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**FINANCING AGREEMENT**

**among**

**CITY OF SAN JOSE,  
as Issuer**

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

**and**

**TAYLOR OAKS APARTMENTS INVESTORS, L.P.,  
as Borrower**

**Relating to**

**[\$[SERIES A-1 PAR]  
CITY OF SAN JOSE  
MULTIFAMILY HOUSING REVENUE BONDS  
(TAYLOR OAKS APARTMENTS), SERIES 2011A-1**

**AND**

**[\$[SERIES A-2 PAR]  
CITY OF SAN JOSE  
MULTIFAMILY HOUSING REVENUE BONDS  
(TAYLOR OAKS APARTMENTS), SERIES 2011A-2**

**Dated as of September 1, 2011**

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All of the right, title and interest of the City of San José (except for its Unassigned Rights) in and to this Financing Agreement are being assigned to Wells Fargo Bank, National Association, as Trustee, as security for the above-referenced bonds pursuant to a certain Trust Indenture dated as of September 1, 2011.

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EXHIBIT A—FORM OF BOND MORTGAGE NOTE

## FINANCING AGREEMENT

THIS FINANCING AGREEMENT (this “**Financing Agreement**”) is made and entered into as of September 1, 2011, by and among the CITY OF SAN JOSE (the “**Issuer**”), a municipal corporation and chartered city, duly organized and existing under the laws of the State of California (the “**State**”), WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, duly organized and existing under the laws of the United States (together with any successor trustees appointed under the Indenture, the “**Trustee**”), and TAYLOR OAKS APARTMENTS INVESTORS, L.P., a duly organized and existing under the laws of the State of California (together with its successors and assigns permitted hereunder, the “**Borrower**”).

### RECITALS

**WHEREAS**, Pursuant to Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State (the “**Act**”) and the Trust Indenture dated as of September 1, 2011 (the “**Indenture**”) between the Issuer and the Trustee, the Issuer has determined to issue its Multifamily Housing Revenue Bonds (Taylor Oaks Apartments), Series 2011A-1 the “**Series A-1 Bonds**”) in the original principal amount of \$[SERIES A-1 PAR] and its Multifamily Housing Revenue Bonds (Taylor Oaks Apartments), Series 2011A-2 (the “**Series A-2 Bonds**” and together with the Series A-1 Bonds, the “**Bonds**”) in the original principal amount of \$[SERIES A-2 PAR] to provide for the financing of a multifamily rental housing development located at 2726-2738 Kollmar Drive in San José, California known as Taylor Oaks Apartments (the “**Project**”).

**WHEREAS**, The Issuer has agreed to use the proceeds derived from the sale of Bonds to make a mortgage loan in the principal amount of \$[PAR AMOUNT] (the “**Bond Mortgage Loan**”) to the Borrower in connection with the Project on the terms specified in this Financing Agreement and upon the satisfaction of various conditions contained herein and in the Indenture.

**WHEREAS**, The Borrower has agreed to use the proceeds of the Bond Mortgage Loan to finance the acquisition and rehabilitation of the Project.

**WHEREAS**, The Borrower’s repayment obligations in respect of the Bond Mortgage Loan will be evidenced by a Bond Mortgage Note dated September [ ], 2011 (together with all riders and addenda thereto, the “**Bond Mortgage Note**”) delivered to the Issuer.

**WHEREAS**, The Borrower will cause to be delivered to the Trustee on the date of initial issuance of the Bonds (the “**Delivery Date**”) a direct pay Credit Enhancement Agreement dated as of even date herewith (the “**Credit Enhancement Agreement**”) between the Federal Home Loan Mortgage Corporation (“**Freddie Mac**” or the “**Credit Facility Provider**”) and the Trustee which will provide for draws in an amount equal to Guaranteed Payments with respect to the Bond Mortgage Loan.

**WHEREAS**, To evidence the Borrower’s reimbursement obligations to Freddie Mac for draws made under the Credit Enhancement Agreement, the Borrower and Freddie Mac will

enter into a Reimbursement and Security Agreement dated as of even date herewith (the “**Reimbursement Agreement**”).

**WHEREAS**, To secure the Borrower’s obligations under the Bond Mortgage Note, the Borrower will execute and deliver to the Issuer a First Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of even date herewith (the “**Bond Mortgage**”) with respect to the Project.

**WHEREAS**, To secure the Borrower’s reimbursement obligations to Freddie Mac under the Reimbursement Agreement, the Borrower will execute and deliver to Freddie Mac a Second Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of even date herewith (the “**Reimbursement Mortgage**”) with respect to the Project.

**WHEREAS**, The Issuer will assign the Bond Mortgage Note and the Bond Mortgage to the Trustee and Freddie Mac, as the respective interests of the Trustee and Freddie Mac may appear, under and subject to the terms of the Intercreditor Agreement (defined below).

**WHEREAS**, To further secure Freddie Mac against any loss Freddie Mac may incur as a result of advancing funds under the Credit Enhancement Agreement, and to facilitate the financing of the Bond Mortgage Loan, during the Construction Phase, Citibank, N.A. (the “**Construction Lender**”), at the request of the Borrower, will (a) make a conventional construction loan to Borrower (the “**Construction Loan**”) pursuant to the terms and subject to the conditions of a Construction Loan Agreement dated as of the date hereof (the “**Construction Loan Agreement**”), (b) enter into a Letter of Credit and Reimbursement Agreement dated as of the date hereof (the “**Construction Phase Credit Reimbursement Agreement**”) with the Borrower and (c) enter into a Construction Phase Financing Agreement dated as of the date hereof (the “**Construction Phase Financing Agreement**”) with Freddie Mac and Citibank, N.A. (the “**Servicer**”).

**WHEREAS**, The Construction Lender will advance proceeds of the Construction Loan, in accordance with the terms of the Construction Loan Agreement and the Construction Phase Financing Agreement, to the Borrower (i) to pay Costs of the Project, (ii) to reimburse Freddie Mac for draws made upon the Credit Facility for the payment of accrued and unpaid interest on the Bond Mortgage Loan, and (iii) to pay any regular, ongoing fees due and payable to the Issuer, the Trustee and Freddie Mac and, prior to the Trustee’s receipt of a Direction to Release, to the Trustee, for the benefit of Freddie Mac, for deposit into the Freddie Mac Collateral Fund, as and to the extent necessary, to assure that, at all times during the Construction Phase, the sum of (a) amounts deposited and held in the Project Account of the Bond Mortgage Loan Fund plus (b) amounts deposited and held in the Freddie Mac Collateral Fund (disregarding any investment earnings thereon), is equal to an amount not less than the Construction Phase Collateral Requirement.

**WHEREAS**, Subject to the terms and conditions of the Construction Phase Credit Reimbursement Agreement and the Construction Phase Financing Agreement, the Construction Lender, in the future, but no later than [\_\_\_\_\_], shall issue to Freddie Mac of a clean, unconditional, irrevocable and transferrable standby letter of credit (the “**Construction Phase Credit Facility**”) in an amount equal to the Construction Phase Collateral Requirement and, upon receipt of the Construction Phase Credit Facility and the accompanying opinion letter, Freddie Mac shall issue a Direction to Release.

**WHEREAS**, During the Construction Phase, the Construction Lender shall serve as the construction loan administrator and be responsible for providing inspection oversight of the Project, including monitoring of disbursement of the Bond Mortgage Loan proceeds to the Borrower, in accordance with the terms of the Indenture, the Construction Loan Agreement, the Construction Phase Credit Reimbursement Agreement and the Construction Phase Financing Agreement.

**WHEREAS**, If the Notice of Conversion is issued prior to the Forward Commitment Maturity Date, the Bond Mortgage Loan will convert from the Construction Phase to the Permanent Phase.

**WHEREAS**, If the Notice of Conversion is not issued on or prior to the Forward Commitment Maturity Date (a) Conversion will not occur, (b) the Bonds will be subject to mandatory redemption, in whole, unless the Bonds are purchased by or for the account of the Construction Lender in accordance with Section 3.08 of the Indenture, and (c) the Credit Enhancement Agreement will terminate.

**WHEREAS**, During the Permanent Phase, the Servicer will act as servicer for the Bond Mortgage Loan.

**WHEREAS**, The Issuer, the Trustee, Freddie Mac and the Construction Lender have also entered into an Intercreditor Agreement dated as of the date hereof (the “**Intercreditor Agreement**”) in connection with Freddie Mac’s delivery of the Credit Enhancement Agreement to the Trustee and the Construction Lender’s making of the Construction Loan to the Borrower and subsequently issuing the Construction Phase Credit Facility to Freddie Mac.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.1. Definitions.** All words and phrases (except for Event of Default) defined in the Indenture shall have the same meanings for the purposes of this Financing Agreement. In addition to the words and phrases defined in the Indenture and elsewhere herein, the following words and phrases shall have the following meanings:

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

“Financing Agreement” means this Financing Agreement, together with any amendments hereto.

“Interest Requirement” means 189 days’ interest computed at the interest rate borne by the Bonds or such lesser number of days as is acceptable to the Rating Agency.

“Taxes” means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

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

**Section 1.2. Interpretation.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Financing Agreement are the Articles, sections and other subdivisions of this Financing Agreement as originally executed.

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

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

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

(a) The Issuer is a municipal corporation and chartered city, duly organized and validly existing under the laws of the State.

(b) The Issuer has all necessary power and authority to issue the Bonds and to execute and deliver this Financing Agreement, the Indenture, and the other Bond Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Issuer has taken all action on its part for the issuance of the Bonds and for the sale, execution and delivery thereof.

(d) Each of the Bond Financing Documents to which the Issuer is a party has been duly validly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

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

(f) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Issuer of, and performance by the Issuer of its obligations under, the Bond Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Issuer, threatened against the Issuer by or before any court, governmental agency or public board or body, nor, to the Issuer's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Issuer or the title to office of any member of the governing body of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Bond Financing Documents or the

issuance, sale, execution or delivery of the Bonds; (iii) affects or questions the validity or enforceability of the Bonds or any Bond Financing Document; (iv) questions the tax-exempt status of the Bonds; or (v) questions the power or authority of the Issuer to perform its obligations under the Bonds or any Bond Financing Document, or to carry out the transactions contemplated by the Bonds and the Bond Financing Documents.

(h) No officer or other official of the Issuer has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Financing Agreement.

(i) Upon the discovery by the Issuer of any noncompliance by the Borrower with this Financing Agreement or the Tax Regulatory Agreement, the Issuer will notify the Trustee, the Servicer, the Credit Facility Provider and the Construction Lender of such noncompliance and will, subject to the provisions of Article VII hereof, promptly institute action, or cause the Trustee to institute action, to correct such noncompliance, will diligently pursue such action and will attempt to correct such noncompliance within sixty (60) days after such discovery, subject to the provisions of the Indenture, this Financing Agreement and the Tax Regulatory Agreement.

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

**Section 2.2. Representations, Warranties and Covenants of the Borrower to the Issuer, Credit Facility Provider, Servicer, Construction Lender and Trustee.** The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Financing Agreement, are relied upon by the Issuer, the Credit Facility Provider, the Servicer, the Construction Lender and the Trustee and serve as a basis for the undertakings of the Issuer, the Servicer and the Trustee contained in this Financing Agreement:

(a) The Borrower is a limited partnership duly organized, validly existing and in good standing under the laws of the state in which it has been organized and duly qualified to conduct its business under the laws of the State has full legal right, power and authority to enter into this Financing Agreement, the other Bond Financing Documents and the Construction Loan Documents, and to carry out and consummate all transactions contemplated hereby, by the other Bond Financing Documents and by the Construction Loan Documents, and by proper action has duly authorized the execution, delivery and performance of this Financing Agreement, the other Bond Financing Documents and the Construction Loan Documents. All corporate general partners, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All partnership general partners, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Bond Financing Documents and the Construction Loan Documents to which it is a party.

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

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of rehabilitation of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Bond Financing Documents or the Construction Loan Documents.

(e) None of the execution and delivery of the Bond Financing Documents and the Construction Loan Documents to which the Borrower is a party, the consummation of the transactions provided for in the Bond Financing Documents and the Construction Loan Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Bond Financing Documents and the Construction Loan Documents (i) violates any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower, (ii) conflicts with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license, (iii) contravenes any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance permitted under the terms of the Bond Financing Documents.

(f) Within the six (6) month period preceding the Delivery Date, the Borrower has not acquired the Project or any interest therein, nor has the Borrower transferred or acquired any capital interest in the owner of the Project. The Borrower shall not cause or permit the Project, or any interest therein, to be sold, assigned or transferred, except as provided in the Bond Financing Documents, and shall not sell the Project or any interest therein or in its ownership structure for a period of six (6) months following the Delivery Date.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Bond Financing Documents or the Construction Loan Documents, (ii)

adversely affect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the issuance, sale or delivery of the Bonds, or the loaning of the proceeds of the Bonds to the Borrower or the execution and delivery of the Bonds or any of the Bond Financing Documents or the Construction Loan Documents, (iv) adversely affect the validity or enforceability of the Bonds, any of the Bond Financing Documents or any of the Construction Loan Documents, or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(h) The Project and the operation of the Project (in the manner contemplated by the Bond Financing Documents) conform and, following completion of the rehabilitation of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning (as a legal nonconforming use), planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(i) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(j) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Bond Financing Documents or the Construction Loan Documents or the operations of the Borrower or the enforceability of the Bond Financing Documents or the Construction Loan Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(k) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(l) If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. If the Borrower is a limited liability company, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Financing Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(m) The representations and warranties of the Borrower contained in the Tax Certificate and Tax Regulatory Agreement are true and accurate in all material respects.

(n) The information, statements or reports furnished in writing to the Issuer, the Servicer, the Credit Facility Provider and the Construction Lender by the Borrower in

connection with this Financing Agreement or the consummation of the transactions contemplated hereby and by the Construction Loan Documents (including, without limitation, any written information furnished by the Borrower in connection with the preparation of the Official Statement for the Bonds and of any other materials related to the issuance, delivery or offering of the Bonds on the Delivery Date) do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or the assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

(o) To the knowledge of the Borrower, no commissioner, member, officer or employee of the Issuer has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Bond Financing Documents, the Construction Loan Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Bond Financing Documents or the Construction Loan Documents.

(p) The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project (other than the option and/or right of first refusal which may be exercised at the end of the "compliance period," as defined in Section 42(i)(1) of the Code, as set forth in the Borrower's partnership agreement).

(q) The Project is located wholly within the boundaries of the Issuer.

(r) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Bonds. The Borrower shall operate the Project as required by the Tax Regulatory Agreement.

(s) The information contained in the Official Statement under the captions "THE PROJECT AND THE PRIVATE PARTICIPANTS," "PLAN OF FINANCING" and "ABSENCE OF LITIGATION – The Borrower" is accurate in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact pertaining to the Borrower, the developer, the property manager and the Project necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(t) The Indenture and the Credit Enhancement Agreement have been submitted to the Borrower for examination, and the Borrower, by execution of this Financing Agreement, acknowledges and agrees that it has participated in the drafting of the Indenture and has reviewed the Credit Enhancement Agreement and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower

pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Indenture.

(u) The Borrower will have a fee simple interest in the land and improvements on the Project, subject only to liens permitted under the Bond Mortgage, the Reimbursement Mortgage and the Construction Loan Documents.

(v) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Issuer, the Trustee, the Credit Facility Provider or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Bond Financing Documents or otherwise relied on the Issuer, the Trustee, the Credit Facility Provider or the Servicer in any manner.

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

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

(b) The Trustee has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Financing Agreement and the other Bond Financing Documents to which it is a party, (ii) to perform its obligations under this Financing Agreement and the other Bond Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Financing Agreement and the other Bond Financing Documents to which it is a party.

(c) The Trustee has duly authorized (i) the execution and delivery of this Financing Agreement and the other Bond Financing Documents to which it is a party, (ii) the performance by the Trustee of its obligations under this Financing Agreement and the other Bond Financing Documents to which it is a party, and (iii) the actions of the Trustee contemplated by this Financing Agreement and the other Bond Financing Documents to which it is a party.

(d) Each of the Bond Financing Documents to which the Trustee is a party has been duly executed and delivered by the Trustee and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Trustee, enforceable against the Trustee in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Trustee meets the qualifications to act as Trustee under the Indenture.

(f) The Trustee has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Trustee described or contemplated in the Bond Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Trustee as a prerequisite to (i) the execution and delivery of this Financing Agreement and the other Bond Financing Documents to which the Trustee is a party, (ii) the authentication or delivery of the Bonds, (iii) the performance by the Trustee of its obligations under this Financing Agreement and the other Bond Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Financing Agreement and the other Bond Financing Documents to which the Trustee is a party. The Trustee makes no representation or warranty relating to compliance with any federal or state securities laws.

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

**Section 2.5. Tax Covenants of the Borrower.** The Borrower covenants and agrees that:

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

(b) it will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Bonds to be included in gross income, for federal income tax purposes, and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation the following:

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

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

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

(c) in order to satisfy the requirements set forth in subpart (4) of the definition of “program investment” that appears in Section 1.148-1(b) of the Treasury Regulations (which requirements must be met in order for the Bond Mortgage Loan to qualify as a program investment within the meaning of that section), neither the Borrower nor any related person (within the meaning of “program investment”) will purchase Bonds in an amount related to the amount of the Bond Mortgage Loan except as expressly permitted under the Indenture;

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

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

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

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

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

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

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

(k) no proceeds of the Bonds shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in section 147(d)(3) of the Code) with respect to such building equal or exceed 15

percent of the portion of the cost of acquiring such building (and equipment) financed with proceeds of the Bonds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds of the Bonds. In compliance with this provision, within two years after the later of the date of the Borrower's acquisition of the Project or the date of the issuance of the Bonds, the Borrower will make Rehabilitation Expenditures (as defined in the Tax Regulatory Agreement) in an amount equal to or greater than fifteen percent (15%) of the amount of proceeds of the Bonds used to acquire any existing buildings and related equipment which are part of the Project;

(l) from the proceeds of the Bonds and investment earnings thereon, no amount in excess of two percent (2%) of the proceeds of the Bonds, will be used for Costs of Issuance of the Bonds, all within the meaning of Section 147(g)(1) of the Code. For this purpose, if the fees of the original purchaser of the Bonds are retained as a discount on the purchase price of the Bonds, such retention shall be deemed to be an expenditure of proceeds of the Bonds for said fees;

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

(n) it shall cooperate fully with the Issuer in the event of any audit, investigation, administrative proceeding or litigation relating to the Bonds that is commenced by the Internal Revenue Service, the Securities and Exchange Commission or any other governmental agency or entity; this provision is not intended to limit any indemnification or other obligation of the Borrower with respect to the Issuer contained in the Tax Regulatory Agreement or the Financing Agreement; and

(o) upon completion of the Project (but in no event more than five years after the Delivery Date), it shall prepare a final allocation of the proceeds of the Bonds that have been expended to the Costs of the Project.

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

## ARTICLE III

### THE BOND MORTGAGE LOAN

**Section 3.1. Conditions to Funding the Bond Mortgage Loan.** On the Delivery Date, the Issuer shall cause the Bond proceeds to be deposited with the Trustee in accordance with Section 2.11 of the Indenture and Section 3.3 hereof. The Trustee shall use such proceeds as provided in Article II of the Indenture, provided that no such disbursements of proceeds of the Bonds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Issuer the Bond Mortgage Note in the form attached hereto as ***Exhibit A***, with only such changes therein as shall be approved in writing by the Credit Facility Provider and the Issuer shall have assigned the Bond Mortgage Note to the Trustee and Freddie Mac (in accordance with Section 3.4 hereof);

(b) The Bond Mortgage and the Reimbursement Mortgage, with only such changes therein as shall be approved in writing by Credit Facility Provider, shall have been executed and delivered by the Borrower and delivered to the title company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the “**Recorder’s Office**”);

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

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

(e) The Borrower shall have delivered to the Trustee, the Issuer, the Credit Facility Provider, the Servicer and the Construction Lender a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.2 hereof and an opinion of its counsel or other counsel satisfactory to the Trustee, the Issuer, the Credit Facility Provider, the Servicer and the Construction Lender.

**Section 3.2. Terms of the Bond Mortgage Loan; Servicing.** i) The Bond Mortgage Loan shall (i) be evidenced by the Bond Mortgage Note; (ii) be initially secured by the Credit Facility and the Bond Mortgage; (iii) be in the principal amount of \$[PAR AMOUNT]; (iv) bear interest as provided in the Bond Mortgage Note; (v) provide for principal and interest payments in accordance with the Bond Mortgage Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Bond Mortgage Note.

(b) From and after the Conversion Date, the Servicer shall service the Bond Mortgage Loan pursuant to the Commitment and the *Guide*. The Issuer, the Trustee and the Borrower acknowledge and agree that (i) selection or removal of any Servicer is in the sole and absolute discretion of the Credit Facility Provider; (ii) neither the Issuer nor the Trustee shall

terminate or attempt to terminate any Servicer as the servicer for the Bond Mortgage Loan or appoint or attempt to appoint a substitute servicer for the Bond Mortgage Loan; (iii) the Commitment and the *Guide* are each subject to amendment without the consent of the Trustee, the Issuer or the Borrower; and (iv) none of the Trustee, the Issuer or the Borrower shall have any rights under, or be a third party beneficiary of, the *Guide*. The Servicer shall have the right to collect all payments made by the Borrower in connection with the Bond Mortgage Loan (from and after the Conversion Date) and to receive copies of all reports and notices provided for by the Bond Financing Documents.

**Section 3.3. Initial Deposits.** On the Delivery Date, proceeds of the Bonds in the amount of \$[ ] shall be deposited in the Project Account of the Bond Mortgage Loan Fund. The Borrower will deposit with the Trustee the sum of \$[ ] for credit to the Cost of Issuance Fund and \$[ ] for credit to the Borrower Equity Account of the Bond Mortgage Loan Fund, and will cause the initial advance on the Construction Loan to be made by the Construction Lender to the Trustee, on behalf of Borrower and for the benefit of Freddie Mac, for deposit into the Freddie Mac Collateral Fund in the amount of \$[ ]. Subject to the conditions listed in Section 3.1 hereof, amounts on deposit in the Bond Mortgage Loan Fund are to be disbursed to the Borrower or otherwise as provided in Section 2.11(d) of the Indenture.

To the extent that amounts in the Cost of Issuance Fund from the above-mentioned sources are insufficient to pay all costs of issuing the Bonds, the Borrower shall cause the payment of such additional costs of issuing the Bonds to be made on its behalf as such amounts become due.

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

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

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

**Section 3.7. Continuing Disclosure Requirement.** The Borrower hereby covenants and agrees it will promptly execute and deliver to the Trustee and the Issuer an agreement to deliver such information and reports and give notice of the occurrence of certain events consistent with the requirements of Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the “**Rule**”). Notwithstanding any other provision of this Financing Agreement, failure of the Borrower to comply with any continuing disclosure agreement shall not be considered an Event of Default hereunder; however, the Trustee, at the written request of any underwriter of the Bonds required to comply with the Rule or the Owners of at least 25% aggregate principal amount in Outstanding Bonds or the Credit Facility Provider, shall, but only to the extent indemnified to its satisfaction, or any Bondholder may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Borrower to comply with its obligations under this Section 3.7.

## ARTICLE IV

### LOAN PAYMENTS

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

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

The Borrower acknowledges and agrees that the Servicer, from and after the Conversion Date, may collect monthly payments from the Borrower with respect to the Bond Mortgage Loan in accordance with the Reimbursement Agreement, but such payments shall not be credited against the principal or interest due with respect to the Bond Mortgage Loan or the Bond Mortgage Note until and only to the extent such amounts are used to reimburse the Credit Facility Provider for amounts paid under the Credit Facility to pay principal of or interest on the Bonds.

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

(c) Notwithstanding anything contained in any other provision of this Financing Agreement to the contrary (but subject to the provisions of Section 5.1 hereof and the Intercreditor Agreement), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and each of the Borrower's general partners, payable from and enforceable against any and all income, assets and properties of the Borrower: (i) the Borrower's obligations to the Issuer and the Trustee under subsections (b)(ii), (b)(iv), (b)(vi), and (b)(vii) of Section 4.2 hereof; (ii) the Borrower's obligations under

Sections 2.5 and 6.1 of this Financing Agreement; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Bonds and fees and expenses of the Rebate Analyst as provided in Sections 2.4 and 4.3 of this Financing Agreement and the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and such expenses under Section 7.4 hereof.

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

(a) In addition to the payments set forth in Section 4.1 hereof, payments to be made by the Borrower under the Bond Mortgage Note include certain money to be paid in respect of, among others, the Bond Fee Component, the Ordinary Servicing Fees and Expenses, the Freddie Mac Credit Enhancement Fee, any annual rating maintenance fees of the Rating Agency and amounts required to be deposited in any Custodial Escrow Account pursuant to the Bond Mortgage Loan Documents, as set forth in subsection (b) of this Section 4.2. To the extent that any portion of the Bond Fee Component, the Ordinary Servicing Fees and Expenses, the Freddie Mac Credit Enhancement Fee, any annual rating maintenance fees of the Rating Agency and amounts required to be deposited in a Custodial Escrow Account remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Indenture or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.2.

(b) The Borrower shall pay (or cause to be paid by the Trustee, to the extent paid from money on deposit in the Administration Fund or the Cost of Issuance Fund, as applicable), in consideration of the funding of the Bond Mortgage Loan, the following fees, expenses and other money payable in connection with the Bond Mortgage Loan:

(i) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, (A) to Freddie Mac, the closing fee of Freddie Mac set forth in Section 3.1 of the Reimbursement Agreement, together with all third party and out-of-pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Bond Mortgage Loan and the Credit Enhancement Agreement, and (B) to the Construction Lender, the origination fee, all issuance fees and all other letter of credit fees of the Construction Lender due and payable as of the Delivery Date, together with all third party and out-of-pocket expenses of the Construction Lender (including but not limited to the fees and expenses of counsel to the Construction Lender) in connection with the Bond Mortgage Loan and the making the Construction Loan.

(ii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Issuer, an initial financing fee in an amount equal to the Initial City Fee (as that term is defined in the Regulatory Agreement), together with all third party and out-of-pocket expenses of the Issuer (including but not limited to the fees and expenses of counsel to the Issuer) in connection with the Bond Mortgage Loan and the issuance of the Bonds.

(iii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Servicer, its commitment fees and application fees, together with all third party and out of pocket expenses of the Servicer (including but not limited to the fees and expenses of counsel to the Servicer) in connection with the Bond Mortgage Loan.

(iv) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Trustee, an acceptance fee in an amount equal to \$[\_\_\_\_\_], together with all third party and out-of-pocket expenses of the Trustee (including but not limited to the fees and expenses of counsel to the Trustee) in connection with the Bond Mortgage Loan and the issuance of the Bonds.

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

(vi) From money on deposit in the Administration Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Trustee, the Ordinary Trustee's Fees and Expenses and the Extraordinary Trustee's Fees and Expenses when due from time to time.

(vii) From money on deposit in the Administration Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Issuer, the Issuer Fee when due and any extraordinary expenses not covered by the Issuer Fee the Issuer may incur in connection with the Bond Financing Documents or the Project from time to time.

(viii) From money on deposit in the Administration Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Indenture and this Financing Agreement when due from time to time.

(ix) Prior to the Conversion Date, from money on deposit in the Bond Mortgage Loan Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower and, from and after the Conversion Date, from amounts withheld by the Servicer as provided in the Guide, to Freddie Mac, the Freddie Mac Credit Enhancement Fee due from time to time.

(x) From money on deposit in the Administration Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, the amount of any Freddie Mac Reimbursement Amount due and owing from time to time but unpaid and any portion of the Freddie Mac Credit Enhancement Fee remaining unpaid as provided in Section 4.06 of the Indenture.

(xi) From and after the Conversion Date, from amounts withheld by the Servicer as provided in the Guide, to the Servicer, the Ordinary Servicing Fees and Expenses due from time to time.

(xii) From money on deposit in the Administration Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Servicer, the amount of any portion of the Ordinary Servicing Fees and Expenses remaining unpaid and any Extraordinary Servicing Fees and Expenses.

(xiii) From amounts withheld by the Servicer as provided in the Guide, to the Servicer, the amounts required to be deposited in a Custodial Escrow Account pursuant to the Bond Mortgage Loan Documents from time to time.

(xiv) From money on deposit in the Administration Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Servicer, the amounts required to be deposited in the Custodial Escrow Account remaining unpaid.

(xv) From money on deposit in the Administration Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Dissemination Agent, if any, the Dissemination Agent's Fee when due from time to time.

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

(xvii) From money of the Borrower on the Delivery Date, the Costs of Issuance Deposit.

(xviii) From money of the Borrower on the Delivery Date, the Borrower Equity Deposit.

(xix) Prior to the Conversion Date, from money on deposit in the Bond Mortgage Loan Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Construction Lender, the fees of the Construction Lender due from time to time.

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

**Section 4.4. Prepayment of Bond Mortgage Loan.** The Borrower shall have the option to prepay the Bond Mortgage Loan in full or in part prior to the payment and discharge of all the outstanding Bonds in accordance with the provisions of the Indenture, this Financing Agreement and the Bond Mortgage Note, and only with the prior written consent of the Credit Facility Provider and the payment of any amount due under the next succeeding paragraph. The Borrower shall be required to prepay the Bond Mortgage Loan in each case that Bonds

are required to be redeemed in accordance with the terms and conditions set forth in the Indenture.

The Bonds are subject to redemption in accordance with the terms and conditions set forth in the Indenture. In connection with any prepayment, whether optional or mandatory, in addition to all other payments required under the Bond Mortgage Note, the Borrower shall pay, or cause to be paid to the Servicer (from and after the Conversion Date) or other party as directed by the Credit Facility Provider (or, if no Credit Facility is then in effect, to the Trustee), an amount sufficient to pay the redemption price of the Bonds to be redeemed, including principal, interest and premium (if any), such premium to be paid with Eligible Funds not consisting of funds drawn under the Credit Facility, and further including any interest to accrue with respect to the Bond Mortgage Loan and such Bonds between the prepayment date and the redemption date, together with a sum sufficient to pay all fees, costs and expenses in connection with such redemption and, in the case of redemption in whole, to pay all other amounts payable under this Financing Agreement, the Indenture and the Reimbursement Agreement. The Borrower shall provide notice of the prepayment to the Issuer, the Trustee, the Credit Facility Provider, the Servicer and the Construction Lender in writing forty-five (45) days, or such shorter time as is possible in the case of mandatory prepayments, prior to the date on which the Borrower will make the prepayment. Each such notice shall state, to the extent such information is available, (a) the amount to be prepaid, (b) the date on which the prepayment will be made by the Borrower, and (c) the cause for the prepayment, if any.

**Section 4.5. Borrower's Obligations Upon Redemption.** In the event of any redemption, the Borrower will timely pay, or cause to be paid through the Servicer, to the Trustee an amount equal to the principal amount of such Bonds or portions thereof called for redemption, together with interest accrued to the redemption date and premium, if any, such premium to be paid with Eligible Funds not consisting of funds drawn under the Credit Facility. In addition, the Borrower will timely pay all fees, costs and expenses associated with any redemption of Bonds.

**Section 4.6. Credit Facility Reimbursement Fund.** Under the Reimbursement Agreement, the Borrower may be required to make monthly interest payments and principal deposits to the Servicer for remittance to the Trustee for deposit into the Credit Facility Reimbursement Fund. Amounts on deposit in the Credit Facility Reimbursement Fund shall be held solely for the benefit of the Credit Facility Provider and shall be applied as provided in the Indenture.

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

## ARTICLE V

### SPECIAL COVENANTS OF BORROWER

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

Except with respect to the obligations of the Borrower set forth in Sections 2.4, 2.5, 4.2(b)(ii), 4.2(b)(iv), 4.2(b)(vi), 4.2(b)(vii), 4.3, 6.1 and 7.4 hereof, but otherwise notwithstanding any other provisions of this Financing Agreement, the obligations of the Borrower under this Financing Agreement are non-recourse liabilities of the Borrower. However, nothing in this Section 5.1 shall limit the right of the Issuer, the Trustee, the Credit Facility Provider, the Servicer or the Construction Lender to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Financing Agreement or the other Bond Financing Documents. In any action or proceeding brought with respect to the Bond Mortgage Loan or the Bonds, no deficiency or other money judgment shall be enforced against the Borrower or any partner of the Borrower or any successor or assign of the Borrower, and any judgment obtained shall be enforced only against the Project and other property of the Borrower encumbered by the Bond Mortgage Loan Documents and not against the Borrower or any partner of the Borrower or any successor or assign of the Borrower. Nothing in this Section 5.1 shall limit any right that the Credit Facility Provider, the Servicer or the Construction Lender may have to enforce the Bond Mortgage Note, the Bond Mortgage, or any other Bond Mortgage Loan Document in accordance with their terms.

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

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

**Section 5.4. Alternate Credit Facility.** The Borrower, with the prior written confirmation of the Credit Facility Provider that the provisions of the Reimbursement Agreement have been satisfied (but without the consent of the Issuer, the Trustee or the Bondholders), may, on any Interest Payment Date occurring on or after the date that the Bonds may first be optionally redeemed at a price of not greater than par plus accrued interest to the redemption date and subject to the terms of the existing Credit Facility, arrange for the delivery to the Trustee of an Alternate Credit Facility in substitution for the Credit Facility then in effect (referred to in this Section 5.4 as "**credit support**"); provided that, without the consent of the Borrower (and without the consent of the Issuer, the Trustee or the Bondholders), the Credit Facility Provider

may provide any other form of “credit support” issued by the Credit Facility Provider in substitution for then existing Credit Facility if (A) the conditions of Section 8.05 of the Indenture are satisfied or (B)(i) the Rating Agency confirms in writing that such substitution will not adversely affect the current rating on the Bonds, (ii) the Credit Facility Provider delivers to the Issuer and the Trustee an opinion of counsel satisfying the requirements of subsection (c) of this Section 5.4 and (iii) such substitute “credit support” does not increase the amounts required to be paid by, or other obligations of, the Borrower. Any Alternate Credit Facility shall satisfy the following conditions, as applicable:

(a) [Intentionally Omitted].

(b) The Alternate Credit Facility shall (i) be in an amount equal to the aggregate principal amount of the Bonds Outstanding from time to time plus the Interest Requirement (or otherwise provide coverage satisfactory to the Rating Agency); (ii) provide for payment in immediately available funds to the Trustee upon receipt of the Trustee’s request for such payment with respect to any Interest Payment Date or mandatory redemption date pursuant to the Indenture; (iii) be accompanied by a written confirmation from the Rating Agency to the Issuer and the Trustee of the then existing rating on the Bonds; and (iv) have a stated expiration or termination date not sooner than one year following its effective date.

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

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

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

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

of Default (as such terms are defined in each respective Bond Financing Document) under any of the Bond Financing Documents.

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

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

**Section 5.8. Right to Perform Borrower's Obligations.** In the event the Borrower fails to perform any of its obligations under this Financing Agreement, the Issuer, the Trustee and/or the Servicer, after giving requisite notice, if any, and subject to the Intercreditor Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced by the Issuer, the Trustee or the Servicer shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Bond Mortgage Loan Documents.

**Section 5.9. Notice of Certain Events.** The Borrower shall promptly advise the Issuer, the Trustee, the Credit Facility Provider, the Servicer and the Construction Lender in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.10. Survival of Covenants.** The provisions of Sections 2.4, 2.5, 4.2, 4.3, 6.1 and 7.4 hereof shall survive the expiration or earlier termination of this Financing Agreement and, with regard to the Trustee, the resignation or removal of the Trustee.

**Section 5.11. Access to Project; Records.** Subject to reasonable notice and the rights of tenants at the Project, the Issuer, the Trustee, the Servicer, the Construction Lender and the Credit Facility Provider, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Bond Mortgage Loan and the Borrower's compliance with the terms and conditions of the Bond Financing Documents; b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Bond Mortgage Loan and the Borrower's compliance with the terms and conditions of the Bond Financing Documents; and c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Issuer, the Trustee, the Servicer, the Construction Lender and the Credit Facility Provider, as the Issuer, the Trustee, the Servicer, the Construction Lender or the Credit Facility Provider, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Bond Financing Documents have been complied with and (ii) to make copies of any records that the Issuer, the Trustee, the Servicer, the

Construction Lender or the Credit Facility Provider or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Issuer, the Trustee, the Servicer, the Construction Lender and the Credit Facility Provider, such information concerning the Project, the Bond Mortgage and the Bond Financing Documents as any of them may reasonably request.

**Section 5.12. Regulatory Agreement.** The covenants of the Borrower in the Tax Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the owners of the Bonds and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Tax Regulatory Agreement. The Borrower covenants to file of record the Tax Regulatory Agreement and such other documents and take such other steps as are necessary in order to assure that the restrictions contained in the Tax Regulatory Agreement will, subject to the terms of the Tax Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Tax Regulatory Agreement. Subject to the provisions of the Intercreditor Agreement, the Issuer and the Trustee shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Tax Regulatory Agreement or this Financing Agreement.

**Section 5.13. Damage, Destruction and Condemnation.** If prior to full payment of the Bonds (or provision for payment of the Bonds in accordance with the provisions of the Indenture) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Financing Agreement and in the Bond Mortgage Note to the extent the Bond Mortgage Loan is not prepaid in accordance with the terms of the Bond Mortgage Loan Documents.

**Section 5.14. Obligation of the Borrower To Acquire and Rehabilitate the Project.** The Borrower shall proceed with reasonable dispatch to complete the acquisition, rehabilitation, development and equipping of the Project. If amounts on deposit in the Bond Mortgage Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of such acquisition, rehabilitation, development and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Issuer, the Trustee, the Servicer, the Construction Lender, the Credit Facility Provider or the Bondholders in respect of any such costs or to any diminution or abatement in the repayment of the Bond Mortgage Loan. Neither of the Trustee nor the Issuer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Bond Mortgage Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and neither of the Trustee nor the Issuer shall be liable to the Borrower, the Bondholders or any other person if for any reason the Project is not completed.

**Section 5.15. Filing of Financing Statements.** The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date all UCC financing statements

which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Bond Mortgage Loan, the Trust Estate and the Bond Mortgage, and the rights and powers of the Issuer, the Trustee and the Credit Facility Provider in connection with such security interests. The Borrower shall cooperate with the Trustee in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

**ARTICLE VI**  
**INDEMNIFICATION**

**Section 6.1. Indemnification.**

(a) The Borrower releases the Issuer and the Trustee, and their respective officers, directors, agents, officials, employees (and, as to the Issuer, members of its governing body) and any person who controls the Issuer or the Trustee within the meaning of the Securities Act of 1933, as amended, from, and covenants and agrees to indemnify, hold harmless and defend the Issuer and the Trustee and their respective officers, directors, employees, agents, members of its governing body, officials and any person who controls such party within the meaning of the Securities Act of 1933, as amended, and employees and each of them (each an “Indemnified Party”) from and against, any and all losses, claims, damages, demands, liabilities and expenses (including attorney’s fees and expenses), taxes, causes of action, suits, claims, demands and judgments of any nature, joint or several, by or on behalf of any person arising out of:

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

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

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

(iv) the Bond Mortgage Loan, the Construction Loan or any Credit Facility (the “Loans”) (excluding the actual repayment of the principal thereof and interest thereon);

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

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

(vii) any and all claims arising in connection with (A) the issuance, sale or repricing of any Bonds or any certifications or representations made by any person other than the party seeking indemnification, including, but not limited to, any (1) statement or information made by the Borrower with respect to the Borrower or the

Project in the Tax Certificate or in any other certificate executed by the Borrower which, at the time made, is misleading, untrue or incorrect in any material respect, (2) untrue statement or alleged untrue statement of a material fact relating to the Borrower or the Project made to any or all of the Issuer and/or Trustee, as the case may be, or arising out of or based upon the omission or alleged omission to state to any or all of the Issuer and/or Trustee, as the case may be, a material fact relating to the Borrower or the Project in order to make the statements in such offering material not misleading, (3) failure to properly register or otherwise qualify the sale of the Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bonds could be sold, and (B) the carrying out by the Borrower of any of the transactions provided for in the Bond Financing Documents and the Construction Loan Documents;

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

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

(x) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Project or arising out of any action or inaction of the Borrower, whether or not related to the Project, or resulting from or in any way connected with the acquisition, construction, development, operation, leasing or management of the Project, including without limitation, providing social services whether directly or through leases with service providers, the issuance of the Bonds or otherwise in connection with transactions provided for in the Bond Financing Documents and the Construction Loan Documents or otherwise in connection with the Project, the Bonds or the execution or amendment of any document relating to the Project or the Bonds;

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

(xii) any and all claims arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or supervision of work done in or about, or from the planning, design, acquisition, rehabilitation, repair or equipping of, the Project or any part of it;

provided, however, that there shall be no such duty of the Borrower for indemnification in connection with any such claim listed in subsection (i) through (xii) above, or proceeding brought with respect to such claim (a) in the case of the Trustee or any of its Indemnified Parties, to the extent such damages are caused by the proven gross negligence or willful misconduct of such Person and (b) in the case of the Issuer or any of its Indemnified Parties, to the extent such damages are caused by the proven gross negligence or willful misconduct of such Person;

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

(b) In addition, the Borrower shall indemnify, save and hold harmless the Issuer and its officers, members of its governing board, officials, employees, advisors and agents (collectively, the "Issuer's Agents") against any and all claims asserted by or on behalf of any person, firm, corporation, private or public, arising or resulting from, or in any way connected with:

(i) any act, failure to act, misrepresentation or omission by any person, firm, corporation or governmental authority, including the Issuer or the Issuer's Agents (other than willful misrepresentations knowingly made by the Issuer or the Issuer's Agents and willful or wanton misconduct on the part of the Issuer or the Issuer's Agents), in connection with the issuance, sale or delivery of the Bonds; and

(ii) any act, failure to act or misrepresentation by the Issuer or the Issuer's Agents (other than willful misrepresentations knowingly made by the Issuer or the Issuer's Agents and willful or wanton misconduct on the part of the Issuer or the Issuer's Agents) in connection with, or in the performance of, any obligation under this Financing Agreement, the Tax Regulatory Agreement or the Indenture.

(c) Notwithstanding the foregoing, Borrower shall not be obligated to indemnify Issuer or Trustee, as applicable with respect to the consequences of any act of proven gross negligence or willful misconduct of Issuer or Trustee, as the case may be. Borrower's obligations under this Section 6.1 shall survive the repayment and cancellation of the Bonds and the release and reconveyance of the Trust Estate.

(d) Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Loan Agreement, the Borrower shall remain obligated to indemnify each Indemnitee pursuant to this Section 6.1 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless such Indemnitee has consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

(e) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to this Agreement shall survive the final payment or defeasance of the Bonds and, in the case of the Trustee, any resignation by the Trustee under the Indenture. The provisions of this Section 6.1 shall survive repayment of the Loans and the termination of this Financing Agreement and the transfer and sale of the Bonds.

**Section 6.2. Limitation With Respect to the Credit Facility Provider.** Notwithstanding anything in this Financing Agreement to the contrary, in the event that the Credit Facility Provider shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Bond Mortgage Loan, the Credit Facility Provider shall not be liable for any breach or default of any prior owner of the Project under this Financing Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Credit Facility Provider is the owner of the Project. Accordingly, during any period that the Credit Facility Provider owns the Project and that this Article VI is applicable to the Credit Facility Provider, the Credit Facility Provider's obligations

under this Article VI shall be limited to acts and omissions of the Credit Facility Provider occurring during the period of the Credit Facility Provider's ownership of the Project.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.1. Events of Default.** The following shall be “**Events of Default**” under this Financing Agreement and the term “Event of Default” shall mean, whenever it is used in this Financing Agreement, one or all of the following events:

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

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

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

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

Nothing contained in this Section 7.1 is intended to amend or modify any of the provisions of the Bond Financing Documents or to bind the Issuer, the Trustee, the Credit Facility Provider, the Servicer or the Construction Lender to any notice and cure periods other than as expressly set forth in the Bond Financing Documents.

**Section 7.2. Remedies on Default.** Subject to Section 7.6 hereof and provisions of the Intercreditor Agreement, whenever any Event of Default hereunder shall have occurred and be continuing, the Trustee or the Issuer where so provided may take any one or more of the following remedial steps:

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

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

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

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

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any premium on the Bonds collected pursuant to action taken under this Section 7.2 shall be applied in accordance with the provisions of the Indenture.

The provisions of this Section 7.2 are subject to the further limitation that if, after any Event of Default hereunder all amounts which would then be payable hereunder by the Borrower if such Event of Default had not occurred and was not continuing shall have been paid by or on behalf of the Borrower, and the Borrower shall have also performed all other obligations in respect of which it is then in default hereunder, and shall have paid the reasonable charges and expenses of the Issuer, the Trustee, the Servicer and the Credit Facility Provider, including reasonable attorneys' fees paid or incurred in connection with such default, and shall have paid all amounts then due to the Credit Facility Provider, including, but not limited to, any Freddie Mac Reimbursement Amounts and Freddie Mac Credit Enhancement Fees, and if there shall then be no default existing under the Indenture, then and in every such case such Event of Default hereunder shall be waived and annulled, but no such waiver or annulment shall affect any subsequent or other Event of Default or impair any right consequent thereon.

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

**Section 7.4. Agreement to Pay Attorneys' Fees and Expenses.** In the event the Borrower should default under any of the provisions of this Financing Agreement and the Issuer, the Trustee, the Servicer or the Credit Facility Provider should employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or

observance of any obligation or agreement on the part of the Borrower contained in this Financing Agreement or in the Bond Mortgage Note, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

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

**Section 7.6. Rights of Credit Facility Provider.** Notwithstanding anything herein to the contrary, as long as a Wrongful Dishonor has not occurred with respect to the Credit Facility, none of the Issuer, the Trustee or any other person shall, upon the occurrence of an Event of Default hereunder or an event of default under any other Bond Financing Document, take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Bond Mortgage Loan, except at the written direction of the Credit Facility Provider; provided that this prohibition shall not be construed to limit the rights of the Issuer or the Trustee to specifically enforce the Tax Regulatory Agreement in order to provide for operation of the Project in accordance with the Code and the laws of the State, including the Act; and provided further that this prohibition shall not be construed to limit the rights of the Issuer, the Trustee or the Servicer or any indemnified party under Section 6.1 hereof to enforce its rights against the Borrower under Sections 2.4, 2.5, 4.2, 4.3, 6.1 and 7.4 hereof by mandamus or other suit, action or proceeding at law or in equity where such suit, action or proceeding does not seek any remedies under or with respect to the Bond Mortgage or cause acceleration of the Bond Mortgage Loan.

**ARTICLE VIII**  
**MISCELLANEOUS**

**Section 8.1. Notices.**

(a) Whenever in this Financing Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Issuer, the Trustee, the Credit Facility Provider, the Borrower, the Servicer or the Construction Lender shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.05 of the Indenture or upon receipt of such notice or other communication delivered by facsimile transmission as required or permitted by this Financing Agreement (receipt of which shall be evidenced by confirmation of transmission). The Issuer, the Trustee, the Credit Facility Provider, the Borrower, the Servicer or the Construction Lender may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

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

The Trustee agrees to accept and act upon facsimile transmission or Electronic Notice of written instructions and/or directions pursuant to this Financing Agreement.

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

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

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

**Section 8.4. Modifications in Writing.** Modification or the waiver of any provisions of this Financing Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Credit Facility Provider and the Construction Lender and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given and so long as the interests of any Bondholders are not adversely affected and the Trustee consents in writing thereto. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

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

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

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

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

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

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

**Section 8.11. Cross References.** Any reference in this Financing Agreement to an "Exhibit," an "Article," a "Section," a "Subsection" or a "Paragraph" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Financing Agreement, an article of this Financing Agreement, a section of this Financing Agreement, a subsection of the section of this Financing Agreement in which the reference appears and a paragraph of the subsection within this Financing Agreement in which the

reference appears. All exhibits attached to or referred to in this Financing Agreement are incorporated by reference into this Financing Agreement.

**Section 8.12. Credit Facility Provider, the Construction Lender and Servicer as Third-Party Beneficiaries.** The parties hereto agree and acknowledge that the Credit Facility Provider, the Construction Lender and the Servicer are third party beneficiaries of this Financing Agreement.

**Section 8.13. Credit Facility Provider.** Following the release of the Credit Enhancement Agreement by the Trustee pursuant to the terms of the Indenture and the provision of an Alternate Credit Facility, all notices to be provided Freddie Mac hereunder shall be provided to the Alternate Credit Facility Provider and payments to be made to Freddie Mac by the Servicer or from the Administration Fund shall be paid to the Alternate Credit Facility Provider.

**Section 8.14. Non-Liability of Issuer.** The Issuer shall not be obligated to pay the principal (or redemption price) of or interest on the Bonds, except from Revenues and other money and assets received by the Trustee on behalf of the Issuer pursuant to this Financing Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Issuer or any member is pledged to the payment of the principal (or redemption price) or interest on the Bonds. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Financing Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under this Financing Agreement.

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

**Section 8.15. No Liability of Officers.** No recourse under or upon any obligation, covenant, or agreement or in any Bonds, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Owner of any Bonds, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee,

agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Owner of any Bonds, of any sum that may remain due and unpaid upon the Bonds or any of them, is hereby expressly waived and released as a condition of and consideration for the execution of this Financing Agreement and the issuance of the Bonds.

**Section 8.16. Capacity of the Trustee.** The Trustee is entering into this Financing Agreement solely in its capacity as Trustee and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Trustee under the Indenture. The Trustee shall be responsible only for the duties of the Trustee expressly set forth herein and in the Indenture.

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

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

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

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

**Section 8.18. Termination of References.** All references in this Financing Agreement to the Construction Lender shall be of no force or effect and shall be disregarded for all purposes of this Financing Agreement from and after the Conversion Date or during any period the Construction Lender is in default in the performance of its obligations as and when due under the Construction Phase Financing Agreement.

[Signature Pages Follow]

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

CITY OF SAN JOSE, as Issuer

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

ATTEST:

By: \_\_\_\_\_  
City Clerk

Approved as to form:

By: \_\_\_\_\_  
Chief Deputy City Attorney

[Issuer's Signature Page to Taylor Oaks Apartments Financing Agreement]

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Trustee

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

[Issuer's Signature Page to Taylor Oaks Apartments Financing Agreement]

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

TAYLOR OAKS APARTMENTS INVESTORS, L.P.  
a California limited partnership

By: FTF Taylor Oaks, LLC,  
a California limited liability company,  
its Co-General Partner

By: \_\_\_\_\_  
Robert Putnam,  
Managing Member

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Mark A. Wiese,  
President

[Issuer's Signature Page to Taylor Oaks Apartments Financing Agreement]

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

EXHIBIT A

FORM OF BOND MORTGAGE NOTE

CITY OF SAN JOSE  
MULTIFAMILY HOUSING REVENUE BONDS  
(TAYLOR OAKS APARTMENTS), SERIES 2011A-1

AND

CITY OF SAN JOSE  
MULTIFAMILY HOUSING REVENUE BONDS  
(TAYLOR OAKS APARTMENTS), SERIES 2011A-2

BOND MORTGAGE NOTE

US \$[PAR AMOUNT]

September [ ], 2011

FOR VALUE RECEIVED, the undersigned, Taylor Oaks Apartments Investors, L.P. (the "**Borrower**"), promises to pay to the order of the City of San José (the "**Issuer**"), and its assigns, the principal sum of [PAR AMOUNT] (US \$[\_\_\_\_\_]), plus premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Note is issued pursuant to that certain Financing Agreement dated as of September 1, 2011, among the Issuer, Wells Fargo Bank, National Association (the "**Trustee**") and the Borrower (together with any and all amendments, modifications, supplements and restatements, the "**Financing Agreement**") pursuant to which the Issuer has made a mortgage loan in the principal amount of this Note to the Borrower (the "**Bond Mortgage Loan**"), and this Note is entitled to the benefits of the Financing Agreement and subject to the terms, conditions and provisions thereof. The Bond Mortgage Loan was funded with proceeds from the Issuer's Multifamily Housing Revenue Bonds (Taylor Oaks Apartments), Series 2011A-1 (the "**Series A-1 Bonds**") and the Issuer's Multifamily Housing Revenue Bonds (Taylor Oaks Apartments), Series 2011A-2 (the "**Series A-2 Bonds**," and together with the Series A-1 Bonds, the "**Bonds**") issued pursuant to the Trust Indenture dated as of September 1, 2011 (the "**Indenture**") between the Issuer and the Trustee.

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

2. **Payments of Principal and Interest.** All payments under this Note shall be due on, and shall be made on dates, in amounts, at times and in a manner which corresponds with the Issuer's obligation to make or provide for payments under the Bonds, and to that end, the Borrower agrees to make payments under this Note at all times in amounts sufficient to enable

the Trustee, on behalf of the Issuer, to make timely payment, when due, of the principal of, premium, if any, on, and interest on, the Bonds, whether at maturity, by acceleration, on redemption or otherwise, all as provided in the Bonds and in the Indenture. All remaining unpaid principal and interest and other amounts due under this Note shall be due and payable on [October 1, 2028] (the “**Maturity Date**”).

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

3. **Payment of Fees and Expenses; Other Required Payments.** The Borrower shall also pay fees and expenses under Section 4.2 of the Financing Agreement, rebate amounts under Sections 2.4 and 4.3 of the Financing Agreement and indemnification amounts under Section 6.1 of the Financing Agreement, as well as any other amounts owed under the Financing Agreement, when due and in accordance with the terms and provisions set forth therein.

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

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

6. **Security.** The Indebtedness is secured by, among other things, a multifamily mortgage, assignment of rents and security agreement dated as of the date of this Note (the “**Bond Mortgage**”). Reference is made to the Bond Mortgage for other rights of the Lender as to collateral for the Indebtedness.

7. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Lender, as governed by the Indenture, without any prior notice to the Borrower. The Lender may exercise this option to accelerate regardless of any prior forbearance.

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

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

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

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

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

13. **Loan Charges.** If any applicable law limiting the amount of interest or other charges permitted to be collected from the Borrower in connection with the Bond Mortgage

Loan is interpreted so that any interest or other charge provided for herein or in any other document evidencing or securing the Bond Mortgage Loan, whether considered separately or together with other charges provided for in any such other document, violates that law, and the Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation.

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

15. **Governing Law.** This Note shall be governed by the law of the State of California (the “**Property Jurisdiction**”).

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

17. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Trustee as designated in the Indenture, or such other place as may be designated by written notice to the Borrower from or on behalf of the Lender.

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

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

20. **Assignment.** The Borrower acknowledges that this Note is being assigned by the Issuer to the Trustee for the Bonds and the Federal Home Loan Mortgage Corporation as the credit enhancer of the Bond Mortgage Loan, as their interests may appear.

[Signature page follows]

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

TAYLOR OAKS APARTMENTS INVESTORS, L.P.  
a California limited partnership

By: FTF Taylor Oaks, LLC,  
a California limited liability company,  
its Co-General Partner

By: \_\_\_\_\_  
Robert Putnam,  
Managing Member

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Mark A. Wiese,  
President

\_\_\_\_\_  
Borrower's Employer ID No.

**ASSIGNMENT**

Pay to the order of WELLS FARGO BANK, NATIONAL ASSOCIATION, without recourse or warranty, as Trustee under the Indenture referred to in the attached Note and FEDERAL HOME LOAN MORTGAGE CORPORATION, without recourse or warranty, as the Credit Facility Provider for the Bond Mortgage Loan evidenced by the attached Note, as their respective interests may appear, under and subject to the terms and conditions of that certain Intercreditor Agreement dated as of [\_\_\_\_\_], by and among the undersigned, the Trustee, Credit Facility Provider and CITIBANK, N.A.

CITY OF SAN JOSE

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

ATTEST:

By: \_\_\_\_\_  
City Clerk