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JUNIOR INDENTURE OF TRUST

between

CITY OF SAN JOSÉ,
as Issuer

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Relating to

\$4,615,712
CITY OF SAN JOSÉ
JUNIOR MULTIFAMILY HOUSING REVENUE BONDS
(VILLA DE GUADALUPE APARTMENTS)
2017 SERIES B

Dated as of May 1, 2017

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JUNIOR INDENTURE OF TRUST

THIS JUNIOR INDENTURE OF TRUST (this “Indenture”), made and entered into and dated as of May 1, 2017, by and between the CITY OF SAN JOSÉ (the “Issuer”), a municipal corporation and charter city, organized and existing under the laws of the State of California (the “State”), and U.S. Bank National Association, a national banking association organized and existing under and by virtue of the laws of the United States of America, qualified to accept and administer the trusts hereby created (together with any successor trustee hereunder and their respective successors and assigns, the “Trustee”);

WITNESSETH:

WHEREAS, the Issuer is authorized by Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code (the “Act”), to issue one or more series of its revenue bonds and loan the proceeds thereof to finance, among other things, the acquisition, rehabilitation and equipping of multifamily rental housing for persons and families of low or moderate income; and

WHEREAS, pursuant to the Act and this Indenture, the Issuer proposes to finance the acquisition, rehabilitation and equipping of an 101-unit senior multifamily rental housing development to be located within the City of San José, California to be known as Villa De Guadalupe Apartments (as more particularly described herein, the “Project”);

WHEREAS, in order to provide a portion of the funds necessary to finance the Project, pursuant to and in accordance with the Act, the Issuer has issued revenue notes designated City of San José Multifamily Housing Revenue Note (Villa De Guadalupe Apartments) 2017 Series A-1, in the original aggregate principal amount of \$28,980,000 and City of San José Multifamily Housing Revenue Note (Villa De Guadalupe Apartments) 2017 Series A-2, in the original aggregate principal amount of \$8,720,000 (as more particularly defined herein, the “Senior Issuer Notes”) pursuant to a Funding Loan Agreement dated as of May 1, 2017 (the “Senior Funding Loan Agreement”) between the Issuer, the Trustee and Citibank, N.A., as funding lender (the Senior Funding Lender”);

WHEREAS, pursuant to and in accordance with the Act, the Issuer has authorized and undertaken to issue revenue bonds to be designated City of San José Junior Multifamily Housing Revenue Bonds (Villa De Guadalupe Apartments) 2017 Series B, in the original aggregate principal amount of \$4,615,712 (the “Bonds”) pursuant to this Indenture in order to provide a portion of the funds necessary to finance the Project;

WHEREAS, the Issuer has duly entered into a Junior Loan Agreement of even date herewith (the “Junior Loan Agreement”) with Burnham VDG Venture LP, a California limited partnership (the “Borrower”) and the Trustee specifying the terms and conditions under which it will issue the Bonds and use the proceeds of the sale thereof to make a mortgage loan in the original aggregate principal amount of \$4,615,712 (the “Junior Loan”), to the Borrower for the financing of the Project, evidenced by a Junior Promissory Note (the “Junior Note”), endorsed by the Issuer to the Trustee pursuant to this Indenture;

WHEREAS, to secure the Borrower’s obligations under the Junior Note, the Borrower will execute and deliver to the Issuer a Junior Multifamily Deed of Trust, Assignment of Rents,

Security Agreement and Fixture Filing dated as of even date herewith (the “Junior Mortgage”) with respect to the Project, which Junior Mortgage will be assigned to the Trustee; and

WHEREAS, to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof and of the interest thereon, the Issuer has authorized the execution and delivery of this Indenture;

WHEREAS, the Issuer has determined that all acts and proceedings required by law necessary to make the Bonds, when executed by the Issuer, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal limited obligations of the Issuer, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth, in accordance with its terms, have been done and taken, and the execution and delivery of this Indenture have been in all respects duly authorized; and

WHEREAS, the Trustee has trust powers and the power and authority to enter into this Indenture, to accept trusts generally and to accept and execute the trust created by this Indenture; the Trustee has accepted the trust so created and, to evidence such acceptance, has joined in the execution of this Indenture.

NOW, THEREFORE, the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the holders and owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, to secure the payment of the principal of, and interest on the Bonds according to their tenor and effect, and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Trustee, and its successors in trust and its and their assigns in and to the following (said property being herein referred to as the “Trust Estate”), to wit:

GRANTING CLAUSE FIRST

All right, title and interest of the Issuer in and to all Revenues.

GRANTING CLAUSE SECOND

All right, title and interest of the Issuer in and to the Junior Loan Agreement, the Junior Note and the Junior Mortgage (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards subject to the interests of the holders of the Senior Issuer Notes), whether payable under the above-referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer or any other Person is or may become entitled to do under said documents.

GRANTING CLAUSE THIRD

All funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said trust and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all Holders of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to lien or otherwise of any of the Bonds over any of the other Bonds, except as set forth in this Indenture;

PROVIDED, HOWEVER, that if the Issuer or its successors or assigns shall pay or cause to be paid to the Holders of the Bonds the principal, interest and, to become due thereon at the times and in the manner provided in Article IX hereof, and if the Issuer shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Issuer, cease, terminate and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.09, 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any property at the time subject to the lien of this Indenture which may then be in its possession; otherwise this Indenture to be and remain in full force and effect and upon the trusts and subject to the covenants and conditions hereinafter set forth.

AND IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto, that the terms and provisions upon which the Bonds are to be issued, executed, authenticated, delivered and secured, and the trusts and conditions upon which the Trust Estate is to be held and disposed of, which said trusts and conditions the said Trustee hereby accepts and agrees to discharge, are as follows (except that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money shall not be a general obligation of the Issuer nor a debt or pledge of the faith and credit of the Issuer or the State, but shall be payable solely from the revenues and funds pledged for its payment in accordance with this Indenture):

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Terms used herein and not otherwise defined shall have the meaning provided in the Senior Funding Loan Agreement. The terms used in this Indenture

(except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified below:

“Act” means Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as now in effect and as it may from time to time hereafter be amended and supplemented.

“Authorized Amount” shall mean \$4,615,712, the principal amount of Bonds authorized to be issued under this Indenture.

“Authorized Officer” means (a) when used with respect to the Issuer, each of the City Manager, the Director of Housing, the Director of Finance, the Assistant Director of Finance, Treasury Division Manager and Debt Administrator of the Issuer and any other officer or employee of the Issuer designated by certificate of any of the foregoing as authorized by the Issuer, acting alone, to perform a specified act, sign a specified document or otherwise take action with respect to the Bonds, (b) when used with respect to the Borrower, any general partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, and (c) when used with respect to the Trustee, any authorized signatory of the Trustee, or any Person who is authorized in writing to take the action in question on behalf of the Trustee.

“Bond Counsel” means (i) on the Closing Date, the law firm or law firms delivering the approving opinion(s) with respect to the Bonds, or (ii) any other firm of attorneys selected by the Issuer that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer’s Municipal Marketplace.

“Bond Documents” shall mean (a) the Junior Loan Documents, (b) this Indenture, (c) the Regulatory Agreement, (d) the Tax Certificate, (e) the Bond Purchase Agreement, (f) UCC financing statements, (g) such assignments of management agreements, contracts and other rights as may be reasonably required, (h) all other documents evidencing, securing, governing or otherwise pertaining to the Bonds or any other Bond Documents, and (i) all amendments, modifications, renewals and substitutions of any of the foregoing.

“Bond Fund” means the Bond Fund established by the Trustee pursuant to Section 4.01 hereof.

“Bond Payment Date” means (i) the fifth Business Day of each month, commencing June 7, 2017, (ii) any date on which the Bonds are subject to mandatory redemption pursuant to the provisions hereof, and (iii) the Maturity Date.

“Bond Purchase Agreement” shall mean the Junior Bond Purchase Agreement by and among the Issuer, the Bondholder Representative and the Borrower executed in connection with the Bonds.

“Bond Rate” means 2.75% per annum.

“Bond Register” means the books or other records maintained by the Bond Registrar setting forth the registered Holders from time to time of the Bonds.

“Bond Registrar” means the Trustee acting as such, and any other bond registrar appointed pursuant to this Indenture.

“Bond Resolution” means the resolution adopted by the Issuer authorizing the issuance of the Bonds.

“Bondholder” or “Holder” or “Owner” means any Person who shall be the registered owner of any Outstanding Bond or Bonds.

“Bondholder Representative” means any Person appointed to such position by written instrument signed by 100% of the Holders of the Outstanding Bonds. If at any time there is no appointed Bondholder Representative, the Servicer shall be deemed to be the Bondholder Representative. If there is no appointed Bondholder Representative and no Servicer, the Holder of a majority or plurality of the Outstanding Bonds shall be deemed to be the Bondholder Representative. The initial Bondholder Representative is Standard Property Company Inc., a California corporation.

“Bonds” means the City of San José Junior Multi family Housing Revenue Bonds (Villa De Guadalupe Apartments) 2017 Series B issued pursuant to the provisions of this Indenture.

“Borrower” means Burnham VDG Venture LP, a limited partnership duly organized and existing under the laws of the State of California, or any of its permitted successors or assigns, as owner of the Project.

“Business Day” means any day other than (a) a Saturday, (b) a Sunday, (c) a day on which the Federal Reserve Bank of New York is authorized or obligated by law or executive order to remain closed, (d) a day on which the Principal Office of the Bondholder Representative is closed, or (e) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Trustee or the Bondholder Representative is located are authorized or obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

“Carryback Loan” means the loan from Standard Guadalupe Venture LP, a Delaware limited partnership, to the Borrower in the principal amount of \$4,615,712.

“Certificate of the Issuer” and “Request of the Issuer” mean, respectively, a written certificate or request signed in the name of the Issuer by an Authorized Officer of the Issuer or such other Person as may be designated and authorized to sign for the Issuer. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“Closing Date” means May 23, 2017, the date of issuance of the Bonds.

“Code” means the Internal Revenue Code of 1986 and the regulations promulgated thereunder.

“City” means the City of San José, California.

“Determination of Taxability” shall mean, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Issuer and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation or (e) receipt by Trustee or Bondholder Representative, at the request of Issuer, Borrower, Trustee or Bondholder Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Bonds is includable in gross income for federal income tax purposes of any bondholder or any former bondholder, other than a bondholder who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Issuer (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Issuer or the Borrower, as the case may be, or (iii) unless otherwise agreed to by the Bondholder Representative in its sole and reasonable discretion, one year from the date of initial determination.

“Electronic Notice” means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.05 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.05 hereof.

“Enforcement Action” shall have the meaning given to that term in the Subordination Agreement.

“Excess Cash Flow” shall mean, for any period, Gross Revenues for such period less the sum of (i) Expenses of the Project for such period, and (ii) without duplication, all amounts due on the Senior Borrower Loan Obligations and Section 5.1 of the Partnership Agreement prior to payments on the Junior Loan for such period.

“Expenses of the Project” shall mean, for any period, the current expenses, paid or accrued, of operation, maintenance and current repair of the Project, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Senior Borrower Loan Documents), a management fee (however characterized) not to exceed 4% of Gross Revenues, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the Project shall not include any payments, however characterized, on account of the Junior Loan or any other subordinate financing in respect of the Project or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

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

“Extraordinary Services” means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Trustee in respect of or to prevent default under this Indenture or the Junior Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Junior Loan Agreement, and other actions taken and carried out by the Trustee which are not expressly set forth in this Indenture or the Junior Loan Documents.

“Government Obligations” means investments meeting the requirements of clauses (a) or (b) of the definition of “Qualified Investments” herein.

“Gross Revenues” shall mean all receipts, revenues, income and other moneys received by or on behalf of Borrower and derived from the ownership or operation of the Project, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the Project. Gross Revenues shall not include loan proceeds, equity or capital contributions, or tenant security deposits being held by Borrower in accordance with the applicable law.

“Indenture” means this Junior Indenture of Trust, as the same may be amended, modified or supplemented from time to time.

“Investor Limited Partner” shall mean Aegon LIHTC Fund 50, LLC, a Delaware limited liability company, its successors and assigns.

“Issuer” means the City of San José, a municipal corporation and charter city, and its successors and assigns.

“Junior Loan” means the loan made by the Issuer to the Borrower in the original principal amount of \$4,615,712 pursuant to the Junior Loan Agreement.

“Junior Loan Agreement” means the Junior Loan Agreement dated as of the date hereof among the Borrower, the Issuer and the Trustee, as such Junior Loan Agreement may from time to time be amended or supplemented.

“Junior Loan Documents” means, collectively, this Indenture, the Junior Loan Agreement, the Junior Note, the Junior Mortgage, the Bond Purchase Agreement, and all other documents securing the Junior Loan.

“Junior Mortgage” means the Junior Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof, together with all riders and addenda thereto, granting a second priority mortgage and security interest in the Project to the Issuer to secure the repayment of the Junior Loan which Junior Mortgage has been assigned by the Issuer to the Trustee as the same may be amended, supplemented or restated.

“Junior Note” means the Junior Promissory Note dated the Closing Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Junior Loan, as the same may be amended, supplemented or restated from time to time, which Junior Promissory Note will be delivered to the Issuer and endorsed by the Issuer to the Trustee.

“Maturity Date” means June 1, 2052.

“Net Proceeds”, when used with respect to any insurance proceeds or condemnation award with respect to the Project, shall mean the amount remaining (i) after deducting from the gross proceeds thereof all expenses (including attorneys’ fees) incurred in the collection of such proceeds or award and (ii) after applying such amounts as set forth in the Senior Borrower Loan Documents.

“Outstanding” when used with respect to the Bonds or “Bonds Outstanding” means, as of any date, all Bonds that have been duly authenticated and delivered by the Trustee under this Indenture, except:

(a) Bonds surrendered and replaced upon exchange or transfer, or cancelled because of payment or redemption, at or prior to such date;

(b) Bonds for the payment, redemption or purchase for cancellation of which sufficient money has been deposited prior to such date with the Trustee (whether upon or prior to the maturity, amortization or redemption date of any such Bonds), or which are deemed to have been paid and discharged pursuant to the provisions of Section 9.01 hereof; provided that if such Bonds are to be redeemed prior to the maturity thereof, other than by scheduled amortization, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee shall have been filed with the Trustee; and

(c) Bonds in lieu of which others have been authenticated (or payment, when due, of which is made without replacement) under Section 2.06 hereof.

“Partnership Agreement” means the Amended and Restated Limited Partnership Agreement of the Borrower, dated as of May 23, 2017.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

“Pledged Revenues” means the amounts pledged under the Senior Funding Loan Agreement.

“Principal Office of the Trustee” means the office of the Trustee referenced in Section 11.05(a) hereof, or such other office or offices as the Trustee may designate in writing from time to time, or the office of any successor Trustee where it principally conducts its business of serving as trustee under indentures pursuant to which municipal or governmental obligations are issued.

“Project” means, collectively, the land and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as Villa De Guadalupe Apartments located in San José, California, including the real estate described in the Junior Mortgage.

“Qualified Investments” means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Trustee or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Trustee or such other institution has been rated at least “VMIG-1” / “A-2+” by Moody’s/S&P or which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with Freddie Mac or a bank or any insurance company or other financial institution which has a rating assigned by Moody’s/S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody’s/S&P, and which are approved by the Bondholder Representative; or (g) any other investments approved in writing by the Bondholder Representative. For purposes of this definition, the “highest rating” shall mean a rating of at least “VMIG-1” / “A-1+” for obligations with less than one year maturity; at least “Aaa” / “VMIG-1” / “AAA” / “A-1+” for obligations with a maturity of one year or greater but less than three years; and at least “Aaa” / “AAA” for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

“Record Date” means the 15th day of the month preceding the month in which any Bond Payment Date falls.

“Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants dated as of May 1, 2017 among the Issuer, the Trustee, the fiscal agent under the Senior Funding Loan Agreement and the Borrower with respect to the Project.

“Responsible Officer” means any officer of the Trustee employed within or otherwise having regular responsibility in connection with the corporate trust department of the Trustee and the trusts created hereunder.

“Revenue Fund” means the Revenue Fund established by the Trustee pursuant to Section 4.01 hereof.

“Revenues” means the amount of Excess Cash Flow, if any, required to be applied to payment of the Junior Loan pursuant to the provisions of Section 5.1 of the Partnership Agreement, not to exceed 75% of Excess Cash Flow.

“Senior Borrower Loan” shall have the meaning given to the term “Borrower Loan” in the Senior Funding Loan Agreement.

“Senior Borrower Loan Documents” shall have the meaning given to the term “Borrower Loan Documents” in the Senior Funding Loan Agreement.

“Senior Borrower Loan Obligations” shall mean and includes, collectively, and without limitation, each of the following: (A) all debt service payments due on the Senior Borrower Loan, (B) all obligations of Borrower under the Senior Borrower Loan Documents, (C) all capital expenditures required for the proper maintenance of the Project in accordance with the Senior Borrower Loan Documents, as calculated by Borrower in accordance with customarily accepted cash basis accounting principles, consistently applied, and in accordance with the terms of the Senior Borrower Loan Documents; (D) all amounts required to be deposited into any replacement reserve, completion/repair reserve, operating deficit reserve, principal repayment reserve, replacement hedge reserve or other reserve or escrow established or required by Senior Funding Lender or Servicer in connection with the Senior Borrower Loan and the Senior Borrower Loan Documents, including the Senior Mortgage, and (E) all fees, costs and expenses of Senior Funding Lender and Servicer in connection with the Senior Borrower Loan.

“Senior Funding Lender” has the meaning given to it in the recitals hereof.

“Senior Funding Loan” has the meaning given to the term “Funding Loan” in the Senior Funding Loan Agreement.

“Senior Funding Loan Agreement” has the meaning given to it in the recitals hereof.

“Senior Funding Loan Documents” shall have the meaning given to the term “Funding Loan Documents” in the Senior Funding Loan Agreement.

“Senior Issuer Notes” has the meaning given to it in the recitals hereof.

“Senior Mortgage” has the meaning given to the term “Security Instrument” in the Senior Funding Loan Agreement.

“Senior Noteowner Representative” means the “Noteowner” as defined in the Senior Funding Loan Agreement.

“Senior Security” has the meaning given the term “Security” in the Senior Funding Loan Agreement.

“Senior Transaction Documents” means the Senior Funding Loan Documents and the Senior Borrower Loan Documents.

“Servicer” means the Servicer under and as defined in the Senior Funding Loan Agreement.

“Sophisticated Investor” means (1) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “Securities Act”); (2) an “accredited investor” as defined in Sections 501(a)(1) through (3) of Regulation D promulgated under the Securities Act; (3) an entity that is directly or indirectly wholly owned or controlled by or under common control with the holder of the Bonds; (4) an entity all of the investors in which are described in (1), (2) or (3) above; or (5) a custodian or trustee for a party described in (1), (2) or (3) above.

“Subordination Agreement” means the Subordination and Intercreditor Agreement, dated as of May 1, 2017, by and between the Trustee and Citibank, N.A., as Senior Lender under Senior Funding Loan Agreement.

“State” means the State of California.

“Tax Certificate” shall mean the Tax Certificate and Agreement, dated the Closing Date, executed and delivered by the Issuer and the Borrower.

“Trustee” means U.S. Bank National Association and its successors in trust hereunder.

“Trust Estate” shall have the meaning given to that term in the Granting Clauses.

“Unassigned Rights” means all of the rights of the Issuer and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be paid its fees and expenses, to give or withhold consent to amendments, changes, modifications and alterations, to receive notices and the right to enforce such rights.

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

ARTICLE II

THE BONDS

Section 2.01. The Bonds.

(a) The Bonds are hereby authorized to be issued hereunder as revenue bonds of the Issuer in accordance with the Bond Resolution. The Bonds are hereby authorized to be designated “City of San José Junior Multifamily Housing Revenue Bonds (Villa De Guadalupe Apartments) 2017 Series B” in the original aggregate principal amount of \$4,615,712. The Bonds shall be fully registered as to principal and interest, without coupons, and shall be numbered by series, if any, in the manner and with any additional designation as the Trustee, as Bond Registrar, deems necessary for the purpose of identification. All of the Bonds are equally and ratably secured. Bonds issued on the Closing Date shall be dated such date; Bonds issued after the Closing Date shall be dated the date they are authenticated by the Trustee. The Bonds shall be due and payable in full on the Maturity Date.

(b) The Bonds shall be issued as one bond in the principal amount of \$4,615,712 and shall bear interest at the Bond Rate. Payment of interest on the Bonds shall be payable on each Bond Payment Date, solely from Revenues received by the Trustee pursuant to the provisions of the Junior Note and the Junior Loan Agreement. Unpaid interest on the Bonds, and other overdue amounts under this Indenture, shall accrue interest at the Bond Rate.

(i) Interest on the Bonds shall be computed on the basis of a 360-day year of twelve months. Interest on the Bonds shall be payable on each Bond Payment Date, in each case from the Bond Payment Date next preceding the date of authentication thereof to which interest has been paid or duly provided for, unless the date of authentication is an Bond Payment Date to which interest has been paid or duly provided for, in which case from the date of authentication of the Bond, or unless no interest has been paid or duly provided for on the Bonds, in which case from the Closing Date, until payment of the principal of the Bond has been made or duly provided for. Notwithstanding the foregoing, if a Bond is authenticated after a Record Date and before the following Bond Payment Date, such Bond shall bear interest from such Bond Payment Date; provided, however, that if there shall be a default in the payment of interest due on such Bond Payment Date, then the Bonds shall bear interest from the next preceding Bond Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for on the Bonds, from the Closing Date.

(c) The Person in whose name any Bond is registered on the Record Date with respect to an Bond Payment Date shall be entitled to receive the interest payable on such Bond Payment Date (unless such Bond has been called for redemption on a redemption date which is prior to such Bond Payment Date) notwithstanding the cancellation of such Bond upon any registration of transfer or exchange thereof subsequent to such Record Date and prior to such Bond Payment Date.

(d) No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued hereunder, or in substitution for other Bonds pursuant to Section 2.06 hereof, is expressly limited to \$4,615,712.

Section 2.02. Limited Obligations. The Bonds are limited obligations of the Issuer, payable solely from the Revenues and other funds and money pledged and assigned hereunder. Neither the Issuer, the State of California (the "State"), nor any political subdivision thereof (except the Issuer, to the limited extent set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, or interest on the Bonds or for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and none of the Bonds or any of the Issuer's agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. The Issuer has no taxing power.

No recourse shall be had for the payment of the principal of, or interest on any Bond or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained, against, the Issuer, any past, present or future member of its governing body, its officers, attorneys,

accountants, financial advisors, agents or staff or the officers, attorneys, accountants, financial advisors, agents or staff of any successor public entity, as such, either directly or through the Issuer or any successor public entity, under any rule of law or penalty or otherwise, and all such liability of the Issuer, any member of its governing body and its officers, attorneys, accountants, financial advisors, agents and staff is hereby, and by the acceptance of the Bonds, expressly waived and released as a condition of, and in consideration for, the execution of this Indenture and the issuance of the Bonds.

It is recognized that notwithstanding any other provision of this Indenture, neither the Borrower, the Trustee nor any Bondholder shall look to the Issuer for damages suffered by the Borrower, the Trustee or such Bondholder as a result of the failure of the Issuer to perform any covenant, undertaking or obligation under this Indenture, the Junior Loan Agreement, the Bonds or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Issuer in any of such documents, nor for any other reason. Although this Indenture recognizes that such documents shall not give rise to any pecuniary liability of the Issuer, nothing contained in this Indenture shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Issuer) in any court or before any governmental body, agency or instrumentality or otherwise against the Issuer or any of its officers or employees to enforce the provisions of any of such documents which the Issuer is obligated to perform and the performance of which the Issuer has not assigned to the Trustee or any other person; provided, however, that as a condition precedent to the Issuer proceeding pursuant to this Section 2.02, the Issuer shall have received satisfactory indemnification.

Section 2.03. Indenture Constitutes Contract. In consideration of the purchase and acceptance of the Bonds issued hereunder by those who shall hold them from time to time, the provisions of this Indenture shall be part of the contract of the Issuer with the Holders of the Bonds and shall be deemed to be a contract between the Issuer and the Holders of the Bonds from time to time.

Section 2.04. Form and Execution. The Bonds shall be in substantially the form attached as Exhibit A, with necessary and appropriate variations, omissions and insertions as are customary, permitted or required by this Indenture. The Bonds shall be executed on behalf of the manual or facsimile signature of the Authorized Officer of the Issuer, and attested by the manual or facsimile signature of the City Clerk of the Issuer. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Bonds. Any reproduction of the official seal of the Issuer on the Bonds shall have the same force and effect as if the official seal of the Issuer had been impressed on the Bonds.

In case any officer of the Issuer whose manual or facsimile signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery, and also any Bond may bear the facsimile signatures of, or may be signed by, such Persons as at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

Section 2.05. Authentication. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless a certificate of authentication on such Bond, substantially in the form set forth in Exhibit A, shall have been duly executed by an Authorized Officer of the Trustee; and such executed certificate of authentication upon any such Bond shall be conclusive evidence that such Bond has been duly executed, registered, authenticated and delivered under this Indenture. It shall not be necessary that the same Person sign the certificate of authentication on all of the Bonds.

Section 2.06. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate a new Bond of like interest rate, series, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Bond or in lieu of and in substitution for such lost, stolen or destroyed Bond, upon payment by the Owner thereof of any applicable tax or governmental charge and the reasonable expenses and charges of the Issuer and the Trustee in connection therewith, and in the case of a Bond lost, stolen or destroyed, the filing with the Trustee of evidence satisfactory to it that such Bond was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Issuer and the Trustee with indemnity satisfactory to each of them. In the event any such Bond shall have matured, instead of issuing a duplicate Bond or Bonds the Issuer may pay the same without surrender thereof.

Section 2.07. Transfer and Exchange of Bonds; Persons Treated as Owners; Restrictions on Transfer. The Trustee as Bond Registrar shall cause a Bond Register to be kept for the registration of transfers of Bonds. Any Bond may be transferred only upon an assignment duly executed by the registered Owner or such registered Owner's duly authorized representative in such form as shall be satisfactory to the Bond Registrar and upon surrender of such Bond to the Trustee for cancellation. Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the Trustee shall authenticate and deliver to the transferee a replacement fully registered Bond for the amount of such Bond so surrendered.

In all cases in which Bonds shall be transferred or exchanged hereunder, the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer or exchange shall be paid by the Borrower.

The Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the registered Owner thereof, or such registered Owner's legal representative, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

Neither the Issuer nor the Trustee shall be required to make any such exchange, registration or transfer of Bonds during the period of fifteen (15) days immediately preceding an Bond Payment Date or, in the case of any proposed redemption of Bonds, during the period of fifteen (15) days immediately preceding the selection of Bonds for such redemption and after the giving

of notice of redemption, the Trustee is not required to transfer or exchange any Bond or portion thereof which has been called for redemption.

Restrictions on Transfer. The following shall apply to all sales and transfers of the Bonds after the applicable initial sale and delivery of the Bonds:

(a) The Bonds, in the form attached hereto as Exhibit A, shall be physical certificated instruments, and shall not be held in a book-entry only system unless approved in advance by the Issuer;

(b) The Bonds shall be sold in whole only;

(c) The Bonds shall only be sold and subsequently transferred in whole to Sophisticated Investors, with such Sophisticated Investors executing and delivering an Investor Letter in the form attached as Exhibit B hereto; and

(d) The Trustee shall not authenticate or register a Bond unless it has received a certificate from the Issuer stating that the conditions of this Section 2.07 have been satisfied and there shall have been delivered to the Trustee an Investor Letter executed by the transferee of the Bonds;

Section 2.08. [Reserved].

Section 2.09. Delivery of Bonds. Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate the Bonds and deliver them to or upon the order of the Issuer upon receipt by the Trustee of the following:

(a) executed counterparts of this Indenture, the Junior Loan Agreement, the Regulatory Agreement, and the Tax Certificate;

(b) an opinion of Bond Counsel to the effect that the Bonds are valid and binding special obligations of the Issuer;

(c) evidence satisfactory to the Issuer of the Carryback Loan and Junior Note (representing the purchase price of the Bonds);

(d) a copy of the Junior Mortgage;

(e) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the agreements described herein to which it is a party, that its execution and delivery of and performance of its covenants in such agreements do not contravene law or any provision of any other agreement to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their respective terms;

(f) an opinion of Bond Counsel to the effect that the interest on the Bonds, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

(g) a certified copy of the Bond Resolution;

(h) evidence satisfactory to the Trustee that the Senior Issuer Notes have been issued and delivered to the initial purchasers thereof; and

(i) the written request and authorization to the Trustee by the Issuer to authenticate and deliver the Bonds in accordance with the provisions of this Indenture.

Section 2.10. [Reserved].

Section 2.11. Subordination.

This Indenture and the Junior Loan Agreement are and at all times shall be subject and subordinate in all respects to the terms, provisions, conditions, covenants, liens and security interests of the Senior Transaction Documents. Correspondingly, payment of the indebtedness evidenced by the Bonds is and shall be subject and subordinate in all respects to the prior payment in full of all amounts due and payable in respect of the Senior Issuer Notes and the Senior Borrower Loan Documents, and otherwise under the Senior Transaction Documents. Accordingly, the Bondholders expressly subject and subordinate all of their right, title and interest in and to the Bonds in all respects to (i) the payment in full of the Senior Issuer Notes, (ii) the payment in full of the Senior Borrower Loan, (iii) the lien of the Pledged Revenues under the Senior Funding Loan Agreement and of the Senior Mortgage and (iv) the payment in full of all amounts owed to the Noteowner Representative under the Senior Transaction Documents. In addition, notwithstanding anything contained in this Indenture, the Junior Loan Agreement, the Junior Note or the Junior Mortgage to the contrary, the Issuer and the Trustee agree, and the Bondholders by their acceptance of the Bonds agree, that:

(a) the sole source of funds available to the Issuer for the purpose of paying the principal of, and interest on, the Bonds, including scheduled sinking fund payments, if any, shall be the Revenues;

(b) the Junior Note is payable solely from, and only to the extent of, the Revenues as defined and provided for in this Indenture;

(c) payments of the principal of, and interest on, the Junior Note shall be made only after all current and past due Senior Obligations have been paid in full;

(d) the security for the Junior Loan and the Junior Note shall be the Junior Mortgage, which shall be wholly subordinate to the Senior Mortgage encumbering the same Project;

(e) the obligation of the Borrower to repay the Junior Loan is and shall be subject and subordinate in all respects to the obligations of the Borrower to pay all amounts due in respect of the Senior Obligations, whether under the Senior Transaction Documents or otherwise;

(f) so long as any amounts are currently due and owing in respect of the Senior Obligations, whether under the Senior Transaction Documents or otherwise, the Trustee shall not be entitled to (1) make any payment in respect of the Bonds or (2) foreclose on the Junior Mortgage notwithstanding (a) any arrearages in the payments of any amounts due and owing under or with respect to the Bonds or (b) any default in respect of the Bonds, the Junior Note, the Junior Mortgage or the Junior Loan except as consented to in writing by the Bondholder Representative; or (3) take any other action except as permitted under the Subordination Agreement; and

(g) unpaid principal and interest on the Bonds resulting from insufficient Revenues may accrue and may be payable after such accrual, provided that such principal and interest shall be payable solely from, and only to the extent of, Revenues, provided further that payment of such principal and interest is and shall remain subject and subordinate to the Senior Obligations.

Failure to make any payment in respect of the Bonds or otherwise under this Indenture shall not constitute an Event of Default under (and as defined in) this Indenture. The Trustee shall not, after the Trustee receives a notice of default or otherwise acquires knowledge of a default or an Event of Default by the Borrower with respect to the Senior Issuer Notes, the Senior Borrower Loan or under any Senior Transaction Document, make any payments in respect of the Bonds unless and until such default or Event of Default or potential default has been cured or waived by the Bondholder Representative.

The parties to this Indenture acknowledge that the terms of this Indenture are in all respects subject to the Senior Transaction Documents.

ARTICLE III

REDEMPTION OF BONDS PRIOR TO MATURITY

Section 3.01. Redemption of Bonds Prior to Maturity. The Bonds are subject to redemption upon the circumstances, on the dates and at the prices set forth as follows (and, in the event of a partial redemption can be in any principal amount):

(a) The Bonds shall be subject to mandatory redemption in whole or in part, after satisfaction of all requirements of the Senior Transaction Documents, on the next Bond Payment Date for which notice of redemption can timely be given, at a redemption price equal to the principal amount of Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption upon prepayment of the Junior Loan in whole or in part following a casualty to or condemnation of the Project; such mandatory redemption shall be in an amount as nearly equal as possible to, but not exceeding, the amount of any Net Proceeds of insurance or condemnation awards not used to repair or replace the Project.

(b) The Bonds shall be subject to mandatory redemption in whole on the next date for which notice of redemption can timely be given at a redemption price equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption upon acceleration of the Junior Loan in whole following an Event of Default under Article VII of the Junior Loan Agreement, except as otherwise provided in Article VI.

(c) Except as otherwise provided in this Article III, including but not limited to Section 3.01(g) hereof, the Bonds are subject to optional or mandatory redemption in whole or in part on any Business Day for which notice of redemption can timely be given, in the event and to the extent that the Junior Loan is prepaid pursuant to the Junior Note as set forth in Section 4.4 of the Junior Loan Agreement, at a redemption price equal to the principal amount of Bonds to be redeemed, plus accrued interest to the date fixed for redemption.

(d) [Reserved]

(e) The Bonds are subject to mandatory redemption upon a Determination of Taxability in whole on any Business Day for which notice of redemption can timely be given at a redemption price equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption unless the Issuer agrees, in its sole and absolute discretion, that the Bonds shall not be subject to mandatory redemption upon such Determination of Taxability.

(f) The Bonds are subject to mandatory redemption in whole or in part on any Business Day for which notice of redemption can timely be given, in the event and to the extent the Bondholder Representative notifies the Trustee in writing that, subject to and in accordance with the terms and conditions of the Partnership Agreement, there are net proceeds available from (i) a sale or exchange of any assets of the Borrower, (ii) any financing or refinancing of the Project, (iii) the liquidation of the Borrower, or (iv) any other transaction where the proceeds are deemed attributable to capital under generally accepted accounting principles.

(g) The Bonds are subject to mandatory redemption upon in whole on any Business Day for which notice of redemption can timely be given at a redemption price equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption if the Bond Rate is greater than the maximum interest rate that may be paid on the Bonds under State law.

(h) The Bonds shall be subject to optional redemption in whole or in part on any Business Day for which notice of redemption can timely be given, at a redemption price equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date fixed for redemption, subject to the consent of the Senior Noteowner Representative, so long as the Senior Issuer Notes are outstanding.

(i) The Borrower shall have the option to cause the Bonds to be purchased by the Borrower or its designee in lieu of redemption pursuant to this Section 3.01. Such option may be exercised by delivery to the Trustee on or prior to the Business Day preceding the applicable date of redemption of a written notice of the Borrower, specifying that the Bonds shall not be redeemed, but instead shall be subject to purchase pursuant to this Section. Upon delivery of such notice, the Bonds shall not be redeemed but shall instead be subject to mandatory tender at the applicable purchase price on the date that would have been the date of redemption.

Section 3.02. [Reserved].

Section 3.03. Notice of Redemption. Notice of the intended redemption of each Bond shall be given by the Trustee by first class mail, postage prepaid, or by facsimile transmission, to the registered Owner at the address of such Owner shown on the Bond Register. All such

redemption notices shall be given not less than ten (10) days prior to the date fixed for redemption. The Trustee may provide a conditional notice of redemption.

Notices of redemption shall state the redemption date and the redemption price, the place or places where amounts due upon such redemption will be payable, and, if less than all of the then Outstanding Bonds are called for redemption, shall state (i) the numbers of the Bonds to be redeemed by giving the individual certificate number of each Bond to be redeemed or shall state that all Bonds between two stated certificate numbers, both inclusive, are to be redeemed or that all of the Bonds of one or more maturities have been called for redemption only if bonds cease to be book entry-bonds; (ii) the Maturity Date of each Bond being redeemed; (iii) the conditions, if any, which must be satisfied in order for the redemption to take place on the scheduled date of redemption, and (iv) any other descriptive information needed to identify accurately the Bonds being redeemed.

Failure to give notice by mailing to the registered Owner of any Bond designated for redemption or to any depository or information service shall not affect the validity of the proceedings for the redemption of any other Bond if notice of such redemption shall have been mailed as herein provided.

Section 3.04. Effect of Notice of Redemption. If a conditional notice of redemption has been provided pursuant to the terms of this Indenture and the conditions are not satisfied, such notice of redemption shall be of no force and effect and the Bondholders shall be restored to their former positions as though no such notice of redemption had been delivered. Notice of redemption having been given in the manner provided in this Article III and if either there were no conditions to such redemption or the conditions have been satisfied (or in the event no such notice is required under Section 3.03), and money for the redemption being held by the Trustee for that purpose, thereupon the Bonds so called for redemption shall become due and payable on the redemption date, and interest thereon shall cease to accrue on such date; and such Bonds shall thereafter no longer be entitled to any security or benefit under this Indenture except to receive payment of the redemption price thereof.

ARTICLE IV

REVENUES AND FUNDS

Section 4.01. Pledge of Revenues and Assets; Establishment of Funds. The pledge and assignment of and the security interest granted in the Trust Estate pursuant to the Granting Clauses hereof shall attach, be perfected and be valid and binding from and after the time of the delivery of the Bonds by the Trustee or by any Person authorized by the Trustee to deliver the Bonds. The Trust Estate so pledged and then or thereafter received by the Trustee shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Issuer irrespective of whether such parties have notice thereof.

The Trustee shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund; and
- (b) Bond Fund.

The funds and accounts established pursuant to this Section 4.01 shall be maintained in the corporate trust department of the Trustee as segregated trust accounts, separate and identifiable from all other funds held by the Trustee. The funds and accounts established hereunder shall bear a designation clearly indicating that the funds deposited therein are held for the benefit of the Holders of the Bonds, respecting the Revenue Fund and the Bond Fund. The Trustee shall, at the written direction of an Authorized Officer of the Issuer, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Issuer or the Trustee may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Indenture with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

Section 4.02. [Reserved].

Section 4.03. Application of Revenues.

(a) All Revenues shall be deposited by the Trustee, promptly upon receipt thereof, to the Revenue Fund, except (i) with respect to investment earnings to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (ii) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) On each Bond Payment Date or any other date on which payment of principal of or interest on the Bonds becomes due and payable, the Trustee shall credit from the Revenue Fund to the Bond Fund an amount equal to the principal of and interest due on the Bonds on such date.

(c) Promptly upon receipt, the Trustee shall deposit directly to the Bond Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Junior Loan, after reimbursement of any and all amounts owed to the Bondholder Representative and (ii) amounts paid to the Trustee to be applied to the redemption of all or a portion of the Bonds pursuant to Article III hereof.

(d) Should the amount in the Bond Fund be insufficient to pay the amount due on the Bonds on any given Bond Payment Date or other payment date, the Trustee shall credit to the Bond Fund the amount of such deficiency by charging the Revenue Fund.

Section 4.04. Application of Bond Fund. The Trustee shall charge the Bond Fund, on each Bond Payment Date, an amount equal to the unpaid interest due on the Bonds on such Bond Payment Date, and shall cause the same to be applied to the payment of such interest when due.

Income realized from the investment or deposit of money in the Bond Fund shall be deposited by the Trustee upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Bond Fund except as expressly provided in this Article IV and in Section 6.05.

Section 4.05. Reserved.

Section 4.06. Reserved.

Section 4.07. Reserved.

Section 4.08. Investment of Funds. The money held by the Trustee shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Trustee, at the written direction of the Borrower in Qualified Investments. The Trustee may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Trustee shall be entitled to assume, absent receipt by the Trustee of written notice to the contrary, that any investment which at the time of purchase in a Qualified Investment remains a Qualified Investment thereafter.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Trustee shall not be liable or responsible for any loss resulting from any investment made in accordance herewith.

The Issuer acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Issuer the right to receive brokerage confirmations of the security transactions as they occur. To the extent permitted by law, the Issuer specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Trustee hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur.

Section 4.09. Money Held for Particular Bonds; Funds Held in Trust. The amounts held by the Trustee for the payment of the interest, principal or redemption price due on any date with respect to particular Bonds pending such payment, shall be set aside and held in trust by it for the Holders of the Bonds entitled thereto, and for the purposes hereof such interest, principal or redemption price, after the due date thereof, shall no longer be considered to be unpaid.

All money held by the Trustee for such purpose at any time pursuant to the terms of this Indenture shall be and hereby are assigned, transferred and set over unto the Trustee in trust for the purposes and under the terms and conditions of this Indenture.

Section 4.10. Accounting Records. The Trustee shall maintain accurate books and records for all funds and accounts established hereunder and provide monthly statements (or other electronic access as agreed to by the parties) of such funds and accounts to the Issuer and the Borrower upon request.

Section 4.11. Amounts Remaining in Funds. After full payment of the Bonds (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Issuer and the Trustee and other amounts required to be paid hereunder or under any Junior Loan Document, any amounts remaining in any fund or account hereunder shall be paid to the Borrower.

Section 4.12. Reserved.

ARTICLE V

GENERAL COVENANTS AND REPRESENTATIONS

Section 5.01. Payment of Principal and Interest. The Issuer covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, and interest on the Bonds at the place, on the dates and in the manner provided herein and in the Bonds, according to the true intent and meaning thereof.

Section 5.02. Performance of Covenants. The Issuer covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto.

Section 5.03. Representations and Warranties of the Issuer. The Issuer hereby represents and warrants as follows:

(a) The Issuer is a public instrumentality and political subdivision of the State of California.

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

(c) The revenues and assets pledged for the repayment of the Bonds are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Indenture, and all action on the part of the Issuer to that end has been duly and validly taken.

(d) The Bond Documents to which the Issuer is a party have been validly authorized, executed and delivered by the Issuer, and assuming due authorization, execution and delivery by

the other parties thereto, constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

Section 5.04. Inspection of Project Books. The Issuer covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Trustee or the Bondholder Representative may from time to time reasonably designate.

Section 5.05. Damage, Destruction or Condemnation. Net Proceeds resulting from casualty to or condemnation of the Project shall be applied, after satisfaction of all payment requirements under the Senior Transaction Documents, as provided in the Junior Loan Documents.

Section 5.06. Tax Covenants. (a) Issuer's Covenants. The Issuer covenants to and for the benefit of the Holders of the Bonds that it will:

(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Bonds or the money and investments held in the funds and accounts in any manner which would cause the Bonds to be arbitrage bonds under Section 148 of the Code and the Regulations issued under Section 148 of the Code (the "Regulations") or which would otherwise cause the interest payable on the Bonds to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all obligations of the Borrower under the Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Bonds to be includable in gross income for federal income tax purposes;

(iv) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Issuer on the Bonds will be excluded from the gross income for federal income tax purposes, of the Bondholders pursuant to the Code, except in the event where any such owner of Bonds is a "substantial user" of the facilities financed with the Bonds or a "related person" within the meaning of the Code; and

(v) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code and the Regulations.

In furtherance of the covenants in this Section 5.05, the Issuer and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Indenture and made a part of this Indenture as if set forth in this Indenture

in full, and by its acceptance of this Indenture the Trustee acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Indenture by this reference and agrees to comply with the terms specifically applicable to it. In the event of a conflict between the terms of this Indenture and the Tax Certificate, the terms of the Tax Certificate shall control.

(b) Trustee's Covenants. The Trustee agrees that it will invest funds held under this Indenture in accordance with the covenants and terms of this Indenture and the Tax Certificate (this covenant shall extend through the term of the Bonds, to all funds and accounts created under this Indenture and all money on deposit to the credit of any such fund or account). The Trustee covenants to and for the benefit of the Bondholders that, notwithstanding any other provisions of this Indenture or of any other Loan Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Bonds to be classified as "arbitrage bonds" within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Bonds to be includable in gross income for federal income tax purposes; provided that the Trustee shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower or the Issuer. This covenant shall extend, throughout the term of the Bonds, to all funds created under this Indenture and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Indenture, the Trustee obligates itself to comply throughout the term of the issue of the Bonds with the requirements of Sections 103(b) and 148 of the Code; provided that the Trustee shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower or the Issuer. The Trustee further covenants that should the Issuer or the Borrower file with the Trustee (it being understood that neither the Issuer nor the Borrower has an obligation to so file), or should the Trustee receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Bonds would cause the Bonds to become "arbitrage bonds," then the Trustee will comply with any written instructions of the Issuer, the Borrower or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Bonds from becoming "arbitrage bonds," and the Trustee will bear no liability to the Issuer, the Borrower or the Bondholders for investments made in accordance with such instructions.

ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

Section 6.01. Events of Default. Each of the following shall be an event of default with respect to the Bonds (an "Event of Default") under this Indenture:

(a) failure to pay the principal of, or interest on any Bond when due, to the extent sufficient Revenues are available therefor;

(b) failure by the Issuer or the Trustee to perform or observe any other of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, and the continuation of such failure for a period of thirty (30) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Issuer or the

Trustee by the Borrower, the Trustee or the Issuer, as applicable, or by the holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding; or

(c) the occurrence of any Event of Default under the Junior Loan Agreement upon written notice thereof, specifying such default and requiring the same to be remedied, delivered to the Issuer or the Trustee by the Borrower, the Trustee or the Issuer, as applicable, or by the holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding.

The Trustee and the Issuer agree that a failure to pay any amounts required to be paid under this Indenture as a result of a deficiency of available Revenues shall not constitute an Event of Default hereunder during any period in which any Senior Issuer Notes are Outstanding.

The Trustee and the Issuer agree that a failure to pay any amounts required to be paid under this Indenture as a result of a deficiency of available Revenues shall not during any period in which any Senior Issuer Notes are Outstanding constitute an Event of Default hereunder whereby the Bondholder Representative may commence an Enforcement Action.

Section 6.02. Acceleration; Other Remedies Upon Event of Default.

(a) Upon the occurrence of an Event of Default under Section 6.01(b) hereof, the Trustee shall, upon the written direction of the Bondholder Representative, and the consent of the Senior Noteowner Representative, if required, and receipt of indemnity satisfactory to it, by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

(b) Upon the occurrence of an Event of Default (other than an Event of Default under Section 6.01(b) hereof), the Trustee shall, but only upon the written direction of the Bondholder Representative, by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable and interest on the Bonds shall cease to accrue, anything contained in this Indenture or in the Bonds to the contrary notwithstanding.

If at any time after the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Issuer or the Borrower shall pay to or deposit with the Trustee a sum sufficient to pay all principal of the Bonds then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) upon all the Bonds then due, with interest at the rate borne by the Bonds on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Trustee (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor (collectively, the “Cure Amount”) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Bondholder Representative, then and in every case, the Trustee on behalf of the Holders of all the Outstanding Bonds shall rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Holders of all Bonds with respect to which such an Event of Default has occurred (if no Event of Default has occurred and is continuing under Section 6.01(b)), may also proceed to protect and enforce any rights of the Trustee and, to the full extent that the Holders of such Bonds themselves might do, the rights of such Bondholders under the laws of the State or under this Indenture by such of the following remedies as the Trustee shall deem most effectual to protect and enforce such rights:

- (i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of or interest on the Bonds then Outstanding and to require the Issuer to carry out any covenants or agreements with or for the benefit of the Bondholders and to perform its duties under the Act, this Indenture, the Junior Loan Agreement or the Regulatory Agreement to the extent permitted under the applicable provisions thereof;
- (ii) by pursuing any available remedies under the Junior Loan Agreement or any Junior Loan Document or the Regulatory Agreement;
- (iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and
- (iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Holders of the Bonds and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee, the Bondholders hereunder or under the Junior Loan Agreement or any other Junior Loan Document or the Regulatory Agreement, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Trustee or the Bondholders, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

Section 6.03. Rights of Bondholders. If an Event of Default under Section 6.01(b) hereof shall have occurred and is then continuing, and if requested in writing so to do by the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding with respect to which there is a default, and if indemnified to its satisfaction, the Trustee shall exercise one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel or a committee of Responsible Officers, shall deem to be in the best interest of the affected Bondholders. If an Event of Default under Section 6.01(b) hereof shall have occurred and is then

continuing, the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding with respect to which an Event of Default has occurred shall have the right at any time, subject to the provisions of Section 6.08 hereof, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Indenture.

Section 6.04. Waiver by Issuer. Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Issuer nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Indenture; and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisement and redemption to which it may be entitled under the laws of the State and the United States.

Section 6.05. Application of Money After Default. All money collected by the Trustee at any time pursuant to this Article VI shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Trustee to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund and the Bond Fund available for the payment of interest or principal then due with respect to the Bonds shall be insufficient for such payment, such money (other than money held for the payment or redemption of particular Bonds as provided in Section 4.09 hereof) shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Trustee incurred in performance of its duties under this Indenture, including, without limitation, the payment of all reasonable fees and expenses of the Trustee incurred in exercising any remedies under this Indenture;

(b) Unless the principal of all Bonds shall have become or have been declared due and payable:

FIRST: to the payment to the Persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available is not sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or preference; and

SECOND: to the payment to the Persons entitled thereto of the unpaid principal of and, on any Bonds which shall have become due, whether at maturity or by call for redemption, in the order in which they became due and payable, and, if the amount available is not sufficient to pay in full all the principal of and, on the Bonds so due on any date, then to the payment of principal ratably, according to

the amounts due on such date, to the Persons entitled thereto, without any discrimination or preference, and then to the payment of any premium due on the Bonds, ratably, according to the amounts due on such date, to the Persons entitled thereto, without any discrimination or preference.

(c) If the principal of all of the Bonds shall have become or have been declared due and payable, to the payment of the principal of, and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due, respectively, for principal and interest, to the Persons entitled thereto without any discrimination or preference except as to any differences in the respective rates of interest specified in the Bonds.

Section 6.06. Reserved.

Section 6.07. Remedies Vested in Trustee. All rights of action, including the right to file proof of claims, under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery or judgment shall be for the mutual benefit as provided herein of all of the Holders of the Outstanding Bonds.

Section 6.08. Remedies of Bondholders. No Holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default shall have occurred of which the Trustee shall have been notified as provided herein; (b) such default shall have become an Event of Default under Section 6.01(b) hereof; (c) the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding with respect to which there is such an Event of Default shall have made written request to the Trustee and shall have offered reasonable opportunity to the Trustee either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (d) such Holders shall have offered to the Trustee indemnity as provided in this Indenture; and (e) the Trustee shall within sixty (60) days thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture or the rights of any other Holders of Bonds or to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided with respect to the equal and ratable benefit of all Holders of Bonds with respect to which there is a default. Nothing contained in this Indenture shall, however, affect or impair the right of any Bondholder to enforce the payment of the principal of and interest on any Bond at the maturity thereof or the obligation of the Issuer to pay the principal of, and interest on the Bonds issued hereunder to the respective holders thereof, at the time, in the place, from the sources and in the manner expressed herein and in said Bonds.

Section 6.09. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry or otherwise,

and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee, the Bondholder Representative, the Borrower and the Bondholders shall be restored to their former positions and rights hereunder with respect to the Trust Estate herein conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 6.10. Waivers of Events of Default. So long as no Event of Default has occurred and is then continuing under Section 6.01(b) or Section 6.01(c) hereof, the Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of, and interest on the Bonds only upon the written direction of the Bondholder Representative. If there shall have occurred and is then continuing an Event of Default under Section 6.01(b) or Section 6.01(c) hereof, the Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of, and interest on the Bonds upon the written request of the Holders of 100% of the Bonds then Outstanding with respect to which there is a default; provided, however, that there shall not be waived (a) any Event of Default in the payment of the principal of any Bonds at the date of maturity specified therein, or upon proceedings for mandatory redemption of any Bonds, (b) any default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal or when due (whether at the stated maturity thereof or upon proceedings for mandatory redemption) as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee, and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

Section 6.11. Notice to Bondholders if Default Occurs. Upon the occurrence of an Event of Default, or if an event occurs which could lead to an Event of Default with the passage of time and of which the Trustee is required to take notice pursuant to Section 7.02(l) hereof, the Trustee shall, within thirty (30) days, give written notice thereof by first class mail to the registered Owners of all Bonds then Outstanding. Notwithstanding the foregoing, except in the case of an Event of Default with respect to the payment of principal of or and interest on the Bonds, the Trustee shall be protected in withholding such notice if and so long as the board of directors of the Trustee, the executive committee, or a trust committee of directors or officers of the Trustee in good faith determines that the withholding of such notice is in the best interests of the Holders of the Bonds.

ARTICLE VII

CONCERNING THE TRUSTEE

Section 7.01. Standard of Care. The Trustee, prior to an Event of Default as defined in Section 6.01 and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Indenture. The Trustee,

during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Indenture; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Trustee by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Trustee shall not be liable for any error of judgment made in good faith by an officer or employee of the Trustee except for willful misconduct or negligence by the officer or employee of the Trustee as the case may be; and

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Bondholder Representative or the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding (or such lesser or greater percentage as is specifically required or permitted by this Indenture) relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

Section 7.02. Reliance Upon Documents. Except as otherwise provided in Section 7.01:

(a) the Trustee may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document of the proper party or parties, including any facsimile transmission as permitted hereunder or under the Junior Loan Agreement;

(b) any notice, request, direction, election, order or demand of the Issuer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Issuer by an Authorized Officer of the Issuer (unless other evidence in respect thereof be herein specifically

prescribed), and any resolution of the Issuer may be evidenced to the Trustee by a copy of such resolution duly certified by an Authorized Officer of the Issuer;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Trustee by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) [Intentionally Omitted];

(e) any notice, request, direction, election, order or demand of the Bondholder Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Bondholder Representative by any Authorized Officer of the Bondholder Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) [Intentionally Omitted];

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Indenture, the Trustee may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys, and the Trustee may consult with counsel and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Issuer or the Borrower and such certificate shall in the absence of bad faith on the part of the Trustee be full warrant to the Trustee for any action taken or permitted by it under the provisions of this Indenture, but in its discretion the Trustee may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Bonds (except the Trustee's certificate of authentication thereon) shall be taken as the statements of the Issuer and the Borrower and shall not be considered as made by or imposing any obligation or liability upon the Trustee. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the title of the Issuer or the Borrower to the Trust Estate, or as to the security of this Indenture, or of the Bonds issued hereunder, and the Trustee shall incur no liability or responsibility in respect of any of such matters;

(k) the Trustee shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Trust Estate except for its own willful

misconduct or negligence; and every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.02(k);

(l) the Trustee shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Trustee) herein or in any contracts or securities assigned or conveyed to or pledged with the Trustee hereunder, except Events of Default that are evident under Section 6.01(a) or Section 6.01(b) hereof. The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) or Section 6.01(b) hereof) unless the Trustee shall receive from the Issuer, the Bondholder Representative or the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Trustee may conclusively assume that there is not such default. Every provision contained in this Indenture or related instruments or in any such contract or security wherein the duty of the Trustee depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(l);

(m) the Trustee shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Trustee, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Holder of any Bond; and

(n) the Trustee shall be under no obligation to exercise those rights or powers vested in it by this Indenture, other than such rights and powers which it shall be obliged to exercise in the ordinary course of its trusteeship under the terms and provisions of this Indenture and as required by law, at the request or direction of any of the Bondholders pursuant to Sections 6.03 and 6.08 of this Indenture, unless such Bondholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Trustee is authorized and directed to execute in its capacity as Trustee the Junior Loan Agreement, the Subordination Agreement and the Regulatory Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

The Trustee or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Trustee agrees to accept and act upon facsimile transmission or Electronic Notice of written instructions and/or directions pursuant to this Indenture provided, however, that: (a)

subsequent to such facsimile transmission or Electronic Notice of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, (b) such originally executed instructions and/or directions shall be signed by such Person as may be designated and authorized to sign for the party signing such instructions and/or directions, and (c) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated Person.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Trustee pursuant to this Section 7.02 shall remain in effect until the Trustee receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Trustee shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

Section 7.03. Use of Proceeds. The Trustee shall not be accountable for the use or application of any of the Bonds authenticated or delivered hereunder or of the proceeds of the Bonds except as provided herein.

Section 7.04. Trustee May Hold Bonds. The Trustee and its officers and directors may acquire and hold, or become pledgees of Bonds and otherwise may deal with the Issuer and the Borrower in the same manner and to the same extent and with like effect as though it were not Trustee hereunder.

Section 7.05. Trust Imposed. All money received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received.

Section 7.06. Compensation of Trustee. The Trustee shall be entitled to its acceptance fee and its annual administration fee, payable by the Borrower pursuant to the Junior Loan Agreement, in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Trustee hereunder. The Trustee shall be entitled to extraordinary fees and expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Junior Loan Documents; provided the Trustee shall not incur any extraordinary fees and expenses without the consent of the Bondholder Representative (except that no consent shall be required if an Event of Default under 6.01(b) has occurred and is continuing). If any property, other than cash, shall at any time be held by the Trustee subject to this Indenture, or any supplemental indenture, as security for the Bonds, the Trustee, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Indenture as such security for the Bonds, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Trustee for its services and reimbursement to the Trustee for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Junior Loan Agreement and in Sections 4.11 and 6.05 hereof. The Issuer shall have no liability for Trustee's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Trustee agrees that it shall continue to perform its duties hereunder (including, but not limited to,

its duties as Paying Agent and Bond Registrar) and under the Junior Loan Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Trustee's fees and expenses as required by the Junior Loan Agreement.

The Borrower shall indemnify and hold harmless the Trustee and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any Person arising from any cause whatsoever in connection with this Indenture or transactions contemplated hereby, the Project, or the issuance of the Bonds; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the issuance of the Bonds; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any Person for damages caused by the negligence, willful misconduct or unlawful acts of such Person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Trustee, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section shall survive the termination of this Indenture.

Section 7.07. Qualifications of Trustee. There shall at all times be a Trustee hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Trustee shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.09. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section and another association or corporation is eligible, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.09.

Section 7.08. Merger of Trustee. Any association or corporation into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Trustee hereunder and vested with all the title to the whole property or Trust Estate and all the trusts, powers, discretions,

immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Trustee in respect of the beneficial interest of the Trustee in the Junior Loan.

Section 7.09. Resignation by the Trustee. The Trustee may at any time resign from the trusts hereby created by giving written notice to the Issuer, the Borrower and the Bondholder Representative, and by giving notice by certified mail or overnight delivery service to each Holder of the Bonds then Outstanding. Such notice to the Issuer, the Borrower and the Bondholder Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Trustee shall not be effective until a successor Trustee has been appointed as provided herein and such successor Trustee shall have agreed in writing to be bound by the duties and obligations of the Trustee hereunder.

Section 7.10. Removal of the Trustee. The Trustee may be removed at any time, either with or without cause, with the consent of the Bondholder Representative (which consent of the Bondholder Representative shall not be unreasonably withheld and which approval shall be deemed given after fifteen (15) days if the Bondholder Representative has not responded to a written request for such approval) by a written instrument signed by the Issuer and delivered to the Trustee and the Borrower, and if an Event of Default shall have occurred and be continuing, other than an Event of Default under Section 6.01(b), by a written instrument signed by the Bondholder Representative and delivered to the Trustee, the Issuer and the Borrower. The Trustee may also be removed, if an Event of Default under Section 6.01(b) shall have occurred and be continuing, by a written instrument or concurrent instruments signed by the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding and delivered to the Trustee, the Issuer, the Borrower and the Bondholder Representative. The Trustee may also be removed by the Bondholder Representative following notice to the Issuer and after a thirty (30) day period during which the Issuer may attempt to cause the Trustee to discharge its duties in a manner acceptable to Bondholder Representative, and in each case written notice of such removal shall be given to the Servicer, the Borrower and to each registered Owner of Bonds then Outstanding as shown on the Bond Registrar. Any such removal shall take effect on the day specified in such written instrument(s), but the Trustee shall not be discharged from the trusts hereby created until a successor Trustee has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Trustee hereunder.

Section 7.11. Appointment of Successor Trustee.

(a) In case at any time the Trustee shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Trustee or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Trustee or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Trustee hereunder, and the Issuer, with the written consent of the Bondholder Representative (which consent shall not be unreasonably withheld and which consent shall be deemed given after fifteen (15) days if the applicable party has not responded to a written request from the Issuer for such consent), shall promptly appoint a successor Trustee. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Issuer.

(b) If, in a proper case, no appointment of a successor Trustee shall be made pursuant to subsection (a) of this Section 7.11 within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 or of removal of the Trustee pursuant to Section 7.10, the retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Section 7.12. Concerning Any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer a written instrument accepting such appointment hereunder, accepting assignment of the beneficial interest in the Junior Mortgage, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Trust Estate and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, the Borrower or the Bondholder Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Trustee all the Trust Estate and the rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and money held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by a successor Trustee for more fully and certainly vesting in such successor the Trust Estate and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Trustee in each recording office where this Indenture shall have been filed and/or recorded. Each successor Trustee shall mail notice by first class mail, postage prepaid, at least once within 30 days of such appointment, to the Owners of all Bonds Outstanding at their addresses on the Bond Register.

Section 7.13. Successor Trustee as Trustee, Paying Agent and Bond Registrar. In the event of a change in the office of Trustee, the predecessor Trustee which shall have resigned or shall have been removed shall cease to be trustee and paying agent on the Bonds and Bond Registrar, and the successor Trustee shall become such Trustee, Paying Agent and Bond Registrar.

Section 7.14. Appointment of Co-Trustee or Separate Trustee. It is the intent of the Issuer and the Trustee that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in case of litigation under or connected with this Indenture, the Junior Loan Agreement or any of the other Junior Loan Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Trustee or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee, with the consent of the Issuer, appoint an additional individual or institution as a co-trustee or separate trustee.

In the event that the Trustee appoints an additional individual or institution as a co-trustee or separate trustee, in the event of the incapacity or lack of authority of the Trustee, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Trustee herein or to hold title to the Trust Estate or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be imposed upon, exercised by or vested in or conveyed to the Trustee with respect thereto shall be imposed upon, exercisable by and vest in such separate trustee or co-trustee, but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-trustee or separate trustee shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Issuer and the Trustee.

Should any instrument in writing from the Issuer be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer, the Trustee and the Borrower. If the Issuer shall fail to deliver the same within thirty (30) days of such request, the Trustee is hereby appointed attorney-in-fact for the Issuer to execute, acknowledge and deliver such instruments in the Issuer's name and stead. In case any co-trustee or separate trustee, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such co-trustee or separate trustee.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) The Bonds shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Trustee;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon or exercised or performed by the Trustee, or by the Trustee and such co-trustee, or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or separate trustee;

(c) any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co-trustee or separate trustee;

(d) any co-trustee or separate trustee to the extent permitted by law shall delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Trustee at any time by an instrument in writing with the concurrence of the Issuer evidenced by a certified resolution may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section and in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of or remove any such co-trustee or separate trustee without the concurrence of the Issuer, and upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section;

(f) no Trustee or co-trustee hereunder shall be personally liable by reason of any act or omission of any other Trustee hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Bondholders and delivered to the Trustee shall be deemed to have been delivered to each such co-trustee or separate trustee; and

(h) any money, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

The total compensation of the Trustee and co-trustee or separate trustee shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

Section 7.15. Notice of Certain Events. The Trustee shall give written notice to the Issuer, the Servicer and the Bondholder Representative of any failure by the Borrower to comply with the terms of the Regulatory Agreement of which a Responsible Officer has actual knowledge.

Section 7.16. Reserved.

Section 7.17. Filing of Financing Statements. The Trustee shall, at the expense of the Borrower, file or record or cause to be filed or recorded all UCC continuation statements for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Closing Date in connection with the security for the Bonds pursuant to the authority of the UCC. Upon the filing of any such continuation statement the Trustee shall immediately notify the Issuer, the Borrower, the Bondholder Representative and the Servicer that the same has been done. If direction is given by the Servicer or the Bondholder Representative, the Trustee shall file all continuation statements in accordance with such directions.

ARTICLE VIII

SUPPLEMENTAL INDENTURES AND AMENDMENTS OF CERTAIN DOCUMENTS

Section 8.01. Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may from time to time and at any time, without the consent of, or notice to, any of the Bondholders, but with the prior written consent of the Bondholder Representative, enter into an indenture or indentures supplemental to this Indenture for any one or more of the following purposes:

(a) to cure any formal defect, omission, inconsistency or ambiguity herein in a manner not materially adverse to the Holder of any Bond to be Outstanding after the effective date of the change;

(b) to grant to or confer upon the Trustee for the benefit of the Holders of the Bonds any additional rights, remedies, powers or authority that may lawfully be granted or conferred and that are not contrary to or inconsistent with this Indenture or the rights of the Trustee hereunder as theretofore in effect;

(c) to subject to the lien and pledge of this Indenture additional revenues, properties or collateral;

(d) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under any state blue sky laws;

(e) to make such additions, deletions or modifications as may be, in the opinion of Bond Counsel delivered to the Issuer and the Trustee, necessary to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds; or

(f) to modify, amend or supplement this Indenture in any other respect which is not materially adverse to the Holders of the Bonds to be Outstanding after the effective date of the change and which does not involve a change described in Section 8.02.

Section 8.02. Supplemental Indentures Requiring Consent of Bondholders. With the prior written consent of the Bondholder Representative, the Holders of more than 51% of the aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture; provided, however, that nothing in this Section contained shall permit, or be construed as permitting, (a) an extension of the time for payment of, or an extension of the stated maturity or reduction in the principal amount or reduction in the rate of interest on or extension of the time of payment, of interest on, or reduction of any premium payable on the redemption of, any Bonds, or a reduction in the Borrower's obligation on the Junior Note, without the consent of the Holders of all of the Bonds then Outstanding, (b) the creation of

any lien prior to or on a parity with the lien of this Indenture, (c) a reduction in the aforesaid percentage of the principal amount of Bonds which is required in connection with the giving of consent to any such supplemental indenture, without the consent of the Holders of all of the Bonds then Outstanding, (d) the modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, (e) a privilege or priority of any Bond over any other Bonds, or (f) any action that results in the interest on the Bonds becoming included in gross income for federal income tax purposes.

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed, postage prepaid, to all registered Bondholders and to the Bondholder Representative. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Bondholders.

Thirty (30) days after the date of the mailing of such notice, the Issuer and the Trustee may enter into such supplemental indenture substantially in the form described in such notice, but only if there shall have first been or is simultaneously delivered to the Trustee the required consents, in writing, of the Bondholder Representative and the Holders of not less than the percentage of Bonds required by this Section 8.02. If the Holders of not less than the percentage of Bonds required by this Section 8.02 shall have consented to and approved the execution and delivery of a supplemental indenture as provided herein, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section 8.02 permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith. The Trustee may rely upon an opinion of counsel as conclusive evidence that execution and delivery of a supplemental indenture has been effected in compliance with the provisions of this Article VIII.

Anything in this Article VIII to the contrary notwithstanding, unless the Borrower shall then be in default of any of its obligations under the Junior Loan Agreement, the Regulatory Agreement, the Junior Note or the Junior Mortgage, a supplemental indenture under this Article VIII which affects any rights of the Borrower shall not become effective unless and until the Borrower shall have expressly consented in writing to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture to be mailed by certified or registered mail to the Borrower or the Borrower's attorney at least fifteen (15) days prior to the proposed date of execution and delivery of any supplemental indenture.

Notwithstanding any other provision of this Indenture, the Issuer and the Trustee may consent to any supplemental indenture upon receipt of the consent of the Bondholder Representative, the Holders of all Bonds then Outstanding and, as applicable, the Borrower.

Section 8.03. Amendments to Junior Loan Agreement Not Requiring Consent of Bondholders. The Trustee shall, without the consent of, or notice to, the Bondholders, but with the consent of the Borrower and the Bondholder Representative, consent to any amendment, change or modification of the Junior Loan Agreement as follows:

- (a) as may be required by the provisions of Junior Loan Agreement or this Indenture;
- (b) to cure any formal defect, omission, inconsistency or ambiguity in the Junior Loan Agreement in a manner not materially adverse to the Holder of any Bond to be Outstanding after the effective date of the change;
- (c) to make such additions, deletions or modifications as may be necessary, in the opinion of Bond Counsel delivered to the Issuer and the Trustee, to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds; or
- (d) to modify, amend or supplement the Junior Loan Agreement in any other respect which is not materially adverse to the Trustee or Holders of the Bonds to be Outstanding after the effective date of the change and which does not involve a change described in Section 8.04.

Section 8.04. Amendments to Junior Loan Agreement Requiring Consent of Bondholders. Except for the amendments, changes or modifications of the Junior Loan Agreement as provided in Section 8.03 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Junior Loan Agreement without the consent of the Bondholder Representative, and the Borrower and without the giving of notice and the written approval or consent of the Holders of at least 51% of the aggregate principal amount of the Bonds then Outstanding given and procured in accordance with the procedure set forth in Section 8.02 hereof; provided, however, that nothing contained in this Section 8.04 shall permit, or be construed as permitting, any amendment, change or modification of the Borrower's obligation to make the payments required under the Junior Loan Agreement without the consent of the Holders of all of the Bonds then Outstanding. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of the Junior Loan Agreement, the Trustee shall cause notice of such proposed amendment, change or modification to be given in the same manner as provided in Section 8.02 hereof. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Trustee for inspection by Bondholders.

Section 8.05. Consent of Holders of Senior Issuer Notes. No supplement or amendment to the Junior Loan Agreement or this Indenture, as described in this Article VIII, shall be effective except upon receipt by the Trustee of the written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, thereto of (a) the "Noteowner Representative" under and as defined in the Senior Funding Loan Agreement or (b) the registered holders of 100% of the aggregate principal amount of the Senior Issuer Notes then outstanding.

Section 8.06. Opinion of Bond Counsel Required. No supplement or amendment to the Junior Loan Agreement or this Indenture, as described in this Article VIII, shall be effective until the Issuer, the Trustee and the Bondholder Representative shall have received an opinion of

Bond Counsel to the effect that such supplement or amendment is authorized or permitted by this Indenture and, upon execution and delivery thereof, will be valid and binding upon the Issuer in accordance with its terms and will not cause interest on the Bonds to be includable in gross income of the Holders thereof for federal income tax purposes. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it as conclusive evidence that (i) any proposed supplemental indenture or amendment permitted by this Article VIII complies with the provisions of this Indenture, (ii) it is proper for the Trustee to join in the execution of that supplemental indenture or amendment under the provisions of this Article VIII, and (iii) if applicable, such proposed supplemental indenture or amendment is not materially adverse to the interests of the Bondholders.

ARTICLE IX

SATISFACTION AND DISCHARGE OF INDENTURE

Section 9.01. Discharge of Lien. If the Issuer shall pay or cause to be paid to the Holders of the Bonds the principal and interest to become due thereon at the times and in the manner stipulated therein and herein, in any one or more of the following ways:

- (a) by the payment of the principal of and interest on all Bonds Outstanding; or
- (b) by the deposit or credit to the account of the Trustee, in trust, of money or securities in the necessary amount (as provided in Section 9.04) to pay the principal, redemption price and interest to the date established for redemption whether by redemption or otherwise; or
- (c) by the delivery to the Trustee, for cancellation by it, of all Bonds Outstanding;

and shall have paid all amounts due and owing to the Bondholder Representative hereunder, and shall have paid all fees and expenses of and any other amounts due to the Trustee, and if the Issuer shall keep, perform and observe all and singular the covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any interest in property at the time subject to the lien of this Indenture which may then be in its possession, except amounts held by the Trustee for the payment of principal of, interest, on the Bonds.

Any Outstanding Bond shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 if, under circumstances which do not cause interest on the Bonds to become includable in the Holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) in case such Bond is to be redeemed on any date prior to its maturity, the Trustee shall have given to the Bondholder irrevocable notice of redemption of such Bond on said date; (b) there shall be on deposit with the Trustee, pursuant to Section 9.04 hereof, either money or direct obligations of the United States of America in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which

will be sufficient to pay, when due, the principal or redemption price, if applicable, and interest due and to become due on such Bond on the redemption date or Maturity Date thereof, as the case may be; and (c) in the case of Bonds which do not mature or will not be redeemed within Sixty (60) days of such deposit, the Trustee shall have received a verification report of a firm of certified public accountants reasonably acceptable to the Trustee as to the adequacy of the amounts so deposited to fully pay the Bonds deemed to be paid.

The Trustee shall in no event cause the Bonds to be optionally redeemed from money deposited pursuant to this Article IX unless the requirements of Article III have been met with respect to such redemption.

Section 9.02. Reserved.

Section 9.03. Discharge of Liability on Bonds. Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01) to pay or redeem Outstanding Bonds (whether upon or prior to their maturity or the redemption date of such Bonds) provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article III provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, all liability of the Issuer in respect of such Bonds shall cease, terminate and be completely discharged, except only that thereafter the holders thereof shall be entitled to payment by the Issuer, and the Issuer shall remain liable for such payment, but only out of the money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 9.04.

Section 9.04. Payment of Bonds After Discharge of Indenture. Notwithstanding any provisions of this Indenture, and subject to applicable unclaimed property laws of the State, any money deposited with the Trustee or any paying agent in trust for the payment of the principal of, interest on the Bonds remaining unclaimed for two (2) years after the payment thereof, to the extent permitted by applicable law, shall be paid to the Borrower, whereupon all liability of the Issuer and the Trustee with respect to such money shall cease, and the holders of the Bonds shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Trustee and subject to this Section 9.04 shall be held uninvested and without liability for interest thereon.

Section 9.05. Deposit of Money or Securities With Trustee. Whenever in this Indenture it is provided or permitted that there be deposited with or credited to the account of or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held shall consist of:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which there shall have been furnished to the Trustee proof satisfactory to it that notice of such redemption on a specified redemption date has been duly given or provision satisfactory to the Trustee shall be made for such notice, the amount so to be deposited or held shall be the principal amount of such Bonds and interest thereon to the redemption date; or

(b) noncallable and nonprepayable direct obligations of the United States of America or noncallable and nonprepayable obligations which as to principal and interest constitute full faith and credit obligations of the United States of America, in such amounts and maturing at such times that the proceeds of said obligations received upon their respective maturities and interest payment dates, without further reinvestment, will provide funds sufficient, in the opinion of a nationally recognized firm of certified public accountants, to pay the principal, and interest to maturity, or to the redemption date, as the case may be, with respect to all of the Bonds to be paid or redeemed, as such principal, and interest become due; provided that the Trustee shall have been irrevocably instructed by the Issuer to apply the proceeds of said obligations to the payment of said principal, and interest with respect to such Bonds.

ARTICLE X

INTENTIONALLY OMITTED

ARTICLE XI

MISCELLANEOUS

Section 11.01. Consents and Other Instruments of Bondholders. Any consent, request, direction, approval, waiver, objection, appointment or other instrument required by this Indenture to be signed and executed by the Bondholders may be signed and executed in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such instrument, namely:

(a) the fact and date of the execution by any Person of any such instrument may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the Person signing such instrument acknowledged the execution thereof. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such affidavit or certificate shall also constitute sufficient proof of such authority;

(b) the ownership of registered Bonds shall be proved by the Bond Register; and

(c) any request, consent or vote of the Holder of any Bond shall bind every future Holder of the same Bond and the Holder of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or permitted to be done by the Trustee or the Issuer in pursuance of such request, consent or vote.

Section 11.02. Reserved.

Section 11.03. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Indenture or the Bonds is intended or shall

be construed to give to any Person other than the Parties hereto, the Bondholder Representative, the Borrower and the Holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions hereof.

Section 11.04. Severability. If any provision of this Indenture shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Indenture contained, shall not affect the remaining portions of this Indenture, or any part thereof.

Section 11.05. Notices.

(a) Any provision of this Indenture relating to the mailing of notice or other communication to Bondholders shall be deemed fully complied with if such notice or other communication is mailed, by first class mail, postage prepaid, to each registered Owner of any Bonds then Outstanding at the address of such registered Owner as it appears on the Bond Register. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

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

The Issuer:	City of San José Finance Department 200 East Santa Clara Street, 13th Floor Tower San José, California 95113-1905 Attention: Debt Management Fax: (408) 292-6482
-------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

With a copy to: City of San José
Finance Department
200 East Santa Clara Street, 12th Floor Tower
San José, California 95113-1905
Attention: Director of Housing
Fax: (408) 998-3183

With a copy to: San José City Attorney's Office
200 East Santa Clara Street, 16th Floor Tower
San José, California 95113-1905
Attention: City Attorney
Fax: (408) 998-3183

The Trustee: U.S. Bank National Association
Global Corporate Trust Services
One California Street, Suite 1000
San Francisco, CA 94111
Attn: Andrew Fung
Facsimile: (415) 677-3769

The Borrower: Burnham VDG Venture LP / Standard Property
Company, Inc.
1901 Avenue of the Stars, Suite 395
Los Angeles, CA 90067
Attn: Scott Alter
Fax: 310-551-1666

The Investor Limited
Partner: Aegon LIHTC Fund 50, LLC
c/o AEGON USA Realty Advisors, LLC
Attn: LIHTC Reporting
Mail Drop 5553
4333 Edgewood Road NE
Cedar Rapids, IA 52499
Fax: (319) 355-8030

With a copy to: Holland & Knight LLP
10 St. James Ave., 11th Floor
Boston, MA 02116
Attn: Jonathan I. Siros, Esq.
Fax: (617) 523-6850

Bondholder
Representative: Burnham VDG Venture LP / Standard Property
Company, Inc.
1901 Avenue of the Stars, Suite 395
Los Angeles, CA 90067
Attn: Scott Alter
Fax: 310-551-1666

The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions pursuant to this Indenture, provided, however, that subsequent to such facsimile transmission of written instructions, the originally executed instructions and/or directions shall be provided to the Trustee in a timely manner.

(b) The Trustee shall provide to the Bondholder Representative (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Trustee hereunder within ten (10) Business Days of receiving a written request from the Bondholder Representative for any such information or other communication.

Section 11.06. Reserved.

Section 11.07. Trustee as Paying Agent and Bond Registrar. The Trustee is hereby designated and agrees to act as Paying Agent and Bond Registrar for and in respect to the Bonds. When acting in either such capacity, the Trustee will receive the same rights, protections and indemnifications afforded to the Trustee hereunder.

Section 11.08. Payments Due on Non-Business Days. In any case where a date of payment with respect to any Bonds shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period from and after such date providing that payment is made on such next succeeding Business Day.

Section 11.09. Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.10. Laws Governing Indenture and Administration of Trust. The effect and meanings of this Indenture and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State without regard to conflicts of laws principles.

Section 11.11. No Recourse. No recourse under or upon any obligation, covenant or agreement contained in this Indenture or in any Bond shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Issuer, either directly or through the Issuer or its governing body or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Holder of any Bond issued hereunder, or otherwise, of any sum that may be due and unpaid by the Issuer or its governing body upon any such Bond. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond

by reason of any act of omission on his/her part or otherwise, for the payment for or to the Holder of any Bond issued hereunder or otherwise of any sum that may remain due and unpaid upon any Bond hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Indenture and the issuance of the Bonds.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Indenture to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

CITY OF SAN JOSÉ, as Issuer

By



Julia H. Cooper, Director of Finance

Attest:



Toni J. Taber, City Clerk

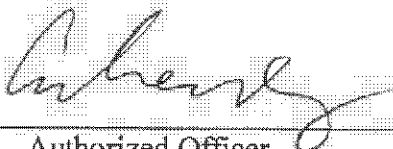
Approved as to form:



Kevin Fisher, Chief Deputy City Attorney

[Signature page – Junior Indenture of Trust - Villa De Guadalupe Apartments]

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By 
Authorized Officer

[Signature page – Junior Indenture of Trust - Villa De Guadalupe Apartments]

EXHIBIT A
FORM OF JUNIOR BOND

\$ _____

CITY OF SAN JOSÉ
JUNIOR MULTIFAMILY HOUSING REVENUE BONDS
(VILLA DE GUADALUPE APARTMENTS)
2017 SERIES B

THIS BOND MAY ONLY BE TRANSFERRED IN WHOLE UPON SATISFACTION OF THE REQUIREMENTS IN THE INDENTURE, INCLUDING THE DELIVERY TO THE TRUSTEE OF THE DOCUMENTS REQUIRED THEREIN IN CONNECTION WITH ANY TRANSFER OF THIS BOND. ANY TRANSFER OF THIS BOND IN VIOLATION OF THE TRANSFER RESTRICTIONS CONTAINED IN THE INDENTURE SHALL BE VOID AND OF NO EFFECT.

<u>MATURITY DATE</u>	<u>DATED DATE</u>	<u>INTEREST RATE</u>
		Bond Rate

Registered Owner:

Principal Amount:

The City of San José, a municipal corporation and charter city organized and existing under the laws of the State of California (the "Issuer"), for value received, hereby promises to pay (but only out of Revenues as hereinafter provided) to the registered owner identified above or registered assigns, on the Maturity Date set forth above, the principal sum set forth above and to pay (but only out of Revenues as hereinafter provided) interest on the balance of said principal amount from time to time remaining unpaid from and including the date hereof until payment of said principal amount has been made or duly provided for, at the rates and on the dates determined as described herein and in the Indenture (as hereinafter defined). The principal of and, interest on this Bond are payable at final maturity, acceleration or redemption in lawful money of the United States of America upon surrender hereof at the principal corporate trust office of U.S. Bank National Association, as Trustee, or its successor in trust (the "Trustee"). Payment of the interest on any Bond shall be made on each Bond Payment Date (as hereinafter defined) to the Person appearing on the bond registration books of the Bond Registrar as the Owner thereof on the Record Date, such interest to be paid by the Paying Agent (i) to such Owner by check or draft mailed on the Bond Payment Date, to such Owner's address as it appears on the registration books or at such other address as has been furnished to the Bond Registrar as provided below, in writing by such Owner not later than the Record Date or (ii) upon written request, at least three Business Days prior to the applicable Record Date, to the Owner of Bonds aggregating not less than \$1,000,000

in principal amount, by wire transfer in immediately available funds at an account maintained in the United States at such wire address as such Owner shall specify in its written notice; except, in each case, that, if and to the extent that there shall be a default in the payment of the interest due on such Bond Payment Date, such defaulted interest shall be paid to the Owner in whose name any such Bonds are registered at the close of business on the fifth to last Business Day next preceding the date of payment of such defaulted interest.

The Bonds are authorized to be issued pursuant to Act and are designated as the “City of San José Junior Multifamily Housing Revenue Bonds (Villa De Guadalupe Apartments) 2017 Series B”, limited in aggregate principal amount of \$4,615,712. The Bonds are limited obligations of the Issuer and, as and to the extent set forth in the Indenture, are payable solely from, and secured by a pledge of and lien on, the Revenues. Proceeds from the sale of the Bonds will be loaned by the Issuer to Burnham VDG Venture LP, a California limited partnership (the “Borrower”) under the terms of a Junior Loan Agreement, dated as of May 1, 2017 (the “Agreement”), among the Issuer, the Borrower and the Trustee. The Bonds are all issued under and secured by and entitled to the benefits of a Junior Indenture of Trust, dated as of May 1, 2017 (the “Indenture”) between the Issuer and the Trustee. No holder of this Bond shall ever have the right to compel the exercise of the taxing power the State or any political subdivision of the State to pay the principal of this Bond or the interest on it or any other cost incident to this Bond, or to enforce payment of this Bond against any property of the Issuer, any Program Participant of the Issuer, the State or any political subdivision of the State. The Issuer has no taxing power.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights thereunder of the registered owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Issuer thereunder, to all of the provisions of the Indenture and of the Junior Loan Agreement the holder of this Bond, by acceptance hereof, assents and agrees.

The Bonds are issued simultaneously with the funding of the Issuer’s revenue notes designated as City of San José Multifamily Housing Revenue Note (Villa De Guadalupe Apartments) 2017 Series A-1, in the original aggregate principal amount of \$28,980,000 and City of San José Multifamily Housing Revenue Note (Villa De Guadalupe Apartments) 2017 Series A-2, in the original aggregate principal amount of \$8,720,000 (the “Senior Issuer Notes”) pursuant to a Senior Funding Loan Agreement dated as of May 1, 2017 (the “Senior Funding Loan Agreement”) between the Issuer and the Trustee. As set forth in the Indenture, the Bonds are subordinate in all respects to the Senior Issuer Notes.

All terms not herein defined shall have the meanings ascribed to them in the Indenture.

The Bonds are issuable as one fully registered bond. Subject to the limitations and upon payment of the charges, if any, provided in the Indenture, Bonds may be exchanged in whole at the Principal Corporate Trust Office of the Trustee and the Bond Registrar.

The Bonds may only be held by, or transferred to, Sophisticated Investors (as defined in the Indenture), with such Sophisticated Investors executing and delivering an Investor Letter in the form attached as Exhibit B to the Indenture as Exhibit B.

This Bond is transferable by the registered owner hereof, in person, or by its attorney duly authorized in writing, at the Principal Corporate Trust Office of the Trustee and the Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new fully registered Bond, for the same aggregate principal amount, will be issued to the transferee in exchange therefor. The Issuer, the Trustee and the Bond Registrar may treat the registered owner hereof as the absolute owner hereof for all purposes, and the Issuer, the Trustee and the Bond Registrar shall not be affected by any notice to the contrary.

Interest on the Bonds

Bond Payment Date has the meaning set forth in the Indenture.

Record Date means the 15th day of the month prior to a Bond Payment Date.

Redemption of Bonds

The Bonds are subject to optional, mandatory and extraordinary redemption as set forth in the Indenture.

General Matters

The holder of this Bond shall have no right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon the Indenture, except as provided in the Indenture.

No recourse shall be had for the payment of the principal of, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Indenture contained, against any past, present or future member, director, officer, employee or agent of the Issuer, or through the Issuer, or any successor to the Issuer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such member, director, officer, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of the Indenture and the issuance of any of the Bonds.

Amendments Permitted

The Indenture contains provisions permitting the Issuer and the Trustee to execute supplemental indentures with the written consent of the Bondholder Representative and the Owners of more than fifty-one percent (51%) in aggregate principal amount of Bonds at the time Outstanding, subject to certain conditions as set forth in the Indenture.

The Indenture also contains provisions permitting the Issuer and the Trustee to execute supplemental indentures without consent of the Owners of the Bonds, subject to certain conditions as set forth in the Indenture.

The Indenture prescribes the manner in which it may be discharged and after which the Bonds shall no longer be secured by or entitled to the benefits of the Indenture, except for the purposes of transfer and exchange of Bonds and of payment of the principal of and interest on the

Bonds as the same become due and payable, including a provision that under certain circumstances the Bonds shall be deemed to be paid if certain securities, as defined therein, maturing as to principal and interest in such amounts and at such times as to ensure the availability of sufficient moneys to pay the principal of, and interest on the Bonds and all necessary and proper fees, compensation and expenses of the Trustee shall have been deposited with the Trustee.

No member or officer of the Issuer, nor any Person executing this Bond, shall in any event be subject to any personal liability or accountability by reason of the issuance of the Bonds.

It is hereby certified that all of the conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of California.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Bond Registrar.

In the event of any inconsistency between the provisions of this Bond and the provisions of the Indenture, the provisions of the Indenture shall control.

IN WITNESS WHEREOF, the City of San José has caused this Bond to be executed on its behalf by the manual or facsimile signature of an Authorized Officer, and its seal to be reproduced hereon and attested by the manual or facsimile signature of the City Clerk.

CITY OF SAN JOSÉ, as Issuer

[SEAL]

By: _____
Authorized Officer

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds issued under the provisions of and described in the within-mentioned Indenture.

Date of Authentication: _____

U.S. Bank National Association, as Trustee

By _____
Authorized Officer

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto
(Please insert Social Security Number or other identifying number of assignee)

(Please Print or Typewrite Name and Address of Assignee)

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____.

Signature Guaranteed

NOTICE: Signature(s) must be guaranteed by an eligible guaranty institution.

Signature

NOTICE: The Signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B

FORM OF PURCHASER'S LETTER

[To be prepared on letterhead of Purchaser]

[Date]

City of San José

U.S. Bank National Association

Re: City of San José
Junior Multifamily Housing Revenue Bonds
(Villa De Guadalupe Apartments) 2017 Series B

Ladies and Gentlemen:

The undersigned (the "Purchaser") hereby acknowledges receipt as transferee, from the previous owner thereof, of the above-referenced bonds (the "Bonds") in fully registered form and in the original aggregate principal amount of \$4,615,712, constituting all of the Bonds currently outstanding. The Bonds have been checked, inspected and approved by the Purchaser.

The undersigned acknowledges that the Bonds were issued for the purpose of making a loan to assist in financing a multifamily rental housing development known as Villa De Guadalupe Apartments located in the City of San José, California (the "Project"), as more particularly described in that certain Junior Loan Agreement dated as of May 1, 2017, as may be amended and supplemented from time to time (the "Junior Loan Agreement"), by and among the City of San José (the "Issuer"), Burnham VDG Venture LP, a limited partnership duly organized and existing under the laws of the State of California (the "Borrower"), and U.S. Bank National Association (the "Trustee"). The undersigned further acknowledges that the Bonds are secured by a certain Junior Indenture of Trust dated as of May 1, 2017, as amended and supplemented (the "Indenture"), between the Issuer and the Trustee, which creates a security interest in loan repayments made pursuant to the Junior Loan Agreement for the benefit of the holders and Owners of the Bonds, and by a Junior Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing with respect to the Project (the "Junior Mortgage"), which creates a security interest in the Project, subject to permitted encumbrances, as provided therein. Terms not otherwise defined herein shall have the meanings assigned thereto in the Indenture.

In connection with the sale of the Bonds to the Purchaser, the Purchaser hereby makes the following representations upon which you may rely:

1. The Purchaser hereby certifies that it is (a) a bank as defined in Section 3(a)(2) of the Securities Act of 1933 (the “Act”) or a bank holding company or a wholly owned subsidiary of a bank holding company, or a savings and loan association or other institution as defined in Section 3(a)(5)(a) of that act whether acting in its individual or fiduciary capacity; or (b) a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; or (c) an insurance company as defined in Section 2(13) of that act; or (d) an investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that act; or (e) a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; or (f) a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivision for the benefit of its employees, if investment decisions are made by a plan fiduciary which is a bank, savings and loan association, insurance company, or registered investment advisor and the plan establishes fiduciary principles the same as or similar to those contained in Sections 404-407 of Title I of the Employee Retirement Income Security Act of 1974; or (g) an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if investment decisions are made by a plan fiduciary, as defined in Section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment advisor, or if the employee benefit plan has total assets in excess of \$100,000,000, or, if a self-directed plan, with investment decisions made solely by Persons that are accredited investors or (h) an “accredited investor” as defined in Rule 501 of Regulation D of the Act, as amended.

2. The Bonds are being acquired by the Purchaser for its own account and for investment and not with a view to, or for resale in connection with, any public distribution of the Bonds. The Purchaser understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible due to unmarketability of the Bonds; provided, however, the Purchaser acknowledges and agrees that it may transfer the Bonds in whole only and in accordance with the Indenture and this letter.

3. The Purchaser understands that the Bonds have not been registered under the Act.

4. The Purchaser acknowledges that it is familiar with the conditions, financial and otherwise, of the Borrower and understands that the Borrower has no significant assets other than the Project. To the extent deemed appropriate in making its investment decision, the Purchaser has discussed the Borrower’s financial condition and the Borrower’s current and proposed business activities with the Borrower. The Purchaser further acknowledges that it has such knowledge and experience in business matters that it is fully capable of evaluating the merits and risks of this investment and it is able to bear the economic risk of the investment. The Bonds are a security of the kind the Purchaser wishes to purchase and hold for investment, and the nature and amount of the Bonds are consistent with the Purchaser’s investment program. The Purchaser has been furnished such information and such documents as the Purchaser deems necessary to make a decision to purchase the Bonds, including copies or forms of the Indenture, the Junior Loan Agreement, the Junior Mortgage and the Regulatory Agreement (as defined in the Indenture), and certain other documents relating to the Bonds and the Project, all of which documents the Purchaser has reviewed. Specifically, but without limitation, the Purchaser has reviewed information about the Project and the property manager for the Project, if any, as well as information about the investment risks relating to the Bonds, and the Purchaser understands that

the Bonds involve a high degree of risk. SPECIFICALLY, AND WITHOUT IN ANY MANNER LIMITING THE FOREGOING, THE PURCHASER UNDERSTANDS AND ACKNOWLEDGES THAT, AMONG OTHER RISKS, THE BONDS ARE PAYABLE SOLELY FROM REVENUES DERIVED FROM THE PROJECT AND THAT THE BONDS ARE NOT ENTITLED TO THE BENEFIT OF ANY CREDIT FACILITY AND NOT RATED BY THE RATING AGENCY. The Purchaser has made such inquiry with respect to all of the foregoing as it believed to be desirable for its purposes.

5. The Purchaser has received from the Issuer no formal or informal offering or disclosure document relating to the Bonds and has concluded that the receipt of one prior to the purchase of the Bonds is not required. It is acknowledged that no written information has been provided by the Issuer, and that any written information furnished by any other party to the transaction does not purport to fully disclose all information pertinent to the Bonds.

6. Except as disclosed to the Issuer, the Purchaser is not now and has never been controlled by, or under common control with, the Borrower. Except as disclosed to the Issuer, the Borrower has never been and is not now controlled by the Purchaser. THE PURCHASER HAS ENTERED INTO NO ARRANGEMENTS WITH THE BORROWER OR WITH ANY AFFILIATE OF THE BORROWER IN CONNECTION WITH THE BONDS, OTHER THAN AS DISCLOSED TO THE ISSUER. The Purchaser hereby agrees to deliver to the Issuer a copy of any agreement between the Purchaser and the Borrower or any affiliate of the Borrower relating to the Bonds.

7. The Purchaser has authority to purchase the Bonds and to execute this letter and any other instruments and documents required to be executed by the Purchaser in connection with the purchase of the Bonds.

8. In entering into this transaction the Purchaser has not relied upon any representations or opinions made by the Issuer relating to the legal consequences or other aspects of the transactions, nor has it looked to, nor expected, the Issuer to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the refinancing, operation or management thereof), or any other matter pertaining to the merits or risks of the transaction, or the adequacy of any collateral pledged to the Trustee to secure repayment of the Bonds.

9. The Purchaser understands that the Bonds are not secured by any pledge of any money received or to be received from taxation by the State of California or any political subdivision or taxing district thereof, including, without limitation, the Issuer; that the Bonds will never represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the State of California or any political subdivision thereof; that no right will exist to have taxes levied by the Issuer, the State of California or any political subdivision thereof for the payment of principal, and interest on the Bonds; and that the liability of the Issuer with respect to the Bonds is subject to further limitations as set forth in the Bonds and the Indenture.

10. The Purchaser has been informed that the Bonds have not been and will not be registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any

jurisdiction, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

11. The Purchaser has obtained, from representatives of the Borrower and others, all information regarding the Bonds that it has deemed relevant. The Purchaser has asked of the Borrower and all other relevant parties all the questions to which the Purchaser desired answers, and has had those questions satisfactorily answered. Neither the Borrower nor the Issuer nor any other relevant party has refused to disclose any information that Purchaser deems necessary or appropriate to its decision to purchase the Bonds.

12. Although the Purchaser does not intend at this time to dispose of the Bonds, the Purchaser acknowledges that it has the right to sell and transfer the Bonds, subject to the following requirements:

(a) The Purchaser may not dispose of the Bonds to a Person or entity other than as described in Section 1 without the prior written consent of the Issuer;

(b) The Purchaser will only sell or otherwise transfer the Bonds in whole, except with the prior written approval of the Issuer;

(c) Prior to any transfer of the Bonds, the Purchaser shall deliver to the Issuer and the Trustee a certificate identifying any and all documents that have been executed by the Purchaser and the Borrower or any affiliate of the Borrower with respect to the Bonds; and

(d) The Purchaser will not sell or otherwise transfer the Bonds without requiring the transferee to deliver to the Issuer and to the Trustee an investor's letter to the same effect as this Purchaser's Letter, including this paragraph 12, with no revisions except as may be approved in writing by the Issuer.

[Purchaser]

CITY OF SAN JOSÉ
MULTIFAMILY HOUSING REVENUE NOTE
(VILLA DE GUADALUPE APARTMENTS) 2017 SERIES A-1

CITY OF SAN JOSÉ
MULTIFAMILY HOUSING REVENUE NOTE
(VILLA DE GUADALUPE APARTMENTS) 2017 SERIES A-2

CITY OF SAN JOSÉ
JUNIOR MULTIFAMILY HOUSING REVENUE BONDS
(VILLA DE GUADALUPE APARTMENTS) 2017 SERIES B




CERTIFICATE OF THE ISSUER

The undersigned, an Authorized Signatory (as defined below) of the City of San José (the “Issuer”), hereby certifies as of May 23, 2017, as follows:

(i) that the undersigned is the duly elected or appointed, qualified and acting Director of Finance of the City of San José, a chartered city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the “Issuer”), and as such, is familiar with the facts herein certified and is authorized and qualified to certify the same;

[Remainder of Page Intentionally Left Blank]

(iii) that the signatures set forth opposite the names and titles of the following persons are the true and correct specimens of, or are, the genuine signatures of such persons, each of whom holds the office designated below:

<u>Name and Title</u>	<u>Signature</u>
Julia H. Cooper, Director of Finance	
David Bopf, Interim Assistant Director of Housing	
Toni J. Taber, City Clerk	

[Remainder of Page Intentionally Left Blank]

[Incumbency page – Certificate of the Issuer]

(iii) that the Director of Finance of the City and the City Clerk have been duly authorized by the City Council of the City to sign and attest, on behalf of the City, the City of San José Multifamily Housing Revenue Note (Villa De Guadalupe Apartments) 2017 Series A-1 (the “Governmental Lender Tax-Exempt Note”) in the aggregate principal amount of \$28,980,000, City of San José Multifamily Housing Revenue Note (Villa De Guadalupe Apartments) 2017 Series A-2 (the “Governmental Lender Taxable Note” and, collectively with the Governmental Lender Tax-Exempt Note, the “Governmental Lender Notes”) in the aggregate principal amount of \$8,720,000 and City of San José Junior Multifamily Housing Revenue Bonds (Villa De Guadalupe Apartments) 2017 Series B (the “Junior Bonds” and together with the Governmental Lender Notes, the “Obligations”), in the aggregate principal amount of \$4,615,712, and pursuant to such authority they have signed and attested the Obligations in said aggregate principal amount by their manual or facsimile signatures;

(iv) the seal of the City is impressed or imprinted by facsimile upon each of the Obligations, is impressed hereon and is the legally adopted, proper and only official seal of the City.

(v) that the City Council of the Issuer duly adopted the following resolution (the “Resolution”) at a meeting of the City Council that was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, which Resolution has not been amended, modified, supplemented, rescinded or repealed and remain in full force and effect as of the date hereof:

Resolution No. 78146, entitled “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ, CALIFORNIA, AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF MULTIFAMILY HOUSING REVENUE NOTES AND JUNIOR MULTIFAMILY HOUSING REVENUE BONDS, AND THE LOAN OF THE PROCEEDS THEREOF FOR THE FINANCING OF THE VILLA DE GUADALUPE APARTMENTS; AND APPROVING OTHER RELATED DOCUMENTS AND ACTIONS,” adopted by the City Council on May 2, 2017.

(vi) that, by all necessary action, the Issuer has duly authorized and approved the execution and delivery of, and the performance by the Issuer of the obligations on its part contained in the following agreements (collectively referred to herein as the “Issuer Documents”):

(a) the Funding Loan Agreement;

(b) the Borrower Loan Agreement (the “Loan Agreement”), dated as of May 1, 2017, by and among the Funding Lender, the Governmental Lender and the Borrower;

(c) the Junior Indenture of Trust (the “Junior Bonds Indenture”), dated as of May 1, 2017, between the Issuer and the Junior Bonds Trustee;

(d) the Junior Loan Agreement (the “Junior Loan Agreement”), dated as of May 1, 2017, among the Issuer, the Junior Bonds Trustee and the Borrower;

(e) the Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement"), dated as of May 1, 2017, among the Issuer, the Borrower, and U.S. Bank National Association, as Fiscal Agent/Trustee;

(f) the Tax Certificate and Agreement (the "Tax Certificate") of the Issuer and the Borrower, dated as of the date hereof; and

(g) the Junior Bond Purchase Agreement (the "Junior Bond Purchase Agreement"), dated May 23, 2017, by and among the Issuer, Standard VDG Lender, LLC, as purchaser of the Junior Bonds (the "Junior Bonds Purchaser") and the Borrower.

(vii) That the Issuer Documents have been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other respective parties thereto, constitute legal, valid and binding obligations of the Issuer;

(viii) that to the best knowledge of the undersigned, no litigation is pending or threatened (a) to restrain or enjoin the issuance, sale or delivery of the Obligations; (b) in any way contesting or affecting the authority for the issuance or the validity of the Obligations, or the validity of the Issuer Documents; or (c) in any way contesting the existence or powers of the Issuer;

(ix) that the Obligations, the Issuer Documents and the Resolution are in full force and effect and have not been amended, modified, supplemented or rescinded, except as has been agreed to in writing by the Underwriter;

(x) that the Issuer has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof under the Issuer Documents, and the representations and warranties of the Issuer contained in the Indenture are true, complete and correct on and as of the date hereof.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Funding Loan Agreement and the Junior Bonds Indenture.

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IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date first above written.

CITY OF SAN JOSÉ

By: 
Julia H. Cooper, Director of Finance

[Signature page – Certificate of the Issuer]

EXHIBIT A
BOND RESOLUTION

RESOLUTION NO. 78146

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE, CALIFORNIA, AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF MULTIFAMILY HOUSING REVENUE NOTES AND JUNIOR MULTIFAMILY HOUSING REVENUE BONDS, AND THE LOAN OF THE PROCEEDS THEREOF FOR THE FINANCING OF THE VILLA DE GUADALUPE APARTMENTS; AND APPROVING OTHER RELATED DOCUMENTS AND ACTIONS

WHEREAS, the City of San José (the "City") is a municipal corporation and charter city duly organized and existing under a charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and the Charter of the City (the "Charter"); and

WHEREAS, the Charter provides that the City is authorized to issue revenue notes and bonds pursuant to California law and the City is authorized to issue revenue notes and bonds under Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the California Health and Safety Code, as amended (the "Act"), which authorizes cities to issue revenue notes and bonds for the purpose of, among other things, financing the acquisition, rehabilitation and equipping of multifamily rental housing and capital improvements in connection with and determined necessary to such multifamily housing; and

WHEREAS, the Act provides that the proceeds of notes and bonds issued by a city may be loaned to a nongovernmental owner of multifamily housing to allow such owner, who shall be responsible for the payment of such notes and bonds, to reduce the cost of operating such housing and to assist in providing housing for low income persons; and

WHEREAS, Burnham VDG Venture LP, a California limited partnership (the "Borrower"), has requested that the City sell and issue multifamily housing revenue notes and bonds for the purpose of financing the acquisition and rehabilitation of a 101-unit multifamily rental housing project located in the City and generally known as Villa De Guadalupe Apartments (the "Project"); and

WHEREAS, the City is willing to issue its Multifamily Housing Revenue Notes (as more fully described herein, the "Notes") and its Junior Multifamily Housing Revenue Bonds (as more fully described herein, the "Junior Bonds" and together with the Notes, the "Obligations") and to loan the proceeds thereof to the Borrower, who shall be

responsible for the payment of such Obligations, to allow the Borrower to assist in providing housing for low income persons; and

WHEREAS, the issuance, sale and delivery of the Obligations will be conducted in accordance with the City's policies related thereto, and the City Council finds that the public interest and necessity require that the City at this time make arrangements for the sale of the Obligations; and

WHEREAS, there has been prepared and filed with the City Clerk for consideration at this meeting the documentation required for the issuance and sale of the Obligations, and such documentation is in substantially final form and an appropriate instrument to be executed and delivered for the purposes intended; and

WHEREAS, all acts, conditions and things required by the laws and Charter of the City and the laws of the State of California, including the Act, to exist, to have happened and to have been performed precedent to and in connection with the consummation of the financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is duly authorized and empowered, pursuant to each and every requirement of law, to authorize such financing and to authorize the execution of the documents related thereto, for the purposes, in the manner and upon the terms provided in this resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE THAT:

1. The City hereby finds and declares that the above recitals are true and correct.
2. Revenue notes and bonds in one or more series are hereby approved and authorized to be issued pursuant to, and in compliance with, the Act, the Funding Loan Agreement and the Junior Indenture (hereinafter defined). The Obligations are to be designated as the "City of San José Multifamily Housing Revenue Note (Villa De Guadalupe Apartments), 2017 Series A-1," and "City of San José Multifamily Housing Revenue Note (Villa De Guadalupe Apartments), 2017 Series A-2," and "City of San José Junior Multifamily Housing Revenue Bonds (Villa De Guadalupe Apartments) 2017 Junior Series B." The 2017 Series A-1 and 2017 Series A-2 Notes shall be issued in an aggregate principal amount not to exceed \$38,500,000, in the form set forth in and otherwise in accordance with the Funding Loan Agreement. The Junior Bonds shall be issued in an amount, which together with the 2017 Series A-1 Note, does not exceed \$38,500,000, in the form set forth in and otherwise in accordance with the Junior Indenture. The 2017 Series A-1 and 2017 Series A-2 Notes and the Junior Bonds shall be executed by the manual or facsimile signature of the City Manager, the Director of Housing, the Director of Finance, the Assistant Director of Finance, the Treasury Division Manager, or the Debt Administrator, or the designee of any of them (each, an "Authorized Officer") and attested by the manual or facsimile

signature of the City Clerk, in the form set forth in and otherwise in accordance with the Funding Loan Agreement and the Junior Indenture.

3. The proposed form of Funding Loan Agreement (the "Funding Loan Agreement"), among the City, Citibank, N.A., as funding lender (the "Funding Lender") and U.S. Bank National Association (or such other financial institution selected by an Authorized Officer), as fiscal agent (the "Fiscal Agent"), on file with the City Clerk, is hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Funding Loan Agreement and the City Clerk is hereby authorized and directed to attest to the signature of any such Authorized Officer on said Funding Loan Agreement, in substantially said form, with such additions thereto or changes therein as approved by any Authorized Officer upon consultation with tax and bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

The date, maturity date or dates (which shall not extend beyond 36 years from the date of issuance, interest rate or rates (which shall not exceed 12%), interest payment dates, denominations, form, registration privileges, manner of execution, place of payment, terms of prepayment and other terms of the Notes shall be as provided in the Funding Loan Agreement as finally executed.

4. The proposed form of Borrower Loan Agreement (the "Borrower Loan Agreement"), among the City, the Borrower and the Funding Lender, on file with the City Clerk, is hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Borrower Loan Agreement and the City Clerk is hereby authorized and directed to attest to the signature of any such Authorized Officer on said Borrower Loan Agreement, in substantially said form, with such additions thereto or changes therein as approved by any Authorized Officer upon consultation with tax and bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.
5. The proposed form of Junior Indenture of Trust (the "Junior Indenture"), by and between the City and U.S. Bank National Association (or such other financial institution selected by an Authorized Officer), as trustee (the "Trustee"), on file with the City Clerk, is hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Junior Indenture and the City Clerk is hereby authorized and directed to attest to the signature of any such Authorized Officer on said Junior Indenture, in substantially said form, with such additions thereto or changes therein as approved by any Authorized Officer upon consultation with tax and bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

The date, maturity date or dates (which shall not extend beyond 36 years from the date of issuance, interest rate or rates (which shall not exceed 12%), interest payment dates, denominations, form, registration privileges, manner of execution, place of payment, terms of redemption and other terms of the Junior Bonds shall be as provided in the Junior Indenture as finally executed.

6. The proposed form of Junior Loan Agreement (the "Junior Loan Agreement"), among the City, the Trustee and the Borrower, on file with the City Clerk, is hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Junior Loan Agreement in substantially said form, with such additions thereto and changes therein as any such Authorized Officer may approve upon consultation with tax and bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.
7. The proposed form of Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") by and among the City, U.S. Bank National Association, as fiscal agent/trustee (Fiscal Agent/Trustee) and the Borrower, on file with the City Clerk, is hereby approved. The City's Director of Housing and the Director of Finance are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Regulatory Agreement in substantially said form, with such additions thereto or changes therein as said officials may approve upon consultation with tax and bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.
8. The proposed form of Junior Bond Purchase Agreement (the "Junior Bond Purchase Agreement"), by and among the City, Standard VDG Lender LLC, as purchaser (the "Purchaser") and the Borrower, on file with the City Clerk, is hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Junior Bond Purchase Agreement in substantially said form, with such additions thereto and changes therein as any such Authorized Officer may approve upon consultation with tax and bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.
9. The Junior Bonds, when executed, shall be delivered to the Trustee for authentication; and the Trustee is hereby requested and directed to authenticate the Junior Bonds by executing the Trustee's certificate of authentication appearing thereon, and to deliver the Junior Bonds, when duly executed and authenticated, to or at the direction of the purchasers thereof in accordance with written instructions executed on behalf of each of the Authorized Officers, which said officers are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Trustee. Such instructions shall provide for the delivery of the Junior Bonds to or at the direction of the purchasers thereof, upon payment of the purchase price thereof.

10. All actions heretofore taken by the officers and agents of the City with respect to the financing of the Project and the sale, delivery and issuance of the Obligations are hereby approved, confirmed and ratified, and the proper officers of the City are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents, including but not limited to an endorsement of a note, bond and related documents, a tax certificate and agreement and such other documents and agreements as described in the Funding Loan Agreement, the Borrower Loan Agreement, the Junior Indenture, the Junior Loan Agreement, the Junior Bond Purchase Agreement and the other documents herein approved, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Obligations, subject to the conditions set forth herein, and to effectuate the purposes thereof and of the documents herein approved in accordance with this resolution and resolutions heretofore adopted by the City and otherwise in order to carry out the financing of the Project.
11. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this resolution, whether before or after the issuance and delivery of any Obligations, including without limitation any of the foregoing that may be necessary or desirable in connection with any default under or amendment of such documents, any transfer or other disposition of the Project, any addition or substitution of security for the Obligations or any prepayment of the Notes or any redemption of the Junior Bonds, may be given or taken by the Authorized Officers, as appropriate, without further authorization by this City Council, and each of the Authorized Officers is hereby authorized and directed to give any such consent, approval, notice, order or request and to take any such action that such officer may deem necessary or desirable to further the purposes of this resolution and the financing of the Project; provided such action shall not create any obligation or liability of the City other than as provided in the Funding Loan Agreement and Junior Indenture and other documents approved herein.
12. If any of the Authorized Officer is unavailable to execute the documents hereinabove mentioned, a designee or authorized deputy thereof shall be entitled to sign in the place of such Authorized Officer.

13. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

ADOPTED this 2nd day of May, 2017, by the following vote:

AYES: ARENAS, CARRASCO, DAVIS, DIEP, JONES, JIMENEZ,
KHAMIS, T. NGUYEN, ROCHA.

NOES: NONE.

ABSENT: PERALEZ; LICCARDO.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:




TONI J. TABER, CMC
City Clerk

The foregoing instrument is
a correct copy of the original
on file in this office.

Attest:

TONI J. TABER
City Clerk

City Clerk of the City of San Jose
County of Santa Clara, State of California

By  Deputy

JUNIOR LOAN AGREEMENT

among

CITY OF SAN JOSÉ,
as Issuer

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

and

BURNHAM VDG VENTURE LP, a California limited partnership,
as Borrower

Relating to

\$4,615,712
CITY OF SAN JOSÉ
JUNIOR MULTIFAMILY HOUSING REVENUE BONDS
(VILLA DE GUADALUPE APARTMENTS)
2017 SERIES B

Dated as of May 1, 2017

All of the right, title and interest of the City of San José (except for its Unassigned Rights) in and to this Junior Loan Agreement are being assigned to U.S. Bank National Association, as Trustee, as security for the above-referenced bonds pursuant to a certain Indenture dated as of May 1, 2017.

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EXHIBIT A – FORM OF JUNIOR PROMISSORY NOTE

JUNIOR LOAN AGREEMENT

THIS JUNIOR LOAN AGREEMENT (this "Junior Loan Agreement"), made and entered into May 1, 2017, by and among the CITY OF SAN JOSÉ (the "Issuer"), a municipal corporation and charter city, organized and existing under the laws of the State of California (the "State"), U.S. BANK NATIONAL ASSOCIATION, a national banking association, organized and operating under the laws of the United States of America (together with any successor trustees appointed under the Indenture, the "Trustee"), and Burnham VDG Venture LP, a limited partnership duly organized and existing under the laws of the State of California (together with its successors and assigns permitted hereunder, the "Borrower"),

WITNESSETH:

WHEREAS, the Issuer is authorized by Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code (the "Act") to issue revenue bonds for the purpose of financing, among other things, the acquisition, rehabilitation and equipping of multifamily rental housing and for the provision of capital improvements in connection therewith and determined necessary thereto; and

WHEREAS, the Borrower has requested the assistance of the City in financing the acquisition, construction and development of an 101-unit senior multifamily rental housing development to be known as Villa De Guadalupe Apartments, located in the City of San José, California (the "Project"), and as a condition to such financial assistance the Borrower has agreed to enter into a Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith (the "Regulatory Agreement") setting forth certain restrictions with respect to the Project; and

WHEREAS, the Issuer has determined to assist in the financing of the Project by issuing its Junior Multifamily Housing Revenue Bonds (Villa De Guadalupe Apartments) 2017 Series B, in the original aggregate principal amount of \$4,615,712 (the "Bonds"), pursuant to a Junior Indenture of Trust, dated as of May 1, 2017 (the "Indenture"), by and between the Issuer and the Trustee, and the Act, and making a subordinate loan to the Borrower in the amount of the sum of such principal amount (the "Junior Loan"), evidenced by a Junior Promissory Note (the "Junior Note") upon the terms and conditions set forth herein;

WHEREAS, the Borrower's obligations under this Junior Loan, the Junior Note and this Junior Loan Agreement are subordinate in all respects to all payment obligations under Senior Transaction Documents (as defined in the Indenture) and the Issuer's Multifamily Housing Revenue Note (Villa De Guadalupe Apartments) 2017 Series A-1, in the original aggregate principal amount of \$28,980,000 and the Issuer's Multifamily Housing Revenue Note (Villa De Guadalupe Apartments) 2017 Series A-2, in the original aggregate principal amount of \$8,720,000 (collectively, the "Senior Issuer Notes"), issued pursuant to the Funding Loan Agreement dated as of May 1, 2017 (the "Senior Funding Loan Agreement") between the Issuer, the Trustee and Citibank, N.A., as Senior Funding Lender;

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

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

(a) The Issuer is a public body, corporate and politic, organized and existing under the laws of the State.

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

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

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

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

(f) To the best knowledge of the Issuer, no authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Issuer of, and performance by the Issuer of its obligations under, any of the Junior Loan Documents, which has not been obtained.

(g) To the best knowledge of the Issuer, there is no action, suit, proceeding, inquiry or investigation pending or threatened against the Issuer by or before any court, governmental agency or public board or body, nor, to the Issuer's knowledge, any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Issuer or the title to office of any member of the governing body of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Junior Loan Documents or the issuance, execution or delivery of the Bonds, as applicable; (iii) affects or questions the validity or enforceability of the Bonds; or (iv) questions the power or authority of the Issuer to perform its obligations under the Bonds or to carry out the transactions contemplated by the Bonds and the Junior Loan Documents.

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

Section 2.2. Representations, Warranties and Covenants of the Borrower. The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Junior Loan

Agreement, are relied upon by the Issuer and the Trustee and serve as a basis for the undertakings of the Issuer and the Trustee contained in this Junior Loan Agreement:

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

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

(c) The officers of the Borrower executing this Junior Loan Agreement and the other Junior Loan Documents are duly and properly in office and fully authorized to execute the same. This Junior Loan Agreement and the other Junior Loan Documents have been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

(d) No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the best knowledge of the Borrower and with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of this Junior Loan Agreement or the other Junior Loan Documents or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

(e) The execution and delivery of this Junior Loan Agreement and the other Junior Loan Documents, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under (i) the organizational or other governing documents of the Borrower or to the best knowledge of the Borrower and with respect to the Borrower, (ii) any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, (iii) any mortgage, deed of trust, Junior Loan Agreement, lease, contract or other agreement or instrument

to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iv), except as provided in the Junior Loan Documents, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Junior Loan Agreement or the Junior Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

(f) There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower or the assets, properties or operations of the Borrower which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, this Junior Loan Agreement or the other Junior Loan Documents or upon the financial condition, assets, properties or operations of the Borrower, and the Borrower is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Junior Loan Agreement or the other Junior Loan Documents or the financial condition, assets, properties or operations of the Borrower. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of all of the Property.

(g) The Project and the operation of the Project (in the manner contemplated by the Junior Loan Documents) conform with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

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

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

(j) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against

damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

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

(l) The representations and warranties of the Borrower contained in the Regulatory Agreement are true and accurate.

(m) The information, statements or reports furnished in writing to the Issuer by the Borrower in connection with this Junior Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Closing Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or the assumptions contained in any certificate of the Borrower delivered as of the Closing Date are reasonable.

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

(o) The Borrower covenants to pay all third-party fees of the financing, including but not limited to the following:

(i) All taxes and assessments of any type or character charged to the Issuer or to the Trustee affecting the amount available to the Issuer or the Trustee from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental

authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Trustee and taxes based upon or measured by the net income of the Trustee or the Issuer; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Issuer or the Trustee, at the Borrower's expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Issuer or the Trustee;

(ii) All fees, charges and expenses of the Trustee for services rendered under the Indenture, as and when the same become due and payable;

(iii) The portion of the annual fee of the Issuer attributable to the Bonds (in addition to the fee attributable to the Senior Issuer Notes, which shall be payable in accordance with and pursuant to the Senior Transaction Documents), payable as set forth in Section 7 of the Regulatory Agreement, and the fees and expenses of the Issuer or any agents, attorneys, accountants, consultants selected by the Issuer to act on its behalf in connection with this Junior Loan Agreement, the Regulatory Agreement or the Junior Loan Documents, including, without limitation, any and all expenses incurred in connection with the authorization, issuance and delivery of the Bonds, as applicable, or in connection with any litigation which may at any time be instituted involving this Junior Loan Agreement, the Regulatory Agreement, or the Junior Loan Documents or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing (except to the extent any such fees or expenses are payable as a result of the gross negligence or willful misconduct of the Issuer); and

(iv) These obligations and those in Section 6.1 shall remain valid and in effect notwithstanding repayment of the loan hereunder or termination of this Junior Loan Agreement or the Indenture.

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

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

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

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

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

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

Section 2.4. Tax Covenants of the Borrower. The Borrower covenants and agrees that:

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

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Bonds to be included in gross income, for federal income tax purposes, and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation, the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Regulatory Agreement);

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

(d) It will comply with the requirements of Section 148 of the Code and the Regulations issued thereunder throughout the term of the Bonds and will not make any use of the proceeds of the Bonds, or of any other funds which may be deemed to be proceeds of the Bonds under the Code and the related regulations of the United States Treasury, which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code;

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Bonds becoming includable in gross

income for purposes of federal income tax purposes, it will promptly give written notice of such circumstance, event or condition to the Issuer and the Trustee.

In the event of a conflict between the terms of this Section 2.4 and the Tax Certificate, the terms of the Tax Certificate shall control.

Section 2.5. Enforcement of Junior Loan Documents. The Trustee may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Junior Loan Documents as and to the extent set forth therein.

ARTICLE III

THE JUNIOR LOAN

Section 3.1. Conditions to Funding the Junior Loan. The Junior Loan shall be deemed funded upon delivery of the Carryback Loan and Junior Note (representing the purchase price of the Bonds) and satisfaction of the following conditions:

(a) The Borrower shall have executed and delivered to the Issuer the Junior Note in the form attached hereto as Exhibit A, with only such changes therein as shall be approved in writing by the Issuer, and the Issuer shall have endorsed the Junior Note to the Trustee;

(b) The Junior Mortgage shall have been executed and delivered by the Borrower and delivered to the title company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the "Recorder's Office");

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

(d) All other Junior Loan Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Trustee; and

(e) The Borrower shall have delivered to the Trustee and the Issuer an opinion of its counsel or other counsel satisfactory to the Trustee and the Issuer.

Section 3.2. Terms of the Junior Loan. The Junior Loan shall (i) be evidenced by the Junior Note; (ii) be initially secured by the Junior Mortgage; (iii) be in the original aggregate principal amount of \$4,615,712; (iv) bear interest as provided in the Junior Note; (v) provide for principal and interest payments in accordance with the Junior Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Junior Note.

Section 3.3. Assignment to Trustee. The parties hereto acknowledge, and the Borrower consents to, the assignment by the Issuer to the Trustee pursuant to the Indenture of all of the Issuer's right, title and interest in this Junior Loan Agreement (excluding the Unassigned Rights), the Junior Loan, the Junior Mortgage and the Revenues as security for the payment of the principal of, and interest on the Bonds.

Section 3.4. Investment of Funds. Except as otherwise provided in the Indenture, any money held as a part of any fund or account established under the Indenture shall be invested or reinvested by the Trustee in Qualified Investments in accordance with the Indenture.

Section 3.5. Damage; Destruction and Eminent Domain. If, prior to payment in full of the Bonds, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Issuer, the Borrower, or the Trustee receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized, after satisfaction of all payment requirements of the Senior Transaction Documents, as provided in the Junior Loan Documents and the Indenture.

ARTICLE IV

LOAN PAYMENTS

Section 4.1. Payments Under the Junior Note; Independent Obligation of Borrower.

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

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

(c) Notwithstanding anything contained in any other provision of this Junior Loan Agreement to the contrary (but subject to the provisions of Section 5.1 hereof and the Intercreditor Agreement), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and each of the Borrower's general partners, payable from and enforceable against any and all income, assets and properties of the Borrower: (i) the

Borrower's obligations to the Issuer and the Trustee under Section 4.2 of this Junior Loan Agreement; (ii) the Borrower's obligations under Section 6.1 of this Junior Loan Agreement; and (iii) the Borrower's obligation to pay legal fees and such expenses under Section 7.4 of this Junior Loan Agreement.

Section 4.2. Payment of Certain Fees and Expenses Under the Junior Note.

(a) The Borrower shall pay (or cause to be paid by the Trustee), in consideration of the funding of the Junior Loan, the following fees, expenses and other money payable in connection with the Junior Loan:

(i) On or prior to the Closing Date, to the Issuer, an initial financing fee attributable to the Bonds (in addition to the fee attributable to the Senior Issuer Notes, which shall be payable in accordance with and pursuant to the Senior Transaction Documents) in an amount equal to \$-0-, together with all third-party and out-of-pocket expenses of the Issuer (including but not limited to the fees and expenses of counsel to the Issuer) in connection with the Junior Loan and the issuance of the Bonds.

(ii) On the Closing Date, to the Trustee, an acceptance fee attributable to the Bonds (in addition to the fee attributable to the Senior Issuer Notes, which shall be payable in accordance with and pursuant to the Senior Transaction Documents) in an amount equal to \$0, together with all third party and out-of-pocket expenses of the Trustee (including but not limited to the fees and expenses of counsel to the Trustee) in connection with the Junior Loan and the issuance of the Bonds.

(iii) All other fees and expenses of the Trustee and the Issuer described in Sections 2.2(o)(ii) and 2.2(o)(iii) hereof.

Section 4.3. Reserved.

Section 4.4. Prepayment of Junior Loan. The Borrower shall have the option to prepay the Junior Loan in full or in part prior to the payment and discharge of all the outstanding Bonds on any Business Day in accordance with the provisions of the Indenture, this Junior Loan Agreement and the Junior Note, without the payment of any premium or fee. The Borrower shall be required to prepay the Junior Loan in each case that Bonds are required to be redeemed in accordance with the terms and conditions set forth in the Indenture.

The Bonds are subject to redemption in accordance with the terms and conditions set forth in the Indenture. In connection with any prepayment, whether optional or mandatory, in addition to all other payments required under the Junior Note or the Indenture, the Borrower shall pay an amount sufficient to pay the redemption price of the Bonds to be redeemed, including principal and interest, and further including any interest to accrue with respect to the Junior Loan and such Bonds between the prepayment date and the redemption date, together with a sum sufficient to pay all fees, costs and expenses in connection with such redemption and, in the case of redemption in whole, to pay all other amounts payable under this Junior Loan Agreement and the Indenture. The Borrower shall provide notice of the prepayment to the Issuer, and the Trustee in writing ten (10) days, or such shorter time as is possible in the case of mandatory prepayments, prior to the date on which the Borrower will make the prepayment. Each such notice shall state, to the extent such

information is available, (a) the amount to be prepaid, and (b) the date on which the prepayment will be made by the Borrower.

Section 4.5. Borrower's Obligations Upon Redemption. In the event of any redemption, the Borrower will timely pay, to the Trustee an amount equal to the principal amount of such Bonds or portions thereof called for redemption, together with interest accrued to the redemption date. In addition, the Borrower will timely pay all fees, costs and expenses associated with any redemption of Bonds.

ARTICLE V

SPECIAL COVENANTS OF BORROWER

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

Except as otherwise provided herein or in the Junior Loan Documents, the obligations of the Borrower under this Junior Loan Agreement are non-recourse liabilities of the Borrower and its partners. However, nothing in this Section 5.1 shall limit the right of the Issuer or the Trustee to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Junior Loan Agreement or the other Junior Loan Documents. In any action or proceeding brought with respect to the Junior Loan or the Bonds, no deficiency or other money judgment shall be enforced against the Borrower or any partner of the Borrower or any successor or assign of the Borrower, and any judgment obtained shall be enforced only against the Project and other property of the Borrower encumbered by the Junior Loan Documents and not against the Borrower or any partner of the Borrower or any successor or assign of the Borrower.

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

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

Section 5.4. Intentionally Omitted.

Section 5.5. Borrower to Maintain Its Existence. The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

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

Section 5.7. Sale or Other Transfer of Project. The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Senior Transaction Documents, the Regulatory Agreement and the Junior Loan Documents.

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

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

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

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

Section 5.12. Reserved.

Section 5.13. Damage, Destruction and Condemnation. If prior to full payment of the Bonds (or provision for payment of the Bonds in accordance with the provisions of the Indenture) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other

casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Junior Loan Agreement and in the Junior Note to the extent the Junior Loan is not prepaid in accordance with the terms of the Junior Loan Documents.

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

ARTICLE VI

INDEMNIFICATION

Section 6.1. Indemnification. (a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Issuer, the Trustee, and each of their respective officers, governing 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 (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under or any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

(i) the Bonds, the Junior Loan Documents, or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby, including, as applicable, the issuance, issuance, sale or resale of the Bonds;

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

(iii) any lien (other than a permitted encumbrance) or charge upon payments by the Borrower to the Issuer and the Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(iv) any violation of any environmental regulations with respect to, or the release of any hazardous substances from, the Project or any part thereof during the period in which the Borrower is in possession or control of the Project;

(v) the enforcement of, or any action taken by, the Issuer or the Trustee related to remedies under, this Junior Loan Agreement or the Indenture;

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

(vii) any Determination of Taxability;

(viii) any breach (or alleged breach) by Borrower of any representation, warranty or covenant made in or pursuant to this Junior Loan Agreement;

(ix) the Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, or rehabilitation of, the Project or any part thereof; or

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

except (a) in the case of the foregoing indemnification of (1) the Bondholder Representative or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party, or (2) in the case of the Trustee or any related Indemnified Party, the negligence or willful misconduct of the Trustee, or any breach by such party of its obligations under any of the Junior Loan Documents or any untrue statement or misleading statement of a material fact by such Indemnified Party contained in any offering statement or document for the Bonds or any of the Junior Loan Documents or any omission or alleged omission from any such offering statement or document of any material fact necessary to be stated therein in order to make the statements made therein by such Indemnified Party not misleading; or (b) in the case of the foregoing indemnification of the Issuer or any related Indemnified Party, they shall not be indemnified by the Borrower with respect to liabilities arising from their own bad faith, fraud or willful misconduct. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party (which notice shall be

timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion so long as the Indemnified Party is fully released (otherwise the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not be unreasonably withheld). Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel) an actual conflict of interest exists by reason of common representation.

In addition thereto, the Borrower will pay upon demand all of the fees and expenses paid or incurred by the Trustee and/or the Issuer in enforcing the provisions hereof, as more fully set forth in this Junior Loan Agreement.

(b) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant this Junior Loan Agreement shall survive the final payment or defeasance of the Bonds and in the case of the Trustee any resignation or removal. The provisions of this Section shall survive the termination of this Junior Loan Agreement.

Nothing contained in this Section 6.1 shall in any way be construed to limit the indemnification rights of the Issuer contained in Section 9 of the Regulatory Agreement. With respect to the Issuer, the Regulatory Agreement shall control in any conflicts between this Section 6.1 and Section 9 of the Regulatory Agreement.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default. The following shall be "Events of Default" under this Junior Loan Agreement and the term "Event of Default" shall mean, whenever it is used in this Junior Loan Agreement, one or all of the following events after the expiration of any applicable cure periods:

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

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

(c) The Borrower's failure to observe and perform any of its other covenants, conditions or agreements contained herein, other than as referred to in clause (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is

given by the Issuer or the Trustee to the Borrower; provided, however, that if the failure shall be such that it can be corrected but not within such period, the Issuer and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower within such period and diligently pursued until the failure is corrected;

Nothing contained in this Section is intended to amend or modify any of the provisions of the Junior Loan Documents or to bind the Issuer or the Trustee to any notice and cure periods other than as expressly set forth in the Junior Loan Documents. Notwithstanding anything herein to the contrary, the Investor Limited Partner shall have the right, but not the obligation, to cure defaults hereunder in the same manner as the Borrower.

Section 7.2. Remedies on Default. Whenever any Event of Default hereunder shall have occurred and be continuing, the Trustee or the Issuer where so provided may take any one or more of the following remedial steps:

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

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

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

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

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

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

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

Section 7.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Junior Loan Agreement and the Issuer or the Trustee should employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Junior Loan Agreement or in the Junior Note, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

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

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Notices. Whenever in this Junior Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

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

The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions pursuant to this Junior Loan Agreement, provided, however, that subsequent to

such facsimile transmission of written instructions shall provide the originally executed instructions and/or directions shall be provided to the Trustee in a timely manner.

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

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

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

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

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

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

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

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

Section 8.10. Effective Date and Term. This Junior Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full

force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Indenture shall terminate.

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

Section 8.12. Reserved.

Section 8.13. Waiver of Personal Liability. No member, officer, agent or employee of the Issuer or any director, officer, agent or employee of the Borrower shall be individually or personally liable for the payment of any principal (or redemption price) or interest on the Bonds or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Junior Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Junior Loan Agreement.

Section 8.14. No Liability of Issuer. The Issuer shall not be obligated to pay the principal (or redemption price) of or interest on the Bonds, except from Revenues and other money and assets received by the Trustee on behalf of the Issuer pursuant to this Junior Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Issuer or any member is pledged to the payment of the principal (or redemption price) or interest on the Bonds. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Junior Loan Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under this Junior Loan Agreement.

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

Section 8.15. No Liability of Officers. No recourse under or upon any obligation, covenant, or agreement or in any Bonds, or under any judgment obtained against the Issuer, or by

the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Owner of any Bonds, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Owner of any Bonds, of any sum that may remain due and unpaid upon the Bonds or any of them, is hereby expressly waived and released as a condition of and consideration for the execution of this Junior Loan Agreement and the issuance of the Bonds.

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

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

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

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

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

[Signature Pages Follow]

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

CITY OF SAN JOSÉ, as Issuer

By: 
Julia W. Cooper, Director of Finance

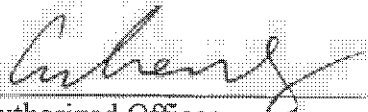
Attest:


Toni J. Taber, City Clerk

Approved as to form:


Kevin Fisher, Chief Deputy City Attorney

U.S. BANK NATIONAL
ASSOCIATION, as Trustee

By: 
Authorized Officer

[Signature page – Junior Loan Agreement – Villa de Guadalupe Apartments]

OHSUSA:766459783.

BURNHAM VDG VENTURE LP,
a California limited partnership

By: Burnham VDG Manager LP,
a California limited partnership,
its Administrative General Partner

By: Burnham GP LLC,
a California limited liability company,
its General Partner

By: 

Scott Alter, Manager

By: Housing on Merit VI LLC,
a California limited liability company,
its Managing General Partner

By: Housing on Merit,
a California nonprofit public benefit corporation,
its Manager

By: _____
Jennifer Litwak, Executive Director

[Signature page – Junior Loan Agreement – Villa de Guadalupe Apartments]

BURNHAM VDG VENTURE LP,
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By: Burnham VDG Manager LP,
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By: Housing on Merit,
a California nonprofit public benefit corporation,
its Manager

By: 
Jennifer Litwak, Executive Director

[Signature page – Junior Loan Agreement – Villa de Guadalupe Apartments]

EXHIBIT A

FORM OF JUNIOR PROMISSORY NOTE

CITY OF SAN JOSÉ
JUNIOR MULTIFAMILY HOUSING REVENUE BONDS
(VILLA DE GUADALUPE APARTMENTS)
2017 SERIES B

JUNIOR PROMISSORY NOTE

US \$ 4,615,712

May 23, 2017

FOR VALUE RECEIVED, Burnham VDG Venture LP, a California limited partnership organized and existing under the laws of the State of California (together with its permitted successors and assigns, "Maker"), promises to pay to the CITY OF SAN JOSÉ, a municipal corporation and charter city, organized and existing under the laws of the State of California, or its successors or assigns (the "Issuer" or the "Holder" as the context requires), in legal tender of the United States, the Principal Sum of \$ 4,615,712, on June 1, 2052, or earlier as provided herein and in the Junior Loan Agreement (hereinafter defined), together with interest thereon at the rates, at the times and in the amounts necessary to make payments on the Issuer's Junior Multifamily Housing Revenue Bonds (Villa De Guadalupe Apartments) 2017 Series B (the "Bonds"), issued under that certain Junior Indenture of Trust, dated as of May 1, 2017 (the "Indenture"), by and between the Issuer and U.S. Bank National Association, as trustee (the "Trustee"), when such payments become due and payable on each Bond Payment Date (as defined in the Indenture). Maker shall pay to the Holder on or before each Bond Payment Date (as defined in the Indenture) on which interest on the Bonds is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on the Bonds then due and payable. Maker shall pay to the Holder on or before the Maturity Date an amount in immediately available funds sufficient to pay the principal amount of the Bonds and all accrued but unpaid interest thereon. In the event that amounts held under the Indenture and derived from Bond proceeds, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on the Bonds in accordance with the Indenture, the principal amount due hereunder shall be reduced to the extent of the principal amount of the Bonds so paid.

"Indebtedness" means the principal of, interest on, and any other amounts due at any time under, this Note, the Mortgage (as defined herein) or any other Junior Loan Document, including late charges, default interest, and advances to protect the security of the Mortgage as described in Section 12 of the Mortgage.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Indenture.

All payments under this Note shall be applied first to the payment of interest due and the balance, if any, shall be applied to the payment of principal.

This Note is secured by a Junior Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of May 1, 2017 (as the same may be modified, amended or supplemented from time to time, the "Mortgage") made by Maker to a trustee for the benefit of the Trustee covering property, with improvements thereon, as more fully described therein (the "Mortgaged Property") and certain other security as more fully set forth in the Junior Loan Agreement.

1. This Note is subject to the express condition that at no time shall interest be payable on this Note or under the Mortgage or the Junior Loan Agreement at a rate in excess of the maximum permitted by law; and Maker shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such maximum rate. If by the terms of this Note or of the Mortgage or Junior Loan Agreement, Maker is required to pay interest at a rate in excess of such maximum rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such maximum rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

2. Amounts payable hereunder representing late payments, penalty payments or the like shall be payable to the extent allowed by law.

3. This Note is subject to all of the terms, conditions, and provisions of the Junior Loan Agreement, including those respecting prepayment and the acceleration of maturity and the provisions of Section 4.5 thereof, and is further subject to all of the terms, conditions and provisions of the Indenture. The outstanding principal hereof is subject to acceleration at the same time or times and under the same terms and conditions, and with the same notice, if any, as provided under the Indenture for the acceleration of payment of the Bonds.

4. If there is an Event of Default, then in any such event and subject to the provisions and requirements of the Junior Loan Agreement and the Indenture, the Holder may declare the entire unpaid principal balance of this Note and accrued interest, if any, due and payable at once. All of the covenants, conditions and agreements contained in the Junior Loan Agreement, the Regulatory Agreement, the Mortgage and all other security instrument and related documents, instruments and assignments evidencing or securing the Borrower's obligations to the Issuer or to the Trustee relating to the Project and all other documents and instruments delivered simultaneously herewith, as the same may be supplemented and amended from time to time (the "Loan Documents") are hereby made part of this Note.

5. No delay or omission on the part of the Holder in exercising any remedy, right or option under this Note or the Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights,

remedies and options of the Holder under this Note and the Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

6. Maker shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the Indebtedness hereunder, together with interest thereon at the Default Rate to the extent allowed by law.

7. No amendments or other changes of any nature may be made to this Note except in writing and subject in all events to the provisions of the Indenture and the Junior Loan Agreement. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Holder of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Holder of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Maker to pay the entire sum then due, and Maker's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Holder to any action of Maker which is subject to consent or approval of the Holder hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

8. (a) Neither Borrower nor any of its partners, members and/or managers shall have any personal liability under this Note, the Mortgage or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents, and Lender's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any obligations of Borrower.

(b) Borrower shall be personally liable to Lender for the repayment of a portion of the Indebtedness equal to any loss or damage suffered by Lender (the "Losses") as a result of (1) fraud or material misrepresentation by Borrower or Guarantor or any general partner, managing member, manager, officer, director, partner, member, agent or employee of Borrower or Guarantor in connection with the application for or creation of the Indebtedness or any request for any action or consent by or on behalf of Lender; or (5) failure to apply Rents, first, to the payment of reasonable operating expenses (other than property management fees that are not currently payable or any other Loan Document) and then to amounts ("Debt Service Amounts") payable under this Note, the Mortgage or any other Loan Document (except that Borrower will not be personally liable (i) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (ii) with respect to Rents that are distributed on account of any calendar year if Borrower has paid all operating expenses and Debt Service Amounts for that calendar year);

(c) Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Mortgage, any other Loan Document or applicable law. For purposes of this Section 9, the term "Mortgaged Property" shall not include any funds that (1) have been applied by Borrower as required or permitted by the Mortgage prior to the occurrence of an Event of Default or (2) Borrower was unable to apply as required or permitted by the Mortgage because of a bankruptcy, receivership, or similar judicial proceeding. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

(d) Nothing herein or in the other Loan Documents shall be deemed to be a waiver of any right which the Lender or the Servicer may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to the Lender and the Servicer hereunder and under the other Loan Documents or to require that all collateral shall continue to secure the amounts due hereunder and under the other Loan Documents.

9. In addition, the Indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of all amounts then due and payable (including, but not limited to, all amounts due and payable by virtue of any default or acceleration or upon maturity) with respect to the Indebtedness evidenced by each respective Note (as defined by that certain Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing by the Borrower for the benefit of the Issuer and assigned to Citibank, N.A.), in the original aggregate maximum principal amount of \$37,700,000, each executed by Borrower and payable to the Issuer and endorsed to Citibank, N.A. (the "Funding Lender") to the extent and in the manner provided in that certain Subordination and Intercreditor Agreement, dated as of May 1, 2017, by and among the Trustee, the Funding Lender and the Borrower (the "Subordination Agreement"). The rights and remedies of the Holder and each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the "Junior Lender" under the Subordination Agreement.

Maker agrees that this Note shall be construed in accordance with and governed by the laws of the State of California.

BURNHAM VDG VENTURE LP,
a California limited partnership

By: Burnham VDG Manager LP, a California
limited partnership, its Administrative
General Partner

By: Burnham GP LLC, a California
limited liability company, its General
Partner

By: _____
Scott J. Alter
Manager

By: Housing on Merit VI LLC, a California
limited liability company, its Managing
General Partner

By: Housing on Merit, a California
nonprofit public benefit corporation,
its Manager

By: _____
Jennifer Litwak
Executive Director

ASSIGNMENT

Pay to the order of _____, without recourse or warranty, as
Trustee under the Indenture referred to in the attached Note.

CITY OF SAN JOSÉ

By: _____
Authorized Signatory

May 23, 2017

City of San José
San José, CA

U.S. Bank National Association
San Francisco, CA

Re: City of San José
Junior Multifamily Housing Revenue Bonds
(Villa De Guadalupe Apartments) 2017 Series B

Ladies and Gentlemen:

The undersigned (the "Purchaser") hereby acknowledges receipt as transferee, from the previous owner thereof, of the above-referenced bonds (the "Bonds") in fully registered form and in the original aggregate principal amount of \$4,615,712, constituting all of the Bonds currently outstanding. The Bonds have been checked, inspected and approved by the Purchaser.

The undersigned acknowledges that the Bonds were issued for the purpose of making a loan to assist in financing a multifamily rental housing development known as Villa De Guadalupe Apartments located in the City of San José, California (the "Project"), as more particularly described in that certain Junior Loan Agreement dated as of May 1, 2017, as may be amended and supplemented from time to time (the "Junior Loan Agreement"), by and among the City of San José (the "Issuer"), Burnham VDG Venture LP, a limited partnership duly organized and existing under the laws of the State of California (the "Borrower"), and U.S. Bank National Association (the "Trustee"). The undersigned further acknowledges that the Bonds are secured by a certain Junior Indenture of Trust dated as of May 1, 2017, as amended and supplemented (the "Indenture"), between the Issuer and the Trustee, which creates a security interest in loan repayments made pursuant to the Junior Loan Agreement for the benefit of the holders and Owners of the Bonds, and by a Junior Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing with respect to the Project (the "Junior Mortgage"), which creates a security interest in the Project, subject to permitted encumbrances, as provided therein. Terms not otherwise defined herein shall have the meanings assigned thereto in the Indenture.

In connection with the sale of the Bonds to the Purchaser, the Purchaser hereby makes the following representations upon which you may rely:

1. The Purchaser hereby certifies that it is (a) a bank as defined in Section 3(a)(2) of the Securities Act of 1933 (the "Act") or a bank holding company or a wholly owned subsidiary of a bank holding company, or a savings and loan association or other institution as defined in

Section 3(a)(5)(a) of that act whether acting in its individual or fiduciary capacity; or (b) a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; or (c) an insurance company as defined in Section 2(13) of that act; or (d) an investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that act; or (e) a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; or (f) a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivision for the benefit of its employees, if investment decisions are made by a plan fiduciary which is a bank, savings and loan association, insurance company, or registered investment advisor and the plan establishes fiduciary principles the same as or similar to those contained in Sections 404 407 of Title I of the Employee Retirement Income Security Act of 1974; or (g) an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if investment decisions are made by a plan fiduciary, as defined in Section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment advisor, or if the employee benefit plan has total assets in excess of \$100,000,000, or, if a self directed plan, with investment decisions made solely by Persons that are accredited investors or (h) an “accredited investor” as defined in Rule 501 of Regulation D of the Act, as amended.

2. The Bonds are being acquired by the Purchaser for its own account and for investment and not with a view to, or for resale in connection with, any public distribution of the Bonds. The Purchaser understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible due to unmarketability of the Bonds; provided, however, the Purchaser acknowledges and agrees that it may transfer the Bonds in accordance with the Indenture and this letter.

3. The Purchaser understands that the Bonds have not been registered under the Act.

4. The Purchaser acknowledges that it is familiar with the conditions, financial and otherwise, of the Borrower and understands that the Borrower has no significant assets other than the Project. To the extent deemed appropriate in making its investment decision, the Purchaser has discussed the Borrower’s financial condition and the Borrower’s current and proposed business activities with the Borrower. The Purchaser further acknowledges that it has such knowledge and experience in business matters that it is fully capable of evaluating the merits and risks of this investment and it is able to bear the economic risk of the investment. The Bonds are a security of the kind the Purchaser wishes to purchase and hold for investment, and the nature and amount of the Bonds are consistent with the Purchaser’s investment program. The Purchaser has been furnished such information and such documents as the Purchaser deems necessary to make a decision to purchase the Bonds, including copies or forms of the Indenture, the Junior Loan Agreement, the Junior Mortgage and the Regulatory Agreement (as defined in the Indenture), and certain other documents relating to the Bonds and the Project, all of which documents the Purchaser has reviewed. Specifically, but without limitation, the Purchaser has reviewed information about the Project and the property manager for the Project, if any, as well as information about the investment risks relating to the Bonds, and the Purchaser understands that the Bonds involve a high degree of risk. SPECIFICALLY, AND WITHOUT IN ANY MANNER LIMITING THE FOREGOING, THE PURCHASER UNDERSTANDS AND ACKNOWLEDGES THAT, AMONG OTHER RISKS, THE BONDS ARE PAYABLE

SOLELY FROM REVENUES DERIVED FROM THE PROJECT AND THAT THE BONDS ARE NOT ENTITLED TO THE BENEFIT OF ANY CREDIT FACILITY AND NOT RATED BY THE RATING AGENCY. The Purchaser has made such inquiry with respect to all of the foregoing as it believed to be desirable for its purposes.

5. The Purchaser has received from the Issuer no formal or informal offering or disclosure document relating to the Bonds and has concluded that the receipt of one prior to the purchase of the Bonds is not required. It is acknowledged that no written information has been provided by the Issuer, and that any written information furnished by any other party to the transaction does not purport to fully disclose all information pertinent to the Bonds.

6. Except as disclosed to the Issuer, the Purchaser is not now and has never been controlled by, or under common control with, the Borrower. Except as disclosed to the Issuer, the Borrower has never been and is not now controlled by the Purchaser. THE PURCHASER HAS ENTERED INTO NO ARRANGEMENTS WITH THE BORROWER OR WITH ANY AFFILIATE OF THE BORROWER IN CONNECTION WITH THE BONDS, OTHER THAN AS DISCLOSED TO THE ISSUER. The Purchaser hereby agrees to deliver to the Issuer a copy of any agreement between the Purchaser and the Borrower or any affiliate of the Borrower relating to the Bonds.

7. The Purchaser has authority to purchase the Bonds and to execute this letter and any other instruments and documents required to be executed by the Purchaser in connection with the purchase of the Bonds.

8. In entering into this transaction the Purchaser has not relied upon any representations or opinions made by the Issuer relating to the legal consequences or other aspects of the transactions, nor has it looked to, nor expected, the Issuer to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the refinancing, operation or management thereof), or any other matter pertaining to the merits or risks of the transaction, or the adequacy of any collateral pledged to the Trustee to secure repayment of the Bonds.

9. The Purchaser understands that the Bonds are not secured by any pledge of any money received or to be received from taxation by the State of California or any political subdivision or taxing district thereof, including, without limitation, the Issuer; that the Bonds will never represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the State of California or any political subdivision thereof; that no right will exist to have taxes levied by the Issuer, the State of California or any political subdivision thereof for the payment of principal, and interest on the Bonds; and that the liability of the Issuer with respect to the Bonds is subject to further limitations as set forth in the Bonds and the Indenture.

10. The Purchaser has been informed that the Bonds have not been and will not be registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any jurisdiction, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

11. The Purchaser has obtained, from representatives of the Borrower and others, all information regarding the Bonds that it has deemed relevant. The Purchaser has asked of the Borrower and all other relevant parties all the questions to which the Purchaser desired answers, and has had those questions satisfactorily answered. Neither the Borrower nor the Issuer nor any other relevant party has refused to disclose any information that Purchaser deems necessary or appropriate to its decision to purchase the Bonds.

12. Although the Purchaser does not intend at this time to dispose of the Bonds, the Purchaser acknowledges that it has the right to sell and transfer the Bonds, subject to the following requirements:

(a) The Purchaser may not dispose of the Bonds to a Person or entity other than as described in Section 1 without the prior written consent of the Issuer;


(b) The Purchaser will not sell or otherwise transfer the Bonds unless such transfer will not result in the transferee owning less than an Authorized Denomination (as defined in the Indenture), except with the prior written approval of the Issuer;

(c) Prior to any transfer of the Bonds, the Purchaser shall deliver to the Issuer and the Trustee a certificate identifying any and all documents that have been executed by the Purchaser and the Borrower or any affiliate of the Borrower with respect to the Bonds; and

(d) The Purchaser will not sell or otherwise transfer the Bonds without requiring the transferee to deliver to the Issuer and to the Trustee an investor's letter to the same effect as this Purchaser's Letter, including this paragraph 12, with no revisions except as may be approved in writing by the Issuer.

[Signature Page to Purchaser Letter – Junior Bonds – Villa De Guadalupe]

STANDARD VDG LENDER LLC,
a Delaware limited liability company

By: 

Scott Alter, Manager

\$4,615,712

CITY OF SAN JOSÉ
JUNIOR MULTIFAMILY HOUSING REVENUE BONDS
(VILLA DE GUADALUPE APARTMENTS)
2017 SERIES B

THIS BOND MAY ONLY BE TRANSFERRED IN WHOLE UPON SATISFACTION OF THE REQUIREMENTS IN THE INDENTURE, INCLUDING THE DELIVERY TO THE TRUSTEE OF THE DOCUMENTS REQUIRED THEREIN IN CONNECTION WITH ANY TRANSFER OF THIS BOND. ANY TRANSFER OF THIS BOND IN VIOLATION OF THE TRANSFER RESTRICTIONS CONTAINED IN THE INDENTURE SHALL BE VOID AND OF NO EFFECT.

<u>MATURITY DATE</u>	<u>DATED DATE</u>	<u>INTEREST RATE</u>
June 1, 2052	May 23, 2017	2.75%

Registered Owner: SCOTT J. ALTER

Principal Amount: FOUR MILLION SIX HUNDRED FIFTEEN THOUSAND SEVEN HUNDRED TWELVE DOLLARS

The City of San José, a municipal corporation and charter city organized and existing under the laws of the State of California (the "Issuer"), for value received, hereby promises to pay (but only out of Revenues as hereinafter provided) to the registered owner identified above or registered assigns, on the Maturity Date set forth above, the principal sum set forth above and to pay (but only out of Revenues as hereinafter provided) interest on the balance of said principal amount from time to time remaining unpaid from and including the date hereof until payment of said principal amount has been made or duly provided for, at the rates and on the dates determined as described herein and in the Indenture (as hereinafter defined). The principal of and, interest on this Bond are payable at final maturity, acceleration or redemption in lawful money of the United States of America upon surrender hereof at the principal corporate trust office of U.S. Bank National Association, as Trustee, or its successor in trust (the "Trustee"). Payment of the interest on any Bond shall be made on each Bond Payment Date (as hereinafter defined) to the Person appearing on the bond registration books of the Bond Registrar as the Owner thereof on the Record Date, such interest to be paid by the Paying Agent (i) to such Owner by check or draft mailed on the Bond Payment Date, to such Owner's address as it appears on the registration books or at such other address as has been furnished to the Bond Registrar as provided below, in writing by such Owner not later than the Record Date or (ii) upon written request, at least three Business Days prior to the applicable Record Date, to the Owner of Bonds aggregating not less than \$1,000,000 in principal amount, by wire transfer in immediately available funds at an account maintained in the United States at such wire address as such Owner shall specify in its written notice; except, in each case, that, if and to the extent that there shall be a default in the payment of the interest due on such Bond Payment Date, such defaulted interest shall be paid to the Owner in whose name

any such Bonds are registered at the close of business on the fifth to last Business Day next preceding the date of payment of such defaulted interest.

The Bonds are authorized to be issued pursuant to Act and are designated as the "City of San José Junior Multifamily Housing Revenue Bonds (Villa De Guadalupe Apartments) 2017 Series B", limited in aggregate principal amount of \$4,615,712. The Bonds are limited obligations of the Issuer and, as and to the extent set forth in the Indenture, are payable solely from, and secured by a pledge of and lien on, the Revenues. Proceeds from the sale of the Bonds will be loaned by the Issuer to Burnham VDG Venture LP, a California limited partnership (the "Borrower") under the terms of a Junior Loan Agreement, dated as of May 1, 2017 (the "Agreement"), among the Issuer, the Borrower and the Trustee. The Bonds are all issued under and secured by and entitled to the benefits of a Junior Indenture of Trust, dated as of May 1, 2017 (the "Indenture") between the Issuer and the Trustee. No holder of this Bond shall ever have the right to compel the exercise of the taxing power the State or any political subdivision of the State to pay the principal of this Bond or the interest on it or any other cost incident to this Bond, or to enforce payment of this Bond against any property of the Issuer, any Program Participant of the Issuer, the State or any political subdivision of the State. The Issuer has no taxing power.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights thereunder of the registered owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Issuer thereunder, to all of the provisions of the Indenture and of the Junior Loan Agreement the holder of this Bond, by acceptance hereof, assents and agrees.

The Bonds are issued simultaneously with the funding of the Issuer's revenue notes designated as City of San José Multifamily Housing Revenue Note (Villa De Guadalupe Apartments) 2017 Series A-1, in the original aggregate principal amount of \$28,980,000 and City of San José Multifamily Housing Revenue Note (Villa De Guadalupe Apartments) 2017 Series A-2, in the original aggregate principal amount of \$8,720,000 (the "Senior Issuer Notes") pursuant to a Senior Funding Loan Agreement dated as of May 1, 2017 (the "Senior Funding Loan Agreement") between the Issuer and the Trustee. ***As set forth in the Indenture, the Bonds are subordinate in all respects to the Senior Issuer Notes.***

All terms not herein defined shall have the meanings ascribed to them in the Indenture.

The Bonds are issuable as one fully registered bond. Subject to the limitations and upon payment of the charges, if any, provided in the Indenture, Bonds may be exchanged in whole at the Principal Corporate Trust Office of the Trustee and the Bond Registrar.

The Bonds may only be held by, or transferred to, Sophisticated Investors (as defined in the Indenture), with such Sophisticated Investors executing and delivering an Investor Letter in the form attached as Exhibit B to the Indenture as Exhibit B.

This Bond is transferable by the registered owner hereof, in person, or by its attorney duly authorized in writing, at the Principal Corporate Trust Office of the Trustee and the Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new fully

registered Bond, for the same aggregate principal amount, will be issued to the transferee in exchange therefor. The Issuer, the Trustee and the Bond Registrar may treat the registered owner hereof as the absolute owner hereof for all purposes, and the Issuer, the Trustee and the Bond Registrar shall not be affected by any notice to the contrary.

Interest on the Bonds

Bond Payment Date has the meaning set forth in the Indenture.

Record Date means the 15th day of the month prior to a Bond Payment Date.

Redemption of Bonds

The Bonds are subject to optional, mandatory and extraordinary redemption as set forth in the Indenture.

General Matters

The holder of this Bond shall have no right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon the Indenture, except as provided in the Indenture.

No recourse shall be had for the payment of the principal of, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Indenture contained, against any past, present or future member, director, officer, employee or agent of the Issuer, or through the Issuer, or any successor to the Issuer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such member, director, officer, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of the Indenture and the issuance of any of the Bonds.

Amendments Permitted

The Indenture contains provisions permitting the Issuer and the Trustee to execute supplemental indentures with the written consent of the Bondholder Representative and the Owners of more than fifty-one percent (51%) in aggregate principal amount of Bonds at the time Outstanding, subject to certain conditions as set forth in the Indenture.

The Indenture also contains provisions permitting the Issuer and the Trustee to execute supplemental indentures without consent of the Owners of the Bonds, subject to certain conditions as set forth in the Indenture.

The Indenture prescribes the manner in which it may be discharged and after which the Bonds shall no longer be secured by or entitled to the benefits of the Indenture, except for the purposes of transfer and exchange of Bonds and of payment of the principal of and interest on the Bonds as the same become due and payable, including a provision that under certain circumstances the Bonds shall be deemed to be paid if certain securities, as defined therein, maturing as to principal and interest in such amounts and at such times as to ensure the availability of sufficient

moneys to pay the principal of, and interest on the Bonds and all necessary and proper fees, compensation and expenses of the Trustee shall have been deposited with the Trustee.

No member or officer of the Issuer, nor any Person executing this Bond, shall in any event be subject to any personal liability or accountability by reason of the issuance of the Bonds.

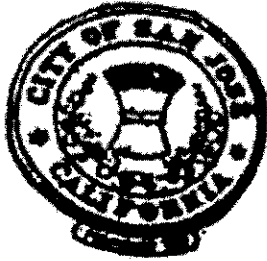
It is hereby certified that all of the conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of California.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Bond Registrar.

In the event of any inconsistency between the provisions of this Bond and the provisions of the Indenture, the provisions of the Indenture shall control.

Specimen

IN WITNESS WHEREOF, the City of San José has caused this Bond to be executed on its behalf by the manual or facsimile signature of an Authorized Officer, and its seal to be reproduced hereon and attested by the manual or facsimile signature of the City Clerk.



CITY OF SAN JOSÉ, as Issuer

By: Julia H Cooper
Authorized Officer

ATTEST:

By: [Signature]
City Clerk

Specimen

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds issued under the provisions of and described in the within-mentioned Indenture.

Date of Authentication: 5/23/2017

U.S. Bank National Association, as Trustee

By 
Authorized Officer

Specimen

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto
(Please insert Social Security Number or other identifying number of assignee)

(Please Print or Typewrite Name and Address of Assignee)

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____.

Signature Guaranteed

NOTICE: Signature(s) must be guaranteed by an eligible guaranty institution.

Signature

NOTICE: The Signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Specimen

MULTIFAMILY NOTE
(TAXABLE)

\$8,720,000

May 23, 2017

FOR VALUE RECEIVED, the undersigned (“**Borrower**”) promises to pay to the order of **CITY OF SAN JOSÉ**, a municipal corporation and charter city, organized and existing under the laws of the State of California, the maximum principal sum of Eight Million Seven Hundred Twenty Thousand Dollars (\$8,720,000), with interest on the unpaid principal balance from time to time outstanding at the annual rate as set forth on Schedule A. The terms of this Note incorporate the Modifications, if any, set forth on Schedule B to this Note.

1. **Defined Terms**. As used in this Note, the following terms shall have the following definitions:

(a) “**Beneficiary Parties**” shall have the meaning set forth in the Security Instrument.

(b) “**Borrower Loan**” means the loan evidenced by this Note and the Tax Exempt Note, the proceeds of which shall be disbursed in accordance with the Borrower Loan Agreement.

(c) “**Borrower Loan Agreement**” means that certain Borrower Loan Agreement, dated as of May 1, 2017, by and between Borrower and Governmental Lender.

(d) “**Business Day**” means any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

(e) “**Closing Date**” shall mean the date of this Note.

(f) “**Conditions to Conversion**” shall have the meaning given to such term in the Construction Funding Agreement.

(g) “**Construction Funding Agreement**” shall mean that certain Construction Funding Agreement, dated as of May 1, 2017, by and between Borrower and Funding Lender.

(h) “**Conversion Date**” shall have the meaning given to such term in the Borrower Loan Agreement.

(i) “**Default Rate**” shall have the meaning set forth in Section 8 of this Note.

(j) “**First Payment Date**” means the first (1st) Business Day of the month following the month in which the first disbursement of Borrower Loan proceeds is made in accordance with the Borrower Loan Agreement, or, if the first disbursement of Borrower Loan proceeds is made after the twentieth (20th) day of a month, means the first (1st) Business Day of

the second (2nd) month following the month in which the first disbursement of Borrower Loan proceeds is made in accordance with the Borrower Loan Agreement.

(k) “**Fiscal Agent**” means U.S. Bank National Association, as fiscal agent under the Funding Loan Agreement, and its successors and assigns.

(l) “**Funding Lender**” means Citibank, N.A., a national banking association, and its successors and assigns.

(m) “**Governmental Lender**” means City of San José, California, a municipal corporation and charter city duly organized and existing under its Charter and the Constitution of the State of California.

(n) “**Indebtedness**” means the principal of, interest on, and any other amounts due at any time under, this Note, the Security Instrument or any other Borrower Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of the Security Instrument as described in Section 12 of the Security Instrument.

(o) “**Interest Rate**” shall have the meaning set forth in Schedule A to this Note.

(p) “**Lender**” means the Funding Lender, as assignee of this Note, and any subsequent holder of this Note.

(q) “**Loan Month**” means the period commencing on a Loan Payment Date and ending on the day preceding the next succeeding Loan Payment Date (without adjustment in either case for Business Day conventions).

(r) “**Loan Payment Date**” means the first (1st) Business Day of each month, commencing on the First Payment Date.

(s) “**Lock-Out Period**” means none.

(t) “**Maturity Date**” means the earlier to occur of (i) June 1, 2020, or (ii) any earlier date on which the unpaid principal balance of this Note becomes due and payable, as a Condition to Conversion, by acceleration or otherwise.

(u) “**Maximum Permanent Period Amount**” shall have the meaning set forth in the Construction Funding Agreement.

(v) “**Maximum Rate**” means the lesser of (i) twelve percent (12%) per annum or (ii) the maximum interest rate that may be paid on the Borrower Loan under the laws of the Property Jurisdiction.

(w) “**Minimum Permanent Period Amount**” shall have the meaning set forth in the Construction Funding Agreement.

(x) “**Note**” means this Multifamily Note.

(y) “**Note Interest**” shall have the meaning set forth in Schedule A to this Note.

(z) “**Permanent Period Amount**” shall have the meaning set forth in the Construction Funding Agreement.

(aa) “**Property Jurisdiction**” shall have the meaning set forth in the Security Instrument.

(bb) “**Tax Exempt Note**” means that certain Multifamily Note (Tax Exempt) dated as of the date hereof in the maximum principal amount of Twenty-Eight Million Nine Hundred Eighty Thousand Dollars (\$28,980,000) made by Borrower payable to the order of Governmental Lender and assigned to Funding Lender.

All other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Borrower Loan Agreement.

2. **Method of Payment.** All payments due under this Note shall be payable to Servicer, or, if there is no Servicer, to the Fiscal Agent, or its successor. Servicer will remit all payments received from Borrower to Fiscal Agent. Each such payment shall be made by wire transfer of immediately available funds in accordance with wire transfer instructions that the Fiscal Agent or Servicer shall supply by Written Notice to the Borrower from time to time.

3. **Payment of Principal and Interest.** Principal and interest shall be paid as follows:

(a) Borrower shall pay all amounts due under this Note at the times and in the amounts set forth herein and in the Borrower Loan Agreement. Borrower shall make its payments under this Note in immediately available funds.

(b) Commencing on the First Payment Date and continuing on each Loan Payment Date thereafter until and including the Conversion Date, Borrower shall pay monthly payments of interest only, at the Interest Rate set forth on Schedule A attached hereto, in successive monthly installments. Such payments shall be made to the Fiscal Agent by 2:00 p.m., New York City time, or, if to the Servicer, by 11:00 a.m., New York City time, on each Loan Payment Date.

(c) To the extent permitted by applicable law, any accrued interest remaining past due may, at Lender’s discretion, be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Note, and any reference below to “accrued interest” shall refer to accrued interest that has not become part of the unpaid principal balance.

(d) Borrower shall pay all unpaid principal of and interest on this Note on the Maturity Date and any other amounts due under subsection 3(a) hereof.

(e) Any regularly scheduled monthly installment of principal and interest that is received by Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

(f) Borrower shall make all payments of principal and interest under this Note without relief from valuation and appraisal laws.

(g) Borrower acknowledges that the calculation of all interest payments shall be made by the Lender and shall be final and conclusive, absent manifest error.

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

5. **Security.** The Indebtedness is secured by, among other things, the Security Instrument, and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note and any other Borrower Loan Document shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Late Charge.** If any amount payable under this Note or under the Security Instrument or any other Borrower Loan Document is not received by the Servicer or Fiscal Agent, as applicable, when such amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event, such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5.0%) of such amount (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted). Notwithstanding the foregoing, with regard to each regularly scheduled monthly installment of interest payable pursuant to this Note, such late charge shall not become due and payable to Lender so long as the Borrower makes such payment on or prior to the tenth (10th) calendar day following the date upon which such payment is due (or the Business Day immediately following such tenth (10th) calendar day if such tenth (10th) calendar day is not a Business Day). Any accrued but unpaid late charges shall be added to and become part of the unpaid principal balance of this Note, shall bear interest at the rate or rates specified in this Note, and shall be secured by the Security Instrument and the other applicable Borrower Loan Documents. Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Borrower Loan, and that it is extremely difficult and impractical to determine

those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the Closing Date, of the additional expenses Lender will incur by reason of such late payment, and such late charge shall be deemed liquidated damages and not additional interest or a penalty. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 8. Notwithstanding anything to the contrary in any other Borrower Loan Document, if a Servicer has been appointed by Lender, any late charges payable hereunder shall not be remitted to Lender and shall instead be paid directly to Servicer, who shall apply such late charges in accordance with the terms of the applicable servicing agreement. Any action regarding the collection of a Late Charge will be without prejudice to any other rights, and shall not act as a waiver of any other rights that the Servicer or the Lender may have as provided herein, in the other Borrower Loan Documents, or at law or in equity.

8. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate per annum (the “**Default Rate**”) equal to the lesser of the Maximum Rate or a rate equal to the Interest Rate plus four percent (4%), in each case compounded monthly (computed in accordance with Schedule A in the same manner in which Note Interest is computed). If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate until the unpaid principal balance and all accrued interest is paid in full. Borrower also acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Borrower Loan, that, during the time that any monthly installment under this Note is delinquent, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender’s ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent or any other Event of Default has occurred and is continuing, Lender’s risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate as provided above represents a fair and reasonable estimate, taking into account all circumstances existing on the Closing Date, of the additional costs and expenses Lender will incur by reason of Borrower’s delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. **Personal Liability of Borrower.**

(a) Borrower shall be personally liable under this Note, the Security Instrument and the other Borrower Loan Documents for (i) the repayment of the Indebtedness, including, without limitation, all amounts due under this Note, and (ii) the performance of all other obligations of Borrower under this Note and the other Borrower Loan Documents.

(b) Borrower shall at all times be personally liable to Lender for the repayment of a portion of the Indebtedness equal to any loss or damage suffered by Lender (the “**Losses**”) as a result of (i) failure of Borrower to pay to Lender upon demand after an Event of Default all Rents to which Lender is entitled under Section 3(a) of the Security Instrument and the amount of all non-forfeited security deposits collected by Borrower from tenants then in residence; (ii) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument; (iii) failure of Borrower to comply with Section 14(d) or (e) of the Security Instrument relating to the delivery of books and records, statements, schedules, and reports; (iv) fraud or material misrepresentation by Borrower or Guarantor or any general partner, managing member, manager, officer, director, partner, member, agent or employee of Borrower or Guarantor in connection with the application for or creation of the Indebtedness or any request for any action or consent by or on behalf of Lender; (v) failure to apply Rents, first, to the payment of reasonable operating expenses (other than property management fees that are not currently payable pursuant to the terms of an Assignment of Management Agreement or any other Borrower Loan Document) and then to amounts (“**Debt Service Amounts**”) payable under this Note, the Security Instrument or any other Borrower Loan Document (except that Borrower will not be personally liable (A) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (C) with respect to Rents that are distributed on account of any calendar year if Borrower has paid all operating expenses and Debt Service Amounts for that calendar year); (vi) failure of Borrower to comply with the provisions of Section 17(a) of the Security Instrument prohibiting the commission of waste of the Mortgaged Property; or (vii) failure of Borrower to obtain and maintain any local real estate tax abatement or exemption required under the Security Instrument, or the reduction, revocation, cancellation or other termination of such abatement or exemption, as a result of any act or omission by or on behalf of Borrower, Guarantor or any of their respective partners, members, managers, directors, officers, agents, employees or representatives.

(c) For purposes of determining Borrower’s personal liability under this Section 9, all payments made by Borrower with respect to the Indebtedness and all amounts received by Lender from the enforcement of its rights under the Security Instrument shall be applied first to the portion of the Indebtedness for which Borrower has no personal liability.

(d) Borrower shall at all times be personally liable to Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default: (i) Borrower’s acquisition of any property or operation of any business not permitted by Section 32 of the Security Instrument; or (ii) a Transfer (including, but not limited to, a lien or encumbrance) that is an Event of Default under Section 21 of the Security Instrument, other than a Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company; or (iii) a Bankruptcy Event, as defined by the Security Instrument (but only if the Bankruptcy Event occurs with the consent or active participation of Borrower, its General Partner, Guarantor or any Borrower Affiliate.

(e) In addition to the Borrower’s personal liability pursuant to the other provisions of this Note, Borrower shall at all times be personally liable to Lender for (i) the performance of all of Borrower’s obligations under Sections 18 and 43(i) of the Security

Instrument (relating to environmental matters) and the Agreement of Environmental Indemnification; (ii) the costs of any audit under Section 14(d) of the Security Instrument; and (iii) any costs and expenses incurred by Lender in connection with the collection of all amounts for which Borrower is personally liable under this Section 9, including out of pocket expenses and reasonable fees of attorneys and expert witnesses and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability.

(f) To the extent that Borrower has personal liability under this Section 9, Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Security Instrument, any other Borrower Loan Document or applicable law. For purposes of this Section 9, the term "**Mortgaged Property**" shall not include any funds that (i) have been applied by Borrower as required or permitted by the Security Instrument prior to the occurrence of an Event of Default or (ii) Borrower was unable to apply as required or permitted by the Security Instrument because of a bankruptcy, receivership, or similar judicial proceeding. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

(g) Nothing herein or in the other Borrower Loan Documents shall be deemed to be a waiver of any right which the Lender or the Servicer may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to the Lender and the Servicer hereunder and under the other Borrower Loan Documents or to require that all collateral shall continue to secure the amounts due hereunder and under the other Borrower Loan Documents.

10. **Prepayments.**

(a) Borrower may voluntarily prepay all or a portion of this Note without penalty or premium. Any voluntary prepayment shall be made upon not less than thirty (30) days prior written notice to Servicer. Such prepayment shall be made by paying (i) the amount of principal outstanding, (ii) all accrued interest, and (iii) all other sums due Lender at the time of such prepayment. In connection with any such prepayment, the Borrower shall wire transfer the amount required hereunder in immediately available funds by 2:00 p.m., New York City time, on the date of prepayment.

(b) Upon Lender's exercise of any right of acceleration under this Note, Borrower shall pay to Lender, in addition to the entire unpaid principal balance of this Note outstanding at the time of the acceleration, all accrued interest and all other sums due Lender.

(c) The Borrower shall prepay the entire outstanding principal balance of this Note, at the direction of the Lender, at a price equal to the outstanding principal balance of this Note, plus accrued interest and any other amounts payable under this Note or the Borrower Loan

Agreement through the date of prepayment, upon the occurrence of any event or condition described below:

(1) no later than the day before (a) any sale of the Project, restructuring of the Borrower or any other event that would cause or be deemed to cause an assumption of obligations of an unrelated party for purposes of Section 1.150-1(d)(2) of the Regulations (any such event referred to herein as a “**Transfer**”) which Transfer would occur within six months of a “refinancing” (as contemplated by such Regulation), or (b) any “refinancing” that would occur within six months of a Transfer; or

(2) in whole, upon a Determination of Taxability as to the Tax Exempt Note.

In connection with any such prepayment, the Borrower shall wire transfer immediately available funds by no later than 2:00 p.m., New York City time, on the date fixed by the Lender, which date shall be communicated by the Lender in writing to the Borrower; provided, however, that in the case of a prepayment as a result of a Determination of Taxability which is unrelated to any action or inaction on the part of the Borrower, such date shall be no earlier than ninety (90) days after Borrower’s receipt of such written communication from the Lender.

(d) The Borrower shall prepay the outstanding principal balance of this Note at the direction of the Lender, in whole or in part, at a price equal to the amount of principal being prepaid plus accrued interest and any other amounts payable under this Note or the other Borrower Loan Documents, upon the occurrence of any event or condition described below:

(1) in whole or in part, if the Mortgaged Property shall have been damaged or destroyed to the extent that it is not practicable or feasible to rebuild, repair or restore the damaged or destroyed property within the period and under the conditions described in the Security Instrument following such event of damage or destruction; or

(2) in whole or in part, if title to, or the use of, all or a portion of the Mortgaged Property shall have been taken under the exercise of the power of eminent domain by any Governmental Authority which results in a prepayment of this Note under the conditions described in the Security Instrument; or

(3) in whole or in part, to the extent that insurance proceeds or proceeds of any condemnation award with respect to the Mortgaged Property are not applied to restoration of the Mortgaged Property in accordance with the provisions of the Security Instrument.

In connection with any such prepayment, the Borrower shall wire transfer immediately available funds by no later than 2:00 p.m., New York City time, on the date fixed by the Lender, which date shall be communicated by the Lender in writing to the Borrower. To the extent that the Borrower receives any insurance proceeds or condemnation awards that are to be applied to the prepayment of this Note, such amounts shall be applied to the prepayment of this Note.

(e) Any permitted or required prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless Lender agrees otherwise in writing.

(f) Notwithstanding anything herein to the contrary, Borrower shall prepay this Note in full, together with all amounts due under the Borrower Loan Documents, on the earlier to occur of (i) the Conversion Date and (ii) on any prepayment, in whole or in part, of the Tax Exempt Note.

11. **Costs and Expenses.** To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including, without limitation, out-of-pocket expenses and reasonable fees of attorneys (including, without limitation, in-house attorneys) and expert witnesses and costs of investigation, incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Borrower Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. For purposes of Section 9(f) and this Section 11, attorneys' out of pocket expenses shall include, but are not limited to, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses.

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

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

14. **Borrower Loan Charges.** Neither this Note nor any of the other Borrower Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the maximum interest permitted to be charged under applicable law. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Borrower Loan is interpreted so that any interest or other charge provided for in any Borrower Loan Document, whether considered separately or together with other charges provided for in any other Borrower Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any,

previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

15. **Obligations of the Borrower Absolute and Unconditional.** Subject to Section 9, the obligations of the Borrower to make all payments required under this Note and the other Borrower Loan Documents on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder and under the other Borrower Loan Documents shall be primary, absolute, unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Note and the other Borrower Loan Documents under any and all circumstances, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Mortgaged Property or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Mortgaged Property or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Mortgaged Property, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Lender's legal organization or status, or any default of the Lender hereunder or under any other Borrower Loan Document, and regardless of the invalidity of any action of the Lender or the invalidity of any portion of this Note or the other Borrower Loan Documents. Provided further, the obligations of Borrower under this Note and the other Borrower Loan Documents shall not be affected by:

(a) any lack of validity or enforceability of any Borrower Loan Document or any of the Related Documents;

(b) any amendment of, or any waiver or consent with respect to, any of the Borrower Loan Documents or Related Documents;

(c) the existence of any claim, set-off, defense or other rights which Borrower, its general partners or Guarantor may have at any time against Lender (other than the defense of payment in accordance with the terms of this Note or the other Borrower Loan Documents) or any other Person, whether in connection with this Note or any other Borrower Loan Document, the Related Documents or any transaction contemplated thereby or any unrelated transaction;

(d) any breach of contract or other dispute between Borrower, its general partners or Guarantor, and Lender;

(e) any Funding Requisition or any document presented in connection therewith, proving to be forged, fraudulent, untrue, inaccurate, invalid or insufficient in any respect (except in the event of willful misconduct by Lender with respect to same); or

(f) any exchange, release or nonperfection of any lien or security interest in any collateral pledged or otherwise provided to secure any of the obligations contemplated herein, in any other Borrower Loan Document or in any Related Document.

The Borrower hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Note or the other Borrower Loan Documents or which releases or purports to release the Borrower therefrom. Nothing contained herein shall be construed as prohibiting the Borrower from pursuing any rights or remedies it may have against any Person in a separate legal proceeding.

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

17. **Counting of Days.** Except where otherwise specifically provided, any reference in this Note to a period of “days” means calendar days, not Business Days.

18. **Notices.** All notices, demands and other communications required or permitted to be given by Lender to Borrower pursuant to this Note shall be in writing, and addressed as set forth below. Each notice shall be deemed given on the earliest to occur of (a) the date when the notice is received by the addressee; (b) the first (1st) Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (c) the third (3rd) Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

If to Lender: Citibank, N.A.
388 Greenwich Street, 8th Floor
New York, New York 10013
Attention: Transaction Management Group
Re: Villa de Guadalupe, Deal ID No. 24261
Facsimile: (212) 723-8209

And to: Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Re: Villa de Guadalupe, Deal ID No. 24261
Facsimile: (805) 557-0924

Prior to the Conversion Date, with a copy to: Citibank, N.A.
388 Greenwich Street, 8th Floor
New York, New York 10013
Attention: Account Specialist
Re: Villa de Guadalupe, Deal ID No. 24261
Facsimile: (212) 723-8209

Following the Conversion Date, with a copy to: Citibank N.A.
c/o Berkadia Commercial Servicing Department
323 Norristown Road, Suite 300
Ambler, Pennsylvania 19002
Attention: Client Relations Manager
Re: Villa de Guadalupe, Deal ID No. 24261
Facsimile: (215) 328-0305

And a copy of any notices of default sent to:: Citibank, N.A.
388 Greenwich Street
New York, New York 10013
Attention: General Counsel's Office
Re: Villa de Guadalupe, Deal ID No. 24261
Facsimile: (646) 291-5754

If to Borrower: Burnham VDG Venture LP
c/o Standard Property Company
1901 Avenue of the Stars, Suite 395
Los Angeles, California 90067
Facsimile: (310) 551-1666

With a copy to: Rutan & Tucker, LLP
611 Anton Boulevard, 14th Floor
Costa Mesa, California 92626
Attention: Randall M. Babbush
Facsimile: (714) 546-9035

And a copy to: Aegon LIHTC Fund 50, LLC
c/o AEGON USA Realty Advisors, LLC
4333 Edgewood Road, NE
Mail Drop 5553
Cedar Rapids, Iowa 52499
Attention: LIHTC Reporting
Facsimile: (319) 355-8030

With a copy to:

Holland & Knight LLP
10 St. James Avenue, 11th Floor
Boston, Massachusetts 02116
Attention: Jonathan I. Sirois, Esq.
Facsimile: (617) 523-6850

The Borrower, Lender and Equity Investor may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 18. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 18, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 18 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

19. **Payments on Non-Business Day.** If the date for the making of any payment under this Note is not a Business Day, such payment shall be due and payable on the next succeeding Business Day.

20. **Terms of Note Governing Payment Matters Control in the Event of any Conflict.** In the event the provisions of the Borrower Loan Agreement or the other Borrower Loan Documents (other than this Note) conflict with the provisions of this Note which govern the terms of repayment of the Borrower Loan or the payment of other amounts due in connection with the Borrower Loan (including, without limitation, the provisions of this Note which govern the required payments of principal, interest and other amounts due in connection with the Borrower Loan, the manner of payment, the calculation of interest, the payment of the Lender's costs and expenses, the application of payments received by the Lender, the acceleration of amounts owed by the Borrower, late charges, default rates of interest, prepayments, prepayment premiums or maximum rates of interest or similar charges), the provisions of this Note shall govern and control.

21. **Local Law Provisions (California).**

(a) If any Guarantor is liable for only a portion of the Indebtedness, Borrower hereby waives its rights under California Civil Code Section 2822(a) to designate the portion of the Indebtedness that shall be satisfied by Borrower's partial payment.

(b) Borrower hereby expressly waives any right it may have, under California Civil Code Section 2954.10 or otherwise, to prepay this Note, in whole or in part, without prepayment charge, upon acceleration of the maturity date of this Note, and agrees that if for any reason, a prepayment of any or all of this Note is made, whether voluntarily or upon or following any acceleration of the maturity date of this Note by Lender, then Borrower shall pay the prepayment premium calculated pursuant to Section 10 hereof. By initialing this provision in the space provided below, Borrower hereby declares that Lender's agreement to make the Borrower Loan at the interest rate provided for herein and for the term set forth in this Note constitutes adequate consideration, given individual weight by Borrower, for this waiver and agreement.

INITIALS OF BORROWER: JML _____]

22. **Determinations by Lender.** Except to the extent expressly set forth in this Note to the contrary, in any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Note, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

23. **Release; Indemnity.**

(a) *Release.* Borrower covenants and agrees that, in performing any of its rights or duties under this Note, neither the Beneficiary Parties, nor their respective agents or employees, shall be liable for any losses, claims, damages, liabilities and expenses that may be incurred by any of them as a result of such performance, except to the extent such liability for any losses, claims, damages, liabilities or expenses arises out of the willful misconduct or gross negligence of such party.

(b) *Indemnity.* Borrower hereby agrees to indemnify and hold harmless the Beneficiary Parties and their respective agents and employees from and against any and all losses, claims, damages, liabilities and expenses including, without limitation, reasonable attorneys' fees and costs and disbursements, which may be imposed or incurred by any of them in connection with this Note, except that no such party will be indemnified for any losses, claims, damages, liabilities or expenses arising out of the willful misconduct or gross negligence of such party.

24. **Governing Law.** This Note shall be governed by and enforced in accordance with the laws of the Property Jurisdiction, without giving effect to the choice of law principles of the Property Jurisdiction that would require the application of the laws of a jurisdiction other than the Property Jurisdiction.

25. **Consent to Jurisdiction and Venue.** Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this

Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Lender's right to bring any suit, action or proceeding relating to matters arising under this Note against Borrower or any of Borrower's assets in any court of any other jurisdiction.

26. **Severability.** The invalidity, illegality or unenforceability of any provision of this Note shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

27. **Remedies Cumulative.** In the event of Borrower's default under this Note, the Lender may exercise all or any one or more of its rights and remedies available under this Note, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent the Lender from exercising any other right or remedy available to the Lender. The Lender may exercise any such remedies from time to time as often as may be deemed necessary by the Lender.

28. **No Agency or Partnership.** Nothing contained in this Note shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

29. **Entire Agreement; Amendment and Waiver.** This Note contains the complete and entire understanding of the parties with respect to the matters covered. This Note may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Note shall be considered as a general waiver.

30. **Further Assurances.** Borrower shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that Lender may reasonably request, in order to protect any right or interest granted by this Note or to enable Lender to exercise and enforce its rights and remedies under this Note.

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

32. **Servicer.** Borrower hereby acknowledges and agrees that, pursuant to the terms of the Security Instrument: (a) from time to time, Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under this Note or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by such servicer with the same force and effect.

33. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND LENDER (a) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (b) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. IF FOR ANY REASON THIS WAIVER IS DEEMED TO BE UNENFORCEABLE, ALL SUCH DISPUTES SHALL BE RESOLVED BY JUDICIAL REFERENCE PURSUANT TO THE PROVISIONS OF SECTION 43(J) OF THE SECURITY INSTRUMENT.

34. **Time of the Essence.** Time is of the essence with respect to this Note.

35. **Modifications.** All modifications (if any) to the terms of this Note (“**Modifications**”) are set forth on Schedule C attached to this Note. In the event of a Transfer under the terms of the Security Instrument, some or all of the Modifications to this Note may be modified or rendered void by Lender at its option by notice to Borrower or such transferee.

36. **Attached Schedules.** The following Schedules are attached to this Note and are incorporated by reference herein as if more fully set forth in the text hereof:

Schedule A – Principal and Interest Payments

Schedule B – Prepayment Premium

Schedule C – Modifications to Multifamily Note (Taxable)

The terms of this Note are modified and supplemented as set forth in said Schedules. To the extent of any conflict or inconsistency between the terms of said Schedules and the text of this Note, the terms of said Schedules shall be controlling in all respects.

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IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Multifamily Note (Taxable) or caused this Multifamily Note (Taxable) to be duly executed and delivered by its authorized representative as of the date first set forth above.

BORROWER:

BURNHAM VDG VENTURE LP, a California limited partnership

By: Burnham VDG Manager LP, a California limited partnership, its Administrative General Partner

By: Burnham GP LLC, a California limited liability company, its General Partner

By: 

Scott J. Alter
Manager

By: Housing on Merit VI LLC, a California limited liability company, its Managing General Partner

By: Housing on Merit, a California nonprofit public benefit corporation, its Manager

By: _____
Jennifer Litwak
Executive Director

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Multifamily Note (Taxable) or caused this Multifamily Note (Taxable) to be duly executed and delivered by its authorized representative as of the date first set forth above.

BORROWER:

BURNHAM VDG VENTURE LP, a California limited partnership

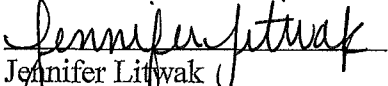
By: Burnham VDG Manager LP, a California limited partnership, its Administrative General Partner

By: Burnham GP LLC, a California limited liability company, its General Partner

By: _____
Scott J. Alter
Manager

By: Housing on Merit VI LLC, a California limited liability company, its Managing General Partner

By: Housing on Merit, a California nonprofit public benefit corporation, its Manager

By: 
Jennifer Litwak
Executive Director

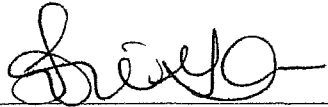
PAY TO THE ORDER OF:

CITIBANK, N.A.,
AS ASSIGNEE UNDER THAT CERTAIN
FUNDING LOAN AGREEMENT
DATED AS OF MAY 1, 2017

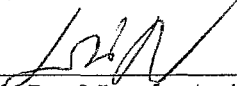
WITHOUT RECOURSE

CITY OF SAN JOSÉ, CALIFORNIA


Attest:

By: 
Toni J. Taber, City Clerk

By: 
Julia H. Cooper, Director of Finance

By: 
David Bopf, Interim Assistant Director of
Housing

Approved as to form:


Kevin Fisher, Chief Deputy City Attorney

SCHEDULE A

INTEREST PAYMENTS

1. **Interest Rate.** Except as provided in Paragraphs 8 and 14 of this Note, interest (“**Note Interest**”) shall accrue on the unpaid principal of this Note from the Closing Date until paid in full at an annual rate (the “**Interest Rate**”) as follows:

- (a) Adjustable Interest Rate. Interest shall accrue at the Adjustable Rate.
- (b) Interest Rate Adjustment. The Adjustable Rate shall be determined by Lender on each Rate Determination Date and shall be adjusted on each Reset Date until this Note is repaid in full. Accrued interest on this Note shall be paid in arrears.
- (c) Maximum Rate. Notwithstanding any other provision of this Note to the contrary, Note Interest shall not exceed the Maximum Rate, as the Maximum Rate may change in accordance with this Note.
- (d) Interest Accrual. Note Interest shall be computed on the basis of the actual number of days in the period in respect of which payment is being made, divided by 365 (or, if any portion of that period falls in a leap year, the sum of (i) the actual number of days in that portion of the period falling in a leap year divided by 366 and (ii) the actual number of days in that portion of the period falling in a non-leap year divided by 365).

2. **Definitions.** For purposes of this Schedule A, the following terms shall have the meanings set forth below:

“**Accrual Period**” means the period commencing on the first calendar day of each month and continuing to but excluding the first calendar day of the following month (without adjustment in either case for Business Day payment conventions).

“**Adjustable Rate**” means the sum of (i) the Current Index, and (ii) the Margin, which sum is then rounded to five decimal places.

“**Current Index**” means the Index that is determined by Lender on each Rate Determination Date.

“**Index**” means the London Inter-Bank Offered Rate for 1-month U.S. Dollar-denominated deposits administered by the ICE Benchmark Administration Limited (formerly administered by the British Bankers Association, or such other person which takes over the administration of that rate) which appears on Reuters Screen LIBOR01 Page (or any successor page) as of 11:00 a.m., London time, on the Rate Determination Date (the “**LIBOR Rate**”). If Lender determines that use of the Index would violate any applicable law or regulation, or if the Index becomes unavailable, then Lender, in its sole and absolute discretion, will choose a new rate which is based upon comparable information and provide notice to Borrower of such choice.

“**London Business Day**” shall mean any Business Day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency) in the city of London, England.

“**Margin**” means 2.35%.

“**Payment Change Date**” means the first day of the next succeeding Accrual Period that follows each Reset Date until this Note is repaid in full.

“**Rate Determination Date**” means two (2) London Business Days prior to the applicable Reset Date.

“**Required Monthly Payment**” shall have the meaning set forth in Paragraph 3 below.

“**Reset Date**” means the first day of each Accrual Period.

3. **Monthly Interest Only Payments.** Consecutive monthly installments of interest only, each in the amount of the Required Monthly Payment (defined below), shall be payable on each Loan Payment Date until the entire principal balance evidenced by this Note is fully paid. The Required Monthly Payment shall be an amount equal to the Note Interest that has accrued on the unpaid principal balance of the Borrower Loan during the applicable Accrual Period, and shall change on each Payment Change Date based on the applicable Adjustable Rate and unpaid principal balance. The entire unpaid principal balance and accrued but unpaid interest, if not sooner paid, shall be due and payable on the Maturity Date.

4. **Notification of Required Monthly Payment.** Before each Payment Change Date, Lender shall re-calculate the Adjustable Rate and shall notify Borrower (in the manner specified in Section 18 of this Note for giving notices) of any change in the Required Monthly Payment.

5. **Error in Calculation of Required Monthly Payment.** If Lender at any time determines, in its sole but reasonable discretion, that it has miscalculated the amount of the Required Monthly Payment (whether because of a miscalculation of the Adjustable Rate or otherwise), then Lender shall give notice to Borrower of the corrected amount of the Required Monthly Payment (and the corrected Adjustable Rate, if applicable) and (a) if the corrected amount of the Required Monthly Payment represents an increase, then Borrower shall, within thirty (30) calendar days thereafter, pay to Lender any sums that Borrower would have otherwise been obligated under this Note to pay to Lender had the amount of the Required Monthly Payment not been miscalculated, or (b) if the corrected amount of the Required Monthly Payment represents a decrease thereof and Borrower is not otherwise in breach or default under any of the terms and provisions of this Note, the Security Instrument or any other Borrower Loan Document, then Borrower shall thereafter be paid the sums that Borrower would not have otherwise been obligated to pay to Lender had the amount of the Required Monthly Payment not been miscalculated.

SCHEDULE B

MODIFICATIONS TO MULTIFAMILY NOTE

The following modifications are made to the text of the Note that precedes this Schedule:

1. Section 9 is amended by adding the following sentence to the end of subsection (e) thereof:

“Borrower shall be personally liable to Lender for the payment of any payments made to Borrower under the HAP Contract to the extent such payments are not made to the Lender as provided for under that certain Assignment of Housing Assistance Payments Agreement (pertaining to the HAP Contract, as defined therein), dated as of May 1, 2017, by Borrower (as Owner) for the benefit of Lender.”

2. Section 9(a) is hereby modified by adding the following new sentence at the end of the first sentence thereof:

“Notwithstanding anything to the contrary contained in this Section 9, the liability of Borrower’s not-for-profit managing general partner shall be further limited to only those Losses incurred as a result of any act or omission of such managing general partner.”

Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Note.

CITY OF SAN JOSÉ
JUNIOR MULTIFAMILY HOUSING REVENUE BONDS
(VILLA DE GUADALUPE APARTMENTS) 2017 SERIES B

MATURITY SCHEDULE FOR FINAL CDIAC

<u>Series</u>	<u>Par Amount</u>	<u>Maturity Date</u>
2017 Series B	\$4,615,712	June 1, 2052