
PROJECT LOAN AGREEMENT - FIXED RATE - TEL (Forward)

(Revised 10-10-2023)

among

**COUNTY OF CONTRA COSTA, CALIFORNIA,
as Governmental Lender,**

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Fiscal Agent,**

and

**MAYFAIR AFFORDABLE HOUSING LP,
as Borrower**

Dated as of [May 1, 2024]

Relating to:

Mayfair Apartments

11690 San Pablo Avenue, El Cerrito, California

Maximum Project Loan Principal Amount: [\$35,141,577]

All of the right, title and interest of the County of Contra Costa, California (except for its Unassigned Rights) in and to this Project Loan Agreement are being assigned to U.S. Bank Trust Company, National Association, as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement dated as of [May 1, 2024] by and among the Governmental Lender, the Initial Funding Lender named therein and the Fiscal Agent.

PROJECT LOAN AGREEMENT – FIXED RATE – TEL (Forward)

(Revised 10-10-2023)

THIS PROJECT LOAN AGREEMENT (this “Project Loan Agreement”) is made and entered into as of [May 1, 2024], by and among the County of Contra Costa, California (the “Governmental Lender”), a public body, corporate and politic, duly organized and existing under the laws of the State of California (the “State”), U.S. Bank Trust Company, National Association, a national banking association, organized and operating under the laws of the United States of America (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the “Fiscal Agent”), and Mayfair Affordable Housing LP, a limited partnership duly organized and existing under the laws of the State of California (together with its permitted successors and assigns, the “Borrower”).

RECITALS

A. Pursuant to Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the California Health and Safety Code (the “Act”) and this Project Loan Agreement, the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the maximum aggregate principal amount of [\$35,141,577] (the “Project Loan”) to provide for the financing of a multifamily rental housing development located at 11690 San Pablo Avenue, El Cerrito, California known as Mayfair Apartments. The Land, Improvements, and Fixtures (each as defined in the Security Instrument) are collectively referred to herein as the “Project”.

B. The Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the separate loan being made to the Governmental Lender pursuant to the Funding Loan Agreement dated as of [May 1, 2024] (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Funding Loan Agreement”) by and among BMO Bank N.A., a national banking association (the “Initial Funding Lender”), the Governmental Lender, and the Fiscal Agent, in the maximum aggregate principal amount of [\$35,141,577] (the “Funding Loan” and together with the Project Loan, the “Loans”). The Funding Loan is evidenced by the County of Contra Costa, California Multifamily Housing Revenue Note (Mayfair Affordable Apartments), 2024 Series A dated [May __, 2024] (the “Delivery Date”), executed by Governmental Lender and authenticated by Fiscal Agent in favor of Initial Funding Lender in the form attached hereto as Exhibit A (as the same may be amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time, and together with all addenda thereto, the “Governmental Note”).

C. Pursuant to the terms and subject to the conditions of the Funding Loan Agreement, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement, Initial Funding Lender has agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Project Loan to the Borrower in corresponding installments pursuant to this Project Loan Agreement. The Initial Funding Lender will administer the Loans during the Construction Phase in accordance with the Financing Documents.

D. The Borrower has agreed to use the proceeds of the Project Loan to finance the construction of the Project and to pay certain closing costs with respect to the Loans.

E. The Borrower's payment obligations in respect of the Project Loan will be evidenced by a Promissory Note (Tax-Exempt Loan) dated the Delivery Date (as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, and as the same may be further amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time, and together with all riders and addenda thereto, the "Project Note") delivered to the Governmental Lender, which Project Note will be endorsed by the Governmental Lender without recourse to the Fiscal Agent as security for the Funding Loan.

F. To secure the Borrower's obligations under the Project Note, the Borrower will execute and deliver to the Governmental Lender a Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing dated as of the Delivery Date (as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, and as the same may be further amended, restated, supplemented or otherwise modified from time to time, the "Security Instrument") granting a first priority mortgage and security interest in the Project in favor of the Governmental Lender.

G. All of the right, title and interest of Governmental Lender (except for its Unassigned Rights) in and to this Project Loan Agreement, the Security Instrument, and the other Financing Documents are being assigned to Fiscal Agent as security for the Funding Loan.

H. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise ("Freddie Mac") has entered into a commitment with Walker & Dunlop, LLC, a limited liability company organized under the laws of the State of Delaware (the "Seller/Servicer") dated [_____, 2024] as the same may be amended, modified or supplemented from time to time, the "Freddie Mac Commitment") whereby Freddie Mac has agreed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Funding Loan from the Seller/Servicer following the Conversion Date.

I. If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Freddie Mac Commitment and the Construction Phase Financing Agreement, the Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Initial Funding Lender will deliver, and the Seller/Servicer will purchase, the Funding Loan, as evidenced by the Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, (i) the Project Loan will not convert from the Construction Phase to the Permanent Phase, (ii) neither the Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Funding Loan and (iii) the Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note.

J. As Conditions to Conversion, the Project Note and the Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Seller/Servicer (the "Freddie Mac Continuing Covenant Agreement"), in each case pursuant to the forms attached to the Construction Phase Financing Agreement.

K. If the Conditions to Conversion are satisfied and the Funding Loan is purchased by the Seller/Servicer on the Conversion Date as set forth above, the Seller/Servicer shall deliver the Funding

Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the “Freddie Mac Purchase Date”).

L. Upon the occurrence of the Freddie Mac Purchase Date, the Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Funding Loan, the Governmental Note, the Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. On and after the Freddie Mac Purchase Date, Freddie Mac will act as Funding Lender Representative with respect to the Loans and Walker & Dunlop, LLC, a limited liability company organized under the laws of the State of Delaware, will act as Loan Servicer for the Loans on behalf of Funding Lender Representative.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the origination and funding of the Project Loan by Governmental Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION; SCHEDULES

Section 1.01 Definitions. All words and phrases (except for Event of Default) defined in the Funding Loan Agreement and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Project Loan Agreement. In addition to the words and phrases defined in the Funding Loan Agreement and elsewhere herein, the following words and phrases shall have the following meanings:

“Additional Loans” is defined in Section 8.13 of this Project Loan Agreement.

“Event of Default” means any of those events specified in and defined by the applicable provisions of Section 7.01 hereof to constitute an event of default.

“Fee Component” means the regular, ongoing fees due from time to time to the Governmental Lender, the Fiscal Agent and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the unpaid principal amount of the Funding Loan on an annual basis.

“Limited Partner” means Wincopin Circle LLLP, and its successors and assigns in accordance with the terms of the Borrower’s First Amended and Restated Agreement of Limited Partnership.

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

“Project Loan Amortization Schedule” means the Project Loan Amortization Schedule to be attached as Schedule 1 to the Project Note on the Conversion Date.

“Project Loan Payment” means each payment of the Project Loan on each Project Loan Payment Date pursuant to the Project Note and this Project Loan Agreement.

“Project Loan Payment Date” means (a) the first day of each calendar month, commencing [_____] 1, 2024, or (b) any other date on which the Project Loan is prepaid or paid, whether at

scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date as provided in Section 4.01(c) hereof.

“Project Note” is defined in the Recitals of this Project Loan Agreement.

“Servicing Fee” means: [(a) [during the Construction Phase, \$0, and (b)] during the Permanent Phase, the ordinary fee payable to the Loan Servicer in connection with the servicing of the Project Loan and the Funding Loan payable monthly in an amount equal to one twelfth of [0.21]% of the outstanding principal balance of the Project Loan, computed on the basis of a 360-day year and the actual number of days elapsed.

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

Section 1.02 Interpretation. The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Project Loan Agreement as a whole and not to any particular Article, Section or other subdivision. References to Articles, Sections, and other subdivisions of this Project Loan Agreement are to the designated Articles, Sections and other subdivisions of this Project Loan Agreement as originally executed. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. The headings of this Project Loan Agreement are for convenience only and shall not define or limit the provisions hereof. References to Articles, Sections and other subdivisions of this Project Loan Agreement are the Articles, sections and other subdivisions of this Project Loan Agreement as originally executed.

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

Section 1.03 Schedules.

Schedules	
Schedule I	List of Project Loan Agreement Sections

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01 Representations, Warranties and Covenants of the Governmental Lender.

The Governmental Lender makes the following representations, warranties and covenants for the benefit of the Borrower, the Fiscal Agent, the Funding Lender and the Loan Servicer:

(a) The Governmental Lender is a public body, corporate and politic, duly organized, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Note and to make the Project Loan from the proceeds thereof, and to execute, and deliver this Project Loan Agreement, the Funding Loan Agreement, and the TEL Regulatory Agreement, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Governmental Lender has taken all action on its part to incur the Funding Loan evidenced by the Governmental Note as provided in the Funding Loan Agreement and make the Project Loan from the proceeds thereof as provided in this Project Loan Agreement and for the sale, execution and delivery of the Governmental Note.

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

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

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

(g) There is no action, suit, proceeding, inquiry or investigation pending with respect to which the Governmental Lender has been served with process by or before any court, governmental

agency or public board or body, nor, to the Governmental Lender's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any member of the Board of Supervisors of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of, this Project Loan Agreement, the Funding Loan Agreement or the TEL Regulatory Agreement or the issuance, sale, execution or delivery of the Governmental Note or the Project Loan Note; (iii) affects or questions the validity or enforceability of the Governmental Note, this Project Loan Agreement, the Funding Loan Agreement or the TEL Regulatory Agreement; (iv) questions the tax exempt status of the interest on the Governmental Note; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Note, this Project Loan Agreement, the Funding Loan Agreement or the TEL Regulatory Agreement, or to carry out the transactions on its part contemplated by the Governmental Note, this Project Loan Agreement, the Funding Loan Agreement or the TEL Regulatory Agreement.

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

(i) To the extent it has received written notice of noncompliance by the Borrower with its obligations under the TEL Regulatory Agreement, and it has received assurance satisfactory to the Governmental Lender that the Governmental Lender will be reimbursed for its expenses incurred or to be incurred in connection therewith and is otherwise indemnified against liability related thereto, the Governmental Lender will enforce or cause to be enforced all obligations of the Borrower under the TEL Regulatory Agreement in accordance with its terms.

It is expressly acknowledged that the Governmental Lender makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Governmental Note and any of the Financing Documents, or as to the correctness, completeness or accuracy of such statements. Also, it is expressly acknowledged that the Governmental Lender is making no representations as to the necessity of registering the Governmental Note pursuant to any securities laws or complying with any other requirements of securities laws.

Section 2.02 Representations, Warranties and Covenants of the Borrower. The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Project Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Loan Servicer and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Loan Servicer and the Fiscal Agent contained in this Project Loan Agreement:

(a) The Borrower is a limited partnership duly organized, validly existing and in good standing under the laws of the State and is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Project Loan Agreement and the other Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Project Loan Agreement and the other Financing Documents. All corporate general partners of the Borrower, if any, are duly organized and in good standing under the laws of

their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All partnership general partners of the Borrower, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

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

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

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

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

(f) Reserved.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents, (ii) adversely affect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Project Loan or the execution and delivery of any of the Financing Documents, (iv) adversely affect the validity or enforceability of any of the Financing

Documents, or (v) adversely affect the exclusion of interest on the Governmental Note from gross income of the holders thereof for federal income tax purposes.

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

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

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

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

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

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

(n) The information, statements or reports furnished in writing to the Governmental Lender, the Loan Servicer and the Funding Lender Representative by the Borrower in connection with this Project Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not

misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

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

(p) The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project, except as provided in the limited partnership agreement forming the Borrower.

(q) The Project is located wholly within the boundaries of the City of El Cerrito, California.

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

(s) The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Project Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(t) The Borrower will own fee simple interest in the land and improvements constituting the Project, subject only to liens permitted under the Security Instrument.

(u) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Loan Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Loan Servicer in any manner.

Section 2.03 Representations and Warranties of the Fiscal Agent. The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender and the Loan Servicer:

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

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

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

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

(e) The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

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

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

Section 2.04 Arbitrage and Rebate Fund Calculations. The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.10 of the Funding Loan Agreement, and (b) if required to do so under Section 4.10 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.10 of the Funding Loan Agreement. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.10 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Funding Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

Section 2.05 Tax Covenants of the Borrower. The Borrower covenants and agrees that:

- (a) It will at all times comply with the terms of the Tax Certificate and the TEL 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 Governmental Note to be included in gross income of the holders of the Governmental Note 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 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 TEL Regulatory Agreement);
- (c) No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Governmental Note;
- (d) It will comply with the requirements of Section 148 of the Code and the Treasury Regulations issued thereunder throughout the term of the Funding Loan and the Project Loan and will not make any use of the proceeds of the Funding Loan or the Project Loan, or of any other funds which may be deemed to be proceeds of the Governmental Note under the Code and the Treasury Regulations, which would cause the Governmental Note to be an “arbitrage bond” within the meaning of Section 148 of the Code; and
- (e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Governmental Note becoming includable in gross income of the holders thereof for federal income tax purposes, it will promptly give written notice of such circumstance, event or condition to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Loan Servicer.
- (f) The full amount of each disbursement of proceeds of the Project Loan 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 Governmental Note (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 Governmental Note will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land. None of the proceeds of the Governmental Note (as defined for purposes of Section 147(g) of the Code) will be disbursed to provide working capital;
- (g) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the TEL Regulatory Agreement;
- (h) All leases for rental units in the Project will comply with all applicable laws and the TEL Regulatory Agreement;
- (i) 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 to use that portion of the

Project in any manner which would violate the covenants set forth in this Project Loan Agreement or the TEL Regulatory Agreement;

(j) No proceeds of the Funding Loan shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if construction expenditures (as defined in Section 147(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if construction expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds;

(k) From the proceeds of the Funding Loan and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Funding Loan will be used for Costs of Issuance of the Governmental Note, all within the meaning of Section 147(g)(1) of the Code; and

(l) No proceeds of the Funding Loan 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.

In the event of a conflict between the terms and requirements of this Section 2.05 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

ARTICLE III

THE PROJECT LOAN

Section 3.01 Conditions to Funding the Project Loan. On the Delivery Date, the Governmental Lender shall cause the proceeds of the initial disbursement of the Funding Loan to be deposited with the Title Company in accordance with Section 2.11 of the Funding Loan Agreement and Section 3.03 hereof. Such proceeds of the Funding Loan shall be disbursed by the Title Company pursuant to the Settlement Sheet. Following the Delivery Date, the Governmental Lender shall cause the proceeds of the Funding Loan to be deposited with the Fiscal Agent in accordance Section 3.03 hereof. The Fiscal Agent shall use such proceeds as provided in Article II of the Funding Loan Agreement to make the Project Loan on behalf of Governmental Lender, provided that no authorization for the initial disbursement of proceeds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Governmental Lender the Project Note and the Governmental Lender shall have endorsed the Project Note to the Fiscal Agent;

(b) The Security Instrument and the Assignment, with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower and the Governmental Lender, respectively, and delivered to the Title Company for recording in the Contra Costa County Recorder's Office (the "Recorder's Office");

(c) The TEL Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the Title Company for recording in the Recorder's Office, and the Fiscal Agent shall have received evidence satisfactory to it of such delivery;

(d) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Fiscal Agent; and

(e) The Borrower shall have delivered to the Fiscal Agent, the Governmental Lender, the Funding Lender Representative and the Loan Servicer a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Fiscal Agent, the Governmental Lender, Bond Counsel, the Funding Lender Representative, Freddie Mac and the Loan Servicer.

Section 3.02 Terms of the Project Loan; Servicing.

(a) The Project Loan shall (i) be evidenced by the Project Note; (ii) be secured by the Security Instrument; (iii) be in the maximum aggregate principal amount of [\$35,141,577]; (iv) bear interest as provided in the Project Note; (v) provide for principal and interest payments in accordance with the Project Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Project Note. The outstanding principal balance of Project Loan at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender and deposited by the Fiscal Agent into the Project Loan Fund under the Funding Loan Agreement minus any amounts prepaid with respect to principal in accordance with the terms hereof and the Project Note.

(b) The Funding Lender Representative may appoint a Loan Servicer to service the Loans for all or a portion of the term of the Loans. The initial Loan Servicer of the Loans is BMO Bank N.A., which shall service the Loans as required by the Initial Funding Lender. On the Freddie Mac Purchase Date, the Seller/Servicer shall become the Loan Servicer and shall service the Loans pursuant to the terms of the Freddie Mac Commitment and the Guide. The Funding Lender Representative may remove a Loan Servicer or appoint a replacement Loan Servicer, in its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any successor Loan Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Project Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.

(c) During any period that the Loan Servicer services the Loans, the Borrower shall make all payments in connection with the Project Loan to the Loan Servicer, and the Loan Servicer will (i) Retain the allocable portion of the monthly Servicing Fee (if any) for its own account, (ii) Remit to the Funding Lender all payments of principal of, Prepayment Premium, if any, and interest due with respect to the Funding Loan, together, with any other amounts due to the Funding Lender, (iii) Remit to the Fiscal Agent the Fiscal Agent's Ordinary Fees and Expenses, together with any other amounts due to the Fiscal Agent, and (iv) Remit to the Governmental Lender the Governmental Lender Fee, together with any other amounts due to the Governmental Lender. During any period in which there is no Loan Servicer, all notices to be sent to the Loan Servicer shall be sent to the Funding Lender Representative (to the extent not already provided) and all amounts to be paid to the Loan Servicer by the Borrower shall be paid directly to the Fiscal Agent (unless otherwise directed by the Funding Lender Representative).

(d) The Governmental Lender, the Fiscal Agent and the Borrower hereby acknowledge and agree that (i) the Funding Lender Representative has appointed the Loan Servicer to service and administer the Project Loan, (ii) the selection or removal of any Loan Servicer is in the sole and absolute discretion of the Funding Lender Representative; and (iii) none of the Governmental Lender,

the Fiscal Agent or the Borrower shall terminate or attempt to terminate any Loan Servicer as Loan Servicer for the Project Loan or appoint or attempt to appoint a substitute Loan Servicer for the Project Loan. The Governmental Lender, the Fiscal Agent and the Borrower further hereby acknowledge and agree with respect to the Loan Servicer during the Permanent Phase that: (i) The Guide is subject to amendment without the consent of the Fiscal Agent, the Governmental Lender or the Borrower; and (ii) None of the Fiscal Agent, the Governmental Lender or the Borrower shall have any rights under, or be a third party beneficiary of, the Guide.

Section 3.03 Deposits.

(a) On the Delivery Date the initial proceeds of the Funding Loan in the amount of \$_____ shall be deposited with the Title Company to be disbursed pursuant to the Settlement Sheet. On each date of an advance of the proceeds of the Funding Loan following the Delivery Date, such proceeds shall be deposited in the Project Account of the Project Loan Fund, including the initial deposit in the amount of \$[_____], of which \$[_____] shall be transferred from the Project Account for deposit to the Costs of Issuance Fund as provided in Section 2.11(d) of the Funding Loan Agreement]. [In addition, on the Delivery Date, Borrower will deposit (i) \$[_____] with Fiscal Agent for credit to the Borrower Equity Account of the Project Loan Fund and (ii) with Loan Servicer the Stub Payment Amount.] Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Project Loan Fund are to be disbursed to the Borrower or otherwise as provided in Section 2.11(d) of the Funding Loan Agreement.

(b) The Borrower shall pay all costs of closing the Loans through the Title Company and to the extent such amounts deposited with the Title Company are insufficient to pay all costs of closing the Loans, shall cause the payment of such additional costs of closing the Loans to be made on its behalf as such amounts become due.

Section 3.04 Pledge and Assignment to Fiscal Agent. The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title and interest in this Project Loan Agreement (excluding the Unassigned Rights), the Project Loan, the Project Note, the Security Instrument, the other Project Loan Documents and the Revenues as security for the payment of the principal of, Prepayment Premium, if any, and interest on the Governmental Note and the payment of any other amounts due under the Financing Documents.

Section 3.05 Investment of Funds. Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent in Qualified Investments in accordance with Section 4.07 of the Funding Loan Agreement.

Section 3.06 Damage; Destruction and Eminent Domain. If, prior to payment in full of the Project Loan, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Loan Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Project Loan Documents and the Funding Loan Agreement.

Section 3.07 Enforcement of Financing Documents. The Fiscal Agent or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

ARTICLE IV

LOAN PAYMENTS

Section 4.01 Payments Under the Project Note; Independent Obligation of Borrower.

(a) Payment Obligations. The Borrower agrees to repay the Project Loan on each Project Loan Payment Date as provided in the Project Note, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Loan Servicer, to pay all amounts payable with respect to the Funding Loan, when due, whether at maturity or upon prepayment (with Prepayment Premium, if applicable), acceleration or otherwise. To ensure such timely payment during the Permanent Phase, the Loan Servicer shall collect from the Borrower, and the Borrower shall provide to the Loan Servicer the foregoing payments not less than two (2) Business Days prior to each respective Project Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Project Note, provided that in all events payments made by the Borrower under and pursuant to the Project Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Project Note or any provision of the Project Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Project Note or such provision of the Project Note shall be deemed to be the obligation of the Borrower pursuant to this Project Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Project Note.

(b) Obligations Unconditional; No Set-Off. The obligation of the Borrower to repay the Project Loan, to perform all of its obligations under the Project Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Project Loan Agreement or by the Project Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand (except as otherwise provided herein or in the other Project Loan Documents), and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent

hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Project Loan Agreement.

(c) Payments from Borrower to Fiscal Agent or Loan Servicer. Each payment by the Borrower hereunder or under the Project Note shall be made in immediately available funds to the Loan Servicer on each Project Loan Payment Date or such other date when such payment is due; provided, however, such Project Loan Payment shall be made directly to the Fiscal Agent if there is no Loan Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the Fiscal Agent or the Loan Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Loan Servicer may designate by written notice to the Borrower. Whenever any Project Loan Payment or any other payment under this Project Loan Agreement or under the Project Note shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

Section 4.02 Additional Payments Under the Project Note and this Project Loan Agreement.

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Project Note include certain money to be paid in respect of, among other things, the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Fee Component, the Servicing Fee, or amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.02.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03, the Borrower shall pay (or cause to be paid by the Loan Servicer or the Fiscal Agent (to the extent paid from money on deposit in the Administration Fund or the Costs of Issuance Fund, as applicable) or a third-party escrow agent acceptable to Governmental Lender and Initial Funding Lender), in consideration of the funding of the Project Loan, the following fees, expenses and other money payable in connection with the Loans:

(i) On the Delivery Date, from money on deposit with the Title Company, or to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Initial Funding Lender, its origination fees, together with all third party and out of pocket expenses of the Initial Funding Lender (including but not limited to the fees and expenses of counsel to the Initial Funding Lender) in connection with the Loans.

(ii) On the Delivery Date, from money on deposit with the Title Company, or to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, all third party and out of pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Loans.

(iii) On the Delivery Date, from money on deposit with the Title Company, or to the extent such money is insufficient for such purpose, from other money of the Borrower, to the

Governmental Lender, an initial financing fee in an amount equal to \$[_____], together with all third party and out-of-pocket expenses of Governmental Lender (including but not limited to the fees and expenses of Bond Counsel and counsel to the Governmental Lender) in connection with the Loans and the issuance of the Governmental Note.

(iv) On the Delivery Date, from money on deposit with the Title Company, or to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Seller/Servicer, its commitment fees and application fees, together with all third party and out of pocket expenses of the Seller/Servicer (including but not limited to the fees and expenses of counsel to the Seller/Servicer, if any) in connection with the Loans.

(v) On the Delivery Date, from money on deposit with the Title Company, or to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, an acceptance fee in an amount equal to [\$2,000.00], the Fiscal Agent's first year annual fee of [\$2,500.00], and reimbursement for legal expenses of [\$3,000.00], together with all third party and out of pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Loans and the issuance of the Governmental Note.

(vi) To the Fiscal Agent, the Fiscal Agent's Ordinary Fees and Expenses and the Fiscal Agent's Extraordinary Fees and Expenses when due from time to time.

(vii) To the Governmental Lender, the Governmental Lender Fee when due and any extraordinary expenses not covered by the Governmental Lender Fee the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time.

(viii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Project Loan Agreement when due from time to time.

(ix) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(x) To the Loan Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Loan Servicer as provided in the Continuing Covenant Agreement.

(xi) To the Loan Servicer, the amounts required to be deposited in respect of reserves and impositions required under the Continuing Covenant Agreement and the other Project Loan Documents.

(xii) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

Section 4.03 Payments to Rebate Fund. The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

Section 4.04 Prepayment.

(a) Optional Prepayment of the Project Loan. The Borrower shall have the option to prepay the Project Loan in whole, together with all accrued and unpaid interest thereon, as provided in the Project Note.

(b) Mandatory Prepayment of the Project Loan. The Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Note, as provided in the Project Note. Additionally, the Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Note, in connection with the following:

(i) In part, in the event the Borrower makes a Pre-Conversion Loan Equalization Payment; and

(ii) In whole, on or after the Forward Commitment Maturity Date, at the written direction of the Initial Funding Lender, if the Conversion Notice is not issued by the Seller/Servicer prior to the Forward Commitment Maturity Date.

(c) Defeasance of the Funding Loan. In addition, after the Conversion Date and prior to the Window Period, the Borrower may cause a defeasance of the Funding Loan resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a “Defeasance Notice”) to the Funding Lender Representative, the Loan Servicer, the Governmental Lender and the Fiscal Agent of the date the Borrower desires to defease the Funding Loan (the “Defeasance Date”). The Defeasance Date may not be more than 60 calendar days, nor less than 30 calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid to the Funding Lender Representative the Defeasance Fee set forth in the Continuing Covenant Agreement. In addition to, and not in limitation of any other provisions of this Project Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the Project Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the Security Instrument, the Pledged Security and other security provided by it for the Project Loan, subject to the terms and conditions hereof and the other Financing Documents.

Section 4.05 Borrower’s Obligations Upon Prepayment. In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Loan Servicer, an amount equal to the principal amount of the Funding Loan or portion thereof called for prepayment, together with interest accrued to the prepayment date and Prepayment Premium, if any. In addition, the Borrower will timely pay all fees, costs and expenses associated with any prepayment of the Funding Loan.

Section 4.06 Limits on Personal Liability.

(a) Except as otherwise set forth in the Project Note and subsection 4.06(b) below, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents are non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the

Borrower or any partner of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Loan Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Project Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Loan Servicer or the Funding Lender Representative may have to enforce the Project Note, the Security Instrument, or any other Financing Document in accordance with their terms.

(b) Notwithstanding anything contained in any other provision of this Project Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and each of the Borrower's general partners: (i) the Borrower's obligations to the Governmental Lender and the Fiscal Agent under subsections [(b)(ii), (b)(iii), (b)(iv),] (b)(v), (b)(vi), and (b)(vii) of Section 4.02 hereof; (ii) the Borrower's obligations under Sections 2.05 and 6.01 of this Project Loan Agreement; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04, 4.02(b)(viii), and 4.03 of this Project Loan Agreement and the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

ARTICLE V SPECIAL COVENANTS OF BORROWER

Section 5.01 Performance of Obligations. The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

Section 5.02 Compliance With Applicable Laws. All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

Section 5.03 Funding Loan Agreement Provisions. The execution of this Project Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. Whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement.

Section 5.04 Borrower to Maintain Its Existence; Certification of No Default.

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

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within 30 days after the end of each

calendar year, render to the Fiscal Agent (with a copy to the Governmental Lender) a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.

Section 5.05 Borrower to Remain Qualified in State and Appoint Agent. The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

Section 5.06 Sale or Other Transfer of Project. The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Governmental Lender and the Funding Lender Representative.

Section 5.07 Right to Perform Borrower's Obligations. In the event the Borrower fails to perform any of its obligations under this Project Loan Agreement, the Governmental Lender, the Fiscal Agent, the Loan Servicer, the Limited Partner, and/or the Funding Lender Representative, after giving requisite notice, if any, and subject to Section 5.05 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Project Loan Documents.

Section 5.08 Notice of Certain Events. The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Loan Servicer in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

Section 5.09 Survival of Covenants. The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Project Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

Section 5.10 Access to Project; Records. Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Loan Servicer and the Funding Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours to do any of the following: (a) Enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) Inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) Require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Loan Servicer and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Loan Servicer or the Funding Lender Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Loan Servicer or the

Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the Loan Servicer and the Funding Lender Representative, such information concerning the Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

Section 5.11 TEL Regulatory Agreement. The covenants of the Borrower in the TEL Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the TEL Regulatory Agreement. The Borrower covenants to file of record the TEL Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the TEL Regulatory Agreement will, subject to the terms of the TEL Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the TEL Regulatory Agreement. Subject to the provisions of Section 7.06 of this Project Loan Agreement, the Governmental Lender shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the TEL Regulatory Agreement.

Section 5.12 Damage, Destruction and Condemnation. If prior to payment in full of the Funding Loan (or provision for payment in full of the Funding Loan in accordance with the provisions of the Funding Loan Agreement) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Project Loan Agreement and in the Project Note to the extent the Project Loan is not prepaid in full in accordance with the terms of the Project Loan Documents.

Section 5.13 Obligation of the Borrower To Construct the Project. The Borrower shall proceed with reasonable dispatch (and in no event later than required under the Financing Documents) to complete the construction, development and equipping of the Project as required by the Financing Documents. If amounts on deposit in the Project Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of the acquisition, construction, development and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Loan Servicer, the Funding Lender Representative or the Funding Lender in respect of any such additional costs or to any diminution or abatement in the repayment of the Project Loan. None of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Loan Servicer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Project Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and none of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Loan Servicer shall be liable to the Borrower or any other person if for any reason the Project is not completed.

Section 5.14 Filing of Financing Statements. The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date all UCC financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority

of the Project Loan, the Funding Loan, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with such security interests. The Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements; provided, however, that Fiscal Agent shall only file or record, or cause to be filed or recorded, those UCC continuation statements on which Fiscal Agent is named as a secured party or additional secured party for financing statements that have been delivered to Fiscal Agent, at Borrower's expense.

ARTICLE VI

INDEMNIFICATION

Section 6.01 Indemnification.

(a) Indemnified Losses. To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Loan Servicer, the Funding Lender and each of their respective officers, Supervisors, directors, officials, employees, attorneys and agents (collectively, the "Indemnified Parties"), against any and all losses, damages (including, but not limited to, consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, "Losses"), to the extent arising, directly or indirectly, out of or based upon or in any way relating to any of the following:

(i) any breach by the Borrower of its obligations under the Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with transactions contemplated thereby, including the issuance, sale, transfer or resale of the Governmental Note;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project Loan or 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, construction or equipping of, the Project or any part thereof;

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Loan Servicer hereunder, or any Taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Fiscal Agent in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) the enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative related to remedies under this Project Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(vii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Governmental Note or any of the Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Governmental Note necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(viii) any declaration of taxability of interest on the Governmental Note or allegations (or regulatory inquiry) that interest on the Governmental Note is includable in gross income of the holders thereof for federal income tax purposes (including any Determination of Taxability);

(ix) any audit or inquiry by the Internal Revenue Service with respect to the Project and/or the tax-exempt status of the Governmental Note; or

(x) the Fiscal Agent's acceptance or administration of the trust of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Note to which it is a party;

except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the negligence, unlawful acts or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Loan Servicer, the Funding Lender or the Governmental Lender or any of their respective officers, Supervisors, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the willful misconduct of such Indemnified Party.

(b) Procedures. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) Borrower to Remain Obligated. Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Project Loan Agreement, the Continuing Covenant Agreement, and the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in

writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Financing Documents.

(d) Survival. The provisions of this Section 6.01 shall survive the termination of this Project Loan Agreement.

(e) No Limitation on Other Indemnification Rights. The provisions of this Section 6.01 shall not operate to limit any other rights of the Governmental Lender to be held harmless, defended or indemnified by the Borrower under any other instrument or agreement, including, without limitation, the TEL Regulatory Agreement

Section 6.02 Limitation With Respect to the Funding Lender. Notwithstanding anything in this Project Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Project Loan, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01 Events of Default. The occurrence of any one or more of the following will constitute an "Event of Default" under this Project Loan Agreement, and the term "Event of Default" shall mean, whenever it is used in this Project Loan Agreement, one or all of the following events:

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

(b) Failure by the Borrower to pay any amounts due under this Project Loan Agreement or the Project Note or the other Financing Documents at the times and in the amounts required by this Project Loan Agreement or the Project Note or such other Financing Documents, as applicable;

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Project Loan Agreement, which failure continues for a period of 30 days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (unless such default cannot with due diligence be cured within 30 days but can be cured within a reasonable period and will not, in the Funding Lender Representative's sole discretion, adversely affect the Funding Lender or result in impairment of this Project Loan Agreement or any other Financing

Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within 30 days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative's judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Project Loan Agreement, result in harm to the Funding Lender, impairment of this Project Loan Agreement or any other Financing Document;

(d) The occurrence of a default under the Continuing Covenant Agreement or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Project Loan Agreement but only if the Fiscal Agent is provided written notice by the Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Loan Servicer or the Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents. Notwithstanding anything to the contrary contained herein, the Limited Partner shall have the right, but not the obligation, to cure a default on the same terms as Borrower may in accordance with the terms of this Section 7.01, and the Governmental Lender, the Fiscal Agent, the Loan Servicer and Funding Lender agree to accept or reject such cure on the same basis as if provided by the Borrower itself.

Section 7.02 Remedies on Default. Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) Such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Project Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Project Note to be immediately due and payable).

(b) Without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) Whatever action at law or in equity may appear necessary or desirable to collect the payments under this Project Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Project Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of, Prepayment Premium, if any, and interest and all other amounts due on the Funding Loan collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

Section 7.03 No Remedy Exclusive. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), at any time and from time to time, whether or not the Funding Lender has accelerated the Project Loan, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Project Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Project Loan Agreement.

Section 7.04 Agreement to Pay Attorneys' Fees and Expenses. In the event the Borrower shall default under any of the provisions of this Project Loan Agreement and the Governmental Lender, the Fiscal Agent, the Loan Servicer or the Funding Lender Representative shall employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Project Loan Agreement or in the Project Note, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

Section 7.05 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Project Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.06 Control of Proceedings.

(a) Notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Project Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Project Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Project Loan without the express direction of the Funding Lender Representative.

(b) The Governmental Lender and the Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

- (i) Prosecute any action with respect to a lien on the Project; or
- (ii) Initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Project Loan; or
- (iii) Interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the occurrence of any event of default by the Borrower under the Financing Documents; or
- (iv) Take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Project Loan or the Funding Loan.

(c) Notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender or the Fiscal Agent may take one or both of the following actions:

- (i) Specifically enforce the tax covenants of the Borrower specified in Section 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof;
- (ii) Specifically enforce the TEL Regulatory Agreement or seek injunctive relief against acts which may be in violation of the TEL Regulatory Agreement or are otherwise inconsistent with the operation of the Project in accordance with applicable requirements of the Code and State law, including the Act (but in neither the case of subsection (c)(i) above or this subsection (c)(ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding Section 7.06(a) and Section 7.06(b) hereof, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any Indemnified Party related to the Governmental Lender or the Fiscal Agent under Section 6.01 (each a “Related Indemnified Party”) to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01 and 7.04 hereof, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent’s right to receive payment of Fiscal Agent’s Extraordinary Fees and Expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an Event of Default with respect to the Funding Loan, which Fiscal Agent’s Extraordinary Fees and Expenses shall be payable as provided thereunder). Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the

Borrower under any applicable liquidation, insolvency, bankruptcy, construction, composition, reorganization, conservation or other similar law in effect now or in the future.

Section 7.07 Assumption of Obligations. In the event that the Fiscal Agent or the Funding Lender or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Project Loan Agreement, the Project Note, the TEL Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Notices.

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

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Loan Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 10.04 of the Funding Loan Agreement or as required or permitted by this Project Loan Agreement by Electronic Instruction and Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the Limited Partner, or the Loan Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Loan Servicer shall also be given to the Funding Lender Representative and a duplicate copy of each notice or other communication given hereunder by any party to the Funding Lender Representative shall be given to the Loan Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Instruction and Notice of written instructions and/or directions pursuant to this Project Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Loan Servicer (i) prompt notice of the occurrence of any Event of Default hereunder and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

Section 8.02 Concerning Successors and Assigns. All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Project Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Project Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Loan Servicer, the Funding Lender and the Funding Lender Representative, as applicable.

Section 8.03 Governing Law. This Project Loan Agreement shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America.

Section 8.04 Modifications in Writing. Modification or the waiver of any provisions of this Project Loan Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

Section 8.05 Further Assurances and Corrective Instruments. The Governmental Lender, the Fiscal Agent and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Project Loan Agreement; provided, however, that no such supplement or further instruction shall change the essential economic terms of the Project Loan or impose on the Borrower greater liability in connection with the Project Loan Documents without the written consent of the Borrower.

Section 8.06 Captions. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Project Loan Agreement.

Section 8.07 Severability. The invalidity or unenforceability of any provision of this Project Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

Section 8.08 Counterparts. This Project Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 8.09 Amounts Remaining in Loan Payment Fund or Other Funds. It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Project Loan and all other amounts owing under the Project Loan Documents), shall be paid in accordance with the Funding Loan Agreement.

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

Section 8.11 Cross References. Any reference in this Project Loan Agreement to an “Exhibit,” an “Article,” a “Section,” a “Subsection” or a “Paragraph” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Project Loan Agreement, an article of this Project Loan Agreement, a section of this Project Loan Agreement, a subsection of the section of this Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Project Loan Agreement in which the reference appears. All schedules and exhibits attached to or referred to in this Project Loan Agreement are incorporated by reference into this Project Loan Agreement.

Section 8.12 Funding Lender Representative and Servicer as Third Party Beneficiaries. The parties hereto agree and acknowledge that the Funding Lender Representative and the Loan Servicer are third party beneficiaries of this Project Loan Agreement.

Section 8.13 Supplemental Financings. Governmental Lender and Fiscal Agent each acknowledges that Loan Servicer (or another originating lender that is generally approved by Freddie Mac to sell mortgages to Freddie Mac) may make additional loans to Borrower secured by additional mortgages on the Project (“Additional Loans”), provided however that no such Additional Loans may be made without the prior written consent of Governmental Lender. Additional Loans must be subordinate to the repayment of the Project Loan by Borrower. *[to discuss]*

Section 8.14 Non-Liability of Governmental Lender. None of the Governmental Lender, any member of the Board of Supervisors of the Governmental Lender or any person executing the Funding Loan Agreement, this Project Loan Agreement or the Governmental Note is liable personally on the Governmental Note or subject to any personal liability or accountability by reason of its execution and delivery. The Funding Loan Agreement and the Governmental Note are limited obligations of the Governmental Lender, payable solely from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Project Loan Agreement. Neither the Governmental Lender nor the State of California or any of its political subdivisions shall be directly, indirectly, contingently or morally obligated to use any other moneys or assets to pay all or any portion of the payments due in respect of the Governmental Note, to levy or to pledge any form of taxation whatever therefor or to make any appropriation for its payment. The Governmental Note is not a pledge of the faith and credit of the Governmental Lender or the State of California or any of its political subdivisions nor does it constitute indebtedness within the meaning of any constitutional or statutory debt limitation. The Governmental Lender shall not be liable for payment of the principal of, Prepayment Premium or interest in respect of the Governmental Note or any other costs, expenses, losses, damages, claims or actions of any conceivable kind on any conceivable theory, under or by reason of or in connection with the Funding Loan Agreement, this Project Loan Agreement, the Governmental Note or any other Financing Document, except only to the extent amounts are received for the payment thereof from the Borrower under this Project Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender’s sole source of money to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Project Loan Agreement, together with investment income on certain funds and accounts held by the

Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or Prepayment Premium) and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or Prepayment Premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor but solely, in the case of the Governmental Lender, from the Revenues, other than with respect to any deficiency caused by the willful misconduct of the Governmental Lender.

Section 8.15 No Liability of Officers. No recourse under or upon any obligation, covenant, or agreement or in the Governmental Note, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any Supervisor, director, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such Supervisor, director, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Project Loan Agreement and the issuance of the Governmental Note.

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

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

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal

Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Project Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Loan Servicer or the Borrower, as applicable; and

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

Section 8.18 Assignment. Neither the Funding Lender nor the Fiscal Agent may assign or transfer its interest in the Project Loan Documents separately from its interest in the Funding Loan Agreement and the Governmental Note. Any assignment or transfer of Project Loan Documents by Funding Lender or Fiscal Agent must be in conformity with the requirements of Section 2.08 of the Funding Loan Agreement. Upon such assignment, all references to Funding Lender or the Fiscal Agent, as appropriate, in this Project Loan Agreement and in any Project Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the Funding Lender or the Fiscal Agent, as appropriate. The Borrower shall accord full recognition to any such assignment, and all rights and remedies of Funding Lender in connection with the interest so assigned shall be as fully enforceable by such assignee as they were by Funding Lender before such assignment. In connection with any proposed assignment, Funding Lender may disclose to the proposed assignee any information that the Borrower has delivered, or caused to be delivered, to Funding Lender with reference to the Borrower, General Partner, any Affiliate of either of them, or the Project, including information that the Borrower is required to deliver to Funding Lender pursuant to this Project Loan Agreement, provided that such proposed assignee agrees to treat such information as confidential.

Section 8.19 Governmental Lender, Funding Lender and Servicer Not in Control; No Partnership. None of the covenants or other provisions contained in this Project Loan Agreement shall, or shall be deemed to, give the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer the right or power to exercise control over the affairs or management of the Borrower, the power of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer being limited to the rights to exercise the remedies referred to in the Project Loan Documents and the Financing Documents. The relationship between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Project Loan Documents or the Financing Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer or to create an equity in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer. None of the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer undertake or assume any responsibility or duty to the Borrower or to any other person with respect to the Project or the Project Loan, except as expressly provided in the Project Loan Documents or the Financing Documents; and notwithstanding any other provision of the Project Loan Documents and the Financing Documents: (1) the Governmental Lender, the Funding

Lender, the Fiscal Agent and the Servicer are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members, or partners and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer do not intend to ever assume such status; (2) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall in no event be liable for any of the Borrower's obligations under or with respect to the Project Loan Agreement or the Project Note, or expenses or losses incurred or sustained by the Borrower; and (3) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Borrower, or its stockholders, members, or partners, as applicable. The Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the Governmental Lender, the Funding Lender, the Servicer, the Fiscal Agent and the Borrower, or to create any equity interest in the Project on behalf of the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, or any sharing of liabilities, losses, costs or expenses.

[Signature Pages Follow]

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

COUNTY OF CONTRA COSTA, CALIFORNIA

By:_____

John Kopchik,
Director, Department of
Conservation and Development

S-1

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO
MAYFAIR AFFORDABLE APARTMENTS PROJECT LOAN AGREEMENT]

U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION, as Fiscal Agent

By: _____
[Authorized Officer]

S-2

[FISCAL AGENT'S SIGNATURE PAGE TO
MAYFAIR AFFORDABLE APARTMENTS PROJECT LOAN AGREEMENT]

Mayfair Affordable Housing LP,
a California limited partnership

By: Mayfair Affordable LLC,
a California limited liability company,
its managing general partner

By: BRIDGE Housing Corporation,
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Smitha Seshadri, Executive Vice President

Schedule I

List of Project Loan Agreement Sections

ARTICLE I

DEFINITIONS; INTERPRETATION; SCHEDULES

Section 1.01	Definitions.....	3
Section 1.02	Interpretation.....	4
Section 1.03	Schedules	4

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01	Representations, Warranties and Covenants of the Governmental Lender.....	5
Section 2.02	Representations, Warranties and Covenants of the Borrower	6
Section 2.03	Representations and Warranties of the Fiscal Agent	9
Section 2.04	Arbitrage and Rebate Fund Calculations	10
Section 2.05	Tax Covenants of the Borrower	11

ARTICLE III

THE PROJECT LOAN

Section 3.01	Conditions to Funding the Project Loan	12
Section 3.02	Terms of the Project Loan; Servicing	13
Section 3.03	Deposits.....	14
Section 3.04	Pledge and Assignment to Fiscal Agent	14
Section 3.05	Investment of Funds.....	14
Section 3.06	Damage; Destruction and Eminent Domain	14
Section 3.07	Enforcement of Financing Documents	15

ARTICLE IV

LOAN PAYMENTS

Section 4.01	Payments Under the Project Note; Independent Obligation of Borrower.....	15
Section 4.02	Additional Payments Under the Project Note and this Project Loan Agreement.....	16
Section 4.03	Payments to Rebate Fund.....	17
Section 4.04	Prepayment	18
Section 4.05	Borrower's Obligations Upon Prepayment.....	18
Section 4.06	Limits on Personal Liability.....	18

ARTICLE V

SPECIAL COVENANTS OF BORROWER

Section 5.01	Performance of Obligations	19
Section 5.02	Compliance With Applicable Laws	19
Section 5.03	Funding Loan Agreement Provisions	19
Section 5.04	Borrower to Maintain Its Existence; Certification of No Default.....	19

Schedule I-1

Section 5.05	Borrower to Remain Qualified in State and Appoint Agent	20
Section 5.06	Sale or Other Transfer of Project	20
Section 5.07	Right to Perform Borrower's Obligations.....	20
Section 5.08	Notice of Certain Events.....	20
Section 5.09	Survival of Covenants.....	20
Section 5.10	Access to Project; Records.....	20
Section 5.11	TEL Regulatory Agreement.....	21
Section 5.12	Damage, Destruction and Condemnation	21
Section 5.13	Obligation of the Borrower To Construct the Project.....	21
Section 5.14	Filing of Financing Statements	21

ARTICLE VI

INDEMNIFICATION

Section 6.01	Indemnification	22
Section 6.02	Limitation With Respect to the Funding Lender	24

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01	Events of Default	24
Section 7.02	Remedies on Default.....	25
Section 7.03	No Remedy Exclusive.....	26
Section 7.04	Agreement to Pay Attorneys' Fees and Expenses	26
Section 7.05	No Additional Waiver Implied by One Waiver	26
Section 7.06	Control of Proceedings	26
Section 7.07	Assumption of Obligations	28

ARTICLE VIII

MISCELLANEOUS

Section 8.01	Notices	28
Section 8.02	Concerning Successors and Assigns	29
Section 8.03	Governing Law	29
Section 8.04	Modifications in Writing.....	29
Section 8.05	Further Assurances and Corrective Instruments	29
Section 8.06	Captions	29
Section 8.07	Severability	29
Section 8.08	Counterparts.....	29
Section 8.09	Amounts Remaining in Loan Payment Fund or Other Funds.....	29
Section 8.10	Effective Date and Term.....	30
Section 8.11	Cross References.....	30
Section 8.12	Funding Lender Representative and Servicer as Third Party Beneficiaries	30
Section 8.13	Supplemental Financings	30
Section 8.14	Non-Liability of Governmental Lender	30
Section 8.15	No Liability of Officers	31
Section 8.16	Capacity of the Fiscal Agent.....	31
Section 8.17	Reliance.....	31
Section 8.18	Assignment	32

Section 8.19	Governmental Lender, Funding Lender and Servicer Not in Control; No Partnership	32
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