

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

Citibank, N.A.  
1801 California St., Suite 3700  
Denver, CO 80202  
Attention: Judy Wessler  
Citi # [\_\_\_\_\_]

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**CITY OF SAN JOSÉ,  
as Issuer  
and**

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

**FEDERAL HOME LOAN MORTGAGE CORPORATION,  
as Freddie Mac  
and**

**CITIBANK, N.A.,  
as Construction Lender**

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**INTERCREDITOR AGREEMENT**

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**§[series A-1 par]  
City of San José  
Multifamily Housing Revenue Bonds  
(Taylor Oaks Apartments), Series 2011A-1**

**and**

**§[series A-2 par]  
City of San José  
Multifamily Housing Revenue Bonds  
(Taylor Oaks Apartments), Series 2011A-2**

**Dated as of September 1, 2011**

Freddie Mac Loan (Construction) No. [\_\_\_\_]  
Freddie Mac Loan (Permanent) No. [\_\_\_\_]  
Freddie Mac Loan (Short Term (Gap) Bonds) No. [\_\_\_\_]

## INTERCREDITOR AGREEMENT

**THIS INTERCREDITOR AGREEMENT** (this “**Agreement**”) is dated as of September 1, 2011, and is made among **CITY OF SAN JOSÉ** (the “**Issuer**”), **WELLS FARGO BANK, NATIONAL ASSOCIATION** (the “**Trustee**”), **FEDERAL HOME LOAN MORTGAGE CORPORATION** (“**Freddie Mac**”) and **CITIBANK, N.A.** (“**Construction Lender**”).

### RECITALS

Pursuant to, and in accordance with, the laws of the State of California (the “**State**”), and in accordance with Section 142(d) of the Internal Revenue Code of 1986, as amended (the “**Code**”), the Issuer has issued and sold 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**]. The Bonds were issued pursuant to a Trust Indenture dated as of September 1, 2011, between the Issuer and the Trustee (the “**Indenture**”). The proceeds of the Bonds were used by the Issuer to make a mortgage loan (the “**Bond Mortgage Loan**”) to Taylor Oaks Apartments Investors, L.P., a limited partnership duly organized and existing under the laws of the State (the “**Borrower**”), pursuant to a Financing Agreement dated as of September 1, 2011, among the Issuer, the Trustee and the Borrower (the “**Financing Agreement**”), for the sole and exclusive purpose of financing the acquisition and rehabilitation of a 59-unit multifamily rental housing development located in the City of San José, California, known as Taylor Oaks Apartments, which property is more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Project**”).

The Bond Mortgage Loan is evidenced by the Bond Mortgage Note dated [\_\_\_\_], 2011, executed by the Borrower in the original aggregate principal amount of \$[**aggregate par amount**] and payable to the order of the Issuer (the “**Bond Mortgage Note**”) and the Borrower’s obligations under the Bond Mortgage Note are secured by a First Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of September 1, 2011 (the “**Bond Mortgage**”) encumbering the Project, which Bond Mortgage has been recorded in the official records of the County of Santa Clara, California (the “**Official Records**”) prior to the recordation of this Agreement. The Issuer has assigned certain of its rights under the Financing Agreement to the Trustee pursuant to the Indenture and certain of its rights under 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 and conditions of this Agreement.

The Borrower has requested that Freddie Mac execute and deliver to the Trustee a Credit Enhancement Agreement dated as of the date hereof (the “**Credit Enhancement Agreement**”) to provide payment for and secure the payment of amounts owing under the Financing Agreement sufficient to pay the principal and interest on the Bonds. Freddie Mac is executing and delivering the Credit Enhancement Agreement concurrently with the execution of this Agreement.

To evidence the Borrower’s reimbursement obligations to Freddie Mac as a result of payments made by Freddie Mac under the Credit Enhancement Agreement, the Borrower and Freddie Mac are entering into a Reimbursement and Security Agreement (the “**Reimbursement Agreement**”) contemporaneously with the execution hereof.

The Borrower’s obligations to Freddie Mac under the Reimbursement Agreement will be secured by a Second Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of September 1, 2011 (the “**Reimbursement Mortgage**”), encumbering the Project, which Reimbursement Mortgage will be recorded in the Official Records immediately after the recordation of the Bond Mortgage (and the instrument evidencing the assignment thereof to the Trustee and Freddie Mac).

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, has agreed to (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**”) with the Borrower, and (b) issue to Freddie Mac, in the future, but not later than, [\_\_\_\_], a clean, unconditional, irrevocable and transferrable standby letter of credit pursuant to the terms and subject to the conditions of a Letter of Credit and Reimbursement Agreement dated as of the date hereof (the “**Construction Phase Credit Reimbursement Agreement**” and, together with the Construction Loan Agreement, the “**Credit Agreement**”) with the Borrower.

The Construction Lender, Freddie Mac and the Servicer (as defined herein) are entering into a Construction Phase Financing Agreement dated as of the date hereof (the “**Construction Phase Financing Agreement**”) to evidence the respective rights and obligations of Freddie Mac and the Construction Lender during the Construction Phase.

The Borrower’s obligations to the Construction Lender under the Credit Agreement will be secured under a Third Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of September 1, 2011 (the “**Construction Mortgage**”) encumbering the Project, which Construction Mortgage will be recorded in the Official Records immediately after the recordation of the Reimbursement Mortgage.

It is a condition to the delivery of the Credit Enhancement Agreement by Freddie Mac to the Trustee and the making of the Construction Loan to the Borrower and subsequently issuing the Construction Phase Credit Facility to Freddie Mac that the rights of the Issuer, the Trustee, Freddie Mac and the Construction Lender to enforce remedies under the Bond Mortgage, the

Reimbursement Mortgage and the Construction Mortgage, respectively, be established between and among the parties hereto.

## AGREEMENTS

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and in order to induce Freddie Mac to execute and deliver the Credit Enhancement Agreement to the Trustee and to induce the Construction Lender to make advances on the Construction Loan on behalf of the Borrower and thereafter deliver the Construction Phase Credit Facility for the benefit of Freddie Mac and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. *Defined Terms.*** Unless otherwise defined herein, or unless the context clearly indicates otherwise, each term used in this Agreement including in the Recitals set forth above, and which is defined in the Indenture, the Credit Agreement or the Reimbursement Agreement, as applicable, shall have the meaning given to such term by the Indenture, the Credit Agreement or the Reimbursement Agreement, as applicable.

As used herein, the following terms shall have the meanings set forth below:

*“Affiliate”* as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or by contract or otherwise, or (b) the ownership of a managing member’s interest in a limited liability company.

*“Bond Documents”* means, collectively, the Indenture, the Bonds, the Financing Agreement, the Bond Mortgage Note, the Tax Regulatory Agreement, the Bond Mortgage, this Agreement and any other document evidencing or securing the Bonds or the Bond Mortgage Loan as such documents shall be amended, modified or supplemented from time to time.

*“Construction Default Event”* means, prior to the delivery of the Construction Phase Credit Facility, the occurrence of a Construction Phase Collateral Shortfall or a Construction Lender Default as each such term is defined in the Construction Phase Financing Agreement.

*“Construction Loan Agreement”* means the Construction Loan Agreement as described in the Recitals hereto.

*“Construction Mortgage”* means the Construction Mortgage as described in the Recitals hereto.

*“Construction Mortgage Documents”* means, collectively, the Construction Loan Agreement, the Construction Phase Credit Reimbursement Agreement, the Construction

Phase Credit Facility, the Construction Mortgage and any other document evidencing or securing the obligations of the Borrower pursuant to the Construction Loan Agreement and the Construction Phase Credit Reimbursement Agreement.

“*Construction Phase*” means the period commencing on the Closing Date and ending on the Conversion Date (as defined in the Reimbursement Agreement).

“*Construction Phase Collateral Requirement*” shall have the meaning given that term in the Construction Phase Financing Agreement.

“*Construction Phase Credit Facility*” means the clean unconditional, irrevocable and transferrable, standby letter of credit to be issued by the Construction Lender for the benefit of Freddie Mac no later than [\_\_\_\_\_] in the amount of \$[\_\_\_\_\_] , and any replacements or renewals thereof.

“*Construction Phase Credit Reimbursement Agreement*” means the Letter of Credit and Reimbursement Agreement as described in the Recitals hereto.

“*Construction Phase Financing Agreement*” means the Construction Phase Financing Agreement as described in the Recitals hereto.

“*Construction Wrongful Dishonor*” means, from and after the delivery of the Construction Phase Credit Facility, the failure of the Construction Lender to honor a draw made in accordance with the terms of the Construction Phase Credit Facility (which draw strictly complies with, and conforms to, the terms and conditions of the Construction Phase Credit Facility) or the insolvency of the Construction Lender as defined in the Construction Phase Financing Agreement.

“*Conversion*” means conversion of the Bond Mortgage Loan from the Construction Phase to the Permanent Phase pursuant to the Forward Commitment and the Construction Phase Financing Agreement.

“*Conversion Date*” means the date upon which the Conversion takes place.

“*Credit Agreement*” means the Credit Agreement as described in the Recitals hereto.

“*Credit Enhancement Documents*” means, collectively, the Reimbursement Agreement, the Reimbursement Mortgage, the Pledge Agreement with respect to the Bonds, and any other document evidencing or securing the obligations of the Borrower pursuant to the Reimbursement Agreement.

“*Permanent Phase*” means the period of the Bond Mortgage Loan commencing on the Conversion Date and continuing through the maturity of the Bond Mortgage Loan.

“*Tax Regulatory Agreement*” means the Regulatory Agreement and Declaration of Restrictive Covenants dated as of September 1, 2011, among the Trustee, the Issuer

and the Borrower, to be recorded immediately prior to the Bond Mortgage in the Official Records, together with all supplements thereto.

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

**SECTION 2. *Rules of Construction.*** The words “hereof,” “herein,” “hereunder,” “hereto,” and other words of similar import refer to this Agreement in its entirety.

The terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants.”

References to Articles, Sections, and other subdivisions of this Agreement are to the designated Articles, Sections, and other subdivisions of this Agreement as originally executed. Reference herein to any document or instrument shall be deemed to include any amendments or supplements to, or restatements of, such documents or instrument.

The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

**SECTION 3. *Exercise of Rights and Remedies by Freddie Mac.***

(A) Until either a Wrongful Dishonor has occurred and is continuing, or the Credit Enhancement Agreement terminates in accordance with its terms and all of the Borrower’s obligations to Freddie Mac under the Reimbursement Agreement shall have been paid in full:

(i) Except as provided in Sections 3(C) and 3(D), without the prior written consent of Freddie Mac, neither the Trustee nor the Issuer may exercise any of its rights and remedies as beneficiary under the Bond Mortgage or as a secured party with respect to the liens and security interests created by the Financing Agreement or the other Bond Documents or take any action to cause a redemption of the Bonds or to declare the outstanding balance of the Bonds or the Bond Mortgage Note to be due pursuant to the Indenture or the Financing Agreement or to foreclose the lien of the Bond Mortgage, to seek the appointment of a receiver or to collect rents or realize upon any other collateral held as security for the Bonds, declare a default or event of default, or file or join in the filing of any judicial proceeding to collect the indebtedness secured by the Bond Mortgage.

(ii) Any and all consents and approvals of the Trustee as beneficiary required under the Bond Mortgage shall be given only with the prior written consent of Freddie Mac, in its sole discretion.

(iii) Freddie Mac and the Trustee and, prior to the Conversion Date and so long as there is no Construction Default Event or Construction Wrongful Dishonor, as applicable, the Construction Lender, shall each be named as a mortgagee on all fire, extended coverage and other hazard insurance policies required under the Bond Mortgage and all proceeds shall be held and applied by the Trustee in accordance with this paragraph. Prior to the Conversion Date and provided there has not been a Construction Default Event or Construction Wrongful Dishonor, as applicable, the application of the proceeds of insurance or condemnation (“**Insurance/Condemnation Proceeds**”) shall be solely as directed by the Construction Lender in accordance with the terms of the Construction Mortgage Documents (provided that the Construction Lender shall consult with Freddie Mac regarding the use and application of such proceeds) and subject to the requirement that excess proceeds remaining after the use of such Insurance/Condemnation Proceeds for the repair, restoration, rebuilding or alteration of the Project and for payment of costs incurred by the Construction Lender in connection with such casualty or condemnation shall be deposited with the Trustee and applied in accordance with the Indenture to reimburse Freddie Mac for a drawing upon the Credit Enhancement Agreement for the purpose of redeeming the Bonds in accordance with the Indenture. During any Construction Default Event or Construction Wrongful Dishonor, as applicable, the application of Insurance/Condemnation Proceeds shall be solely as directed by Freddie Mac. From and after the Conversion Date, the application of Insurance/Condemnation Proceeds shall be solely as directed in writing by Freddie Mac, in accordance with the terms of the Reimbursement Mortgage and subject to the requirement that excess proceeds remaining after the use of such Insurance/Condemnation Proceeds for the repair, restoration, rebuilding or alteration of the Project and for payment of any costs incurred by Freddie Mac in connection with such casualty or condemnation shall be deposited with the Trustee and applied in accordance with the Indenture to reimburse Freddie Mac for a drawing upon the Credit Enhancement Agreement for the purpose of redeeming the Bonds in accordance with the Indenture.

(iv) Except as provided in Sections 3(C) and 3(D), any and all demands permitted to be made by the beneficiary under the terms of the Bond Mortgage shall be made only by or at the written direction of Freddie Mac in its sole discretion (the beneficiary may request, however, that Freddie Mac, in its discretion, provide such direction).

(v) Except as provided in Sections 3(C) and 3(D), Freddie Mac, in its sole discretion, shall have the sole right to direct the Trustee to waive or forbear any term, condition, covenant or agreement of the Bond Mortgage applicable to the Borrower as Trustor, or any breach thereof, other than a covenant that might adversely impact the tax-exempt status of the Bonds.

(vi) Except as provided in Sections 3(C) and 3(D), Freddie Mac shall control all of the Bond Mortgage Rights (as such term is defined below) and Freddie Mac shall have the right, power and authority to direct the Trustee with respect to all decisions in connection with the Bond Mortgage, which pursuant to its terms may be made by the beneficiary, except Freddie Mac shall *not* have the right to direct the Trustee to take or

refrain from taking action that would adversely impact the tax-exempt status of the Bonds. The parties hereto agree that although all Bond Mortgage Loan payments are required to be made semi-annually, the Borrower has agreed during the Permanent Phase to make monthly Bond Mortgage Loan payments under the Reimbursement Agreement to the Servicer in the manner and at the times set forth in the Reimbursement Agreement. “**Bond Mortgage Rights**” collectively means, with respect to the Bond Mortgage Loan, all rights of the Issuer, the Trustee and/or the beneficiary under the Bond Mortgage (other than those rights specifically excluded below) including without limitation, the right to receive any and all Bond Mortgage Loan payments thereunder and all of the rights and interests under the Bond Mortgage, and to vest in its independent contractor, including the Servicer, such rights, powers and authority as may be necessary to implement any of the foregoing; “**Bond Mortgage Rights**” does not mean, and expressly excludes (a) the Issuer’s rights under Sections 2.4, 2.5, 4.2, 4.3, 6.1 and 7.4 of the Financing Agreement; (b) the right to receive payments relating to the redemption premium of a redeemed Bond; (c) the Issuer’s and the Trustee’s right to require the Borrower to pay rebate, meet continuing disclosure requirements and the right to specifically enforce the Tax Regulatory Agreement; and (d) the Trustee’s rights to specifically enforce the Borrower’s obligations to make payments owing to the Trustee pursuant to Sections 2.4, 2.5, 4.2, 4.3, 6.1 and 7.4 of the Financing Agreement; *provided, however*, that the enforcement of such rights of the Trustee or the Issuer is limited as provided in Sections 3(C) and 3(D) (such rights are referred to herein as the “**Mortgagee Retained Rights**”).

(vii) The Trustee, the Issuer and the Construction Lender covenant and agree neither to file nor join in the filing of any involuntary petition involving the Borrower under the federal bankruptcy laws or other federal or state reorganization, receivership, insolvency or similar proceeding without the prior written consent of Freddie Mac.

(viii) None of the Trustee, the Issuer, Freddie Mac or the Construction Lender shall acquire by subrogation, contract or otherwise any lien upon or other estate, right or interest in the Project or any rents or revenues therefrom that are not subject to the terms of this Agreement, except as may be expressly permitted hereunder (or as may be expressly agreed to by the parties in writing).

(ix) Upon the initiation of any liquidation or reorganization of the Borrower or any of the entities comprising Borrower or any of the partners or members of any such entity (Borrower and all such entities and partners or members hereinafter collectively referred to as the “**Borrower Parties**”) in or by the filing of any bankruptcy, insolvency or receivership proceeding or upon the initiation of any involuntary liquidation, dissolution or reorganization proceeding involving a Borrower Party, then, in any such case, any payment or distribution, whether in cash, property or securities, to which Trustee or Issuer would be entitled pursuant to the Indenture, Bond Mortgage Note, Financing Agreement or Bond Mortgage, shall instead be paid over to Freddie Mac for application as provided in the Reimbursement Agreement until all amounts due to Freddie Mac under the Reimbursement Agreement have been paid in full, and then, prior to the Conversion Date, to the Construction Lender until all amounts owing under the Construction Mortgage Documents have been paid in full.

(x) The Trustee and the Issuer irrevocably authorize Freddie Mac to take any action (but Freddie Mac has *no* obligation to take any such action, in which case the Trustee or the Issuer may proceed) with respect to any payment or distribution, whether in cash or securities, as described in Section (ix) above (in the name of Freddie Mac or in the name of the Trustee or Issuer, as Freddie Mac may deem necessary or advisable for the enforcement of the provisions of this Agreement), to:

- (1) demand, sue for, collect and receive every such payment or distribution described in Section (ix),
- (2) file claims and proofs of claims in any statutory or non-statutory proceeding,
- (3) vote the full amount of the Bond Mortgage Loan in its sole discretion in connection with any resolution, arrangement, plan of reorganization, compromise, settlement or extension, and
- (4) take all such other action (including, without limitation, the right to participate in any composition of creditors and the right to vote the amount of the Bond Mortgage Loan at creditors' meetings for the election of trustees, acceptances of plans and otherwise), as Freddie Mac may deem necessary or advisable for the enforcement of the provisions of this Agreement.

The Trustee and the Issuer agree, upon the initiation of any liquidation or reorganization of any Borrower Party by the filing of any bankruptcy, insolvency or receivership proceeding or upon the initiation of any involuntary liquidation, dissolution or reorganization proceeding involving a Borrower Party, and at the sole expense of the Borrower or if the Borrower fails to pay, at the expense of Freddie Mac, promptly

- (1) to take such action as may be requested at any time by Freddie Mac to deliver any instruments required to collect the amount of the Bond Mortgage Loan, on demand therefor, and
- (2) to execute and deliver such powers of attorney (only with respect to the Trustee), assignments or other instruments as may be requested by Freddie Mac in order to enable Freddie Mac to enforce any and all claims upon or in respect of the Bond Mortgage Loan and to collect and receive any and all payments or distributions which may be payable or deliverable at any time upon or in respect of the Bond Mortgage Loan.

Nothing herein contained shall be deemed to preclude the Trustee and the Issuer from appearing or being heard in any bankruptcy, insolvency, or other similar proceedings affecting a Borrower Party, nor from collecting from a Borrower Party the full Bond Mortgage Loan amount due to the Trustee and the Issuer (through subrogation to the rights of Freddie Mac or otherwise) after all amounts due to Freddie Mac under the Reimbursement Agreement and the Reimbursement Mortgage shall have been paid in full nor from enforcing, in accordance with this Agreement, the Mortgagee Retained Rights.

For purposes of this Agreement, Freddie Mac's claim or entitlement in any bankruptcy proceeding for post-petition interest shall be senior to the Bond Mortgage Loan and the Bonds and subject to the rights, benefits, terms and provisions of this Agreement as if it were part of the Reimbursement Agreement obligations. For purposes of this Agreement, the Construction Lender's claim or entitlement in any bankruptcy proceeding for post-petition interest shall be junior to any claim or entitlement of Freddie Mac. The Trustee and the Issuer hereby agree not to seek adequate protection payments in any Borrower or Borrower Party bankruptcy proceeding without the prior written consent of Freddie Mac, which may be granted or withheld by Freddie Mac in its sole discretion. Further, at the sole expense of the Borrower or if the Borrower fails to pay, at the expense of Freddie Mac, the Trustee and the Issuer agree to join, and not object to, or otherwise contest any request for relief from the automatic stay of 11 U.S.C. § 362 requested by Freddie Mac in any bankruptcy proceeding of the Borrower, in order to enable Freddie Mac to foreclose or exercise any of its rights or remedies under the Reimbursement Mortgage with respect to the Project.

The authorization of Freddie Mac set forth above in this subsection (x) shall not obligate Freddie Mac to take any such action.

(xi) Upon the occurrence and during the continuation of a default by the Borrower under the Reimbursement Mortgage, all amounts payable (including, but not limited to, any payment pursuant to an assignment of rents) under the Reimbursement Mortgage shall be paid to Freddie Mac (or the then owner of the Reimbursement Mortgage) in full before any payment or distribution, whether in cash or in other property, shall be made to Trustee or Issuer for the purpose of making Bond Mortgage Loan payments under the Financing Agreement. During the continuation of any default under the Reimbursement Mortgage, any payment or distribution, whether in cash or other property, which would otherwise (but for the provisions contained in this Agreement) be payable or deliverable under the Bond Mortgage, shall be paid or delivered directly to Freddie Mac in satisfaction of any amounts payable (including, but not limited to, any payment pursuant to an assignment of rents) under the Reimbursement Mortgage (including any interest thereon accruing after the occurrence of any such default) until all such amounts shall have been paid in full or the default shall have been cured or waived by Freddie Mac.

(xii) If any payment of the rents or other revenues arising from an assignment of rents contained in the Bond Mortgage or distribution of security or the proceeds of any of the foregoing is collected or received by Issuer or Trustee in contravention of any term, condition or provision of this Agreement, Issuer or Trustee, as applicable, immediately will deliver the same to Freddie Mac, in precisely the form received (except for the endorsement or the assignment by Issuer or Trustee, as applicable, where necessary), and, until so delivered, the same shall be held in trust by Issuer or Trustee, as applicable. The Issuer or Trustee shall not be required to deliver money paid by the Borrower pursuant to Sections 2.4, 2.5, 4.2, 4.3, 6.1 or 7.4 of the Financing Agreement (other than money required to be paid to Freddie Mac pursuant to the provisions of such sections) or any rebate payments due under the Indenture.

(xiii) Trustee or Issuer shall not have any right to contest any of the procedures or actions taken by Freddie Mac to exercise its remedies under the Reimbursement Agreement or the Reimbursement Mortgage so long as Freddie Mac is in compliance with its agreements hereunder.

(xiv) Trustee or Issuer shall not have any right to contest any of the procedures or actions taken by Construction Lender to exercise its remedies under the Construction Mortgage Documents so long as Construction Lender is in compliance with its agreements hereunder.

(B) Freddie Mac shall have the right to delegate to the Servicer any of the Bond Mortgage Rights. None of Freddie Mac, the Servicer or the Construction Lender or their respective officers, directors, employees or agents shall be liable to the Issuer or the Trustee for any action taken or omitted to be taken in good faith by such party in connection with the Bond Mortgage Loan by reason of such party's control of the Bond Mortgage Rights.

(C) If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Tax Regulatory Agreement, and if such default remains uncured for a period of 60 days after Borrower, Freddie Mac and, prior to the Conversion Date, the Construction Lender receive written notice from the Trustee or Issuer stating that a default has occurred pursuant to the Tax Regulatory Agreement, and specifying the nature of the default, the Issuer and the Trustee shall have the right to seek specific performance of the provisions of the Tax Regulatory Agreement, or to exercise their other rights or remedies thereunder; *provided, however*, that the Trustee shall not have the right to accelerate the Bond Mortgage Note or the Bonds, to cause a redemption of the Bonds, to foreclose under the Bond Mortgage or take any other remedial action under any of the other Bond Documents. The Trustee and the Issuer agree to refrain from the exercise of such permitted remedies if Freddie Mac cures or the Construction Lender cures any such default by the Borrower within sixty (60) days after notice to Freddie Mac and the Construction Lender, if such default is capable of being cured by the payment of money or, in the event of any other default, Freddie Mac or the Construction Lender commences to cure such default and thereafter diligently proceeds with such cure.

(D) If the Borrower defaults in the performance of its obligations to the Issuer pursuant to Sections 2.4, 2.5, 4.2, 4.3, 6.1 or 7.4 of the Financing Agreement or the Borrower's obligation to comply with continuing disclosure requirements or to make payments to the Trustee owed pursuant to Sections 2.4, 2.5, 4.2, 4.3, 6.1 or 7.4 of the Financing Agreement for fees, expenses, rebate or indemnification, the Issuer or the Trustee shall have the right to exercise all its rights and remedies thereunder; *provided, however*, that neither the Issuer nor the Trustee shall have the right to accelerate the Bond Mortgage Note or the Bonds, to cause a redemption of the Bonds, to foreclose under the Bond Mortgage or take any other remedial action under any of the other Bond Documents. The Trustee and the Issuer agree to refrain from the exercise of such permitted remedies if Freddie Mac or the Construction Lender cures any such default by the Borrower within sixty (60) days after receipt by Freddie Mac and the Construction Lender of written notice of such default, if such default is capable of being cured by the payment of money or, in the event of any other default, Freddie Mac or the Construction Lender commences to cure such default and thereafter diligently proceeds with such cure, provided that such longer cure

period may be agreed to by the Issuer and the Trustee upon receipt of an opinion of Bond Counsel that such period will not adversely affect the exemption of interest on the Bonds from gross income for federal income tax purposes.

(E) The Trustee and the Issuer each acknowledges that Freddie Mac or the Servicer may hold cash or other collateral and reserves to secure the Reimbursement Agreement and that the Construction Lender (prior to Conversion) may hold cash or other collateral and reserves to secure the Credit Agreement, which collateral and reserves are not available as security for the Bonds. All cash collateral that is held by the Servicer that is primarily held as security for the payment of principal and interest on the Bonds or to reimburse Freddie Mac for payments made under the Credit Enhancement Agreement shall be invested in obligations the interest on which is excludable from gross income for federal income tax purposes. Freddie Mac agrees that it will instruct the Servicer (based upon the instruction of Bond Counsel) which funds and accounts held by the Servicer are subject to investment yield limitation as described in the Tax Certificate.

(F) The Trustee and the Issuer each acknowledges that Freddie Mac and the Construction Lender may make advances to the Borrower pursuant to the terms of the Reimbursement Agreement and the Reimbursement Mortgage and the Credit Agreement and the Construction Mortgage, respectively, or any extension, modification, amendment, renewal, consolidation, increase, reinstatement or supplement thereto and, from and after the Conversion Date, may make additional loans secured by additional mortgages on the Project (“**Additional Loans**”), notwithstanding anything to the contrary in the Bond Documents. The Trustee and the Issuer each acknowledges that the obligations evidenced by the Reimbursement Agreement and secured by the Reimbursement Mortgage and the obligations evidenced by the Credit Agreement and secured by the Construction Mortgage, and the Additional Loans, together with accrued interest thereon, plus fees, advances and expenses due and owing by the Borrower thereunder, as applicable, may increase in the future and the agreements of the Trustee and the Issuer set forth in this Agreement shall extend to such amounts that are currently, and that may become, due and owing under the Reimbursement Mortgage, the Construction Mortgage and the Additional Loans.

### **SECTION 3A. Exercise of Rights and Remedies by Construction Phase Facility Credit Provider.**

Prior to the Conversion Date and so long as no Construction Default Event or Construction Wrongful Dishonor, as applicable, is in existence, any provision of this Agreement (i) requiring the consent of Freddie Mac shall also require the consent of the Construction Lender and (ii) permitting Freddie Mac to provide direction to the Trustee shall require the consent of the Construction Lender.

### **SECTION 4. *Exercise of Rights and Remedies by Trustee; Transfer of Bond Mortgage Loan.***

(A) Upon (i) the occurrence and during the continuation of a Wrongful Dishonor, or (ii) upon the termination or replacement of the Credit Enhancement Agreement in accordance with its terms, and no further obligations of the Borrower to Freddie Mac under the Reimbursement Agreement remain outstanding, Freddie Mac shall not exercise the rights and

remedies referred to in Section 3 hereof without the prior written consent of the Trustee, and the actions set forth in Section 3 shall be taken by the Trustee in its sole discretion; *provided, however,* if prior to the Conversion Date the Credit Enhancement Agreement has terminated and Freddie Mac has received funds in an amount equal to the Construction Phase Collateral Requirement (from the sources described in the Construction Phase Financing Agreement), the Construction Lender shall have the right, in its sole discretion, to direct the action of the Trustee and other rights and remedies otherwise reserved to Freddie Mac under Section 3 hereof.

(B) Unless a Wrongful Dishonor shall have occurred and be continuing, neither the Trustee nor the Issuer shall, without the prior written consent of Freddie Mac and, prior to the Conversion Date and provided no Construction Default Event or Construction Wrongful Dishonor, as applicable, shall have occurred and be continuing, the Construction Lender, dispose of the Bond Mortgage Loan or transfer the Financing Agreement, the Bond Mortgage Note, the Bond Mortgage or any other related document or any right or interest in the Financing Agreement, the Bond Mortgage Note, the Bond Mortgage or any other related document other than, in the case of the Trustee, to a successor Trustee pursuant to the terms of the Indenture. As a condition to the effectiveness of any such transfer to a successor trustee, the successor trustee must execute an assumption agreement with respect to this Agreement and the Indenture in form and substance acceptable to Freddie Mac and, prior to the Conversion Date and so long as no Construction Default Event or Construction Wrongful Dishonor, as applicable, has occurred and is continuing, the Construction Lender.

**SECTION 5. *Application of Money Received Upon Exercise of Remedies under the Bond Mortgage.*** Any and all amounts received or collected by the Trustee or Freddie Mac in payment of the Bond Mortgage Loan as a result of the exercise of set-off rights, the liquidation of any security interest created by the Bond Documents or the Credit Enhancement Documents, the sale (by foreclosure, power of sale or otherwise) of the Project under the Bond Mortgage or the exercise of any remedies under any of the Bond Documents or the Credit Enhancement Documents against the Borrower or the Project (including rents received from the appointment of a receiver) shall be held by the Trustee or Freddie Mac, as the case may be, for the benefit of the Trustee and Freddie Mac and will be applied as follows:

(A) Until either (i) a Wrongful Dishonor has occurred and is continuing, or (ii) the Credit Enhancement Agreement expires, terminates or is replaced, and the Borrower has no further obligations to Freddie Mac under the Reimbursement Agreement and other documents evidencing Additional Loans, such money held by the Trustee or Freddie Mac (as applicable) shall be applied in such manner and in such order as Freddie Mac, in its sole discretion, determines, subject, however, to the terms of the Reimbursement Mortgage and Reimbursement Agreement; and

(B) Upon and following the occurrence and continuance of an event described in clause (A)(i) or clause (A)(ii) of this Section 5, such money held by the Trustee and Freddie Mac shall be applied in such manner and in such order (to the extent permitted by the Bond Documents, the Credit Enhancement Documents and applicable law) as the Trustee, in its sole discretion, determines as required under the terms of the Indenture; *provided, however,* if prior to the Conversion Date an event described in (A)(ii) of this Section 5 has occurred and Freddie Mac has received funds in an amount equal to the Construction Phase Collateral Requirement (from

the sources described in the Construction Phase Financing Agreement), money held by the Trustee and Freddie Mac (other than amounts released by the Trustee to Freddie Mac from the Freddie Mac Collateral Fund and the Project Account of the Bond Mortgage Loan Fund or advanced by the Construction Lender to Freddie Mac or drawn under the Construction Phase Credit Facility in an aggregate amount equal to the Construction Phase Collateral Requirement) shall be applied in such manner and in such order as the Construction Lender determines, to the extent permitted by the Bond Documents, the Construction Mortgage Documents and applicable law.

**SECTION 6. *Assignment of Rights.*** The Issuer and the Trustee each hereby agree that, following a total defeasance of the Bonds, an acceleration of the principal amount of the Bonds or the calling of all Bonds for redemption or the cancellation of the Bonds, when Trustee holds Eligible Funds under the Indenture or in accordance with written instructions provided by Freddie Mac (whether as a result of the payment by Freddie Mac under the Credit Enhancement Agreement or otherwise) in an amount which shall be sufficient to pay

(A) the principal of all Bonds then Outstanding and any redemption premium owed (provided Freddie Mac is *not* liable for any premium) and

(B) all accrued and unpaid interest on the Bonds then Outstanding to the date of redemption, acceleration or defeasance,

such that the obligation of Freddie Mac under the Credit Enhancement Agreement is deemed to be retired in full in accordance with its terms, then, in such event, the Issuer or the Trustee, as applicable, shall promptly do all of the following (but at the sole cost and expense of the Borrower):

(i) Use all funds drawn under the Credit Enhancement Agreement as may be necessary to promptly redeem, retire or defease all Outstanding Bonds at their face amount plus any accrued interest, and, in the event any excess funds were paid to the Trustee pursuant to a drawing under the Credit Enhancement Agreement, return said excess funds to Freddie Mac promptly; *provided, however*, in the event on or prior to the Conversion Date Freddie Mac has received funds in an amount equal to the Construction Phase Collateral Requirement (from the sources described in the Construction Phase Financing Agreement), the Trustee shall use all funds drawn under the Credit Enhancement Agreement to purchase all Outstanding Bonds in lieu of redemption in accordance with the terms of the Indenture (unless otherwise instructed in writing by the Construction Lender) and shall return any said excess to the Construction Lender;

(ii) At the option of Freddie Mac, either reconvey, release and cancel, or assign to Freddie Mac, all of their right, title and interest (other than their rights to be paid for services rendered and to be rendered and for fees and expenses incurred thereunder and to be indemnified pursuant thereto) under the Bond Documents, other than the Tax Regulatory Agreement, and execute, acknowledge and deliver to Freddie Mac such instruments and documents as may be reasonably necessary in connection with such reconveyance, release, cancellation or assignment;

(iii) Deliver to Freddie Mac, in such form and to such place, as Freddie Mac shall designate, all property due Freddie Mac pursuant to the provisions of the Indenture; and

(iv) Return the Credit Enhancement Agreement to Freddie Mac.

In connection with any reconveyance, release or assignment pursuant to subsection (B)(ii) of this Section 6 or any delivery pursuant to subsection (B)(iii) of this Section 6, in the event on or prior to the Conversion Date Freddie Mac has received funds in an amount equal to the Construction Phase Collateral Requirement (from the sources described in the Construction Phase Financing Agreement), any reconveyance, release, assignment or delivery pursuant to such subsections shall be to the Construction Lender or its designee.

### **SECTION 7. *Substitution of Obligor.***

7.1 The Issuer and the Trustee agree that, should Freddie Mac succeed to the interest of the Borrower in the Project pursuant to a foreclosure sale or otherwise without having implemented the provisions of Section 6, then Freddie Mac shall have the right, but not the obligation, to be the successor to the Borrower for all purposes of the Bond Documents and Freddie Mac acknowledges and agrees that upon its election to succeed the Borrower, it shall be so treated as successor to the Borrower, *provided, however*, that any and all liability of Freddie Mac as successor in interest to the Borrower's interest under the Bond Documents shall be limited to the period it owns the Project. The Issuer and the Trustee agree that in the event on or prior to the Conversion Date Freddie Mac has received funds in an amount equal to the Construction Phase Collateral Requirement (from the sources described in the Construction Phase Financing Agreement), should the Construction Lender elect to succeed to the interest of the Borrower in the Project pursuant to a foreclosure sale or otherwise without having implemented the provisions of Section 6 above, then the Construction Lender shall have the right, but not the obligation, to succeed to all the rights of the Borrower for all purposes of the Bond Documents and, following such election, the Construction Lender acknowledges and agrees to be so treated as successor to the Borrower, *provided, however*, that any and all liability of the Construction Lender as successor in interest to the Borrower's interest under the Bond Documents shall be limited to the period it owns the Project. The Issuer and the Trustee agree that any such transfer of ownership of the Project shall not be deemed to violate any terms or conditions of the Bond Documents.

7.2 Following any succession by Freddie Mac or the Construction Lender or its Affiliate, as applicable (the "**Successor Borrower**"), to the right, title and interest of the Borrower in the Project pursuant to Section 7.1, the Successor Borrower or its designee shall have the right to sell, transfer and/or assign its interest in the Project to any person or entity, provided that the party purchasing the Project from the Successor Borrower or its designee delivers or causes to be delivered to the Issuer and the Trustee concurrently with such transfer: (i) if the Bonds remain Outstanding, a letter of credit or other credit enhancement facility that complies with all applicable requirements under the Indenture and the Financing Agreement; (ii) a written instrument assuming and agreeing to perform all obligations of the Borrower under the Bond Documents to which the Borrower is a party accruing from and after the date of such transfer; (iii) an opinion of counsel to the transferee that such transferee has duly assumed the

obligations of the Borrower under the Bond Documents to which the Borrower is a party, that such transferee is qualified to do so pursuant to the Bond Documents and applicable law, and that each of the Bond Documents to which the Borrower is a party is a binding obligation of the transferee; and (iv) an opinion of Bond Counsel that such transfer or substitution will not cause interest on the Bonds to be included in the gross income of any registered owner thereof for federal income tax purposes (except for interest on any Bond held by a “substantial user” of the Project or a “related person,” within the meaning of Section 147(a)(2) of the Internal Revenue Code of 1986, as amended). Upon completion of any transfer to the Successor Borrower or its designee, in accordance with this Section 7, the liability of the Successor Borrower or its designee, as applicable, or any purchaser from the Successor Borrower or its designee shall be limited to the period it owned the Project and the Successor Borrower or its designee, as applicable, shall thereafter be relieved of any further liability for obligations of the “Borrower” under the Bond Documents accruing from and after the date of such transfer. Any environmental liability that Freddie Mac or the Construction Lender or its Affiliate may incur as a result of its ownership of the Project following a foreclosure or a deed in lieu of foreclosure shall be expressly limited by the provisions of any federal, state or local environmental statutes, rules, regulations or administrative procedures pertaining to “lender liability” and shall be limited to the period it owned the Project.

7.3 The Issuer and the Trustee agree that any purchaser may succeed to the interest of the Borrower in the Project pursuant to a foreclosure sale or otherwise, provided that such purchaser delivers or causes the delivery of the documents described in Section 7.2.

**SECTION 8. *Acknowledgement and Consent.*** The Issuer and the Trustee acknowledge and consent to the granting by the Borrower to Freddie Mac of the Reimbursement Mortgage which shall be a second priority mortgage lien on the Project and to the granting by the Borrower to the Construction Lender of the Construction Mortgage which shall be a third priority mortgage lien on the Project. The Issuer and the Trustee acknowledge and agree that Freddie Mac and, prior to the Conversion Date, the Construction Lender, are each a third-party beneficiary of the Financing Agreement with the right to enforce the provisions of such Financing Agreement subject to the terms of this Agreement. The Issuer and the Trustee agree and acknowledge that to the extent the Bond Mortgage grants or reserves to the Borrower any rights that are not granted or reserved to the Borrower under the Construction Mortgage or Reimbursement Mortgage (as applicable), the Borrower must comply with the terms of the Construction Mortgage or Reimbursement Mortgage (as applicable) and a failure to do so shall be an Event of Default under the Credit Agreement or Reimbursement Agreement (as applicable).

**SECTION 9. *Bond Mortgage Loan Servicing.*** The identity of the Servicer being of material importance to Freddie Mac, this Agreement is accepted by Freddie Mac on the basis, and with the understanding, that the Servicer will be determined solely by Freddie Mac. The term “**Servicer**” as used in this Agreement shall mean a multifamily seller and servicer approved by Freddie Mac, which initially shall be Citibank, N.A., and any permitted successor or assign under the Freddie Mac Multifamily Seller/Servicer Guide (the “**Guide**”) or any other person designated by Freddie Mac to service the Bond Mortgage Loan.

Accordingly, so long as the Credit Enhancement Agreement is in effect or obligations of the Borrower to Freddie Mac under the Reimbursement Agreement remain outstanding, and no

Wrongful Dishonor has occurred and is continuing, the Issuer and the Trustee agree that Freddie Mac shall, in its discretion, have the sole and exclusive right to (a) appoint the Servicer and arrange for the servicing of the Bond Mortgage Loan and the Bond Mortgage or Financing Agreement, provided such servicing shall be performed by a Freddie Mac approved seller-servicer in accordance with the terms and conditions of the Guide, and (b) remove the Servicer (for any reason), terminate its right to service the Bond Mortgage Loan, and appoint a new Servicer.

The Issuer and the Trustee further acknowledge and agree that the Guide is subject to amendment or termination without the consent of the Issuer, the Trustee or the Borrower (provided that no such amendment shall adversely affect the rights of Issuer or Trustee or in any way operate to modify the provisions of the Financing Agreement, the Forward Commitment or affect the tax status of the Bonds) and that none of the Issuer, the Trustee or the Borrower shall have any rights under or be a third-party beneficiary of the Guide. The Trustee and the Issuer acknowledge and agree that the Servicer shall have no duties or obligations to the Trustee, the Issuer or the Borrower under the Guide or otherwise, except as expressly set forth in the Bond Documents. The Trustee and the Issuer acknowledge and agree that any Servicer designated by Freddie Mac shall be paid a fee by the Borrower for its services. None of the Issuer, the Trustee, the Construction Lender or Freddie Mac shall have the obligation to pay such fees from their own funds. In the event the Borrower fails, following the Conversion Date, to make any payment relating to fees, expenses or indemnification obligations to the Issuer or Trustee as required under the Financing Agreement, the party which has not received such payment shall immediately notify the Servicer of such failure.

#### **SECTION 10. Representations, Warranties and Covenants.**

(A) The Issuer represents, warrants and covenants to the other parties hereto that:

(i) The Issuer has not received a notice in writing from the Internal Revenue Service alleging that any event or act has occurred in the operation and management of the Project that would adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes or a notice in writing from the Trustee concerning any event of default under any Bond Document.

(ii) The Issuer has all necessary power and authority to execute, deliver and perform its obligations under and has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a legal, valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) applicable limitations of bankruptcy or equitable principles affecting the enforcement of creditors' rights, the effect of general principles of equity, including without limitation, concepts of materiality, reasonableness, good faith or fair dealing, and the possibility of the unavailability of specific performance or injunctive relief, (b) the exercise of judicial discretion and (c) any limitation of the legal remedies against public entities in the State.

(iii) The Issuer will not knowingly take or permit, or knowingly omit to take or cause to be taken any action within its control that would adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(B) The Trustee represents, warrants and covenants to the other parties hereto that:

(i) The Trustee has no knowledge of and has no reason to believe that any event or act has occurred that would adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes or of any event of default under any Bond Document.

(ii) The Trustee has all necessary power and authority to execute, deliver and perform its obligations under and has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a legal, valid and binding obligation of the Trustee enforceable against the Trustee in accordance with its terms except as enforceability may be limited by bankruptcy, moratorium, insolvency and similar laws affecting creditors' rights generally and general principles of equity.

(iii) The Trustee will not knowingly take or permit, or knowingly omit to take or cause to be taken, any action within its control that would adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(C) Freddie Mac represents, warrants and covenants to the other parties hereto that:

(i) Freddie Mac has all necessary power and authority to execute, deliver and perform its obligations under and has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a legal, valid and binding obligation of Freddie Mac enforceable against Freddie Mac in accordance with its terms except as enforceability may be limited by bankruptcy, moratorium, insolvency and similar laws affecting creditors' rights generally and general principles of equity.

(ii) Freddie Mac will not knowingly take or permit, or knowingly omit to take or cause to be taken any action within its control that would adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(D) The Construction Lender represents, warrants and covenants to the other parties hereto that:

(i) The Construction Lender has all necessary power and authority to execute, deliver and perform its obligations under and has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a legal, valid and binding obligation of the Construction Lender enforceable against the Construction Lender in accordance with its terms except as enforceability may be limited by bankruptcy, moratorium, insolvency and similar laws affecting creditors' rights generally and general principles of equity.

(ii) The Construction Lender will not knowingly take or permit, or knowingly omit to take or cause to be taken any action within its control that would adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

**SECTION 11.           *Subrogation.***

(A) The Issuer and the Trustee agree that Freddie Mac shall be subrogated to their rights and remedies under the Bond Documents (except with respect to any Mortgagee Retained Rights) upon and to the extent of Freddie Mac's payment (whether pursuant to the Credit Enhancement Agreement or otherwise) of the principal of or interest on the Bonds or the payment or performance of any obligation under the Bond Documents. The Issuer and the Trustee agree to cooperate with Freddie Mac at the sole expense and liability of Freddie Mac in connection with Freddie Mac's enforcement of any of such rights and remedies and, except as permitted under the terms of this Agreement, agree not to take any actions that would prejudice the exercise of such rights of subrogation unless in the opinion of Bond Counsel delivered to the Issuer, the Trustee, and Freddie Mac such action is necessary to preserve the exemption of interest on the Bonds from gross income for federal income tax purposes.

(B) The Issuer and the Trustee agree that, in the event the Credit Enhancement Agreement has been terminated and Freddie Mac has received funds in an amount equal to the Construction Phase Collateral Requirement (from the sources described in the Construction Phase Financing Agreement), the Construction Lender shall be subrogated to Issuer's and Trustee's rights and remedies under the Bond Documents (except with respect to any Mortgagee Retained Rights) upon and to the extent of the Construction Lender's payment of the principal of or interest on the Bonds or the payment or performance of any obligation under the Bond Documents. The Issuer and the Trustee agree to cooperate with the Construction Lender at the Construction Lender's sole expense and liability in connection with the Construction Lender's enforcement of any of such rights and remedies and agree not to take any actions that would prejudice the exercise of such rights of subrogation unless in the opinion of Bond Counsel delivered to the Issuer, the Trustee and the Construction Lender such action is necessary to preserve the exemption from income taxation of interest on the Bonds.

**SECTION 11A.           *Exercise of Rights and Remedies by Construction Lender.***

(A) Freddie Mac and the Construction Lender have agreed in the Construction Phase Financing Agreement to certain conditions to the exercise by Freddie Mac of its remedies pursuant to the Reimbursement Mortgage during the Construction Phase.

(B) Freddie Mac agrees that it will, upon the unconditional release by the Trustee of Freddie Mac as credit enhancer, receipt by Freddie Mac of funds in an amount equal to the Construction Phase Collateral Requirement (from the sources described in the Construction Phase Financing Agreement) and demand for such termination by the Construction Lender, terminate the Servicer.

(C) The Construction Lender or its Affiliate shall have the right, but not the obligation, to succeed to the rights and obligations of the Borrower under the Bond Documents if the Construction Lender or such Affiliate shall foreclose or accept a deed in lieu of foreclosure and effect a cure of any defaults of the Borrower in performance of its obligations thereunder and shall deliver a written instrument assuming and agreeing to perform Borrower's obligations thereunder arising from and after the date of such assumption.

(D) Issuer, Trustee and Freddie Mac hereby acknowledge and agree that all the rights of Freddie Mac and the limitations thereon under this Agreement are included within the rights assignable by Freddie Mac to the Construction Lender or its Affiliate pursuant to Section 1.03 of the Indenture. Issuer and Trustee hereby agree to recognize the Construction Lender or its Affiliate as the holder of such rights following any such assignment by Freddie Mac.

**SECTION 12. *Amendment and Waiver.*** This Agreement and each provision hereof may be amended to the extent and upon the conditions that the Indenture may be amended by an instrument in writing signed by the parties hereto.

**SECTION 13. *Governing Law.*** This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the law of the State of California.

**SECTION 14. *Notices.*** All notices, demands, requests, consents, approvals, certificates or other communications (“**Communications**”) required under this Agreement shall be in writing, mailed (registered or certified mail, return receipt requested and postage pre-paid), hand-delivered, with signed receipt, or sent by nationally recognized overnight courier (receipt of which to be evidenced by a signed receipt for overnight delivery service) and shall be sufficiently given and shall be deemed to have been properly given if given in the manner in which notices are to be given and to the addresses as provided in the Indenture. All communications which the Trustee or Issuer is required to send to any other person pursuant to any Bond Document or any Borrower Documents shall also be sent to the Servicer. All communications required to be sent to Freddie Mac or the Servicer pursuant to the terms of any Bond Document and any other Borrower Document shall be sent to the following addresses:

The Issuer: Finance Department  
City of San José  
200 East Santa Clara Street, 13<sup>th</sup> Floor Tower  
San José, California 95113-1905  
Attention: Debt Management  
Email: [debt.management@sanjoseca.gov](mailto:debt.management@sanjoseca.gov)  
Telephone: (408) 535-7010  
Facsimile: (408) 292-6482

with a copy to: Housing Department  
City of San José  
200 East Santa Clara Street, 12<sup>th</sup> Floor Tower  
San José, California 95113-1905  
(which copy shall not constitute notice to Issuer)  
Attention: Administrative Officer  
Telephone: (408) 535-8235  
Facsimile: (408) 998-3183

with a copy to: Office of the City Attorney  
City of San José  
200 East Santa Clara Street. 16<sup>th</sup> Floor Tower  
San José, California 95113-1905

(which copy shall not constitute notice to Issuer)  
Telephone: (408) 535-1900  
Facsimile: (408) 998-3131

The Trustee: Wells Fargo Bank, National Association  
707 Wilshire Boulevard, 17<sup>th</sup> Floor  
MAC: E2818-176  
Los Angeles, California 90017  
Attention: Dania Samai  
Email: [danial.d.samai@wellsfargo.com](mailto:danial.d.samai@wellsfargo.com)  
Facsimile: (213) 614-3355  
Telephone: (213) 614-3328

Construction Lender: Citibank, N.A.  
c/o Citi Community Capital  
Middle Office  
390 Greenwich Street, 2<sup>nd</sup> Floor  
New York, New York 10013  
Attention: Desk Head  
Loan # [\_\_\_\_]  
Facsimile: (212) 723-8939

with a copy to: Citibank, N.A.  
Citi Community Capital  
Municipal Securities Division  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Loan # [\_\_\_\_]  
Facsimile: (805) 557-0924

With a copy of any  
default notices also being  
sent to:

Citigroup Inc.  
Citi Community Capital  
Municipal Securities Division  
388 Greenwich Street  
New York, NY 10013  
Attention: General Counsel's Office  
Loan # [\_\_\_\_]

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

with a copy to: Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel -  
Multifamily, Legal Division  
E-mail: Timothy\_Oneill@freddiemac.com  
Telephone: (703) 903-2000  
Facsimile: (703) 903-2885

with a copy to: Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B2E  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
E-mail: mfla@freddiemac.com

The Servicer: Citibank, N.A.  
c/o Berkadia Commercial Mortgage LLC  
118 Welsh Road  
P.O. Box 809  
Horsham, Pennsylvania 19044  
Attention: Servicing – Account Manager  
Telephone: (215) 328-3866  
Facsimile: (215) 328-3478

with a copy to: Citibank, N.A.  
Citi Community Capital  
Municipal Securities Division  
325 E. Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Management  
Telephone: (805) 557-0930  
Facsimile: (805) 557-0924

with a copy to: Robinson & Cole LLP  
885 Third Avenue, 28<sup>th</sup> Floor  
New York, New York 10022  
Attention: Andrew Kramer, Esq.  
Telephone: (212) 451-2900  
Facsimile: (212) 451-2999

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

The Trustee agrees to accept and act upon electronic transmission, which includes facsimile transmission or email with an imaged or scanned attachment (such as a PDF), of written instructions and/or directions pursuant to this Agreement.

**SECTION 15. *Benefit of Agreement.*** This Agreement shall be binding upon and inure to the benefit of the Issuer, the Trustee, the Construction Lender, the Servicer and Freddie Mac and their respective successors and assigns. No other party shall be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise. This Agreement shall be deemed terminated with respect to the Construction Lender without the necessity for further or confirmatory instruments upon the earlier of (i) the date, if any, upon which an alternate construction loan or construction phase credit facility is delivered to replace the Construction Loan or, if applicable, the Construction Phase Credit Facility unless the alternate construction lender or construction phase credit facility provider replaces the Construction Lender hereunder, (ii) the Conversion Date, or (iii) the date that the Indenture is released and terminated and, in the case of (i) and (ii) immediately above, all of the Borrower's obligations to Construction Lender under the Credit Agreement shall have been paid in full. This Agreement shall be deemed terminated with respect to Freddie Mac without the necessity for further or confirmatory instruments upon the earlier of (i) the date, if any, upon which an Alternate Credit Facility is delivered to replace the Credit Enhancement Agreement unless the Alternate Credit Facility Provider replaces Freddie Mac hereunder, and (ii) the date that the Indenture is released and terminated and, in the case of either (i) or (ii) immediately above, all of the Borrower's obligations to Freddie Mac under the Reimbursement Agreement shall have been paid in full.

**SECTION 16. *Counterparts.*** This Agreement may be executed in any number of counterparts and all of such counterparts shall together constitute one and the same instrument.

**SECTION 17. *Acknowledgment and Consent Regarding Reimbursement Mortgage.*** The Issuer and the Trustee agree and acknowledge that to the extent the Bond Mortgage grants or reserves to the Borrower any rights that are not granted or reserved to the Borrower under the Reimbursement Mortgage, the Borrower must comply with the terms of the Reimbursement Mortgage and a failure to do so shall be an Event of Default under the Reimbursement Agreement.

**SECTION 18. *Trustee.*** The Trustee accepts the duties imposed upon it by this Agreement and agrees to perform those duties but only upon and subject to the following express terms and conditions:

(A) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against the Trustee;

(B) as to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceedings, the Trustee shall be entitled to rely in good faith upon a certificate purportedly signed by an authorized signatory of Freddie Mac as sufficient evidence of the facts contained in such certificate;

(C) the permissive right of the Trustee to do things enumerated in this Agreement shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful misconduct;

(D) none of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under this Agreement except for any liability of the Trustee arising from its own negligence or willful misconduct;

(E) the Trustee is entering into this Agreement solely in its capacity as Trustee under the Indenture and not in its individual or corporate capacity; and

(F) all of the provisions of the Indenture related to the duties, obligations, standard of care, protections and immunities from liability afforded the Trustee under the Indenture shall apply to the Trustee under this Agreement.

**SECTION 19. *Invalidity.*** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of any other provision and all other provisions shall remain in full force and effect.

**SECTION 20. *Time is of the Essence.*** Time is of the essence of this Agreement.

**SECTION 21. *Controlling Instrument.*** This Intercreditor Agreement controls over any contrary provisions of the Bond Documents.

[Signature Pages Follow]

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

**CITY OF SAN JOSÉ,**  
as Issuer

By \_\_\_\_\_  
[ ], [ ]

**[ACKNOWLEDGMENT ATTACHED]**

[ISSUER'S SIGNATURE PAGE TO TAYLOR OAKS APARTMENTS INTERCREDITOR AGREEMENT]

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

By: \_\_\_\_\_  
[\_\_\_\_\_] , Vice President

**[ACKNOWLEDGMENT ATTACHED]**

[TRUSTEE'S SIGNATURE PAGE TO TAYLOR OAKS APARTMENTS INTERCREDITOR AGREEMENT]



**CITIBANK, N.A.**, as Construction Lender

By: \_\_\_\_\_  
[ ], Vice President

**[ACKNOWLEDGMENT ATTACHED]**

[CONSTRUCTION LENDER'S SIGNATURE PAGE TO TAYLOR OAKS APARTMENTS INTERCREDITOR  
AGREEMENT]

**EXHIBIT A**  
**LEGAL DESCRIPTION**