

## OFFICIAL STATEMENT

NEW ISSUE

BOOK-ENTRY ONLY

Standard & Poor's: "AA/A-1+"

See "RATING" herein

*In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however, to certain qualifications described herein, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes, except during any period wherein a Bond is held by a "substantial user" of the facilities financed by the Bonds or by a "related person" within the meaning of Section 147(a) of the Internal Revenue Code of 1986. It should be noted, however, that such interest is an item of tax preference for purposes of computing the federal alternative minimum tax imposed on individuals and corporations. In the further opinion of Bond Counsel, interest on the Bonds is exempt from personal income taxation imposed by the State of California. See "TAX MATTERS" herein.*

**\$25,000,000**

**ABAG Finance Authority for Nonprofit Corporations  
Multifamily Housing Revenue Bonds  
(Capitol Park Apartments)  
2005 Series A  
CUSIP: 00037N LX 2**

**Dated Date: Date of Issuance**

**Due: As shown on the inside front cover**

The ABAG Finance Authority for Nonprofit Corporations (the "Issuer") is issuing \$25,000,000 of its Multifamily Housing Revenue Bonds (Capitol Park Apartments) 2005 Series A (the "Bonds"). The Bonds are being issued under a Trust Indenture, dated as of December 1, 2005 (the "Indenture"), by and between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"), to provide funding for a Loan (the "Loan") to be made by the Issuer to KDF SJC, L.P., a California limited partnership (the "Borrower"). The loan will be used to finance a portion of the acquisition, rehabilitation and equipping of a multifamily rental housing project known as Capitol Park Apartments. The Project is located in the City of San Jose, California. The Loans will be made on the Closing Date pursuant to the Loan Agreement, each dated as of the date of the Indenture, among the Issuer, the Borrower and the Trustee (the "Loan Agreement").

The Bonds shall bear interest at the rates per annum set forth on the inside front cover page (each a "Reset Rate") calculated on the basis of a 360-day year composed of twelve 30-day months. Interest earned shall be paid on the earlier of the Escrow Break Date (as defined herein) or the date on which the Bonds are redeemed (the "Redemption Date"). The Bonds are issuable only as fully registered bonds, without coupons, in the denomination of \$250,000 or any integral multiple of \$1.00 in excess thereof. The Bonds will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). Purchase of beneficial interests in the Bonds will be made in book-entry only form. DTC will act as securities depository for the Bonds. So long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, references herein to the registered owners of the Bonds shall mean Cede & Co. and shall not mean the beneficial owners of the Bonds. Purchasers of beneficial interests in the Bonds will not receive physical delivery of Bonds. Payments of principal of, premium, if any, and interest on the Bonds and the payment of the purchase price of tendered Bonds will be made directly to DTC or its nominee, Cede & Co., by the Trustee, so long as DTC is the registered owner of the Bonds. DTC will remit such payments to the applicable DTC Participants. The disbursements of such payments will be made by DTC participants to the beneficial owners of the Bonds. See "THE BONDS—Book-Entry Only" herein.

Payment of the principal of and interest on the Bonds will be secured, to the extent described herein, solely (i) by the Bond proceeds deposited in Project Fund and invested in an investment agreement (the "Investment Agreement") as described herein, and (ii) by certain other resources and assets, constituting the trust estate under the Indenture, all as described herein.

**PRIOR TO MATURITY, THE BONDS ARE SUBJECT TO MANDATORY TENDER ON ANY DATE (THE "ESCROW BREAK DATE") NO EARLIER THAN JANUARY 12, 2006 AND NO LATER THAN APRIL 10, 2006 SHOULD THE ESCROW BREAK REQUIREMENTS (AS DEFINED HEREIN) BE SATISFIED, ALL IN ACCORDANCE WITH THE INDENTURE. IN ADDITION, THE BONDS ARE SUBJECT TO MANDATORY REDEMPTION ON APRIL 17, 2006 SHOULD THE ESCROW BREAK EVENT (AS DEFINED HEREIN) NOT OCCUR ON OR PRIOR TO APRIL 10, 2006. SEE "THE BONDS — MANDATORY TENDER ON ESCROW BREAK DATE" AND "—REDEMPTION PROVISIONS" HEREIN.**

**THIS OFFICIAL STATEMENT DESCRIBES THE BONDS ONLY DURING THE PERIOD FROM THE CLOSING DATE TO THE DATE ON WHICH THE BONDS ARE EITHER TENDERED OR REDEEMED.**

**THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE TRUST ESTATE, WHICH IS SPECIFICALLY ASSIGNED AND PLEDGED TO SUCH PURPOSES IN THE MANNER AND TO THE EXTENT PROVIDED IN THE INDENTURE. NEITHER THE ISSUER, THE ASSOCIATION OF BAY AREA GOVERNMENTS ("ABAG"), OR THE MEMBERS OF THE ISSUER OR ABAG SHALL BE DIRECTLY OR INDIRECTLY OR CONTINGENTLY OR MORALLY OBLIGATED TO USE ANY OTHER MONEYS OR ASSETS OF THE ISSUER, ABAG OR ANY OF ITS MEMBERS TO PAY ALL OR ANY PORTION OF DEBT SERVICE DUE ON THE BONDS. THE BONDS AND THE OBLIGATION TO PAY PRINCIPAL OF AND INTEREST THEREON AND ANY REDEMPTION, PREMIUM WITH RESPECT THERETO DO NOT CONSTITUTE AN INDEBTEDNESS OR AN OBLIGATION OF THE ISSUER OR ABAG, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION, OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF ANY OF THEM, BUT SHALL BE PAYABLE SOLELY FROM THE TRUST ESTATE AS PROVIDED IN THE INDENTURE. NO OWNER OF THE BONDS SHALL HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF TO PAY ANY PRINCIPAL OF, PURCHASE PRICE, PREMIUM, IF ANY, OR INTEREST ON THE BONDS. NEITHER THE ISSUER NOR ABAG HAVE ANY TAXING POWER.**

This cover page contains certain information for quick reference only. This cover page is not intended to be a summary of this issue. Investors must read the entire Official Statement, including all Exhibits attached hereto, to obtain information essential to the making of an informed investment decision.

*The Bonds are offered when, as and if issued by the Issuer and received by the Underwriter, subject to prior sale, withdrawal or modification of such offer without notice, subject to the approving opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, and certain other conditions. Certain legal matters will be passed on for the Borrower by Cox, Castle & Nicholson, LLP, San Francisco, California and for the Underwriter by Eichner & Norris PLLC, Washington, D.C. It is expected that the Bonds will be delivered through the facilities of The Depository Trust Company in New York, New York, on or about December 5, 2005.*



a Division of GMAC Commercial Holding Capital Markets Corp.

## **MATURITY SCHEDULE**

\$25,000,000 3.35% 2005 Bonds due September 1, 2039, Price 100%

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## OFFICIAL STATEMENT

**\$25,000,000**

**ABAG Finance Authority for Nonprofit Corporations  
Multifamily Housing Revenue Bonds  
(Capitol Park Apartments)  
2005 Series A**

### INTRODUCTION

The following introductory statement is subject in all respects to more complete information contained elsewhere in this Official Statement. The order and placement of materials in this Official Statement, which includes the cover page and Exhibits hereto, are not to be deemed to be a determination of relevance, materiality or relative importance, and this Official Statement, including the cover page and Exhibits hereto, must be considered in its entirety. Certain capitalized terms used herein are defined herein. All other capitalized terms used in this Official Statement that are not otherwise defined herein shall have the meanings ascribed to them in the Indenture, the Loan Agreement and the Regulatory Agreement (as each such term is hereinafter defined).

The ABAG Finance Authority for Nonprofit Corporations (the "Issuer") is issuing \$25,000,000 of its Multifamily Housing Revenue Bonds (Capitol Park Apartments) 2005 Series A (the "Bonds"). The purpose of this Official Statement is to set forth certain information in connection with the issuance and delivery of the Bonds. The Bonds are being issued pursuant to the laws of the State of California (the "State"), particularly the provisions of the Act and the Resolution. The Bonds are being issued under a Trust Indenture, dated as of December 1, 2005 (the "Indenture"), by and between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee").

The Bonds are being issued by the Issuer for the purpose of providing funds to be loaned (the "Loan") to KDF SJC, L.P., a California limited partnership (the "Borrower"), to finance a portion of the acquisition, rehabilitation and equipping of a multifamily rental housing project known as Capitol Park Apartments which is located in the City of San Jose, California (the "Project"). A Loan Agreement dated as of the date of the Indenture (the "Loan Agreement") by and between the Issuer, the Trustee and the Borrower will obligate the Borrower to repay the Loan. However, the proceeds of the Bonds will not be released to the Borrower prior to the Escrow Break Date.

Prior to the Escrow Break Date, payment of the principal of and interest on the Bonds will be secured, to the extent described herein, by the Bond proceeds. During such time, the Bond proceeds will be deposited in Project Fund and invested pursuant to a Funding Agreement dated as of the Closing Date (the "Investment Agreement") by and between Transamerica Occidental Life Insurance Company, an Iowa corporation (the "Investment Agreement Provider") and the Trustee.

**THIS OFFICIAL STATEMENT DESCRIBES THE BONDS ONLY DURING THE PERIOD PRIOR TO THE DATE ON WHICH THE BONDS ARE EITHER TENDERED OR REDEEMED.**

On the Escrow Break Date, the Bonds will be subject to mandatory tender for purchase and the Bondholders will not have the right to retain their Bonds. See "THE BONDS—Mandatory Tender and Purchase" herein.

There are also circumstances under which the Bonds will be subject to mandatory redemption, including on April 17, 2006 in the event the Escrow Break Event has not occurred on or prior to April 10,

2006, the Escrow Break Termination Date. Any such mandatory redemption will be at a redemption price equal to the principal amount of the Bonds plus accrued interest to the Redemption Date. No such redemption will be made at a premium. In the event of such a mandatory redemption, the redemption price is to be paid with funds held under the Project Fund and invested in the Investment Agreement. Alternatively, in lieu of such redemption, the Bonds may be purchased by the Trustee for the account of the Borrower from funds held under the Project Fund and invested in the Investment Agreement. See “THE BONDS—Redemption Provisions.” In either case, the Bondholders will be required to deliver their Bonds for redemption or purchase, as the case may be.

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In order to ensure compliance with the applicable provisions of the Internal Revenue Code of 1986, as amended (the “1986 Code”), the Borrower, the Trustee and the Issuer will enter into a Regulatory Agreement and Declaration of Restrictive Covenants dated as of the date of the Indenture (the “Regulatory Agreement”), which will require, among other things that 40% of the units in the Project for rental to persons or families having incomes at or below 60% of area median gross income, adjusted for family sized. In addition, the Regulatory Agreement requires that all such set-aside units be rented to tenants at affordable rents, defined as rents not greater than 30% of 60%, respectively, of area median income, as applicable, adjusted for family size. See “THE BORROWER AND THE PROJECT” herein.

Summaries of the Indenture and the Loan Agreement are attached as Exhibits to this Official Statement. All references herein to the Indenture, the Loan Agreement, the Investment Agreement and all other documents and agreements are qualified in their entirety by reference to such documents and agreements. All references to the Bonds are qualified by reference to the form thereof included in the Indenture. Copies of the Indenture, the Loan Agreement, the Regulatory Agreement and the Investment Agreement are available for inspection at the corporate trust office of the Trustee, Wells Fargo Bank, N.A., 707 Wilshire Blvd., 17th Fl., Los Angeles, CA 90017, Attn: Corporate Trust Services.

## **THE ISSUER**

### **Organization**

The Issuer is a joint powers authority duly organized and existing under the laws of the State of California. The Issuer was formed pursuant to the terms of a Joint Powers Agreement, dated as of April 1, 1990, as amended as of September 18, 1990 and June 9, 1992 (the "Joint Powers Agreement"), and the Act in order to assist nonprofit corporations and other entities to obtain financing for projects located within the several jurisdictions of the members of the Issuer with purposes serving the public interest.

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### **ESTIMATED SOURCES AND USES OF FUNDS**

The total amount of the proceeds of the Bonds will be deposited into the Project Fund and invested in an Investment Agreement. All costs of issuance will be paid by the Borrower and deposited into the Costs of Issuance Fund.

### **SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**

#### **General**

Under the terms of the Indenture, the Bonds are secured by a pledge of the Trust Estate comprised of the following:

- (a) All right, title and interest of the Issuer in, to and under the Loan Agreement (except the Unassigned Issuer's Rights) and the Note, including, without limitation, all rents, revenues and receipts derived by the Issuer from the Borrower relating to the Project and including, without limitation, all Pledged Revenues; provided that the pledge and assignment

made under the Indenture will not impair or diminish the obligations of the Issuer under the provisions of the Loan Agreement.

(b) All right, title and interest of the Issuer in, to and under, together with all rights, remedies, privileges and options pertaining to, the Bond Documents, and all other payments, revenues and receipts derived by the Issuer under and pursuant to, and subject to the provisions of, the Bond Documents, except for the Unassigned Issuer's Rights.

(c) All moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held by the Trustee under the Indenture (but excluding the Expense Fund and the Rebate Fund), subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture.

(d) Any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of the Indenture as additional security by the Issuer or anyone on its part or with its consent, or which pursuant to any of the provisions of the Indenture or of the Loan Agreement may come into the possession or control of the Trustee or a receiver appointed pursuant to the Indenture; and the Trustee is authorized to receive any and all such property as and for additional security for the Bonds and to hold and apply all such property subject to the terms of the Indenture.

The foregoing (collectively the "Trust Estate") is pledged for the equal and proportionate benefit, security and protection (subject to the terms of the Indenture) of all registered owners of the Bonds, without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the others of the Bonds. The Trust Estate comprises the security for the Bonds.

### **Investment Agreement**

The Proceeds of the Bonds will be deposited in the Project Fund and invested by the Trustee in the Investment Agreement.

In the event of termination or cancellation of the Investment Agreement, no assurance can be given that an instrument from an institution meeting the requirements of the Indenture and with a similar rate of return can be obtained.

### **Limited Obligations**

**THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE TRUST ESTATE, WHICH IS SPECIFICALLY ASSIGNED AND PLEDGED TO SUCH PURPOSES IN THE MANNER AND TO THE EXTENT PROVIDED IN THE INDENTURE. NEITHER THE ISSUER, ABAG, OR THE MEMBERS OF THE ISSUER OR ABAG SHALL BE DIRECTLY OR INDIRECTLY OR CONTINGENTLY OR MORALLY OBLIGATED TO USE ANY OTHER MONEYS OR ASSETS OF THE ISSUER, ABAG OR ANY OF ITS MEMBERS TO PAY ALL OR ANY PORTION OF DEBT SERVICE DUE ON THE BONDS. THE BONDS AND THE OBLIGATION TO PAY PRINCIPAL OF AND INTEREST THEREON AND ANY REDEMPTION, PREMIUM WITH RESPECT THERETO DO NOT CONSTITUTE AN INDEBTEDNESS OR AN OBLIGATION OF THE ISSUER OR ABAG, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION, OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS**

**OF ANY OF THEM, BUT SHALL BE PAYABLE SOLELY FROM THE TRUST ESTATE AS PROVIDED IN THE INDENTURE. NO OWNER OF THE BONDS SHALL HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF TO PAY ANY PRINCIPAL OF, PURCHASE PRICE, PREMIUM, IF ANY, OR INTEREST ON THE BONDS. NEITHER THE ISSUER NOR ABAG HAVE ANY TAXING POWER.**

### **THE INVESTMENT AGREEMENT PROVIDER**

Transamerica Occidental Life Insurance Company, an Iowa corporation (the "Investment Agreement Provider"), is headquartered at 4333 Edgewood Road N.E., Cedar Rapids, Iowa 52499. The Investment Agreement Provider had net admitted assets of \$30.0 billion, liabilities of \$27.2 billion and capital and surplus of \$2.8 billion, as of September 30, 2005. The Investment Agreement Provider is an indirect wholly owned subsidiary of AEGON N.V., a Netherlands-based multinational financial services conglomerate.

All proceeds of the Bonds will be deposited in the Project Fund and invested and held pursuant to the Investment Agreement until the Escrow Break Date, or should the Escrow Break Requirements not be satisfied, April 17, 2006. The termination date of the Investment Agreement is April 17, 2006. Amounts invested pursuant to the terms of the Investment Agreement will bear interest at a rate equal to 3.85% per annum. Interest will be payable on each date of a principal repayment and upon final repayment of the investment. Interest will be calculated on the basis of a 360-day year composed of twelve 30-day months. On or after January 12, 2006, the Trustee may withdraw all amounts invested pursuant to the Investment Agreement upon not less than two (2) Business Days notice for the purposes permitted under the Investment Agreement

The information contained in this section of the Official Statement relates to and has been obtained from the Investment Agreement Provider. Delivery of this Official Statement will not create any implication that there has been no change in the affairs of the Investment Agreement Provider since the date hereof, or that the information contained or referred to in this Official Statement is correct as of the time subsequent to the date hereof.

Neither the Investment Agreement Provider nor any of their respective directors, officers, employees, shareholders or agents will be liable or responsible for (i) the payment of any amounts owing on or with respect to the Bonds; (ii) the use or application by the Issuer, the Borrower or the Trustee of any monies payable to the Trustee under the Investment Agreement; (iii) any acts or omissions of the Issuer, the Borrower or the Trustee under or with respect to the Bonds or the Indenture; (iv) the validity or enforceability of the Bonds, the Loan Agreement or the Indenture; (v) the tax treatment of interest paid on the Bonds or (vi) the Issuer's, the Borrower's or the Trustee's performance of its obligations under the Investment Agreement, the Indenture, the Loan Agreement, the Bonds or any other agreement or instrument relating to the Bonds or their issuance.

## **CERTAIN BONDHOLDERS' RISKS**

*The purchase of the Bonds will involve a number of risks. The following is a summary, which does not purport to be comprehensive or definitive, of some of such risk factors.*

### **Mandatory Tender and Early Redemption of the Bonds**

Any person who purchases a Bond should consider the fact that the Bonds are subject to mandatory tender and redemption, upon the occurrence of certain events. See “THE BONDS — Mandatory Tender on Escrow Break Date” and “THE BONDS — Redemption Provisions.”

### **Security for the Bonds**

Payment of the principal of, and interest on the Bonds will be primarily secured by and payable from Bond proceeds held in the Project Fund. The Bond proceeds will be deposited in the Project Fund and invested in the Investment Agreement, the rights to which are assigned to the Trustee for the benefits of the Bondholders. Under the Investment Agreement, amounts invested under the Investment Agreement may be withdrawn, when withdrawals are permitted under the Investment Agreement and the Indenture, from the Project Fund. The Investment Agreement represents the unsecured obligation of the Investment Agreement Provider to provide repayment to the Trustee of money invested in the Investment Agreement. The Issuer and the Underwriter make no representation as to the ability of the Investment Agreement Provider to make payments thereunder in amounts necessary or the sufficiency of amounts in the Project Fund to make scheduled payments of debt service on the Bonds. The Investment Agreement Provider, under the Investment Agreement, or otherwise, does not guarantee or provide for the payment of amounts due on the Bonds in the event of a nonpayment by the Issuer.

### **Issuer Limited Liability; Bondholder Recourse only to Trust Estate**

The Bonds will not be insured or guaranteed by any governmental entity or by the Issuer or any member or program participant of the foregoing. The Bondholders will have no recourse to the Issuer in the event of an Event of Default on the Bonds. The Trust Estate for the Bonds will be the only source of payment on the Bonds.

### **No Personal Liability of Borrower**

The Borrower is not personally liable for payments on the Loans or under other documents executed in connection with the issuance of the Bonds and the making of the Loans. Potential purchasers of the Bonds should assume that the sole security for the Bonds is the proceeds thereof and the investment earnings generated pursuant to the Investment Agreement. If the Investment Agreement Provider fails to make timely payments of principal and interest under the Investment Agreement, the Trustee will have no other recourse for any deficiencies which may exist.

### **Enforceability and Bankruptcy**

The remedies available to the Trustee and the holders of the Bonds upon an event of default under the Loan Agreement, the Investment Agreement or the Indenture are in many respects dependent upon regulatory and judicial actions which are often subject to discretion and delay.

Under existing laws and judicial decisions, the remedies provided under the aforesaid documents may not readily be available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Bonds and the aforesaid documents will be qualified to the extent that the

enforceability of certain legal rights related to the Bonds is subject to limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally and by equitable remedies and proceedings generally.

## **Summary**

The foregoing is intended only as a summary of certain risk factors attendant to an investment in the Bonds. In order for potential investors to identify risk factors and make an informed investment decision, potential investors should be thoroughly familiar with this entire Official Statement and the Appendices hereto.

## **THE BONDS**

### **General**

The Bonds will bear interest from the dated date set forth on the cover hereof and will mature on the maturity date set forth on the inside cover hereof. Interest on the Bonds will be payable to the registered owner thereof, as of the close of business on the applicable Record Date, in accordance with the terms set forth in the Indenture, on each Bond Payment Date.

**Interest Rate.** The rate of interest (the "Interest Rate") on the Bonds from the Closing Date to the earlier of the Escrow Break Date or April 17, 2006 is set forth in the inside cover hereof. During this period, interest will accrue on the basis of a year of 360 days of twelve 30-day months.

### **Requirement For Escrow Break**

**Escrow Break Requirements.** Notwithstanding any other provision of the Indenture to the contrary, if, prior to the Escrow Break Termination Date, it is anticipated based upon representations of the Borrower that each of the conditions set forth in the Indenture as described in this section will have satisfied on or before the proposed Escrow Break Date, then the Trustee at the direction of the Issuer and the Borrower will (1) coordinate the timing of the delivery of the construction/permanent loan financing arrangement with respect to the Bonds and (2) establish the date of delivery of such construction/permanent loan financing arrangement, and the following will be required to occur (the "Escrow Break Requirements"):

- (i) the Trustee will have received the following:
  - (a) executed original counterparts of any Bond Documents or the Loan Documents and any amendments thereto to be executed and delivered on the Escrow Break Date and executed original counterparts of any documents to be executed and delivered in connection with the Escrow Break Event;
  - (b) evidence of proper recordation of the Regulatory Agreement and the Mortgage (which may be telephonic notice from the title company or other party responsible for such recordation);
  - (c) evidence of proper recordation of the security instrument or a title insurance binder insuring the "gap"; and

(d) written evidence that the Bonds, if they are to be rated, have been assigned a rating of “AA” or “A-1” or better, or their equivalent.

(ii) the Trustee will have received from Bond Counsel a then current Opinion of Counsel dated the Escrow Break Date to the effect that, absent a change in law or material fact bearing on the matters covered in the Opinion of Counsel, the Escrow Break Event is permitted by the Indenture and will not affect the exclusion from gross income of the interest payable on the Bonds for federal income tax purposes;

(iii) the Borrower will have deposited with the Trustee immediate available funds sufficient to pay remarketing expenses and all other fees, costs and expenses (including attorneys’ fees and expenses) necessary to effectuate the terms and conditions of;

(iv) the Borrower will have complied with any other conditions required by the Issuer, if any, in connection with the Escrow Break Event.

If all of the above conditions have not been satisfied on or prior to the proposed Escrow Break Date, (a) remarketing of the Bonds on the proposed Escrow Break Date will not occur, and (b) the Bonds will be subject to special mandatory redemption pursuant to the Indenture.

The Borrower will, not later than seven (7) days before the proposed Escrow Break Date, deliver written notice to the Issuer and the Trustee designating the proposed Escrow Break Date.

If all of the above conditions have not been satisfied on or prior to the proposed Escrow Break Date, (a) remarketing of the Bonds on the proposed Escrow Break Date will not occur, and (b) the Bonds will be subject to special mandatory redemption pursuant to the Indenture.

#### **Mandatory Tender on Escrow Break Date**

The Bonds will be subject to mandatory tender for purchase on the Escrow Break Date at a purchase price equal to the principal amount of Bonds outstanding plus interest accrued to the Escrow Break Date. The Trustee is directed to give notice of such tender and the Escrow Break Date to Bondholders pursuant to the Indenture. Any notice of mandatory tender for purchase will be conclusively presumed to have been duly given whether or not the Registered Holder actually receives the notice.

Any Bond which is not tendered on the Escrow Break Date (“Untendered Section 4.10 Bond”) will be deemed to have been tendered to the Trustee as of such Escrow Break Date, and, will, beginning on such Escrow Break Date, cease to bear interest and no longer be considered to be Outstanding under the Indenture. In the event of a failure by any Owner to deliver such Owner’s Bonds on the Escrow Break Date, such Owner will not be entitled to any payment (including any interest to accrue from and after the Escrow Break Date) other than the purchase price for such Untendered Section 4.10 Bond. Untendered Section 4.10 Bonds will no longer be entitled to the benefits of the Indenture, except for the purpose of payment of the purchase price for such Untendered Section 4.10 Bonds. If for any reason a holder fails to deliver such Bond to the Trustee on the Escrow Break Date, the Issuer will execute, and the Trustee will authenticate and deliver to the Remarketing Agent for redelivery to the purchasers of the remarketed Bonds, a new Bond or Bonds in replacement of the Bond not so delivered. The replacement of any such previously Outstanding Bond will not be deemed to create new indebtedness, but such Bond as is issued in replacement will be deemed to evidence the indebtedness previously evidenced by the Bond not so delivered.

The Trustee will make payment for Bonds purchased pursuant to the Indenture at or before 4:00 p.m., Eastern Time, on the Escrow Break Date, first, from remarketing proceeds received on the Escrow Break Date, second, from amounts on deposit in the Project Fund, and third, from moneys from the Borrower.

The Trustee will withdraw all amounts invested under the Investment Agreement including any investment earnings thereon pursuant to the provisions thereof by presentment of a draw request as required under the Investment Agreement so as to receive such withdrawal amounts and investment earnings thereon not later than one (1) Business Day prior to the Escrow Break Date.

Following the Escrow Break Date, moneys received by the Trustee for the purchase of Bonds will be held in trust and will be paid to the former owners of such Bonds upon presentation of such Bonds at the principal office of the Trustee. The Trustee will promptly give notice by “Registered” or “certified first class” mail to each Bond Registered Holder whose Bonds are deemed to have been purchased, which notice will state that interest on such Bonds ceased to accrue on the date of purchase and that moneys representing the purchase price of such Bonds are available against delivery of such Bonds at the principal office of the Trustee.

Notwithstanding the above, during any period that the Bonds are issued as Book-Entry Bonds pursuant to the Indenture, (a) each Beneficial Owner must direct (or if a Beneficial Owner is not a DTC Participant, cause its DTC Participant to direct) the transfer of its Bond(s) on the records of DTC to the account of, or as directed by, the Trustee; and (b) it will not be necessary for Bond(s) to be physically delivered on the date specified for purchase of such Bond(s), but such purchase will be made as if such Bond(s) had been so delivered, and the purchase price of such Bond(s) will be paid to DTC.

### **Remarketing of Bonds**

The Remarketing Agent will offer for sale and use its best efforts to remarket, on or prior to the Escrow Break Date, at a price equal to par, plus accrued interest on the Bonds, if any, all Bonds required to be tendered upon delivery of notice pursuant to the Indenture.

In the event that any principal amount of the Bonds subject to remarketing on the Escrow Break Date remain unremarketed on the Escrow Break Date, no Bonds will be remarketed on the Escrow Break Date and the Bonds will be redeemed pursuant to the Indenture. The Trustee will withdraw all amounts invested under the Investment Agreement including any investment earnings thereon pursuant to the provisions thereof by presentment of a draw request as required under the Investment Agreement so as to receive such withdrawal amounts and investment earnings thereon not later than one (1) Business Day prior to the redemption date established pursuant to the Indenture.

Upon delivery (except as otherwise provided in, but subject to the tendering of Beneficial Owners in compliance with any Book – Entry System then in effect) of Bonds to or upon the order of the Remarketing Agent, the Remarketing Agent will deliver to the Trustee at its Principal Office, in immediately available funds, to be transferred to the Trustee for deposit into the Bond Purchase Fund, an amount equal to the purchase price of the total principal amount of Bonds specified in the notice given by the Remarketing Agent, plus accrued interest, if any, on such Bonds.

Except as otherwise provided in the Indenture, the Remarketing Agent will not remarket any Bonds directly to the Issuer, the Borrower or any partner, member or shareholder of the Borrower.

In its capacity as a registered broker-dealer, the Remarketing Agent may, but is not obligated to, acquire for its own account any Bonds delivered to it, but not otherwise remarketed. The Remarketing Agent may purchase and sell Bonds for its own account at any time.

### **Redemption Provisions**

The Bonds are subject to redemption at the times and redemption prices set forth in the Indenture.

*Optional Redemption.* The Bonds will not be subject to optional redemption prior to the Escrow Break Termination Date.

*Mandatory Redemption.* The Bonds are subject to mandatory redemption as provided in this section on the earliest practicable Redemption Date for which timely notice of redemption can be given pursuant to the terms of the Indenture following the occurrence of the event requiring such redemption. The principal of and accrued interest on any Bond being redeemed under this section will be paid from Bond Proceeds and earnings from the Investment Agreement. Bonds will be redeemed at a redemption price equal to 100 percent of the principal amount of such Bonds plus accrued interest to the Redemption Date.

*Failure to Meet Escrow Break Conditions.* The Bonds will be redeemed in whole on April 17, 2006, in the event that the Escrow Break Event has not occurred on or prior to the Escrow Break Termination Date.

### **Notice of Redemption**

The Trustee will give notice of redemption by first-class mail, postage prepaid, not less than five (5) days nor more than ten (10) days prior to the specified Redemption Date, to the Registered Holder of each Bond to be redeemed. With respect to Book-Entry Bonds, if the Trustee sends notice of redemption to the Securities Depository, in accordance with the requirements of the Securities Depository, the Trustee will not be required to give the notice set forth in the immediately preceding sentence. Neither the failure to mail or receive notice as described above, failure to give notice timely, nor any defect in any notice so mailed or in its content or in the manner in which notice is given will affect the validity or sufficiency of the proceedings for the redemption of such Bonds.

All Bonds so called for redemption will cease to bear interest on the specified date set for redemption, provided funds for their redemption have been duly deposited with the Trustee pursuant to the Indenture and, thereafter, the owners of such Bonds called for redemption will have no rights in respect thereof, except to receive payment of the redemption price for such Bonds.

### **Purchase of Bonds in Whole in Lieu of Redemption**

The Borrower will have the option to cause the Bonds to be purchased in lieu of redemption pursuant to the Indenture. Such option may be exercised by delivery to the Trustee on or prior to the Business Day preceding the redemption date of a written notice of the Borrower, specifying that the Bonds will not be redeemed, but instead will be subject to purchase pursuant to the Indenture as described in this section. Upon delivery of such notice, the Bonds will not be redeemed but will instead be subject to mandatory tender at the Purchase Price on the date that would have been the redemption date; provided that payment of such Purchase Price will be made only in Eligible Funds.

## **Book-Entry Only**

*Portions of the information relating to the Book-Entry System under this heading have been furnished by DTC, but have not been independently verified by the Underwriter, the Issuer, the Borrower or the Investment Agreement Provider. None of the Underwriter, the Issuer, the Borrower or the Investment Agreement Provider makes any representation whatsoever as to the accuracy, adequacy or completeness of such information.*

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully registered bonds registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered Bond certificate will be issued for each series and maturity of the Bonds, in the aggregate principal amount of such series and maturity, and will be deposited with DTC.

DTC is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Government Securities Clearing Corporation, MBS Clearing Corporation, and Emerging Markets Clearing Corporation, (NSCC, GSCC, MBSCC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC’s records reflect only the

identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE BONDS, AS NOMINEE OF DTC, REFERENCES HEREIN TO THE BONDOWNERS OR REGISTERED OWNERS OF THE BONDS WILL MEAN CEDE & CO. AND WILL NOT MEAN THE BENEFICIAL OWNERS OF THE BONDS.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices will be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and interest payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or the Trustee, on the payment date in accordance with their holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, the Trustee, the Borrower, the Remarketing Agent, the Investment Agreement Provider or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

The requirement for physical delivery of Bonds in connection with a mandatory purchase will be deemed satisfied when the ownership rights in the Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Bonds to the account of the tender agent or the Remarketing Agent, as appropriate.

DTC may discontinue providing its service as securities depository with respect to the Bonds at any time by giving reasonable notice to the Issuer or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

The Issuer may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered.

NONE OF THE ISSUER, THE TRUSTEE, THE INVESTMENT AGREEMENT PROVIDER, THE UNDERWRITER OR THE BORROWER WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DTC PARTICIPANTS, OR THE PERSONS FOR WHOM THEY ACT AS NOMINEES, WITH RESPECT TO THE PAYMENTS TO OR THE PROVIDING OF NOTICE TO THE DIRECT PARTICIPANTS, THE INDIRECT PARTICIPANTS OR THE BENEFICIAL OWNERS OF THE BONDS. THE ISSUER CANNOT AND DOES NOT GIVE ANY ASSURANCES THAT DTC, DIRECT PARTICIPANTS OR OTHERS WILL DISTRIBUTE PAYMENTS OF PRINCIPAL OF OR INTEREST ON THE BONDS PAID TO DTC OR ITS NOMINEE, AS THE REGISTERED OWNER, OR ANY NOTICES TO THE BENEFICIAL OWNERS OR THAT THEY WILL DO SO ON A TIMELY BASIS, NOR THAT DTC WILL ACT IN A MANNER DESCRIBED IN THIS OFFICIAL STATEMENT.

### **Remarketing Agent**

Pursuant to the Remarketing Agreement, the Remarketing Agent will determine the interest rates on the Bonds in accordance with the Indenture and is required to use its best efforts to remarket the Bonds in accordance with the Remarketing Agreement.

## **THE BORROWER AND THE PROJECT**

*The following description of the Borrower and the Project was furnished by the Borrower, and none of the Issuer, the Trustee, the Underwriter or the Investment Agreement Provider has independently investigated the accuracy of such descriptions contained therein.*

### **The Borrower**

The Borrower is KDF SJC, L.P., a California limited partnership. The General Partner of the Borrower is KDF Communities – SJC, LLC, a California limited liability company (the “General Partner”).

The General Partner was formed in 2005 for the purpose of acquisition and development of multi-family housing projects. The principals of the General Partner have a combined total of over 21 years of experience in the real estate market and have owned over 25 apartment projects, comprising a total of approximately 3,300 units in California.

### **The Managing Agent**

The Project will be managed by VPM Management, Inc. (the “Manager”). The Manager was founded in 1967 and has been involved in the management of residential rental projects since 1978. The Manager has 235 full-time employees. The Manager currently manages 56 apartment projects comprising a total of over 8,200 units located in California.

## The Project

Originally constructed in 1973, the Project is a residential rental project comprised of twelve two-story buildings of wood frame construction, containing a total of two hundred eighty eight (288) units. The Project is located on approximately 9.4 acres located at 3875 Seven Trees, San Jose, California. Amenities at the Project include a recreation room with a fireplace, two laundry rooms, a pool and a picnic. Rehabilitation of the Project is expected to commence by February, 2006 and is expected to be completed by approximately December, 2006. The unit mix consists of 60 studio unites, 173 one-bedroom units and 55 two bedroom units. The Borrower will not acquire title to the Project prior to the Escrow Break Date.

The unit mix is as follows:

Type of Unit	Number of Units	Square Feet
Studio	60	385
1 BR/1 BA (jr.)	60	485
1 BR/1 BA	113	575
2 BR/1 BA	2	805
2 BR/2 BA	<u>53</u>	863
TOTAL	288	

## Restrictive Covenants

The Project will be subject to the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 1, 2005, by and among the Issuer, the Trustee and the Borrower (the "Regulatory Agreement"), which imposes certain requirements on the Borrower with respect to the tax-exempt status of the Bonds under the Code, and certain other requirements under the Act, which include, among other requirements, a set aside of 40% of the units in the Project for rental to persons or families having incomes at or below 60% of area median gross income, in each case adjusted for family size and determined in accordance with Section 142(d) of the Code. In addition, the Regulatory Agreement requires that all such set-aside units be rented to tenants at affordable rents, defined as rents not greater than 30% of 60%, respectively, of area median income, as applicable, adjusted for family size.

The Project will also be subject to the terms and conditions of a resolution of the California Debt Limit Allocation Committee (the "CDLAC Resolution") with respect to the ownership, operation and management of the Project. Copies of the CDLAC Resolution are available from the Borrower and/or Trustee upon written request.

## TAX MATTERS

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes, except during any period while a Bond is held by a "substantial user" of the facilities financed by the Bonds or by a "related person" within the meaning of Section 147(a) of the Code. It should be noted, however, that such interest is an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations.

The Opinion of Counsel is subject to the condition that the Issuer and the Borrower comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that

interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The Issuer and the Borrower have covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bonds. Bond Counsel expresses no opinion regarding other federal tax consequences arising with respect to the Bonds.

Owners of the Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the Bonds may have federal or state tax consequences other than as described above. Bond Counsel expresses no opinion regarding any federal or state tax consequences arising with respect to the Bonds other than as expressly described above.

In the further Opinion of Counsel, interest on the Bonds is exempt from California personal income taxes.

The proposed form of the Opinion of Counsel with respect to the Bonds is attached hereto as Exhibit A.

## **LEGAL MATTERS**

In connection with the issuance of the Bonds, Jones Hall, A Professional Law Corporation, San Francisco, California, as Bond Counsel, will render the opinion attached hereto as Exhibit A. Bond Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Official Statement or other offering material relating to the Bonds.

Certain legal matters will be passed upon for the Borrower by Cox, Castle & Nicholson, LLP, San Francisco, California and for the Underwriter by Eichner & Norris PLLC, Washington, D.C.

The payment of fees and expenses of certain of the counsel listed above is contingent upon the issuance and delivery of the Bonds.

## **NO LITIGATION**

### **The Issuer**

There is no pending litigation against the Issuer of which the Issuer has actual notice, nor, to the knowledge of the Issuer, is there any threatened litigation against the Issuer which in any way questions or affects the validity of the Bonds, or any proceedings or transactions relating to their issuance, sale or delivery.

### **The Borrower**

To the Borrower's knowledge, there is not now pending or threatened any proceeding or litigation against the Borrower affecting the ability of the Borrower to enter into or deliver the Loan Agreement, the Loan Documents or the Regulatory Agreement, seeking to restrain or enjoin any of the Borrower's execution and delivery of the agreements described in this Official Statement, or contesting the existence or powers of the Borrower with respect to the transactions described in this Official Statement.

## **RATING**

The Bonds have been assigned the rating set forth on the cover page hereof by Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc. Such rating reflects only the views of the Rating Agency at the time the rating is given, and the Issuer makes no representation as to the appropriateness of the rating. An explanation of the significance of such rating may be obtained only from the Rating Agency. There is no assurance that such rating will continue for any given period of time or that it will not be revised downward, suspended or withdrawn entirely by the Rating Agency, if, in its judgment, circumstances so warrant. Any such downward revision, suspension or withdrawal of such rating may have an adverse effect on the market price of the Bonds.

## **UNDERWRITER**

Newman and Associates, A Division of GMAC Commercial Holding Capital Markets Corp. (the "Underwriter") has agreed, subject to certain conditions, to purchase the Bonds from the Issuer at a price of 100%. The Borrower will pay the Underwriter on the Escrow Break Date an underwriting fee equal to 1.00% of the original principal amount of the Bonds.

The Underwriter intends to offer the Bonds to the public initially at the offering price set forth on the inside cover page of this Official Statement, which offering price may subsequently change without any requirement of prior notice. The Underwriter reserves the right to join with dealers and other underwriters in offering the Bonds to the public. The Underwriter may offer and sell Bonds to certain dealers (including dealers depositing Bonds into investment trusts) at prices lower than the public offering prices. In connection with its offering, the Underwriter may over allot or effect transactions which stabilize or maintain the market price of the Bonds at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.

## **CONTINUING DISCLOSURE**

During the time the Bonds bear interest at the Bond Coupon Rate pursuant to the Indenture, the Bonds are exempt from the continuing disclosure requirements of Securities Exchange Commission Rule 15c2-12(b)(5). Accordingly, no continuing disclosure with respect to the Bonds, the Borrower, the Investment Agreement Provider or the Issuer will be provided to the owners of the Bonds so long as the Bonds bear interest at the Bond Coupon Rate.

## **MISCELLANEOUS**

This Official Statement is submitted in connection with the sale of the securities referred to herein and may not be reproduced or used, as a whole or in part, for any other purpose. Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the Issuer and the purchasers or holders of any of the Bonds.

[Issuer's Signature Page to Official Statement]

**ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS**

By: \_\_\_\_\_  
Chief Financial Officer

[Signatures continue on next page]

[Borrower's Signature Page to Official Statement]

**KDF SJC, L.P.**,  
a California limited partnership

By: KDF Communities - SJC, LLC,  
a California limited liability company,  
its General Partner

By: \_\_\_\_\_  
Mark E. Hyatt,  
Managing Member

## EXHIBIT A

### PROPOSED FORM OF OPINION OF BOND COUNSEL

December \_\_, 2005

ABAG Finance Authority for Nonprofit Corporations  
101 8th Street  
Oakland, CA 94607

**OPINION:** \$25,000,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Capitol Park Apartments) 2005 Series A

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance by the ABAG Finance Authority for Nonprofit Corporations (the "Issuer") of its \$25,000,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Capitol Park Apartments) 2005 Series A (the "Bonds"), pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, in accordance with Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California (the "Act"), and with respect to the Bonds, a Trust Indenture, dated as of December 1, 2005 (the "Indenture"), by and between the Issuer and Wells Fargo Bank, National Association, as trustee, approved by the Issuer by a resolution adopted November 30, 2005. We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon representations of the Issuer contained in the Indenture and in the certified proceedings and other certifications of public officials and of KDF SJC, L.P., a California limited partnership (the "Borrower"), furnished to us, without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, that:

1. The Issuer is a joint exercise of powers agency, duly organized and validly existing under the laws of the State of California with the power to enter into the Indenture, perform the Agreement on its part contained therein and issue the Bonds.
2. The Indenture has been duly approved by the Issuer and constitutes a valid and binding obligation of the Issuer enforceable upon the Issuer.
3. The Indenture creates a valid lien on the funds pledged by the Indenture for the security of the Bonds.
4. The Bonds have been duly authorized, executed and delivered by the Issuer and are valid and binding limited obligations of the Issuer, payable solely from the sources provided therefor in the Indenture.
5. The interest on the Bonds is excluded from gross income for federal income tax purposes except during any period while a Bond is held by a "substantial user" of the facilities financed by the

Bonds or a “related person” within the meaning of Section 147(a) of the Internal Revenue Code of 1986 (the “Code”). It should be noted, however, that such interest is an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. The opinion set forth in the first sentence is subject to the condition that the Issuer and the Borrower comply with all requirements of the Code that must be satisfied subsequent to the date hereof in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The Issuer and the Borrower have covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bonds in gross income for federal income tax purposes to be retroactive to the date hereof. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

6. The interest on the Bonds is exempt from personal income taxation imposed by the State of California.

The rights of the owners of the Bonds and the enforceability of the Bonds and the Indenture may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and may also be subject to the exercise of judicial discretion in appropriate cases.

Respectfully submitted,

A Professional Law Corporation

## EXHIBIT B

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

*The information in this section applies equally to both Indenture, with the exception of the sections pertaining to the tax treatment of the Bonds, but describes only one Indenture. Documents and defined terms referenced in this section apply only to the Project and the related Bonds. This summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Indenture, copies of which are on file with the Trustee.*

#### Definitions

The following are definitions set forth in the Indenture and used in the Official Statement:

“*Act*” means Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California in accordance with Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California, as now in effect and as it may from time to time hereafter be amended and supplemented.

“*Act of Bankruptcy*” means the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) by or against the Borrower or any general partner of the Borrower under any applicable bankruptcy, insolvency, reorganization, or similar law, now or hereafter in effect; provided that, in the case of an involuntary proceeding, such proceeding is not dismissed within 90 days after the commencement thereof.

“*Affiliate,*” means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

“*Authorized Denomination*” means (i) \$250,000 principal amount and any multiple of \$1.00 in excess thereof with respect to the Bonds.

“*Authorized Issuer Representative*” means the President, Chief Financial Officer or Secretary of the Issuer, or such other person at the time designated to act on behalf of the Issuer as evidenced by a written certificate furnished to the Trustee and the Borrower containing the specimen signature of such person and signed on behalf of the Issuer by an Authorized Issuer Representative. Such certificate may designate an alternate or alternates, each of whom will be entitled to perform all duties of the Authorized Issuer Representative.

“*Bankruptcy Code*” means the United States Bankruptcy Reform Act of 1978, as amended from time to time, or any substitute or replacement legislation.

“*Beneficial Owner*” means the person in whose name a Bond is recorded as beneficial owner of such Bond by the Trustee or by a Securities Depository, a Participant or an Indirect Participant on the records of the Trustee or of a Securities Depository, a Participant or an Indirect Participant, as the case may be, or such person’s subrogee.

“*Bond Counsel*” means (a) on the Closing Date, the law firm or law firms delivering the approving opinion(s) with respect to the Bonds or (b) after the Closing Date, any law firm selected by the Issuer of nationally recognized standing in matters pertaining to the exclusion from gross income for federal income tax purposes of the interest payable on bonds issued by states and political subdivisions.

“*Bond Coupon Rate*” means from the Closing Date to the earlier to occur of the Escrow Break Date or the date of redemption of the Bonds.

“*Bond Documents*” means (a) the Indenture, (b) the Loan Agreement and (c) the Regulatory Agreement.

“*Bond Payment Date*” means the Escrow Break.

“*Bond Purchase Agreement*” will mean the Bond Purchase Agreement by and among the Underwriter, the Issuer, and the Borrower executed in connection with the Bonds.

“*Bond Register*” means the Bond Register maintained by the Trustee pursuant to the Indenture on behalf of the Issuer for the registration and transfer of the Bonds.

“*Bondholder*,” “*holder*,” “*Owner*,” “*owner*,” “*Registered Owner*” or “*registered owner*” will mean the Person or Persons in whose name or names the Bonds are registered in the Bond Register.

“*Bond Obligations*” means the obligation of the Issuer to pay the principal and purchase price of and the interest and premium, if any, on all Bonds as required by and set forth in the Indenture.

“*Bonds*” means the Issuer’s Multifamily Housing Revenue Bonds (Capitol Park Apartments) 2005 Series A in the original aggregate principal amount of \$25,000,000.

“*Book-Entry Bonds*” means that part of the Bonds for which a Securities Depository or its nominee is the Bondholder.

“*Book-Entry System*” means an electronic system in which the clearance and settlement of securities transactions is made through electronic book-entry changes.

“*Borrower*” means KDF SJC, L.P., a California limited partnership organized and existing under the laws of the State of California.

“*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.

“*Closing Date*” means December 5, 2005, the date of original issuance and delivery of the Bonds.

“*Code*” means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced in the Indenture) as it may be amended to apply to obligations issued on the date of issuance of the Bonds, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“*Costs of Issuance*” means the Issuance Fee and the fees, costs, expenses and other charges incurred in connection with the issuance of the Bonds and the remarketing of the Bonds on the Escrow Break Date, the negotiation and preparation of the Indenture and each of the other Bond Documents and will include, but will not be limited to, the following: (a) counsel fees (including but not limited to Bond Counsel, Issuer’s counsel, Trustee’s counsel, Underwriter’s counsel, Borrower’s counsel, Bondholder Representative’s counsel and Bond Purchaser’s counsel); (b) Underwriter and financial advisor fees incurred in connection with the issuance of the Bonds; (c) initial Trustee acceptance and set-up fees and

expenses (including fees of the counsel to the Trustee) incurred in connection with the issuance of the Bonds; (d) Trustee and certifying and authenticating agent fees and expenses related to issuance of the Bonds; (e) printing costs (for the Bonds and of any preliminary and final offering materials); (f) any recording fees; (g) any additional fees charged by the Issuer; and (h) costs incurred in connection with the required public notices generally and costs of the public hearing.

“*Costs of Issuance Deposit*” means the deposit in the amount set forth in the Indenture to be made by the Borrower with the Trustee on the Closing Date to pay Costs of Issuance.

“*Costs of Issuance Fund*” means the Costs of Issuance Fund created and established by the Indenture.

“*DTC*” means The Depository Trust Company and any successor to it or any nominee of it.

“*DTC Participant*” has the meaning given to that term in the Indenture.

“*Electronic Means*” means a facsimile transmission.

“*Eligible Funds*” means any moneys held by the Trustee in any fund or account under the Indenture and available, pursuant to the provisions of the Indenture, to be used to pay principal of, premium, if any, or interest on, the Bonds.

“*Escrow Break Date*” means the date that the Escrow Break Event occurs, which date will be no earlier than January 12, 2006 and no later than the Escrow Break Termination Date, as such date may be extended pursuant to the provisions of the Indenture.

“*Escrow Break Event*” means delivery to the Trustee of a construction and/or permanent loan financing arrangement providing for the payment of the principal of and interest on the Bonds, acceptable to the Issuer.

“*Escrow Break Notice*” means a written notice by the Borrower to the Issuer and the Trustee (a) stating that the Borrower is prepared to meet the Escrow Break Requirements and (b) specifying the Escrow Break Date.

“*Escrow Break Requirements*” has the meaning given to that term in the Indenture.

“*Escrow Break Termination Date*” means April 10, 2006, as such date may be extended pursuant to the provisions of the Indenture.

“*Expense Fund*” means the Expense Fund created pursuant to the Indenture.

“*Event of Default*” means as described herein and defined in the Indenture.

“*Favorable Opinion of Counsel*” means, with respect to any action the taking of which requires such an opinion, an unqualified opinion of an attorney or a firm of attorneys designated by the Bondholder Representative having a national reputation for skill in connection with the authorization and issuance of municipal obligations under Section 103 and 141-150 (or any successor provisions) of the Code to the effect that such action will not impair the exclusion of interest on the Bonds from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“*Government Obligations*” means noncallable, nonprepayable (a) direct, general obligations of the United States of America, or (b) any obligations unconditionally guaranteed as to the full and timely payment of all amounts due thereunder by the full faith and credit of the United States of America (including obligations held in book-entry form), but specifically excluding any mutual funds or unit investment trusts invested in such obligations.

“*Indenture*” means the Trust Indenture between the Issuer and the Trustee, dated as of December 1, 2005.

“*Indirect Participant*” means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository through a Participant.

“*Investment Agreement*” means the Funding Agreement between Transamerica Occidental Life Insurance Company, an Iowa corporation and the Trustee.

“*Issuer*” means ABAG Finance Authority for Nonprofit Corporations, a joint exercise of powers agency organized and existing under the laws of the State of California, and its successors and assigns.

“*Issuer Documents*” means the Bonds, Loan Agreement, the Indenture, the Loan Documents to which the Issuer is a party, the Regulatory Agreement and the tax certificate.

“*Issuer’s Fee*” means the annual fee of the Issuer in the amount as set forth in and in accordance with and pursuant to the provisions of the Loan Agreement and the Regulatory Agreement.

“*Loan*” means the loan made by the Issuer to the Borrower pursuant to the Loan Agreement for the purpose of providing funds to the Borrower to permanently finance the acquisition, rehabilitation and equipping of the Project.

“*Loan Agreement*” means, the Loan Agreement dated as of the date of the Indenture among the Issuer, the Trustee and the Borrower, as amended, supplemented or restated from time to time.

“*Loan Documents*” means the Loan Agreement, the Note, the Regulatory Agreement and all other documents or agreements evidencing or relating to the Loan.

“*Mortgage*” means the Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date thereof, executed by the Borrower and granting a first lien on the Project for the benefit of the Issuer and assigned to the Trustee, including any amendments and supplements thereto as permitted in the Indenture.

“*Moody’s*” means Moody’s Investors Service, a Delaware corporation, and its successors and assigns.

“*Note*” means the Multifamily Note, dated as of the date thereof, in the stated principal amount of \$25,000,000, executed by the Borrower in favor of the Issuer, as assigned to the Trustee, as it may be amended, supplemented or replaced from time to time.

“*Opinion of Counsel*” means an opinion from an attorney or firm of attorneys, acceptable to the Issuer, the Trustee and the Servicer with experience in the matters to be covered in the opinion.

“*Outstanding*” or “*Outstanding Bonds*” means the sum of all Bonds theretofore authenticated and delivered under the Indenture, except:

- (a) Bonds theretofore canceled or required to be canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Bonds which are deemed to have been paid in accordance with the Indenture;
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to the Indenture; and
- (d) Bonds not tendered when required under the provisions of the Indenture which are deemed tendered.

In determining whether the Registered Holders of a requisite aggregate principal amount of Outstanding Bonds have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions of the Indenture, the Loan Agreement or any other Bond Document, Bonds which are owned by or held for the account of the Borrower, the Issuer or any other obligor on the Bonds, or any affiliate of any one of said entities (for the purpose of this definition an "affiliate" of any specified Person means any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such specified Person) will be disregarded and deemed not to be Outstanding for the purpose of any such determination.

*"Participant"* means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository.

*"Permitted Investments"* will mean 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 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 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 P 1 by Moody's which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation; (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 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, and which are approved by the Bondholder Representative; (g) shares or units in any money market mutual fund (including mutual funds of or sponsored by the Trustee or its affiliates) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of direct obligations of the United States government, and which fund has been rated Aaa by Moody's; (h) any other investments approved by the Bondholder Representative or (i) the Investment Agreement. For purposes of this definition, the "highest rating" will mean a rating of at least P 1 for obligations with less than one (1) year maturity; at least Aa2/P 1 for obligations with a maturity of one (1) year or greater but less than three (3) years; and at least Aaa for obligations with a maturity of three (3) years or greater. Permitted 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, will be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

“*Person*” means any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“*Pledged Revenues*” means the amounts pledged under the Indenture to the payment of the principal of and premium and interest on the Bonds, consisting of the following: (a) all income, revenues, proceeds and other amounts to which the Issuer is entitled and which are held by the Trustee, derived from or in connection with the Project and the Bond Documents and all amounts obtained through the exercise of the remedies provided in the Bond Documents, and all receipts of the Trustee credited under the provisions of the Indenture against said amounts payable, and (b) moneys held in the funds and accounts established under the Indenture, together with investment earnings thereon (except any amounts on deposit in the Expense Fund and the Rebate Fund).

“*Project Fund*” means the Project Fund created and established by the Indenture.

“*Qualified Financial Institution*” means any of (a) bank or trust company organized under the laws of any state of the United States of America, (b) national banking association, (c) savings bank, a savings and Loan association, or an insurance company or association chartered or organized under the laws of any state of the United States of America, (d) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (e) government bond dealer reporting to, trading with and recognized as a primary dealer by the Federal Reserve Bank of New York and (f) securities dealer the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation. With respect to an entity which provides an agreement held by the Trustee for the investment of moneys at a guaranteed rate as set out in paragraph (g) of the definition of the term “*Permitted Investments*” or an entity which guarantees or insures, as applicable, the agreement, a “*Qualified Financial Institution*” may also be a corporation or limited liability company organized under the laws of any state of the United States of America.

“*Rating Agency*” means any one and each of Standard & Poor’s, Moody’s, Duff & Phelps Credit Rating Co. and Fitch, Inc. then rating the Bonds or the Securities or any other nationally-recognized statistical rating agency then rating the Bonds or the Securities.

“*Rebate Fund*” means the Rebate Fund created under the Indenture.

“*Record Date*” means the day immediately prior to any Bond Payment Date.

“*Registered Holder*” means the Person or Persons in whose name or names the Bonds are registered in the Bond Register

“*Remarketing Agent*” means, initially, the Underwriter.

“*Resolution*” means the resolution of the Executive Committee of the Board of Directors of the Issuer authorizing the issuance of the Bonds and the execution and delivery of the Bond Documents to which it is a party.

“*Securities Depository*” will mean The Depository Trust Company and any substitute for or successor to such securities depository that will maintain a Book-Entry System with respect to the Bonds.

“*Security*” means the Trust Estate.

“*S&P*” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors and assigns.

“*State*” means the State of California.

“*Third Party Fees*” means the Issuer’s Fee, the Trustee’s Fee and the Rebate Analyst’s Fee.

“*Trust Estate*” means the Trust Estate described in the granting clauses of the Indenture.

“*Trustee*” means Wells Fargo Bank, National Association, a national banking association, duly organized and existing under the laws of the United States of America, or its successors or assigns, or any other corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at any time serving as successor trustee under the Indenture.

“*Trustee’s Annual Fee*” means the annual continuing trust administration fee as set forth in the Indenture payable by the Borrower as provided in the Loan Agreement, computed and payable semiannually in advance on each Bond Payment Date.

“*Unassigned Issuer’s Rights*” means the Issuer’s rights to reimburse and payment of its fees, costs and expenses and the rebate amount under the Loan Agreement and as set forth in the Indenture.

“*Underwriter*” means Newman and Associates, A Division of GMAC Commercial Holding Capital Markets Corp.

## **Funds and Accounts**

The following Funds and Accounts are under the Indenture:

- (a) the Project Fund and within the Project Fund, the Tax-Exempt Bonds Account; and
- (b) the Costs of Issuance Fund.

The Trustee will hold and administer the Funds and Accounts in accordance with the Indenture.

***Initial Deposits.*** On the Closing Date, the Trustee will make the following deposits:

- (a) the Bond proceeds will be deposited into the Project; and
- (b) the Costs of Issuance Deposit received from the Borrower will be deposited into the Cost of Issuance Fund.

## **The Project Fund**

***Disbursements and Transfers.*** No amounts on deposit in the Project Fund will be disbursed prior to the Escrow Break Date; provided, however, on the Escrow Break Date interest earnings on amounts on deposit in the Project Fund will be disbursed by the Trustee for the payment of the interest

portion of the purchase price of the Bonds due and payable on the Escrow Break Date upon the occurrence of the Escrow Break Event without receipt of a requisition.

### **Costs of Issuance Fund**

*Deposits Into the Costs of Issuance Fund.* On or before the Closing Date the Borrower will deliver the Costs of Issuance Deposit to the Trustee. On the Closing Date, the Trustee will deposit or transfer, as applicable, the Costs of Issuance Deposit into the Costs of Issuance Fund. On or before the Escrow Break Date, the Borrower will deliver to the Trustee amounts required to pay the costs incurred in connection with the occurrence of the Escrow Break Event and the remarketing of the Bonds on the Escrow Break.

*Disbursements From the Costs of Issuance Fund.* The Trustee will disburse moneys on deposit in the Costs of Issuance Fund, pursuant to requisitions in the form attached to the Indenture, signed by an authorized Borrower representative, to pay Costs of Issuance and on the Escrow Break Date the Escrow Break costs. The Trustee may conclusively rely on such requisitions for purposes of making such disbursements. Moneys on deposit in the Costs of Issuance Fund will not be part of the Trust Estate and will be used solely to pay Costs of Issuance or Escrow Break costs, as applicable.

### **Moneys to be Held in Trust**

Except for (i) moneys deposited with or paid to the Trustee for the redemption of Bonds notice of the redemption of which has been duly given, and (ii) moneys on deposit in the Costs of Issuance Fund and the Rebate Fund, all moneys required to be deposited with or paid to the Trustee for the account of any Fund or Account will be held by the Trustee in trust and, while held by the Trustee, will constitute part of the Trust Estate and be subject to the security interest created by the Indenture.

### **Bonds Payable on Redemption Date**

Notice of redemption having been given as required in the Indenture and described herein, the Bonds or portions thereof designated for redemption will become due and payable on the redemption date at the redemption price and, from and after such date (unless the Borrower will default in the payment of the redemption price with Eligible Funds), such Bonds or portions thereof will cease to bear interest from and after the redemption date whether or not such Bonds are presented and surrendered for payment on such date. If any Bond or portion thereof called for redemption is not so paid upon presentation and surrender thereof on the redemption date, such Bond or portion thereof will continue to bear interest at the rate or rates provided for thereon until paid and the Registered Holders thereof will have all of the rights and be subject to the limitations set forth in the Indenture. Upon surrender of the Bonds for redemption in accordance with said notice, the Bonds will be paid by the Trustee on behalf of the Issuer at the redemption price to the extent of Eligible Funds held by the Trustee on such redemption date. Installments of interest due on or prior to the redemption date will be payable to the Registered Holders as of the relevant Record Dates, without surrender thereof, according to the terms of the Bonds and the provisions of the Indenture.

### **Source of Payment of Bonds and Other Obligations; Disclaimer of General Liability**

The Bonds are limited obligations of the Issuer, the principal of, premium, if any, and interest on which are payable solely from the pledged receipts or from any other moneys made available to the Issuer for such purpose from the Trust Estate; provided, however, that under the Indenture, the Issuer has reserved to itself, and has not pledged or assigned, the Unassigned Issuer's Rights. The Bonds do not constitute, within the meaning of any statutory or constitutional provision, an indebtedness, an obligation

or a loan of credit of the State, the Issuer, ABAG, or any other municipality, county or other municipal or political corporation or subdivision of the State. The Bonds do not create a moral obligation on the part of the State, the Issuer, ABAG or any other municipality, county or other municipal or political corporation or subdivision of the State and each of such entities is prohibited by the Act from making any payments with respect to the Bonds. The Issuer has no taxing power.

### **Exempt from Individual Liability**

No covenant, condition or agreement contained in the Indenture will be deemed to be a covenant, agreement or obligation of any present or future officer, director, employee or agent of the Issuer, ABAG or the Trustee in his individual capacity, and neither the officers, directors, employees or agents of the Issuer or the Trustee executing the Bonds or the Indenture will be liable personally on the Bonds or under the Indenture or be subject to any personal liability or accountability by reason of the issuance of the Bonds or the execution of the Indenture.

### **Satisfaction and Discharge of Indenture**

Whenever all Bond Obligations have been fully paid and the Bonds are no longer outstanding, and all fees, costs and expenses due and payable under the Indenture and under the other Bond Documents have been paid in full, then (a) the Indenture and the lien, rights and interests created by the Indenture will cease, determine and become null and void (except as to any surviving rights of transfer or exchange of the Bonds in the Indenture or therein provided for) and (b) the Trustee will execute and deliver a termination statement and such instruments of satisfaction and discharge as may be necessary and pay, assign, transfer and deliver to the Borrower or upon the order of the Borrower, all cash and securities then held by it under the Indenture as a part of the Trust Estate.

### **Trust for Payment of Debt Service**

The Issuer will, at the direction of the Borrower, on any date provide for the payment of any of the Bonds by establishing an escrow for such purpose with the Trustee and depositing therein cash and/or government obligations which (assuming the due and punctual payment of the principal of and interest on such government obligations, but without reinvestment) will provide funds sufficient to pay the principal, premium, if any, and interest on the Bonds as the same become due and payable until the maturity or redemption of the Bonds; provided, however, that

(i) such government obligations must not be subject to redemption prior to their respective maturities at the option of the issuer of such government obligations,

(ii) if the Bonds are to be redeemed prior to their maturity, either (i) the Trustee will receive evidence that irrevocable written notice of such redemption has been given in accordance with the provisions of the Indenture and the Bonds or (ii) the Issuer will confer on the Trustee irrevocable written authority for the giving of such notice on behalf of the Issuer,

(iii) prior to the establishment of such escrow the Issuer and the Trustee must receive (1) an Opinion of Counsel stating in effect that upon the occurrence of an Act of Bankruptcy, money and investments in such trust will not be recoverable from the Trustee or the Bondholders under provisions of the Bankruptcy Code relating to voidable preferences and (2) an Favorable Opinion of Counsel, and

(iv) prior to the establishment of such escrow, the Trustee must receive a report by an independent certified public accountant stating in effect that the principal and interest payments

on the Government Obligations in such escrow, without reinvestment, together with the cash initially deposited therein, will be sufficient to make the required payments from such trust.

Cash and/or Government Obligations deposited with the Trustee pursuant to the Indenture as described in this section will not be a part of the Trust Estate but will constitute a separate, irrevocable trust fund for the benefit of the Bondholders to be paid from such fund. Such cash and the principal and interest payable on such Government Obligations will be applied by the Trustee solely to the payment of Bond principal, premium, if any, and interest on the Bonds.

The obligations under the Indenture relating to paying agent, registrar and transfer agent functions and the provisions set forth in the Indenture will survive defeasance.

### **Events of Default**

Any one or more of the following will constitute an event of default (an "Event of Default") under the Indenture (whatever the reason for such event and whether it will be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) if any Bonds are outstanding, a default in the payment of any interest upon the Bonds after such interest becomes due and payable; or

(b) if any Bonds are outstanding, a default in the payment of principal of, or premium on, the Bonds after such Bond principal or premium becomes due and payable, whether at its stated maturity, by declaration of acceleration or call for redemption, purchase or otherwise; or

(c) subject to the Indenture, default in the performance or breach of any material covenant or warranty of the Issuer in the Indenture (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this section specifically dealt with), and continuance of such default or breach for a period of thirty (30) days after there has been given written notice, as provided in the Indenture, to the Issuer and the Borrower by the Trustee or to the Issuer, the Borrower, and the Trustee specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" under the Indenture; provided that, so long as the Issuer has commenced to cure such failure to observe or perform within the thirty (30) day cure period and the subject matter of the default is not capable of cure within said thirty (30) day period and the Issuer is diligently pursuing such cure to the Trustee's satisfaction, then the Issuer will have an additional period of time as reasonably necessary (not to exceed thirty (30) days) within which to cure such default; or

(d) a failure to pay any Third Party Fee.

### **Acceleration of Maturity; Rescission and Annulment**

(a) Subject to the provisions of the Events of Default section above, upon the occurrence of an Event of Default, then and in every such case, the Trustee may declare the principal of all the Bonds and the interest accrued to be immediately due and payable, by notice to the Issuer and the Borrower and upon any such declaration, all principal of and prepayment premium, if any, and interest on the Bonds will become immediately due and payable.

(b) Notwithstanding the occurrence and continuation of an Event of Default, it is understood that the Trustee will pursue no remedies against the Borrower, the Project or the Project Fund if no Loan

Agreement Default has occurred and is continuing. An Event of Default under the Indenture will not in and of itself constitute a Loan Agreement Default.

### **Supplemental Indenture; Amendments**

*Supplemental Trust Indentures without Bondholders Consent.* The Issuer and the Trustee from time to time may enter into a Supplemental Indenture, without the consent of any Bondholders, but with the consent of the Bondholder Representative and at all times with the consent of the Borrower, as are necessary or desirable to:

(a) cure any ambiguity or formal defect or omission or correct or supplement any provision in the Indenture that may be inconsistent with any other provision in the Indenture;

(b) grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders or the Trustee;

(c) amend any of the provisions of the Indenture to the extent required to maintain the exclusion from gross income of interest on the Bonds for federal income tax purposes;

(d) add to the covenants and agreements of the Issuer in the Indenture other covenants and agreements thereafter to be observed by the Issuer or to surrender any right or power in the Indenture reserved to or conferred upon the Issuer;

(e) make any change in the Indenture that is required by any Rating Agency in order to obtain a rating by such Rating Agency on the Bonds;

(f) amend, alter, modify or supplement the Indenture in a manner necessary or desirable in connection with either the use or maintenance of the Book-Entry System for the Bonds, or the issuance of certificated Bonds following the termination of the Book-Entry System for the Bonds; or

(g) make any other change, which is not materially adverse to the interests of the Bondholders; or

(h) amend, alter, modify or supplement the Indenture in a manner necessary or desirable in connection with the remarketing of the Bonds on the Escrow Break Date.

The Trustee will provide the Borrower with at least ten Business Days written notice of any proposed Supplemental Indenture. Immediately after the execution of any Supplemental Indenture for any of the purposes of this section, the Trustee will cause a notice of the proposed execution of such Supplemental Indenture to be mailed, postage prepaid, to the Bondholders. Such notice will briefly set forth the nature of the proposed Supplemental Indenture and will state that copies thereof are on file at the designated office of the Trustee for inspection by Bondholders. A failure on the part of the Trustee to mail the notice required by this section will not affect the validity of such Supplemental Indenture.

*Supplemental Trust Indentures with Bondholders' Consent.* Except as otherwise provided in the section above, subject to the terms and provisions contained in the Indenture, the Trustee may from time to time enter into a Supplemental Indenture with Bondholders consent pursuant to the terms of the Indenture.

## EXHIBIT C

### SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT

*The information in this section applies equally to both Loan Agreement, but describes only one Loan Agreement. Documents and defined terms referenced in this section apply only to the related Project and Bonds. This summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Loan Agreement, copies of which are on file with the Trustee.*

#### **The Loan**

The Issuer agrees to make the Loan to the Borrower with the Bond proceeds. Upon the issuance and delivery of the Bonds, the Issuer will deliver the Bond proceeds to the Trustee. The Loan will be deemed made in full upon deposit of the Bond proceeds into the Project Fund. The Borrower accepts the Loan from the Issuer upon the terms and conditions set forth in the Loan Agreement and the Loan Documents, subject to the Indenture and the Regulatory Agreement. Disbursements will be made from the Project Fund, as provided in the Indenture.

The Loan will be evidenced by, payable in accordance with, and bear interest at the rates and on the terms provided in, the Loan Agreement.

Prior to the issuance of the Bonds, the Borrower will pay to the Trustee the Costs of Issuance Deposit for deposit into the Costs of Issuance Fund.

#### **Loan Agreement Defaults**

Each of the following events will constitute a "Loan Agreement Default or an Event of Default":

- (a) failure by the Borrower to pay any monthly loan payment or additional payment within five (5) days after the date such payment is due;
- (b) failure by or on behalf of the Borrower to pay when due any amount (other than as provided in subsections (a) above) required to be paid by the Borrower under the Loan Agreement, the Note or any of the other Bond Documents, including a failure to repay any amounts that have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings, which default remains uncured for a period of five (5) days after written notice thereof will have been given to the Borrower;
- (d) a transfer other than a transfer permitted under the mortgage occurs;
- (e) any representation or warranty made by the Borrower in any Bond Document to which it is a party, or in any report, certificate, financial statement or other instrument, agreement or document furnished by the Borrower in connection with any Bond Document, will be false or misleading in any material respect as of the date the Closing Date;
- (f) the Borrower will make a general assignment for the benefit of creditors, or will generally not be paying its debts as they become due;
- (g) an Act of Bankruptcy with respect to the Borrower or any guarantor;

(h) an event of default of the Borrower as defined or described in any other Bond Document to which the Borrower is a party occurs and any applicable notice and or cure period has expired;

(i) the Borrower will continue to be in Default under any of the other terms, covenants or conditions of the Loan Agreement (other than paragraphs (a) - (h) above) for 30 days after notice from the Trustee, the Bondholder Representative or the Servicer in the case of such other Default; provided, however, that if such other Default under this paragraph (i) is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower will have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period will be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed 60 days;

(j) The managing general partner shall make a general assignment for the benefit of creditors, shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to the managing general partner shall occur, unless in all cases the managing general partner is replaced with a substitute managing general partner that satisfies the requirements of Section 21(b)(7)(iii)(A) or (B) of the Mortgage.

After a Responsible Officer of the Trustee obtains actual knowledge of the occurrence of a Loan Agreement Default, the Trustee will give Written Notice thereof to the Issuer, the Borrower, the Bondholder Representative and the Servicer.

### **Remedies**

The remedies will be as provided in the Loan Agreement.