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RCUD APR 7 '08

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA

Adopted this Resolution on October 16, 2007 by the following vote:

AYES: SUPERVISORS GIOIA,
 UILKEMA, BONILLA, AND PIEPHO
 NOES: NONE
 ABSENT; SUPERVISOR GLOVER
 ABSTAIN: NONE



SUBJECT:

Resolution No. 2007/590

RESOLUTION AUTHORIZING THE ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$30,000,000 FOR THE FINANCING OF A MULTIFAMILY RESIDENTIAL RENTAL PROJECT GENERALLY KNOWN AS EAST LELAND FAMILY APARTMENTS, PITTSBURG.

It is hereby RESOLVED by the Board that:

WHEREAS, the County of Contra Costa (the "County") is authorized to issue multifamily housing revenue bonds pursuant to Section 52075 and following of the California Health and Safety Code;

WHEREAS, the County desires to participate in financing the development of a 63-unit multifamily residential rental development generally known as East Leland Family Apartments and located at 2555 East Leland Road, Pittsburg, California (the "Project"), which will be owned and operated by Mercy Housing California XXXVIII, a California Limited Partnership, or an entity related thereto (collectively, the "Borrower");

WHEREAS, to assist in financing the Project, the County intends to sell and issue not to exceed \$30,000,000 aggregate principal amount of its multifamily housing revenue bonds (the "Bonds") and to loan the proceeds thereof to the Borrower, thereby reducing the cost of the Project and assisting in providing housing for low income persons;

WHEREAS, pursuant to Section 147(f) of the Internal Revenue Code of 1986 (the "Code"), the financing of the Project and the issuance of the Bonds by the County must be approved by the "applicable representative of the County" (as defined in the Code);

WHEREAS, the Board of Supervisors of the County of Contra Costa (the "Board"), is the elected legislative body of the County and is one of the applicable elected representatives required to approve the financing of the Project and the Bonds under Section 147(f) of the Code;

WHEREAS, pursuant to Section 147(f) of the Code, the Deputy Director – Redevelopment has, following notice duly given, held a public hearing regarding the financing of the Project and the issuance of the Bonds at which no public comments were made; and

WHEREAS, the Board desires to approve the financing and the issuance of the Bonds;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the County of Contra Costa, as follows:

Section 1. The Board hereby specifically finds and declares that the statements, findings and determinations of the County set forth above are true and correct.

Section 2. For purposes of Section 147(f) of the Code, the Board hereby authorizes the issuance of Bonds by the County to finance the Project.

Section 3. The adoption of this Resolution does not (1) relieve or exempt the Borrower from obtaining any other permits or approvals that are required by, or determined to be necessary from, the County in connection with the Project, nor (2) obligate the County to incur any obligation or provide financial assistance with respect to the Bonds or the Project.

Section 4. All actions heretofore taken by the officers and agents of the County with respect to the financing of the Project and the sale and issuance of Bonds are hereby approved, ratified and confirmed, and any authorized officer of the County is hereby authorized and directed, for and in the name and on behalf of the County, to do any and all things and take any and all actions and execute and deliver any an all certificates, agreements and other documents, which any such officer may deem necessary or advisable in order to effectuate the purposes of this Resolution.

Section 5. This Resolution shall take effect upon its adoption.

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown

ATTESTED: October 16, 2007

John Cullen, Clerk of the Board of Supervisors
And County Administrator

By K. Sinclair Deputy

cc: Community Development

RESOLUTION 2007/540



C-39

TO: BOARD OF SUPERVISORS

FROM: Dennis M. Barry, AICP
Community Development Director

DATE: October 16, 2007

SUBJECT: Multi-Family Mortgage Revenue Bonds – East Leland Family Apartments, Pittsburg

SPECIFIC REQUEST(S) OR RECOMMENDATIONS(S) & BACKGROUND AND JUSTIFICATION

RECOMMENDATIONS

ADOPT Resolution authorizing issuance of Multi-Family Housing Revenue Bonds in an amount not to exceed \$30 million to finance the construction of the East Leland Family Apartments, Pittsburg.

FISCAL IMPACT

No General Fund obligation is involved. In the event bonds are issued, the County is reimbursed for costs associated with issuance of bonds. Annual expenses related to monitoring of the Regulatory Agreement are accommodated in the bond issue. The bonds to be issued will be solely secured by a pledge of revenues (rents, reserves, etc.) pledged under the bond documents. No County funds are pledged to secure the bonds

CONTINUED ON ATTACHMENT: YES SIGNATURE: *Jim Kennedy*

RECOMMENDATION OF COUNTY ADMINISTRATOR COMMITTEE APPROVE OTHER RECOMMENDATION OF BOARD

SIGNATURE(S): *Judie Anna*

ACTION OF BOARD ON APPROVED AS RECOMMENDED OTHER

VOTE OF SUPERVISORS

UNANIMOUS (ABSENT)
AYES: _____ NOES: _____
ABSENT: ABSTAIN: _____

Contact: Jim Kennedy
5-7225
orig: Community Development
cc: County Administrator
County Counsel
Housing Authority
Redevelopment Agency
via: Community Development
*Mercy Housing

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MINUTES OF THE BOARD OF SUPERVISORS ON THE DATE SHOWN.

ATTESTED OCTOBER 16, 2007
JOHN CULLEN, CLERK OF THE BOARD OF SUPERVISORS AND THE COUNTY ADMINISTRATOR
BY K. Sinclair, DEPUTY

BACKGROUND/REASONS FOR RECOMMENDATIONS

East Leland Family Apartments is a 63-unit project located at 2555 East Leland Road, Pittsburg. The ownership entity is Mercy Housing California XXXVIII, a California Limited Partnership. The development entity is related to Mercy Housing California, an experienced non-profit owner/manager of affordable housing projects. The City of Pittsburg is supportive of the development of the East Leland Family Apartments. The Pittsburg Redevelopment Agency currently owns the site. The Pittsburg Redevelopment Agency and Mercy Housing California have entered into a Disposition and Development Agreement that provides, among other things, financial assistance from Redevelopment Housing Set Aside funds in an amount up to \$5.375 million. The County has committed \$1.5 million in HOME funding to the project.

The proposed financing would implement policy of the City and the County to increase the supply of affordable housing. The site is near Los Medanos College, and near retail services in the area. The 3-acre site is currently vacant. Multifamily development abuts the site to the east and west. The development will include the affordable housing project along with a day care facility for 50 children. An application for Private Activity Bond Authority was submitted to the California Debt Limit Allocation Committee in October 2007.

The recommended action is the adoption of a Resolution by the Board, as the legislative body of the County, authorizing the issuance of bonds. The Board's action acknowledges that a public hearing has been held by the Deputy Director – Redevelopment as required by Section 147(f) of the Internal Revenue Code. The recommended action of the Board is not the Bond Sale Resolution. Such actions would come back to the Board after receipt of an allocation from the State for Private Activity Bond Authority. Expected timing for a Bond Sale Resolution would be in December, 2007 or January, 2008.

JK:dk

100783 100

**LOAN AGREEMENT
CONSTRUCTION TO PERMANENT**

Between

**CITICORP NORTH AMERICA, INC.,
a Delaware corporation**

and

**Mercy Housing California XXXVIII,
a California Limited Partnership**

Dated as of February 1, 2008

Relating to

Construction Loan in the amount of

\$14,500,000

CONSTRUCTION LOAN AGREEMENT

(East Leland Family Apartments)

This Loan Agreement ("**Agreement**") is made as of February 1, 2008, by and between Mercy Housing California XXXVIII, a California Limited Partnership ("**Borrower**"), and Citicorp North America, Inc., a Delaware corporation, ("**Agent**"), in its capacity as agent for the County of Contra Costa, a political subdivision organized and existing under the laws of the State of California ("**Issuer**") under and pursuant to that certain Master Agency Agreement dated as of February 1, 2008 executed by Issuer and Agent ("**Master Agency Agreement**") (Issuer and its successors and assigns in and to this Agreement acting through Agent during the term of Agent's agency and acting on their own behalf or through other agents thereafter, are referred to herein as the "**Lender**") with reference to the following facts:

A. Borrower has requested that Issuer provide a construction loan (the "**Loan**") in the amount of Fourteen Million Five Hundred Thousand Dollars (\$14,500,000) to Borrower to finance the construction (the "**Work**") of certain buildings and other improvements (collectively, the "**Improvements**") on real property (the "**Land**" and collectively with the Improvements, the "**Project**"), to be owned by Borrower prior to or concurrently with the first Loan disbursement, located at 2555 East Leland Road, City of Pittsburg, County of Contra Costa ("**County**"), State of California, as described in Exhibit A attached hereto. Borrower intends to complete the Work on or before February 1, 2010 (the "**Completion Date**"). In this Agreement, the term "**Property**" shall refer to all or any part of the property affected by the Deed of Trust (as defined below) or any interest in all or any part of it, as the context requires.

B. Issuer has determined to issue its Multifamily Housing Revenue Bonds (East Leland Family Apartments) 2008 Series A (the "**Bonds**"), the proceeds of which will be loaned to Borrower (the "**Loan**") pursuant to this Agreement to provide funds to finance a portion of the costs of acquisition and construction of the Improvements. Upon issuance of the Bonds, all right, title and interest of Issuer under and in the Loan will be assigned by Issuer and Agent, as agent for Issuer under that certain Master Agency Agreement to Citicorp Municipal Mortgage Inc., a Delaware statutory trust as initial holder of the Bonds (in such capacity, "**Holder**") pursuant to that certain Master Pledge and Assignment dated as of February 1, 2008 ("**Master Pledge and Assignment**"). Each capitalized term used herein but not otherwise defined herein shall have the meaning given such term in the Master Pledge and Assignment.

C. Agent is executing this Agreement, and, subject to the other terms and conditions of this Agreement, shall disburse or cause to be disbursed the proceeds of the Loan to Borrower in its capacity as agent for Issuer pursuant to the Master Agency Agreement. All of the rights, powers, elections, determinations, remedies, duties and functions of Issuer hereunder may be exercised and performed on behalf of Issuer by Agent or its designee unless and until Agent's agency pursuant to the Master Agency Agreement is terminated, modified, assigned, in whole or in part, or otherwise amended in accordance with the provisions of the Master Agency Agreement.

D. Borrower is a partnership formed pursuant to that certain Agreement of Limited Partnership, dated January 23, 2007, as assigned and amended pursuant to an Assignment and

Substitution Agreement and First Amendment to Agreement of Limited Partnership, dated December 14, 2007, and as the same may be amended and supplemented from time to time, (the "**Partnership Agreement**") between Mercy Housing Calwest ("**MHCW**" or "**General Partner**"), a California nonprofit public benefit corporation, as successor to Mercy Housing West, a California nonprofit public benefit corporation, and South of Market Mercy Housing, a California corporation ("**SMMH**"), as the initial limited partner of the Borrower. Following the Loan Closing (as defined below) but prior to or concurrently with the first Work Disbursement, the Partnership Agreement will be amended and restated to (a) admit the Investor Limited Partner (defined herein) and, (b) cause SMMH to withdraw from the Borrower partnership, and (c) evidence Investor Limited Partner's agreement to make capital contributions to Borrower as and when due under the Partnership Agreement, as amended and restated (the "**Amended Partnership Agreement**"). Pursuant to the terms of the Amended Partnership Agreement, when executed, the total capital contributions to Borrower from Investor Limited Partner are anticipated to be not less than \$10,630,175 (the "**Capital Obligations**").

E. A material inducement to Lender to enter into this Agreement is the availability of federal low-income housing tax credits (the "**Tax Credits**") reserved or allocated by the California Tax Credit Allocation Committee (the "**TCAC**"), acting under Section 42(h) of the Internal Revenue Code (the "**Code**") pursuant to its Tax Exempt Reservation Letter dated January 23, 2008 (the "**Preliminary Reservation**"), and any successive document or instrument or any continuation or finalization of such reservation or allocation (collectively with the Preliminary Reservation, the "**Tax Credit Documents**") with respect to the Project.

F. Borrower and General Partner have each agreed to pledge and assign to Lender, and create a security interest in favor of Lender, as to their respective interests, in and to, among other things: (1) all of General Partner's rights as a General Partner in Borrower including rights under the Amended Partnership Agreement, when executed; (2) the Tax Credits; and (3) the Capital Obligations.

G. The following parties have made or will make loans (the "**Subordinate Loans**") to Borrower secured by some or all of the Property:

- (1) that certain loan made by the County of Contra Costa ("**County**") in the amount of \$1,500,000 ("**County Loan**") to Borrower; and
- (2) that certain loan made by the Redevelopment Agency of the City of Pittsburg ("**Pittsburg RDA**") in the amount of \$4,952,854 ("**Pittsburg RDA Loan**") to Borrower; and
- (3) Citibank, N.A., as AHP Lender ("**AHP Lender**"), in the amount of \$378,000 in Affordable Housing Program ("**AHP**") funds (the "**AHP Loan**").

County, Pittsburg RDA and AHP Lender are collectively referred to herein as "**Subordinate Lenders**." All documents which evidence, guaranty, secure, or otherwise pertain to the Subordinate Loans, including but not limited to any deeds of trust, mortgages, or other security instrument securing the Subordinate Loans, and any regulatory agreements,

development agreements, and use restrictions of the Subordinate Lenders, are herein referred to as the "**Subordinate Loan Documents**." The Subordinate Loans and the proceeds of the Investor Limited Partner's Capital Obligations, are collectively referred to herein as the "**Other Funding**".

II. Borrower has received a commitment from the California Department of Housing and Community Development ("**HCD**") to make a loan in the amount of \$4,936,020 in Multifamily Housing Program funds ("**HCD Loan**") to Borrower.

I. Mercy Housing Inc., a Nebraska not for-profit corporation ("**Guarantor**"), has agreed to guaranty Borrower's obligations to Lender in accordance with a Completion and Repayment Guaranty ("**Guaranty**") of even date herewith.

NOW, THEREFORE, in consideration of the making and administering of the Loan and of the covenants and agreements contained in this Agreement, and of other valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. **THE LOAN.**

1.1 **Agreement.** Borrower agrees to take, and Lender agrees to administer, the Loan up to the amount set forth in Recital A above, which Loan shall be for the purposes set forth in Recital B above and otherwise be subject to the terms and conditions contained in this Agreement. The proceeds of the Loan are referred to as "**Loan Funds**."

1.2 **Loan Terms/Phases and Conversion.**

1.2.1 **Construction Phase.** The initial term of the Loan (the "**Construction Phase**") shall commence on the Loan Closing (as defined in Section 1.5 below) and shall end on the Conversion Date (as defined in Section 1.2.3 below).

Subject to the terms and conditions of the Note (as defined below), prior to the Conversion Date, interest on the Loan shall accrue at the Floating Interest Rate in effect from time to time as set forth in the Note.

Unless otherwise set forth in this Agreement or in any of the other Loan Documents, the payment terms, prepayment provisions, and other provisions applicable to the repayment of the Loan during the Construction Phase shall be set forth in the promissory note (the "**Note**") dated as of the date of this Agreement, to be executed and delivered by Borrower to the order of Lender in connection with the Loan Closing.

1.2.2 **Permanent Phase.** The "**Permanent Phase**" of the Loan shall commence on the Conversion Date. Upon the Conversion Date, the principal balance of the Loan shall be paid down to an amount ("**Permanent Phase Loan Amount**") which shall not exceed the lesser of (a) the "**Permanent Phase Loan Amount (Section 3.2.10 Calculation)**" (as calculated by Lender, in its sole discretion, pursuant to Exhibit C to this Agreement), or (b) One Million One Hundred Forty Thousand Eight Hundred Dollars (\$1,140,800) (the "**Maximum Permanent Phase Loan Amount**").

The term of the Permanent Phase of the Loan shall extend to earlier of (i) the last day of the two hundred fortieth (240th) month following the “**First Amortization Payment Date**” described in the Note and (ii) April 1, 2030 (such earlier date shall be referred to herein as the “**Maturity Date**”); provided that the Maturity Date shall be automatically extended by six months each time, if any, that the Outside Conversion Date is extended by six months pursuant to Section 1.2.4.

Subject to the terms and conditions of the Note, from and after the Conversion Date, interest on the Loan shall accrue at the Fixed Interest Rate as set forth in the Note. In accordance with the Rate Lock Agreement dated as of even date herewith by and between Borrower and Lender, the Conversion Date may occur no later than the Rate Lock Deadline (as set forth in the Rate Lock Agreement).

Unless otherwise set forth in this Agreement or in any of the other Loan Documents, the payment terms, prepayment provisions, and other provisions applicable to the repayment of the Loan following the Construction Phase shall be set forth in the Note.

1.2.3 Conversion to Permanent Phase. If, on or before February 1, 2010, (the “**Outside Conversion Date**”) all of the Conversion Conditions (as defined in Exhibit C hereto) have been satisfied, then the Loan shall convert to the Permanent Phase. Such conversion is hereinafter referred to as the “**Conversion to the Permanent Phase.**” Unless otherwise approved by Agent, the Conversion to Permanent Phase must occur on the first (1st) day of a calendar month. The date on which the Conversion to Permanent Phase actually occurs shall be referred to herein as the “**Conversion Date**”.

1.2.4 Extension of the Outside Conversion Date. The Conversion Conditions must be satisfied on or before the Outside Conversion Date (as such date may be extended pursuant to this Section 1.2.4). The Borrower may extend the Outside Conversion Date to August 1, 2010 and again to February 1, 2011 (in each case, the “**Extended Outside Conversion Date**”) upon the terms and in compliance with the provisions of this Section 1.2.4, provided that in connection with any such extension, each of the following conditions is fully satisfied in the sole and exclusive discretion of the Lender:

1.2.4.1 No Event of Default shall have occurred and no event or condition that, with the giving of notice or the passage of time, or both, would be an Event of Default shall have occurred and be continuing;

1.2.4.2 No legislation, rule, order or decree shall, in the opinion of counsel for the Lender, purport to prohibit or restrain the extension of the Outside Conversion Date;

1.2.4.3 Upon the request of the Lender, the Lender shall receive an opinion of a nationally recognized bond counsel firm (“**Bond Counsel**”) addressed to the Lender that such extension, in and of itself, will not adversely affect the tax-exempt status of interest on the Bonds;

1.2.4.4 The Borrower shall execute and deliver to the Lender and cause to be executed and delivered to the Lender such documents as the Lender shall reasonably require

in order to evidence such extension of the Outside Conversion Date, the continuation of the obligations of the Borrower under this Agreement with respect to the Loan, as thus amended, the continuation of the liens of all collateral security for such obligations and the continuation of each Guaranty with respect to such obligations, all in form and content reasonably satisfactory to the Lender;

1.2.4.5 The Borrower shall pay all costs and expenses paid and incurred by the Lender in connection with the extension of the Outside Conversion Date, including the fees of Lender's counsel and the Title Company.

1.2.4.6 The Borrower shall deposit with Lender an amount sufficient to pay all interest due and payable during the extension period.

1.2.5 Interest. Interest on the Loan shall accrue on the unpaid principal balance of the Loan, from the date on which a disbursement is funded pursuant to this Agreement and the Master Pledge and Assignment through the Maturity Date or the earlier payment of the Note, by acceleration or otherwise, prior to the Conversion Date at the Floating Interest Rate in effect from time to time as set forth in the Note and, on and after the Conversion Date, at the Fixed Rate. Interest is calculated as set forth in the Note.

1.3 Acceleration. If for any reason the Conversion Conditions are not fully satisfied by the Outside Conversion Date (or if extended pursuant to Section 1.2.4 above, the Extended Outside Conversion Date), then the Loan term shall expire, and the Note shall mature, on the Outside Conversion Date (or, if extended pursuant to Section 1.2.4 above, the Extended Outside Conversion Date) and, as provided in the Note, the entire outstanding principal amount of the Loan, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full.

1.4 Loan Documents. In order to consummate the Loan, Lender shall receive the following documents, fully executed by the parties as set forth below, in the form prescribed by Lender (collectively, the "**Loan Documents**"), together with any additional documents, items and funds as Lender may require in connection with the Loan:

1.4.1 Regulatory Agreement and Declaration of Restrictive Covenants executed by Issuer and Borrower (the "**Regulatory Agreement**" and collectively with the Master Pledge and Assignment and the Master Agency Agreement, the "**Bond Documents**");

1.4.2 Master Pledge and Assignment executed by Issuer;

1.4.3 Master Agency Agreement executed by Issuer;

1.4.4 This Agreement executed by Borrower;

1.4.5 Note executed by Borrower;

1.4.6 Construction To Permanent Deed of Trust, with Assignment of Rents, Security Agreement and Fixture Filing executed by Borrower (the "**Deed of Trust**");

1.4.7 Assignment of Deed of Trust and Related Documents executed by Agent in favor of Holder;

1.4.8 Guaranty executed by Guarantor;

1.4.9 any other Guaranty required by Lender;

1.4.10 Assignment of the Construction Contract executed by Borrower and the Contractor (as defined in Section 3.1 below);

1.4.11 Assignment of the Management Agreement executed by Borrower and the Manager (as defined in Section 1.7.16 below);

1.4.12 Assignment of Architecture Contract and Plans and Specifications executed by Borrower and the Architect (as defined in Section 3.1 below);

1.4.13 Replacement Reserve Agreement executed by Borrower;

1.4.14 Unsecured Environmental Indemnity Agreement executed by Borrower and General Partner;

1.4.15 Subordination Agreement executed by Lender, Pittsburg RDA, and Borrower, subordinating the rights and interests of the Pittsburg RDA to the rights and interests of Lender,

1.4.16 Subordination Agreement executed by Lender, County, and Borrower, subordinating the rights and interests of the County, in its capacity as lender under the County Loan, to the rights and interests of Lender;

1.4.17 Subordination Agreement executed by Lender, AHP Lender, and Borrower, subordinating the rights and interests of the AHP Lender to the rights and interests of Lender and additionally subordinating the rights and interests of the AHP Lender to the rights and interests of the County, in its capacity as lender under the County Loan, and to the rights and interests of the Pittsburg RDA in its capacity as lender under the Pittsburg RDA Loan;

1.4.18 Partnership Borrowing Authorization and Certificate executed by the General Partner of Borrower;

1.4.19 General Partner's Resolution Regarding Partnership Formation and Execution of Documents and Certificate executed by officers of MHCW;

1.4.20 UCC-1 Financing Statement (Master Pledge and Assignment);

1.4.21 UCC-1 Financing Statement (Deed of Trust);

1.4.22 UCC-1 Financing Statement (Partnership Interests);

1.4.23 Paying Agent Agreement executed by Paying Agent (as defined in the Master Pledge) and Borrower

1.4.24 Continuing Disclosure Agreement; and

1.4.25 Letter of Intent or other evidence reasonably acceptable to Lender that a provider of child care services will be engaged to operate a child care facility at the Property directly benefiting residents of the Project, at which residents of the Project will have priority over all other applicants, and which will otherwise satisfy the requirements of the Estoppel Letter, dated January 15, 2008, delivered by HCD to Lender.

1.4.26 All other documents reasonably required by Lender.

1.5 Loan Closing and Issuance of the Bonds.

1.5.1 Loan Closing and Closing Conditions. The “**Loan Closing**” shall be accomplished pursuant to (a) the execution and delivery of all of the Loan Documents by Borrower and all other parties thereto, and (b) the recordation against the Property of the Regulatory Agreement, the Deed of Trust and of any of the other Loan Documents which are required to be recorded. The Loan Closing shall not occur, and Issuer’s obligation to issue the Bonds and Lender’s obligation to administer the Loan shall not arise, until each of the following conditions have been met:

1.5.1.1 *Borrower shall be the fee owner of the Property.*

1.5.1.2 Lender’s title insurance policy (the “**Title Policy**”) has been issued and delivered to Lender in compliance with the escrow instructions of Lender.

1.5.1.3 Borrower has delivered to Lender such environmental reports as required by Lender, which reports shall have been prepared not more than six (6) months prior to the closing of the Loan and shall have been prepared by a qualified licensed environmental professional acceptable to Lender. Borrower shall have also confirmed to Lender’s satisfaction that there are no additional environmental conditions or legal noncompliance affecting the Project other than as set forth in the “**Environmental Reports**” described in Exhibit H attached hereto.

1.5.1.4 Borrower has provided evidence reasonably satisfactory to Lender that the Project has received a preliminary reservation of the Tax Credits sufficient to support the Minimum Investor Equity (as set forth in Exhibit D hereto).

1.5.1.5 Borrower has delivered to Lender certificates of Borrower’s casualty insurance and liability insurance, as provided in the Deed of Trust, and Borrower’s builder’s risk insurance, as described in Exhibit E attached hereto.

1.5.1.6 Borrower shall have delivered to Lender a fully executed commitment from HCD to make the HCD Loan, an Estoppel Letter executed by HCD and, if available, a Standard Agreement executed by Borrower and HCD.

1.5.1.7 Borrower shall have delivered to Lender such estoppel certificates, subordination agreements and other agreements from any parties to any development

agreements, disposition and development agreements, covenants, conditions and restrictions, and other agreements or restrictions affecting the Project as Lender shall require.

1.5.1.8 Lender has reviewed and approved such financial statements, tax returns and other financial information as it may require regarding the financial condition of Borrower, General Partner, and Guarantor. Lender has reviewed and approved all organization documents and evidence of due formation and good standing requested by Lender, including, without limitation, resolutions, certificates of authority, incumbency certificates, or other evidence of authorization requested by Lender.

1.5.1.9 Borrower shall have delivered to Lender evidence that all utilities necessary to perform the Work, and construct and occupy the Project will be provided, including written assurances from such utility companies as Lender requires.

1.5.1.10 Borrower shall have delivered to Lender evidence of such zoning (including variances) and other land use entitlements necessary to permit the intended use of the Project.

1.5.1.11 All representations and warranties of Borrower set forth in this Agreement and in any of the other Loan Documents are true, accurate and complete.

1.5.1.12 Borrower shall have paid to Agent the following non-refundable and fully earned fees in immediately available funds: a Loan fee equal to five tenths of one percent (0.5%) of the Loan amount.

1.5.1.13 Lender, in its sole discretion, shall have approved each of the following:

- (A) the Plans and Specifications for the work;
- (B) all Project Agreements;
- (C) the identity, reputation, experience and creditworthiness of the Contractor, the Manager, and the Architect;
- (D) the Construction Contract, the Management Agreement, and the Architect Contract; and
- (E) the Project Budget attached to this Agreement as Exhibit G, a trade cost breakdown and a project schedule.

1.5.1.14 Each of the following documents shall have been delivered to Lender in form and substance satisfactory to Lender fully executed by all of the appropriate parties:

- (A) Assignments by Borrower to Lender of its rights under the Project Agreements (including, without limitation, the Assignment of Construction Contract, Assignment of Architecture Agreement, and Assignment of Management Agreement listed in

Section 1.4 above) (provided however that no such assignment shall include an assignment of any tax, insurance or replacement or operating reserves) and any management agreements in effect with respect to the Project; and

(B) Consents to assignment by Borrower to Lender of the rights of Borrower under the Project Agreements, executed by such parties to the Project Agreements as Lender may require; and subordinations executed by any parties to which any previous assignments or pledges of the rights of Borrower have been made.

1.5.1.15 Borrower must provide to Lender such policy or policies of worker's compensation insurance as may be required by applicable worker's compensation insurance laws (including employer's liability insurance, if required by Lender), covering all employees (if any) of Borrower and Borrower must provide (or cause the Contractor to provide) such policy or policies of worker's compensation insurance as may be required by applicable worker's compensation insurance laws (including employer's liability insurance, if required by Lender), covering all employees of the Contractor.

1.5.1.16 Lender shall have received, reviewed and approved, in its sole and absolute discretion, a written construction cost analysis, based upon the final approved Plans, the final approved project budget and the final approved Construction Contract, confirming to Lender's satisfaction that the Project can be constructed and operated for a total cost not in excess of the final approved Project Budget.

1.5.1.17 Lender shall have received copies of all building permits and other Permits for the Work and the Project.

1.5.1.18 Borrower shall have provided to Lender evidence, including a copy of the grading plans signed and certified by the project soils engineer, that the Plans and Specifications and all other documents and agreements relating to construction of any Improvements conform to the recommendations of the soils report;

1.5.1.19 Borrower shall have provided to Lender the Payment and Performance Bond. The Payment and Performance Bond shall cover the General Contractor and any other principal subcontractors Lender designates. The Payment and Performance Bond, and if required, the contracts they cover, shall have been duly recorded in accordance with applicable law. As used herein, "**Payment and Performance Bond**" shall mean a payment and performance bond which is (i) in an amount not less than the guaranteed maximum price or fixed price set forth in the Construction Contract; (ii) issued by a Treasury-listed surety licensed to do business in the state where the Property is located approved by Lender in its sole and absolute discretion, and (iii) written in dual-obligee form naming Lender as co-obligee, in form and substance acceptable to Lender in its sole and absolute discretion.

1.5.1.20 Lender shall have received, reviewed and approved all other documents, instruments, agreements, certificates and opinions as Lender may require.

1.5.1.21 Lender's security interest in all personal property and fixtures described in the Loan Documents shall have been duly perfected in a first priority lien position. Lender's security interest in all other personal property pledged as collateral security for the

Loan, as described in one or more security agreements executed by Borrower, General Partner and/or any third party pledgor, in favor of Lender, shall have been duly perfected in a first-priority lien position.

1.5.1.22 Borrower shall have delivered to Lender an ALTA survey of the Land and any existing Improvements thereon certified to Lender and the title insurance company by a licensed land surveyor and showing the location of all boundary lines, easements, rights of way and other matters affecting the Land. Such survey shall be dated within ninety (90) days of the Loan Closing.

1.5.1.23 Borrower shall have provided to Lender evidence that all taxes and assessments levied against or affecting the Property have been paid current. Lender shall obtain, at Borrower's cost and expense, a tax service contract for the Property with a tax service company acceptable to Lender.

1.5.1.24 Lender shall have received, reviewed and approved, in Lender's sole and absolute discretion, an appraisal of the Property.

1.5.1.25 Borrower shall have delivered to Lender a soils report prepared within six (6) months prior to the closing of the Loan prepared by a qualified licensed soils engineer acceptable to Lender. The soils report shall be based upon adequate due diligence, and shall state that there are no unusual or hazardous soil conditions in, on, under, or around the Property, that no condition or circumstance warranting further investigation or analysis exists in the opinion of the soils engineer, and that construction of all Improvements as proposed is feasible under existing soil conditions so long as the recommendations of the soils report are followed.

1.5.1.26 Borrower shall have entered into a twenty (20)-year rate lock. The rate lock agreement between Borrower and Lender must not expire before February 1, 2011.

1.5.1.27 If there are any leases of any part of the Land or any space within the Improvements in existence as of the date hereof (i) copies of those leases shall have been delivered to and approved by Lender, and (ii) if any such lease is a non-residential lease or a lease for more than one (1) residential unit within the Improvements, then Borrower shall have delivered to Lender fully-executed estoppel certificates, subordination agreements, and/or subordination, nondisturbance, and attornment agreements required by Lender.

1.5.1.28 Borrower shall have opened all accounts required pursuant to the Loan Documents; including, without limitation, the Borrower's Funds Account (defined below).

1.5.1.29 The Property and all existing improvements thereon shall not be in need of immediate repairs (except only such repairs as are to be completed as part of the Work), as determined by Lender.

1.5.1.30 No event shall have occurred and be continuing which constitutes an Event of Default or which, with notice and the expiration of any applicable cure period, could constitute an Event of Default under any of the Loan Documents.

1.5.1.31 Borrower shall have delivered to Lender and to Issuer a favorable opinion from independent counsel, opining to such matters as Lender and Issuer may require by counsel acceptable to Lender and Issuer for Borrower and/or any other parties to the Loan Documents.

1.5.1.32 Lender shall have received and approved an executed original of an opinion of Bond Counsel, opining as to the due organization and valid existence of the Issuer, due execution and delivery by the Issuer of, and the enforceability of, the Master Agency Agreement, the Master Pledge and Assignment and this Agreement, and the exclusion of interest on the Bonds from gross income for federal income tax purposes, addressed to Issuer and Lender.

1.5.1.33 Borrower shall have obtained the County Loan and each of the following conditions shall have been satisfied in connection therewith:

(A) Lender shall have approved the amount and plan for disbursement of the proceeds of the County Loan as being consistent with the approved Project Budget for the Project;

(B) Lender shall have approved the form and content of the documents evidencing and securing the County Loan; and

(C) Borrower shall have delivered to Lender such estoppel certificates, subordination agreements, inter-creditor agreements, and other agreements as Lender shall require respecting the County Loan and from any parties to any development agreements, disposition and development agreements, covenants, conditions and restrictions, and other agreements and restrictions related to the County Loan and affecting the Project; and

1.5.1.34 Borrower shall have obtained the Pittsburg RDA Loan and each of the following conditions shall have been satisfied in connection therewith:

(A) Lender shall have approved the amount and plan for disbursement of the proceeds of the Pittsburg RDA Loan as being consistent with the approved Project Budget for the Project;

(B) Lender shall have approved the form and content of the documents evidencing and securing the Pittsburg RDA Loan; and

(C) Borrower shall have delivered to Lender such estoppel certificates, subordination agreements, inter-creditor agreements, and other agreements as Lender shall require respecting the Pittsburg RDA Loan and from any parties to any development agreements, disposition and development agreements, covenants, conditions and restrictions, and other agreements and restrictions related to the Pittsburg RDA Loan and affecting the Project; and

(D) A minimum of \$1,401,676.84 of the Pittsburg RDA Loan funds shall have been disbursed to Project Costs on the Project Budget.

1.5.1.35 Borrower shall have delivered to Lender any other item reasonably deemed necessary by Lender and shall have fulfilled any other condition reasonably required by Lender to fulfill the intention of this Agreement and any Loan commitment issued to Borrower.

1.5.1.36 Lender shall have received executed copies of all documents evidencing the AHP Loan in a form satisfactory to Lender.

1.6 **Borrower's General Work Obligations.** Borrower hereby agrees to carry out the Work in accordance with and subject to the Project Budget and Cost Breakdown (the "**Project Budget**") attached hereto as Exhibit G, and the terms and provisions of this Agreement. The Work shall also be carried out in compliance with the applicable provisions of the other Loan Documents. Where any of the other Loan Documents set forth requirements or conditions similar to those set forth in this Agreement, then all such requirements and conditions shall be construed together with the similar provisions of this Agreement so as to give full effect to the separate provisions of the other Loan Documents and this Agreement. In the event of any inconsistencies as between the provisions of this Agreement and those of the other Loan Documents, the provisions which impose on Borrower the more stringent or more detailed requirements shall apply.

1.7 **Other Covenants of Borrower.** Borrower promises to keep each of the covenants set forth below, unless Lender has waived compliance in writing.

1.7.1 **Signs and Publicity.** At Lender's request, Borrower will identify Lender as the lender on any signs posted on the Property and use its best efforts to identify Lender in publicity concerning the Project. In the alternative, with Borrower's consent, which may not be unreasonably withheld, Lender may post signs on the Property identifying itself as the lender for the Property. Lender may refer to the Property in its own promotional and advertising materials. Borrower may not post signs, or otherwise identify Lender as the lender, except with Lender's prior written consent in each instance.

1.7.2 **Income from Property.** Borrower shall first apply all income from leases, and all other income derived from the Property, to pay costs and expenses associated with the ownership, maintenance, development, operation, and marketing of the Land and Improvements (the "**Property Expenses**"), including all amounts then required to be paid under the Loan Documents, before using or applying such income for any other purpose. At all times prior to repayment of the Loan, all Net Monthly Cash Income (defined below) shall be used first to pay (i) during the Construction Phase, monthly interest payments coming due under the Loan (except as otherwise provided in the Loan Documents) and (ii) during the Permanent Phase, (A) monthly principal and interest payments coming due under the Loan, and (B) monthly reserve payments coming due under the Loan Documents. Notwithstanding anything to the contrary set forth above, both during the Construction Phase and at any time after the occurrence of an Event of Default, Borrower may not distribute any income to any of its members, partners, or shareholders, allow any member, partner, or shareholder to withdraw capital, or make any payments on indebtedness owed to any member, partner, or shareholder. For purposes hereof, "**Net Monthly Cash Income**" shall mean all actual cash income received from the Property during a calendar month less the actual operating expenses approved by Lender incurred for or

attributable to the Property, but not including amounts payable under the Note or any Subordinate Loan Documents.

1.7.3 Payment of Expenses. Borrower shall pay Lender's reasonable costs and expenses incurred in connection with the making, disbursement, and administration of the Loan. Borrower shall also pay any and all of Lender's costs and expenses incurred in connection with any revisions, extensions, renewals, or "workouts" of the Loan, and in the exercise of any of Lender's rights or remedies under this Agreement. Such costs and expenses include charges for title insurance (including endorsements), filing, recording, and escrow charges, fees for appraisal and appraisal review, architectural and engineering review, construction services and environmental services, mortgage taxes, document review and preparation, reasonable legal fees and expenses of Lender's counsel, and any other reasonable fees and costs for services, regardless of whether such services are furnished by Lender's employees or agents or independent contractors. Borrower acknowledges that amounts payable under this Section 1.7.3 are not included in any loan fees or commitment fees for the Loan. All such sums incurred by Lender and not immediately reimbursed by Borrower will be considered an additional loan to Borrower secured by the Deed of Trust and bearing interest at the interest rate under the Note that applies during Default.

1.7.4 Financial and Other Information.

1.7.4.1 Financial and Other Information of Borrower and General Partner.

Borrower and General Partner shall keep true and correct financial books and records, using generally accepted accounting principles ("GAAP"), or such other accounting principles as Lender in its reasonable judgment may find acceptable from time to time. Borrower and General Partner shall provide to Lender the following:

(A) Commencing on the Conversion to Permanent Phase and within one hundred twenty (120) days after Borrower's fiscal year end, Borrower's annual financial statements. Commencing on the Conversion to Permanent Phase and within one hundred twenty (120) days after General Partner's fiscal year end, General Partner's annual financial statements. These financial statements shall be audited by a Certified Public Accountant ("CPA") acceptable to Lender.

(B) Commencing on the Conversion to Permanent Phase, Borrower shall deliver to Lender operating statements for the Property quarterly within thirty (30) days after the end of each calendar quarter.

(C) Within thirty (30) days after the request of Lender, signed copies of Borrower's and General Partner's state and federal tax returns and including all extensions and all supporting schedules (including K-1's).

(D) Within thirty (30) days after the request of Lender, quarterly balance sheets and income statements for Borrower, General Partner and the Property.

(E) Within thirty (30) days after the request of Lender, such other information as Lender may reasonably request concerning the affairs and properties of Borrower or General Partner.

1.7.5 Notices. Borrower shall notify Lender promptly in writing of any and all of the following:

1.7.5.1 Any litigation to the extent not covered by insurance (which does not include coverage offered under assumption of rights) seeking damages in excess of \$10,000 affecting Borrower, and any litigation seeking damages in excess of \$50,000 affecting the General Partner or, prior to the Conversion Date, the Guarantor.

1.7.5.2 Any written communication Borrower receives from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Land or Improvements fail in any respect to comply with any of the Requirements or any other applicable governmental law.

1.7.5.3 Any material adverse change in the physical condition of the Property (including any damage suffered as a result of earthquakes or floods).

1.7.5.4 Any material adverse change in Borrower's, or General Partner's, or, prior to the Conversion Date, Guarantor's financial condition, any material adverse change in Borrower's, any General Partner's or, prior to the Conversion Date, Guarantor's operations, or any change in the management of Borrower or General Partner.

1.7.5.5 Any default by the Contractor or surety related to the Property, or any material adverse change in the financial condition or operations of any of them.

1.7.5.6 Any other circumstance, event, or occurrence that results in a material adverse change in Borrower's, or General Partner's or, prior to the Conversion Date, Guarantor's ability to timely perform any of its obligations under any of the Loan Documents.

1.7.5.7 Any written communication Borrower receives from any Subordinate Lender that a default or Event of Default (as defined in the applicable document), or event that with notice or the passage of time, or both, could become such an Event of Default, shall have occurred and be continuing under any of the Subordinate Loan Documents.

1.7.6 Keeping Guarantor Informed. Borrower shall keep the Guarantor informed of Borrower's financial condition and business operations, the condition and all uses of the Property, including all changes in condition or use, and any and all other circumstances that might affect Borrower's ability to pay or perform its obligations under the Loan Documents.

1.7.7 Notice of Change. Borrower shall give Lender prior written notice of any change in the location of its place of business or its chief executive office if it has more than one place of business; and Borrower's name or business structure. Unless otherwise approved by Lender in writing, Borrower agrees that all Property that consists of personal property (other than the books and records) will be located at the Land and that all books and records will be located at Borrower's place of business or chief executive office if Borrower has more than one place of business.

1.7.8 Capital Contributions of Investor Limited Partner. Borrower shall cause Investor Limited Partner to make the capital contributions required pursuant to the Amended

Partnership Agreement, at the times, in the amounts, subject to the terms and conditions specified therein. Prior to repayment of the Loan, in no event may Borrower amend, modify, or waive any term of the Amended Partnership Agreement without the prior written consent of Lender (which consent shall not be unreasonably withheld), except that Borrower shall be permitted to make modifications to the Amended Partnership Agreement that do not affect the timing or the amount of, or any conditions to or requirements for, Investor Limited Partner's capital contributions thereunder, or otherwise serve in any way to reduce, delay or limit Investor Limited Partner's obligation to make such contributions.

1.7.9 Appraisals. If reasonably required by Lender, or if required by law or regulations, Lender shall have the right to order appraisals of the Property from time to time from an appraiser selected by Lender, which appraisals shall comply with all federal and state standards for appraisals and otherwise shall be satisfactory to Lender in all material respects. Borrower agrees to pay the cost and expense for all appraisals and reviews thereof ordered by Lender pursuant to this Section 1.7.9. Lender shall bear the cost of an appraisal ordered more frequently than once every two years.

1.7.10 As-Built Plans; Surveys. Upon the request of Lender, Borrower shall promptly provide to Lender an as-built ALTA survey of the Land and Improvements in form and substance satisfactory to Lender, certified by a licensed land surveyor and showing the location of the completed improvements, and all boundary lines, easements, rights of way, and other matters affecting the Land. Borrower agrees to pay the cost and expense for such as-built plans and specifications and/or as-built surveys.

1.7.11 Tax-Exempt Status of Interest on the Bonds. The Borrower shall take all action necessary to ensure the continued tax-exempt status of the interest on the Bonds. The Borrower shall make no changes to the Project or to the operation thereof which would impair the tax-exempt status of the interest on the Bonds.

1.7.12 Costs of Issuance. Not in excess of two percent (2%) of the proceeds of the aggregate of the original principal amount of the Bonds will be used to pay all items of expense directly or indirectly payable by, or reimbursable to the Issuer, the Lender or the Borrower and related to the authorization, issuance, sale and delivery of the Bonds, including but not limited to the costs of preparation and reproduction of documents, printing expenses, filing and recording fees, underwriting fees and expenses, legal fees and charges, fees and disbursements of consultants and professionals, fees and expenses of the Lender, including legal fees of counsel to the Lender, fees and charges for preparation, execution and safekeeping of the Bonds and any other cost, charge or fee in connection with the original issuance of the Bonds which constitutes a "cost of issuance" within the meaning of Section 147(g) of the Code (collectively "**Costs of Issuance**").

1.7.13 Qualified Project Costs. Upon the disbursement of all amounts to be disbursed from the Borrower's Funds Account (as defined below), at least 95% of the sum of all such payments requisitioned by or for the account of the Borrower from the Borrower's Funds Account shall be allocated to costs, that: (i) were paid or incurred by or on account of the Borrower or any Related Person (as defined in Section 147(a)(2) of the Code) on or after the 60th day prior to the Inducement Date (as defined below); (ii) are chargeable to the capital

account for the residential units of the Project or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs, within the meaning of United States Treasury Regulation 1.103-8(a)(1); (iii) if any portion of the Project is being constructed or rehabilitated by a Related Person of the Borrower (whether as a Contractor or a subcontractor), include only the actual out-of-pocket costs incurred by such Related Person in constructing or rehabilitating the Project (or any portion thereof) and not, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the acquisition, construction and development of the Project or payments received by such related person due to early completion of the Project (or any portion thereof); (iv) do not constitute leasing commissions, costs of advertising for the Project or other costs related to the rental of units in the Project or management fees for the management and operation of the Project after the Funding Date; and (v) are used to finance residential rental property described in Section 1.103-8(b) of the United States Treasury Regulations.

1.7.14 Covenants Regarding Tax Credits. Borrower hereby agrees to comply with all of the following covenants (each, a “**Tax Credit Covenant**”):

1.7.14.1 To observe and perform all obligations imposed on Borrower in connection with the Tax Credits, including the obligation to have the Property “placed in service” (within the meaning given in Section 42 of the Code) in a timely manner; and to operate the residential units of the Property, and to use Borrower’s best efforts to cause all appropriate parties to operate the same, in accordance with all requirements, statutes, and regulations governing the Tax Credits;

1.7.14.2 To preserve at all times the reservation of the Tax Credits and to obtain an allocation of the Tax Credits reserved as of the date of this Agreement except as may be reduced in amount based upon the basis cost certification submitted by Borrower in conjunction with its application for IRS Form 8609 allocating the Tax Credits;

1.7.14.3 Not to release, forego, alter, amend, or modify its rights to the Tax Credits without Lender’s prior written consent, which Lender may give or withhold in Lender’s sole and absolute discretion;

1.7.14.4 Not to execute any residential lease of all or any portion of the Property that is not an Approved Lease Form or which does not comply fully with all requirements, statutes, and regulations governing the Tax Credits, without Lender’s prior written consent, which Lender may give or withhold in Lender’s sole and absolute discretion;

1.7.14.5 To cause to be kept all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income level of tenants, set-asides for low-income tenants, and any other matters now or hereafter required to qualify for and maintain the Tax Credits in connection with the low-income occupancy of the Property;

1.7.14.6 To comply with the appropriate minimum low-income set-aside requirements under the Code or applicable federal regulations (the “**Federal Laws**”), TCAC and

all California laws and regulations (the "State Laws") applicable to the creation, maintenance and continued availability of the Tax Credits;

1.7.14.7 To certify compliance with the set-aside requirements and report the dollar amount of qualified basis and maximum applicable percentage, date of placement in service and any other information required for the Tax Credits at such time periods as required by Federal Laws, TCAC or State Laws for such Tax Credits;

1.7.14.8 To set aside the appropriate number of units for households with incomes meeting the required standards of the median income of the county in which the Project is located to qualify for the Tax Credits (as determined pursuant to Section 42 of the Code and/or State Laws), adjusted for family size, and to operate and maintain all such units as "low-income units" qualifying for the Tax Credits under Section 42(i)(3) of the Code and/or State Laws;

1.7.14.9 Not less than fifty percent (50%) of the total Project basis, including all Land costs, shall be paid for with Bond proceeds;

1.7.14.10 To exercise good faith in all activities relating to the operation and maintenance of the Property in accordance with the requirement of Federal Laws and State Laws; and

1.7.14.11 To promptly deliver to Lender true and correct copies of all written notices or other documents or written communications received or given by Borrower with regard to or relating in any way to Borrower's partnership interests and/or the Tax Credits. Immediately upon receipt thereof, Borrower shall deliver to Lender a copy of (i) the final reservation of Tax Credits for the Property; (ii) the basis audit (as required by Section 42 of the Code) for the Property (including a certificate of Borrower's accountant or attorneys if requested by Lender); (iii) the first annual income certification for all tenants of the Property showing that the tenants are qualified for purposes of Borrower's obtaining Tax Credits, and (iv) the fully-completed Form 8609 (required by the Code) issued for the Property. Borrower shall deliver promptly to Lender such other certificates, income certificates, reports and information as Lender may request.

Borrower understands and acknowledges that Lender is making the Loan based, in part, upon the value of the Tax Credits, and the Tax Credits, directly or indirectly, constitute part of Lender's security for the Loan. Borrower agrees to indemnify, defend, and hold Lender harmless for, from, and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations, and costs or expenses, including litigation costs and reasonable attorneys' fees, arising from or in any way connected with Borrower's failure to comply with one or more Tax Credit Covenants, excepting those arising out of, or resulting, solely from Lender's gross negligence or willful misconduct.

1.7.15 Other Debts. Except as otherwise provided herein or in any other Loan Document, without Lender's prior written consent, Borrower shall not have outstanding or incur any direct or contingent debts or lease obligations (other than those to the Lender), or become liable for the debts of others, related to or with respect to the Property. This does not prohibit: acquiring goods, supplies, or merchandise on normal trade credit; endorsing negotiable

instruments received in the usual course of business; leases in existence on the date of this Agreement previously disclosed in writing to Lender, leases entered into in accordance with Section 1.7.21, a lease for a day care center as required by HCD; and the deferred developer fees, if any.

1.7.16 Other Liens. Except as otherwise provided herein or in any other Loan Document, without Lender's prior written consent, Borrower shall not create, assume, or allow any security interest or lien (including judicial liens) on property the Borrower now or later owns, except: deeds of trust and security agreements in favor of the Lender; liens for taxes not yet due; and liens outstanding on the date of this Agreement previously disclosed in writing to, and approved by, Lender.

1.7.17 Property Management Agreement. Borrower shall at all times cause the Property to be managed by a property manager approved by Lender pursuant to a Management Agreement (defined in Section 4.6.3 below) approved by Lender. All Management Agreements and operating agreements relating to the Property shall be terminable for cause upon thirty (30) days written notice without penalty or charge (other than for unpaid accrued management fees).

1.7.18 Maintenance and Repair. Borrower shall (a) maintain the Property, including the parking and landscaping portions thereof, in good condition and repair, reasonable wear and tear excepted, (b) promptly make all necessary structural and non-structural repairs to the Improvements (or cause tenants under any leases to perform such obligation), (c) not demolish, alter, remove, or add to any Improvements, excepting (i) the repair and restoration of Improvements following damage thereto as required by the Deed of Trust, (ii) the construction or installation of non-structural alterations or improvements, provided the same are in all respects consistent with the character and utility of the existing Improvements, (iii) the installation or construction of tenant improvements and related demolition in connection with any leases approved in accordance with this Agreement, and (d) not erect any new buildings, structures or building additions on the Land, without the prior written consent of Lender in each instance. Borrower shall pay when due all claims for labor performed and materials furnished therefor in connection with any improvements or construction activities.

1.7.19 [Reserved].

1.7.20 Tax Service Contract. Lender shall obtain at Borrower's cost and expense, a tax service contract for the Property with a tax service company acceptable to Lender in its sole and absolute discretion.

1.7.21 Leasing.

1.7.21.1 Lender (and all other parties whose approval is required) shall approve Borrower's standard form of residential lease or rental agreement prior to its use by Borrower (the "**Approved Lease Form**"). Borrower may not materially modify the Approved Lease Form without Lender's prior written consent, together with the approval of all other parties whose consent is required, which approval shall not be unreasonably withheld, conditioned or delayed.

1.7.21.2 Notwithstanding the foregoing, Borrower may enter into residential leases (and amendments) in the ordinary course of business with bona fide third party residential tenants without Lender's prior written consent if Borrower uses the Approved Lease Form and complies with all of the following:

(A) Within fifteen (15) days after Lender's written request therefor, Lender receives a copy of the executed lease (accompanied by all financial information and certificates obtained by Borrower pertaining to the tenant).

(B) The lease meets the requirements of Investor Limited Partner and the Subordinate Lenders.

(C) The lease reflects an arm's-length transaction.

(D) The lease does not affect more than one (1) residential unit within the Improvements and is for a minimum term of six (6) months and a maximum term of twelve (12) months, unless otherwise agreed in writing by Lender.

(E) The lease, together with all leases previously executed, does not cause the Loan to become "out of balance." Borrower acknowledges that the Loan may become "out of balance" if the landlord's aggregate economic obligations under the leases exceed, or the net operating income from the Property fails to meet, Borrower's projections for such obligations, thereby increasing the cost or decreasing the value of the Property.

(F) Borrower, acting in good faith and exercising due diligence, has determined that the tenant qualifies as a low-income household for purposes of meeting the requirements for obtaining Tax Credits.

(G) The lease meets the standards required by Section 42 of the Code.

1.7.21.3 Lender, in its sole and absolute discretion, may consider any executed lease it receives to be unsatisfactory if the lease fails to meet any of the requirements of this Agreement. If this happens, or if Borrower at any time fails to submit any executed lease (and accompanying information) at the time required by this Section, or if any Event of Default (as such term is defined below) has occurred and is continuing, Lender may make written demand on Borrower to submit all future leases for Lender's approval prior to execution. Borrower shall comply with any such demand by Lender.

1.7.21.4 Borrower has disclosed to Lender any and all leases affecting the Property or any portion of or interest in it. Borrower shall deliver within thirty (30) days after request from Lender such monthly rent rolls, tenant income certificates, leasing schedules and reports, and other leasing information as Lender from time to time may request. In addition, upon the request of Lender, if there are non-residential tenants occupying any part of the Property, Borrower shall promptly obtain and deliver to Lender such estoppel certificates, subordination agreements, and/or subordination, nondisturbance, and attornment agreements in form and substance acceptable to Lender, executed by such non-residential tenants as Lender from time to time may require.

1.7.21.5 Lender's approval of any lease is for the sole purpose of protecting Lender's security and preserving Lender's rights under the Loan Documents. No approval by Lender will result in a waiver of any default of Borrower. In no event will Lender's approval of any lease be a representation of any kind with regard to the lease, its enforceability, or the financial capacity of any tenant or guarantor. If Lender's prior written approval is required for any Lease, Borrower shall pay to Lender, as a condition to such consent Lender's costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith. Such costs and expenses shall be due and payable whether or not such consent is given. Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Property.

1.7.22 Borrower's Funds Account. During the Construction Phase, Borrower shall cause to be deposited into an interest-bearing account held at Agent (or, at Agent's direction, with another institution selected by Agent) (the "**Borrower's Funds Account**") all payments of the Capital Obligations as and when payable under the Amended Partnership Agreement and the AHP Loan funds; provided that the final installment of the Capital Obligations, payable on or after the Conversion Date following a reduction of the principal balance of the Loan to the Permanent Phase Loan Amount, may be advanced directly to the Borrower. All amounts deposited into the Borrower's Funds Account shall be available from time to time for disbursement by Lender to or for the account of Borrower to pay Project costs shown on the Approved Budget and in accordance with Schedule A-1 of the Amended Partnership Agreement on the same terms and subject to the same conditions as disbursements of Loan Funds are made available under this Agreement (and for no other purpose). Lender may maintain the Borrower's Funds Account with Lender, Agent, Servicer or Paying Agent (and this Agreement shall constitute a control agreement for all purposes). Unless Lender otherwise elects, all amounts on deposit in the Borrower's Funds Account shall be disbursed prior to the disbursement of Loan Funds. Lender (or, at Lender's option, Agent, Servicer or Paying Agent) shall be the sole signatory on the Borrower's Funds Account. As additional security for all of Borrower's obligations under the Loan Documents, Borrower hereby pledges to Lender, and grants to Lender a security interest in, the Borrower's Funds Account, all amounts now or hereafter on deposit in the Borrower's Funds Account, all interest and other earnings on the Borrower's Funds Account, if any, all additions, increases, modifications, renewals, rollovers, substitutions and replacements to and/or for the foregoing collateral, and all proceeds and products of the foregoing collateral, whether voluntary or involuntary. In addition, all monies in the Borrower's Funds Account are subject to the pledge described in the Deed of Trust.

1.7.23 Preservation of Rights. Borrower shall obtain, preserve and maintain in good standing, as applicable, all rights, privileges and franchises necessary or desirable for the operation of the Property and the conduct of Borrower's business thereon or therefrom.

1.7.24 Performance of Acts. Upon Lender's request, Borrower shall perform all acts necessary or advisable to perfect any lien or security interest provided for in the Loan Documents or to carry out the intent of the Loan Documents.

1.7.25 Negative Covenants. Without Lender's prior written consent, Borrower shall not: engage in any business activities substantially different from Borrower's present business; liquidate or dissolve Borrower's business; lease or dispose of all or a substantial part of

Borrower's business or Borrower's assets; or enter into any consolidation, merger, pool, joint venture, syndicate or other combination.

1.7.26 Tax Status of Bonds. The Borrower hereby covenants, represents and agrees as follows: (a) that the Borrower will not take or permit any action to be taken that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds and, if it should take or permit any such action, the Borrower will take all lawful actions to rescind such action promptly upon having knowledge thereof; and (b) that the Borrower will take such action or actions, including amending this Agreement, as determined reasonably necessary in the opinion of a nationally recognized bond counsel firm to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service under the Code. The Borrower covenants and agrees to timely perform all of the obligations of Borrower set forth in the Tax Certificate executed by the Borrower and delivered to Issuer on the date of issuance of the Bonds and Section 148 of the Code. The Borrower's obligations set forth in this Section 2.2.26 shall survive the defeasance or payment in full of the Bonds.

1.7.27 Loss of Tax Exclusion. The Borrower understands that the interest rates provided under this Agreement with respect to the Bonds are based on the assumption that interest income paid on the Bonds and received by the Holder will be excludable from Holder's gross income under Section 103 of the Code and applicable state law. In the event that (i) the Borrower receives notice from Agent that Agent has discovered any facts, actions or failures to act by the Borrower that would cause the Bonds not to be treated as tax-exempt obligations (unless the Borrower provides to Agent, within thirty (30) days after the Borrower's receipt of such notice from Agent, an opinion from a nationally recognized bond counsel firm, acceptable to the Issuer and the Holder that, notwithstanding any facts, actions or failures to act by Borrower, interest on the Bonds will be excludable from the Holder's gross income under Section 103 of the Code and applicable state law); or (ii) Holder receives notice from the Internal Revenue Service or other government agency that interest payable on the Bonds is not excludable from the Holder's gross income, or that the Internal Revenue Service is challenging the status of the interest on the Bonds, then the interest rate on the Note and on all obligations under this Agreement (other than those to which the Default Rate applies) shall be increased to a rate equal to four percent (4.0%) in excess of the rate of interest announced from time to time by Citibank, N.A. (or its successors by merger, asset acquisition or otherwise) as its "Prime Rate" or "Reference Rate," with changes in the applicable rate hereunder effective concurrently with each announced change in the "Prime Rate" or "Reference Rate." However, in no event shall any rate exceed the Highest Lawful Rate (as defined in the Note). The "Prime Rate" or "Reference Rate" is set by Citibank, N.A. based on various factors, including Citibank, N.A.'s costs and desired return, general economic conditions and other factors, and is used as a basis for pricing loans, which may be priced at, above or below the "Prime Rate" or "Reference Rate."

Borrower shall, in addition, pay to the Holder, promptly upon demand, an amount equal to the difference between the amount of interest payable on the Note from the date on which such loss of tax exemption on the Bonds shall be applicable to the date on which the interest rate on the Note was increased and the amount of interest that would have been payable on the Note during such period had the Note borne interest during such period at such higher rate. The Borrower

shall also indemnify, defend and hold Agent and Issuer harmless from any penalties, interest expense or other costs, including attorneys' fees (including all allocated time and charges of Agent's and Issuer's "in-house" and "outside" counsel) and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of the Bonds and the interest payable to Holder on the Bonds. The obligations of the Borrower under this paragraph shall survive termination of this Agreement and repayment of the Loan.

If, following any increase in interest rates pursuant to this Section 1.7.27, a final determination is made, to the satisfaction of Agent, that interest paid on the Bonds is excludable from Holder's gross income under Section 103 of the Code and applicable state law, Holder shall promptly refund to the Borrower any additional interest paid by the Borrower pursuant to this Section 1.7.27 and any interest accrued thereon.

1.7.28 Accelerating Transfers.

1.7.28.1 **"Accelerating Transfer"** means any sale, contract to sell, conveyance, encumbrance, pledge, mortgage, lease not expressly permitted under this Agreement or the Deed of Trust, or other transfer of all or any material part of the Property or any interest in it, whether voluntary, involuntary, by operation of law, or otherwise. If Borrower is a corporation, "Accelerating Transfer" also means any transfer or transfers of shares possessing, in the aggregate, more than forty-nine percent (49%) of the voting power or more than forty-nine percent (49%) of the direct or indirect beneficial ownership of Borrower. If Borrower is a partnership, "Accelerating Transfer" also means withdrawal or removal of any partner, dissolution of the partnership under California law, or any transfer or transfers of, in the aggregate, more than forty-nine percent (49%) of the partnership interests. If Borrower is a limited liability company, "Accelerating Transfer" also means withdrawal or removal of any member, termination of the limited liability company, or any transfer or transfers of, in the aggregate, more than forty-nine percent (49%) of the voting power or, in the aggregate, more than forty-nine percent (49%) of the ownership interests in Borrower. Notwithstanding the foregoing, the transfer of the Investor Limited Partner's limited partnership interest in the Borrower to an affiliate of the Investor Limited Partner upon written notice to the Lender shall not constitute an "Accelerating Transfer" and shall not require the consent of the Lender.

1.7.28.2 Borrower acknowledges that Lender is making one or more advances under this Agreement in reliance on the expertise, skill, and experience of Borrower. In consideration of Lender's reliance, Borrower agrees that Borrower shall not make any Accelerating Transfer, other than a transfer allowed pursuant to the express terms of this Agreement, unless the transfer is preceded by Lender's express written consent to the particular transaction and transferee. Lender may withhold such consent in its sole and absolute discretion.

1.7.28.3 Notwithstanding anything to the contrary contained herein, the Borrower's Investor Limited Partner shall be permitted to remove the General Partner thereof for cause in accordance with the Amended Partnership Agreement without the consent of the Lender so long as, concurrently therewith, the replacement General Partner is approved by Lender or is not subject to the approval of Lender pursuant to this Section 2.7.28.3. If the Investor Limited Partner of Borrower exercises its right to remove the General Partner thereof, the Lender's consent shall not be required if the Investor Limited Partner or an entity that

controls, is controlled by or is under common control with the Investor Limited Partner is the substitute General Partner. Substitution of any other person or entity as a General Partner shall be subject to the prior written consent of the Lender in its reasonable discretion. Notwithstanding the foregoing, notice of any removal and substitution of the General Partner shall be promptly given to Lender and the substitute General Partner shall assume all of the rights and obligations of the removed General Partner under all of the Loan Documents and a copy of any amendment to the Amended Partnership Agreement shall be promptly submitted to Lender.

1.7.29 Property Tax Abatement. When the construction of the Improvements has been completed and the units therein have been initially rented, the Property shall be and shall remain at all times thereafter exempt from property tax pursuant to Section 214(g) of the California Revenue and Taxation Code.

2. COMPLIANCE WITH OTHER FUNDING REQUIREMENTS. Borrower shall promptly comply with all of the terms and provisions of the Subordinate Loan Documents, including, without limitation, all provisions and requirements which relate to the Work. Where the Subordinate Loan Documents set forth requirements or conditions which are similar to those set forth in the Loan Documents, then all such requirements and conditions shall be construed together with the similar provisions of the Loan Documents so as to give full effect to the separate provisions of the Subordinate Loan Documents and the Loan, provided that in so construing such provisions, the provisions of the Loan Documents shall not be amended or modified. In the event of any inconsistencies as between the provisions of the Loan Documents and those of the Subordinate Loan Documents (including, without limitation, provisions that relate to insurance and condemnation proceeds), the applicable provisions of the Loan Documents shall prevail and apply.

3. PAYING AGENT; SERVICER.

3.1 Paying Agent Agreement. Borrower acknowledges and agrees that, unless otherwise agreed by Agent, until the Loan is paid in full, all Loan payments shall be tendered by Borrower to the Servicer for Servicer's transmittal to the Paying Agent pursuant to the terms of the Paying Agent Agreement. Borrower shall comply with the terms and conditions of the Paying Agent Agreement. Borrower shall have no right to amend or modify the Paying Agent Agreement without the prior consent of Agent.

3.2 Appointment of Paying Agent; Absence of Paying Agent. Borrower covenants to ensure that a Paying Agent is at all times engaged to perform, at the expense of Borrower, the duties of the Paying Agent described in the Bond Documents. Borrower shall not terminate the Paying Agent Agreement unless Lender has first approved, in Lender's sole and absolute discretion, and in writing, a successor Paying Agent. However, if for any reason the Paying Agent shall become vacant for any reason or the Paying Agent is unable or unwilling to perform its duties under the Paying Agent Agreement, Borrower shall, within 30 days thereafter and with the consent of Lender, appoint a bank or trust company, or other entity located in the State or the same city as such Paying Agent to fill such vacancy; provided, however, that if

Borrower shall fail to appoint such Paying Agent within such period, the Agent shall make the appointment or shall perform the duties of the Paying Agent pursuant to the Paying Agent Agreement (and during such period, such party shall be entitled to receive the fees and shall be entitled to all protections afforded the Paying Agent under the Paying Agent Agreement).

Wells Fargo Bank, National Association, a national banking association, is the initial Paying Agent. Any bank or trust company with which or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Agreement.

3.3 **Servicer.** Agent shall have the right, but not the obligation, from time to time, to appoint another Person as the “Servicer” under the Loan Documents and to delegate and/or assign certain rights and responsibilities regarding the servicing of the Loan, including the rights and responsibilities under Section 5.1, below, to such appointed Person (all for such term and on such terms and conditions as Agent deems appropriate in its sole judgment). Agent shall be the initial “Servicer” of the Loan. In addition, at any time when no appointed Servicer is serving as the “Servicer”, Agent shall be the “Servicer” for all purposes of the Loan Documents. All compensation owing to such Servicer shall be payable solely from the excess of the interest accruing under the Note for any period over the interest accruing on the Bonds for the same period.

4. **CONSTRUCTION.**

4.1 **Plans and Specifications; Architect and Contractor.** Borrower shall prepare and submit to Lender for approval detailed plans and specifications which provide for the construction of the Project incorporating the categories of work and costs set forth in the Project Budget. The plans and specifications reviewed and approved by Lender are referred to herein as the “**Plans and Specifications.**” As used in this Agreement, “**Work**” shall mean the work contemplated in the Plans and Specifications. The term “**Architect**” shall mean the architect approved by Lender for the Work; the term “**Contractor**” shall mean the general contractor approved by Lender for the Work.

4.2 **Pre-construction Conditions.** Prior to commencing the Work, Borrower shall have acquired a fee interest in the Property, as provided above, and shall have otherwise met all of the conditions set forth in Section 5.3.2.1 below. Borrower shall do all things to satisfy the foregoing conditions in such time as is necessary to allow for the Work to commence not later than the earlier of the date that is thirty (30) days following receipt of the Permits and May 27, 2008 (the “**Outside Start Date**”).

4.3 **Commencement and Completion of Work.**

4.3.1 Borrower shall commence the Work on or before the Outside Start Date and, upon such commencement, Borrower shall continuously prosecute the Work diligently to completion.

4.3.2 Borrower shall Complete the Work on or before the Completion Date. “**Completed**” or “**Complete**” shall mean (a) the Work has been completed substantially in accordance with the Plans and Specifications, (b) all punch-list items have been completed,

except non-material work that does not affect the right of Borrower or its tenants to legally occupy the Property, (c) Borrower has delivered to Lender a written completion certification in a form satisfactory to Lender from the Borrower, Architect and the Contractor (the "**Completion Certificate**"). and (d) Borrower has delivered to Lender evidence satisfactory to Lender that:

4.3.2.1 The Improvements have been "placed in service" within the meaning of Section 42 of the Code;

4.3.2.2 The completed Work has been inspected by and received occupancy permits and other approvals of governmental authorities having jurisdiction over the Project permitting occupancy by residential tenants of all units in the Project and is otherwise in compliance with all applicable rules, laws, regulations, ordinances, and permits (collectively, "**Legal Requirements**"), and the terms and conditions of all Permits (as defined in Section 4.8 below) and other permits and entitlements obtained in connection with the development of the Project; and

4.3.2.3 Lender has been provided with a copy of a recorded Notice of Completion for the Project, no mechanic's liens are outstanding with respect to the Project, and any applicable mechanic's liens filing periods have expired. However, in the event that all other Conversion Conditions have been satisfied prior to the running of any applicable mechanic's liens filing period and the other conditions of this Section 4.3.2 have been satisfied, then, in lieu of the running of such period, Lender will accept an endorsement to the Title Policy insuring the priority of the Deed of Trust over any liens for labor or materials arising in connection with the Work.

4.4 **Work.** Borrower must conduct the Work in a good and workmanlike manner in accordance with sound building practices, as well as the Plans and Specifications and Legal Requirements.

4.5 "**In-balance**". At all times the Loan shall be "in balance" (as defined in Section 5.2 below) and the undisbursed Loan Funds, together with all undisbursed proceeds from the Other Funding (as shown in the Project Budget), shall be sufficient to Complete the Work and operate the Property through the Conversion Date and to accomplish the purposes contemplated by the other Loan Documents.

4.6 **Changes.**

4.6.1 Borrower shall provide Lender with copies of all change orders pursuant to which changes are proposed to the Plans and Specifications or to the design of the Work, together with all additional documents relating to the proposed change that Lender may require. These documents may include the following: (i) plans and specifications indicating the proposed change; (ii) a written description of the proposed change and related working drawings; and (iii) a written estimate of the cost of the proposed change and the time necessary to complete it.

4.6.2 Borrower must obtain Lender's prior written approval of any change order that involves more than \$25,000 in changes in costs of the Work or which, when aggregated with other change orders not previously approved by Lender, involves more than \$100,000 in changes in costs of the Work.

4.6.3 In addition, Borrower must obtain Lender's prior written approval of all material changes in the scope or general conditions of the contract with the Contractor for the Work (the "**Construction Contract**"), the contract with the Architect for the design of the Work (the "**Architecture Contract**"), the contract with the Manager for the Property (the "**Management Agreement**") or any other contracts for the Work (collectively, the "**Project Agreements**"). Finally, Borrower must obtain from the appropriate persons or entities all approvals of any changes in plans, specifications, work, materials or contracts required by any Legal Requirements.

4.6.4 Lender may take a reasonable time to evaluate any requests for proposed changes and may require that all approvals required from other parties be obtained before it approves any requested change. Lender may approve or disapprove changes in the exercise of its reasonable judgment, and such approvals will not be unreasonably delayed. Borrower acknowledges that delays may result and agrees that they will not affect Borrower's obligation to complete the Work by the Completion Date.

4.7 Work Information and Verification.

4.7.1 Within thirty (30) days after receiving a written request from Lender to do so, Borrower shall deliver to Lender any and all of the following information and documents, all in forms acceptable to Lender:

4.7.1.1 A copy of the most recent Plans and Specifications certified by the Architect as being complete and accurate;

4.7.1.2 A current, complete and correct list showing the name, address and telephone number of the Contractor, and each subcontractor and material supplier engaged in connection with the Work and the total dollar amount of each contract and subcontract (including any changes), together with the amounts paid through the date of the list;

4.7.1.3 True and correct copies of the most current versions of all executed Project Agreements, including any amendments or other changes;

4.7.1.4 A current Work progress schedule showing the progress of Work and the projected sequencing and completion times for uncompleted work, all as of the date of the schedule; and

4.7.1.5 Any update to any item described above, previously delivered to Lender.

4.7.2 Borrower expressly authorizes Lender to contact the Architect, Contractor, Manager, or any contractor, surety or any governmental authority or agency to verify or discuss any information disclosed in accordance with this Section 4.7 and any other information Lender may reasonably require.

4.7.3 Borrower shall promptly notify Lender of any default by the Architect, Contractor, Manager or surety or any other architect, contractor, manager or surety, under its respective agreement which is not cured after the passage of applicable notice and cure periods.

Any architect, contractor, subcontractor, material supplier or surety who terminates or materially breaches its contract must be replaced promptly, and Borrower must deliver promptly all required information and documents to Lender regarding each replacement architect, contractor, subcontractor, material supplier and surety. Lender may disapprove any architect, contractor, surety or other party Lender in its reasonable judgment deems financially or otherwise unqualified; however, in no event may the absence of disapproval be deemed approval.

4.7.4 If, based on any Work progress schedule or other materials submitted by Borrower, Lender in its reasonable judgment determines that the Work will not be completed by the Completion Date, Lender may request Borrower in writing to reschedule the work of Work to permit timely completion. In addition, if Lender in its reasonable judgment determines that the Improvements as improved with the Work will not be "placed in service" (within the meaning of Section 42 of the Code) by the Completion Date, Lender may request Borrower in writing to reschedule the work of Work. Within fifteen (15) days after receiving such a request from Lender, Borrower must deliver to Lender a revised Work progress schedule showing completion of the Work by the Completion Date.

4.8 **Permits, Licenses and Approvals.** Borrower must properly obtain, comply with and keep in effect all building permits, licenses and approvals required from governmental bodies in order to complete the Work and to construct, occupy, and operate the Property (the "Permit(s)"). Borrower must deliver copies of all such Permits to Lender promptly, and in any event within ten (10) days after such Permits are obtained by Borrower.

4.9 **Purchase of Materials; Conditional Sales Contracts.** Without Lender's prior written consent, Borrower may not: (a) purchase or contract for any materials, equipment, furnishings, fixtures or articles of personal property to be placed or installed on the Project under any security agreement or other agreement where the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider them personal property after their incorporation in the work of Work (provided that the foregoing shall not apply to leases entered into by Borrower for laundry equipment and other operating equipment which is typically leased rather than purchase in the operation of multifamily projects); or (b) remove or permit to be removed from the Project any equipment, machinery or fixtures used in connection with the management, maintenance, operation or enjoyment thereof unless replaced by articles of equal suitability and value owned by Borrower free and clear of any lien or security interest.

4.10 **Site Visits; Right to Stop Work.**

4.10.1 Borrower grants to Lender, together with Lender's agents and representatives, the right to enter and visit the Project at any reasonable time (subject to any applicable rights of tenants of the Project) upon 24 hours notice to Borrower for the purposes of performing an appraisal, observing the progress of Work, inspecting the Property, taking soil or groundwater samples, conducting tests to, among other things, investigate for the presence of Hazardous Materials and examining all materials, plans, specifications, working drawings and other matters relating to the Work. For purposes of these site visits, Borrower must maintain at all times a full set of working drawings at the Work site. Lender, together with its agents and representatives, shall have the right to examine, copy and audit the books, records, accounting data and other documents of Borrower and its contractors relating to the Project or Work;

provided that Borrower shall have the right to have a representative present during any such site visits.

4.10.2 If Lender in its reasonable judgment determines that any work or materials materially fail to conform to the approved Plans and Specifications or sound building practices, or that they otherwise depart from the requirements of this Agreement, then Lender may require the nonconforming or defective work to be stopped and withhold its consent to disbursements until the matter is corrected or it is determined that the work is no longer defective, as applicable. If this occurs, Borrower must correct the work to Lender's reasonable satisfaction promptly and halt all other work which may be affected by the nonconforming or defective work pending completion of such corrective work. No such action by Lender will affect Borrower's obligation to complete the Work on or before the Completion Date.

4.10.3 Lender shall have no duty to visit the Work site, to supervise or observe Work or to examine any books or records. Any site visit, observation or examination by such parties is solely for the purpose of protecting Lender's rights and interests. No site visit, observation or examination by such parties will impose any liability or result in a waiver of any default of Borrower or be a representation that Borrower is or will be in compliance with the Plans and Specifications, that the Work is free from defective materials or workmanship, that the Work complies with all applicable Requirements. Neither Borrower nor any other party is entitled to rely on any site visit, observation or examination by Lender. Lender owes no duty of care to protect Borrower or any other party against, or to inform Borrower or any other party of, any negligent or defective design or Work of any improvements on the Project, or the presence of any Hazardous Materials on the Project or any other adverse condition affecting the Project.

4.11 **Protection Against Lien Claims.** Borrower must pay or otherwise discharge promptly all claims and liens for labor done and materials and services furnished in connection with the Work. Borrower has the right to contest in good faith any claim or lien, provided that it does so diligently and without prejudice to Lender or delay in completing the Work. Promptly upon the request of Lender, Borrower must provide a bond, cash deposit or other security satisfactory to the requesting party in the exercise of its reasonable judgment.

4.12 **Cooperation.** Borrower must cooperate at all times with Lender in bringing about the timely completion of the Work, and Borrower must resolve all disputes arising during the work of Work in a manner allowing work to proceed expeditiously. Further, Borrower covenants and agrees to execute such additional instruments as may be reasonably requested by Lender in order to carry out the provisions of this Agreement and the other Loan Documents and to perfect or give further assurances of any of the rights granted or provided for in this Agreement or in any of the other Loan Documents.

5. **PROJECT BUDGET AND DISBURSEMENTS.**

5.1 **Project Budget.** The Project Budget restricts disbursements to line items in cost categories. Borrower agrees to use disbursements of Loan Funds solely in conformity with the Project Budget. If the Work cannot be completed in strict conformity with the most recently approved Project Budget, Borrower must submit immediately to Lender for its approval a revised Project Budget. In the revised Project, Budget Borrower must identify requested changes in any

line items and provide a written statement of reasons for the changes. If further changes are required, Borrower must seek Lender's approval, following the procedures described above. Lender need not authorize any further disbursements unless and until it approves the revised Project Budget. Lender agrees that such review and approval or disapproval of any revised Project Budget shall not be unreasonably delayed. Borrower acknowledges that delays may result and agrees that they will not affect Borrower's obligation to complete the Work by the Completion Date. Lender reserves the right to approve or disapprove any Project Budget in its sole and absolute discretion. The most recently approved Project Budget supersedes all previously approved Project Budgets.

5.2 Loan In Balance.

5.2.1 The Loan is "in-balance" whenever the amount of the undisbursed Loan Funds, plus any other undisbursed sums from Other Funding as shown in the Project Budget most recently approved by Lender and as set forth in Exhibit G attached hereto, are sufficient in Lender's reasonable judgment to pay, through completion of the Work and the Completion Date, all of the following sums: (a) all interest, fees, and any and all other sums accruing or payable to Lender (or which may become reimbursable to Lender) under the Loan and the any of the Loan Documents ("**Interest and Fees**") and (b) all costs of Work which have been completed but not paid for and all costs of Work which have yet to be completed. The Loan is "out-of-balance" if and when Lender in its reasonable judgment determines that the funds (including all undisbursed Loan Funds and all undisbursed proceeds from the Other Fundings) are insufficient to pay for the costs and sums described in (a) and (b) above.

5.2.2 Undisbursed Loan Funds in one category or line item (e.g., insurance costs) may not be applied to another category or line item (e.g., Interest Reserve, as defined below) unless either the Project Budget allows such use (and only to the extent specifically allowed) or Lender consents in writing to such use in each instance.

5.2.3 Whenever the Loan is out-of-balance, Lender may make written demand on Borrower to demonstrate the immediate availability of additional funds and such funds shall promptly be deposited into an In-balance Account established by Borrower at Lender in an amount sufficient in Lender's reasonable judgment to cause the Loan to be "in-balance" by depositing such amount into the Borrower's Funds Account. Also, if required by Lender, Borrower must submit, for Lender's approval, a revised Project Budget within fifteen (15) days after any such demand.

5.2.4 At any time, Lender may evaluate the sufficiency of undisbursed Loan Funds allocated in the Project Budget for the payment of Interest and Fees, whether described therein as "Interest Reserve," "Construction Interest," and/or "Lender Fees," (collectively, the "**Interest Reserve**"), exercising its reasonable judgment in light of (i) cost overruns or change orders; (ii) failure of the Work to be completed in a timely manner, or (iii) other factors. Based on Lender's evaluation, the Loan may be "out-of-balance." If this happens, at its sole election using reasonable discretion, Lender may exercise its rights under Section 5.2.3 above or make written demand on Borrower to pay all future Interest and Fees out of Borrower's own funds until the remaining portion of the undisbursed Interest Reserve is sufficient in Lender's

reasonable judgment to cover any and all such amounts coming due with respect thereto through completion of the Work and the Completion Date.

5.3 Conditions To Disbursement. Before any disbursements are made pursuant to the Loan, all applicable conditions (as set forth in this Section 5.3) to the disbursement must have been satisfied at Borrower's sole cost and expense in a manner acceptable to Lender in the exercise of its reasonable judgment. Borrower acknowledges that delays in disbursements may result from the time necessary for Lender to verify satisfactory fulfillment of any and all conditions to a given disbursement. Borrower consents to all such reasonable delays. No waiver of any condition to disbursement is effective unless expressly made by Lender in writing. If Lender authorizes a disbursement before fulfillment of one or more required conditions, that disbursement alone will not be a waiver of such conditions, and Lender reserves the right to require their fulfillment before making any subsequent disbursements. If all conditions are not satisfied, Lender, acting in its reasonable judgment, may disburse the proceeds of the Loan as to certain items or categories of costs and not others.

5.3.1 Initial Disbursement. Upon satisfaction of the conditions to Loan Closing set forth in Section 1.5, and upon receipt of a "Funding Requisition" in the form attached hereto as Exhibit I, Lender shall make an initial disbursement (the "**Initial Disbursement**") of Loan Funds in the amount of \$100,000 to pay for costs of acquiring, constructing, developing, and equipping the Project, to the extent permitted by the Act and the Code (as each term is defined in the Master Pledge and Assignment) expended by Borrower no earlier than sixty (60) days prior to the date Issuer passed its inducement resolution evidencing its intent to issue the Bonds (the "**Inducement Date**"). Following the Initial Disbursement, Lender shall have no obligation to make any further disbursement of proceeds of the Loan until the conditions set forth in Section 5.3.2 have been satisfied in the Lender's sole discretion.

5.3.2 Work Disbursements. Borrower may request disbursements of the remaining Loan Funds (but not more frequently than once per month) ("**Work Disbursement(s)**") for the payment of predevelopment costs, hard costs, and other line items within the Project Budget, which Work Disbursements will only be made upon the satisfaction of, and subject to, the conditions set forth in Sections 5.3.2.1 and 5.3.2.2 below and the other applicable provisions of this Agreement. Work Disbursements will be made for stored materials, either on site or off site, only with the approval of the Lender.

5.3.2.1 Initial Work Disbursement. In addition to any other disbursement conditions herein and subject to the provisions of Section 5.3.2.2 and 5.6 below, the initial Work Disbursement (after the Initial Disbursement of \$100,000) for any costs incurred in connection with the Work shall be advanced only upon the satisfaction of the following conditions:

(A) Lender has received a Funding Requisition in the form attached hereto as Exhibit I.

(B) Lender shall have received, reviewed, and approved, in Lender's sole and absolute discretion, a copy of the fully executed Amended Partnership Agreement and all other related documents evidencing a commitment by an investor acceptable to Lender in its sole and absolute discretion, who shall be a nationally-recognized syndicator of

or investor in Low-Income Housing Tax Credits (LIHTC) listed among the top fifteen such LIHTC investors in the United States, ranked by dollar amount invested, in calendar year 2007 (the "**Investor Limited Partner**"), to fund its Capital Obligations, subject to the conditions of the Amended Partnership Agreement. Lender hereby approves US Bancorp Community Development Corporation or an affiliate thereof as the Investor Limited Partner upon substantially the terms and conditions set forth in that certain proposal dated December 3, 2007, delivered by US Bancorp Community Development Corporation to General Partner, executed by General Partner on December 13, 2007.

(C) Borrower shall have delivered to Lender a Security Agreement (Assignment of Partnership Interests) executed by Borrower and General Partner, or an executed amendment to the existing Security Agreement (Assignment of Partnership Interests), in either case satisfactory to Lender in its sole and absolute discretion;

(D) Borrower shall have delivered to Lender evidence satisfactory to Lender that Investor Limited Partner has unconditionally funded the total amount of Capital Obligations required to be funded by Investor Limited Partner as of the date of the Initial Work Disbursement, all in accordance with the time periods and other terms and conditions of the Amended Partnership Agreement.

(E) Borrower shall be the fee owner of the Improvements and the Property.

(F) Borrower shall have delivered to Lender evidence satisfactory to Lender that all delinquent taxes on the Property have been paid in full.

(G) Borrower shall have delivered to Lender evidence satisfactory to Lender that the Property is a lawfully created separate and individual tax parcel.

(H) Lender shall have received copies of all building permits and other Permits for the Work and the Project.

(I) The Borrower shall have furnished evidence satisfactory to Lender of funding of at least \$1,490,000 of the proceeds of the County Loan and application of such proceeds in accordance with the approved Project Budget for the Project.

(J) The Borrower shall have furnished evidence satisfactory to Lender of funding of at least \$4,952,854 of the proceeds of the Pittsburg RDA Loan and application of such proceeds in accordance with the approved Project Budget for the Project.

(K) Borrower shall have delivered to Lender a Standard Agreement executed by Borrower and HCD

5.3.2.2 General Work Disbursements Requirements. Lender is not required to consent to, nor shall there otherwise be made, any Work Disbursements if:

(A) Proceeds of the Subordinate Loans have been disbursed but have not been used by the Borrower; or

(B) Lender does not receive a Funding Requisition, or Lender in its reasonable judgment considers any Funding Requisition to be incomplete or otherwise unacceptable, based on Lender's observations while visiting the Work site or for any other reason; or

(C) The Project is materially damaged and not repaired, unless Lender receives evidence from Borrower that Borrower will receive insurance proceeds or other funds sufficient to pay for all repairs in a timely manner; or

(D) The Project or any interest in it is affected by eminent domain or condemnation proceedings; or

(E) For any reason the title insurer fails to issue a lien-free, disbursement, continuation, date-down, and/or other title insurance endorsement as may be required by Lender. A "lien-free" endorsement shall mean an endorsement to the Title Policy insuring the priority of the Deed of Trust over any liens for labor or materials arising in connection with the Work or otherwise; or

(F) Lender receives a bonded stop notice, unless Borrower files a release bond satisfactory to Lender in its reasonable judgment; or

(G) The Loan is "out of balance" according to Section 5.2 of this Agreement, and Borrower fails to comply with any demand by Lender to deposit funds, or Lender does not approve any revised Project Budget proposed by Borrower; or

(H) Lender in its reasonable judgment determines that there has been or will be a material failure to complete the Work by the Completion Date, and Borrower fails to comply with any demand by Lender to submit a revised date of projected completion of the Work or Lender does not approve any such revised date proposed by Borrower; or

(I) If a breach, default or failure of condition of or under Borrower's Amended Partnership Agreement, any funding agreement related to the Project, or any other syndication documents of Borrower exists and remains uncured upon the expiration of all applicable notice and cure periods; or

(J) An Event of Default under this Agreement or under any of the other Loan Documents has occurred and is continuing, or an event has occurred that with notice or the passage of time could become an Event of Default; or any representation and warranty of Borrower set forth in this Agreement or any of the other Loan Documents is not materially true and correct.

(K) Borrower shall have delivered to Lender a copy of the agreement between Comcast Cable and the Borrower upon execution of such agreement.

5.4 Disbursement Amounts.

5.4.1 Line Item Limitations. The Project Budget sets forth various costs relative to the Project broken down by specific line items. Subject to the other terms and conditions of this Agreement, from each line item of cost for which there is a request for payment pursuant to a Funding Requisition, disbursements of Loan Funds will be authorized in a total amount not to exceed the maximum amount for that line item, taking into account all prior disbursements, any applicable retention requirements and any reallocation of funds to which Lender has consented in writing.

5.4.2 Retention Disbursements of Hard Costs.

5.4.2.1 Except as noted in the Project Budget, periodic disbursements for the Work will be equal to ninety percent (90%) of the amount applied for in the applicable Funding Requisition. Until the conditions set forth in Section 5.4.2.2 below have been satisfied, the remaining undisbursed portions of this line item, which will equal ten percent (10%) of the aggregate dollar amount to be disbursed for the Work "hard" costs, will be held as the "Retention."

5.4.2.2 Lender will authorize the disbursement of the aggregate Retention upon satisfaction of the following conditions:

(A) The Work must be Completed in accordance with Section 4.3.2 of this Agreement.

(B) No mechanic's liens are recorded against the Property, all applicable lien periods have expired, and Lender has received evidence that a valid Notice of Completion has been recorded.

(C) Lender must receive a Funding Requisition for such Retention, which shall be accompanied with the Completion Certificate from the Architect and the Contractor that the completed Work conforms to the Plans and Specifications.

(D) Borrower has provided endorsements to or a reissue of Lender's title insurance policy insuring lien-free completion of the Work as well as first-lien priority of the disbursement and such other endorsements insuring such other matters relating to the completed Work as then Lender requires.

(E) No event of default under this Agreement or any of the other Loan Documents has occurred and is continuing, and no event has occurred that, with notice or the passage of time, would be such an event of default ("**Unmatured Event of Default**").

(F) Borrower shall have delivered to Lender evidence satisfactory to Lender, in its sole discretion, that the Investor Limited Partner has unconditionally

funded the total amount of Capital Obligations required to be funded by Investor Limited Partner as of that date, all in accordance with the time periods and other terms and conditions of the Amended Partnership Agreement.

5.4.3 Disbursement of Interest Reserve. Interest and Fees becoming due under the Loan during the Construction Phase shall be paid from the proceeds of the Interest Reserve specified in Exhibit G attached hereto.

5.4.4 Disbursements of Developer Fee. Investor Limited Partner's Capital Obligations or Loan Funds may be used to pay a portion of the developer fees during the Construction Phase as follows: (a) \$400,000 allocated to developer fees may be paid to Developer (as defined in the Developer Agreement between Borrower and Mercy Housing California, as developer) from the Investor Limited Partner's first capital installment, and (b) \$1,101,252 may be paid the from the Investor Limited Partner's third capital installment upon the Conversion Date. The foregoing shall not be deemed a waiver, as between the Investor Limited Partner and the General Partner, of any restriction on developer fee payments set forth in the Developer Agreement between Borrower and Developer or in the Amended Partnership Agreement.

5.4.5 Disbursements of Hard and Soft Cost Contingency Line Items. Lender shall require and the Project Budget shall reflect a contingency reserve equal to five percent (5%) of the total hard costs for the Work. From time to time, Borrower may request to reallocate Loan Funds from the hard cost contingency reserve to other hard cost line items, subject to any Retention requirements applying to those line items. From time to time, Borrower also may request to reallocate Loan Funds from the soft cost contingency reserve to other soft cost line items. Each Funding Requisition for hard or soft cost contingency funds must contain such supporting documentation, including invoices and canceled checks, in such forms as Lender requires. Lender in its sole judgment may decline any Funding Requisition for hard or soft cost contingency funds and also decline any request by Borrower to increase, reallocate or deplete either of such reserves; provided, however, that if Borrower establishes to the reasonable satisfaction of Lender that a cost savings has been effected in a line item (provided that, in the case of hard costs, such cost savings is the subject of a deductive change order) (the "Cost Savings"), the amount of such Cost Savings shall be transferred to the "hard cost" or "soft cost" contingency line item (as appropriate in view of the characterization of the applicable line item). Cost Savings allocated to "hard cost" and "soft cost" contingency line items in excess of the required five percent (5%) contingency shall be available for payment of cost overruns in "hard costs" and "soft costs" of the Project, respectively, subject to the prior reasonable approval of the Lender. If Lender declines any Funding Requisition for hard or soft cost contingency funds or declines any request by Borrower to increase, reallocate or deplete either reserve, or if either reserve becomes depleted for any other reason, Borrower's obligations with respect to the Loan will not be affected.

5.4.6 Disbursements of Other Funding. Whenever Other Funding is allocated to any line item, Lender may authorize all disbursements first from the Other Funding which may be used for such line item until they are exhausted, regardless of the allocations of those funds set forth in the Project Budget, unless Lender and Borrower have agreed otherwise in writing in each instance.

5.5 Disbursement Procedures.

5.5.1 Funding Requisitions.

5.5.1.1 Subject to Section 5.5.3, below, for each disbursement, Borrower must submit to Lender a written Funding Requisition signed by Borrower (or its authorized representatives set forth on Exhibit F attached hereto) and the Contractor, together with such documentation and information as Lender requires. Each Funding Requisition must be acceptable in form and substance to Lender in the exercise of its reasonable judgment and include such items of information and documentation, including invoices, canceled checks, lien waivers and other evidence as Lender requires, to show that Borrower is in compliance with the other Loan Documents. If Lender so requires, any given Funding Requisition also must include written certification by the Architect and the Contractor that the Work as constructed to date conforms to the Plans and Specifications.

5.5.1.2 In each Funding Requisition, Borrower must request disbursement for one or more specified line items of the Project Budget. Borrower may submit a Funding Requisition to Lender on or about the first day of each month, unless Lender agrees to make disbursements more frequently than once a month. Borrower must use all Loan Funds strictly for the purposes for which they are disbursed.

5.5.1.3 Unless Borrower has notified Lender in writing to the contrary, each Funding Requisition constitutes Borrower's representation and warranty to Lender that (i) the Loan is "in balance" (ii) all prior disbursements, as well as that currently being requested, were and will be used in strict compliance with the Project Budget and the other Loan Documents, and (iii) no Event of Default has occurred under any Loan Document, and no event has occurred that, with notice or the passage of time, could become an Event of Default under any of the Loan Documents.

5.5.2 Disbursements to Other Parties. Lender shall have the unconditional right, exercisable at any time, to make disbursements directly to the Architect, Contractor, Manager, subcontractors, laborers or material suppliers.

5.5.3 Disbursements Without Funding Requisitions. Lender may authorize disbursement of Loan Funds to pay interest accruing under the Note, and acting in its reasonable judgment, to pay legal fees and expenses of Lender's attorneys and other sums owing from time to time by Borrower to Lender, all in the absence of a Funding Requisition and without further notice to or authorization by Borrower. Lender at its option may make any such payment on Borrower's behalf by debiting the Loan Funds in the amount of the payment and disbursing such amount to itself. For these purposes, Lender is not restricted to the line items and cost categories of the Project Budget.

5.5.4 Borrower Signatories. Borrower has authorized any of the persons set forth in Exhibit F, acting alone, to sign Funding Requisitions and other documents in connection with the administration of the Loan.

5.5.5 Notice of Advances. Agent, or Servicer acting on Agent's behalf, shall give Paying Agent prompt notice of the date and principal amount of each disbursement of Loan Funds made hereunder.

6. **BORROWER'S REPRESENTATIONS AND WARRANTIES.** Borrower makes the following representations and warranties to Lender:

6.1 Borrower is a California limited partnership duly formed under the laws of the State, is in good standing in the State, has the power and authority to own its properties and assets and to carry on its business as now conducted and as contemplated to be conducted, and has the power to enter into and has duly authorized, by proper action, the execution and delivery of this Agreement and all other Loan Documents. Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended from time to time.

6.2 Each of the Loan Documents will be, assuming due authorization, execution and delivery by the other parties to those documents, and assuming due recordation where required by law, a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject to (a) applicable Bankruptcy, insolvency, reorganization, moratorium or other similar laws or enactments in effect now or in the future affecting the enforceability of creditors' rights generally and (b) the exercise of judicial discretion.

6.3 Neither the execution and delivery of this Agreement or of any other Loan Document in connection with the financing of the Project, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof and thereof, conflicts with or results in a breach of any of the terms, conditions or provisions of Borrower's organizational documents or of any agreement or instrument to which it is now a party or by which it is bound, or constitutes a default (with due notice or the passage of time or both) under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the property or assets of it under the terms of any instrument or agreement to which it is now a party or by which it is bound. Before Guarantor became obligated in connection with the Loan, Borrower made full disclosure to that Guarantor regarding Borrower's financial condition and business operations, the present and former condition, uses, and ownership of the Property and all other circumstances bearing upon Borrower's ability to pay and perform its obligations under the Loan Documents.

6.4 Borrower owns a fee interest in the Land and the Improvements sufficient to carry out the purposes of this Agreement, and such title shall be in and remain in Borrower.

6.5 There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the best of Borrower's knowledge, threatened against it (nor is there any basis therefor), which (a) affects or seeks to prohibit, restrain or enjoin the execution or delivery of this Agreement or any of the other Loan Documents, (b) affects or questions the validity or enforceability of the Loan, this Agreement, or any of the other Loan Documents, (c) questions its power or authority to perform its obligations under this Agreement or any of the other Loan Documents, or its powers to own, acquire, construct, equip or operate the Project.

6.6 There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to its knowledge, threatened against or affecting it or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted or as now contemplated to be conducted, or would materially adversely affect its financial condition. It is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party.

6.7 Borrower is not in default under any order or decree of any court or any order, regulation or demand of any federal, state, municipal or governmental agency or any document, instrument or commitment to which it is a party or to which it or any of its property is subject, in any manner material to the transactions contemplated by this Agreement.

6.8 The operation of the Project in the manner presently contemplated and as described herein will not conflict with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto.

6.9 Borrower has filed or caused to be filed all federal, state and local tax returns that are required to be filed, 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.

6.10 Borrower currently intends to hold the Project for its own account, and, except as to any purchase rights which the General Partner may have pursuant to the Amended Partnership Agreement, has no current plans to sell and has not entered into any agreement to sell the Project.

6.11 Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including, without limitation, the risk of loss of the Project; and that it has not relied on Lender for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement.

6.12 Except only as noted in any of the Environmental Reports (as defined in Section 1.5.1.3 above), the Property is in compliance with all provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“**CERCLA**”); the Resource Conservation and Recovery Act; the Superfund Amendments and Reauthorization Act of 1986; the Toxic Substances Control Act and all environmental laws of the State (the “**Environmental Laws**”); all rules, regulations and administrative orders of any governmental agency; all judgments, decrees or orders of any court of competent jurisdiction with respect thereto. Borrower has not received any assessment, notice (primary or secondary) of liability or financial responsibility, and no notice of any action, claim or proceeding to determine such liability or responsibility, or the amount thereof, or to impose civil penalties with respect to a site listed on any federal or state listing of sites containing or believed to contain “Hazardous Materials” (as defined in the Deed of Trust), nor has Borrower received notification that any Hazardous Material that it has disposed of have been found in any site at which any

governmental agency is conducting an investigation or other proceeding under any Environmental Law. Borrower has not and will not store or dispose of any Hazardous Material on the Property. Notwithstanding the foregoing, the term "Hazardous Material" shall not include any such substance that is customary and ordinary household, cleaning or office product used on the Property by Borrower or any tenant or agent of Borrower, or ordinary construction materials used during the course of construction of Improvements on the Property by Borrower or Contractor, provided such use is in accordance with applicable hazardous materials laws.

6.13 The credit and financial statements of Borrower, as presented to Lender, are true, correct and complete and fairly present the financial condition of Borrower as of the date made or deemed to have been made. There have been no material adverse changes in the business, operations, assets or financial condition of Borrower or in the actual or pro forma operating statements for the Property from that previously disclosed to Lender and all of the information previously furnished to Lender was true, complete and correct when furnished and is true, complete and correct as of the date of this Agreement.

6.14 All information set forth in the application for the Loan submitted by Borrower (the "**Loan Application**") and in all reports, certificates and other documents submitted in connection with the Loan Application is true, complete and correct in all material respects. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete, incorrect, or otherwise misleading in any material respect.

6.15 Borrower has not failed to disclose to Lender any fact known to it or which should reasonably be expected to be known to it which materially and adversely affects, or which Borrower anticipates, or should reasonably be expected to anticipate, will materially and adversely affect, Borrower, the Property, and/or Borrower's ability to perform its obligations under the Loan Documents.

6.16 In the event the Loan Funds and Other Funding are not sufficient to complete the financing of the Project, Borrower will furnish all additional moneys necessary to complete the financing of the Project.

6.17 All of the proceeds of the Loan shall be used to finance the Work and the development of the Project in accordance with the Loan Documents.

6.18 The representations and warranties of Borrower herein shall be in addition to any other representations and warranties of Borrower which are set forth in the Loan Documents. Borrower acknowledges that each representation and warranty made and given by Borrower in this Agreement and in the Loan Documents is material to Lender and any assignee of the Loan and that Lender has been induced to originate the Loan in reliance on each such representation and warranty.

6.19 The Borrower will use and operate the Project in a manner consistent with the Regulatory Agreement and will use and operate the Project in accordance with the terms of the Regulatory Agreement until the date on which the Qualified Project Period (as defined in the Regulatory Agreement) terminates, and knows of no reason why the Project will not be so

operated. If in the future there is a cessation of that operation, the Borrower will use its best efforts to resume that operation or accomplish an alternate use by the Borrower or others which will be consistent with the Code and the status of the Bonds. The Borrower is not now in default under the Regulatory Agreement and specifically agrees to continue to meet its requirements.

6.20 The Borrower will file all appropriate returns, reports and attachments to income tax returns which are now or hereafter required by the provisions of the Code, including without limitation assisting the Issuer in filing the Information Return for Private Activity Bond Issues (Form 8038) required under the Code.

6.21 The weighted average maturity of the Bonds, calculated in accordance with the requirements of Section 147(b) of the Code, is less than 120% of the average reasonably expected economic life of the Project.

6.22 No proceeds of the Bonds shall be invested in federally insured deposits or accounts except as part of a bona fide debt service fund or a reasonably required reserve fund.

6.23 The Borrower covenants and agrees that it will not use or permit the use of any of the proceeds of the Bonds or any other funds of the Borrower, directly or indirectly, in such manner as would, or enter into, or allow any "related person" (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, that would, or take or omit to take any other action that would, cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or "federally guaranteed" within the meaning of Section 149(b) of the Code and applicable regulations promulgated from time to time thereunder.

6.24 The Borrower further warrants and covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with provisions contradictory to, or in opposition to, the provisions hereof, and of the Regulatory Agreement, and that in any event, the requirements of this Agreement and the Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.

6.25 None of the proceeds of the Bonds will be used to finance or refinance any airplane, skybox or other private luxury box, facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

6.26 Each of the representations and warranties of Borrower set forth in this Agreement and in the Loan Documents shall survive the origination of the Loan and any sale or assignment of the Loan, and shall be deemed remade by Borrower upon, and shall survive, the Loan Closing. Borrower acknowledges that this Agreement and the rights and benefits under it will, if the Loan is sold or assigned, be assigned to Lender's assignee and Borrower hereby consents to that assignment.

7. **DEFAULT AND REMEDIES.**

7.1 **Events of Default.** Borrower will be in default under this Agreement upon the occurrence of any one or more of the following events (each an “**Event of Default**”):

7.1.1 Borrower fails to make (i) any monthly installment of principal and/or interest under the Note when due, or (ii) any other payment of principal or interest under the Note when due; or

7.1.2 Borrower fails to make any payment or deposit of funds which may be required of Lender under this Agreement or in any of the other Loan Documents within five (5) days after Lender’s demand; or

7.1.3 Borrower fails to comply with any other covenant contained in this Agreement or in any of the other Loan Documents which calls for the payment of money, and does not cure that failure within five (5) days after written notice from Lender; or

7.1.4 Borrower, General Partner, or, prior to the Conversion Date, Guarantor become insolvent or the subject of any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships (each, an “**Insolvency Proceeding**”) and such proceeding is not dismissed within sixty (60) days; or

7.1.5 Borrower dissolves, terminates or liquidates, or any of these events happens to the General Partner or, prior to the Conversion Date, to the Guarantor; or

7.1.6 Any representation or warranty made or given in this Agreement or in any of the Loan Documents or the Tax Certificate proves to be false or misleading in any material respect when made, including in connection with any funding request; or

7.1.7 An “Event of Default,” “Default,” or “default” occurs under (and as may be defined in) the Note and/or any of the other Loan Documents beyond any applicable notice and cure period which may be provided for in the Note or other Loan Documents; or

7.1.8 The Work is abandoned; or

7.1.9 The Work is halted prior to completion for any period of thirty (30) consecutive days for any cause other than a cause set forth in Section 10.19; or

7.1.10 Any governmental, judicial or legal authority having jurisdiction over the Property orders or requires that Work be stopped in whole or in part, or any required approval, license or permit is withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect (a) for twenty (20) consecutive days, or (b) for a total period of sixty (60) days, so long as Borrower begins within the initial twenty (20) day period and diligently continues to take steps to remove the effect of the order, requirement, withdrawal or suspension, and Lender, exercising reasonable judgment, determines that Borrower is reasonably likely to prevail; or

7.1.11 The occurrence and continuance (after the expiration of any applicable notice and cure periods) of a default by Borrower under, or with respect any of the terms and conditions of, the Subordinate Loan Documents or the Amended Partnership Agreement; or

7.1.12 Borrower fails to comply with any provision contained in this Agreement other than those provisions elsewhere referred to in this Section 7.1, and does not cure that failure either (a) within an initial cure period of thirty (30) consecutive days after written notice from Lender, or (b) within ninety (90) days after such written notice, so long as Borrower begins within the initial cure period and diligently continues to cure the failure, and Lender, exercising reasonable judgment, determines that the cure cannot reasonably be completed at or before expiration of the initial cure period; or

7.1.13 Any Bond Document is amended, modified or terminated without Lender's prior written consent, including without limitation any "automatic" amendments of the Regulatory Agreement; or

7.1.14 Interest on the Bonds is no longer excludable from the gross income of the holders thereof for federal income tax purposes; or

7.1.15 The failure of the Borrower to comply with any of the terms and conditions of the Tax Credit Documents or the failure of the Borrower to comply with any of the monitoring or reporting requirements set forth in the Qualified Allocation Plan adopted by TCAC from time to time in accordance with the provisions of Section 42(m) of the Code, and the failure of Borrower to cure such failure on or before the first to occur of the date within which cure is permitted under the applicable document or thirty (30) days after notice of such failure; or

7.1.16 Investor Limited Partner fails to make any capital contribution required pursuant to Section 4(a) of Exhibit D to this Loan Agreement within the time period such contribution is due under the terms and conditions of the Amended Partnership Agreement; or

7.1.17 Any Subordinate Loan Document, is amended, modified, supplemented, cancelled or terminated without the prior consent of Lender, or any breach or default on the part of Borrower occurs thereunder; or

7.1.18 Any Accelerating Transfer occurs.

Lender agrees that cure of any Event of Default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

7.2 Remedies.

7.2.1 If an Event of Default occurs under this Agreement, Lender may exercise any right or remedy which it has under any of the Loan Documents, or which is otherwise available at law or in equity or by statute, and all of Lender's rights and remedies shall be cumulative. If any Event of Default occurs, Lender's obligation to lend under the Loan Documents shall automatically terminate, and Lender in its sole discretion may withhold any one or more disbursements and may terminate any Loan Document in accordance with its terms.

Lender may also withhold any one or more disbursements after an event occurs that with notice or the passage of time could become an Event of Default. No disbursement of Loan Funds by Lender shall cure any default of Borrower, unless Lender agrees otherwise in writing in each instance.

7.2.2 If Borrower, the General Partner, or, prior to the Conversion Date, Guarantor becomes the subject of any Insolvency Proceeding and such proceeding is not dismissed within sixty (60) days, all of Borrower's obligations under the Loan Documents shall automatically become immediately due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character. Upon the occurrence of any other Event of Default, all of Borrower's obligations under the Loan Documents may become immediately due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character, all at Lender's option, exercisable in its reasonable discretion. If such acceleration occurs, Lender may apply the undisbursed Loan Funds, and any other funds held by Lender in connection with the Loan to the obligations of Borrower under the Loan Documents, in any order and proportions that Lender in its sole discretion may choose.

7.2.3 Also upon any Event of Default, Lender shall have the right in its sole discretion to enter and take possession of the Property, whether in person, by agent, through an affiliate of the Lender, or by court-appointed receiver, and to take any and all actions which Lender in its sole discretion may consider necessary to complete construction of the Improvements, including making changes in plans, specifications, work or materials and entering into, modifying or terminating any contractual arrangements, all subject to Lender's right at any time to discontinue any work without liability. If Lender chooses to complete the Work, it shall not assume any liability to Borrower or any other person for completing the Work, or for the manner or quality of construction of the Improvements, and Borrower expressly waives any such liability. If Lender exercises any of the rights or remedies provided in this Section 7.2.3, that exercise shall not make Lender, or cause Lender to be deemed to be, a partner or joint venturer of Borrower. Lender in its sole discretion may choose to complete construction in its own name or in the name of an affiliate of the Lender. All sums which are expended by Lender in completing the Work shall be considered to have been disbursed to Borrower and shall be secured by the Deed of Trust and any other collateral held by Lender in connection with the Loan; any sums of principal shall be considered to be an additional loan to Borrower bearing interest at the Default Rate, as defined in the Note, and shall be secured by the Deed of Trust and any other collateral held by Lender in connection with the Loan. For these purposes Lender, in its sole discretion, may reallocate any line item or cost category of the Project Budget.

7.3 **Attorneys Fees and Expenses.** If upon any Event of Default, Lender should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of Borrower herein contained, Borrower agrees to pay to Lender the fees of such attorneys and such other expenses so incurred by Lender.

8. RECOURSE; GUARANTY.

8.1 During Construction Phase. Prior to the Conversion to the Permanent Phase, the limitation on the liability of Borrower, as set forth in Section 8.2 below, shall not apply, it being the intention of Borrower and Lender that all of Borrower's liabilities and obligations under this Agreement, the Note, and the other Loan Documents shall be with full recourse as against Borrower and the General Partner.

8.2 During Permanent Phase. Upon and after the Conversion to the Permanent Phase, Lender's recovery under the Loan Documents shall be limited solely to the Property and personal property covered by the Deed of Trust and any other collateral given to Lender as security for Borrower's performance under the Loan Documents and such recovery shall not be a lien, or the basis of a claim of lien or levy of execution, against any other assets of Borrower or any partner of Borrower; provided that, notwithstanding the foregoing, Borrower and the General Partner shall be fully and personally liable for any and all losses and costs or damages (including attorneys' fees incurred by Lender) arising from any of the following:

8.2.1 gross negligence, fraud, intentional misrepresentation by Borrower or any general partner, officer, employee or agent of Borrower;

8.2.2 failure to pay property taxes or other charges which may become liens on the real property senior to the lien of the Deed of Trust;

8.2.3 any loss caused by failure of Borrower to maintain insurance coverage required by the Deed of Trust or any Loan Document;

8.2.4 failure of Borrower to keep the Property in substantially good condition and repair, or the commission of waste (provided, however, that after the Conversion to Permanent Phase, it shall not constitute waste if the Borrower shall fail to restore, rebuild or repair the Property after destruction, damage or partial condemnation, notwithstanding the availability of insurance or condemnation proceeds) on the Property, reasonable wear and tear excepted;

8.2.5 any inaccuracy in or breach of any representation or warranty pertaining to any Hazardous Material (as defined in the Deed of Trust) or any failure in the due, prompt and complete observance and performance of any covenant pertaining to any Hazardous Material or any claims with respect to Hazardous Materials arising out of or with respect to the Project;

8.2.6 retention of any rents or other income, insurance proceeds, condemnation or eminent domain awards or other similar funds or payments attributable to any property securing the Note which, under the terms thereof, should have been paid to Lender;

8.2.7 failure of the Property to comply with the Americans with Disabilities Act of 1991, as amended, the Fair Housing Act of 1990, as amended, or any other similar building laws after any governmental authority has notified Borrower, its agents, employees and/or contractors of such non-compliance;

8.2.8 willful or grossly negligent violation of applicable law; and

8.2.9 failure of Borrower to pay all amounts payable under the Note in full, together with reasonable attorneys' fees, if Borrower transfers or encumbers the Property in contravention of the Loan Documents.

9. **INDEMNITY**. To the fullest extent permitted by law, but subject to Section 8.2 above, and except to the extent any of the following arise by reason of the gross negligence or willful misconduct of any of the Indemnified Parties, Borrower agrees to indemnify, hold harmless and defend Lender, its affiliates and subsidiaries, and each of their respective officers, members, directors, officials, employees, attorneys and agents, (collectively, the "**Indemnified Parties**"), against any and all losses, 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, arising out of or based upon or in any way relating to:

- a. this Agreement or any of the other Loan Documents or the execution or amendment thereof or in connection with transactions contemplated thereby;
- b. any act or omission of Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Loan, the Work, and/or the Project, the ownership, management, maintenance, use, or operation of the Property/Project, or the condition, environmental or otherwise, occupancy, possession, or conduct of the Property/Project or any part thereof;
- c. any lien or charge upon payments by Borrower to Lender, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on Lender in respect of any portion of the Project;
- d. any violation of any Legal Requirements, including, without limitation, any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof; or
- e. any inaccuracy in or breach of any representation or warranty of Borrower set forth in this Agreement or in any of the other Loan Documents.

In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected 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 the 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 participate in the investigation and defense thereof, and Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of Borrower if in its reasonable 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. Notwithstanding the foregoing, neither Borrower nor its partners shall be personally liable for any indemnified obligations which, prior to the Maturity Date, would constitute the repayment of principal on the Loan.

The rights of any persons to indemnity hereunder, including their rights to the payment of fees and reimbursement of expenses, shall survive the final payment of the Loan. The provisions of this Section 9 shall survive the termination of this Agreement. The provisions of this Section 9 shall in no way limit the Borrower's obligations to indemnify certain parties under Section 9 of the Regulatory Agreement.

10. **MISCELLANEOUS.**

10.1 **No Waiver; Consents.** Each waiver by Lender must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from Lender's delay in exercising or failure to exercise any right or remedy against Borrower or any security. Consent by Lender to any act or omission by Borrower shall not be construed as consent to any other or subsequent act or omission or as a waiver of the requirement for Lender's consent to be obtained in any future or other instance. All rights and remedies of Lender are cumulative.

10.2 **Purpose and Effect of Lender Approval.** Lender's approval of any matter in connection with the Loan shall be for the sole purpose of protecting Lender's security and rights. No such approval shall result in a waiver of any default of Borrower. In no event shall Lender's approval be a representation of any kind with regard to the matter being approved.

10.3 **No Commitment to Increase Loan.** From time to time, Lender may approve changes to the Plans and Specifications at Borrower's request, and may also require Borrower to make corrections to the Work, all on and subject to the terms and conditions of this Agreement. Borrower acknowledges that no such action or other action by Lender shall in any manner commit or obligate Lender to increase the amount of the Loan.

10.4 **No Third Parties Benefited.** This Agreement is made and entered into for the sole protection and benefit of Lender and Borrower and their permitted successors and assigns. No trust fund is created by this Agreement and no other persons or entities shall have any right of action under this Agreement or any right to the Loan Funds.

10.5 **Notices.** All notices, requests, demands or other communications to the respective parties hereto under this Agreement or any of the other Loan Documents (unless otherwise expressly stipulated in this Agreement) shall be deemed to have been duly given or made if addressed as follows:

If to Lender: Citicorp North America, Inc.
Citibank Community Development
One Sansome Street, 26th Floor
San Francisco, CA 94104
Attn: Loan Administrator
Loan Number: AHD-00646

If to Borrower: Mercy Housing California XXXVIII,
A California Limited Partnership
1360 Mission Street, #300
San Francisco, CA 94103
Attention: Asset Manager
Facsimile: (415) 335-7100

If to Investor Limited Partner:

U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
Attn.: John Schiffer
Phone: (314) 335-2640
Fax: (314) 335-2601

or to such other address or such other person as either party may from time to time hereafter specify to the other in writing delivered in the manner provided herein. Any notice, request, demand or other communication to be given or made hereunder may (except to the extent otherwise required by law) be given or made by registered or certified U.S. mail, return receipt requested with postage prepaid, or by personal service (including service by a reputable overnight courier service, such as FedEx, DHL or other comparable courier). Unless otherwise expressly stipulated in this Agreement, notices shall be deemed to have been given or made, (i) in the case of notice by mail on the earlier of the receipt date reflected on the return receipt or three (3) calendar days after deposit in the U.S. mail, and (ii) in the case of delivery by courier, by the execution by the addressee of the courier's delivery receipt.

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

10.7 **Actions.** Lender shall have the right, but not the obligation, to commence, appear in, and defend any action or proceeding which might affect its security or its rights, duties or liabilities relating to the Loan, the Property, or any of the Loan Documents. Borrower shall pay promptly on demand all of Lender's reasonable out-of-pocket costs, expenses, and legal fees and expenses of Lender's counsel incurred in those actions or proceedings.

10.8 **Attorneys' Fees.** If any lawsuit, reference or arbitration is commenced which arises out of or relates to this Agreement, the Loan Documents or the Loan, the prevailing party shall be entitled to recover from each other party such sums as the court, referee or arbitrator may adjudge to be reasonable attorneys' fees in the action, reference or arbitration, in addition to

costs and expenses otherwise allowed by law. In all other situations, including any matter arising out of or relating to any Insolvency Proceeding, Borrower agrees to pay all of Lender's costs and expenses, including attorneys' fees, which may be incurred in enforcing or protecting Lender's rights or interests. From the time(s) incurred until paid in full to Lender, all such sums shall bear interest at the rate of default interest provided for in the Note.

10.9 **Applicable Law.** This Agreement is governed by the laws of the State of California, without regard to the choice of law rules of that State.

10.10 **Heirs, Successors and Assigns; Participations.** The terms of this Agreement shall bind and benefit the heirs, legal representatives, successors and assigns of the parties; provided, however, that Borrower may not assign this Agreement or any Loan Funds, or assign or delegate any of its rights or obligations, without the prior written consent of Lender in each instance. Lender in its sole discretion may sell or assign participations or other interests in all or part of the Loan on the terms and subject to the conditions of the Loan Documents, all without notice to or the consent of Borrower and at Lender's sole cost and expense. Also without notice to or the consent of Borrower, Lender may disclose to any actual or prospective purchaser of any securities issued or to be issued by Lender, and to any actual or prospective purchaser or assignee of any participation or other interest in the Loan or any other loans made by Lender to Borrower (whether under this Agreement or otherwise), any financial or other information, data or material in Lender's possession relating to Borrower, the Loan, the Loan Documents, the Work, and/or the Property.

10.11 **Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement shall in no way affect any other provision.

10.12 **Interpretation.** Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Agreement are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Agreement. Time is of the essence in the performance of this Agreement by Borrower. The exhibits to this Agreement are hereby incorporated in this Agreement.

10.13 **Amendments; Corrections.** This Agreement may not be modified or amended except by a written agreement signed by the parties. Borrower hereby agrees that, upon written request from Lender, Borrower will execute any amendments, allonges, or other instruments as may be necessary, in Lender's reasonable determination, to correct any errors, inconsistencies, omissions, or other mistakes in this Agreement and/or the other Loan Document.

10.14 **Counterparts.** This Agreement and any attached consents or exhibits requiring signatures may be executed in counterparts, and all counterparts shall constitute but one and the same document.

10.15 **Language of Agreement.** The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any party.

10.16 **Integration and Relation to Loan Commitment.** The Loan Documents (a) integrate all the terms and conditions mentioned in or incidental to this Agreement, (b) supersede all oral negotiations and prior writings with respect to their subject matter, including any loan commitment of Lender to Borrower, and (c) are intended by the parties as the final expression of the agreement with respect to the terms and conditions set forth in those documents and as the complete and exclusive statement of the terms agreed to by the parties. No representation, understanding, promise or condition shall be enforceable against any party unless it is contained in the Loan Documents. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including any other Loan Document, the terms, conditions and provisions of this Agreement shall prevail.

10.17 **Jury Trial Waiver; Venue.**

IN ANY JUDICIAL ACTION OR PROCEEDING ARISING FROM OR RELATING TO THE LOAN OR THE LOAN DOCUMENTS, INCLUDING ANY ACTION OR PROCEEDING INVOLVING A CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT, TO THE EXTENT PERMITTED BY LAW, BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO REQUEST OR DEMAND A TRIAL BY JURY. VENUE FOR ANY ACTION RELATED TO THE LOAN OR LOAN DOCUMENTS SHALL BE IN AN APPROPRIATE COURT IN SAN FRANCISCO, CALIFORNIA SELECTED BY LENDER TO WHICH BORROWER HEREBY CONSENTS OR TO AN APPROPRIATE COURT IN ANOTHER VENUE HAVING JURISDICTION OVER THE PARTIES SELECTED BY LENDER TO WHICH BORROWER ALSO HEREBY CONSENTS.

10.18 **Exchange Information.** Borrower agrees that the Lender may exchange or disclose financial and other information about the Borrower or the Property or the Project with or to Investor Limited Partner, and any affiliates or other related entities of Lender or any prospective participants in the Loan. Borrower further agrees that Investor Limited Partner may exchange or disclose financial and other information about the Borrower or the Property to the Lender.

10.19 **Force Majeure.** If the Work is affected and delayed directly by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot, insurrection, acts of terrorism, or governmental regulation of the sale or transportation of materials, supplies, or labor, Borrower shall notify Lender in writing within ten (10) calendar days after the event causing the delay. So long as no Event of Default has occurred and is continuing, Lender shall extend the time for completing the Work by a period of time equal to the period of the delay, but not beyond Outside Construction Phase Date (as the same may be extended pursuant to Section 1.2.1 above). Such an extension shall not affect the time for performance of, or otherwise modify, any of Borrower's other obligations under the Loan Documents or the Outside Construction Phase Date.

10.20 **ERISA.** Borrower represents and warrants to Lender that Borrower is not an employee benefit plan or a governmental plan, or a party in interest of either of such plans, and that the funds used to acquire and/or develop the Property are not plan assets or subject to state laws regulating investments of, and fiduciary obligations with respect to, a governmental plan. As used herein, the terms "employee benefit plan," "party in interest," "plan assets" and

“governmental plan” shall have the respective meanings assigned to them in the Employee Retirement Income Security Act of 1974, as amended, and the Regulations promulgated in connection therewith (“ERISA”). Borrower covenants and agrees that during the term of the Loan, unless Lender shall have previously consented in writing, (i) it will take no action which would cause it to become an “employee benefit plan” as defined in Section 3(3) of ERISA, or a “governmental plan” as defined in Section 3(32) of ERISA, or a “plan” as defined in Section 4975(e)(1) of the Internal Revenue Code, as amended, or its assets to become “plan assets” as defined in 29 C.F.R. Section 2510.3-101, as amended, and (ii) it will not sell, assign or transfer its property, or any portion thereof or interest therein (other than a lease entered into in conformity with the provisions of the Loan Documents), to any transferee which does not execute and deliver to Lender its written assumption of the obligations of this covenant. Borrower further covenants and agrees to protect, defend, indemnify and hold Lender harmless from and against all loss, cost, damage and expense (including without limitation, all attorney’s fees and excise taxes, costs of correcting any prohibited transaction or obtaining an appropriate exemption) which Lender may incur as a result of Borrower’s breach of this covenant. The indemnity, representations and warranties contained herein shall survive repayment of the Loan and the extinguishment of the lien of the Deed of Trust by foreclosure or sale of the Property or other action in lieu thereof. Furthermore, the foregoing indemnity shall supersede any limitations on Borrower’s liability under any of the Loan Documents and shall constitute the personal recourse obligation of Borrower.

10.21 **Patriot Act.** Borrower is not now, nor has ever been (i) listed on any Government Lists, (ii) a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (September 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) under investigation by any Governmental Authority for alleged criminal activity. Borrower shall use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Property, including those relating to money laundering and terrorism. Lender shall have the right to audit Borrower’s compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Property, including those relating to money laundering and terrorism. In the event that Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then Lender may, at its option, cause Borrower to comply therewith and any and all costs and expenses incurred by Lender in connection therewith shall be immediately due and payable.

10.22 **Relationships With Other Lender Customers.** From time to time, Lender may have business relationships with Borrower’s customers, suppliers, contractors, tenants, partners, shareholders, officers or directors, or with businesses offering products or services to those of Borrower, or with persons seeking to invest in, borrow from or lend to Borrower. Borrower agrees that Lender may extend credit to such parties and take any action it deems necessary to collect the credit, regardless of the effect that such extension or collection of credit may have on Borrower’s financial condition or operations. Borrower further agrees that in no event will

Lender be obligated to disclose to Borrower any information concerning any other Lender customer.

10.23 **Disclosure to Title Company.** Without notice to or the consent of Borrower, Lender may disclose to any title insurance company insuring any interest of Lender under the Deed of Trust (whether as primary insurer, coinsurer or reinsurer) any information, data or material in Lender's possession relating to Borrower, the Loan, the Improvements or the Property.

LIST OF ATTACHED EXHIBITS

Exhibit A	Description of the Property
Exhibit B	Intentionally Omitted
Exhibit C	Conversion Conditions
Exhibit D	Other Funding Sources
Exhibit E	Builder's Risk Policy
Exhibit F	Authorized Borrower Representatives
Exhibit G	Project Budget and Cost Breakdown
Exhibit H	Environmental Reports
Exhibit I	Form of Requisition

[signatures begin on following page]

IN WITNESS WHEREOF, the party hereto has signed this Agreement as of the day and year first above written.

BORROWER:

Mercy Housing California XXXVIII
a California Limited Partnership

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its General Partner

By: *Valerie Agostino*
Valerie Agostino
Vice President

LENDER:

CITICORP NORTH AMERICA, INC.,
a Delaware corporation, as Agent under that
certain Master Agency Agreement dated as
of February 1, 2008, between Issuer and
Agent

By:

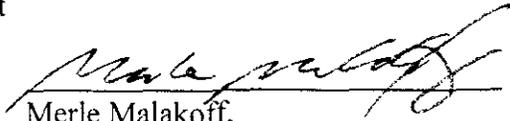

Merle Malakoff,
Vice President

Exhibit A

DESCRIPTION OF THE PROPERTY

Real property in the City of Pittsburg, County of Contra Costa, State of California, described as follows:

Exhibit B

[INTENTIONALLY OMITTED]

Exhibit C

CONVERSION CONDITIONS

This Exhibit C is attached to and incorporated in that certain Loan Agreement (the "**Agreement**") dated as of February 1, 2008 by and between Lender and Borrower. Unless otherwise provided herein, all capitalized terms shall have the defined meanings set forth, or referenced in the Agreement and its other Exhibits.

1. **CONVERSION TO PERMANENT PHASE.** The Conversion to the Permanent Phase, as provided in Section 1.2.3 of the Agreement, shall be conditioned upon the satisfaction of the Conversion Conditions as herein set forth on or before the Outside Conversion Date.
2. **SATISFACTION OF CONDITIONS.** All of the Conversion Conditions must be satisfied on or before the Outside Conversion Date.
3. **CONVERSION CONDITIONS.** The "**Conversion Conditions**" shall be defined as all of the conditions set forth in this Section 3 and in Section 4 of this Exhibit. Any of the Conversion Conditions which require any action on the part of Borrower shall constitute a covenant of Borrower under the Agreement. A Conversion Condition shall only be deemed waived by Lender as provided in Section 5 below.

3.1 **Work Related Conditions.** The Work is Completed, as such term is defined in Section 4.3.2 of the Agreement. Lender shall have the right to conduct inspections on its own behalf in order to confirm that Work has been Completed.

3.2 **Project Related Conditions.**

3.2.1 Borrower provides to Lender written certification that, as of the Conversion Date, there are no adverse environmental conditions affecting the Property in addition to those set forth in the Environmental Reports and that all remediation/mitigation plans and actions required, recommended, or otherwise set forth in any of the Environmental Reports have been completed in compliance with applicable Environmental Laws.

3.2.2 Not less than ninety percent (90%) of the non-manager units within the Project have been occupied for a period of ninety consecutive days.

3.2.3 All tenancies in the Project are in full compliance with all rent, tenant qualification, and other requirements set forth in the TCAC Regulatory Agreement, the Subordinate Loan Documents, and all other recorded restrictions, and any of the other Loan Documents.

3.2.4 The ratio of (i) Borrower's Projected Net Operating Income (as approved by Lender) for the Project for the one-year period beginning on the Conversion Date to (ii) the aggregate principal, interest, fees, debt service on the Loan and other payments that would be required to be paid under the Note during such period is equal to or greater than 1.15 to 1.00 (the "**Debt Service Coverage Ratio Requirement**"). "Projected Net Operating Income" means, (A) the average of all cash income actually received from normal operations of the Project

during the preceding three months (assuming a vacancy rate of 5%), less (B) the greater of (1) the projected monthly operating costs of the Project based on Lender's underwritten assumptions for such period as set forth in the appraisal for the Project, and (2) the average actual aggregate operating costs for such three month period, adjusted to account for seasonal variations, excluding expenses related to lease-up of the Project, and extraordinary, non-recurring expenses.

3.2.5 The Title Policy, together with the endorsements thereto, was issued in accordance with Lender's escrow instructions and there have been issued, during the course of the Work, all lien-free, continuation, date down, or other endorsements required pursuant to this Agreement and/or as may be requested by Lender.

3.2.6 The title company is prepared to issue, as of the Conversion Date, new continuation, date down, and lien-free endorsements to the Title Policy as required in Lender's escrow instructions, together with such additional endorsements as Lender may require.

3.2.7 The Lender has determined that the principal amount of the Note is not more than ninety percent (90.00%) of the stabilized and completed appraised value of the Project.

3.2.8 Except as otherwise expressly allowed in the Agreement and in any of the other Loan Documents and except for transfers of limited partnership interest to an affiliate of Investor Limited Partner, there has been no sale, transfer, encumbrance or other disposition with respect to any rights or interests in the Project which has not been approved by Lender.

3.2.9 Borrower shall have delivered to Lender evidence satisfactory to Lender, in its sole discretion, that the Investor Limited Partner has unconditionally funded the total amount of Capital Obligations required to be funded by Investor Limited Partner as of the Conversion Date, all in accordance with the time periods and other terms and conditions of the Partnership Agreement.

3.2.10 The Loan has been paid down to an amount (for purposes of this Exhibit "C," the "**Permanent Phase Loan Amount (Section 3.2.10 Calculation)**") equal to the lowest of (a) ninety percent (90.00%) of the fair market value of the Project, as determined by the Lender on the basis of an Appraisal; (b) an amount that will comply with the Debt Service Coverage Ratio Requirement; or (c) the Maximum Permanent Phase Loan Amount.

3.2.11 Borrower shall have delivered to Lender an opinion of counsel acceptable to Lender, or other written evidence acceptable to Lender, evidencing the fact that the entire Project is exempt from the payment of real estate taxes and assessment.

3.3 **Principal Amount Under Note Paid Down.** Borrower has delivered to Lender sufficient funds to pay down the principal amount outstanding under the loan to the Permanent Phase Loan Amount.

3.4 **Borrower Conditions.**

3.4.1 Borrower provides to Lender written certification that, as of the Conversion Date, (a) all of Borrower's representations and warranties in the Agreement and in

the other Loan Documents are true and correct, (b) the Agreement and the other Loan Documents are in full force and effect, (c) the Agreement and the other Loan Documents have not been amended or modified without Lender's consent, (d) there is no breach or Event of Default on the part of Borrower under the Agreement and the other Loan Documents, nor has there occurred any event which, with notice and/or the passage of time, would constitute a such a breach or Event of Default.

3.4.2 There has been no change in the structure of, or transfer of interests in, Borrower or the General Partner, other than a transfer of interests to an affiliate of Investor Limited Partner or otherwise expressly allowed in the Agreement and in any of the other Loan Documents, which, if required to be approved by the Lender, has not been approved by Lender.

3.4.3 Borrower provides Lender evidence reasonably satisfactory to Lender that the Property has been exempted from property tax pursuant to Section 214(g) of the California Revenue and Taxation Code.

3.5 **Other Funding Conditions.**

3.5.1 All Other Funding sources have been fully or concurrently funded into the Project in the amounts and subject to the terms and provisions set forth in Exhibit D to the Agreement, except as otherwise amended or modified with the approval of Lender.

3.5.2 There are sufficient funds from the Other Funding sources to pay all amounts due and owing under the Note to and to reduce the outstanding principal balance of the Note to the Permanent Phase Loan Amount upon the Conversion to the Permanent Phase.

3.5.3 There are sufficient funds from the Other Funding sources to fund operating, replacement, and/or other reserves, if any, required to be established under the Subordinate Loan Documents and/or the Approved Partnership Agreement, to the extent such reserves are required to be funded on or before the Conversion to the Permanent Phase.

4. **OTHER CONDITIONS.** Notwithstanding Section 1 of this Exhibit, in the event all of the Conversion Conditions set forth in Sections 3.1 thru 3.5 above have been satisfied on or before the Outside Conversion Date, the Conversion to the Permanent Phase shall nevertheless not occur if:

- (a) there is an uncured breach or Event of Default on the part of Borrower under this Agreement, the Note, and/or any of the other Loan Documents, or has there occurred any event which, with notice and/or the passage of time, would constitute such a breach or Event of Default; or,
- (b) any of Borrower's representations and warranties in the Agreement and the other Loan Documents are not materially true and correct; or,
- (c) there has occurred any material adverse change in Borrower's financial condition from the date of the Agreement which would materially impair the ability of Borrower to perform its obligations under the Note and/or any of the other Loan Documents; or,

- (d) there has been filed by or against Borrower or the General Partner any petition in bankruptcy or insolvency or for the reorganization or the appointment of a receiver or trustee or the making by Borrower of an assignment for the benefit of creditors or the filing of a petition for arrangement; or
- (e) there is any threatened litigation against Borrower or the filing of any such litigation by or against Borrower which in the reasonable discretion of Lender materially and adversely affects or impairs the ability Borrower to perform its obligations under the Note and/or any of the other Loan Documents.

5. **WAIVER.** The Conversion Conditions are for the sole benefit of Lender. A Conversion Condition or any other provision under this Exhibit may only be waived by Lender and shall only be deemed so waived if such waiver is in a writing by Lender which expressly states that a specific Conversion Condition or provision hereof is being waived. In no event shall any act or omission on the part of Lender be construed as a waiver nor serve to later stop Lender's right to require the satisfaction of a Conversion Condition or the compliance with a provision hereof.

6. **APPROVALS.** As to matters referenced herein which require the consent or approval by Lender, such consent or approval may be granted or denied in Lender's sole discretion and no consent or approval shall be effective unless the same is expressly set forth in writing from Lender. In no event shall any other act nor any omission on the part of Lender be construed as a consent or approval nor serve to later estop Lender's right to withhold its consent or approval as to a particular matter.

Exhibit D

REQUIRED TERMS OF OTHER FUNDING SOURCES

1. **COUNTY LOAN:**
 - a. Minimum Funding: \$1,500,000.
 - b. Disbursement: Funded in full prior to the Initial Work Disbursement.
 - c. Repayment: From residual receipts only.
 - d. Subordination: Subordinated to Loan at Loan Closing.
 - e. 55 years from recordation of HCD deed of trust; outside date of December 31, 2064
2. **PITTSBURG RDA LOAN:**
 - a. Minimum Funding: \$4,952,854.
 - b. Disbursement: Funded in full prior to the Initial Work Disbursement.
 - c. Repayment: From residual receipts only.
 - d. Subordination: Subordinated to Loan at Loan Closing.
 - e. Term: 55 years from Certificate of Occupancy; maximum 65 years
3. **AHP LOAN:**
 - a. Minimum Funding: \$378,000
 - b. Disbursement: Within 6 months of Closing Date.
 - c. Repayment: Non-amortizing
 - d. Term: 55 years from the funding of the HCD Loan.
4. **INVESTOR EQUITY:**
 - a. Minimum Funding: A minimum contribution by Investor Limited Partner of Capital Obligations equal to \$10,630,175 (the "**Minimum Investor Equity**") with not less than \$600,000 to be funded on or before the funding of the Initial Work Disbursement, not less than \$1,000,000 to be funded upon completion of 50% of construction and not less than \$8,630,175 on or before the Conversion Date ("**Minimum Conversion Contribution**"), subject to the satisfaction of the funding conditions set forth in the Amended Partnership Agreement.

- a. Subordination: Any regulatory agreement or other rent or occupancy restrictions imposed in connection with the Tax Credits will be subordinate to the Deed of Trust.

Exhibit E

BUILDER'S RISK POLICY

This Exhibit is attached to and incorporated in that certain Loan Agreement dated as of February 1, 2008 by and between Lender and Borrower. Unless otherwise provided herein, all capitalized terms shall have the defined meanings set forth, or referenced in the Agreement and its other Exhibits.

Builder's Risk Policy Requirements

Prior to commencing the Work, Borrower shall provide, maintain and keep in force the following insurance: Builder's "all risk" insurance, including theft, to insure all buildings, machinery, equipment, materials, supplies, temporary structures and all other property of any nature on-site, off-site and while in transit which is to be used in fabrication, erection, installation and completion of the Project, and to remain in effect until the entire Project has been completed and accepted by Borrower and Lender. Such insurance shall be provided on a replacement cost value basis and shall include foundations, other underground property, tenant improvements and personal property. Builders "all risk" insurance shall (i) be on a non-reporting, completed value, form, (ii) cover soft costs, debris removal expense (including removal of pollutants), resulting loss and damage to property due to faulty or defective workmanship or materials and error in design or specification, loss while the property is in the care, custody and control of others to whom the property may be entrusted, (iii) provide that Borrower can complete and occupy the premises without further written consent from the insurer, (iv) cover loss of income resulting from delay in occupancy and use of the premises due to loss, and (v) not exclude losses due to explosions, collapses and underground hazards. If the premises are located in an area identified by the United States Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, as amended, Borrower shall also keep the improvements and the equipment located thereon insured against loss by flood in an amount at least equal to the principal amount of the Loan outstanding or the maximum limits of coverage available with respect to the Project, whichever is less. Such insurance shall also cover continuing expenses not directly involved in the direct cost of construction or renovation, including interest on money borrowed to finance construction or renovation, advertising, promotion, real estate taxes and other assessments, the cost of renegotiating leases, and other expenses incurred as the result of property loss or destruction by the insured peril. Such coverage shall not contain any monthly limitation.

Exhibit F

AUTHORIZED BORROWER REPRESENTATIVES

Valerie Agostino, Vice President

Exhibit G

PROJECT BUDGET AND COST BREAKDOWN

[See Attached]

Exhibit H

ENVIRONMENTAL REPORTS

Exhibit I

FORM OF FUNDING REQUISITION

To: Citicorp North America, Inc., a Delaware corporation, c/o Citicorp North America, Inc.

From: Mercy Housing California XXXVIII, a California Limited Partnership

Re: **EAST LELAND FAMILY APARTMENTS**

Requisition No. _____

The undersigned (the "**Borrower**") hereby requests payment, from the Borrower's Funds Account for the Project identified above, the total amount shown below to the order of the payee named below, as payment or reimbursement for costs incurred or expenditures made in connection with said Project. The payee(s), the purpose and the amount of the disbursement requested are as follows:

<u>Payee</u>	<u>Purpose</u>	<u>Amount</u>
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Total \$

The undersigned hereby certifies as follows:

1. Upon the disbursement of all amounts to be disbursed from the Borrower's Funds Account, at least 95% of the sum of all such payments requisitioned by or for the account of the Borrower from the Borrower's Funds Account and paid from proceeds of the Bonds shall be allocated to costs, that: (i) were paid or incurred by or on account of the Borrower or any Related Person (as defined in Section 147(a)(2) of the Code) on or after the 60th day prior to the Inducement Date; (ii) are chargeable to the capital account for the residential units of the Project or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs, within the meaning of United States Treasury Regulation 1.103-8(a)(1); (iii) if any portion of the Project is being constructed or rehabilitated

by a Related Person of the Borrower (whether as a Contractor or a subcontractor), include only the actual out-of-pocket costs incurred by such Related Person in constructing or rehabilitating the Project (or any portion thereof) and not, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the acquisition, construction and development of the Project or payments received by such related person due to early completion of the Project (or any portion thereof); (iv) do not constitute Costs of Issuance or leasing commissions, costs of advertising for the Project or other costs related to the rental of units in the Project or management fees for the management and operation of the Project after the Funding Date; and (v) are used to finance residential rental property described in Section 1.103-8(b) of the United States Treasury Regulations.

2. The obligation mentioned herein has been properly incurred and is a proper charge against the Borrower's Funds Account, and was necessary in connection with the acquisition, construction and development of the Project. None of the items for which payment is requested has been reimbursed previously from the Borrower's Funds Account, and none of the payments herein requested will result in a breach of the representations and agreements in Sections 1.7, 4.2 or 5 of the Loan Agreement relating to the Project.

Dated: _____, _____.

“BORROWER”

Mercy Housing California XXXVIII,
a California Limited Partnership

By: Mercy Housing Calwest,
a California nonprofit public benefit
corporation,
its General Partner

By: _____
Valerie Agostino
Vice President

RCVD APR 7 '08

**PROMISSORY NOTE
FLOATING RATE LOAN
CONVERTING TO FIXED RATE LOAN**
(East Leland Family Apartments)

Date: February 1, 2008

\$14,500,000

Property Location: 2555 East Leland Road, Pittsburg, California

FOR VALUE RECEIVED, the undersigned, Mercy Housing California XXXVIII, a California Limited Partnership ("**Borrower**"), promises to pay to the order of Citicorp North America, Inc., a Delaware corporation, acting in its capacity as agent for the County of Contra Costa, a political subdivision of the State of California ("**Issuer**"), under and pursuant to the Master Agency Agreement dated as of February 1, 2008, between the Issuer and Agent ("**Agency Agreement**"), at One Sansome Street, 26th Floor, San Francisco, California 94103 or at such other place as Agent shall from time to time designate in writing; the principal sum of Fourteen Million Five Hundred Thousand and No/100ths Dollars (\$14,500,000), with interest on the unpaid principal balance of this Note at the rate or rates of interest set forth below, all subject to the terms and conditions of this Note. Issuer and its successors in interest in and to this Note, acting through Agent during the term of Agent's agency and acting on their own behalf or through other agents thereafter, are referred to in this Note as "**Lender**". Certain terms used but not specifically defined herein are defined in that certain Master Pledge and Assignment (the "**Master Pledge and Assignment**") dated as of February 1, 2008, by and among Issuer, Agent and Citicorp Municipal Mortgage Inc., as initial holder ("**Holder**") of the Bonds, and in that certain Loan Agreement dated as of even date herewith, by and between Borrower and Agent ("**Loan Agreement**"). All principal, interest and other sums due hereunder shall be payable, without offset or deduction, in lawful money of the United States.

This "**Note**" is given by Borrower in connection with that certain Loan (the "**Loan**") being made by Lender in favor of Borrower pursuant to the Loan Agreement. This Note, the Loan Agreement, the Deed of Trust (as described in Section 8 below), and any and all other documents and instruments which have been executed and delivered in connection with the Loan are hereinafter collectively referred to as the "**Loan Documents**." The outstanding principal balance of this Note shall, from time to time, be equal to all amounts advanced on the Loan, less the amount of any principal payments or prepayments which have been made hereunder. Capitalized terms not defined herein shall have the meanings set forth in the Loan Agreement.

1. REGULAR INTEREST.

- 1.1. **Prior to the Conversion Date.** Except as otherwise expressly provided in this Note, prior to the Conversion Date (as defined in Section 1.2.3 of the Loan

Agreement), "Regular Interest" shall accrue on the unpaid principal balance of this Note outstanding from time to time at a floating rate (the "**Floating Interest Rate**") equal to the SIFMA Index Rate, plus a spread equal to 1.25%. As used herein, "SIFMA Index Rate" shall mean a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association ("**SIFMA**"), formerly The Bond Markets Association, or any Person acting in cooperation with or under the sponsorship of SIFMA and acceptable to the Agent. The initial interest rate charged under this Note shall be based upon the first publication day for the SIFMA Index Rate preceding the Loan Closing. Thus, the SIFMA Index Rate is a floating rate which shall change each time that the SIFMA Index Rate changes. If such index is no longer produced by Municipal Market Data, the interest rate will be determined as if the parties had specified the "**S&P Weekly High Grade Index**", which means that index (formerly the J J Kenny Index) maintained by Standard & Poor's Securities Evaluations Inc. for tax-exempt bonds having the same maturity as the Bonds, as published on the day that is one Business Day immediately preceding the Reset Date. "Reset Date" is defined as weekly, every Thursday (or any other day specified by The Bond Market Association), or, if any Thursday is not a Business Day, the next succeeding Business Day. If, and for so long as, the S&P Weekly High Grade Index is not maintained by Standard & Poor's Securities Evaluations Inc., Wells Fargo Bank, N.A., shall serve as indexing agent (in such capacity, the "**Indexing Agent**"), and the Indexing Agent shall calculate and notify the Paying Agent by the close of business every Wednesday of the week (effective as of the immediately succeeding Thursday), calculated on the basis of an index that is alternative to the S&P Weekly High Grade Index (the "**Alternate Index**"). The Alternate Index will be comprised of those series of bonds that the Indexing Agent reasonably believes are representative of the tax-exempt variable rate demand note market, each satisfying the following criteria: (A) in series having an outstanding principal amount of at least \$10,000,000; (B) rated in the highest short-term rating agency category by Moody's Investors Service, Inc., and Standard & Poor's Ratings Services, A Division of The McGraw-Hill Companies, Inc.; (C) issued by issuers most closely resembling the component issuers selected by Municipal Market Data in most recently establishing the SIFMA Index; (D) subject to tender by the holders thereof for purchase on not more than seven days' notice; and (E) the interest on which is (i) variable on a weekly basis, (ii) payable monthly, (iii) excludable from the gross income of the holders thereof for federal income tax purposes under the Code, and (iv) not subject to an "alternative minimum tax" or similar tax under the Code, unless interest on all tax-exempt bonds is subject to such tax. Interest prior to the Conversion Date is calculated on a 365-day year basis on interest due for the actual number of days elapsed.

- 1.2. **From and After the Conversion Date.** Interest from and after the Conversion Date will be calculated on the basis of a 360-day year consisting of twelve (12) months containing thirty (30) days each.

Except as otherwise expressly provided in this Note or the Loan Agreement, "Regular Interest" shall accrue on the unpaid principal outstanding hereunder from the Conversion Date (as defined in Section 1.2.3 of the Loan Agreement) through the Maturity Date (defined below), or the earlier payment of this Note in accordance with the terms hereof, whether upon acceleration or otherwise, at a fixed annual rate (the "**Fixed Interest Rate**") calculated as set forth below:

- (i) If the outstanding principal balance of this Note on the Conversion Date following Conversion is less than or equal to \$950,000 or such other amount as may be set forth in the Rate Lock Agreement (the "**Locked Amount**"), the Fixed Interest Rate shall be 5.625% per annum, or such other amount as may be set forth in the Rate Lock Agreement (the "**Locked Rate**");
- (ii) If the outstanding principal balance of this Note on the Conversion Date following Conversion is greater than \$950,000, the Fixed Interest Rate shall be a single interest rate equal to the weighted average of (a) the Locked Rate times the Locked Amount and (b) the Index (defined below) plus the Margin (defined below), times the remaining outstanding principal balance of the Note on such date;

As used herein, "**Index**" means the AAA Municipal Market Data General Obligation Yield (Uninsured) for a 30 year maturity published by Municipal Market Data, Inc., a Thompson Financial Services Company, or its successor and issued on Wednesday of each week, or if such Wednesday is not a U.S. Government Securities Business Day, the next succeeding U.S. Government Securities Business Day; provided, however, that, if such index is no longer published by Municipal Market Data, Inc., a Thompson Financial Services Company, or its successor, then "**Index**" shall mean a rate equal to the Index for the most recent preceding MMD Reset Date until another reasonably comparable index is selected by the Agent. "**MMD Reset Date**" means Wednesday of each week, or if such Wednesday is not a U.S. Government Securities Business Day, the next succeeding U.S. Government Securities Business Day. "**U.S. Government Securities Business Day**" means any day except for a Saturday, Sunday or a day on which The Bond Market Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. government securities. "**Margin**" means one and fifty one-hundredths of one percent (1.50%).

2. PAYMENTS.

2.1. Monthly Payments Prior To Conversion Date.

- (a) Prior to the Conversion Date, interest only payments shall be due and payable on the Friday immediately preceding each Interest Payment Date, or if such Friday is not a Business Day, the next succeeding Business Day (each, a "**Pre-Conversion Loan Payment Date**"), commencing March 28, 2008, for the period commencing

on the Interest Payment Date (as defined in the Master Pledge and Assignment) immediately prior to such Pre-Conversion Loan Payment Date and ending on the day immediately preceding the next succeeding Interest Payment Date (the "**Loan Month**"), and continuing on each Pre-Conversion Loan Payment Date thereafter until the Conversion Date; provided that the first Loan Month shall commence on the Closing Date (as defined in the Master Pledge and Assignment) and end on the day immediately preceding the first Interest Payment Date.

- (b) Insofar as the Floating Interest Rate will not be actually determinable for that portion of a given Loan Month following the applicable Pre-Conversion Loan Payment Date occurring during such Loan Month, Borrower shall pay, on each Pre-Conversion Loan Payment Date, interest for such Loan Month calculated (a) for the period of the Loan Month for which such Floating Interest Rate is actually determinable, at a rate per annum equal to the actual Floating Interest Rate in effect from time to time during such period, and (b) for the balance of such Loan Month (the "**Assumed Interest Rate Period**" during such Loan Month), at an assumed rate per annum equal to the Floating Interest Rate in effect on the last day of the period described in clause (a), immediately above. If, following the determination of the actual Floating Interest Rate payable for any such Assumed Interest Rate Period occurring in a Loan Month, it is determined that the actual Regular Interest that was due and payable on account of such Assumed Interest Rate Period during such Loan Month exceeded the interest payment actually made by Borrower on account of such Assumed Interest Rate Period, Borrower shall, on the last day of such Loan Month, pay to Lender an amount equal to such excess. In addition, so long as no Event of Default shall have occurred and be continuing, if, following the determination of the actual Floating Interest Rate payable for any such Assumed Interest Rate Period occurring in a Loan Month, it is determined that Borrower made a payment in excess of the actual Regular Interest that was due and payable on account of such Assumed Interest Rate Period during such Loan Month, any excess amount so paid by Borrower shall be credited towards the next ensuing payment of Regular Interest (or, on the Conversion Date only, remitted to Borrower with the consent of Servicer).

- 2.2. **Monthly Payments From and After the Conversion Date.** Commencing on the twenty-fifth (25th) day of the first whole month following the Conversion Date, or if such twenty-fifth (25th) day is not a Business Day, the next succeeding Business Day (the "**First Amortization Payment Date**"), and continuing thereafter on the twenty-fifth (25th) day of each month or the next succeeding Business Day thereafter (each, a "**Regular Loan Payment Date**"), Borrower shall make equal monthly payments of combined principal and Regular Interest, for the period commencing on the immediately preceding Interest Payment Date (as defined in the Master Pledge and Assignment) on which interest was paid on the Bonds, and ending on the day immediately preceding the next succeeding Interest Payment Date (the "**Regular Loan Month**"), until the entire indebtedness evidenced hereby is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable upon the Maturity Date. The amount of equal monthly combined principal and interest payments to be

paid for each Regular Loan Month under this Section 2.2, commencing on the First Amortization Payment Date and continuing on each Regular Loan Payment Date thereafter through and including the Maturity Date, shall be an amount equal to the monthly payment of principal and interest necessary to fully amortize the principal amount of the Bonds outstanding on the Conversion Date (calculated after the payment of any mandatory payment of principal required under Section 2.3b, below), together with interest at the Fixed Interest Rate, over a two hundred forty (240) month period consisting in each year of twelve (12) months containing thirty (30) days each.

2.3. **Mandatory Payments on Conversion Date.**

- (a) If the Conversion Conditions have not been fully satisfied on or before the Outside Conversion Date, then the entire outstanding principal balance of this Note, together with all accrued and unpaid interest and other amounts owing under the Loan Documents, shall become immediately due and payable in full on the Outside Conversion Date.
- (b) In any event, Borrower shall pay to Lender, on or before the Conversion Date, on account of the principal of the Loan, an amount sufficient to reduce the outstanding principal balance of this Note, on the Conversion Date, to the "Permanent Phase Loan Amount" (as calculated by Lender pursuant to the Loan Agreement).

2.4. **Other Mandatory Payments.** Borrower shall pay to Lender, in sufficient time to allow Lender to make timely payments on the Bonds, all amounts from time to time due and payable on the Bonds.

2.5. **Maturity Date.** The "Maturity Date" shall be earlier of (i) the last day of the two hundred fortieth (240th) month following the First Amortization Payment Date and (ii) April 1, 2030. Notwithstanding the foregoing, upon any acceleration of the amounts outstanding under this Note pursuant to a Default (as defined in Section 6 below), or in connection with any other acceleration right of Lender set forth in this Note, the Loan Agreement, or in any of the other Loan Documents, the Maturity Date shall become the date of such acceleration.

2.6. **Acceleration.** Notwithstanding the foregoing, all indebtedness evidenced by this Note shall become due prior to the Maturity Date upon any acceleration of this Note upon the occurrence of a Default (as defined in Section 6 below) or in connection with any other acceleration right of Lender set forth in this Note, the Loan Agreement, or in any of the other Loan Documents.

3. **PREPAYMENTS PRIOR TO CONVERSION DATE.**

Borrower may prepay a portion of the outstanding principal balance of this Note at any time on or prior to the Conversion Date, upon thirty (30) days prior written notice to Lender and Agent, which prepayment shall be without any additional prepayment premium, fee, or other charge (other than any amount payable under the Rate Lock

Agreement); provided that no such prepayment prior to the Conversion Date shall reduce the Loan balance to an amount less than the Locked Amount. Prepayments shall be applied against the outstanding principal balance of this Note and shall not extend or postpone the due date of any subsequent monthly payments or change the amount of such payments, unless Lender and Agent shall agree otherwise in writing. Any partial prepayments must be made on the date monthly payments are due and be in the amount of that part of one or more monthly payments which would be applicable to principal.

4. PREPAYMENTS FROM AND AFTER CONVERSION DATE.

4.1. **Definitions.** As used in this Note, the terms listed below shall have the following meanings:

- (a) **Monthly Note Rate** shall mean one-twelfth (1/12) of the annual Fixed Interest Rate of this Note then in effect, expressed as a decimal calculated to five digits.
- (b) **Prepayment Date** shall mean the date on which the prepayment is made.
- (c) **Yield Rate** means the AAA Municipal Market Data General Obligation Yield (Uninsured) for a tenor equal to the number of years then remaining prior to the scheduled Maturity Date (rounded upwards to the next whole number of years), as published by Municipal Market Data, Inc., a Thompson Financial Services Company, or its successor and issued on Wednesday of each week, or if such Wednesday is not a U.S. Government Securities Business Day, the next succeeding U.S. Government Securities Business Day; provided, however, that, if such index is no longer published by Municipal Market Data, Inc., a Thompson Financial Services Company, or its successor, then "Yield" shall mean a rate equal to the Yield for another reasonably comparable index is selected by the Agent. "U.S. Government Securities Business Day" means any day except for a Saturday, Sunday or a day on which The Bond Market Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. government securities. Solely for purposes of this subsection 4.1.c., the term "years" means any period of 365 consecutive days.
- (d) **Assumed Reinvestment Rate** shall mean one twelfth (1/12) of the Yield Rate as of the date five (5) Business Days (defined as any day other than Saturday or Sunday or any other day on which banks are not required or authorized to close in California) prior to the Prepayment Date, expressed as a decimal calculated to five (5) digits.
- (e) **Present Value Factor** shall mean the factor that discounts to present value the costs resulting to Lender from the difference in interest rates during the months remaining in the Yield Maintenance Period, using the Assumed Reinvestment Rate as the discount rate, with monthly compounding, expressed numerically as follows:

$$\frac{1 - \left(\frac{1}{1 + ARR} \right)^n}{ARR}$$

n = number of months remaining in Yield Maintenance Period

ARR = Assumed Reinvestment Rate

4.2. **Yield Maintenance Period.**

(a) **Prepayment.** Between the Conversion Date and the scheduled Maturity Date (the “**Yield Maintenance Period**”), upon giving Lender, Agent and Paying Agent, if any, no less than thirty (30) days prior written notice, Borrower may prepay all of the unpaid principal balance of this Note on a scheduled monthly payment date by paying a prepayment premium in addition to the payment of principal, accrued interest and any other sums due Lender at the time of the prepayment. Such prepayment premium shall equal the present value of any costs to Lender resulting from the difference in interest rates between the date of this Note and the date on which the prepayment is made, as calculated pursuant to Section 4.2b. immediately below.

(b) **Amount of Prepayment Premium.** The prepayment premium payable upon a prepayment during the Yield Maintenance Period shall be calculated as: (i) the amount of principal being prepaid; multiplied by (ii) the excess, if any, of the Monthly Note Rate over the Assumed Reinvestment Rate; multiplied by (iii) the Present Value Factor. Notwithstanding the foregoing, in no event shall the amount of a prepayment premium due during the Yield Maintenance Period be less than one percent (1%) of the amount of principal being prepaid. In the event that no yield is published on the applicable date for the U.S. Treasury Security used to determine the Assumed Reinvestment Rate, then the Agent shall select the non-callable U.S. Treasury Security maturing in the same year as the U.S. Treasury Security specified above with the lowest yield published in the Wall Street Journal as of the applicable date. If the publication of such yield rates in the Wall Street Journal is discontinued for any reason, Agent shall select a security with a comparable rate and term to the U.S. Treasury Security used to determine the Assumed Reinvestment Rate. The selection of an alternate security pursuant to this Section shall be made in Agent’s sole discretion and shall be conclusive.

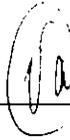
4.3. **Prepayment for Principal Reduction.** Except as provided in Section 4.5 below, Borrower shall also pay a prepayment premium (as calculated in accordance with 4.2b. above) with respect to any other reduction in the principal balance of this Note during the Yield Maintenance Period (a “**Principal Reduction**”) which reduces the principal balance of this Note to less than the scheduled principal balance as of the date such Principal Reduction is made, including, without limitation, any Principal Reduction resulting from the acceleration by Lender of the unpaid principal balance of this Note pursuant to the acceleration provisions

contained in this Note and/or the Deed of Trust, upon Default by Borrower, including without limitation, violation by Borrower of the restrictions set forth in the Deed of Trust on the sale, transfer or encumbrance of the property or transfer of a beneficial interest in Borrower. Notwithstanding anything herein to the contrary, no prepayment premium shall be due with respect to any Principal Reduction resulting from the exercise of Lender's option to apply insurance proceeds or condemnation awards to the unpaid principal balance of this Note pursuant to the terms of the Deed of Trust.

- 4.4. **Prepayment Premium Upon Default.** Borrower recognizes that a Default by Borrower causing a prepayment of this Note during the Yield Maintenance Period will result in Lender incurring additional expense in servicing and enforcing this Note, loss of the use of the money due and interest accruing thereon, and frustration or impairment of Lender's ability to meet its commitments to third parties. Borrower agrees that, in the event of any such prepayment caused by Borrower's Default, Lender shall be entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower therefore acknowledges and agrees that the prepayment premiums (as calculated in accordance with 4.2b, above) set forth herein represent reasonable estimates of such damages to Lender which sum Borrower agrees to pay upon demand. Borrower acknowledges that the prepayment premium provisions contained herein are a material part of the consideration for this Note.
- 4.5. **During Last Ninety (90) Days.** Notwithstanding the foregoing and provided that Borrower is not in Default under this Note, but subject to the requirements of Section 2.4(a), the Loan Agreement, the Deed of Trust, or any of the other Loan Documents, there shall be no Prepayment Premium imposed in the event of a prepayment made within the ninety (90) days prior to the scheduled Maturity Date.
- 4.6. **Waiver.** BORROWER HEREBY EXPRESSLY (i) WAIVES ANY RIGHTS IT MAY HAVE UNDER CALIFORNIA CIVIL CODE § 2954.10 TO PREPAY THIS NOTE, IN WHOLE OR IN PART, WITHOUT PENALTY, UPON ACCELERATION OF THE MATURITY OF THIS NOTE DURING THE YIELD MAINTENANCE PERIOD, AND (ii) AGREES THAT IF A PREPAYMENT OF ANY OR ALL OF THIS NOTE IS MADE, FOLLOWING ANY ACCELERATION OF THE MATURITY OF THIS NOTE BY LENDER DURING THE YIELD MAINTENANCE PERIOD ON ACCOUNT OF ANY TRANSFER OR DISPOSITION AS PROHIBITED OR RESTRICTED BY PROVISIONS OF THE DEED OF TRUST, THEN BORROWER SHALL BE OBLIGATED TO PAY, CONCURRENTLY THEREWITH, AS A PREPAYMENT PREMIUM, THE APPLICABLE SUM SPECIFIED IN THIS NOTE. BORROWER ACKNOWLEDGES THAT THE PREPAYMENT PREMIUM PROVISIONS CONTAINED HEREIN ARE A MATERIAL PART OF THE CONSIDERATION FOR THIS NOTE. BY INITIALING THIS PROVISION IN THE SPACE PROVIDED BELOW, BORROWER HEREBY DECLARES THAT LENDER'S AGREEMENT TO MAKE THE SUBJECT

LOAN AT THE INTEREST RATE AND FOR THE TERM SET FORTH IN THIS NOTE CONSTITUTES ADEQUATE CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY BORROWER, FOR THIS WAIVER AND AGREEMENT.

Borrower's Initials: _____



- 4.7. **Generally.** Prepayments shall be applied against the outstanding principal balance of this Note and shall not extend or postpone the due date of any subsequent monthly payments or change the amount of such payments, unless Lender shall agree otherwise in writing. Any partial prepayments, to the extent permitted hereunder, must be made on the date monthly payments are due and be in the amount of that part of one or more monthly payments which would be applicable to principal.
5. **LATE CHARGES.** Borrower recognizes that Default in making the monthly payments when due hereunder will result in Lender incurring additional expense in servicing the Loan, in loss to Lender of the use of the money due and in frustration to Lender in meeting its loan commitments. Borrower agrees that for any reason, any monthly installment of interest shall not be received by Lender within fifteen (15) calendar days of the date such installment is due, Lender shall be entitled to damages for the detriment caused thereby. Borrower therefore agrees to pay Lender a late charge of five percent (5%) of such installment, or the maximum amount allowed by law, whichever is less, such late charge to be immediately due and payable without notice or demand by Lender. Borrower will pay this late charge only once for each late payment. This Section and the amount for which it provides shall not limit Lender's right, under this Note, the Deed of Trust, or otherwise, to compel prompt performance thereunder. Lender's failure to collect such late charge shall not constitute a waiver of Lender's right to require payment of such late charge for past or future Defaults. The late charge shall be in addition to all other rights and remedies available to Lender upon the occurrence of a default under the Loan Documents. Any such late charge shall be a payment with respect to the Loan but not the Bonds (and shall be made solely for the account of the Agent or the holder of the Bonds, as applicable). **BORROWER ACKNOWLEDGES AND AGREES THAT IT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO FIX THE ACTUAL DAMAGES RESULTING FROM BORROWER'S FAILURE TO PAY AMOUNTS WHEN DUE AND THEREFORE, SUBJECT TO THE PROVISIONS OF SECTION 11(e), HEREOF, SHALL PAY SUCH LATE CHARGE NOT AS A PENALTY, BUT FOR THE PURPOSE OF DEFRAYING THE EXPENSES INCIDENT TO SERVICING THE LOAN AND HANDLING AMOUNTS PAST DUE. FURTHER, BORROWER AGREES THAT A CHARGE OF FIVE PERCENT (5%) OF EACH DELINQUENT PAYMENT HEREUNDER IS A REASONABLE ESTIMATE OF THE DAMAGES TO LENDER. THE LATE**

CHARGES SHALL BE PAYABLE BY BORROWER WITHOUT PREJUDICE TO THE RIGHTS OF LENDER TO COLLECT ANY OTHER AMOUNTS TO BE PAID UNDER THIS NOTE OR THE DEED OF TRUST (INCLUDING, WITHOUT LIMITATION, LENDER'S RIGHT TO COLLECT DEFAULT INTEREST).

Borrower's Initials:

JA

6. **DEFAULT AND REMEDIES.**

- (a) There shall be a "Default" under this Note if (i) any monthly installment of principal and/or interest shall not be received by Lender within five (5) calendar days of the date such installment is due, (ii) any other payment of Regular Interest or default interest, or any required payment, repayment or prepayment of the principal of this Note (including, but not limited to, payment of any balloon payment due and owing on the Conversion Date, the Outside Conversion Date and/or Maturity Date) shall not be received by Lender within five (5) calendar days of the date such payment is due, (iii) any other payment of any kind or nature whatsoever owed by Borrower under this Note or under any of the other Loan Documents, whether owed to Lender, Lender's successors or assigns, or to a third party, is not paid when due and remains unpaid for a period of at least five (5) days following Lender's written notice or, if no due date is specified, then within five (5) days after the Lender's written notice or demand, or (iv) there occurs any "Event of Default" as defined in the Loan Agreement or any default under the Deed of Trust. Upon a Default the entire principal amount outstanding hereunder and accrued interest thereon, together with Lender's costs and attorneys' fees incurred in collecting and/or enforcing payment hereof shall, without notice or demand, at once become due and payable, at the option of Lender.
- (b) Upon and during any Default under this Note (including, without limitation, a failure by Borrower to pay following Lender's acceleration of all amounts due under this Note pursuant to Section 6.a above), the Deed of Trust or any other Loan Document, the Interest Rate under this Note will, at the option of Lender, increase to a rate two percent (2%) above the Interest Rate otherwise payable under this Note. Borrower recognizes that: (i) any default in making any installment or other payment due hereunder will result in Lender incurring additional expenses due to Lender's loss of the use of the money due hereunder and the interest thereon; (ii) Lender will be entitled to damages for the detriment caused thereby; and (iii) it is extremely difficult and impractical to ascertain the extent of such damages. Therefore, Borrower acknowledges and agrees that the default interest provided for hereunder shall be payable not as a penalty but as a

reasonable estimate of Lender's damages. The default rate shall accrue on the entire outstanding balance hereof including without limitation, delinquent interest and any and all costs and expenses incurred by Lender in connection therewith.

- (c) Lender may exercise any right or remedy under this Note during any Default by Borrower regardless of any prior forbearance. In the event of any default in the payment of this Note, or in the event the enforcement of any provision of this Note or the Deed of Trust, and if the same is referred to any attorney at law for collection or any action at law or in equity is brought with respect hereto, Borrower shall pay Lender all expenses and costs, including, but not limited to, attorneys' fees. The rights, powers and remedies of Lender permitted by law or contract or as set forth herein or in the Deed of Trust shall be cumulative and concurrent, and may be pursued singly, successively or together against Borrower or the Real Property (as defined herein), in such order as Lender may determine, in the sole discretion of Lender, and such rights, powers and remedies shall not be exhausted by any exercise thereof but may be exercised as often as occasion therefor shall occur. Additionally, the failure to exercise any such rights, powers and remedies or the acceptance by Lender of any payment hereunder which is less than payment in full shall not constitute a waiver of the right to exercise any of Lender's rights, powers or remedies at that time or any subsequent time.
7. **WAIVERS.** Borrower and any endorsers or guarantors of this Note for themselves, their heirs, legal representatives, successors and assigns, respectively, severally waive presentment, demand, protest and notice of dishonor and waive any right to be released by reason of any extension of time or any modification or change in the terms of payment or any change, alteration or release of any security given for the payment hereof. The pleading of any statute of limitations as a defense to any demand against such makers, endorsers, guarantors and sureties is expressly waived by each and all said parties. No delay or omission on the part of Lender in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note or any other Loan Document.
8. **DEED OF TRUST.** This Note is secured by a Construction to Permanent Deed of Trust, with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith executed by Borrower for the benefit of Lender (the "**Deed of Trust**") encumbering, among other things, Borrower's fee estate in certain real property in the City of Pittsburg, County of Contra Costa, State of California (the "**Real Property**") and this Note is subject to all of the terms and conditions and entitled to all of the benefits of the Deed of Trust. This Note is further secured by, among other things, a UCC-1 Financing Statement of date herewith which evidences a security interest in, among other things, certain personal property, fixtures, equipment and leases as described therein.
9. **TREATMENT OF PAYMENTS.** All payments of principal, interest, late charges, and any other payments due under this Note shall be paid to Lender by wire transfer or check of immediately available funds to such bank or place, or in such other manner, as Lender may from time to time designate. If such payment is received by Lender (or Lender's designee) at or before 2:00 p.m. pacific time, such payment will be credited to Borrower's account as of the date on which received. If such payment is received by

Lender (or Lender's designee) after 2:00 p.m. pacific time, such payment will be credited to Borrower's account on the Business Day next following the date on which received. Each installment payment under this Note shall be applied in the following order of priority: (i) first, to any costs or expenses for which Borrower is liable hereunder or under the other Loan Documents, including any unpaid late charges and any reimbursement of costs and expenses incurred by the Lender; (ii) second, to accrued and unpaid default interest, if any; (iii) third, to accrued and unpaid Regular Interest; and (iv) to unpaid principal.

10. EFFECT OF NOTE.

- (a) It is the intention of Lender and Borrower that this Note shall remain in full force and effect and shall continue to be secured by the Loan Documents until all obligations of Borrower to Lender under this Note have been fully satisfied.
- (b) BORROWER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS NOTE SHALL NOT CREATE A PARTNERSHIP, JOINT VENTURE OR ANY OTHER RELATIONSHIP BETWEEN THE PARTIES EXCEPT THE RELATIONSHIP OF BORROWER AND LENDER. ACCORDINGLY, NOTHING CONTAINED IN THIS NOTE OR IN THE OTHER LOAN DOCUMENTS SHALL OBLIGATE OR BE DEEMED TO OBLIGATE LENDER TO PAY ANY COSTS, FEES OR EXPENSES OF THE REAL PROPERTY, OR TO REIMBURSE BORROWER FOR ANY SUCH COSTS OR OTHERWISE. IN ADDITION, NOTHING IN THIS NOTE OR IN ANY OF THE OTHER LOAN DOCUMENTS SHALL BE DEEMED TO IMPLY THAT LENDER IS AN OWNER OR OPERATOR OF THE REAL PROPERTY OR ANY OTHER BUSINESS OR BUSINESSES LOCATED THEREON OR IN CONNECTION THEREWITH AND LENDER SHALL NOT BE DEEMED TO CONTROL OR REVIEW BORROWER'S OWNERSHIP OR OPERATION OF THE REAL PROPERTY OR ANY OTHER BUSINESS OR BUSINESSES LOCATED THEREON OR IN CONNECTION THEREWITH.
- (c) Disbursement of Proceeds. The proceeds of the Loan evidenced hereby shall be disbursed subject to and in accordance with the terms and conditions of the Loan Agreement. Any disbursement shall be noted by the Paying Agent (or any successor or assign) on the grid labeled as the "Schedule of Draws" on Exhibit "A" attached hereto and made a part hereof. All partial payments of principal, if any, shall be noted by the Paying Agent on the grid labeled "Schedule of Payments" on Exhibit "A" attached hereto and made a part hereof.

11. MISCELLANEOUS.

- (a) Time is of the essence for the performance of each and only covenant of Borrower under this Note.
- (b) In this Note, the singular shall include the plural and time shall be of the essence for the performance of each and every covenant of Borrower.

- (c) This Note and the rights, duties and liabilities of the parties hereunder and/or arising from or relating in any way to the indebtedness evidenced by this Note or the transaction of which such indebtedness is a part shall be governed by, construed and enforced pursuant to the internal laws of the State of California without resort to choice of law principles.
- (d) It is the intent of Borrower and Lender in the execution of this Note and the Deed of Trust to contract in strict compliance with the usury laws of the State of California governing the loan evidenced by this Note. In furtherance thereof, Borrower and Lender stipulate and agree that none of the terms and provisions contained in this Note or in the Deed of Trust shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California in connection with this transaction (the "**Highest Lawful Rate**"). Borrower shall never be required to pay interest on this Note at a rate in excess of the Highest Lawful Rate, and the provisions of this section shall control over all other provisions hereof and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event Lender shall collect monies which are deemed to constitute interest which would otherwise increase the effective Interest Rate on this Note to a rate in excess of the Highest Lawful Rate, all such sums deemed to constitute interest in excess of the Highest Lawful Rate shall, at the option of Lender, be credited to the payment of principal or returned to Borrower.
- (e) To the fullest extent allowable under applicable law, Borrower agrees to pay all costs of collection, all costs of suit, foreclosure or other enforcement of the Deed of Trust or the other Loan Documents, including but not limited to this Note. For the purposes of this provision, "costs" shall include all attorneys' fees, consultants' fees, experts' fees and the like. In addition, Borrower agrees to pay all costs, including without limitation, attorneys' fees, incurred by Lender in enforcing payment whether or not suit is filed, including, without limitation, all costs, attorneys' fees and expenses incurred by Lender in connection with any bankruptcy, reorganization, arrangement or other similar proceedings involving Borrower which in any way affect the exercise by Lender of its rights and remedies hereunder. Any and all costs incurred by Lender in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Borrower pursuant hereto.
- (f) Except as specified herein, this Note may not be amended, modified or changed, nor shall any waiver of the provisions hereof be effective, except only by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought. Additionally, a waiver of any provision in one event shall not be construed as a waiver of any other provision at any time, as a continuing waiver, or as a waiver of such provision on a subsequent event. Neither (i) the failure of Lender to exercise its right to accelerate this Note when such right shall become available, nor (ii) any delay or omission on the part of Lender in exercising any other right hereunder or

under any of the other Loan Documents shall operate as a waiver of such option and right or of any other right hereunder or under the Deed of Trust or under the other Loan Documents, or any of them, if any event of Default has not been cured within any applicable grace period prior to the time of exercise of any such right by Lender, nor shall Lender be prohibited from exercising its right to accelerate the Maturity Date of this Note at any time during the continuance of an event of Default.

- (g) Any provision of this Note which shall be held by a court to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision or term hereof, and such other provisions or terms shall remain in full force and effect.
- (h) Lender may assign or otherwise transfer this Note and deliver to the transferee(s) all or any part of the property then held by it as security hereunder, and the transferee(s) shall thereupon become vested with all the powers and rights herein given to Lender with respect thereto; and Lender shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter, but Lender shall retain all rights and powers hereby given with respect to property not so transferred. Upon any assignment or other transfer of the Lender's interest in this Note to a transferee, all references herein to "Lender" shall thereafter mean and refer to such transferee. In this regard, Borrower hereby acknowledges that Lender's rights and benefits with respect to this Note will be collaterally assigned, and endorsed over, to Holder and that all references herein to approvals, consents, determinations, or other actions ~~in the part of the "Lender"~~ (including, without limitation, any elections to accelerate ~~the amounts due~~ under this Note) shall mean and refer to the Holder.
- (i) **WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THIS NOTE, THE LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**
- (j) Any notices required to be given hereunder shall be delivered in the manner set forth in the Loan Agreement.
- (k) Lender agrees that cure of any Event of Default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

12. RECOURSE.

- (a) Prior to the Conversion Date, all of Borrower's liabilities and obligations under this Note shall be with full recourse as against Borrower and its general partners.
- (b) From and after the Conversion Date, Lender's recovery under this Note or any Loan Documents shall be limited solely to the Real Property and personal property covered by the Deed of Trust and any other collateral given to Lender as security for Borrower's performance under the Loan Documents and such recovery shall not be a lien, or the basis of a claim of lien or levy of execution, against any other assets of Borrower or any general partner of Borrower; provided that, notwithstanding the foregoing, Borrower and any general partner of Borrower shall be fully and personally liable for any and all losses and costs or damages (including attorneys' fees incurred by Lender) arising from any of the following:
- (i) gross negligence, fraud, intentional misrepresentation by Borrower or any general partner, officer, employee or agent of Borrower;
 - (ii) failure to pay property taxes or other charges which may become liens on the real property senior to the lien of the Deed of Trust;
 - (iii) any loss caused by failure of Borrower to maintain insurance coverage required by the Deed of Trust or any Loan Document;
 - (iv) failure of Borrower to keep the Property in substantially good condition and repair or the commission of waste (provided, however, that after the Conversion Date, it shall not be waste if the Borrower shall fail to restore or repair the Property after any destruction, damage, or partial condemnation notwithstanding the availability of insurance or condemnation proceeds) on the Property by Borrower, reasonable wear and tear excepted;
 - (v) any inaccuracy in or breach of any representation or warranty pertaining to any Hazardous Material (as defined in any of the Loan Documents) or any failure in the due, prompt and complete observance and performance of any covenant pertaining to any Hazardous Substance as set forth in any of the Loan Documents;
 - (vi) retention of any rents or other income, insurance proceeds, condemnation or eminent domain awards or other similar funds or payments attributable to any property securing this Note or Loan Documents which, under the terms thereof, should have been paid to Lender;
 - (vii) failure of the Real Property to comply with the Americans with Disabilities Act of 1991, as amended, the Fair Housing Act of 1990, as amended, or any other similar building laws after any governmental authority has notified Borrower, its agents, employees and/or contractors of such non-compliance;

- (viii) willful or grossly negligent violation of applicable law; and
- (ix) failure of Borrower to pay all amounts payable under this Note in full, together with reasonable attorneys' fees, if Borrower transfers or encumbers the Real Property in contravention of the Loan Documents.

COPY

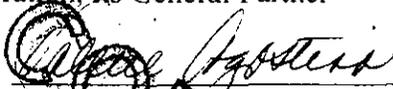
IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed as of the date and year first written above.

"BORROWER":

Mercy Housing California XXXVIII,
a California Limited Partnership

By: Mercy Housing Calwest,
a California nonprofit public benefit
corporation, its General Partner

By:



Valeria Agostino
Vice President

DO NOT DESTROY OR DISCARD THIS NOTE

ALLONGE

Pay to the order of Citicorp Municipal Mortgage Inc., a Delaware statutory trust, as Holder of the Bonds, without recourse or warranty.

CITICORP NORTH AMERICA, INC.,
a Delaware corporation, as Agent
under that certain Master Agency Agreement
dated as of February 1, 2008 between
Issuer and Agent

By:


Merle Malakoff,
Vice President

COPY

EXHIBIT A

SCHEDULE OF DRAWS

Date of Draw	Amount of Draw	Cumulative Outstanding Principal Amount
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SCHEDULE OF PAYMENTS

Date of Payment	Amount of Payment	Cumulative Outstanding Principal Amount
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