
LOAN AGREEMENT

among

**CITY OF SAN JOSE,
as Issuer**

**JPMORGAN CHASE BANK, N.A.,
a national banking association,
as initial Bondowner Representative**

and

**SAN JOSE PACIFIC ASSOCIATES, L.P.,
a California limited partnership,
as Borrower**

Dated as of March 1, 2012

relating to:

**\$22,000,000
CITY OF SAN JOSE
MULTIFAMILY HOUSING REVENUE BONDS
(MAYFAIR COURT APARTMENTS)
SERIES 2012B-1
SERIES 2012B-2**

The interest of the Issuer in this Agreement, excluding the Reserved Rights (as defined in the Indenture of Trust dated as of even date herewith (the "Indenture")), has been assigned to U.S. Bank National Association, as trustee, pursuant to the Indenture by the Issuer for the benefit of the Bondowner Representative.

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LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is made and entered into as of March 1, 2012, by and among the CITY OF SAN JOSE (in its capacity as issuer of the Bond, "Issuer"); JPMORGAN CHASE BANK, N.A., a national banking association, and its successors and assigns ("Bondowner Representative"), and SAN JOSE PACIFIC ASSOCIATES, L.P., a California limited partnership ("Borrower").

WITNESSETH:

WHEREAS, Issuer is a charter city and municipal corporation of the State of California, duly organized and existing under its charter and the laws of the State of California (the "State"); and

WHEREAS, pursuant to, and in accordance with, Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the Health and Safety Code of the State (the "Act"), Issuer is authorized and empowered to issue revenue bonds and apply the proceeds to make loans for the construction and development of qualifying housing developments (defined in the Act to include buildings used to provide residential housing for four or more families); and

WHEREAS, Borrower has requested that Issuer issue its Multifamily Housing Revenue Bond (Mayfair Court Apartments), Series 2012B-1 (the "Series 2012B-1 Bond") and Multifamily Housing Revenue Bond (Mayfair Court Apartments), Series 2012B-2 (the "Series 2012B-2 Bond," and together with the Series 2012B-1 Bond, the "Bonds"), in the original principal amount of up to \$22,000,000 (the "Bond") for the purpose of making a loan (the "Loan") to finance, in part, the construction of a multifamily rental housing project known as the Mayfair Court Apartments, located at 65 McCreery Avenue, San José, California, on land that is more particularly described on Exhibit A hereto (the "Land") which Land, together with the improvements to be constructed thereon (the "Improvements") is collectively referred to as the "Property" or the "Project," and the Bonds shall be issued pursuant to an Indenture of Trust dated as of March 1, 2012 by and among Issuer, U.S. Bank National Association, as trustee ("Trustee"), and Bondowner Representative (the "Indenture"); and

WHEREAS, Issuer deems it desirable and in keeping with its purpose to issue the Bonds and lend the proceeds thereof to Borrower for the purposes described above under the terms and conditions contained in this Agreement; and

WHEREAS, to evidence the Loan, Borrower is executing in favor of Trustee, that certain Variable Rate Note and that certain Fixed Rate Note each payable to the order of Issuer in the aggregate original principal amount of \$22,000,000 (collectively the "Note"), which Note provides for the repayment of the Loan in amounts sufficient to pay, when due, the principal of, premium, if any, and interest on the Bonds, and Borrower has executed or caused to be executed and delivered to the Trustee the Construction and Permanent Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") with respect to the Project to secure, among other things, the payments due under the Note and this Agreement; and

WHEREAS, Caleb Roope, USA Properties Fund, Inc., and Pacific West Communities, Inc. (collectively, the "Guarantor") is to guarantee the Loan by executing and delivering to Bondowner Representative a Payment and Performance Guaranty (the "Guaranty").

WHEREAS, in order to secure additional financing for the Project, Borrower has obtained funds from the sources identified on Exhibit B hereto [("Borrower's Sources")].

WHEREAS, the disbursement of the Loan and the potential conversion of the Loan from the Construction Term to the Permanent Term is governed by, among other documents, that certain Construction Disbursement and Permanent Loan Agreement by and between Borrower and Bondowner Representative ("Disbursement Agreement"); and

WHEREAS, the execution and delivery of this Agreement and the issuance of the Bonds have been duly and validly authorized by Issuer.

NOW, THEREFORE, Issuer, Borrower and Bondowner Representative, each in consideration of the representations, covenants and agreements of the other as set forth herein, mutually represent, covenant and agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined have the meanings set forth for those terms in the Indenture or the Disbursement Agreement.

“**Act**” has the meaning set forth in the recitals to this Agreement

“**Affiliate**” means any person or entity directly or indirectly controlling, controlled by, or under direct or indirect common control with, another identified person or entity. A person or entity will be deemed to control a corporation or other entity if such person or entity possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation or other entity, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble to this Agreement.

“**Bondowner Representative**” has the meaning set forth in the preamble to this Agreement.

“**Bonds**” has the meaning set forth in the recitals to this Agreement.

“**Bondowner Representative**” means JPMorgan Chase Bank, N.A., a national banking association and as otherwise defined in Section 1.01 of the Indenture.

“**Borrower**” has the meaning set forth in the preamble to this Agreement.

[“**Borrower’s Funds**” means funds of Borrower that do not consist of Loan Proceeds or other funds included in the definition of “Borrower’s Sources.”]

[“**Borrower’s Sources**” has the meaning set forth in the recitals to this Agreement.]

“**Borrower’s Governing Agreement**” means an amended and restated agreement of limited partnership under which Investor Limited Partner is admitted as a limited partner of Borrower, which agreement is to be executed and delivered substantially concurrently with the execution and delivery of this Agreement.

“**Construction Loan**” means the Loan before Conversion.

“**Conversion**” means the commencement of the Permanent Loan after the Conversion Date.

“**Conversion Date**” has the meaning set forth in the Disbursement Agreement.

“**Deed of Trust**” has the meaning set forth in the recitals to this Agreement.

“**Default**” has the meaning set forth in Section 9.1.

“Developer Fee” has the meaning set forth in Section 3.2.

“Disbursement Account” means _____.]

“Disbursements” means disbursements of funds by Bondowner Representative to pay Total Project Costs [(as defined in Disbursement Agreement)], which disbursements are made from proceeds of the Loan or other funds held by Bondowner Representative in Pledged Accounts that are available for that purpose.

“Event of Default” has the meaning set forth in Section 6.1.

“Guaranty” has the meaning specified in the recitals to this Agreement.

“Improvements” has the meaning set forth in the recitals to this Agreement.

“Indemnified Costs” means all liabilities, claims, actions, causes of action, judgments, orders, damages, costs, expenses, fines, penalties and losses (including sums paid in settlement of claims and all consultant, expert and legal expenses), but excluding any Costs (as defined in the Indemnity Agreement), which Costs are subject to payment as provided in the Indemnity Agreement.

“Indemnified Parties” means the Trustee, the Issuer and its officers, officials, employees, counsel, attorneys and agents, past, present and future, and its successors and assigns, as well as Bondowner Representative, its parents, subsidiaries and other Affiliates, assignees of Bondowner Representative’s interest in the Bonds or the Loan, owners of participation or other interests in the Loan, and the officers, directors, employees, attorneys and agents of each of them.

“Indemnity Agreement” means an unsecured Environmental Indemnity Agreement to be executed by Borrower and Guarantor to induce Bondowner Representative to purchase the Bond.

“Indenture” has the meaning set forth in the recitals to this Agreement.

“Investor Limited Partner” has the meaning set forth in the Disbursement Agreement.

“Issuer” has the meaning set forth in the preamble to this Agreement.

“Land” has the meaning set forth in the recitals to this Agreement.

“Loan” has the meaning set forth in the recitals to this Agreement.

“Loan Closing” means the issuance of the Bonds and the recording of the Deed of Trust.

“Loan Documents” means, collectively, this Agreement, the Disbursement Agreement, the Note, the Deed of Trust, the Collateral Assignment, the other Security Documents, the Guaranty, the Replacement Reserve Agreement and all other documents that evidence, guarantee or secure the Loan (but specifically excluding the Indemnity Agreement). The term “Loan Documents” does not include the Indemnity Agreement.

“Loan Proceeds” means the proceeds of the Loan in the maximum principal amount set forth in this Agreement.

“Note” has the meaning set forth in the recitals to this Agreement.

“Pledged Accounts” means any cash, bank accounts, reserves or other monies pledged to Bondowner Representative or Trustee pursuant to the Indenture, the Disbursement Agreement or the Loan Documents.

“Project” has the meaning set forth in the recitals to this Agreement.

“Property” has the meaning set forth in the recitals to this Agreement.

“Regulatory Agreement” means that Regulatory Agreement and Declaration of Restrictive Covenants among Issuer, Borrower and Trustee.

“Security Documents” means the Deed of Trust, the Collateral Assignment, such assignments of the Project Contracts as Bondowner Representative may require and such other security documents as Bondowner Representative may require as security for the Loan, the Note and related obligations.

“State” has the meaning set forth in the recitals to this Agreement.

“Treasury Regulations” means Title 26 of the Code of Federal Regulations.

“Trustee” has the meaning set forth in the recitals to this Agreement.

ARTICLE II

ISSUANCE OF BOND; PAYMENT OF ISSUANCE AND OTHER COSTS; ASSIGNMENTS BY ISSUER

Section 2.1. Issuance of Bond. Upon execution of this Agreement, the other Loan Documents and the Indenture, or as soon thereafter as practicable, Issuer will execute the Bonds and Trustee will authenticate and deliver the Bonds to Bondowner Representative, or to its order, upon payment of the purchase price and filing with Bondowner Representative of the opinion of Bond Counsel as to the legality of the Bonds and the furnishing of all other documents required to be furnished before such delivery. The proceeds of the Bonds will be deposited with the Trustee and disbursed in accordance with the Indenture and this Agreement.

Section 2.2. NO WARRANTY BY ISSUER. BORROWER AGREES THAT, BECAUSE THE COMPONENTS OF THE PROJECT HAVE BEEN AND ARE TO BE DESIGNATED AND SELECTED BY IT, ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, ITS BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION 2.2 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT. IN ADDITION, BORROWER ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IT UNDERSTANDS THE NATURE AND STRUCTURE OF THE PROJECT; THAT IT IS FAMILIAR WITH THE PROVISIONS OF ALL THE DOCUMENTS AND INSTRUMENTS RELATING TO THE FINANCING OF THE PROJECT TO WHICH IT OR ISSUER IS A PARTY OR OF WHICH IT IS A BENEFICIARY; THAT IT UNDERSTANDS THE RISKS INHERENT IN SUCH TRANSACTIONS, INCLUDING WITHOUT LIMITATION THE RISK OF LOSS OF THE PROJECT; AND THAT IT HAS NOT RELIED ON ISSUER FOR ANY GUIDANCE OR EXPERTISE IN ANALYZING THE FINANCIAL OR OTHER CONSEQUENCES OF SUCH FINANCING TRANSACTIONS OR OTHERWISE RELIED ON ISSUER IN ANY MANNER EXCEPT TO ISSUE THE BONDS IN ORDER TO PROVIDE FUNDS FOR THE LOAN.

Section 2.3. Payment of Costs of Issuance by Borrower. Borrower agrees that it will provide any and all funds required for the prompt and full payment of all costs of issuance of the Bonds not otherwise paid from proceeds of the Bond, including, but not limited to, the following items:

- (a) all reasonable legal (including Bond Counsel and counsel to Borrower, Issuer, Trustee, Bondowner Representative), abstractors', title insurance, financial, engineering, environmental, construction services, survey, appraisal and accounting

fees and expenses, administrative fees, printing and engraving costs and other expenses incurred and to be incurred by Borrower, Issuer, or Bondowner Representative on or before or in connection with issuance of the Bond;

(b) premiums on all insurance required to be secured and maintained during the term of this Agreement;

(c) all recording fees and other taxes, charges, assessments, license or registration fees of every nature whatsoever incurred and to be incurred in connection with this financing (other than a tax on the income of Issuer or Bondowner Representative);

(d) all reasonable initial fees and expenses of Bondowner Representative, Issuer and Trustee (including, without limitation, Issuer's initial fee referred to in Section 7(a) of the Regulatory Agreement);

(e) the fees payable to Bondowner Representative pursuant to the Disbursement Agreement;

(f) fees payable to the California Debt Limit Allocation Committee and the California Tax Credit Allocation Committee with respect to the Bonds and the financing of the Project; and other reasonable costs of issuance of the Bond.

Section 2.4. Assignment of Certain Rights. Pursuant to the Indenture, the Issuer has assigned the Revenues and has assigned, without recourse or liability, to the Trustee, certain of the Issuer's rights under this Agreement, including the right to receive certain payments hereunder (but excluding Issuer's rights to payments under Sections 2.3, 2.6, 4.1, 8.7 and 8.8 of this Agreement, which have not been assigned), and hereby directs Borrower to make payments, required herein or under the Note to be made to Issuer, either to the Trustee or as otherwise directed by Bondowner Representative. Borrower assents to such assignment and will make such payments under this Agreement directly to the Trustee or as otherwise directed by Bondowner Representative without defense or set off by reason of any dispute between Borrower, Issuer, the Trustee, or Bondowner Representative.

Section 2.5. Issuer Fee. Borrower shall timely pay the fees payable to the Issuer pursuant to Section 7(a) of the Regulatory Agreement as and when billed by the Trustee. The Annual Fee will be payable by the Borrower in the following order of priority: (i) first, \$7,500 will be paid on par and concurrently with debt service on the Bonds, and (ii) second, \$20,000 will be paid on a subordinate basis to the payment of debt service on the Bonds.

Section 2.6. Payment of Other Amounts by Borrower. Borrower shall promptly and timely pay all other amounts due to Issuer, Trustee, Rebate Analyst, Bondowner Representative or any of them under the Indenture, the Note, Disbursement Agreement any other of the Loan Documents or the Indemnity Agreement.

ARTICLE III

DISBURSEMENT

Section 3.1. Disbursement by Bondowner Representative. Bondowner Representative shall make or authorize disbursements of the Loan pursuant to the Disbursement Agreement.

Section 3.2. Limitations on Disbursements. Notwithstanding recording of the Deed of Trust or anything contained in this Agreement, Bondowner Representative will not be required to make any Disbursement unless and until Borrower has satisfied all applicable conditions to such Disbursement set forth in the Disbursement Agreement. No Disbursement shall be made after December 31, 2015, notwithstanding anything to the contrary contained in any construction contract or any other document unless there is first delivered to the Trustee an opinion of Bond Counsel to the effect that such Disbursement will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

ARTICLE IV

COVENANTS OF BORROWER

Borrower will keep and perform each of the covenants set forth below, except to the extent that Bondowner Representative and the Issuer hereafter specifically waives compliance in writing, which waiver may be given or withheld by Bondowner Representative in its sole discretion.

Section 4.1. Indemnity.

(a) Borrower will indemnify, defend and hold the Indemnified Parties harmless for, from and against any and all Indemnified Costs directly or indirectly arising out of or resulting from any of the following (but excepting any thereof that are finally determined to have resulted from the gross negligence or intentional misconduct of Bondowner Representative or any other Indemnified Party):

(i) the Bond, the Indenture, this Agreement or any other document to which the Issuer is a party, or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby, including the issuance, sale or resale of the Bond;

(ii) any act or omission of the Borrower or any of its agents, contractors, subcontractors, engineers, architects, material suppliers, servants, employees or licensees in connection with the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Project or any part thereof;

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

(iv) any violation of any environmental regulations with respect to, or the release of any hazardous substances from, the Project or any part thereof;

(v) the defeasance and/or redemption, in whole or in part, of the Bond;

(vi) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in any offering statement or disclosure or continuing disclosure document for the Bonds or any of the documents relating to the Bond, or any omission or alleged omission from any offering statement or disclosure or continuing disclosure document for the Bonds of any material fact necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

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

(viii) Trustee's acceptance or administration of the trust of the Indenture, or Trustee's or Bondowner Representative's exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which Trustee or Bondowner Representative is a party;

(ix) the making, administration, modification or enforcement of the Loan (including any claims for any brokerage fee, finder's fee or similar fee);

(x) the construction, development, rental, leasing, operation or ownership of the Project, including any defective workmanship or materials;

(xi) any failure to comply with any lease or other agreement relating to the Property;

(xii) any failure to satisfy any Requirement;

(xiii) Issuer's or Bondowner Representative's performance of any act permitted under the Loan Documents or the Indemnity Agreement;

(xiv) breach of any representation or warranty made or given by Borrower to any of the Indemnified Parties or to any prospective or actual buyer or lessee of all or any portion of the Property; or

(xv) any claim or cause of action of any kind by any party that any Indemnified Party is liable for any act or omission of Borrower or any other person or entity in connection with the ownership, sale, leasing, construction, operation, development or financing of the Property; except (a) in the case of the foregoing indemnification of the Bondowner Representative and Trustee or any of their respective officers, members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the negligence or willful misconduct of such Indemnified Party; or (b) in the case of the foregoing indemnification of the Issuer or any of its officers, members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the willful misconduct of such Indemnified Party.

(b) Defense. Upon demand by any Indemnified Party, Borrower will defend any investigation, action or proceeding involving any Indemnified Costs that is brought against any Indemnified Party, whether alone or together with Borrower or any other person or entity, all at Borrower's own cost and by counsel to be approved by the Indemnified Party. In connection therewith, Borrower will pay for the cost and expense of any counsel hired or engaged by an Indemnified Party to protect its interest and/or to oversee any defense of the Indemnified Party by Borrower and its counsel. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of Borrower if in the judgment of such Indemnified Party a conflict of interest exists or could arise by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel. Borrower will not settle or compromise a claim asserted against an Indemnified Party without the approval of that Indemnified Party. In the

event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel acceptable to the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement.

(c) Survival. Notwithstanding any provision to the contrary set forth in any Loan Document, to the fullest extent permitted by law, the obligations created by this Section 4.1(c) and the rights of any individual or entity to indemnify hereunder shall survive repayment of the Loan, foreclosure of the Deed of Trust or deed in lieu thereof, final payment or defeasance of the Bonds and in the case of Bondowner Representative any resignation or removal. Following such repayment, foreclosure or deed, final payment or defeasance, all obligations of Borrower under this Section 4.1(c) will be unsecured obligations of Borrower to the extent they are either unknown or unliquidated at the time of such repayment, foreclosure, final payment or defeasance. Borrower further covenants that nothing within this Section 4.1(c) shall limit the rights of Issuer, the program participants of Issuer and its respective officers, governing members, directors, officials, employees, attorneys and agents to indemnify under Section 9 of the Regulatory Agreement and that such indemnification shall survive the termination and discharge of this Agreement.

Section 4.2. Certain Government Regulations. Borrower will not: (1) be or become subject at any time to any Requirements [(as defined in the Disbursement Agreement)], or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Bondowner Representative from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (2) fail to provide documentary and other evidence of Borrower's identity as may be requested by Bondowner Representative at any time to enable Bondowner Representative to verify its identity or to comply with any applicable Requirements, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

Section 4.3. Sale of Bonds in Secondary Market. Borrower acknowledges the intention of Bondowner Representative to facilitate the marketability of the Bonds to a purchaser in the secondary market as permitted by the Indenture, and Borrower agrees to execute such other documents as are required to effectuate such resale of the Bonds by Bondowner Representative, provided that the same do not change the economic terms of the transactions described herein or expand the liabilities of the parties hereunder.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

Borrower promises that each and every representation and warranty set forth below is true, accurate and correct as of the date of this Agreement. Each Request for Advance (as defined in the Disbursement Agreement) will be deemed to be a reaffirmation, as of the date such Draw Request is submitted to Bondowner Representative, of each and every representation and warranty made by Borrower in this Agreement. Borrower represents and warrants to Issuer and Bondowner Representative as follows:

Section 5.1. Incorporation of Tax Certificate. The covenants, representations, warranties and agreements of Borrower set forth in the Tax Certificate are incorporated by reference herein as if fully set forth herein.

Section 5.2. Tax Covenants. The Borrower covenants that:

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

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

(iii) the use of not less than 95% of the net proceeds of the Bonds (within the meaning of Section 150(a)(3) of the Code) for Qualified Project Costs (as defined in the Tax Certificate);

(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 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 the Bonds in an amount related to the amount of the Loans;

(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 that, in any case, would in any way adversely affect the tax-exempt status of the Bond;

(e) 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 Bond, 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 an “arbitrage bond” within the meaning of Section 148 of the Code;

(f) if the Borrower becomes aware of any circumstance, event or condition that 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 and the Bondowner Representative;

(g) the full amount of each disbursement from the Construction 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 that satisfies the requirements of the Act, the Code and the Regulatory Agreement;

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

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

(k) no proceeds of the Bonds shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition;

(l) from the proceeds of the Bonds and investment earnings thereon, an amount not in excess of 2% of the proceeds of the Bonds will be used for issuance costs of the Bond, 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 Bond, such retention shall be deemed to be an expenditure of proceeds of the Bonds for said fees; and

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

(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 Regulatory Agreement or this Agreement;

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

(p) it shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 6.07 of the Indenture, and (b) if required to do so under Section 6.07 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 6.07 of the Indenture. Such calculations, if required, shall be made in the manner and at such times as specified in Section 6.07 of the Indenture. The Borrower shall cause the Rebate Analyst to provide such calculations to the Trustee and the City 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.

In any matter relating to the exclusion of interest on the Bonds from gross income for federal income tax purposes, the terms and provisions of the Tax Certificate shall control in the event of any conflict between this Agreement and the Tax Certificate.

ARTICLE VI

DEFAULT AND REMEDIES

Section 6.1. Events of Default. Any of the following, without limitation, shall constitute an “Event of Default” (and the term “Default” shall mean any of the following, whether or not any requirement for notice or lapse of time has been satisfied); provided, that any of Borrower’s partners (if Borrower is a limited partnership) or members (if Borrower is a limited liability company) may, but are not obligated to, cure a Default and such cure shall be accepted by Bondowner Representative as if made by Borrower:

(a) Any representation or warranty made by Borrower to or for the benefit of Bondowner Representative herein or elsewhere in connection with the Loan, including but not limited to any representation in connection with the security therefor, shall prove to have been incorrect or misleading in any material respect when made (or becomes incorrect or misleading in any material respect thereafter, and Borrower fails to promptly notify Bondowner Representative; or

(b) Borrower or any other party thereto (other than Issuer, Trustee or Bondowner Representative) shall fail to perform its obligations under any other covenant or agreement contained in this Agreement, the Deed of Trust, the Note, any other Loan Document or the Indemnity Agreement, which failure continues for a period of thirty (30) days after written notice of such failure by Bondowner Representative to Borrower; or

(c) Borrower or any other person or entity liable for the repayment of the indebtedness secured by the Deed of Trust or other Loan Documents shall become unable or admit in writing its inability to pay its debts as they become due, or file, or have filed against it, a voluntary or involuntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or become the subject of any other receivership or insolvency proceeding, provided that if such petition or proceeding is not filed or acquiesced in by Borrower or the subject thereof, it shall constitute an Event of Default only if it is not dismissed within sixty (60) days after it is filed or if prior to that time the court enters an order substantially granting the relief sought therein.

Section 6.2. Remedies.

(a) Withholding of Disbursements. After the occurrence and during the continuance of an Event of Default, Bondowner Representative’s obligation to lend or disburse funds under the Loan Documents will automatically terminate, and Bondowner Representative in its sole discretion may withhold any one or more Disbursements. Bondowner Representative may also withhold any one or more Disbursements after the occurrence and during the continuance of a Default unless and until Borrower cures such Default prior to the occurrence of an Event of Default. No Disbursement by Bondowner Representative will constitute a waiver of any Default unless Bondowner Representative agrees otherwise in writing in each instance.

(b) Acceleration. After the occurrence and during the continuance of an Event of Default, all of Borrower's obligations under the Loan Documents will become immediately due and payable at the option of Bondowner Representative and in Bondowner Representative's sole discretion without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind.

(c) Pledged Accounts, Etc. After the occurrence and during the continuance of an Event of Default, Bondowner Representative in its sole discretion, may apply the funds in the Pledged Accounts and the Disbursement Account, and any other cash or cash equivalents of Borrower or Guarantor held by or subject to the control of Bondowner Representative (including but not limited to funds drawn under any letter of credit provided to Bondowner Representative in connection with the Loan and funds in the Construction Fund), or any portion thereof to payment of Borrower's obligations under the Loan Documents; provided, however, that such application of funds will not cure or be deemed to cure any Event of Default. Nothing in this Agreement will obligate Bondowner Representative to apply all or any portion of any such funds on account of any Event of Default or to repayment of such obligations. Borrower further agrees, and expressly acknowledges the reliance of Bondowner Representative hereon, that any and all application of the funds in any Pledged Account or the Disbursement Account or the Construction Fund to or upon any of such obligations will be, and will be irrevocably deemed to be, a realization upon and foreclosure of the security interests and liens granted Bondowner Representative in such funds and will not be, or be deemed to be, the exercise of a right of set-off.

(d) Continuation of Construction, Etc. After the occurrence and during the continuance of any Event of Default, Bondowner Representative will have the right in its sole discretion to enter and take possession of the Property, whether in person, by agent or by court-appointed receiver, and to take any and all actions that Bondowner Representative in its sole discretion may consider necessary or appropriate to preserve and protect the Property or to complete construction of the Project, including making changes in plans, specifications, work or materials and entering into, modifying or terminating any contractual arrangements, all subject to Bondowner Representative's right at any time to discontinue any work without liability. In addition, with or without taking possession of the Property, Bondowner Representative will have the right but not the obligation to cure any and all defaults by Borrower under any of the Requirements, the Project Contracts or other contracts relating to the Property. If Bondowner Representative chooses to complete the Improvements or to cure any of such defaults, Bondowner Representative will not assume any liability to Borrower or any other person or entity for completing the Project, or for the manner or quality of their construction, or for curing any such defaults, and Borrower expressly waives any such liability. If Bondowner Representative exercises any of the rights or remedies provided in this subsection, that exercise will not make Bondowner Representative, or cause Bondowner Representative to be deemed to be, a partner or joint venturer of Borrower or a mortgagee in possession. Bondowner Representative in its sole discretion may choose to complete construction in its own name. All sums expended by Bondowner Representative in completing construction or curing Borrower's defaults will be considered to have been an additional Disbursement to Borrower bearing interest at the Default Rate and will be secured by the Loan Documents. For these purposes Bondowner Representative, in its sole discretion, may reallocate any line item or cost category of the Budget, and may make use of any available Borrower's sources of funds.

(e) Other Remedies; Cumulative Remedies. After the occurrence and during the continuance of an Event of Default, Bondowner Representative may exercise any and all other rights and remedies available to it under any of the Loan Documents or under applicable law.

All rights and remedies available to Bondowner Representative will be cumulative and not exclusive.

(f) Delegation of Enforcement Rights. Issuer acknowledges that Bondowner Representative, by making funds available to Borrower by means of Bondowner Representative's purchase of the Bonds under the Indenture, is in effect the party making the Loan to Borrower. Accordingly, Issuer hereby delegates to Bondowner Representative the exercise of all the rights and remedies exercisable by either Issuer or Trustee under the Loan Documents (except for the "Reserved Rights" as defined in the Indenture), including, without limitation, approval rights under the Loan Documents and the Indemnity Agreement, and all rights and remedies under the Loan Documents arising from a Default or Event of Default (and under the Indemnity Agreement following a violation thereof), including those rights and remedies set forth Sections 2.2.3, 2.2.4 and Sections 5.2 through and including 5.6 of the Deed of Trust.

Section 6.3. Waiver of the Right of Setoff. Borrower will make all payments provided for under the terms of this Agreement, the Note and the other Loan Documents without offset or deduction. In the event of any litigation by Bondowner Representative to enforce the terms of the Loan Documents, Borrower will not assert any counterclaim against Bondowner Representative therein (other than compulsory counterclaims), but will assert the same only by means of a separate action.

ARTICLE VII

PLEGGED ACCOUNTS; RESERVE ACCOUNTS

Section 7.1. Grant Of Security Interest. Borrower hereby pledges and assigns to Bondowner Representative, and grants Bondowner Representative a security interest in and lien upon each of the Pledged Accounts and all funds from time to time on deposit therein to secure all of Borrower's obligations under the Note, this Agreement and the other Loan Documents. All income taxes payable with respect to income on each Pledged Account, if any, will be paid by Borrower. The tax identification number associated with each Pledged Account will be that of Borrower. Borrower shall execute Bondowner Representative's form of Assignment of Deposit Account with respect to each of the Pledged Accounts.

Section 7.2. Reserve Accounts and Disbursement Account. If Borrower, as a matter of convenience, deposits or causes to be deposited with Bondowner Representative the Disbursement Account, the operating and reserve accounts for the Project, or any of them that do not constitute Pledged Accounts, Bondowner Representative will not have a security interest in any such account unless such a security interest is created by a writing that specifically grants to Bondowner Representative a security interest in the account in question as security for the Loan. Nothing herein constitutes a waiver by Bondowner Representative of any right of setoff against any such account.

ARTICLE VIII

MISCELLANEOUS

Section 8.1. No Waiver; Consents. Each consent or waiver by Bondowner Representative of any of its rights or remedies under this Agreement or the other Loan Documents must be in writing and executed by Bondowner Representative, and no waiver will be construed as a continuing waiver. No waiver will be implied from Bondowner Representative's delay in exercising or failure to exercise any right or remedy against Borrower or any security. Consent by Bondowner Representative to any act or omission by Borrower will not be construed as a consent to any other or subsequent act or omission or as a waiver of the requirement for Bondowner Representative's consent to be obtained in any future or other instance.

Section 8.2. Purpose and Effect of Bondowner Representative's Approval. Bondowner Representative's approval of any matter in connection with the Loan will be for the sole purpose of protecting Bondowner Representative's security and rights. In no event will Bondowner Representative's approval be a representation of any kind with regard to the matter being approved. Without limiting the generality of the preceding sentence, Borrower acknowledges that Bondowner Representative has no duty to Borrower or any third party regarding compliance with laws or regulations affecting Tax Credits (as defined in the Disbursement Agreement) or any other tax matter with respect to the Loan or the Project.

Section 8.3. Singular and Plural. As used in this Agreement and the other Loan Documents, singular terms include the plural and vice versa as the context may require.

Section 8.4. No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of Issuer in its said capacity, Bondowner Representative, Borrower, and their permitted successors and assigns. No trust fund is created by this Agreement and no other persons or entities will have any right of action under this Agreement or any right to the Loan Proceeds or other Borrower's Sources. Bondowner Representative will not be obligated to provide any assurances, commitments, obligations or agreements to or for the benefit of any person or entity other than Borrower.

Section 8.5. Notices. All notices given under this Agreement must be in writing and given as provided in the Indenture with respect to the giving of notices thereunder.

Section 8.6. Authority to File Notices. Borrower irrevocably appoints Bondowner Representative as its attorney-in-fact, with full power of substitution, to file for record, at Borrower's cost and expense and in Borrower's name, any notices of commencement or completion, notices of cessation of labor, or any other notices that Bondowner Representative in its sole discretion may consider necessary or desirable to protect its security for the Loan, if Borrower fails to do so.

Section 8.7. Actions. Issuer, Trustee and Bondowner Representative will have the right, but not the obligation, to commence, appear in, and defend any action or proceeding that might affect its security or its rights, duties or liabilities relating to the Loan, the Property or any of the Loan Documents. Borrower will pay promptly on demand all of Issuer's, Trustee's and Bondowner Representative's reasonable out-of-pocket costs, expenses, and reasonable

attorneys' fees and all expenses of Issuer's and Bondowner Representative's respective counsel incurred in those actions or proceedings.

Section 8.8. Legal and Other Expenses. Borrower will reimburse Issuer, Trustee and Bondowner Representative within five days after written demand for all costs and expenses reasonably incurred by Issuer, Trustee, Bondowner Representative or either of them in connection with the administration, interpretation enforcement or performance of the Loan. Without limiting the generality of the foregoing in the event of any Default, or in the event that any dispute arises relating to the interpretation, enforcement or performance of any of the Loan Documents, Issuer, Trustee and Bondowner Representative will be entitled to collect from Borrower on demand all reasonable fees and expenses incurred in connection therewith, including but not limited to fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, Borrower will pay all such reasonable costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of Borrower or other party liable for any of the obligations of this Agreement or the other Loan Documents or any party having any interest in any security for any of those obligations; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Agreement; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing. Whenever Borrower is obligated to pay or reimburse Issuer or Bondowner Representative for any attorneys' fees, those fees will include the allocated costs, as determined by Issuer or Bondowner Representative, as the case may be, for services of in-house counsel.

Section 8.9. Applicable Law. This Agreement will be governed by the law of the State, without regard to any provisions or principles thereof relating to choice of law or conflict-of-laws, except as may be preempted by federal law.

Section 8.10. Time of Essence. Time is of the essence in the performance of this Agreement and each and every term hereof.

Section 8.11. Force Majeure. If the construction of the Improvements is directly affected and delayed by fire, earthquake or other acts of God, inclement weather that could not reasonably be anticipated by Borrower, strike, lockout, acts of public enemy, riot, insurrection, terrorism, or governmental regulation of the sale or transportation of materials, supplies or labor, Borrower must notify Bondowner Representative in writing within ten business days after the event occurs that causes the delay. So long as no Event of Default has occurred and is continuing and such notice is given in a timely manner, Bondowner Representative will extend the Completion Date (as defined in the Disbursement Agreement) by a period of time equal to the period of the delay provided that the aggregate time extension for all delays will not exceed a total of 90 days, and provided further that (i) no extension will be given for any delay caused by an event, occurrence or condition that is within the reasonable control or anticipation of Borrower, Contractor (as defined in the Disbursement Agreement), or any subcontractor, and (ii) Borrower will undertake all reasonable efforts to resolve the delay and to minimize the effects of the delay on the work and progress of construction. No such extension will affect the time for performance of, or otherwise modify, any of Borrower's other obligations under the Loan Documents or the Indemnity Agreement or the maturity of the Note.

Section 8.12. Integration and Amendments; Conflicts. The Loan Documents and the Indemnity Agreement (a) integrate all the terms and conditions mentioned in or incidental to this Agreement, (b) supersede all oral negotiations and prior writings with respect to their subject matter including, but not limited to, any loan commitment by Bondowner Representative, and (c) are intended by the parties as the final expression of the entire agreement with respect to the Loan and as the complete and exclusive statement of the terms and conditions agreed to by the parties. No representation, understanding, promise or condition will be enforceable against any party unless it is contained in the Loan Documents or the Indemnity Agreement. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including any other Loan Document, the terms, conditions and provisions of this Agreement will control. This Agreement may not be modified or amended except by a written agreement signed by the parties.

Section 8.13. Binding Effect; Successors and Assigns; Disclosure. This Agreement will become effective only when it has been executed by Issuer, Borrower and Bondowner Representative and thereafter will be binding upon and inure to the benefit of Issuer, Borrower and Bondowner Representative and their respective successors and assigns, except that Borrower will not have the right to assign its rights hereunder or any interest herein without the prior written consent of Bondowner Representative, which may be granted or withheld in Bondowner Representative's sole discretion. Bondowner Representative may sell, assign or grant participations in all or any part of its rights and obligations under this Agreement and the other Loan Documents. Bondowner Representative may disclose information about the Loan, Borrower, Guarantor, the Property and other relevant matters to Bondowner Representative's Affiliates, potential purchasers of, assignees of, and participants in, the Loan, and to derivative counterparties and rating agencies.

Section 8.14. Captions. All captions or headings to sections, subsections and other divisions of this Agreement and the addenda and exhibits to this Agreement are only for the convenience of the parties and will not be construed to have any effect or meaning with respect to the other content thereof.

Section 8.15. Incorporation. The recitals, exhibits and addenda of and to this Agreement are incorporated herein and all provisions thereof will be deemed to be binding provisions of this Agreement.

Section 8.16. Relationship of Parties; No Fiduciary Duty. Borrower acknowledges that Bondowner Representative has no fiduciary relationship with, or fiduciary duty to, Borrower or any other person or entity arising out of or in connection with this Agreement, any of the other Loan Documents or the Indemnity Agreement, and the relationship between Bondowner Representative and Borrower in connection herewith and therewith is solely that of creditor and debtor. None of this Agreement, the other Loan Documents or the Indemnity Agreement creates a joint venture among the parties.

Section 8.17. Limitation on Issuer's Liability. Issuer shall not be obligated to pay the principal of, premium, if any, or interest on the Bond, except from Revenues. Any obligation or liability of the Issuer created by or arising out of this Agreement (including without limitation any liability created by or arising out of the representations, warranties or covenants set forth herein or otherwise) shall not impose a debt or pecuniary liability upon the Issuer or a charge upon its general credit, but shall be payable solely out of Revenues. Neither the issuance of the Bonds nor the delivery of this Agreement shall, directly, indirectly or contingently obligate the Issuer to make any appropriation for payment of the Bond. Nothing in the Bond, this Agreement, the

proceedings of the Issuer authorizing the Bond. the Act or any other related document shall be construed to authorize the Issuer to create a debt of the Issuer within the meaning of any constitutional or statutory provision of the State. No breach of any pledge, obligation or agreement of the Issuer hereunder may impose any pecuniary liability upon the Issuer or any charge upon its general credit.

THE BONDS ARE ISSUED PURSUANT TO, AND IN ACCORDANCE, WITH THE ACT AND IS A LIMITED OBLIGATION OF THE ISSUER. NEITHER THE CITY COUNCIL OF THE ISSUER NOR ANY OFFICIAL OR EMPLOYEE OF THE ISSUER NOR ANY PERSON EXECUTING THE BONDS SHALL BE LIABLE PERSONALLY ON THE BONDS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF ITS ISSUANCE. THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE ONLY FROM THE SOURCES DESCRIBED IN THIS AGREEMENT. NONE OF THE ISSUER, THE STATE OR ANY OTHER POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF SUCH BONDS OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE SOURCE OF MONEY PLEDGED THEREFOR. THE BONDS AND THE INTEREST THEREON DO NOT AND SHALL NEVER CONSTITUTE A DEBT OF INDEBTEDNESS OR A GENERAL OBLIGATION OF THE ISSUER, THE STATE OR ANY MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE NOR ANY POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF NOR THE FAITH AND CREDIT OF THE ISSUER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Agreement contained, against, the Issuer, any past, present or future member of its governing body, its officers, attorneys, accountants, financial advisors, agents or staff or the officers, attorneys, accountants, financial advisors, agents or staff of any successor public entity, as such, either directly or through the Issuer or any successor public entity, under any rule of law or penalty of otherwise, and all such liability of the Issuer, any member of its governing body and its officers, attorneys, accountants, financial advisors, agents and staff is hereby, and by the acceptance of the Bond, expressly waived and released as a condition of, and in consideration for, the execution of this Agreement and the issuance of the Bond. It is recognized that notwithstanding any other provision of this Agreement, neither the Borrower nor any bondholder shall look to the Issuer or the members of its City Council, officers, program participants, attorneys, accountants, financial advisors, agents or staff for damages suffered by the Borrower or such bondholder as a result of the failure of the Issuer to perform any covenant, undertaking or obligation under this Agreement, the Bond, the Regulatory Agreement, any of the Loan Documents or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Issuer in any of such documents, nor for any other reason except for representations made by the Issuer in any certificate of the Issuer and the opinion of counsel to the Issuer delivered on the Closing Date. Although this Agreement recognizes that such documents shall not give rise to any pecuniary liability of the Issuer, nothing contained in this Agreement shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Issuer) in any court or before any governmental body, agency or instrumentality or otherwise against the Issuer or any of its officers or employees to enforce the

provisions of any of such documents which the Issuer is obligated to perform and the performance of which the Issuer has not assigned to the Trustee or any other person.

Section 8.18. Counterparts. This Agreement may be executed in counterparts, each of which will be an original, and all of which together will constitute but one and the same instrument.

ARTICLE IX

WAIVER OF JURY TRIAL; JUDICIAL REFERENCE

EACH OF BORROWER AND BONDOWNER REPRESENTATIVE (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH OF BORROWER AND BONDOWNER REPRESENTATIVE (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT IT WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT BORROWER AND BONDOWNER REPRESENTATIVE HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION.

[FROM THE DATE OF LOAN CLOSING TO THE CONVERSION DATE, BORROWER AND BONDOWNER REPRESENTATIVE AGREE THAT, IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE (THE "COURT") AGAINST THE OTHER IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING.]
[Fragment – JPM/PH, please advise.]

Section 9.1. General Reference Proceeding. WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SECTION 9.2 BELOW, ANY CLAIM BY BORROWER OR BONDOWNER REPRESENTATIVE AGAINST THE OTHER WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. BORROWER AND BONDOWNER REPRESENTATIVE INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE AS BETWEEN EACH OTHER IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638. EXCEPT AS OTHERWISE PROVIDED IN THE LOAN DOCUMENTS, VENUE FOR THE REFERENCE PROCEEDING WILL BE IN THE STATE OR FEDERAL COURT IN THE COUNTY OR DISTRICT WHERE VENUE IS OTHERWISE APPROPRIATE UNDER APPLICABLE LAW.

Section 9.2. Matters Not Subject to General Reference Proceeding. THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING, WITHOUT LIMITATION, SET-OFF), (C) APPOINTMENT OF A RECEIVER AND (D) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING, WITHOUT LIMITATION, WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF BORROWER OR BONDOWNER REPRESENTATIVE TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D), AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF

BORROWER OR BONDOWNER REPRESENTATIVE TO A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT.

Section 9.3. Selection of Referee. UPON THE WRITTEN REQUEST OF BORROWER OR BONDOWNER REPRESENTATIVE, BORROWER AND BONDOWNER REPRESENTATIVE SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF SUCH PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, EITHER OF THEM MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

Section 9.4. Conduct of Proceeding. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER. HOWEVER, IF BORROWER OR BONDOWNER REPRESENTATIVE REQUESTS A COURT REPORTER, ONE WILL BE USED, AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

Section 9.5. Proceeding Procedure . THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. BORROWER AND BONDOWNER REPRESENTATIVE SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION THAT WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Section 9.6. Proceeding Decided by Referee . BORROWER AND BONDOWNER REPRESENTATIVE RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

Section 9.7. Inconsistency . IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THIS ARTICLE AND ANY OTHER PROVISION OF THE LOAN DOCUMENTS, THIS ARTICLE WILL CONTROL.

Section 9.8. Inapplicability to Issuer . THE PROVISIONS OF THIS ARTICLE DO NOT APPLY TO THE ISSUER.

ARTICLE X

WAIVER OF SPECIAL DAMAGES

Section 10.1. Waiver. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST BONDOWNER REPRESENTATIVE, ISSUER OR EITHER OF THEM ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

(Remainder of page intentionally left blank)

ARTICLE XI

USA PATRIOT ACT NOTIFICATION

Section 11.1. Notification . Bondowner Representative hereby notifies Borrower that pursuant to the requirements of Section 326 of the USA Patriot Act of 2001 31 U.S.C. Section 5318 (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Borrower Representative to identify the Borrower in accordance with the Patriot Act.

(Remainder of page intentionally left blank)

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

CITY OF SAN JOSE, as Issuer

By: _____
Julia H. Cooper,
Acting Finance Director

ATTEST:

By: _____
City Clerk

Approved as to form:

By: _____
Chief Deputy City Attorney

[Issuer's signature page to Mayfair Court Apartments Loan Agreement]

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

SAN JOSE PACIFIC ASSOCIATES, L.P.,
as Borrower

[To come.]

[Borrower's signature page to Mayfair Court Apartments Loan Agreement]

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

JPMORGAN CHASE BANK, a national
banking association, as initial Bondowner
Representative

By: _____
Name:
Title:

[Bondowner Representative's signature page to Mayfair Court Apartments Loan Agreement]

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

EXHIBIT A
LEGAL DESCRIPTION

[To come.]

EXHIBIT B

BORROWER'S SOURCES

[To be confirmed.]

<u>Sources of Funds</u>	<u>Construction (at Closing)</u>
<i>LIHTC</i>	\$6,861,033
<i>CSJ Loan</i>	6,750,000
<i>HCD MHP Loan</i>	
<i>HCD Infill Loan</i>	3,720,000
<i>Deferred City Interest</i>	
	<u>Permanent (at Conversion)</u>
<i>LIHTC</i>	\$13,091,033
<i>CSJ Loan</i>	6,750,000
<i>HCD MHP Loan</i>	9,200,000
<i>HCD Infill Loan</i>	3,720,000
<i>Deferred City Interest</i>	1,350,000