents; Acknowledgment of Different Provisions of Bond Documents; Incorporation by Reference.** (a) Nothing in this Agreement shall be deemed to amend, or relieve the Agency of its obligations under, any Bond Document to which it is a party. Conversely, to the extent that the provisions of any Bond Document allow the Agency to take certain actions, or not to take certain actions, with regard for example to Permitted Liens, incurrence of Indebtedness, transfers of assets, maintenance of financial ratios and similar matters, the Agency nevertheless shall be fully bound by the provisions of this Agreement.

(b) Except as provided in subsection (c) of this Section 1.6, all references to other documents shall be deemed to include all amendments, modifications and supplements thereto to the extent such amendment, modification or supplement is made in accordance with the provisions of such document and this Agreement.

(c) All provisions of this Agreement making reference to specific sections of any Bond Document shall be deemed to incorporate such sections into this Agreement by reference as though specifically set forth herein (with such changes and modifications as may be herein provided) and shall continue in full force and effect with respect to this Agreement notwithstanding payment of all amounts due under or secured by the Bond Documents, the termination or defeasance thereof or any amendment thereto or any waiver given in connection therewith, so long as this Agreement is in effect and until all Obligations are paid in full. No amendment, modification, consent, waiver or termination with respect to any of such sections shall be effective as to this Agreement until specifically agreed to in writing by the parties hereto with specific reference to this Agreement.

## ARTICLE II

### THE AGENCY'S OBLIGATIONS

**Section 2.1. Payment Obligations.**

(a) The Agency hereby unconditionally, irrevocably and absolutely agrees to make prompt and full payment of all payment obligations owed to the Bank under the Bond Documents and to pay any other Obligations owing to the Bank whether now existing or hereafter arising, irrespective of their nature, whether direct or indirect, absolute or contingent, with interest thereon at the rate or rates provided in such Bond Documents and under such Obligations.

(b)

(i) The Agency shall pay the Purchase Price of the Bonds on the Mandatory Purchase Date; provided, however, if on the Mandatory Purchase Date the conditions set forth in clause (ii) below are satisfied, the Agency shall not be required to pay the Purchase Price for the Bonds on the Mandatory Purchase Date except to the extent of available proceeds from the remarketing of the Bonds. In the event that the conditions in clause (ii) are satisfied on the Mandatory Purchase Date, the available proceeds from the remarketing of the Bonds shall, to the extent available, be applied to pay the Purchase Price for the Bonds and that portion of Bonds for which the Purchase Price cannot be paid from such proceeds shall instead be repaid in accordance with the amortization provisions set forth in Section [ ] of the Fiscal Agent Agreement, such that the Purchase Price of the Bonds shall be paid to the Bank in full on the third anniversary of the Mandatory Purchase Date, subject to the earlier remarketing, repayment, acceleration, prepayment or redemption of the Bonds.

(ii) The Purchase Price of the Bonds is due and payable in full on the Mandatory Purchase Date unless on such date the following conditions are satisfied: (A) no Default shall have occurred and be continuing and (B) the Agency shall be deemed to have made on and as of such date each of the representations and warranties of the Agency made in this Agreement and in any certificate or document delivered in connection with this Agreement and each such representation and warranty shall continue to be accurate and complete in all material respects on and as of such date.

(c) The Agency shall pay within thirty (30) days after demand:

(i) if an Event of Default shall have occurred, all reasonable costs and expenses of the Bank in connection with the enforcement (whether by means of legal proceedings or otherwise) of any of its rights under this Agreement, the other Bond Documents and such other documents which may be delivered in connection therewith;

(ii) a fee for each amendment of any Bond Document, consent by the Bank or waiver by the Bank under any Bond Document, in each case in a minimum amount of \$2,500;

(iii) the reasonable fees and out-of-pocket expenses for counsel or other reasonably required consultants to the Bank in connection with advising the Bank as to its rights and responsibilities under this Agreement and the other Bond Documents or in connection with responding to requests from the Agency for approvals, consents and waivers;

(iv) any amounts advanced by or on behalf of the Bank to the extent required to cure any Default, Event of Default or event of nonperformance hereunder or any Bond Document, together with interest at the Default Rate; and

(v) all reasonable fees, costs and expenses of any consultants providing services to the Agency or the Bank in accordance with this Agreement.

In addition, if at any time any Governmental Board shall require revenue or other documentary stamps or any other tax in connection with the execution or delivery of this Agreement or other Bond Documents, then, if the Agency lawfully may pay for such stamps, taxes or fees, the Agency shall pay, when due and payable, for all such stamps, taxes and fees, including interest and penalties thereon, and the Agency agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay of Agency in paying, or omission of Agency to pay, such stamps, taxes and fees hereunder.

(d) The Bonds are special limited obligations of the Agency and are payable, as to interest thereon and principal thereof, exclusively from Subordinate Housing Set-Aside Amounts, and the Agency is not obligated to pay them except from Subordinate Housing Set-Aside Amounts. Notwithstanding anything in this Agreement, the Agency shall not be required to pay or advance any moneys derived from any source other than the Subordinate Housing Set-Aside Amounts for the payment of the principal of or interest (and premium, if any) on the Bonds, or for any other purpose of this Agreement. Nevertheless, the Agency may advance, but shall not be required under any circumstances whatsoever, for any of the purposes hereof, any funds of the Agency which may be made available to it for such purposes. The Bonds are not a debt of the City, the State of California or any of its political subdivisions, and neither said City, said State nor any of its political subdivisions is liable therefor, nor in any event shall the Bonds be payable out of any funds or properties other than those of the Agency pledged therefor as provided in the Fiscal Agent Agreement. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory limitation or restriction.

**Section 2.2. Increased Payments; Certain Provisions Relating to Interest.**

(a) In addition to other amounts payable by the Agency to the Bank under the Bond Documents, the Agency also shall indemnify the Bank against the Bank's loss or expense as a consequence of any prepayment of all or any part of the Bonds on a day other than an Index Rate Reset Date ("Breakage Expense"). The amount of such Breakage Expense shall be determined by the Bank and absent manifest error shall be conclusive and binding upon the Agency.

(b) Upon the occurrence of an Event of Default, interest shall accrue on the Obligations at the Default Rate and shall be payable by the Agency to the Bank upon demand therefor.

(c)

(i) If the amount of interest payable for any period in accordance with the terms hereof or the Bonds exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the maximum interest rate permitted by applicable law, then interest for such period shall be payable in an amount calculated at the maximum interest rate permitted by applicable Laws.

(ii) Any interest that would have been due and payable for any period but for the operation of the immediately preceding subclause (i) shall accrue and be payable as provided in this subclause (ii) and shall, less interest actually paid to the Bank for such period, constitute the “Excess Interest Amount.” If there is any accrued and unpaid Excess Interest Amount as of any date, then the principal amount with respect to which interest is payable shall bear interest at the maximum interest rate permitted by applicable law until payment to the Bank of the entire Excess Interest Amount.

(iii) Notwithstanding the foregoing, on the date on which no principal amount hereunder remains unpaid, the Agency shall, to the extent possible without violating applicable Laws, pay to the Bank a fee equal to any accrued and unpaid Excess Interest Amount.

**Section 2.3. Obligations Absolute.** The payment obligations of the Agency under this Agreement to pay the Bonds and all other amounts owing hereunder or under the Fiscal Agent Agreement to the Bank out of the Subordinate Housing Set-Aside Amounts shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

(a) any lack of validity or enforceability of this Agreement or any provision hereof, the Bonds or any of the other Bond Documents;

(b) any amendment or waiver of or any consent to departure from all or any of the Bond Documents;

(c) the existence of any claim, set-off, defense or other right which the Agency may have at any time against the Bank or any other person or entity, whether in connection with this Agreement, the other Bond Documents, the transactions contemplated herein or therein or any unrelated transaction; or

(d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Notwithstanding this Section, the Bank acknowledges the Agency may have the right to bring a collateral action with respect to one or more of the foregoing circumstances. The Agency’s payment obligations shall remain in full force and effect pending the final disposition of any such action. All fees payable pursuant to this Agreement shall be deemed to be fully earned when due and non-refundable when paid.

## ARTICLE III

### CONDITIONS PRECEDENT TO PURCHASE OF BONDS

**Section 3.1. Documentary Requirements.** The obligation of the Bank to purchase the Bonds is subject to the conditions precedent that the Bank shall have received, on or before the Closing Date, the items listed below in this Section, each dated and in form and substance as is satisfactory to the Bank.

(a) The following Agency organizational documents:

(1) Copies of the resolutions of the Governing Body of the Agency approving the execution and delivery of the Bond Documents to which the Agency is a party, approving the form of the Bond Documents to which it is not a party and the other matters contemplated hereby, certified by said Governing Body as being true and complete and in full force and effect on the Closing Date.

(2) A certificate of the Governing Body of the Agency certifying that the organizational documents of the Agency are in full force and effect as of and on the Closing Date, along with the audited annual financial statements for the Agency for its most recently ended Fiscal Year together with internally prepared financial statements of the Agency for the fiscal quarter(s) ended since the end of such Fiscal Year.

(3) A certificate by the Governing Body of the Agency certifying the names and signatures of the persons authorized to sign, on behalf of the Agency, the Bond Documents to which it is a party and the other documents to be delivered by it hereunder or thereunder.

(4) Copies of all Interest Rate Protection Agreements to which the Agency is a party.

(b) The following financing documents:

(1) An executed original of each of the Bond Documents;

(2) The Bond; and

(c) The following opinions, addressed to the Bank or on which the Bank is otherwise expressly authorized to rely:

(1) From counsel to the Agency, as to the due authorization, execution and delivery of the Bond Documents, their validity, binding effect and enforceability and such other customary matters as the Bank may reasonably request;

(2) From Bond Counsel to the Agency, in customary form, as to the validity of the Bonds, the creation and validity of the lien upon the Subordinate

Housing Set-Aside Amounts and such other customary matters as the Bank may reasonably request; and

(3) Each other opinion delivered by any Person pursuant to the Bond Documents.

(d) The Bank shall be paid a closing fee of \$[93,000] and fees and expenses of the Bank's counsel in the amount of \$[\_\_\_\_\_];

(e) Originals or certified copies of all approvals, authorizations, permits, licenses, or consents of, or notices to or filings or registrations with, any Governmental Board required by the Agency to execute, deliver or perform this Agreement or any of the other Bond Documents to which the Agency is a party;

(f) a certificate signed by a principal officer of the Agency, stating that the Agency is in compliance as of the Closing Date with all of the terms, provisions and conditions of each financial covenant and any other material provision of any Contract entered into in connection with any Indebtedness; and

(g) Such other instruments, documents and opinions as the Bank shall reasonably require to evidence and secure the Obligations and to comply with the provisions of the Proposal, this Agreement and the other Bond Documents and the requirements of any Governmental Board to which the Bank or the Agency is subject.

**Section 3.2. Credit Requirements.** The Bank shall have determined, in its sole discretion, based in part upon the information and reports submitted by the Agency, that

(a) the Agency has met, prior to the Closing Date, the Bank's credit requirements;

(b) on and as of the Closing Date, there is no pending legislation, decision or other matter described in Section 4.5(b) of this Agreement which might adversely affect the consummation of the transactions contemplated hereby or by the Bond Documents;

(c) on and as of the Closing Date, the Senior Obligations Rating shall be not less than "A" in the case of S&P (and the equivalent in the case of Fitch) and A2 in the case of Moody's;

(d) on and as of the Closing Date, all requirements and preconditions to the issuance, execution, delivery and purchase of the Bonds shall have been satisfied and the Agency shall execute and deliver the Bonds to the Fiscal Agent who shall authenticate and deliver the Bonds to the Bank; and

(e) on and as of the Closing Date (i) each representation and warranty on the part of the Agency contained in this Agreement or any other Bond Document is true and correct as though made on and as of such date, (ii) no Default or Event of Default has occurred and is continuing or would result from the execution or performance of this

Agreement or the Bond Documents, and (iii) no petition by or against the Agency has at any time been filed under the United States Bankruptcy Code or under any similar law.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

**Section 4.1. Existence and Power; Tax Status.** The Agency is a public body, corporate and politic, duly organized and existing under the laws of the State and has the power and authority to own its properties and to carry on its businesses as now being conducted and as currently contemplated to be conducted hereafter and is duly qualified to do business in each jurisdiction in which the character of the properties owned or leased by it or in which the transactions of any material portion of its business (as now conducted and as currently contemplated to be conducted) makes such qualification necessary.

**Section 4.2. Due Authorization.**

(a) The Agency has the power, and has taken all necessary corporate action to authorize the Bond Documents to which it is a party, to borrow hereunder and to execute, deliver and perform its obligations under this Agreement and each of the Bonds Documents to which it is a party in accordance with their respective terms.

(b) The Agency is duly authorized and licensed to own its property (real, personal or mixed) and to operate its business under the laws, rulings, regulations and ordinances of all federal, state and local governing bodies having the jurisdiction to license or regulate such property or business activity and the departments, agencies and political subdivisions thereof, and the Agency has obtained all requisite approvals of all such governing bodies required to be obtained for such purposes. All authorizations and approvals necessary for the Agency to enter into this Agreement and the other Bond Documents and to perform the transactions contemplated hereby and thereby and to conduct its business activities and own its property have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. No other authorization or approval or other action by, and no notice to or filing with, any Governmental Board is required for the due execution, delivery and performance by the Agency of this Agreement or the due execution, delivery or performance by the Agency of the Bond Documents.

(c) The Agency is duly authorized under the Law to (i) delegate to the City, under and in the manner described in the Cooperation Agreement, the Agency's obligations and authority to administer and implement the 20% Housing Program (as defined in the Cooperation Agreement) and (ii) transfer to the City the Housing Set-Aside Amounts to be held in the Low and Moderate Income Housing Fund.

**Section 4.3. Valid and Binding Obligations.** This Agreement has been duly executed and delivered by one or more duly authorized officers of the Agency and is, and each of the Bond Documents to which the Agency is a party, when executed and delivered by the Agency will be, a legal, valid and binding obligation of the Agency enforceable in accordance with its

terms, except as such enforceability may be limited by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Section 4.4. Noncontravention; Compliance with Law.**

(a) The execution, delivery and performance of this Agreement and each of the Bond Documents in accordance with their respective terms do not and will not and the performance of the Cooperation Agreement does not and will not (a) contravene the Agency's Redevelopment Plans, (b) require any consent or approval of any creditor of the Agency, (c) violate any Governmental Requirements, (d) conflict with, result in a breach of or constitute a default under any contract to which the Agency is a party or by which it or any of its Property may be bound or (e) result in or require the creation or imposition of any Lien upon or with respect to any Property now owned or hereafter acquired by the Agency or any Affiliate thereof except such Liens, if any, expressly created by any Bond Document.

(b) The Agency is in compliance with all Governmental Requirements, except for noncompliance that, singly or in the aggregate, has not caused and could not reasonably be expected to cause a Material Adverse Effect on this Agreement or an adverse effect on the Agency's ability to perform its obligations hereunder and under the Bond Documents.

**Section 4.5. Pending Litigation and Other Proceedings; Pending Legislation and Decisions.**

(a) There are no actions, suits or proceedings pending nor are there any actions, suits or proceedings threatened against the Agency or any of its Affiliates or any Property of the Agency or any such Affiliate in any court or before any arbitrator of any kind or before or by any governmental or non-governmental body, which, in any case, may have a Material Adverse Effect or which seeks to restrain or would otherwise have a Material Adverse Effect on the transactions contemplated hereby or by the Bond Documents (any of the foregoing being described as "Material Litigation").

(b) There is no amendment, or to the knowledge of the Agency, proposed amendment to the Constitution of the State or any State law or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, the effect of which will materially adversely affect the issuance of any of the Bonds, the security for any of the Bonds or the Agency's obligations hereunder or under any of the Bond Documents, or the Agency's ability to repay when due its obligations under this Agreement, any of the Bonds or the other Bond Documents.

**Section 4.6. Financial Statements.** The balance sheet of the Agency as of June 30, 2009, and the related statement of revenues and expenses and changes in financial position for the year then ended and the auditors' reports with respect thereto, copies of which have

heretofore been furnished to the Bank, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the Agency at such dates and for such periods, and were prepared in accordance with Generally Accepted Accounting Principles. Since the period of such statements, there has been no (i) change which would have a Material Adverse Effect and (ii) no material increase in the Indebtedness of the Agency.

**Section 4.7. Pension Plans.** (a) To the best knowledge of the Agency, (i) each Pension Plan is in compliance in all material respects with the applicable provisions of the Code and other federal or state law; (ii) there are no pending or threatened claims, actions or lawsuits, or action by any Governmental Board, with respect to any Pension Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect; and there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Pension Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect; and (iii) each Pension Plan is a governmental plan as defined in Section 3(32) of ERISA.

(b) No Housing Set-Aside Amounts or Subordinate Housing Set-Aside Amounts are expended or paid in connection with any Pension Plan maintained by the Agency and the aggregate of such Housing Amounts expended or paid in connection with any other Pension Plan do not exceed \$[1,000,000] in any Fiscal Year.

**Section 4.8. Defaults.**

(a) No Event of Default and no Default has occurred and is continuing or exists.

(b) No defaults by the Agency or any of its Affiliates exist under any Contracts or judgments, decrees or orders, except for defaults that, singly or in the aggregate, have not had and will not have a Material Adverse Effect.

**Section 4.9. No Material Adverse Change.** Since June 30, 2009:

(a) There has been no change in the assets, liabilities, financial position or results of operations of the Agency which might reasonably be anticipated to cause a Material Adverse Effect.

(b) The Agency has not incurred any obligations or liabilities which might reasonably be anticipated to cause a Material Adverse Effect.

(c) The Agency has not (i) incurred any Material Indebtedness, other than the Obligations, Indebtedness to the Bank and other than trade accounts payable arising in the ordinary course of Agency's business, or (ii) guaranteed the obligations of any other Person.

**Section 4.10. No Liens; Insurance.**

(a) The Housing Set-Aside Amounts and the Subordinate Housing Set-Aside Amounts, respectively, have been irrevocably pledged, and allocated to and paid into one or more special funds of the Agency to secure the Senior Obligations and the Parity Debt,

respectively, all as provided by the Law, and are subject to no Lien except Permitted Liens.

(b) The Agency currently maintains insurance of such type and in such amounts or in excess of such amounts as are customarily carried by, and insures against such risks as are customarily insured against by, businesses of like type, size and character to the Agency.

**Section 4.11. Incorporation by Reference.** The representations and warranties of the Agency contained in the other Bond Documents to which the Agency is a party, together with the related definitions of terms contained therein, are hereby incorporated by reference in this Agreement as if each and every such representation and warranty and definition were set forth herein in its entirety, and the representations and warranties made by the Agency in such sections are hereby made for the benefit of the Bank. No amendment to or waiver of such representations and warranties or definitions made pursuant to the relevant Bond Document or incorporated by reference shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Bank.

**Section 4.12. Representations as of the Closing Date.** The representations and warranties of the Agency contained in this Article and in the other Bond Documents to which the Agency is a party are correct on and as of the Closing Date as though made on and as of such date; no petition by or against such Agency has at any time been filed under the United States Bankruptcy Code or under any similar act; no Event of Default or Default has occurred and is continuing or would result from the execution of this Agreement, or the other Bond Documents to which such Agency is a party; the Agency has complied with all agreements and covenants and satisfied all conditions stated in this Agreement on its part to be performed or satisfied at or prior to the date hereof; and since the date of the Proposal there has been no event which has caused or might reasonably be anticipated to cause a Material Adverse Effect.

**Section 4.13. Accuracy of Information.** All information, reports and other papers and data with respect to the Agency furnished to the Bank are correct in all material respects as of their date. No fact is known to the Agency which, in the Agency's judgment may have a Material Adverse Effect which has not been set forth in the financial statements previously furnished to the Bank or in other such information, reports, papers and data or otherwise disclosed in writing to the Bank prior to the Closing Date. No document furnished or other written statement made to the Bank in connection with the negotiation, preparation or execution of this Agreement or the other Bond Documents contains any misstatement or omission material to the creditworthiness of the Agency.

**Section 4.14. Reliance by the Bank.** All representations and warranties made herein to the Bank or incorporated hereby for the benefit of the Bank are made with the understanding that the Bank is relying upon the accuracy of such representations and warranties. Notwithstanding that the Bank may conduct its own investigation as to some or all of the matters covered by the representations and warranties in the Bond Documents, and any certificates, information, opinions or documents delivered in connection therewith, the Bank is entitled to rely on all representations and warranties as a material inducement to the Bank's extension of the credit evidenced by the Bond Documents.

**Section 4.15. Non-Controlled Person.** Neither the Agency nor any of its Affiliates is an “investment company” or a company “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended.

## ARTICLE V

### AFFIRMATIVE AND NEGATIVE COVENANTS OF THE AGENCY

**Section 5.1. Reporting Requirements.** (a) The Agency shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of such Agency in accordance with Generally Accepted Accounting Principles, and will furnish to the Bank, in addition to the items required to be furnished pursuant to Section 5.18(a) and (b), each of the following:

(i) Simultaneously with the delivery of each set of financial statements referred to in Sections 5.15(a) and (b), a certificate signed by a principal financial officer of the Agency, (A) stating that such officer has made a review of activities during the preceding period, for the purpose of determining whether or not the Agency has complied with all of the terms, provisions and conditions of the Bond Documents to which it is a party, (B) containing calculations of the applicable financial covenants (to the extent applicable as of such date) and certified by such officer to be accurate and complete and made in accordance with this Agreement and (C) attesting that, to the best of his/her knowledge, the Agency has kept, observed, performed and fulfilled each and every covenant, provision and condition of such documents on its part to be performed and no Event of Default or Default has occurred, or if an Event of Default or Default has occurred such certificate shall specify such event or condition, the nature and status thereof and any remedial steps taken or proposed to correct such event or condition.

(ii) As soon as available and in any event within forty-five (45) days of the beginning of each Fiscal Year of the Agency, the annual operating budgets of the Agency and of the City of San Jose for such Fiscal Year.

(iii) Promptly upon execution, any amendment, modification or supplement to the Redevelopment Plans or any of the Bond Documents, a true and correct copy of such amendment, modification or supplement.

(b) The Agency shall furnish to the Bank each of the following insofar as any such material relates to or could impact the Housing Set-Aside Amounts or Subordinate Housing Set-Aside Amounts or any financing in connection therewith:

(i) Copies of all filings made by the Agency with EMMA promptly after such filings are made.

(ii) Copies of all Interest Rate Protection Agreements to which the Agency is a party and all documents related thereto promptly following the execution and delivery of such agreements and documents.

(iii) Promptly after the furnishing thereof, any financial statement or report furnished to any trustee, fiscal agent or other holder of any Indebtedness of the Agency, including each modification of the foregoing prepared and delivered to any such Person, and not otherwise required to be furnished to the Bank pursuant to any other clause of this Agreement or the Fiscal Agent Agreement.

(iv) Copies of all material written reports and other material information filed or delivered by the Agency to or with any Governmental Board which has jurisdiction over the affairs of the Agency, which is a creditor of the Agency, or which issues debt on behalf of the Agency, and copies of any reports of governmental audits, inspections or other investigations of the Agency or any of its Property.

(v) Copies of all filings or reports required to be submitted by the Agency to any Rating Agency.

(vi) Any notice required by Section 5.19.

(vii) Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the Agency, as the Bank may from time to time reasonably request.

**Section 5.2. Proceeds of Bonds; Lien on Trust Estate.** The Agency shall use the proceeds of the Bonds solely for the purposes described in the Fiscal Agent Agreement. None of the proceeds of the Bond will be used to provide inventories, raw materials or working capital for the Agency. The Agency shall do or cause the Fiscal Agent to do all things necessary to maintain the Fiscal Agent's perfected liens on the Housing Set-Aside Amounts in accordance with the provisions of the Senior Lien Fiscal Agent Agreement and on the Subordinate Housing Set-Aside Amounts in accordance with the provisions of the Fiscal Agent Agreement.

**Section 5.3. Notices.** The Agency shall provide to the Bank:

(a) Immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default or Default.

(b) As soon as practicable, notice of the occurrence of any event relating to a Pension Plan that could result in a Material Adverse Effect.

(c) Prompt written notice of all actions, suits and proceedings before any court, Governmental Board or other governmental commission, board, bureau, agency or instrumentality, domestic or foreign, against the Agency which, if adversely determined, could have a Material Adverse Effect.

(d) Prompt written notice of any Material Litigation or any investigation, inquiry or similar proceeding by any Governmental Board with respect to any matter that relates to or could impact any of the Housing Set-Aside Amounts, the Low and Moderate Income Housing Fund or the Housing Special Fund.

(e) Prompt written notice of any event which has or is reasonably anticipated to have a Material Adverse Effect.

(f) A copy of any notice, certification, demand or other writing or communication given by the Agency or received by the Agency under or in connection with any Bond Document, in each case promptly after the receipt or giving of the same.

**Section 5.4. Insurance.** The Agency will at all times maintain insurance with respect to its business operations and properties against such risks, in such amounts, with such companies and with such deductibles as is customary for business operations and properties of like size, location and character to those of the Agency.

**Section 5.5. Payment of Taxes; Removal of Liens; Related Obligations.**

(a) The Agency shall pay (i) all Indebtedness and obligations of the Agency in accordance with the terms thereof and (ii) all assessments or other governmental charges as the same respectively become due, all taxes and payments in lieu of taxes, assessments (general or special) and governmental charges of any kind whatsoever that may be at any time lawfully assessed or levied against or with respect to the Agency or its Property or any interest therein and discharge or cause to be discharged all Liens, other than Permitted Liens, subject in each case to the right of the Agency to contest the same as Matters Contested in Good Faith.

(b) The Agency shall promptly pay all amounts payable by it hereunder, and under the other Bond Documents according to the terms hereof and thereof and shall duly perform each of its obligations under the Bond Documents to which it is a party; which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety without giving effect to any expiration, amendment, supplement or termination of the Bond Documents to which the Bank has not given its express written consent.

**Section 5.6. Access to Offices.** The Agency shall permit the duly authorized representatives of the Bank, during the Agency's normal administrative business hours, to enter the Agency's offices or any parts thereof, to examine and copy the Agency's financial and corporate books, records and accounts and to discuss the affairs, finances, business and accounts of the Agency with the Agency's officers, directors and employees. Except during the existence and continuance of a Default or Event of Default, the representatives of the Bank shall provide reasonable advance notice of such access to the Agency.

**Section 5.7. Licensure; Further Assurances.**

(a) The Agency continuously shall maintain all licenses and approvals of Governmental Boards required for operation of its business as currently and as contemplated to be operated.

(b) The Agency shall, upon the request of the Bank, from time to time, execute and deliver and, if necessary, file, register and record such further financing

statements, amendments, continuation statements and other documents and instruments and take such further action as may be reasonably necessary to effect the provisions of this Agreement, and the other Bond Documents. Except to the extent it is exempt therefrom, the Agency shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Agreement, the Bond Documents and such instruments of further assurance.

**Section 5.8. Pension Plans.** The Agency will not (i) maintain or adopt, or commence any contributions to, any Pension Plan for which, or in connection with which, any Housing Set-Aside Amounts or Subordinate Housing Set-Aside Amounts could be expended or paid or (ii) permit the amount of Housing Set-Aside Amounts or Subordinate Housing Set-Aside Amounts expended or paid as contributions to any Pension Plan [materially] to increase in any Fiscal Year.

**Section 5.9. Compliance with Laws.** The Agency shall comply in all material respects with all applicable Laws. The Agency shall comply with the requirements of the Law and shall cause the City to comply with the requirements of the Law, in each case including with respect to the use and expenditure of Housing Set-Aside Amounts or Subordinate Housing Set-Aside Amounts.

**Section 5.10. Compliance with Other Agreements.** The Agency shall comply in all material respects with the terms and conditions of the Bond Documents, the Senior Lien Fiscal Agent Agreement and the Cooperation Agreement, respectively, and all other instruments, agreements and other documents delivered by or on behalf of the Agency in connection with issuance of the Bonds. The Agency shall (i) cause the Fiscal Agent and the Senior Lien Fiscal Agent, respectively, at all times to comply with the terms of the Fiscal Agent Agreement and the Senior Lien Fiscal Agent Agreement, respectively, and (ii) ensure that the City complies with the terms of the Cooperation Agreement, including by ensuring that the City performs all obligations and authority of the Agency which is delegated to or conferred upon the City under the Cooperation Agreement.

**Section 5.11. Transfer, Merger or Change of Business.** Without the prior written consent of the Bank, the Agency shall not dissolve itself or sell, lease, assign, transfer or otherwise dispose of all or substantially all of its property or consolidate with or merge into any other Person (other than into other entities Controlled by the Agency), or make any other material change in ownership that effectively changes control of the Agency, or change the primary activities in which it engages, or engage in any other transaction that could reasonably be expected to have a Material Adverse Effect.

**Section 5.12. Amendments.** The Agency shall not amend, modify or supplement any of the Bond Documents, the Senior Lien Fiscal Agent Agreement or the Cooperation Agreement without the prior written consent of the Bank.

**Section 5.13. Accounting Methods and Fiscal Year.** The Agency shall not adopt, permit or consent to any change in its method of accounting, other than as permitted or required

by Generally Accepted Accounting Principles (except as disclosed in the audit and approved by the Bank) and shall not adopt, permit or consent to any change in its established Fiscal Year.

**Section 5.14. Successor Fiscal Agent, etc.** Without the prior written consent of the Bank (which consent shall be deemed given with respect to any Bank Affiliate and shall not be unreasonably withheld, conditioned or delayed), the Agency shall not agree to any successor Fiscal Agent or to the appointment of a co-Fiscal Agent, Paying Agent, tender agent, authenticating agent or Registrar under the Fiscal Agent Agreement.

**Section 5.15. Financial Reporting; Financial Covenants.** At all times, the Agency shall comply with the following:

(a) *Annual Audited Financial Statements.* The Agency shall furnish to the Bank, as soon as available, and in any event within 180 days after the close of each Fiscal Year of the Agency: financial statements of the Agency and the City of San Jose, each of which shall be audited and reported on without qualification by independent certified public accountants reasonably acceptable to the Bank in accordance with GAAP (applied on a basis consistent with that of the preceding year), and shall fairly present the financial condition of the Agency as at the end of such Fiscal Year and reflect its operations during such Fiscal Year, including, without limitation, balance sheets, profit and loss statements and statements of cash flows, together with notes and supporting schedules, all on a consolidated and consolidating basis and in reasonable detail, and including a copy of any management letter or audit report provided to the Agency by such auditors.

(b) *Quarterly Reporting.* The Agency shall furnish to the Bank, within forty-five (45) days after the end of each fiscal quarterly period of each Fiscal Year of the Agency a City of San Jose Housing Department Sources and Uses of Funds Statement for the Low and Moderate Income Housing Fund.

(c) *Debt Service Coverage Ratio.* The Agency shall, as of the end of each Fiscal Year, maintain a Debt Service Coverage Ratio of not less than 1.25 to 1.0. [Exhibit B provides an example of the foregoing calculation as of June 30, 2009.]

**Section 5.16. Judgments; Liens.** The Agency shall not permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment, attachment or execution (i) against any Housing Set-Aside Amounts, Subordinate Housing Set-Aside Amounts or other funds or investments on deposit in, or otherwise to the credit of, any of the Housing Special Fund, the Subordinate Housing Set-Aside Special Fund or the Low and Moderate Income Housing Fund or any funds or accounts established under the Bond Documents, or (ii) otherwise against the Agency and that could reasonably be expected to have a Material Adverse Effect, that in any such case is not discharged or stayed within 30 days of entry.

**Section 5.17. Redemption, etc.**

(a) The Agency may exercise its option under Section [\_\_\_\_] of the Fiscal Agent Agreement to cause the conversion of the Bonds on any Interest Payment Date occurring prior to the Mandatory Purchase Date and the payment to the Bank of 100% of

the principal amount of the Bonds plus accrued interest to the conversion date by giving or causing the Fiscal Agent to give thirty (30) days' prior written notice to the Bank and complying with the provisions of the Fiscal Agent Agreement applicable thereto.

(b) The Agency may exercise its option under Section [\_\_\_\_] of the Fiscal Agent Agreement to cause the redemption of the Bonds on any Interest Payment Date occurring prior to the Mandatory Purchase Date at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date by giving or causing the Fiscal Agent to give thirty (30) days' prior written notice to the Bank and complying with the provisions of the Fiscal Agent Agreement applicable thereto.

(c) The Agency promptly shall notify the Bank of the amount of any redemption of any Bonds, together with the date of each such redemption.

**Section 5.18. Other Defaults.** The Agency shall not default on any material contract with or obligation when due to a third party, default under which could reasonably be expected to have a Material Adverse Effect, unless such default is cured within any grace period applicable to such contract or obligation.

**Section 5.19. Most Favored Covenant.** In the event that the Agency or any Subsidiary or Affiliate thereof shall, directly or indirectly, enter into or otherwise consent to any Contract (or any amendment, supplement or modification thereto) under which, directly or indirectly, any Person or Persons undertakes to make or provide credit or loans to the Agency, any such Subsidiary or Affiliate, under which the Agency issues or incurs or could issue or incur Indebtedness, which agreement or instrument (or amendment, supplement or modification) provides such Person or Persons with more additional or restrictive covenants, additional or different events of default and/or greater rights or the remedies related thereto than are provided to the Bank in this Agreement, the Agency shall provide the Bank with a copy of each such agreement (or amendment, supplement or modification) within thirty (30) days of any such agreements or instruments and, in any event, such additional or more restrictive covenants, such additional or different events of default and/or greater rights and remedies shall, unless otherwise stipulated by the Bank, automatically be deemed to be incorporated into this Agreement, and the Bank shall have the benefits of such additional more restrictive covenants, additional or more restrictive events of default and/or such greater rights and remedies as if specifically set forth herein for so long as any such agreement or instrument that provides for such additional or more restrictive covenants, such additional or different events of default and/or such greater rights and remedies remain in effect. Upon the request of the Bank, the Agency shall promptly enter into an amendment to this Agreement to incorporate herein and make a part hereof such additional or more restrictive covenants, additional or different events of default and/or greater rights.

**Section 5.20. Time is of the Essence.** In all matters pertaining to this Agreement, time is of the essence.

**Section 5.21. Hedging.** The Agency shall not enter into any Interest Rate Protection Agreement in connection with the Bonds without the prior written consent of the Bank if any termination amounts or regularly scheduled payments under such Interest Rate Protection Agreement payable thereunder would be payable on parity with or senior to any amounts

required to be paid to the Bank pursuant to this Agreement, the Fiscal Agent Agreement or the Bonds.

**Section 5.22. Federal Reserve Board Regulations.** The Agency shall not use any portion of the proceeds of the Bonds for the purpose of carrying or purchasing any Margin Stock and has not incurred any Indebtedness to be reduced, retired or purchased by the Agency out of such proceeds, and the Agency does not own and has no intention of acquiring any Margin Stock (including the Disclosure Document).

**Section 5.23. Certain Information.** The Agency shall not include in any offering document for the Bonds any information concerning the Bank that is not supplied in writing, or otherwise approved, by the bank expressly for inclusion therein, except for a general description of the Bonds, the Bond Documents and this Agreement.

**Section 5.24. Covenants Related to Housing Set-Aside Amounts.**

(a) Prior to the later of (i) the Mandatory Purchase Date and (ii) the date upon which all Obligations of the Agency under the Bond Documents including without limitation all amounts payable to the Bank shall have been paid in full, the Agency shall not suspend collection of, or fail to collect, the Housing Set-Aside Amounts or suspend, reduce or otherwise permit the reduction of the set aside and deposit into the Low and Moderate Income Housing Fund of not less than 20% of all Tax Increment Revenues pursuant to Section 33334.2 *et seq.* and Section 33487 of the Law, or take or fail to take any action having the effect of any of the foregoing.

(b) The Agency will not transfer nor permit the transfer from, nor advance or extend loans of or other credit based on, Housing Set-Aside Amounts, any amounts on deposit in the Low and Moderate Income Housing Fund, earnings therefrom or amounts expected to be deposited therein, to any Governmental Board or other Person without the prior written consent of the Bank; provided, however, that the Agency shall be permitted to loan funds from the Low and Moderate Income Housing Fund for the following limited purpose and in compliance with the following conditions: the Agency may extend the Approved Low and Moderate Income Housing Fund Loan and other amounts in the ordinary course of business, provided that upon and immediately following any disbursement of funds for any such purpose, no Default or Event of Default will exist under this Agreement.

**Section 5.25. Incorporation of Covenants.** The covenants of the Agency set forth in the Fiscal Agent Agreement and each of the other Bond Documents to which the Agency is a party, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety for the benefit of the Bank and shall be enforceable by the Bank against the Agency. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion, report or other instrument or any event or

condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such compliance shall be waived, or such provision shall be consented to, only if it is waived or consented to, as the case may be, by the Bank and such document, opinion, report or other instrument shall be acceptable or satisfactory to the Bank. No amendment to such covenants (or the defined terms relating thereto) made pursuant to the Bond Documents shall be effective to amend such incorporated covenants without the written consent of the Bank. Notwithstanding the termination or expiration of any Bond Document, the Agency shall, unless such Related Document has terminated or expired in accordance with its terms and has been replaced by a new Bond Document, continue to observe the covenants therein contained for the benefit of the Bank until the termination of this Agreement.

**Section 5.26. Additional Indebtedness.**

(a) The Agency may only issue or incur Indebtedness on the terms set forth in subsection (b) of this Section 5.26 and the Agency shall ensure that neither the City nor any other Person shall issue or incur any Indebtedness.

(b) The Agency shall not issue or incur any Indebtedness other than additional Indebtedness issued or incurred for purposes of a Housing Project, and subject to the following specific conditions, which are hereby made conditions precedent to the sale and delivery of additional Indebtedness or the incurrence of any such Indebtedness:

(i) No Event of Default shall have occurred and then be continuing;

(ii) The Agency shall have provided to the Bank a Certificate of the Agency, upon which the Bank may conclusively rely, certifying (on the basis of calculations as of the date of delivery or incurrence of such Indebtedness) that the [Debt Service Coverage Ratio calculated based upon the County’s certified and most recent assessed valuation of property in the Merged Area shall be at least equal to 1.25 times the Maximum Annual Debt Service of (A) all then outstanding Indebtedness plus (B) the Indebtedness then proposed to be issued or incurred]; and

(iii) The Agency shall have complied with all of the requirements of the Fiscal Agent Agreement and the Senior Lien Fiscal Agent Agreement, as applicable, in connection with the issuance or incurrence of such Indebtedness.

[Exhibit B provides an example of the calculation described in clause (b) as of the Closing Date]

**ARTICLE VI**

**EVENTS OF DEFAULT**

**Section 6.1. Events of Default.** The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of law) shall be an “Event of Default” hereunder, unless waived in writing by the Bank:

(a) Any Event of Default with respect to the Bond Documents (other than this Agreement) or the Senior Lien Fiscal Agent Agreement has occurred and is continuing after lapse of any applicable notice and cure periods provided for in such document;

(b) The Agency shall fail to pay any amount payable by the Agency under this Agreement, when the same shall become due and payable;

(c) The Agency shall fail to perform any term, covenant, condition or provision of any of Sections 5.1(a)(i), 5.6, 5.11, 5.12, 5.13, 5.15, 5.19, 5.21, 5.24 or 5.26 of this Agreement;

(d) Failure of the Agency to observe or perform any of the other covenants, conditions or provisions of this Agreement or any other Bond Documents (other than as specified in subparagraphs (a) through (c) above) and to remedy such default within thirty (30) days after the Bank gives the Agency notice of such failure;

(e) Any representation or warranty made or deemed by or on behalf of the Agency herein or in any certificate, financial or other statement furnished by or on behalf of the Agency to the Bank pursuant to or in the Bond Documents shall prove to have been inaccurate, misleading or incomplete in any material respect when made or deemed to have been made;

(f) The Agency shall default in the performance of any of its obligations under any Contracts with the Bank or the Bank's Affiliates, or any of the Agency's Subsidiaries or Affiliates shall default under any Contracts with the Bank or the Bank's Affiliates;

(g) Moody's shall have withdrawn, suspended or downgraded to below "Baa1" (or its equivalent) any Senior Obligations Rating or S&P shall have withdrawn, suspended or downgraded to below "BBB+" (or its equivalent) any Senior Obligations Rating or, if the Agency is rated by Fitch, Fitch shall have withdrawn, suspended or downgraded to below "BBB+" (or its equivalent) any Senior Obligations Rating;

(h) Default by the Agency in the payment of any amount when due in respect of any Indebtedness owed to the Bank or any Bank Affiliate; or default by the Agency in the payment when due of any amount owing in respect of any Material Indebtedness; or default under any Contract under or pursuant to which such Indebtedness is incurred or issued, and continuance of such default beyond the period of grace, if any, allowed with respect thereto; or the occurrence of any act or omission by the Agency under any such Contract which results in such Indebtedness becoming, or being capable of becoming, immediately due and payable (or, with respect to any Interest Rate Protection Agreement, which results in such Interest Rate Protection Agreement being terminated early or being subject to early termination);

(i) The Agency shall apply for or consent to the appointment of, or the taking of possession by, a receiver, trustee, liquidator or custodian or the like of itself or of a substantial part of the Property, admit in writing its inability, or be generally unable, to pay its debts as they become due, make a general assignment for the benefit of creditors,

or commence a voluntary case as a debtor under the federal bankruptcy laws of the United States of America or file a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief as a debtor or seeking to take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or action shall be taken by it for the purpose of effecting any of the foregoing;

(j) If a proceeding shall be instituted, without the application or consent of the Agency, in any court of competent jurisdiction under any law relating to bankruptcy, insolvency, reorganization, dissolution, winding up, liquidation, seeking a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the Agency or of all or any substantial part of any of the Agency's assets, or other like relief in respect thereof under any bankruptcy or insolvency law, and the same shall result in the entry of an order for relief or any such adjudication or appointment, or continue undismissed, or pending and unstayed, for a period of ninety (90) consecutive days;

(k) Any material provision of this Agreement or any of the other Bond Documents shall at any time for any reason cease to be the legal, valid and binding obligation of the Agency or shall cease to be in full force and effect, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the Agency, or the Agency shall renounce the same or deny that it has any further liability hereunder or thereunder;

(l) (i) Any Lien created by the Bond Documents or the Senior Lien Fiscal Agent Agreement in favor of the Fiscal Agent or [Senior Lien] Fiscal Agent, respectively, at any time and for any reason (except as expressly permitted to be released by the terms of such governing document) shall not constitute a valid and perfected Lien or shall fail to have the priority required by Bond Documents or the Senior Lien Fiscal Agent Agreement, respectively, or, except as permitted under the Bond Documents or the Senior Lien Fiscal Agent Agreement, respectively, the Agency shall so assert in writing, or (ii) any rescission of or amendment to or any other action under or in connection with any legislation, law or regulation relating to the Housing Set-Aside Amounts which would (A) reduce the amount of the Housing Set-Aside Amounts or the allocation of the Housing Set-Aside Amounts to the payment of the Bonds or the Obligations or (B) impair or adversely affect (x) the rights of the Agency to any or all of the Housing Set-Aside Amounts or (y) the rights or security of the Fiscal Agent or Senior Lien Fiscal Agent, for the benefit of the Bank or of any other Holder under the Fiscal Agent Agreement or the Senior Lien Fiscal Agent Agreement, respectively;

(m) (i) The entry or filing of one or more judgments or orders or of any similar decrees or decisions for the payment of money (each, a "Judgment") which, individually or in the aggregate, equals or exceeds [\$10,000,000] against the Agency or any other Person and all or any portion of which is payable from any of the Housing Set-Aside Amounts, Subordinate Housing Set-Aside Amounts or other funds or investments on deposit in, or otherwise to the credit of, any of the Housing Special Fund, the Subordinate Housing Set-Aside Special Fund or the Low and Moderate Income Housing Fund or any

funds or accounts established under the Bond Documents, and (x) such Judgment shall be undischarged, unstayed or unbonded (by property other than any of the Housing Set-Aside Amounts or Subordinate Housing Set-Aside Amounts) for a period of 30 consecutive days, or (y) any action shall be taken by a judgment creditor to attach, execute or levy upon all or any portion of the Housing Set-Aside Amounts, Subordinate Housing Set-Aside Amounts or other funds or investments on deposit in, or otherwise to the credit of, any of the Housing Special Fund, Subordinate Housing Set-Aside Special Fund or the Low and Moderate Income Housing Fund or any funds or accounts established under the Bond Documents to enforce any such Judgment; or (ii) the entry or filing of one or more Judgments which, individually or in the aggregate, equals or exceeds [\$3,000,000] against the Agency or any other Person and the payment in any Fiscal Year of an amount equal to or exceeding [\$3,000,000] in connection with one or more such Judgments from any of the Housing Set-Aside Amounts, Subordinate Housing Set-Aside Amounts or other funds or investments on deposit in, or otherwise to the credit of, any of the Housing Special Fund, the Subordinate Housing Set-Aside Special Fund or the Low and Moderate Income Housing Fund or any funds or accounts established under the Bond Documents;

(n) Any court of competent jurisdiction or other Governmental Board with jurisdiction to rule shall declare a moratorium on the payment of any Indebtedness.

(o) Any event which could reasonably be expected to result in a Material Adverse Effect.

**Section 6.2. Consequences of an Event of Default.** If an Event of Default specified in Section 6.1 hereof shall occur and be continuing, the Bank may:

(a) by notice to the Agency, declare the outstanding amount of the Obligations under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue, provided that, if any Event of Default described in Section 6.1(g) or (h) hereof shall occur, the Obligations under this Agreement shall be automatically mature and be due and payable on the date of the occurrence of such Event of Default without presentment, demand, protest, notice of intention to accelerate, notice of acceleration or other notice of any kind to the Agency or any other Person, all of which are hereby expressly waived;

(b) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Bond Documents or to enforce performance or observance of any obligation, agreement or covenant of the Agency under the Bond Documents, whether for specific performance of any agreement or covenant of the Agency or in aid of the execution of any power granted to the Bank in the Bond Documents;

(c) deliver a notice to the Fiscal Agent and the Agency that an Event of Default has occurred and is continuing and directing the Fiscal Agent to accelerate the Bonds;

(d) cure any Default, Event of Default or event of nonperformance hereunder or under any Bond Document; provided, however, that the Bank shall have no obligation to effect such a cure; and

(e) exercise, or cause to be exercised, any and all remedies as it may have under the Bond Documents and as otherwise available at law and at equity.

**Section 6.3. Remedies Cumulative; Solely for the Benefit of Bank.** To the extent permitted by, and subject to the mandatory requirements of, applicable Laws, each and every right, power and remedy herein specifically given to the Bank in the Bond Documents shall be cumulative, concurrent and nonexclusive and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy (whether specifically herein given or otherwise existing) may be exercised from time to time and as often and in such order as may be deemed expedient by the Bank, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy.

The rights and remedies of the Bank specified herein are for the sole and exclusive benefit, use and protection of the Bank, and the Bank is entitled, but shall have no duty or obligation to the Agency, the Fiscal Agent or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Bank hereunder or under any of the other Bond Documents.

**Section 6.4. Waivers or Omissions.** No delay or omission by the Bank in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right remedy or power or be construed to be a waiver of any default on the part of the Bank or to be acquiescence therein. No express or implied waiver by the Bank of any Event of Default shall in any way be a waiver of any future or subsequent Event of Default.

**Section 6.5. Discontinuance of Proceedings.** In case the Bank shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Bond Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Bank shall have the unqualified right so to do and, in such event, the Agency and the Bank shall be restored to their former positions with respect to the Obligations, the Bond Documents and otherwise, and the rights, remedies, recourse and powers of the Bank hereunder shall continue as if the same had never been invoked.

**Section 6.6. Injunctive Relief.** The Agency recognizes that in the event an Event of Default occurs, any remedy of law may prove to be inadequate relief to the Bank; therefore, the Agency agrees that the Bank, if the Bank so requests, shall be entitled to temporary and permanent relief in any such case.

## ARTICLE VII

### INDEMNIFICATION

**Section 7.1. Indemnification.** In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, the Agency hereby agrees (to the extent permitted by law) to indemnify and hold harmless the Bank and its officers, directors, employees and agents and each Bank Participant (each, an “Indemnatee”) from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever (including reasonable attorneys’ fees) which any Indemnatee may incur or which may be claimed against any Indemnatee by any Person or entity whatsoever (collectively, the “Liabilities”) by reason of or in connection with (a) the execution and delivery or transfer of, or payment or failure to pay under, any Bond Document; (b) the issuance and sale of the Bonds; (c) the use of the proceeds of the Bonds and (d) any use or occupancy of any portion of the Project Area (as defined in the Fiscal Agent Agreement) by the Agency or any other Person, including liabilities resulting from or relating to Environmental Laws or Hazardous Substances; provided that the Agency shall not be required to indemnify an Indemnatee for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused the willful misconduct or gross negligence of such Indemnatee. If any proceeding shall be brought or threatened against an Indemnatee by reason of or in connection with the events described in clause (a), (b), (c) or (d) as a condition of indemnity hereunder the Indemnatee shall promptly notify the Agency in writing and the Agency shall assume the defense thereof, including the employment of counsel satisfactory to the Indemnatee and the payment of all reasonable costs of litigation. Notwithstanding the preceding sentence, each Indemnatee shall have the right to employ its own counsel and to determine its own defense of such action in any such case, but the fees and expenses of such counsel shall be at the expense of such Indemnatee unless (i) the employment of such counsel shall have been authorized in writing by the Agency, or (ii) the Agency, after due notice of the action, shall not have employed counsel reasonably satisfactory to the Indemnatee to have charge of such defense, in either of which events the reasonable fees and expenses of counsel for the Indemnatee shall be borne by the Agency. The Agency shall not be liable for any settlement of any such action effected without its consent. Nothing under this Section 7.1 is intended to limit the Agency’s payment of the Obligations.

**Section 7.2. Survival.** The obligations of the Agency under this Article VII shall survive the payment of the Bonds and the termination of this Agreement.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.1. Patriot Act Notice.** The Bank hereby notifies the Agency that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Agency, which information includes the name and address of the Agency and other information that will allow the Bank to identify the Agency in accordance with the Patriot Act. The Agency hereby agrees that it shall promptly provide such information upon request by the Bank.

**Section 8.2. Further Assurances.** From time to time upon the request of either party hereto, the other shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the requesting party may in its reasonable discretion deem necessary or desirable to confirm this Agreement, and the other Bond Documents, to carry out the purpose and intent hereof and thereof or to enable the requesting party to enforce any of its rights hereunder or thereunder.

**Section 8.3. Amendments and Waivers; Enforcement.** The Bank and the Agency may from time to time enter into agreements amending, modifying or supplementing this Agreement or the other Bond Documents or changing the rights of the Bank or the Agency hereunder or thereunder, and the Bank may from time to time grant waivers or consents to a departure from the due performance of the obligations of the Agency hereunder or thereunder. Any such agreement, waiver or consent must be in writing and shall be effective only to the extent specifically set forth in such writing. In the case of any such waiver or consent relating to any provision hereof, any Default or Event of Default so waived or consented to shall be deemed to be cured and not continuing, but no such waiver or consent shall extend to any other or subsequent Default or Event of Default or impair any right consequent thereto.

**Section 8.4. No Implied Waiver; Cumulative Remedies.** No course of dealing and no delay or failure of the Bank in exercising any right, power or privilege under this Agreement or the other Bond Documents shall affect any other or future exercise thereof or exercise of any right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies of the Bank under this Agreement are cumulative and not exclusive of any rights or remedies which the Bank would otherwise have under any Bond Document, at law or in equity.

**Section 8.5. Notices.** All notices, requests, demands, directions and other communications (collectively “notices”) under the provisions of this Agreement shall be in writing (including telexed and facsimile communication), unless otherwise expressly permitted hereunder, and shall be sent by first-class mail or overnight delivery and shall be deemed received as follows: (i) if by first class mail, five (5) days after mailing; (ii) if by overnight delivery, on the next Business Day; (iii) if by telex, when appropriate answer back is received; (iv) if by telephone, when given to a person who confirms such receipt; and (v) if by facsimile, when confirmation of receipt is obtained. All notices shall be sent to the applicable party at the following address or in accordance with the last unrevoked written direction from such party to the other parties hereto:

If to Agency: [Agency Address]

If to the Bank: Wells Fargo Bank, National Association  
[address]

If to the Fiscal Agent: [Fiscal Agent Address]

The Bank may rely on any notice (including telephone communication) purportedly made

by or on behalf of the other, and shall have no duty to verify the identity or authority of the Person giving such notice, unless such actions or omissions would amount to gross negligence or intentional misconduct.

**Section 8.6. Extension.** At any time not earlier than one hundred fifty (150) days prior to the Mandatory Purchase Date and provided no Event of Default has occurred and is continuing, the Agency may by written notice to the Bank request that the Mandatory Purchase Date and the term of this Agreement be extended, on terms and conditions to be mutually agreed to by the Agency and the Bank. The Bank will respond in writing within sixty (60) days of the Bank's receipt of such written notice, provided that the Bank may, in its sole and absolute discretion, decide to accept or reject any such proposed extension and no extension shall become effective unless the Bank shall have consented thereto in writing within sixty (60) days of the Bank's receipt of such written notice. The Bank's failure to so respond to a requested extension of the Mandatory Purchase Date shall constitute the Bank's denial of such request. The Bank's consent shall be conditioned upon (i) the satisfactory review by the Bank of any information requested by it in connection with such requested extension and (ii) the preparation, execution and delivery of documentation in form and substance satisfactory to the Bank and its counsel.

**Section 8.7. No Third-Party Rights.** Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

**Section 8.8. Severability.** The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

**Section 8.9. Governing Law; Consent To Jurisdiction.** (a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

(b) ANY LITIGATION INVOLVING THIS AGREEMENT AND THE BANK AND THE AGENCY SHALL BE BROUGHT IN THE APPROPRIATE CALIFORNIA COURT HAVING JURISDICTION OVER THE MATTER.

(c) The covenants and waivers made pursuant to this Section 8.9 shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement.

**Section 8.10. No Advisory or Fiduciary Responsibility.** In connection with all aspects of the transactions contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Bond Document), the Agency acknowledges and agrees that: (a)(i) the Agency has consulted its own legal, accounting, regulatory and tax

advisors to the extent it has deemed appropriate, and (iii) the Agency is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Bond Documents; (b)(i) the Bank and each of its Affiliates is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Agency, or any other Person and (ii) neither the Bank nor any of its Affiliates has any obligation to the Agency with respect to the Transactions, except those obligations expressly set forth herein; and (c) the Bank and each of its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Agency, and neither the Bank nor any of its Affiliates has any obligation to disclose any of such interests to the Authority. To the fullest extent permitted by applicable Laws, the Agency hereby waives and releases any claims that it may have against the Bank and each of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**Section 8.11. Proposal; Prior Understandings.** This Agreement and the other Bond Documents supersede the Proposal and all other prior understandings and agreements, whether written or oral, among the parties hereto relating to the transactions provided for herein and therein. Those provisions of the Proposal referenced herein are specifically incorporated herein as if reproduced herein in their entireties.

**Section 8.12. Duration.** All representations and warranties of the Agency contained herein or made in connection herewith shall survive the making of and shall not be waived by the execution and delivery of this Agreement or the other Bond Documents, or any investigation by the Bank. All covenants and agreements of the Agency contained herein shall continue in full force and effect from and after the date hereof until the Obligations have been indefeasibly paid in full, at which time this Agreement shall terminate; *provided, however*, that the obligations of the Agency pursuant to Sections 7.1 and 8.16 hereof shall survive any expiration or termination of this Agreement.

**Section 8.13. Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

**Section 8.14. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns. The Agency may not assign its rights or obligations under this Agreement or the other Bond Documents without the prior consent of the Bank. The Bank may participate a portion of its interest in accordance with Section 8.15 hereof.

**Section 8.15. Participations.** The Bank may, in the ordinary course of its business and in accordance with applicable law, at any time sell participations to Bank Participants in all or a portion of its rights and obligations under this Agreement and the Bonds, provided that:

(a) The Bank's and the Agency's respective obligations under this Agreement, and the other Bond Documents shall remain unchanged;

(b) The Bank shall remain solely responsible to the Agency for the performance of such obligations; and

(c) The Agency shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement and the other Bond Documents.

The Agency shall have no obligation to deal with any Bank Participants in connection with this Agreement or the other Bond Documents.

The Agency authorizes the Bank to provide financial and operational information previously provided to the Bank to potential Bank Participants. All amounts payable by the Agency under the Bond Documents shall be determined as if the Bank had not sold any participations. The Bank may assign or sell the Bonds without the consent of the Agency.

**Section 8.16. Preferences.** To the extent that the Bank receives any payment from or on behalf of the Agency which payment or any part thereof is subsequently

(a) invalidated;

(b) declared to constitute a fraudulent conveyance or preferential transfer;

(c) set aside; or

(d) required to be repaid (including pursuant to any settlement entered into by the Bank in its discretion) to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause (collectively, "Set Aside"); then, to the extent of any such Set Aside, the obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment had not been received by the Bank or such Set Aside had not occurred.

**Section 8.17. Headings.** Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 8.18. Electronic Signatures.** The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "*electronic signature*" means a manually-signed original signature that is then transmitted by electronic means; "*transmitted by*

*electronic means*” means sent in the form of a facsimile or sent via the internet as a “pdf” (portable document format) or other replicating image attached to an e-mail message; and, “*electronically signed document*” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

[Signatures begin on the following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

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

REDEVELOPMENT AGENCY OF THE  
CITY OF SAN JOSE

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

**EXHIBIT A**  
**(ATTACHED)**